



## **Iraq Shadow report**

**Report submitted to the Committee against Torture in the  
context of the review of the initial report of Iraq**

**Alkarama Foundation – 13 July 2015**

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## 2. Introduction

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The initial report of Iraq (CAT/C/IRQ/1) was submitted to the Committee against Torture in June 2014, with almost a two-year delay, and will be reviewed by the Committee at its 55<sup>th</sup> session. Alkarama regrets that the report submitted by the authorities did not provide any concrete elements on the implementation of the obligations stemming from the Convention in the country but only cited its relevant domestic legislation.

Alkarama hereby submits this shadow report in which it draws a picture of the situation of torture in Iraq, highlighting its main concerns and addressing recommendations to the State party.

This report is based on first hand testimonies gathered by Alkarama, provided by its local partners, the victims themselves, their families and lawyers. Over the last years, Alkarama has continuously received accounts of torture and other ill-treatments at the hand of the Iraqi security services or state-affiliated militias, which indicates that this practice is widespread and systematic. However, many victims of torture still fear reprisals if they denounce the acts they were subjected to. In addition, the humiliation they suffered, particularly in cases of sexual abuses, often hinders the victims from speaking up and favours impunity for the perpetrators.

Our Organisation has identified alarming patterns, which constitute a breeding ground for the practice of torture. Suspects are constantly arrested without any warrants, detained for extended periods of time, often *incommunicado*, during which they are severely tortured in order to extract confessions. Once they are presented before a judicial authority, these confessions are accepted as the sole material evidence against them. At the outcome of trials that blatantly violate due process rights, detainees are then sentenced to heavy penalties, including to death, which is provided for under the Anti-Terrorism legislation.

While we acknowledge the numerous challenges faced by Iraq, it is of outmost importance that the issue of torture is addressed as a matter of priority by the authorities. Alkarama hopes that the Committee's constructive dialogue with the State party will allow it to tackle this issue.

## 3. Background

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Deterioration over the past years of the human rights situation are a result of the effects of the United States (U.S.) occupation, the ensuing civil war and internal division, as well as the regional turmoil.

Following the invasion of Iraq by a U.S.-led coalition in March 2003, a Coalition Provisional Authority (CPA) aiming at ousting Saddam Hussein was established as the interim authority. The years of occupation were then marked by intense violence between the Iraqi insurgency and the Multi-National Force (MNF), composed essentially of American soldiers. Before handing over sovereignty to an interim Iraqi government in June 2004 on the basis of a UN Security Council Resolution, the CPA issued an order granting immunity for all foreign forces and contractors operating under the auspices of the MNF for any offences committed in Iraq. However, the MNF remained in the country until 2008 while the U.S. retained significant *de facto* power.

After the election of a Transitional National Assembly in 2005 and the adoption of the new Constitution creating an Islamic federal democracy, Prime Minister Nouri Al-Maliki put together a unity government in spring 2006. However, sectarian violence continued to escalate following a bomb attack on a Shia shrine in Samarra in February and continued throughout 2007, bringing the civil war to its height, with 34 000 civilians killed in 2006 alone.

In November 2008, as coalition forces started to hand over control of the territory to the Iraqi forces, the Iraqi Parliament approved the Status of Forces Agreement (SOFA) which established that U.S. troops would leave the country by the end of 2011, releasing or transferring custody of all detainees they held to the Iraqi authorities. In 2009, six years after the invasion, U.S. troops started to withdraw.

In March 2010, parliamentary elections were held and a new government was approved after nine months of political stalemate. However, the ensuing political paralysis, the failure to respond to demands that were first discussed in Parliament and the violent response to the subsequent protest movement, which began in December 2012, favoured radicalisation over political dialogue. This tendency was further accentuated through the arrest and prosecution in December 2011 of prominent political figures who had peacefully criticised the government, as U.S. troops finished withdrawing from the country.

In 2012, attacks targeting Shia areas on one hand and the crushing of peaceful protests denouncing the marginalisation of Sunni Muslims on the other, plunged the country back to a state of sectarian war. As a result, 2013 experienced a serious escalation of violence, which allowed armed groups to grow in strength and increase attacks on officials and civilian institutions. Benefitting from the deterioration of the security situation, the former Al Qaeda in Iraq now referred to as "the Islamic State" (IS), reached the Al Anbar governorate in January 2014 and took over the cities of Fallujah and Ramadi, creating a grave humanitarian crisis followed by the exodus of hundreds of thousands of people.

In response to the intensification of fighting and the advance of IS in the northern and central parts of the country, including in Mosul and Tikrit, pro-government militias were mobilised by the government, kidnapping and executing hundreds of people. In August, an international coalition led by the U.S. intervened to stop the southern advance of IS by carrying out air raids, causing further civilian casualties.

Today, with the legacy of occupation, ensuing internal conflict and dictatorship, Iraq's weak institutions are unable to prevent abuse of power or hold perpetrators of serious human rights violations to account. Given the likelihood of a further deterioration in the situation, an increase in human rights violations, already generalised, is likely if sustained efforts are not made to record violations, identify of perpetrators and bring them to justice.

## **4. Torture: a widespread and systematic practice**

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### **4.2 Definition, absolute prohibition and criminalisation of torture**

Although the Iraqi Constitution prohibits torture – and admissions obtained thereof – in its article 37(c),<sup>1</sup> domestic legislation does not include a definition of torture complying with article 1 of the Convention against Torture (CAT), leaving a legal vacuum that renders the eradication of this practice difficult. Indeed, the only definition of torture is comprised in article 12(2)(e) of the Iraqi Supreme Criminal Court Act No. 10 of 2005, according to which "[t]orture' means the intentional infliction of severe pain or suffering, whether physical or mental, on a person in the custody or under the control of the accused; except that torture does not include pain or suffering arising from, or incidental to, lawful sanctions."<sup>2</sup>

This flawed definition does not require that torture be "inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity" and only applies to the direct perpetrators of torture. This goes against the Committee's jurisprudence according to which the definition of torture contains four levels of involvement – infliction, instigation, consent and acquiescence – which render an official complicit in the act of torture.<sup>3</sup> Moreover, the

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<sup>1</sup> Article 37(c) stipulates that: "All forms of psychological and physical torture and inhuman treatment are prohibited. No account shall be taken of any confession extracted under duress, threat or torture and the victim shall have the right to claim compensation, in accordance with the law, in respect of the physical and mental harm suffered." See: Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.15.

<sup>2</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.17.

<sup>3</sup> OMCT, "A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies – Seeking remedies for torture victims", *OMCT Handbook Series Vol. 4*, April 2014, p.224.

definition lacks the purpose requirement, such as extracting a confession, punishing, intimidating, coercing or discriminating the victim.

It is noteworthy that according to Iraq's national report, the reason for the absence of a definition is to "allow leeway for discretionary juristic interpretation without restricting the concept of torture to a specific definition which, with the passage of time and increasingly sophisticated methods of investigation and interrogation, might not be sufficiently all-embracing and exclusive."<sup>4</sup> This stand is extremely concerning and indicative of a legal migration of the "enhanced interrogation techniques" – a euphemism referring to the use of torture – policy that was introduced by the Bush administration and used during the occupation of Iraq. This interpretation opens doors to an arbitrary redefinition by judges of what constitutes an act of torture, which would become more exclusive than inclusive. This is all the more alarming as the judiciary lacks independence.

Moreover, there is no legal provision in Iraqi legislation specifying that no exceptional circumstance of any kind, be it a state of war or the threat of war, internal political instability or any other state of emergency, can justify the use of torture as required by article 2(2) CAT. In a country where the deteriorating security situation is systematically used as a justification for human rights abuses, such a provision should be incorporated into the law as a matter of priority.

Finally, although torture constitutes an "offence in breach of office duties" in the Iraqi Penal Code (PC), it is not punishable by appropriate penalties taking into account its grave nature, since the duration of imprisonment provided is not fixed, thus violating article 4(2) of the Convention. Indeed, according to article 333 PC, "[a]ny public official or agent who tortures or orders the torture of an accused person, a witness or an expert in order to compel him to confess to the commission of an offence, to make a statement or provide information about such offence, or to withhold information or give a particular opinion in respect thereof, shall be liable to a *penalty of imprisonment*. The use of force or threats shall be deemed tantamount to torture."<sup>5</sup>

Furthermore, article 332 PC which seems to refer to the commission of cruel, inhumane or degrading treatment only foresees "a period of detention not exceeding one year plus a fine not exceeding 100 dinars" – around 10 cents U.S. dollars – for "[a]ny public official or agent who cruelly treats a person in the course of his duties thereby causing him to suffer a loss of esteem or dignity or physical pain", which corresponds to penalties attached to a minor offence. As article 4 is obligatory both for acts of torture and ill-treatment,<sup>6</sup> this provision of Iraqi law also constitutes a breach of the Convention.

### **Recommendations:**

1. Define and criminalise torture in full compliance with the Convention and ensure that penalties are fixed in the law and commensurate with the gravity of the crime;
2. Incorporate into the Iraqi legislation a provision stating that no exceptional circumstance may be invoked as a justification of torture.

### **4.3 The lack of jurisdiction over acts of torture committed by U.S. and Coalition Forces**

After the invasion of Iraq by the Coalition Forces in 2003, the practice of torture against detainees by, among others, U.S. forces, was widespread most notoriously in Abu Ghraib and received considerable media coverage. In 2006, during the U.S. review by the Committee against Torture, the latter expressed concerns over "reliable reports of acts of torture or cruel, inhumane and degrading

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<sup>4</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.17.

<sup>5</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.16.

<sup>6</sup> Committee against Torture, General Comment No. 2, 23 November 2007 (CAT/C/GC/2/CRP. 1/Rev.4), para.6.

treatment or punishment committed by certain members of the State party's military or civilian personnel in [...] Iraq."<sup>7</sup>

To date, victims of torture at the hands of the Coalition forces still have not obtained redress, nor were they compensated, due to the fact that Iraq does not enjoy jurisdiction over acts of torture committed by Coalition and U.S. forces on its territory.

Indeed, and as mentioned in Iraq's national report, article 11 of the Penal Code stipulates that its provisions do not apply to "persons enjoying statutory immunity under the terms of international treaties or international or domestic law."<sup>8</sup> In fact, Iraq has signed agreements with the Coalition and U.S. forces according to which the latter enjoy immunity from prosecution in Iraq. What is more, the cases in which jurisdiction is shared between Iraq and intervening forces are not clearly established thus hindering the process of investigation, accountability and redress for victims of torture.

For example, none of the acts of torture which the individuals cited below were exposed to has led to the opening of an investigation, and the victims never obtained redress.

**Abdenasser Hassan**<sup>9</sup> was arrested in August 2003 by Section No. 101 of the Coalition forces in Karak and transferred to Abu Ghraib prison where he was detained until January 2004 and severely tortured. He reported that he was hooded, beaten up in front of other prisoners, pepper-sprayed, deprived of sleep for long periods, exposed to sunlight under extremely high temperatures until he would faint, held in a freezing cold cell and electrocuted.

Without having ever been presented before a judicial authority, Mr Hassan was released in 2009. As a result of the acts of torture he was subjected to, Mr Hassan still suffers from post-traumatic stress disorder, but also suffers from constant physical pain caused by a fracture to his right shoulder and the loss of many of his teeth due to blows to the face.

**Mahmoud Hekmat Rashi Al-Khayat**<sup>10</sup> was arrested in February 2005 in Karada by the U.S. Battalion No. 101 and was transferred to Abu Ghraib prison where he was detained until July 2005. He was severely tortured for the first two months of his detention in order to extract "confessions". In particular, he was beaten up, pepper-sprayed and electrocuted. He was left with his front teeth broken, a burst vein in his arm from gunfire and wounds all over his body. He was then kept in solitary confinement for the following three months in order for his wounds to heal. The forced confessions he made were later used as evidence during his trial held in 2007 after which he was sentenced to three years of imprisonment.

The blurry legal regime related to the exercise of jurisdiction over acts of torture committed by Coalition and U.S. forces on the Iraqi territory after 2003 amounts a violation of article 5 CAT, and leads to a *de facto* violation of articles 12, 13 and 14 CAT. What is more, it creates a climate of impunity, in addition to the fact that the U.S. fails "to fully investigate allegations of torture and ill-treatment of suspects held in United States custody abroad, evidenced by the limited number of criminal prosecutions and convictions",<sup>11</sup> as noted by the Committee during the country's review in November 2014. Last but not least, the fact that Iraq does not exercise jurisdiction over acts of torture committed by foreign forces on its territory breaches the principle of universal jurisdiction, enshrined in article 6 of the Convention.

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<sup>7</sup> Committee against Torture, *Conclusions and recommendations of the Committee against Torture – United States of America*, 25 July 2006 (CAT/C/USA/CO/2), para.26.

<sup>8</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.41.

<sup>9</sup> Alkarama, *Iraq-USA: Abdenasser Hassan, tortured by U.S. forces in Iraq*, 8 March 2010, <http://en.alkarama.org/oman/442-iraq-usa-abdenasser-hassan-tortured-by-u-s-forces-in-iraq> (accessed on 1 July 2015).

<sup>10</sup> Alkarama, *Iraq: Abu Ghraib Torture Victim Held in Eight Prisons through Five Years*, 27 July 2010, <http://en.alkarama.org/iraq/564-iraq-abu-ghraib-torture-victim-held-in-eight-prisons-thru-five-years> (accessed on 1 July 2015).

<sup>11</sup> Committee against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, 19 December 2014 (CAT/C/USA/CO/3-5), para.12.

## Recommendations:

1. Ensure that the Iraqi authorities can exercise jurisdiction over any act of torture that has occurred on its territory and that complaint mechanisms are accessible to victims;
2. Investigate acts of torture committed by Coalition forces in Iraq, and provide accountability and redress for the victims.

### 4.4 Violations of the legal safeguards related to the deprivation of liberty

In Iraq, arrested and detained persons are rarely provided with the basic fundamental safeguards from the very outset of the deprivation of liberty. The flaws identified by Alkarama through numerous testimonies are all the more concerning as people are usually tortured after the arrest and before charges are formally formulated by the investigative judge, while held in police facilities under the authority of the Ministry of Interior (known as "tasfiraat") or in the Directorate of Counter Terrorism and Organised Crime. Once they are charged, their case is referred to a criminal court for trial and defendants are usually transferred to a facility falling under the authority of the Ministry of Justice.

The public authorities with the power of arrest are the Iraqi police and the Security Forces, which, depending on the force, are under the authority of the Ministry of Interior (MoI), the Ministry of Defence (MoD) or the Prime Minister's Office. In fact, the latter exercises direct control over the Baghdad Operation Command and Counter Terrorism Unit, the 56<sup>th</sup> Brigade of the Army (the "Basra Brigade", responsible for the security in the Green Zone), the 54<sup>th</sup> Brigade of the Army (the "Al Muthanna Brigade"), although they fall administratively under the control of the MoD.<sup>12</sup>

These forces rarely present a warrant while conducting the arrest, and never do so when the person is suspected of terrorism since the warrant is generally issued by the judge post arrest.<sup>13</sup> This practice is permitted under article 92 of the Criminal Code of Procedure (CCP), which provides no obligation of presentation of warrant at the time of the arrest, but only requires that a person be arrested "on the basis of a judicial warrant." Testimonies have shown that the security forces receiving direct orders from the Prime Minister's Office systematically carry out arrests without any warrant or legal basis.

Moreover, the maximum duration of custody which is of 24 hours renewable once – according to article 19(13) of the Constitution and article 123(A) CCP<sup>14</sup> – is never abided by and people are usually presented for the first time before a judicial authority several days or even weeks after their arrest, as shown by cases documented by Alkarama and other stakeholders.<sup>15</sup>

The weak legal framework on pre-trial detention also opens the door to abuses and the practice of torture. Article 109 CCP stipulates that pre-trial detention is of 15 days if the person is accused of an offence punishable by a period of detention exceeding three years or life imprisonment but *can be extended indefinitely* if the person is accused of an offence punishable by death penalty, theoretically subjected to the approval of the relevant court when it goes beyond six months. In practice, this means that persons suspected of "terrorism" can be held in pre-trial detention indefinitely and often without any legal basis, since formal judicial procedures for the renewal of detention are not respected.<sup>16</sup> Thus, detainees are usually held on remand until the conclusion of all legal processes and the sentence is carried out, especially in cases of terrorism.<sup>17</sup> The United Nations Assistance Mission for Iraq (UNAMI) and the Office of the High Commissioner for Human Rights (OHCHR) have found that detainees are sometimes held for up to six years in *tasfiraat* while waiting for the preliminary investigation to be completed.<sup>18</sup>

<sup>12</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.11.

<sup>13</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.12.

<sup>14</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), paras.35 and 72.

<sup>15</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.12.

<sup>16</sup> Human Rights Watch, *The Quality of Justice – Failings of Iraq's Central Criminal Court*, December 2008 (1-56432-402-8), pp.17-18

<sup>17</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.12.

<sup>18</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.12.

In addition, detainees are rarely informed of their right to have a lawyer during the investigation procedures;<sup>19</sup> and lawyers are not allowed to attend the presentation before the investigative judge, in blatant violation of article 123(C) CCP according to which the investigative judge must not question the accused until a lawyer has been appointed.<sup>20</sup> Cases brought to the attention of Alkarama have shown that it is common for detainees to meet their lawyer for the first time in court, once the investigative procedure is over and that they have been transferred to prisons under the control of the Ministry of Justice. This pattern – which amounts to a violation of the right to defence enshrined in article 19(4) of the Constitution<sup>21</sup> – was also identified by UNAMI and OHCHR at the outcome of their trial monitoring study,<sup>22</sup> while NGOs have spoken of a “highly curtailed right to counsel” in the country.<sup>23</sup>

Moreover, although detention facilities are legally required to maintain a bound register and must allow prisoners to inform their family of their detention,<sup>24</sup> it is rarely the case. Since 2014, Alkarama has submitted several urgent actions to the United Nations Committee on Enforced Disappearances on behalf of disappeared individuals and has noted that some of these individuals were never found in none of the registers available to the different Ministries, which demonstrate the alarming absence of proper registers in places of detention. It is also common for detainees to disappear for extended periods of time following transfers from one prison to another.

Finally, medical examinations are almost never carried out and when they are, they are undertaken months after the torture has taken place, when the physical evidence has disappeared. Iraq makes no mention in its national report of a domestic provision related to the undertaking of medical examination but only notes that the authorities are addressing the issue of torture by undertaking “medical examination of the alleged victim after his conviction and transfer from his place of detention to a prison run by the Ministry of Justice.”<sup>25</sup> This measure is clearly insufficient considering that torture mostly occurs at the investigative stage and that traces are likely to have already disappeared when the victim has been convicted and is transferred to a prison to serve his sentence.

In this regard, UNAMI and OHCHR, in a recent study on the judicial response to allegations of torture, found that judges had only requested medical reports proving torture in a third of the cases brought before them. Nearly all the defendants did not have medical reports to support their claims of torture as they were denied access to a doctor while under police custody. When in rare cases the defendants were able to provide a medical report, it in any event did not affect the outcome of the trial, since they were convicted to heavy sentences on the basis of confessions extracted under torture irrespective of the medical reports supporting their claims.<sup>26</sup>

In conclusion, these shortcomings pertaining to the deprivation of liberty are conducive to torture but also make it very difficult for defendants who have been tortured and/or forced to confess a crime to say or prove so. The complete lawlessness surrounding the procedures of custody systematically leads to the extraction of the detainees’ first “confessions” while interrogated by the police (or held in detention centres under the authority of the Ministry of Interior), even if the power of investigation is normally vested with the investigative judge (as per articles 51-57 CCP).

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<sup>19</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.13.

<sup>20</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.35.

<sup>21</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.81.

<sup>22</sup> OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.6.

<sup>23</sup> Human Rights Watch, *The Quality of Justice – Failings of Iraq’s Central Criminal Court*, December 2008 (1-56432-402-8), p.20.

<sup>24</sup> According to Section 3 of Coalition Provisional Authority Memorandum No. 2 of 2003. See: Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), paras. 47 and 73.

<sup>25</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.24.

<sup>26</sup> OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.2.



In practice, arrestees are brought before the investigative judge – in the absence of a lawyer – days if not weeks after their arrest by those who tortured them and are subjected to threats should they reject their statements made under duress. Therefore, most detainees remain very unwilling to raise allegations of torture before the trial takes place and the judge quickly admits self-incriminating evidence. When the suspects do raise allegations of torture, they often do so during the trial, which takes place months if not years after the initial period of police detention and conclusion of the procedure before the investigative judge, when traces of torture are likely to have already disappeared.<sup>27</sup>

### Recommendations:

1. Ensure that all arrestees are presented with a warrant and that they are given prompt access to their families and legal counsel from the investigative stage; immediately inform all detainees of their rights, including their right to lodge complaints;
2. Ensure that persons are effectively taken into custody immediately after their arrest and brought before an investigative judge within 24 hours, in conformity with the Code of Criminal Procedure;
3. Prohibit the investigating police or intelligence officers from accompanying suspects to and being present during the suspects' presentation before the investigative judge; ensure that the suspect is then transferred to a prison falling under the Ministry of Justice;
4. Systematically conduct medical examinations of detainees who allege abuse during interrogation or in detention;
5. Ensure that the pre-trial policy meets international standards and release all detainees unless they are charged with a criminal offence and brought to trial within a reasonable time;
6. Put all detention centres under effective judicial review, including police stations or facilities under the control of militias;

## 4.5 The systematic reliance on confessions under torture

Investigative hearings and trials rely almost exclusively on confessions obtained under torture and information provided by "secret informants", while physical or corroborating evidence is rarely presented.<sup>28</sup> When in some rare cases, an absolute proof that the detainee was subjected to torture in order to extract confessions is brought to the judge's attention, the defendant is generally nonetheless sentenced, only to life imprisonment rather than to the death penalty.

These abuses are partly due to a weak legal framework that does not comply fully with the requirements of article 15 of the Convention, which in turn provides more scope for torture and ill-treatment of suspects. Indeed, except from a Constitutional provision according to which "no account shall be taken of any confession extracted under duress, threat or torture",<sup>29</sup> no other provision addressing this issue refers to the term "torture" *per se* but instead to "illegal methods" or "coercion".

In particular, article 127 CCP prohibits the use of "illegal means to influence the accused for the purpose of extracting [an admission]",<sup>30</sup> i.e. "[i]ll-treatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants". Although Iraq's national report uses the word "confession", the Arabic version of the CCP refers instead to the term *iqrar* (admission) rather than *i'tiraf* (confession). Likewise, article 218 CCP states that admissions must not have been made as a result of coercion."<sup>31</sup>

<sup>27</sup> OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.2.

<sup>28</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.23.

<sup>29</sup> Article 31(1)(c) of the Constitution. See Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.99.

<sup>30</sup> See: Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.100.

<sup>31</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.101.

However, it is noteworthy that this provision was amended in 2003 by CPA Memorandum No. 3 which removed the following: "if there is no causal link between the coercion and the admission or if the admission is corroborated by other evidence which convinces the court that it is true or which has led to uncovering a certain truth, then the court may accept it." These terms clearly allowed for the admission of forced confessions in the course of the proceedings.

Nevertheless, although this provision was theoretically repealed, according to UNAMI, there is still uncertainty among some judges as to whether the legislation passed by the CPA is applicable or remains in force, which "may offer some explanation to judges' continuing reliance on disputed confession as evidence, since the Iraqi Criminal Procedure Code allows them to do so."<sup>32</sup>

In their national report, the Iraqi authorities recognise that confessions carry "considerable weight" and "significantly influence" the judicial body before which it is made.<sup>33</sup> This heavy reliance on confessions is allowed by article 217 CCP,<sup>34</sup> according to which the trial court has absolute authority to decide whether a pre-trial confession is admitted as incriminating evidence, even if the witness subsequently withdraws his statement. The judge can also "divide the admission up", i.e. "accept the part which it believes to be correct and reject the rest."<sup>35</sup>

In conclusion, the absence of any legal safeguards related to the deprivation of liberty as well as the lack of independence of the judiciary contribute to perpetuate this abusive system of reliance on forced confessions and raises the possibility of serious miscarriages of justice. Iraqi courts thus systematically proceed to convict the accused and sentence him to long periods of imprisonment or execute the convict. This systematic reliance on confessions under torture by judges also in turn encourages the police and intelligence forces to use such practices instead of carrying out proper forensic investigations that would allow meeting the standard of proof necessary for conviction.

In the same token, an extremely alarming practice is that of airing such "confessions" on television with the collaboration of the Ministry of Interior, in blatant violation of the principle presumption of innocence and of the right to be treated fairly in judicial proceedings enshrined in article 19 of the Constitution.<sup>36</sup> In the series "Terror in the hands of justice", State-controlled channel Al Iraqiya brings in "terrorists" pre-trial detainees to "confess their crimes", most likely after they have been subjected to torture and threats.<sup>37</sup> As a result, the persons brought on TV are stigmatised as "terrorists" and the judiciary is pressured to issue heavy guilty verdicts on the sole basis of these public confessions.

According to NGO reports,<sup>38</sup> officials of the Ministry of Interior also regularly organise press conferences during which detainees accused of serious crimes are presented to the media to confess

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<sup>32</sup> OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.2.

<sup>33</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.102.

<sup>34</sup> Article 217 of the CPC reads as follow: "A. The court has absolute authority in evaluating the accused's admission and acting upon it whether it was given in front of the court, in front of the investigative judge, during other court hearing of the same case or in another case, even if the witness subsequently withdraws his statement.<sup>34</sup> The court can accept his admission to the [judicial] investigator if there is enough evidence to convince it that the investigator did not have sufficient time to present the accused to the [investigative] judge so that his admission could be recorded.  
B. Admissions may not accepted be if the conditions stipulated in A are not present."

<sup>35</sup> Article 219 of the CPC reads as follow: "It is permissible for the court to divide the admission up, accept the part which it believes to be correct and reject the rest. It is not however permissible to interpret the admission or divide it into parts if it is the only piece of evidence in the case."

<sup>36</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.44.

<sup>37</sup> This practice also contravenes article 235 of the Iraqi Penal Code according to which: « Any person who publishes any matter, which, by its nature, will influence a judge or magistrate entrusted with the judgment of cases brought before a legal authority or legal or other official in charge of investigations or specialist, arbitrator or witness, who is required to give evidence at a trial or investigation or any person who publishes any matter, which, by its nature, will prevent another from passing information to the appropriate authority is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties."

<sup>38</sup> Amnesty International, *Iraq: A Decade of Abuses*, March 2013 (MDE 14/001/2013), p.37.

their crimes. What is more, the MoI even releases video footages of “interrogations” of pre-trial detainees on the Internet via their Youtube channel.<sup>39</sup>

In this regard, the prosecution of former Vice-President Tariq Al Hashimi on the basis of confessions under torture from his bodyguards broadcasted on national television in 2011 is emblematic. At the time, an Interior Ministry official, Major General Adel Daham commented that: “If we say we caught the leader of Al Qaeda, who will believe it? This is to show credibility. We are sure we are doing the right thing.”<sup>40</sup>

In December 2011, Iraqi security forces, ordered by Prime Minister al Maliki, surrounded the house of Vice-President Tariq Al Hashimi, a leading member of the Iraqiya coalition, al Maliki's main electoral rival, who was criticising what he saw as al Maliki's attempts to centralise power. This was marking an escalation of tensions between Al Maliki and Al Hashimi who had been at odds over the formation of a unity government.

As Al Hashimi was not home, the security forces arrested several of his relatives and members of his staff instead. On 19 December 2011, forced confessions at gunpoint of three of his bodyguards who were severely tortured beforehand were aired on state-run channel Al Iraqiya incriminating Al Hashimi. The same day, the Ministry of Interior held a press conference to announce that an arrest warrant had been issued against Al Hashimi for having “orchestrated bombing attacks” and broadcasted the coerced confessions, in violation of the principle of presumption of innocence.

Meanwhile, the security services, tightly controlled by Al Maliki, continued to arrest dozens of Al Hashimi's staff and bodyguards and took them to secret locations where they were severely tortured and forced to sign confessions incriminating both Al Hashimi and themselves.

Alkarama has gathered testimonies regarding 21 of Al Hashimi's staff, their relatives and friends,<sup>41</sup> who were all arrested between December 2011 and March 2012. All reported having been severely tortured while detained *incommunicado* for several months, following the same pattern. While the purpose of the torture was at first to have them confess that they took part in terrorist acts on behalf of Al Hashimi, it also turned to a collective punishment simply for having worked for him. In addition to being held in solitary confinement, they were being beaten up (*falaqa*), forced to strip and exposed to extremely low temperatures. They were also choked with plastic bags and subjected to electric shocks via electrodes placed on sensitive parts of their body. The security services agents, who had access to the prison facilities, also threatened to arrest their wives and mothers and rape them in front of them. Mrs Rasha Nemer Jaafar Al Husseini, Al Hashimi's personal secretary and media officer, was also raped.

They were all later charged on the basis of their confessions extracted under torture with “carrying out terrorist attacks” by the investigating judge of the Central Criminal Court of Iraq (CCCI) branch in Al Karkh. After heavily flawed trials during which their confessions under torture were admitted as the sole pieces of evidence, they were all sentenced to death on the basis of article 4 of the Iraq's Anti-terrorism Law of 2005.

## Recommendations:

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<sup>39</sup> See: <https://www.youtube.com/user/moiiraqi/videos>.

<sup>40</sup> Jack Healy, “Iraq Turns Justice Into a Show, and Terror Confessions a Script”, *New York Times*, 7 January 2012, <http://www.nytimes.com/2012/01/08/world/middleeast/iraq-turns-justice-into-a-show-and-terror-confessions-a-script.html> (accessed on 9 July 2015).

<sup>41</sup> See about four of his security officers here Alkarama, *Iraq : Four Security Officers of Former Vice-President Al Hashimi Arbitrarily Detained on the Basis of False Confessions Obtained Under Torture*, 21 August 2014, <http://en.alkarama.org/iraq/press-releases/1482-iraq-four-security-officers-of-former-vice-president-al-hashimi-arbitrarily-detained-on-basis-of-false-confessions-obtained-under-torture> (accessed on 6 July 2015); and about 11 of his staff in addition to their relatives and friends here : Alkarama, *Iraq : Politically-Driven Mass Arrests and Arbitrary Detention Target Former Vice-President Al Hashimi's Staff*, 15 April 2015, <http://en.alkarama.org/iraq/press-releases/1659-iraq-politically-driven-mass-arrests-and-arbitrary-detention-target-former-vice-president-al-hashimi-s-staff> (accessed on 6 July 2015).

1. Enforce the legal framework to ensure that confessions obtained under torture and the subsequent proceedings are declared null and void;
2. Review all cases of convictions based solely on confessions obtained under torture;
3. Take the necessary measures to ensure that criminal convictions require evidence other than the confession of the detainee;
4. Prohibit television broadcasts or other publication of detainees' confessions in advance of or during their trials or the publication of other information that undermines the presumption of innocence and the right to a fair trial.

#### 4.6 The systematic interference of the executive with the judiciary

Although the Iraqi Constitution stipulates that the judiciary is independent,<sup>42</sup> the executive branch, in particular the Office of the Prime Minister, exercises powerful influence over the judiciary, to the extent that courts become a tool of political control. Prosecution, under the cover of "terrorism", of outspoken political opponents and critics of the Prime Minister have become common. The issuance of the death penalty on the basis of confessions under torture of Ahmad Al Alwani, a Member of Parliament and critical voice of the government's policies in complete disregard of the rules providing for parliamentary immunity is an iconic example of how the Iraqi judiciary keeps handing down politically motivated sentences following orders from the executive branch.

**Ahmad Al Alwani**,<sup>43</sup> a prominent member of the secular Al Iraqiya political block within the Iraqi Council of Representatives, is well known for his denunciation of corruption within the Iraqi bureaucracy, as well as his criticism of both the Iraqi Prime Minister's policies and the central government's marginalisation of Iraqi Sunnis. He was arrested on 28 December 2013, after having held meetings with the provincial authorities of Ramadi – the theatre of a one-year long protest – in order to ease the tensions between demonstrators and the government.

The following day, the Iraqi Minister of Defence threatened to keep Al Alwani in detention if the protests did not cease within two days. As clashes continued between demonstrators and the Iraqi army, he remained detained.

Shortly after his arrest, Al Alwani was taken to a secret place of detention where he was subjected to ill-treatment and torture and forced to sign official documents containing statements extracted under torture. As a consequence of this treatment, he now suffers from serious physical and psychological health conditions for which he does not benefit from the appropriate medical treatment while in detention.

Neither his family nor members of the Parliament were able to obtain information on his whereabouts or on the charges pending against him until his first hearing on 27 January 2014. That day, Al Alwani was brought before the Central Criminal Court of Baghdad handcuffed and hooded and charged with "assault on military assets and killing and injuring security forces for terrorist ends", on the basis of article 4 of the 2005 Anti-Terrorism Law.

During the trial, his lawyer was never allowed to contact or visit him in prison to prepare his defence. Instead, he was only briefly allowed to talk to him for a few minutes in court. Following several episodes of intimidation, Al Alwani's lawyer was also arrested, blindfolded and questioned about his motives for defending this client.

On 23 November 2014, Al Alwani was sentenced to death on the sole basis of confessions extracted under torture. His lawyer filed an appeal, which is still pending to date. Al Alwani is also currently being prosecuted for "incitement to sectarianism", which is also punished by death.

<sup>42</sup> In articles 19(1) and 87. See: Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.7.

<sup>43</sup> Alkarama, *Iraq: MP Ahmad Al Alwani Sentenced to Death After Flawed Trial*, 16 January 2015, <http://en.alkarama.org/component/k2/1593-iraq-member-of-council-of-representatives-al-alwani-sentenced-to-death-after-flawed-trial?Itemid=> (accessed on 9 July 2015).

Today, he remains in detention and is being forbidden to see his family and lawyer, leaving him in a situation of *incommunicado* detention.

Moreover, a broad pattern of harassment and persecution of lawyers by the governmental authorities persists in the country and hinders the independence of lawyers. In October 2012, at the occasion of the 79<sup>th</sup> anniversary of the Iraqi Bar Association, former Prime Minister Al Maliki issued threats against lawyers as he expressed "his commendation and admiration of lawyers who refuse to defend terrorists, murderers and criminals", while criticising those who "are willing to defend a murderer or a criminal."<sup>44</sup> Alkarama has recently gathered testimonies<sup>45</sup> from four high profile lawyers who have been victims of harassment by the Iraqi authorities, including through arbitrary arrest and detention, and even one extrajudicial execution – which clearly illustrate this pattern of interference of the executive with the independence of lawyers.

**Salah Khabbas Al Obeidi, Mouayad Obeed Al Ezzi and Ziad Ghanem Shaaben Al Naseri** are the lawyers of former Vice President Tariq Al Hashimi's staff members.

In the morning of 24 March 2013, Al Obeidi was in his office in the Al Saiidiya district when a group of armed people broke in and executed him. Although a detachment of the Security Forces was standing near Al Obeidi's office, witnesses report that they did not intervene neither during nor after the execution, letting the armed men leave. No inquiry was opened into his execution either.

Al Ezzi and Al Naseri were them victims of arbitrary arrest and detention on the basis of the Anti-Terrorism Law. On 21 November 2012, Al Naseri was arrested and detained for one week in inhumane conditions in the Anti-Terrorism prison of Tikrit. Five months later, on 31 March 2013, Al Ezzi was notified of an arrest warrant issued by the Central Investigating Court of Al Karkh, adjacent to the Green Zone in Baghdad. On 24 June 2013, his arrest warrant was cancelled by the same court.

**Badee Arif Izzat** is the lawyer of Ahmad Al Alwani, a prominent member of the secular Al Iraqiya political bloc within the Iraqi Parliament, well known for his denunciation of corruption within the Iraqi bureaucracy, as well as his criticism of both the Iraqi Prime Minister's policies and the central government's marginalisation of Iraqi Sunnis. Arrested on 28 December 2013 by the Iraqi security forces, Al Alwani was sentenced to death by the Central Criminal Court of Iraq on 23 November 2014 following a severely flawed trial.

In reprisal for his defence of Al Alwani, Izzat was arrested by the Iraqi Special Forces on 20 March 2014, while going to a meeting with officials from the UNAMI. Arrested under the pretext of "carrying false identity documents", he was blindfolded and taken to an interrogating centre within the Green Zone where he was questioned about his motives for defending Al Alwani. After having been kept blindfolded for 12 hours, he was forced to record a video stating that he had not been subjected to torture, and given permission to call his family to pick him up.

Therefore, it is clear that the administration of justice suffers from serious flaws that are caused by the heavy interference of the executive with the judiciary. An independent judiciary system is a *sine qua none* condition to eradicate the systematic reliance of judges on forced confessions and allow for the opening of investigations into allegations of torture and prosecution of those responsible.

## Recommendations:

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<sup>44</sup> Alkarama, *Iraq: Government seriously threatens the independence of judges and lawyers*, 7 November 2012, <http://en.alkarama.org/iraq/1030-iraq-government-seriously-threatens-the-independence-of-judges-and-lawyers> (accessed on 10 July 2015).

<sup>45</sup> Alkarama, *Iraq: Broad Pattern of Harassment and Persecution of Lawyers Through Arbitrary Arrest and Detention, Torture and Even Death*, 12 May 2015, <http://en.alkarama.org/iraq/1683-iraq-reprisals-against-4-lawyers-through-arbitrary-arrest-detention-torture-and-even-execution> (accessed on 10 July 2015).

1. Take immediate and concrete steps to ensure effective independence of the judiciary in general, and judges and lawyers in particular, to ensure a real separation of powers.

#### 4.7 A pervasive impunity for acts of torture

Impunity prevails in Iraq for acts of torture, as in general, very few allegations of torture lead to the opening of an investigation, which breaches article 12 of the Convention – according to which the State party must ensure that the competent authorities proceed to a prompt and impartial investigation, even in the absence of a formal complaint – as well as article 13 which protects the right to complaint. It is noteworthy that Iraq's national report refers to no investigation or prosecution of an official for acts of torture.

The dozens of testimonies gathered by Alkarama have shown that judges systematically reject the torture allegations brought to their attention and subsequently refuse to open an investigation. After a trial monitoring study conducted in Iraq, UNAMI and OHCHR also concluded that "in no case where defendants claimed before the presiding trial judge that they had been tortured, did the judge order an investigation."<sup>46</sup> What is more, in all cases the presiding judge placed the onus on the defendant to prove that torture had taken place and mostly convicted individuals wholly or in part on confessions obtained under torture.<sup>47</sup> In no case did the severity of torture allegations raised in court "affect or influence the attitude of the presiding judges, who systematically failed to order investigations into the allegations."<sup>48</sup>

When an inquiry is conducted, the acts of torture are often covered up. In the case described below, the results of the investigation into the death under torture of Amir Al Batawi that only state the final mechanism of his death, leaving unclear its underlying cause – i.e. the injuries caused by torture – are revealing.

**Amir Al Batawi**,<sup>49</sup> a 40-year-old member of former Vice President Al Hashimi's security personnel, was arrested by the Iraqi Security Forces on 21 December 2011. Charged with terrorism on the basis of the Iraqi Anti-Terrorism Law No.13 of 2005, Al Batawi was transferred to Baladiyat prison in Baghdad – a detention centre falling under the control of the Ministry of Justice where other members of Al Hashimi's staff were detained *incommunicado* – where he died under torture on 15 March 2012.

Five days later, when his body was shown at the Forensic Laboratory of Baghdad, Al Batawi's lawyer saw the victim had lost an enormous amount of weight and that he bore obvious signs of torture on his body, such as wounds on sensitive parts of his body, burn marks, and a cut-off tongue.

On 25 March 2012, a committee was established to investigate the circumstances of his death, following a request by the Ministry of Human Rights. The Committee found that Al Batawi's state of health had started "deteriorating since December 2012" because of several diseases – bronchitis, colon irritation, headache, tonsillitis, inflammation of the intestines, stomach ulceration and bleeding of the higher oesophageal – for which it said Al-Batawi had received the required medical treatments. No mention was made of his loss of weight or even the clear signs of torture that the victim bore on his corpse. To the contrary, the committee concluded that Al Batawi "died from a renal deficiency" according to a report from the forensic doctor of the Medical City Hospital, where Al Batawi had been transferred to on 14 March 2012 to undergo kidney dialysis.

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<sup>46</sup> OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.2.

<sup>47</sup> OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.2.

<sup>48</sup> OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.4.

<sup>49</sup> Alkarama, *Iraq: Death Under Torture of Former Vice President Tariq Al Hashimi Security Personnel*, 3 July 2015, <http://en.alkarama.org/iraq/press-releases/1770-iraq-death-under-torture-of-former-vice-president-tariq-al-hashimi-security-personnel> (accessed on 3 July 2015).

Contesting the committee's findings, on 29 May 2014 Al Batawi's lawyer submitted a request to open an investigation into his death to the Al Karkh Criminal Court in Baghdad, which was immediately rejected under the pretext that the circumstances of Al Batawi's death had already been established.

It is noteworthy that Al Batawi died three weeks following the publication of a report by the Supreme Judicial Council<sup>50</sup> in which its judicial investigating committee concluded that none of the 73 people detained in relation to the Al Hashimi had complained of torture or other ill-treatment.

In light of this, perpetrators of torture are *a fortiori* rarely prosecuted, which favours a climate of impunity and amounts to a violation of article 7 of the Convention.

Indeed, article 333 PC, which should allow for the prosecution of public officials having committed torture is in fact limited by article 136(b) CCP,<sup>51</sup> which subjects the referral to the competent judicial authorities of a perpetrator of torture to the authorisation from the relevant Minister – for example, the Ministry of Interior in a case involving police. Although the Iraqi Council of Representatives passed a law to amend this provision in 2007 and 2011, the Presidency Council never ratified the draft law, which as a result did not enter into force.<sup>52</sup> In addition, the fact that Iraqi domestic law does not contain any provision regarding the non-applicability of the statute of limitations<sup>53</sup> to the crime of torture is another factor that encourages impunity.

What is more, even in the event of a perpetrator of torture facing prosecution, an order from a superior officer or a public authority may be invoked as a justification of torture, since according to article 40(2) PC,<sup>54</sup> there is no crime if the perpetrator commits the act in performance of an order from a superior, which he is obliged to obey, or which he feels he is obliged to obey. Such a provision seriously hampers article 2(3) of the Convention.

Finally, the Amnesty Law No. 19 of 2008 provides a *de facto* immunity for members of the security forces. Aimed at providing a benchmark in facilitating political reconciliation, the law offers amnesty for convicted Iraqis, not exempting from the amnesty those who have committed torture. In fact, according to a 2010 report from the Ministry of Human Rights, the passing of the law was said the main cause of the closure of official investigations into torture complaints.<sup>55</sup>

In conclusion, most acts of torture and ill-treatment are not investigated or prosecuted and remain unpunished. The annual reports from the Ministry of Human Rights remain extremely vague on the

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<sup>50</sup> Supreme Judicial Council, *Bayan hawal wafa athnein min afraad himaya al-hashemi*, 11 April 2012, <http://www.iraqia.iq/view.1393/> (accessed on 10 July 2015).

<sup>51</sup> Article 136(b) CCP reads as follow: "With the exception of infractions punishable by the amended Traffic Code number 48 of 1971, and related statements, the transfer of the accused for trial in an offense committed during performance of an official duty, or as a consequence of performance of this duty is possible only with permission of the minister responsible, in accordance with the stipulations of other codes."

<sup>52</sup> To understand the successive attempts to amend this provision, read: Global Justice Project: Iraq, *The many lives of article 136(b) of Criminal Procedure Code, Law 23 of 1971*, 23 May 2009, <http://giji.org/2009/05/23/the-many-lives-of-article-136b-criminal-procedure-code-23-of-1971/> (accessed on 10 July 2015).

<sup>53</sup> Article 150 PC: "An offence lapses for the following reasons: (1) the death of the accused (2) a general amnesty (3) the dropping of charges by the victim in such circumstances as are prescribed by law."

Article 151 PC: "A sentence imposing a penalty or precautionary measure lapses with a general amnesty or rehabilitation or with the dropping of charges by the victim in such circumstances as are prescribed by law or, in the event of a suspension of sentence and without anything that would call for the reinstatement of the suspended sentence occurring during the period of suspension, by the termination of that period of suspension."

<sup>54</sup> According to article 40 of the Penal Code: "There is no crime if the act is committed by a public official or agent in the following circumstances:

(1) If he commits the act in good faith in the performance of his legal duty or if he considers that carrying it out is within his jurisdiction.

(2) If he commits the act in performance of an order from a superior which he is obliged to obey or which he feels he is obliged to obey. It must be established in these circumstances that the belief of the offender in the legitimacy of the act is reasonable and that he committed the act only after taking suitable precautions. Moreover, there is no penalty in the second instance if the Code does not afford the official an opportunity to question the order issued to him."

<sup>55</sup> Amnesty International, *Iraq: A Decade of Abuses*, March 2013 (MDE 14/001/2013), p.62.

actions taken by the authorities following allegations of torture and the national report of Iraq is silent on the subject.

### **Recommendations:**

1. Monitor the judicial response to torture allegations raised in court and take concrete actions against judges who persistently fail to respond to allegations of torture raised before them;
2. Investigate promptly all allegations of torture and ill-treatment and ensure that those responsible for abuses are held to account; empower those carrying out such investigations to question officials and to be allowed access to all places, including places of detention;
3. Abrogate all domestic legislation that favours impunity, in particular article 136(b) of the Code of Criminal Procedure as to ensure that charges can be brought against officials without the permission of their superiors;
4. Publicly affirm before all members of the security forces that those who order, perpetrate, acquiesce or tolerate torture will be held fully accountable and will be liable to prosecution, imprisonment and dismissal from office.

### **4.8 Secret detentions and enforced disappearances: a breeding ground for torture**

The practice of enforced disappearances and *incommunicado* detention is widespread in Iraq and detainees are systematically tortured while detained in secret or in unacknowledged prisons. While it facilitates the practice of torture as long periods of secret detention are often designed to extract confessions, it also constitutes a form of ill-treatment *per se*, as the disappeared are completely cut from the outside world and have no access to their families or legal counsel.

Although Iraq is a State party to the International Convention for the Protection of All Persons from Enforced Disappearance, enforced disappearance is not defined in domestic law nor is it recognised as a criminal offence. The Iraqi legislation instead refers to "unlawful detention" which is prohibited under article 19(12) of the Constitution "in places not designed for these purposes."<sup>56</sup> Furthermore, article 322 PC theoretically punishes with up to seven years of imprisonment any law enforcement official who arrests, imprisons or detains a person in unlawful circumstances.<sup>57</sup>

Despite these few legal safeguards, enforced disappearances constitute a major challenge as they have been occurring since the Iraq-Iran war (1980-1988) and continue to occur to this day, as documented by Alkarama. Estimates run from 250 000 to one million people missing from decades of conflict and human rights abuses,<sup>58</sup> and the authorities have failed to resolve most cases of disappearances, provide remedy to the relatives of missing persons and prosecute those responsible.

One of the most notorious secret detention centres where torture is systematically practiced is located in the old Al Muthanna military airport in West Baghdad. The facility does not fall under the authority of the Ministry of Defence, the Ministry of Justice or the Ministry of Interior but is instead jointly run by the 54<sup>th</sup> and 56<sup>th</sup> Brigades of the Army, which are under the control of Baghdad Operation Command (BOC) – a regional security command set up by former Prime Minister Al Maliki – which reports directly to the Office of the Prime Minister as the Commander in Chief of the Armed Forces.

The facility, which was exposed in April 2010, is said to have started running in September 2009, when security forces kept about 400 men in the facility after mass arrests were carried out around Mosul against individuals accused of "aiding and abetting terrorism."<sup>59</sup> In March 2010, the Ministry of

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<sup>56</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.72.

<sup>57</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.52.

<sup>58</sup> Figures provided by the International Commission on Missing Persons (ICMP), <http://www.ic-mp.org/where-we-work/middle-east-and-north-africa/iraq/> (accessed on 8 July 2015).

<sup>59</sup> See: Human Rights Watch, *Iraq – At a Crossroads – Human Rights in Iraq Eight Years after the US-Led Invasion*, February 2011 (1-56432-736-1).



Human Rights was allowed to access the facility and found that torture was being systematically practiced in its premises with detainees reporting having been routinely beaten, electrocuted and sexually abused.<sup>60</sup> Although the authorities initially announced the opening of investigations and the immediate transfer of detainees to Al Rusafa prison, former Prime Minister Al Maliki affirmed in a televised interview that there were “no secret prisons in Iraq” and that the torture allegations were “lies” and a “smear campaign”. He added that members of rival political factions had visited the prison and instructed the prisoners to give themselves scars by “rubbing matches on some of their body parts.”<sup>61</sup> While it was announced that three officers were arrested for interrogation,<sup>62</sup> no information is available as to whether they were charged and prosecuted.

Almost six years later, the facility continues to hold secretly and torture hundreds of individuals, some of whom gave their testimony to Alkarama.

**Riad Abdel Majeed Al Obeidi,**<sup>63</sup> a 61-year-old retired Air Force Brigade pilot from Al-A'miriya, was freed on 15 April 2015 after 10 months of detention in the Al Muthanna airport. Al Obeidi was abducted on 1 June 2014 by a patrol of the 54<sup>th</sup> and 56<sup>th</sup> Brigades of the Army – also known as the “Baghdad Brigade” –, the Iraqi National Intelligence and the Military Intelligence, who forced him into a car before taking him to Al Muthanna airport’s detention facility.

During the first 45 days of his secret detention, he was held in solitary confinement in a sewage room, blindfolded and with his hands tied. He was severely tortured, beaten up with sticks, whipped, and repeatedly electrocuted, including on the most sensitive parts of his body. As a consequence of the torture he suffered, he lost sight in one eye and part of his hearing.

Al Obeidi was then forced to sign confessions that were later used to indict him in two cases, including on the basis of article 4 of the 2005 Anti-Terrorism Law under which defendants face the death penalty. Following the intervention of the Committee on Enforced Disappearances, the judicial authorities ordered his release on 12 April 2015. To this day, no investigation has been opened into his disappearance and subsequent torture and he was unable to obtain redress.

**Mohammed Abbas Kadhim Al Sudani,**<sup>64</sup> a 29-year-old married worker, was arrested on 20 November 2014 at around 2 a.m in his house in the Al Wahda neighbourhood of Baghdad by a squad of 15 members of the of the Special Weapons and Tactics (SWAT) unit. The security forces arrested him – and even mistreated his mother and sisters as well as the children who were asleep – before taking him to an unknown location. Following his disappearance, Al Sudani's family submitted a complaint to the police station of the Al Khalesa neighbourhood in Baghdad, but to no avail.

It is only on 4 May 2015, i.e. five months after Al Sudani’s arrest, that his mother received a call by the authorities informing her that her son was detained in Taji prison, a detention centre located in a rural district north of Baghdad, where she was able to visit him the following day.

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<sup>60</sup> Ned Parker, “Secret prison revealed in Baghdad”, *Los Angeles Times*, 19 April 2010, <http://articles.latimes.com/2010/apr/19/world/la-fg-iraq-prison19-2010apr19> (accessed on 2 July 2015).

<sup>61</sup> Sam Dagher, “Report Details Torture at Secret Baghdad Prison”, *The New York Times*, 27 April 2010, <http://www.nytimes.com/2010/04/28/world/middleeast/28baghdad.html> (accessed on 2 July 2015).

<sup>62</sup> Khalid al-Ansary, “Iraq closes secret prison, arrests 3 officers”, *Reuters*, 23 April 2010, <http://www.reuters.com/article/2010/04/23/idUSLDE63M0W8>

<sup>63</sup> Alkarama, *Iraq: Riad Al Obeidi Set Free After 10 Months in Secret Detention Centre in Baghdad*, 16 April 2015, <http://en.alkarama.org/iraq/press-releases/1661-iraq-riad-al-obeidi-set-free-after-10-months-in-secret-detention-centre-in-baghdad> (accessed on 2 July 2015).

<sup>64</sup> Alkarama, *Iraq – URGENT APPEAL: Electrocuted and Sexually Abused by Army, Now at High Risk of Being Sentenced on Sole Basis of Confessions under Torture*, 28 May 2015, <http://en.alkarama.org/iraq/press-releases/1722-iraq-urgent-appeal-electrocuted-and-sexually-abused-by-army-now-at-high-risk-of-being-sentenced-on-sole-basis-of-confessions-under-torture> (accessed on 2 July 2015).

He told his mother that he had spent six months detained in Al Muthanna airport, where he suffered severe torture, including beatings with iron wire on every parts of his body, electrocution on his genitals and several instances of sexual assault, all acts of torture inflicted on him to make him “confess” to having poisoned his father as well as kidnapped and killed other people. He was also forced to sign documents while blindfolded.

Al Sudani reported having been tortured by “Captain Ahmad” and “Captain Osama”, who both belong to the 54<sup>th</sup> Brigade, a unit of the Iraqi Army reportedly under the command of Colonel Firas Al Azerj, which has in the past been commonly referred to by military and police as “Maliki’s forces” as its chain of command bypasses the Ministry of Defence under which it technically falls and reports directly to the Prime Minister (as the Commander in Chief of the Armed Forces) through its security office.

### **Recommendations:**

1. Take the necessary legal measures to ensure that enforced disappearance is criminalised under Iraqi law and that the penalties provided reflect their grave nature;
2. Ensure that all cases of disappearances are thoroughly, promptly and effectively investigated, and that those responsible are prosecuted;
3. Adopt measures to clarify the fate and whereabouts of all outstanding cases and ensure that any individual who has suffered as a result of the disappearance is entitled to redress;
4. Explicitly prohibit secret and *incommunicado* detention and take the necessary measures to ensure that all secret detention facilities are closed;
5. Allow unexpected independent inspection of all places of detention.

### **4.9 Human rights abuses committed by government-backed militias**

In Iraq, human rights violations are committed not only by the Iraqi security services, but also by government-backed militias which have long been operating in the country like regular armed forces with the acquiescence and support of the authorities, when they do not act side by side. As they operate outside any legal framework and without any oversight, their very existence constitutes a violation of article 11 of the Convention. Moreover, the fact that they are completely unaccountable for and that victims do not have access to any redress mechanism amount to a violation of articles 12, 13 and 14 CAT all together.

Today, Iraq’s main Shia militias are the Badr Brigades – the armed wing of the Islamic Supreme Council of Iraq –; the Saraya Peace Brigades – formerly the Mahdi Army, the armed wing of the Sadrist movement –; ‘Asa’in Ahl al-Haq and the Kata’in Hizbullah.<sup>65</sup> These militias are rooted in the suppression of the Shia community at the hands of the Iraqi State prior to 2003, which intensified with the Baathist coup in 1968. Following the fall of Saddam Hussein and the dismantling of the Iraqi army in 2003, security became effectively devolved to party, tribal, and sectarian militias. As a result of sectarian warfare that reached its apex in 2006 and disastrous post-conflict reconstruction, Shia militias that functioned independently from the State became increasingly widespread and powerful.<sup>66</sup>

After the Islamic State seized control of Mosul and other parts of the northwest in June 2014, Shia militias have considerably increased their power and legitimacy. Following calls from political and religious figures, the militias enrolled thousands of “volunteers” to fight against IS and have been conducting security operations with the tacit consent or full cooperation of governmental forces. In June 2014, the Iraqi Ministry of Interior eventually created a state-sponsored umbrella organisation composed of about 40 Shia militias called the “People’s Mobilisation” or “al-Hashd al-Shaabi” led by Hadi al-Amiri, former Minister of Transport and commander of the Badr Brigades.

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<sup>65</sup> Amnesty International, *Absolute impunity – Militia Rule in Iraq*, October 2014 (MDE 14/015/2014), p.17.

<sup>66</sup> Ranj Alaaldin, “Iraq: Growth of the Shia militia”, *BBC*, 17 April 2015, <http://www.bbc.com/news/world-middle-east-32349379> (accessed on 9 July 2015).

These militias have long taken advantage of the climate of lawlessness and impunity prevailing in the country to commit serious human rights abuses, including abductions, torture and summary executions, more recently in reprisal or revenge for IS attacks against Sunni men accused of being “terrorists”.<sup>67</sup>

The case of **Abbas Fadhil Abboud Kadhim Al Batawi**<sup>68</sup> is illustrative of how militias and governmental authorities work side by side. 20-year old Iraqi student Al Batawi was abducted on 16 September 2006 in the city centre of al-Mada’in, in the Baghdad Governorate, by a patrol of the “Jaish al-Mahdi” or “Mahdi Brigade” – which was replaced in 2014 by “Saraya al-Salaam” or “Peace Brigades”. The men were wearing civilian clothes and checked his identity before forcing him into a military vehicle that left for an unknown location.

Worried about his fate and convinced that he was being held *incommunicado* by the authorities; his relatives visited many detention centres and filed complaints with the Ministry of Human Rights. However, the authorities continued to deny his detention. Oddly, in 2007, during a visit of former Vice-President Al Hashimi to Al Rusafa prison, which was broadcasted on national television, Al Batawi was among the detainees filmed. Although he could clearly be identified in the video footage, the authorities continue to this day to deny his detention and his family does not know where he is or even whether he is still alive.

Likewise, members of an unidentified militia abducted 67-year-old farmer **Mohammed Hazza Rayes Al Aseymi**<sup>69</sup> on 8 May 2006 at his house in Baghdad. That day, after five cars surrounded his property, a group of 15 heavily armed and hooded men entered his house and arrested him before taking him to an unknown location.

His family had not heard from him for about seven years until a documentary was broadcasted on Al Rafideen TV in July 2013, showing Al Aseymi in Tasferat prison during a visit by Iraq’s former Vice-President Al Hashimi. However, to date, the Iraqi authorities continue to deny his detention.

Both cases demonstrate how militias operate with the tacit consent or under the direct control of the governmental authorities and conduct arrests before transferring people to official detention facilities. It is also very likely that these individuals have been tortured while enforcedly disappeared.

### Recommendations:

1. Take all the necessary measures to disarm and demobilise militias as a matter of priority;
2. Open prompt, thorough, transparent and independent investigations into allegations of violations, in particular enforced disappearances, unlawful killings, torture and other ill-treatment;
3. Ensure that reparation mechanisms are available to victims and their right holders.

### 4.10 Excessive use of force and police brutality

The Iraqi security forces systematically use force in an excessive manner, often in the context of peaceful demonstrations, leading to the injury and death of several individuals over the last years. The violence itself, as well as the absence of investigations and redress for the victims all together amount to a violation of articles 11, 12, 13, 14 and 16 of the Convention.

The repeated attacks and use of excessive use of force against residents of Camp Ashraf – or Camp “New Iraq” – in the Diyala province, north of Baghdad, are illustrative of such practices. Since 1986, Camp Ashraf has been home to around 3 500 members or supporters of the People’s Mujahedin

<sup>67</sup> For more details, see: Amnesty International, *Absolute impunity – Militia Rule in Iraq*, October 2014 (MDE 14/015/2014).

<sup>68</sup> Alkarama: *Iraq: Authorities Deny Detention of Disappeared Student Seen on Video Footage in Iraqi Prison*, 12 August 2014, <http://en.alkarama.org/iraq/press-releases/1471-iraq-authorities-deny-detention-of-disappeared-student-seen-on-video-footage-in-iraqi-prison> (accessed on 9 July 2015).

<sup>69</sup> Alkarama, *Iraq: Authorities Deny Al Aseymi’s Disappearance Despite Video Footage*, 6 October 2014, <http://en.alkarama.org/iraq/press-releases/1517-iraq-authorities-deny-al-aseymi-s-disappearance-despite-video-footage> (accessed on 9 July 2015).

Organisation of Iran (PMOI), an Iranian opposition group who had fled their country where they were being persecuted. After the transfer of the camp to the Iraqi government in 2009, the Iraqi security forces repeatedly attacked it.

On 28 July 2009, the Iraqi army stormed the camp using tear gas, batons and live ammunition against the unarmed residents who tried to stop them from entering. NGOs have reported that the forces were beating people repeatedly on different parts of the body, including the head, killing seven individuals and injuring scores of others.<sup>70</sup>

Again, on 8 April 2011, clashes erupted between residents and security forces, leading to the death of 34 unarmed civilians – including seven women – and injuring about 300 more. While some were shot, some had been crushed to death by military vehicles.<sup>71</sup>

In September 2013, another attack left 52 camp residents dead after the security forces opened fire on residents. The UNAMI visited the site and concluded that “all the deceased appeared to have suffered gunshot wounds, the majority of them in the head and the upper body, and several with their hands tied.”<sup>72</sup> Although the authorities announced that a committee had been set up under the authority of the Ministry of Interior to investigate the attack, there is no information available concerning the proceedings and results of the investigations of the committee.<sup>73</sup>

Similarly, the authorities have never made public the results of the alleged investigations opened into the 2009 and 2011 attacks, and no one is known to have been held to account for the deaths and injuries caused.

Excessive use of force is equally systematically employed against peaceful protestors. In 2012, demonstrations erupted in Fallujah following a raid on the house of Sunni Finance Minister Raif al-Issawi and the arrest of his bodyguards in Anbar. Quickly spreading all over the country, demonstrators were denouncing the marginalisation of the Sunnis by the Shia-led government and requested among others, the release of individuals arrested on politically motivated charges and the cancellation of article 4 of the Anti-Terrorism Law, which provides for the death sentence and is used abusively to crackdown on any form of dissent. Many of these demonstrations were violently suppressed by the security forces, leading to the death and injury of peaceful protestors.

On 19 April 2013, clashes erupted between the Iraqi Armed Forces and protestors in Hawijah, a town west of Kirkuk, following which the town was put under siege, cutting water, electricity and preventing any other supplies from reaching the area. This siege continued until dawn on 23 April 2013, when the Iraqi Armed Forces, lead by the 12<sup>th</sup> Division of the Army, with the support of military and police divisions as well as SWAT units used excessive force to disperse the sit-in altogether. According to testimonies, the forces employed tear gas, stun grenades, and live ammunition in the operation, resulting in the death of 91 civilians and injury of another 254. The 23 death certificates Alkarama<sup>74</sup> was able to gather indicated that bullet wounds on various parts of their bodies killed the men, indicating that the military and police forces did use live ammunition against unarmed protestors.

The Parliamentary Fact-Finding Committee formed immediately after the incident recommended that an independent investigation into the incident be carried out and that judicial proceedings be initiated

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<sup>70</sup> Human Rights Watch, *Iraq: Protect Camp Ashraf Residents*, 31 July 2009, <http://www.hrw.org/news/2009/07/31/iraq-protect-camp-ashraf-residents> (accessed on 9 July 2015).

<sup>71</sup> OHCHR, *Pillay condemns Iraqi operation that led to 34 deaths, calls for inquiry*, 15 April 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10943&LangID=E> (accessed on 9 July 2015).

<sup>72</sup> OHCHR, *Iraq: UN human rights office, UN mission condemn attack on Camp Ashraf*, 3 September 2013, <http://www.un.org/apps/news/story.asp?NewsID=45761#.VZ6GPEBVW9I> (accessed on 9 July 2015).

<sup>73</sup> OHCHR, Letter of allegation sent to the Iraqi government by the Working Group on Arbitrary Detention, the Independent Expert on the promotion of a democratic and equitable international order and the Special Rapporteur on extrajudicial, summary or arbitrary executions, 6 August 2014 (AL IRQ 3/2014), [https://spdb.ohchr.org/hrdb/28th/Public\\_-\\_AL\\_Iraq\\_06.08.14\\_%283.2014%29.pdf](https://spdb.ohchr.org/hrdb/28th/Public_-_AL_Iraq_06.08.14_%283.2014%29.pdf) (accessed on 9 July 2015).

<sup>74</sup> Alkarama, *Iraq: No Justice Six Months After 91 Demonstrator Deaths in Hawijah*, 20 October 2013, <http://en.alkarama.org/iraq/1159-iraq-no-justice-six-months-after-91-demonstrator-deaths-in-hawijah> (accessed on 2 July 2015).

in view of prosecuting those found to be responsible for the excessive use of force. Subsequently, on 13 May 2013, a Supervising Investigative Judicial Commission was established through an order from the Iraqi Supreme Judicial Council. Although the Commission has received 500 complaints from injured demonstrators and families of demonstrators killed in the crackdown, the Ministry of Defence continues to refuse the referral of military personnel to justice, so that to this day, no result has come from the inquiry.

### **Recommendations:**

1. Investigate promptly all instances of police brutality and excessive use of force by law enforcement officers;
2. Prosecute those responsible for the excessive use of force leading to deaths and injuries, and, if found guilty, ensure that they are punished according to the gravity of their acts;
3. Provide effective remedies and rehabilitation to the victims.

### **4.11 The overuse of the death penalty on the basis of the Anti-Terrorism Law**

The death penalty was re-introduced by the government in 2004 and executions have been carried out increasingly since 2005, to the extent that in 2014, Iraq was the third country in the world that most executed people.<sup>75</sup> To this day, the government continues to argue that the death penalty is required because of the security situation and serves as a deterrent to acts of terrorism, a stand that is clearly questionable considering the serious deterioration of the security situation over the last years.<sup>76</sup>

Iraqi law applies the death penalty for a large number of offences, ranging from attacks against the internal and external security and State institutions, kidnapping, rape, drug trafficking where death results, prostitution and aggravated murder – some of which do not fall under the definition of most serious crimes and should therefore not be sanctioned with capital punishment.<sup>77</sup> In its jurisprudence, the Committee against Torture had already voiced concern over “the high number of offenses that carry the death penalty, including common crimes and vaguely defined categories of State-security related offences”.<sup>78</sup>

In Iraq, nearly all cases in which the capital punishment is applied relate to convictions under the Anti-Terrorism Law No.13 of 2005, as noted by UNAMI and the OHCHR in their 2014 report on the death penalty.<sup>79</sup> Under its article 4, the Law mandatorily applies capital punishment to those who committed or threatened to commit – including those who incite, plan, aid, abet or finance – an act of “terrorism”, a crime that is broadly defined and susceptible to wide interpretation.<sup>80</sup>

What is more and as shown in the cases presented throughout the report by Alkarama,<sup>81</sup> the Iraqi authorities are in fact “inclined to apply anti-terrorism legislation in cases that had no connection with terrorism”.<sup>82</sup> The handing down of death sentences is all the more concerning as the judicial authorities systematically fail to respect due process and fair trial standards, and thus presents a

<sup>75</sup> Rori Donaghy, “Saudi Arabia, Iraq among world's top users of death penalty: Report”, *Middle East Eye*, 1 April 2015, <http://www.middleeasteye.net/news/iran-saudi-arabia-iraq-among-worlds-top-executors-death-penalty-report-1613555170#sthash.ksiKh0oC.dpuf> (accessed on 10 July 2015).

<sup>76</sup> During its last Universal Periodic Review held in October 2014, Iraq rejected 10 recommendations related to the abolition of the death penalty. See: Alkarama, *Iraq: Significant Efforts Needed to Address Severe Persisting Human Rights Issues*, 20 May 2015, <http://en.alkarama.org/iraq/1690-iraq-significant-efforts-needed-to-address-severe-persisting-human-rights-issues> (accessed on 10 July 2015).

<sup>77</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.1.

<sup>78</sup> Committee against Torture, *Concluding Observations of the Committee against Torture – Cuba*, 25 June 2012 (CAT/C/CUB/CO/2), para.14.

<sup>79</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.1.

<sup>80</sup> Article 4 of the Anti-Terrorism Law No. 13 of 2005 defines terrorism as follow: “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>81</sup> In particular the cases of Member of Parliament Ahmad Al Alwani and former Vice-President Tariq Al Hashimi.

<sup>82</sup> OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.10.

significant risk of grievous and irreversible miscarriages of justice. In these circumstances, the use of death penalty amounts to cruel, inhuman and degrading treatment as per article 16 of the Convention.

Moreover, although the Iraqi Penal Code prohibits the imposition of the death penalty for crimes committed when the defendant was a minor or between the age of 18 and 21,<sup>83</sup> the protection of minors is completely ineffective, as shown by the case below. The Committee against Torture has previously raised concerns over the use of the death penalty against children.<sup>84</sup>

**17-year-old Saleh Musa Ahmed Al Baydani**<sup>85</sup> was arrested on 12 August 2009 by U.S. forces in the Tal Afar in northwest Iraq. The soldiers immediately confiscated his identity card and did not show him any official document justifying his arrest. They then took him to Abu Ghraib where he was detained for 10 months with no contact with the outside world. He was finally authorised to talk to his family in May 2010, the first time since his arrest. He was then transferred to a secret facility before being detained in Al Soussa prison in Baghdad.

On 18 July 2011, Al Baydani was brought before the Central Criminal Court, where, following a heavily flawed trial, he was sentenced to death on the sole basis of "evidence" obtained under torture for "association with a terrorist group" under the Anti-Terrorism Law (case No. 958/G2/2011) and in blatant violation of Iraqi domestic law, which provides that no minor should be sentenced to death.

On 10 December 2012, Al Baydani was transferred to Al Kadhamyia prison, known as the place where death sentences are carried out, but his execution was suspended. Al Baydani was allowed to call his family on a regular basis until the end of June 2014. However, with no apparent reason, his relatives stopped receiving calls from him. Their various attempts to obtain information from the prison authorities were unsuccessful. In January 2015, the International Committee of the Red Cross (ICRC) informed Al Baydani's family that he had been transferred to an unknown detention centre situated in the Basra Governorate in southern Iraq, close to the border with Kuwait.

After Alkarama solicited the intervention of the United Nations Committee on Enforced Disappearances, the Iraqi authorities responded that he was detained in Nassriyah prison, although his family has still not heard from him for over a year. It is likely that he is being detained *incommunicado* and does not know if and when his death sentence will be implemented, which amounts to a cruel, inhuman and degrading treatment as per article 16 of the Convention. He also remains at high risk of being executed, although he was a minor at the time of his arrest.

### **Recommendations:**

1. Abolish the death penalty and, as an intermediary step, issue a moratorium on executions; ensure independent review of all death row candidates' files;
2. Review its policy with regards to the imposition of the death penalty, especially when imposed abusively on the basis of the Anti-Terrorism Law;
3. Ensure as a matter of urgency that the death penalty is not imposed on children;
4. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.

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<sup>83</sup> Articles 66 to 79 of the Penal Code.

<sup>84</sup> Committee against Torture, Concluding Observations of the Committee against Torture – Yemen, 17 December 2009 (CAT/C/YEM/CO/2), para.21.

<sup>85</sup> Alkarama, *Iraq: Yemeni Citizen Arrested by US Forces in 2009 Disappears in Iraqi Prison*, 11 May 2015, <http://en.alkarama.org/iraq/1681-iraq-yemeni-citizen-arrested-by-us-forces-in-2009-disappears-in-iraqi-prison> (accessed on 10 July 2015).

## 5. Conclusion

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The current situation in Iraq marked by a widespread and systematic use of torture in all of its forms, unfair trials, and heavy prison sentences, including capital punishment, raises serious questions about the real desire of the authorities to put a definitive end to this practice. This situation is largely fostered by the general climate of impunity that prevails among security forces and state-sponsored militias and has contributed to create a sense of injustice and alienation in the population that is exploited to fuel extremism. The authorities must be reminded that considerations of national security can never justify departure from the absolute prohibition of torture or cruel, inhuman or degrading treatment.

The government of Iraq needs to urgently address these conditions to ensure the rule of law and restore society's trust in its institutions. The Optional Protocol to the Convention Against Torture should also be ratified as a matter of priority as to allow for the establishment of a national mechanism for the prevention of torture that would act as a watchdog.

Alkarama hopes that the concerns raised in this report will be addressed constructively during the dialogue between the Committee against Torture and the representatives of the State Party in order to put an end to torture and other violations of human dignity and miscarriages of justice. This, we hope, will open the way for real achievements in the Iraqi society.