



Justice Network for Prisoners in Iraq (JNP)

**Submission to the Committee of the Convention against Torture on
“Iraq’s Compliance with the Convention against Torture and Other
Cruel, Inhuman or Degrading Treatment or Punishment”**

**Iraq’s review in April-May 2022
Convention against Torture**

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Introduction

Justice Network for Prisoners JNP combines, voluntary, of non-governmental, non-profit and independent organizations, which work in the field of human rights and monitoring prisoners and detainees' rights in Iraq.

This submission provides an overview of Justice Network for Prisoners main concerns regarding the issue of torture in Iraq, submitted to the United Nations Convention against Torture in advance of its review of Iraq in April-May 2022. Hoping that it will enlighten the Convention against Torture's upcoming review of the Iraqi government's compliance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "CAT" .

JNP works with the aim of improving the situation of detainees and prisoners and to provide legal protection and rehabilitation for them it works also to promote awareness about detainees and prisoners' rights, monitor and document violations at detention centers and prisons, afford legal assistance to detainees and prisoners, improve the conditions of detainees, prisoners and achieve justice in prisons, rehabilitate and educate prisoners and prison's staffs and to propose amendments to the Iraqi regulations with accordance to international standards of treating prisoners.

Torture in Iraq is one of the critical issues that is still considered as a real concern, despite the denial of the authorities to be a phenomenon and systematic, but at the same time the frequent recurrence of it in certain institutions and the large number of allegations received about it and the large number of lawsuits filed against confirm that it is a serious and systematic phenomenon, and the Iraqi government and the regional government uses it by legal means, as follows:

Concerned Issues

1- The physical and psychological torture that is practiced on a wide range, is evident in the investigative bodies affiliated with the security and security ministries (the Ministry of Interior, Military Intelligence, the Popular Mobilization, the Military Defenses and Assayish) as indicated in the table below, which includes a limited number of complaints received by JNP on allegations of torture been practiced against the persons in the list, the authorities that committed torture and the means that were used to extract confessions from them.

2 - The investigative authorities resort to a legal game by keeping people opposing the authority under arrest for long term detentions, by adapting crimes which leads to death penalty, in order for them to have the legal outlet to keep the detainees for years, based on Article 109, paragraph B, which states: (If the person arrested is accused of an offence punishable by death the period stipulated in sub-paragraph A may be extended for as long as necessary for the investigation to proceed until the investigative judge or criminal court issues a decision on the case on completion of the preliminary or judicial investigation or the trial..) This means the detainee be remained for many years, without any legal embarrassment, and this is what happened with the detainees of Dohuk in the demonstrations demanding the salaries of the employees. The investigative judge adapted their case to an article related to the national security of the region and spying for countries, which amounts to the death penalty.

3- The investigative authorities of the security and military agencies practice another type of torture, which is not allowing the detainee to meet his lawyer, his family, and the organizations and oversight bodies (Parliament / Commission / Independent Commission) for several months, for the sake of the integrity of the investigation, and this leads to forcing the detainees to confess What these agencies demand of them and they become convicted according to their statements, depending on the discriminatory opinion that indicates that the courts have no objection to taking confessions extracted under torture if they conform to reality, and this is an instrument that allows the investigative agencies to practice torture.

4- What was stated in Article 13 of the Anti-Terrorism Law in the Kurdistan Region of Iraq No. (3) of (2006), which states: “The accused must be treated according to the

provisions of this law a fair legal treatment during all stages of the investigation, including securing a referral for his defense. It is permissible to use means of physical or psychological torture or inhuman treatment against him, and the confession extracted from him under duress, threats, torture or threats shall not be taken into account unless this is supported by other legal evidence. The aforementioned means.) As we see in a paragraph (a confession extracted from him under duress, threats, torture or threats is not valid unless it is supported by other legal evidence) and this means that a confession extracted from him under duress, threats, torture or threats if it is supported by other legal evidence) No problem with it.

5- Torture that is practiced in the courts, by postponing the consideration of settling cases for years without legal and logical justifications, is another type of physical and psychological torture practiced by the courts on a large scale. The three cycles of the Iraq Universal Periodic Review report.

6- The last psychological torture is the failure to compensate those whose innocence appears in the cases in which they have been imprisoned or stood for many years, and they are usually threatened not to file torture cases or to request compensation by the security and military agencies, otherwise other charges will be fabricated against them and they will be imprisoned.

7- Keeping about (700) people for tens of years who were sentenced to death in the region without carrying out the execution and without determining their fate is another type of torture, as it was recorded that there are people whose years of stay in prison have been awaiting execution for more than 27 years, and More than this, demands began by those sentenced to death to implement the penalties on them as long as there is no hope of their release.

Article Two of CAT

Although there are constitutional texts that guarantee the rights of the Iraqi citizen to security and not to be subjected to torture, as well as the Iraqi Penal Code No. 111 of 1969 criminalizing torture in more than one article, but JNP has found that torture and ill-treatment and the method of threats during investigations in particular, are among most of

the allegations of the prisoners, and the biggest problem is that the courts cannot properly deal with these allegations, and the reason is:

1- A long period has passed since the detainees were subjected to torture and the traces on their bodies have disappeared.

2- The difficulty of documenting and proving psychological torture.

3- The carelessness of some judges to the issue of allegations of torture (according to the statements of the prisoners or their lawyers).

However, the report of the High Commission for Human Rights in Iraq supported the documentation of (700) cases of torture and ill-treatment, and investigations were not carried out.

JNP's visiting teams have recorded that torture as stated in the Convention against Torture and other forms of cruel, inhuman or degrading treatment or punishment is not practiced by prison departments and we have not recorded any documented case, but there are allegations by the majority of the convicts and detainees, adults and young, men and women, that they were subjected to ill treatment, especially during the investigation period, and there are lawyers who confirmed that their clients were subjected to various types of physical and psychological torture. This was also confirmed by the reports of international organizations that indicate that confessions are extracted from the accused by dangerous methods, the latest of which was the case of the citizen (Ali al-Jubouri) from Babylon, one of the employees of the Ministry of Defense, who was accused of killing his wife, mutilating her body and throwing it in the river, and he was forced to confess, and the confessions were broadcast on the satellite channels, and he was just around the corner from carrying out the execution on him and when the wife appeared alive, and the matter came to the intervention Presidency of the Council of Ministers to do justice to the person and investigate those involved in this file. But the question that arises is, how many people were not fortunate enough to have the death penalty carried out as a result of such investigations and these trials? And how many people still assert that he is innocent of the accusation that was brought against him and he was sentenced because of it, while he is innocent of it?

UNAMI released a report in August 2021 based on interviews with more than 200 detainees, over half of whom shared credible allegations of torture.¹ The report found that the authorities acquiesce in and tolerate the use of torture to extract confessions, a finding consistent with Human Rights Watch reporting on the systemic use of torture by Iraqi and KRG forces to extract confessions in Iraq.

Recommendations.

1. Ensure that criminal laws have been amended to ensure that all acts of torture are punishable by appropriate penalties, in accordance with article 4 (2) of the Convention.
2. State party must ensure the rights of detainees to be informed of the reasons for their arrest and the nature of the charges against them, to receive legal counsel without delay, and that relative are notified or any other person of their choice of their arrest, to receive an examination by an independent physician of their choice and to be brought promptly before a judge.
3. Free legal aid must be available in all cases where the interests of justice so require.
4. State party must guarantee regular access to the High Independent Commission for Human Rights and the Regional Independent Board of Human Rights to conduct regular and unannounced visits to all places of detention.
5. State party must ensure that concrete measures has put in place to ensure that all instances of torture, ill-treatment and excessive use of force are promptly, effectively and impartially investigated.
6. state party to ensure that measures have been taken to ensure respect in practice for the principle of inadmissibility of evidence obtained through torture and ill-treatment.

¹ "Iraq: Ending torture through accountability, compliance and prevention – UN," UNAMI press release, August 3, 2021, <https://iraq.un.org/en/138505-iraq-ending-torture-through-accountability-compliance-and-prevention-un>

7. State party must ensure the protection of human rights defenders, activists, journalists and other media workers and to punish perpetrators of attacks, intimidation and other criminal acts against them.
8. Not to take statements from the accused except in the presence of the attorney and the public prosecutor, if the person in charge of the investigation is the official in the police station.
9. Taking into account the allegations of the accused about the practice of torture by the interrogators and stopping all procedures until it is ascertained whether the allegation is true or not.
10. Increasing the penalty for anyone who is proven to have practiced torture, ill-treatment or degrading treatment, and isolating him from the profession permanently, as well as those who issued orders to torture.
11. Compensating the person who is subjected to torture, materially and morally, with compensation appropriate to the gravity of the crime committed against him.
12. Ensure full and practical implementation of detention safeguards including through undertaking prompt, effective, thorough, impartial, and transparent investigations of all allegations of torture and ill-treatment aimed at holding those responsible accountable.
13. JNP emphasized on the necessity of providing training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the physical and psychological sequelae of torture, including whether the programmes contain specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
14. Amend existing laws to provide clear definitions of prohibited conduct and ensure that all restrictions set out in domestic legislation are consistent with relevant international human rights standards.
15. The review of punitive laws, reconsideration of the penalties contained therein, mitigating them as much as possible, aligning them with international standards, and observing the philosophy of imposing penalties, which aims at reform and rehabilitation, as well as deterrence in its two types (private and public) has become an urgent necessity.
16. Enacting a law against torture and ill-treatment during the investigation and trial stages, as well as during the sentence period.
17. Compensating the person who is subjected to torture, materially and morally, with compensation appropriate to the gravity of the crime committed against him.

18. Provide adequate compensation to the accused who are released due to insufficient evidence or his innocence of the charge against him after the lapse of years since his arrest.
19. JNP emphasized on the necessity of providing educational materials to ensure that all law enforcement officials, prison staff, border guards and members of the military are fully acquainted with the provisions of the Convention and are aware that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted.
20. Ensure that any person charged with a criminal offence is afforded all fair trial rights and procedural guarantees as required under relevant international human rights norms and national standards.
21. Ensure that Suspects and accused are notified about the reasons for arrest, the nature and cause of the charges against them, promptly and in detail, at the time of arrest and in a language they understand.
22. Ensure that all suspects and accused effectively benefit from the presumption of innocence, without discrimination, and that the burden of proving a criminal offence remains throughout upon the prosecutorial authority.
23. Ensure full and practical implementation of detention safeguards including through undertaking prompt, effective, thorough, impartial, and transparent investigations of all allegations of torture and ill-treatment aimed at holding those responsible accountable.
24. Revising the anti-terrorism laws to comply with international law, and ensuring defendants have sufficient time to prepare and present their cases.