



IRAQ

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SHADOW REPORT

REPORT SUBMITTED TO THE COMMITTEE
AGAINST TORTURE IN THE CONTEXT OF THE
SECOND REVIEW OF IRAQ

13 March 2022

CONTENTS

CONTENTS	3
1 INTRODUCTION	4
2 Widespread torture in detention (Articles 1,2, 4).....	5
2.1 Definition, absolute prohibition and criminalisation of torture	5
2.2 Violations of legal safeguards in detention.....	7
3 Use of coerced confessions in trials (Article 15)	8
4 Secret detentions and enforced disappearances.....	10
4.1 A widespread practice and a breeding ground for torture	10
4.2 Secret detention and enforced disappearance, a common practice.....	11
4.3 Absence of cooperation with the UN Committee on enforced disappearances.....	12
5 Human rights abuses committed by government-backed militias.....	14
6 Excessive use of force and police brutality against peaceful demonstrators (Articles 11, 12, 13, 14 and 16)	15
7 From a broad Anti-Terrorism Law to systematic extrajudicial executions	17
7.1 An overreliance on the Anti-Terrorism law.....	17
7.2 An alarming increase of extrajudicial killings.....	19
8 Conclusion	20

This report focuses on the human rights situation in Iraq. It analyses the implementation in law and practice of the State party's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (thereafter "Convention" or "UNCAT"), highlights our main concerns, and makes recommendations. The period of analysis covers the period between 2 August 2015, when the Committee's last Concluding Observations¹ were issued, up to the publication of the report.

Based on Alkarama's work, it includes individual cases of violations that have been brought to the attention of the United Nations (UN) human rights mechanisms, an analysis of the legal and institutional framework, and materials submitted by the State party to the Committee including the periodic report of Iraq² submitted to the Committee, the list of issues in relation to the second periodic report of Iraq³ and the State's reply to the list⁴.

This contribution was prepared in cooperation and with the participation of local actors, including non-governmental organizations (NGOs) working for the promotion and protection of human rights, as well as victims of violations, their families and their lawyers.

1 INTRODUCTION

Since the US-led coalition invasion of Iraq in 2003, the country has been torn by civil war, internal division, as well as regional turmoil. This situation has resulted in a weak government that is unable or unwilling to combat misuse of power or to bring perpetrators of severe human rights violations to justice.

Over the last years, Iraq faced the threats and violations of the so-called Islamic State (IS) of Iraq and Syria which controlled large areas of the country. Iraqi civilians have suffered from the continued escalation of violence, resulting in severe human rights violations of an unprecedented scale.

The fighting between IS and the central government forces created a fertile ground to severe human rights violations. The persistent climate of insecurity was illustrated by the deadly

¹ Committee against Torture, Concluding Observations on the initial periodic report of Iraq, 2nd August 2015, CAT/C/IRQ/CO/1

² Second periodic report of Iraq submitted to the Committee against Torture under Article 40 of the International Covenant on Civil and Political Rights, 20th December 2020, HRI/CORE/IRQ/2019.

³ Committee against Torture, List of issues regarding the second periodic report of Iraq, 23rd December 2020, CAT/C/IRQ/Q/2.

⁴ Replies of Iraq to the list of issues in relation to its second periodic report, 2021, CAT/C/IRQ/RQ/2.

attacks in Baghdad on 19 July 2021 claimed by the IS. According to security and medical sources, the death toll was between 28 and 30, including about 15 women and children.

The military operations have generated summary killings, widespread enforced disappearances, and torture. From 1968 up until today, between 250,000 and one million people were estimated missing across the country⁵.

Militias affiliated to the Popular Mobilisation Unit⁶ (PMU) and used by the government in its fight against IS committed "*war crimes and other violations of international humanitarian law and human rights law, mostly against members of the Sunni Arab community*"⁷.

During 2019, the country experienced a wave of popular protests rallying against the corruption of their political leadership. Born on social networks, the protests gathered several thousands, in various Iraqi cities, demanding jobs and functional public services and denouncing the corruption of their leaders. Nevertheless, protests were cracked down on with brutality by state security causing the death of hundreds of demonstrators⁸. These executions remain unpunished to date.

Since 2019 to date, numerous human rights defenders, journalists and ordinary citizens continuously suffered from an increasingly brutal crackdown by the authorities on peaceful criticism.

2 Widespread torture in detention (Articles 1, 2, 4)

2.1 Definition, absolute prohibition and criminalisation of torture

The State party's legislation does not contain a definition of torture in accordance with article 1 of the Convention. Despite recommendations made in this regard during the first periodic

⁵ International Commission on Missing Persons (ICMP), Middle East and North Africa, <http://www.icmp.int/where-we-work/middle-east-and-north-africa/>

⁶ An organisation composed of 67 militias currently integrated into the Iraqi army.

⁷ "Iraq: Turning a blind eye, the arming of the popular mobilisation unit", p.11. https://amnestyfr.cdn.prismic.io/amnestyfr%2F8d2ba68e-11c6-4705-bc06-761c25a73ce2_mde1453862017english.pdf

⁸ UNAMI/OHCHR, Human Rights Violations and Abuses in the Context of Demonstrations in Iraq, October 2019 to April 2020, p.14.

review of Iraq⁹, no clear provisions that ensure an absolute and non-derogable prohibition of torture – as required in article 2 § 2 of UNCAT – has been incorporated in the national legislation.

The definition of torture in Iraqi's legislation is substantially more limited than the one contained in article 1 of the Convention since it is materially limited to acts or omissions "*with the aim of extracting a confession within the context of arrest, investigation or detention*".

Moreover, contrary to the Convention, the Iraqi legislation does not include torture as a form of punishment, intimidation, and coercion, of the victim or a third person. These loopholes create a breeding ground for violations and impunity.

Since its last review, Alkarama has submitted numerous cases to the Special Rapporteur on Torture and other Cruel, Inhumane, and Degrading Treatment highlighting a pattern of torture against detainees, especially during the investigation stage and during periods of enforced disappearance.

During 2021, the Iraqi War Crimes Documentation Center¹⁰ and Alkarama documented more than 230 cases of torture, including of women and children, in different prisons under the jurisdiction of the Iraqi Ministry of Interior, the Ministry of Defence or the Ministry of Justice.

These cases show that torture is practiced routinely and widely and take various forms including insults, humiliation, threats of murder and rape against the victim and their relatives, slaps, beatings with metal pipes on different part of the bodies, hanging from the ceiling, sexual violence, and electric shocks, particularly on sensitive parts of the body.

In addition, poor conditions of detention, that amounts to ill treatment, prevail in facilities. Detainees deprived of decent conditions of detention are held in severely overcrowded and unsanitary environment.

For example, the Iraqi War Crimes Documentation Center and Alkarama documented the case of detainees in Taji central prison (Northern Baghdad) who were subjected to extortion and ill-treatment by the prison administration including some directors. According to several testimonies, the prison administration extorted their belongings, including money and other necessities sent by their families. They also denounced a lack of food and regular denial of access to medical care and water. Between

⁹ Committee against Torture, Concluding Observations on the initial periodic report of Iraq, 2nd August 2015, CAT/C/IRQ/CO/1, para.27.

¹⁰ Iraqi War Crimes Documentation Center Website, <https://iwdc-iraq.org/?lang=en>

September and October 2021, the Iraqi War Crimes Documentation Center and Alkarama documented the death of more than nine detainees in Al-Taji prison due medical negligence and the infection of dozens of detainees with tuberculosis.

Recommendations:

- 1. Define and criminalise torture in full compliance with the Convention and ensure that penalties are fixed in the national law regarding to 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;*
- 3. Ensure the respect of the UN Standard Minimum Rules for the Treatment of Prisoners in all detention centres and prisons.*

2.2 Violations of legal safeguards in detention

According to the State party "[t]he accused has legal guarantees based on the Code of Procedure No. (23) of 1971, articles (92, 123, 124, 125, 126, 127, 128, 156), such as the right to be informed of the charge against him and the right to appoint a lawyer and to have a medical examination to prove that the accused has been subjected to torture, to contact his family and inform them of the place of his arrest, and not to be subjected to torture or coercion to extract a confession¹¹ (...)".

Alkarama regrets that this is a mere reproduction of the national provisions in force violated in practice. Indeed, numerous cases documented over the past years showed that fundamental legal safeguards are rarely respected.

The Iraqi security forces, under the control of the public authorities, continue to systematically resort to arbitrary arrests without any official warrant or legal basis. They rarely present a warrant upon arrest, and never do so when the person is suspected of terrorism, as the warrant is usually issued by the judge after the arrest.

Investigations are never carried out "*within a maximum of 24 hours*¹²", and people are usually presented for the first time before a judicial authority several days or even weeks after their arrest.

¹¹ Replies of Iraq to the list of issues in relation to its second periodic report, 2021, CAT/C/IRQ/RQ/2, para.32.

¹² *Ibidem*, para.32.

Numerous urgent actions submitted to the UN Committee on Enforced Disappearances on behalf of families of disappeared persons have also shown the lack of proper registration in detention centres and the violation of the right of detainees to inform their families of their detention.

Moreover, detainees are deprived from their right to a lawyer until their first hearing, once the investigation process is over and they have been transferred to prisons under the control of the Ministry of Justice. This delay led to ill-treatment and torture in all facilities. Alkarama also noted that medical examinations are almost never conducted, and when they are, it is months after the torture has taken place, when physical evidence has disappeared.

Recommendations:

- 4. Ensure the full respect of all procedural safeguards, in law and in practice, including the right to be informed of the reasons of one's arrest, the right to a counsel without delay and the right to contact one's relatives;*
- 5. Ensure that regular warrants are presented before arrests;*
- 6. Ensure the right to be brought before an investigative judge within 24 hours;*
- 7. Ensure the immediate access of detainees that alleges having been subjected to torture to independent medical doctor.*

3 Use of coerced confessions in trials (Article 15)

Extracted confessions from defendants are still admitted as evidence in Iraqi's courts, particularly in cases falling under the 2005 Anti-Terrorism Law where confessions can remain the sole evidence relied upon to uphold the numerous death sentences. Unfortunately, despite the previous recommendations¹³, no visible efforts were made to adopt effective measure to guarantee that coerced confessions are inadmissible in practice.

In most cases documented by Alkarama, the judges did not take into account the defendants' allegations of torture. Furthermore, denial of access to an independent medical doctor upon arrest constitute a direct and insuperable obstacle for victims who are asked to corroborate

¹³ Committee against Torture, Concluding Observations on the initial periodic report of Iraq, 2nd August 2015, CAT/C/IRQ/CO/1, para.22.

their allegations. In practice, medical examinations are only conducted when evidence of torture has disappeared.

Even though, the State party alleges that “*the law punishes the person responsible for the torture, regardless of rank or position, and there is no immunity for the accused responsible and legal action is taken against them*”¹⁴ **to date none of the allegations have been thoroughly investigated by the authorities.** This failure has directly contributed to the pervasive use of torture in the country.

It is worth noting that the State party only refers to individual acts of torture and states that torture is “*not a method followed by the State, but rather individual actions taken by individuals*”¹⁵(...). This statement only shows the absence of willingness from the authorities to address the systemic issues that create the conditions for a wide and routine use of torture in the country.

Finally, the State party’s report remains silent on actions taken by the authorities following allegations of torture. Despite appeals from hundreds of families of those killed during anti-government protests¹⁶, to date, **none of these extrajudicial executions have been investigated by the authorities, thereby reinforcing the climate of widespread impunity in the country.**

Recommendations:

8. *Adopt effective measures to guarantee that confessions extracted under torture are not admitted as evidence during trials;*
9. Take the necessary measures to ensure that criminal convictions require material evidence and ensure that coerced confessions may never be used as the sole evidence in sentencing;
10. *Ensure that all allegations of torture are promptly and impartially investigated and that any state agent who order, perpetrate, acquiesce or tolerate torture is prosecuted and punished according to the gravity of their acts;*

¹⁴ Replies of Iraq to the list of issues in relation to its second periodic report, 2021, CAT/C/IRQ/RQ/2, para.2.

¹⁵ *Ibidem*, para.2.

¹⁶ Irak: Des centaines de protestataires appellent à l'identification des assassins des manifestants”, <https://www.aa.com.tr/fr/monde/irak-des-centaines-de-protestataires-appellent-%C3%A0-l-identification-des-assassins-des-manifestants-/2424727>

11. *Share official information about the investigation of torture conducted by the State authorities and their eventual outcome.*

4 Secret detentions and enforced disappearances

4.1 A widespread practice and a breeding ground for torture

The numerous cases of *incommunicado* detention recorded by Alkarama since the last periodic review show that the widespread practice of *incommunicado* detention in Iraq is still ongoing. These cases indicate that detainees kept in secret or in unacknowledged prisons are systematically exposed to torture.

Even if the State party alleges that “*it is forbidden to create prisons or detention centres except in accordance with the law*”¹⁷ and therefore refutes the existence of secret detention centres, the Iraqi War Crimes Documentation Center and Alkarama documented the existence of several secret prisons under the control of different militias.

These secret prisons, include, but are not limited to the following ones: a prison located in the Al-Buaitha district of Al-Dora south of the Iraqi capital, Baghdad and placed under the control of the “Ashura Brigades”, a prison located in the village of Al-Jaara on the farm of Maher Abdul Rashid, one of the militia’s leaders, in the district of Al-Madaen and placed under the control of Hezbollah¹⁸, and, a prison located in the area of Al-Latifah controlled by the the Popular Mobilization Intelligence (PMU)¹⁹.

The lack of an effective control of the State party upon facilities controlled by government-backed militias create a fertile ground to violations throughout the country and thus engenders the responsibility of the State with regard to all the violations committed in these facilities.

Long periods of secret detention in these facilities during which victims are denied all forms of contact with the outside world are designed to extract confessions used in death penalty trials.

17 Replies of Iraq to the list of issues in relation to its second periodic report, 2021, CAT/C/IRQ/RQ/2, para.101.

18 The Hezbollah Brigades are affiliated with the Popular Mobilisation Units (PMU), an umbrella organisation composed of approximately 120 militias currently embedded in the Iraqi army.

19 Popular Mobilization Units (PMU), an umbrella organisation composed of approximately 120 militias currently embedded in the Iraqi army.

4.2 Secret detention and enforced disappearance, a common practice

It is worth recalling that secret detention also amounts to enforced disappearance which is commonly practiced in Iraq despite the ratification of the International Convention for the Protection of all Persons from Enforced Disappearances (ICCPED) in 2010.

Over the past years, hundreds of cases of enforced disappearance have been documented by Alkarama, highlighting a widespread practice of enforced disappearance, partly due to the inadequate implementation of the provisions of the Convention into the national legislation.

*On 2 December 2019, Alkarama send to Committee on Enforced Disappearance (CED) the case of **Mr. Mohammad Tarek Zanoun EL ELOW** a student who was arrested by Kurdish authorities on 28 August 2017 at a checkpoint at Al Ayadia district in Nineveh Governorate during clashes between IS and the Iraqi authorities in Tal Afar. The last telephone call for the victim with his parents was on 28 August 2019 at 9 pm. A former detainee informed the family on 3 November 2019 that he saw the victim in one of detention controlled by Asayish, Kurdish security service, in Erbil.*

Most of the disappearances in the last few years follow the same pattern. Victims are usually arrested by government-backed militias or by members of the security forces during home raids or at checkpoints, and taken to unknown destinations. **Families are then routinely confronted with the authorities' refusal to acknowledge the detention or provide any information about the fate and whereabouts of the victims.**

*On 21 September 2018, Alkarama send to the CED the case of **Mr. Ahmed Shaker Mahmoud Abdullah AL HUSSEINI's**, a taxi driver, who was stopped and arrested on 15 June 2015, at the Musayib checkpoint run by the Hezbollah Brigades while he was transporting a customer from Baghdad to Mosul. The Hezbollah Brigades arrested him and transferred him by bus to the industrial zone of the neighbouring town of Alexandria. After the research of the family, the State party replied that Mr. Al Hussein was killed on 24 January 2015 during the liberation of Iraqi terrorists. However, the victim's family had identified him in a picture released by the website "Rudaw"²⁰ on which Mr. Al Hussein was pinpointed.*

²⁰ Rudaw, 10 July 2018, صحيفة: يوجد 15 ألف معتقل من أهالي الموصل في السجون بسبب تشابه بالأسماء, <http://www.rudaw.net/arabic/middleeast/iraq/1007201814>

Thus, on a note dated on 5 March 2019, the Committee requested additional information and exhorted the State party to "confirm that the person to whom the State party refers to in its reply by declaring that he was killed" and provide evidence in that respect. To date no further information has been provided.

4.3 Absence of cooperation with the UN Committee on enforced disappearances

Finally, we have to underline the absence of collaboration of the State party with the CED, before which over 150 urgent actions related to disappeared individuals and raised by Alkarama, are still pending to date. **This absence of compliance led the CED to regularly call the State party to collaborate in good faith with the procedure**²¹.

*In May 2021, the Committee urged the Iraqi government to comply with its commitments under the Convention it ratified on 23 November 2010. The UN treaty body insisted on the obligation of the State party to cooperate by conducting full investigations into the cases of enforced disappearances of Iraqi citizens including **Mr. Khamis AL GHURERY, Mr. Amer Tarek Hussein DULAIMI and Mr. Majid AL KHALEDI**, who disappeared following arbitrary arrests by the military. Their cases were respectively brought to the attention of the CED experts by Alkarama on 14 July 2014, 27 July 2015, and 1 November 2017 through its urgent action procedure.*

Alkarama pointed out to the attention of the UN experts that despite the ratification of the International Convention, **the Iraqi State still does not respect its international commitments**. The CED, therefore, invited the State party authorities to provide further information on the measures taken to search for the disappeared.

Finally, encouraging the government to periodically inform the families, relatives, and representatives of the disappeared of the progress of the search and investigation, the Committee stressed the importance of sanctioning any intervention by the authorities that might impede the effectiveness of the process of investigating and finding the disappeared.

*These calls were again repeated in May by the CED to the Iraqi authorities by urging them to cooperate in order to locate and impartially investigate the case of the three brothers, **Falih AI JANABI, Salih AL JANABI and Meshtaq AL JANABI**, who have been missing since their arrest on 9 September 2014 at their home in Latifiya by*

²¹ The CED calls the Iraqi authorities to cooperate regarding the case of enforced disappearance submitted, <https://www.alkarama.org/fr/countries/irak>

members of the federal police and the Iraqi army. Alkarama and Al Wissam Humanitarian Assembly had submitted their situation to the UN Committee on 8 February 2018.

The UN body expressed concern about the lack of collaboration of the Iraqi authorities, who are generally content to accuse any missing person of belonging to a terrorist organization without providing evidence to that effect. The experts recalled that no circumstances can be invoked to justify an enforced disappearance and that it is the responsibility of the government to investigate such disappearances, regardless of the profile of the disappeared persons, or the suspicions that may exist against them.

*Later again in November 2021, the CED urged the Iraqi authorities to investigate on the fate and whereabouts of **Mr. Mohamed DARAJI** who has been missing since he was abducted on 10 February 2014 from his home in the Saladin governorate (north of Baghdad), by armed members of the Saraya Al Salam militia⁴⁶. Alkarama and Al Wissam Humanitarian Assembly submitted his case through an urgent action on 22 September 2017.*

The CED recalled that the Iraqi authorities remained ultimately responsible for all acts of abduction committed by its militias and that they had the obligation to investigate all cases of enforced disappearance on its territory, whoever the perpetrators were.

*Finally, on 21 January 2022, the CED called again the State party to investigate on the case of **Mr. Walid AL JANABI** who disappeared on 6 June 2015 after he was arrested at his home, in Latifiya (south, Baghdad) with his two brothers, **MM. Khalid and Hamid AL JANABI**. His family tried to inquire about the Janabi brothers' fate and consulted the registry of detainees at the Tasferat detention center, located near the Al Sh'aab stadium in Baghdad and went to the headquarters of the 17th Iraqi Army Division in Al Mahmoudiah. In vain, they could not find any information about them. After Alkarama's submission of these cases to the CED, on 7 November 2017, the Committee called, once again, the State party to localize Mr. Janabi.*

Recommendations:

- 12. Take the necessary steps to ensure that enforced disappearance is adequately criminalized as required by the Convention for the protection of all persons from enforced disappearance;*
- 13. Ensure that all cases of disappearances are promptly, effectively and independently investigated, clarify each case and ensure the prosecution of their perpetrators;*
- 14. Ensure that any individual who has suffered as a result of the disappearance is entitled to redress;*

15. Respond positively to the CED calls to collaborate within the procedure and ensure the cooperation in good faith regarding the cases submitted.

5 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.

*On 7 December 2015, **Mr. Hasan Abdul Hamid Rachid Al Muhmadi** and his family were relocating from Al Anbar to another town due to the ongoing military campaign against the Islamic State, and were stopped at a checkpoint run by the Hezbollah Brigades. The officers arrested Mr. Al Muhmadi, but allowed the rest of his family to pass. On the same day, the Hezbollah Brigades arrested many other people at the same checkpoint, who were also forcibly displaced due to the military campaign against the Islamic State. In March 2018, a former detainee at Baghdad Airport Prison told Mr Al Muhmadi's family that he had seen him there. However, when his family went to the prison to inquire about his fate and whereabouts, the authorities informed them that they did not have any record of him ever being held at the facility.*

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, in plain view from the authorities²².

Many cases documented by Alkarama 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.

22 "Iraq: Turning a blind eye, the arming of the popular mobilisation unit"
https://amnestyfr.cdn.prismic.io/amnestyfr%2F8d2ba68e-11c6-4705-bc06-761c25a73ce2_mde1453862017english.pdf

Recommendations:

- 16. Ensure the dissolution of all militias in the country and their integration in the State party's regular forces after an effective vetting and investigations;*
- 17. Put all detention facilities under the control of militias under the State party's judiciary's effective supervision;*
- 18. Ensure, in law and in practice, that arrests are carried out upon presentation of an arrest warrant regularly issued by an independent judicial authority;*
- 19. Open prompt, thorough, transparent and independent investigations into allegations of violations, in particular enforced disappearances, unlawful killings, torture and other ill-treatment committed by militias.*

6 Excessive use of force and police brutality against peaceful demonstrators (Articles 11, 12, 13, 14 and 16)

Over the last years, Alkarama has observed with great concern an escalation of violence particularly in the context of peaceful demonstrations leading to the injury and even the death of several civilians. Iraqi security forces used excessive force and resorted to violence in a total impunity while denying the victims their rights to reparation in violation of articles 11, 12, 13, 14 and 16 of the Convention.

The anti-governments protest in 2019, during which the violence reached its peak, are illustrative of such practices. Iraqi authorities deliberately targeted journalists and media figures arbitrarily arrested under the anti-terrorism law (see part 4.7).

Between 1 October 2019 to the end of January 2020, the Iraqi War Crimes Documentation Center and Alkarama documented the case of 41 journalists who were abducted by government-backed militants while 73 of them were subjected to threats and reprisals. During the protests, 130 arrest warrants were issued under the anti-terrorism law against activists who participated in the protests and journalists covering the protests. More than 50 journalists were forced to leave their posts in Baghdad and flee for fear of being arrested or killed.

Alkarama also sent to the attention of the UN special procedures several cases of repression against human rights activists for documenting human right violations in the country. Human rights defenders have also been subjected to harassment and attacks by Iraqi security forces and affiliated militias in retaliation for their work. Among the victims of this repression were members of the NGO Al Wissam Humanitarian Assembly, a local partner which has

documented numerous cases of enforced disappearances and submitted them, along with us, to UN human rights mechanisms.

*In February and March 2018, two Iraqi human rights defenders working as volunteers for Al Wissam Humanitarian Assembly, **Mr. Faisal AL TAMIMI and Mr. Iyad AL ROUMY** were subjected to threats and attacks in retaliation for speaking out against the practice of enforced disappearances in the country. As they were walking out of a meeting preparing for a conference in Karada to call on Iraq to join the International Criminal Court, a man in a car opened fire, seriously injuring one of the men.*

According to the victims, the reprisals were carried out by members of a militia from the Popular Mobilization Forces. A few months later, in July 2018, Mr. Imad Al Tamimi was again subjected to reprisals. He was abducted and brought to a secret detention facility where he was detained for nearly two months and subjected to severe acts of torture. Under duress, he was forced to sign a document stating that he would no longer participate in any event related to enforced disappearances in Iraq, and that if he failed to do so, he would be re-arrested along with his brothers.

On 23 March 2018, Alkarama wrote to the UN Special Rapporteur on human rights defenders to call upon him to intervene with the Iraqi authorities to cease all acts of reprisals against these activists.

Civilians were not spared during the lethal crackdown of the protestation particularly in cities marked by intense demonstrations like Baghdad and Bassora (southwest Iraq) where authorities violence resulted in the death of more than 350 of peaceful demonstrators⁵¹ between October and December.

In addition to the excessive use of force, the Iraqi authorities proceeded to numerous arrests and enforced disappearances of young civilian demonstrators because of their participation in the peaceful demonstrations that took place in Tahrir Square in central Baghdad.

*On 30 November 2019, the young journalist and civilian activist, **Mr. Khalil AL JUMAILI**, was arrested by members of the Iraqi National Intelligence Service after showing sympathy for the victims of the Nasiriyah massacre. The day of his arrest, a detachment of intelligence and counter-terrorism in Anbar came to his home and took him at gunpoint to an unknown destination. The contact with him was lost and his family has not seen him since then.*

On 9 December 2019, Alkarama and an Iraqi NGO, the Ikram Center for Human Rights, lodged a petition to the UN CED for urgent assistance and asked the authorities in Iraq to disclose the fate of Mr. Al Jumaili. On 6 January 2020, he was released.

All fractions were targeted by the Iraqi authorities, independently of their age. Even minors, were confronted to excessive violence.

*On 30 November 2019, the young activist **Mrs. Asma AL AZZAWI** (17) left her family's house located in the New Baghdad area, east of the capital, to visit relatives. She disappeared from that moment and no one was able to communicate with her after that day. After Alkarama's submission to the CED, the Committee asked the Iraqi authorities to take urgent measures to locate Mrs. Al-Azzawi and place her under the protection of the Law. She was released on 15 December 2019.*

*On 4 December 2019, Alkarama send the case of **Mr. Shakir Ra'ed Ni'ema AL KHAFAJI** (17) who was arrested on 5 November 2019 while returning back from Al Tahrir square after having participate in the anti-government protests. Around 10 pm, before leaving the square, he called his family. After the call, he disappeared, and his family could not get in touch with him again.*

To date, none of this violence have been investigated and no one was held to account for the injuries and death caused.

Recommendations:

- 20. Ensure that security forces do not use excessive force in demonstrations and crowd management;*
- 21. Investigate effectively, promptly, thoroughly, and impartially any allegation of violation or abuse committed by the security forces in the context of the repression of pacific protests;*
- 22. Prosecute those responsible for the excessive use of force leading to injuries and deaths, and, ensure their punishment according to the gravity of their acts;*
- 23. Provide effective remedies and rehabilitation to the victims.*

7 From a broad Anti-Terrorism Law to systematic extrajudicial executions

7.1 An overreliance on the Anti-Terrorism law

The violations of the right to life documented by Alkarama highlighted a preoccupying frequency of executions, so that Iraq remains on the list of the top five executioners in the

world and ranks fourth with at least 100 executions in 2019²³. Within a year, executions in Iraq almost doubled. This drastic increase led the UN experts to urge Iraqi authorities to halt mass executions²⁴.

The major part of the execution was due to the growing instrumentalization of the "fight against terrorism". According to the Counter Terrorism Act No.13 of 2005¹⁵, anyone found guilty of committing a terror offence is given the death sentence in Iraq. The vague definition of the notion of "terrorism" significantly expands its scope to include different terrorist acts that do not meet the threshold of the "most serious crimes" under international law. According to the article 6 of the ICCPR the death penalty is strictly limited to the most serious crimes - meaning intentional killing and murder- that must "*be read restrictively and appertain only to crimes of extreme gravity involving intentional killing*"²⁵.

Even if the State party claims that guarantees and safeguards in the application of the death penalty, which is supposed to have a "deterrent effect"²⁶, exist in national law, "*once death sentences are handed down by the court at first instance, they are almost never overturned on appeal, and clemency is rarely granted*"²⁷.

In fine, this overly broad definition gives the judiciary discretionary power to impose a death sentence through a subjective interpretation and adds to the fact that this law foresees the mandatory application of the death sentence, which is *per se*, contrary to International Human Rights Law Standards.

In recent years, executions have continued in Iraq under the anti-terrorism law. Alkarama and the Iraqi War Crimes Documentation Centre, identified those 25 thousand detainees out of a total of 60 thousand have been sentenced to death on the basis of the anti-terrorism law. Most of them were arrested and then sentenced to death by judges in the absence of evidence, sometimes solely on the basis of confessions extracted under torture or only on information provided by "secret informers".

*On 15 December 2021, Alkarama learnt about the death of **Mr. Saleh Musa Ahmed AL BAYDANI**, a Yemeni citizen who has been missing for over 10 months from the prison where he had been detained since December 2012. Arrested in August 2009 by*

23 Deathpenaltyin2019:Factsandfigures, <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>

24 "Iraq: Wave of mass executions must stop, trials are unfair", <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26526&LangID=E>

25 Human Rights Committee, General comment No.36, CCPR/C/GC/36, Para. 35.

26 Replies of Iraq to the list of issues in relation to its second periodic report, 2021, CAT/C/IRQ/RQ/2, para.165.

27 UNAMI/OHCHR, Report on the Death Penalty in Iraq, Baghdad, October 2014, p. 2.

U.S. forces when he was only 17, Mr. Al Baydani was sentenced to death two years later.

On 18 July 2011, Mr. Al Baydani was brought before the Al Saa 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. Such an unfair verdict is contrary to Iraqi and international law, as both bodies of law uphold guarantees to fair trial and prohibit the imposition of the death penalty on juveniles. For this reason, and concerned over his imminent risk of execution, on 23 August 2012 Alkarama sent an urgent appeal to the Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions.

On 10 December 2012, after being informed of Mr. Al Baydani's transfer to another prison in Baghdad, Al Kadhamiya, known as the place where death sentences are carried out, Alkarama submitted second urgent appeal to the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions demanding that his execution be halted and his case retried by a court of law in compliance with international standards of fair trial. According to his family, Mr. Al Baydani's execution was subsequently suspended. Detained in Al Kadhamiya prison, Mr. Al Baydani was allowed to call his family on a regular basis until the end of June 2014. With no apparent reason, however, his relatives stopped receiving calls from him. Their various attempts to obtain information from the prison authorities were unsuccessful.

Therefore, Alkarama sent a communication to the CED asking them to intervene with the Iraqi authorities to demand Mr. Al Baydani's immediate release or, at the very least, that he be put under the protection of the law and that his pending death penalty be halted.

On 15 December 2021, the CED was informed "that the Ministry of Health in the Republic of Iraq received the body of Mr. Al Baydani, (who holds a Yemeni Nationality) Mr. Al Baydani was after he had been executed according to a judicial order". Unfortunately, none of his family members were informed about his execution.

7.2 An alarming increase of extrajudicial killings

Over the past years, summary executions have continued in Iraq whether during battles between the State party and IS or in the context of peaceful demonstrations.

The offensive launched, in October 2016, by the State party and its allies to retake Mosul from the IS has cost the lives of thousands of Iraqis, including women and children. While it is difficult to determine the exact human toll, the losses caused by IS or strikes by the Iraqi coalition or its American allies, would amount to 9 to 11,000 deaths between October 2016

and July 2017²⁸. According to the Kurdish leader Hoshiyar Zebari, former Iraqi foreign minister, the US air force bombing has killed more than 40,000 civilians²⁹.

Similarly, the repression against the civilian population which was particularly egregious during the anti-government protests that began on October 1st 2019, to denounce leadership corruption, demand jobs and improved public services, caused the death of several thousands. In Baghdad, which gathered several thousand demonstrators, or in southern cities such as Basra or Nassariyah, security forces used tear gas, stun grenades, sound bombs and even live bullets against demonstrators to disperse them.

A report published by the human rights office of the United Nations Assistance Mission in Iraq (UNAMI), clearly put forth the extent of repression during the anti-government demonstrations and states that "*Live ammunition caused most of the 359 deaths of protesters attributed to the security forces at protest sites, with shrapnel and the direct impact of tear gas canisters responsible for 28 other deaths*"²⁶. The same report mentioned the "deliberate killing" of unarmed protesters during anti-government demonstrations.

According to data shared by UNAMI "359 of the 487 protester deaths (74%) are attributed to security forces and 109 deaths (22%) to 'unidentified armed elements', 12 including due to small-scale attacks at demonstration sites. Nineteen bodies of protesters were found in burned down buildings affiliated to political parties and public offices set on fire by protesters, accounting for four per cent of deaths. The total number of recorded deaths included at least 34 children - all boys - and one woman."²⁹

Recommendations:

1. Review the State's policy with regards to the imposition of the death penalty, through a *moratorium* on the practice.
2. Ensure the existence, in law and in practice, of effective guarantees and safeguards of an appeal of the death penalty.

8 Conclusion

²⁸ "Mosul is a graveyard: Final IS battle kills 9,000 civilians", <https://apnews.com/article/middle-east-only-on-ap-islamic-state-group-bbea7094fb954838a2fdc11278d65460>

²⁹ "La bataille de Mossoul: l'apogée de la guerre confessionnelle en Irak", <https://www.sciencespo.fr/ceci/fr/oir/la-bataille-de-mossoul-lapogee-de-la-guerre-confessionnelle-en-irak>

This report has attempted to highlight a widespread and systematic use of all forms of torture that have occurred since the last periodic review of the State party in 2015.

To date, the human rights situation remains fragile all around the country. The flaws in the implementation and transposition of the Convention's provisions, the lack of respect for the guarantees, when they exist in national legislation, and the impunity of the perpetrators of violations contribute to widespread abuses which only worsen the situation.

Throughout its work, Alkarama has observed that a large proportion of the torture committed on Iraqi territory were carried out by government-backed militias. These militias supported, or at least tolerated by the Iraqi government, commit all kinds of violations with religious motives. From attempts to the right to life, enforced disappearances to the acts of torture, these militias act with a considerable autonomy and in total impunity.

The dissolution of these militias, that constitute a real threat to the human rights situation in Iraq, is, thus, the only solution for the creation of the rule of law in which the State is and remains the only authority to detain and exercise the monopoly of legitimate force.

Alkarama hopes that a constructive dialogue between the Committee and the Iraqi authorities will allow these concerns to be addressed with the aim of establishing a rule of law in Iraq that respects its international obligations without any derogation. We hope that the concerns raised in this report will help to open the way for real achievements in the Iraqi society in order to put an end to torture and other violations of human dignity and miscarriages of justice.