



Justice Network for Prisoners in Iraq (JNP)

Submission to the Human Rights Committee

**Iraq's sixth periodic report by the Human Rights
Committee**

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Introduction

Justice Network for Prisoners JNP combines, voluntary, of non-governmental, non-profit and independent organizations i, 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 human rights situation in Iraq, submitted to the United Nations Human Rights Committee in advance of its review of Iraq in March 2022. Hoping that it will enlighten the Committee's upcoming review of the Iraqi government's compliance with its obligations under the International Covenant on Civil and Political rights ("ICCPR").

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 and Other Forms of Ill-Treatment (art. 7)

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.

Our 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.

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>

Death Penalty (arts. 6, 7)

Unfortunately the Ministry of Justice in Iraq has not announced the number of the death penalty cases and usually the files and documents of death penalties got delayed in the appeal and cassation courts before they are finalized. In Kurdistan Region there is more than 600 cases of death penalty, some of them have been waiting for 27 years but the penalty has not been executed as in the KRI, the RG implemented a de facto moratorium on the death penalty in 2008, banning it “except in very few cases which were considered essential,” according to a KRG spokesperson. JNP recently received a document stamped by 8 persons on death row and been waiting for a long time to execute the sentence, they have stamped a document urging the Ministry of Justice to implement their sentences!?

Fair Trial in Kurdistan Region and Iraq

JNP fully supports the outcome of UNAMI’s report “ Human Rights and Freedom of Expression: Trials in the Kurdistan Region of Iraq “ which has been published on the 22nd of December 2021 which states: The right to a fair trial is a key element in ensuring the proper administration of justice, and human rights protection more generally. Trials serve as a mechanism to ensure accountability and provide remedies for victims of crime or injustice. As such, it is crucial for trials to be fair, and to be perceived as fair. Transparency, accountability, and openness to constructive questioning all provide the opportunity for authorities to explain their actions and are key to building public trust and sustaining a healthy democracy.

Due Process and Fair Trial Violations (art. 14)

JNP fully agrees with what has been mentioned in UNAMI’s report “ Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and Implications for justice, accountability and social cohesion in the aftermath of ISIL”², it came in the report that; while proceedings were generally orderly and well organized,

² UNAMI report

https://www.ohchr.org/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf

with judges who were routinely prepared with investigation files, UN human rights officers found defendants had ineffective legal representation and limited possibilities to present or challenge evidence.

Prosecutions mainly focused on “association” or “membership” of a terrorist organization, with no distinction being made between people who participated in violence and those who joined ISIL for their own survival, or through coercion.

Recommendations.

1. 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.
2. 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.
3. 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.
4. Compensating the person who is subjected to torture, materially and morally, with compensation appropriate to the gravity of the crime committed against him.
5. 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.
6. 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.
7. 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.
8. Legislation of a law against torture and ill-treatment during the investigation and trial stages, as well as during the sentence period.
9. The management of the prison file must be entrusted to the Ministry of Justice in the federal government and the regional government and for all groups (men - women - juveniles) whether they are convicted or detained.
10. Recommending to the bodies concerned with monitoring the human rights situation in Iraq the need to open offices for them in prisons and corrections to review the situation on a daily and continuous basis, or the necessity of having periodic (monthly) visits to all prisons, corrections, detention centers and transfers.
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. 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.
13. 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.
14. Ensure that Suspects and accused persons effectively benefit from access to lawyers at all stages of the investigation and trial, including in places of detention.
15. 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.
16. Ensure that Accused have sufficient time, facilities and opportunity to prepare and present their case to the investigative and trial courts under conditions that do not place them at a substantial disadvantage, including appropriate access to case files, ability to adduce and challenge evidence, and to cross-examine witnesses, on the basis of equality of arms.
17. 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.
18. Ensure that All persons deprived of their liberty can contact a person of their choosing to inform such person about their detention and whereabouts and to facilitate family visits.
19. 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.
20. Revising the anti-terrorism laws to comply with international law, and ensuring defendants have sufficient time to prepare and present their cases.
21. “Robust safeguards for detention, due process and fair trials not only demonstrate commitment to justice: they are a necessary building block for resilience.