



Iraq

**Submission to the List of Issues to be taken up in connection
with the consideration of Iraq's fifth periodic report by the
Human Rights Committee**

Alkarama Foundation – 17 December 2014

1. Table of contents

1. TABLE OF CONTENTS 2

2. INTRODUCTION 3

3. LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS APPLIED (ARTICLE 2)..... 3

4. THE VIOLATIONS OF THE RIGHT TO LIFE (ARTICLE 6 OF THE COVENANT) 4

5. THE PRACTICE OF TORTURE AND THE BREACHES OF THE RIGHT TO PHYSICAL INTEGRITY (ARTICLES 7 & 10 OF THE COVENANT) 5

6. THE PRACTICE OF ARBITRARY DETENTION AND THE INFRINGEMENTS OF FAIR TRIAL RIGHTS (ARTICLES 9 & 14 OF THE COVENANT) 7

7. THE RIGHTS TO FREEDOM OF OPINION AND EXPRESSION AND THE USE OF THE ANTI-TERRORISM LAW TO NEUTRALISE POLITICAL OPPONENTS..... 9

2. Introduction

In the context of its contribution to the fifth review of Iraq by the Human Rights Committee, Alkarama would like to provide suggestions of questions with the objective of strengthening the dialogue which will take place during the review of the State Party in October 2015.

Alkarama has carefully reviewed Iraq's national report (CCPR/C/IRQ/5) and wishes to make a preliminary remark. We note with concern that the Iraqi authorities seem to be denying that human rights violations continue to occur until today in the country, as "far-reaching changes"¹ allegedly took place since then.

On the contrary, human rights violations and breaches to the International Covenant on Civil and Political Rights (ICCPR) remained widespread and systematic in the country. With the legacy of occupation, conflict and dictatorship, and in conjunction with a lack of political will to address the ensuing challenges, 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.

Sustained efforts should therefore be made by the State Party to address the issues presented in this report, with the aim to uphold human rights standards enshrined in the ICCPR.

3. Legal Framework within which the Covenant is Applied (Article 2)

At the time Iraq was under occupation by the United States (U.S.) armed forces and the coalition accompanying them, numerous human rights violations, including torture, enforced disappearance, unlawful detention and execution, were reported. In particular, Alkarama has documented several cases of individuals who were tortured by the U.S. forces, often detained *incommunicado* by the U.S. force before being handed over to the Iraqi authorities. Whilst some are still disappeared today, others were sentenced by Iraqi courts on the basis of confessions extracted under torture.

Under article 12 of the U.S. – Iraq Status Of Forces Agreement of 2008, Iraq maintains jurisdiction over U.S. contractors and their employees but shares jurisdiction with the U.S. over U.S. forces. Iraq can assert exclusive jurisdiction over U.S. forces, including the civilian component for the commission of grave premeditated felonies committed off-duty.

This agreement can infringe article 2(3) of the ICCPR and in particular the right to an effective remedy for victims of violations.

Questions:

1. *How does Iraq make sure that human rights violations committed by U.S. forces when the U.S. were acting de facto and de jure governmental power in Iraq are duly investigated?*
2. *Is there any cooperation mechanism to ensure that the substitution of jurisdiction does not hinder accountability?*

¹ Para. 1, CCPR/C/IRQ/5.

4. The Violations of the Right to Life (Article 6 of the Covenant)

According to Iraq, the death penalty is applied in the cases of crimes against "the internal security of the State", "constituting a public danger" "prejudicial to the safety of transport and communication" etc.² However, these crimes do not meet the threshold of the "most serious crimes".

Iraq further notes that "most of the death sentences were handed down, in accordance with article 4 of the Counter-Terrorism Act No. 13 of 2005".³ This provision indeed mandatorily applies the death penalty to those convicted of acts of terrorism.

It is noteworthy that preceding articles of that law elaborate what acts are considered to be acts of terrorism, listing a range of vague transgressions. This includes, amongst others, the use of violence or threats to expose civilians' lives to danger; acts causing damage to or destruction of public buildings; participation or membership in a "terrorist gang" that carries out or plans to carry out acts of terrorism; encouraging or inciting citizens to commit insurrection or arming civilians to carry out such acts; kidnapping for financial gain as a means of promoting or inciting terrorism."⁴

Iraq goes even further by affirming that "under the present circumstances, abolition of the death penalty in our country would constitute a flaw in our criminal justice policy since we are facing not only the most ruthless and odious acts of organised and unorganised terrorism and organised crime designed to undermine democratic institutions, but also acts of violence motivated by the racial, ethnic or religious affiliation in an unstable security situation".⁵

Questions:

3. How is this assertion compatible with article 6(6) of the ICCPR according to which "nothing in this article shall be invoked to deny or to prevent the abolition of capital punishment"?
4. Is the State Party taking concrete measures, such as amending the Anti-Terrorism law, as to ensure that the death penalty is applied only to the most serious crimes?
5. Is the State Party considering reviewing its position by abolishing the death penalty or at the very least adopting a moratorium on executions?

In addition, in its report, Iraq states that "the only reported cases of extrajudicial executions consist in the indiscriminate homicidal acts committed by criminal and terrorist groups against all sections of Iraqi society".⁶ However, Alkarama has documented many cases of extrajudicial executions over the last years.

One example is that of Abdullah Al Matoui,⁷ a Tunisian national who had been arrested in 2005 and sentenced to ten years of imprisonment. In the context of the Arab League Summit in March 2012, the Iraqi authorities and their Tunisian counterparts agreed on the repatriation of some prisoners of Tunisian nationality detained in Iraq, amongst which Mr Al Matoui. However, on 31 July 2012, when he was transferred from Soussa prison in the province of Al Sulaymania to Al Rusafa prison in Baghdad; he expressed fear for his life to Alkarama, as he was being subjected to death threats from the prison's administration and prison guards.

² Para. 85, CCPR/C/IRQ/5.

³ Para.84, CCPR/C/IRQ/5.

⁴ UNAMI / OHCHR, *Report on the Death Penalty in Iraq*, October 2014, http://www.ohchr.org/Documents/Countries/IQ/UNAMI_HRO_DP_1Oct2014.pdf (last accessed on 10 December 2014), p.9.

⁵ Para. 85, CCPR/C/IRQ/5.

⁶ Para. 87, CCPR/C/IRQ/5.

⁷ Alkarama, *Iraq: Execution of a Tunisian detainee in Al Rusafa Prison*, 17 September 2012, <http://en.alkarama.org/iraq/press-releases/995-iraq-execution-of-a-tunisian-detainee-in-al-rusafa-prison> (last accessed on 10 December 2014).

On 2 August 2012, following three days of detention in solitary confinement in Al Rusafa, Mr Al Matoui was taken out of his cell and attacked by three men coming from outside the prison. The perpetrators beat and stabbed him, which led to his death the same day.

Question:

6. *Were independent investigations into the circumstances of Mr Al Matoui's death carried out? Were both the persons responsible for his death and those who failed to protect him prosecuted and punished?*

Another emblematic case is the Hawijah Massacre,⁸ which took place in Hawijah, Kirkuk, on 23 April 2013. That day, a sit-in was organised demanding the release of prisoners arbitrarily detained on the basis of the fourth article of the Anti-Terrorism Law. At dawn, the Iraqi Armed Forces, lead by its 12th division, Special Weapons and Tactics (SWAT) units, as well as other army and police divisions used force to disperse the sit-in altogether employing tear gas, stun grenades, as well as live ammunition in the operation. As a result, 91 civilians were killed and 254 were injured.

A Parliamentary Fact-Finding Committee mandated to look into the incident issued a report on 29 April 2013 in which it recommended that independent investigations and prosecutions of those responsible be conducted. As a result, a judicial body called the Supervising Investigative Judicial Commission was established by an order of the Iraqi Supreme Judicial Council on 13 May 2013. To our knowledge, whilst hearings were held starting from 26 May 2013, the investigations have had to come to a halt since the military personnel summoned to present themselves before the Commission have failed to appear. This seems to be due to the Ministry of Defence's failure to approve for them to be heard by civil investigators or courts, a requirement specified by domestic legislation.

Questions:

7. *Were the complaints filed by injured demonstrators and families of killed demonstrators duly investigated? Were individuals responsible for the killing of protestors prosecuted? If so, could the State party provide specific examples and specify what sanctions were given?*
8. *What are the Standard Operating Procedures related to law and order operations especially crowd control regarding the use of force and the guarantees of the right to life of peaceful demonstrators?*

5. The Practice of Torture and the Breaches of the Right to Physical Integrity (articles 7 & 10 of the Covenant)

With regard to the prohibition of torture, we take note of the provisions prohibiting torture mentioned by Iraq in its national report.⁹ Although Iraq ratified the Convention against Torture (CAT) in 2011, it has not fully incorporated the provisions into the Constitution and national legislation.

Indeed, article 217 of the Criminal Procedure Code (CPC) only gives a vague definition of torture, stipulating that "[t]he use of any illegal method to influence the accused and extract an admission is not permitted". The penalties specified in articles 332 and 333 of the CPC do not appropriately reflect the gravity of the crime of torture. Indeed, whilst article 332 punishes with one year of detention at most and a fine for any public official or agent "who cruelly treats a person in the course of his duties", article 333 does not even state the length of the detention that should apply when a public official tortures or orders the torture of an accused, witness or informant in order to compel him to confess.

⁸ Alkarama, *Iraq: No Justice Six Months after 91 Demonstrator Deaths in Hawijah*, 23 October 2013, <http://en.alkarama.org/iraq/1159-iraq-no-justice-six-months-after-91-demonstrator-deaths-in-hawijah> (last accessed on 10 December 2014).

⁹ Paras. 88-89, CCPR/C/IRQ/5.

Question:

9. *What steps are being taken to ensure that torture is defined according to international standards, criminalised and that the penalties attached reflect the gravity of the crime?*

In terms of accountability, Iraq claims in its report that the Ministry of Human Rights has compiled a database of cases of torture as to ensure that they are following-up on the outcome of judicial investigations to ensure that the perpetrators are duly convicted.¹⁰ Moreover, Iraq refers to 57 of its personnel who have been referred to court.¹¹

We wish to highlight in this regard that article 136(b) of the Criminal Code (CC) constitutes a serious impediment to resolving the issue of torture during the pre-trial stage in Iraq as the prosecution of government officials who have engaged in or authorised abuse of detainees in the course of their official duty must be permitted by the “responsible minister”. For example, a policeman implicated in torture or ill-treatment of detainees would be prosecuted for acts of torture only if the Ministry of Interior permits it.

Questions:

10. *Could Iraq provide the Committee with the full list of these 57 cases, as well as with specific examples of cases of torture involving security officials, law enforcement and detention personnel which were referred to the judicial authorities? Were the perpetrators effectively prosecuted? Were cases dismissed, and if so, for what reasons? How many officials were condemned and what were the sanctions imposed?*
11. *How is Iraq making sure that the crime of torture by government officials does not remain unpunished?*

Finally, the wide powers of the Prime Minister’s Office are worrying in terms of addressing the issue of torture in the country. Indeed, to date the supervision of detention facilities has still not been unified under the Ministry of Justice alone, which is concerning since most claims of torture occur in detention facilities controlled by the Ministry of Interior.¹² Iraq has noted in its report that the Government was making “every endeavour” to ensure that detention facilities be managed by the Ministry of Justice.¹³

In addition, Presidential Order No. 207/S¹⁴ according to which “the Ministry of Interior shall designate a number of investigating officers [...] to conduct the investigation procedures under the supervision of the judiciary” is problematic. Indeed, considering that individuals are mostly tortured during the investigation stage – aiming at extracting confessions that will be used as compelling evidence during the trial –, authorising the Ministry of Interior to conduct the investigation leaves the door open to abuses.

Questions:

12. *What are the steps being taken so far to ensure that detention facilities are being put under authority of the Ministry of Justice alone? When will this transfer be achieved?*
13. *What measures are being taken to prevent the Ministry of Interior from exercising interference with the judiciary, in particular during the investigation stage?*

¹⁰ Para. 92, CCPR/C/IRQ/5.

¹¹ Para. 93, CCPR/C/IRQ/5.

¹² UNAMI / OHCHR, *Report on Human Rights in Iraq: July – December 2013*, June 2014, http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2013Report_en.pdf (last accessed on 10 December 2014), p. 6.

¹³ Para. 96, CCPR/C/IRQ/5.

¹⁴ Para. 113, CCPR/C/IRQ/5.

6. The Practice of Arbitrary Detention and the Infringements of Fair Trial Rights (articles 9 & 14 of the Covenant)

Although the right to enjoy liberty and the prohibition of unlawful detention and other principles inherent to the right to a fair legal proceeding are enshrined in Iraqi law, Alkarama remains concerned over the rampant practice of arbitrary detention in the country. The UN High Commissioner for Human Rights even described the Iraqi criminal justice system as “seriously flawed.”¹⁵

Alkarama will first raise thematic issues that should be raised with the Iraqi authorities before presenting emblematic cases that demonstrate the blatant disrespect for fair trial rights.

First, Alkarama notes with concerns that very often, courts convict accused persons on the sole evidence of either the testimony of a secret informant, or confessions extracted under torture.¹⁶ Indeed, the investigative and trial hearings in cases of “national security” rely often exclusively on testimonies provided by secret informants, as allowed under article 47 of the Iraqi Code of Criminal Procedure, which are left to the judge’s discretion as to whether to take them into consideration.

While we note that Iraq reaffirms the principle of presumption of innocence in its report,¹⁷ Alkarama is extremely concerned with the practice of airing “confessions” of “terrorists” on state-run channel Al Iraqiya. The TV show, “*In the Grip of the Law*”, which is produced in cooperation with the Iraqi Ministry of Interior and broadcasted every Friday, brings alleged terrorists in to “confess their crimes”.¹⁸

Alkarama has documented the cases of four security officers¹⁹ assigned to former vice-president Tariq Al Hashimi, who were severely tortured and forced to make false confessions, on the basis of which they were later sentenced to death. On 19 December 2011, the forced confessions at gunpoint of three of Al Hashimi’s bodyguards were aired on Al Iraqiya, in the serie “*Terror in the hands of justice*”, a programme established, funded and distributed by the U.S. since 2005. 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 bomb attacks”, during which the coerced confessions were released.

Questions:

14. *What measures are being taken by Iraq as to ensure that such flawed evidence is excluded?*
15. *How is this practice of airing confessions on TV compatible with the principle of presumption of innocence enshrined in article 14 of the ICCPR?*
16. *Is the State party considering trying de novo or releasing persons convicted on the basis of confessions made under torture?*

¹⁵ UN High Commissioner for Human Rights, *Pillay condemns rampant use of death penalty in Iraq*, 19 April 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13253&LangID=E> (last accessed on 10 December 2014).

¹⁶ UNAMI / OHCHR, *Report on Human Rights in Iraq: July – December 2013*, June 2014, http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2013Report_en.pdf (last accessed on 10 December 2014), p. 9.

¹⁷ Para. 112, CCPR/C/IRQ/5.

¹⁸ Newsweek, *The Reality TV Show That Interrogates ISIS Prisoners on Camera*, 3 December 2014, <http://www.newsweek.com/2014/12/12/reality-tv-show-interrogates-isis-prisoners-camera-288833.html> (last accessed on 10 December 2014).

¹⁹ Alkarama, *Iraq: Four Security Officers of Former Vice-President Al Hashimi Arbitrarily Detained on Basis of False Confessions Obtained under Torture*, 21 August 2014, <http://en.alkarama.org/1482-iraq-four-security-officers-of-former-vice-president-al-hashimi-arbitrarily-detained-on-basis-of-false-confessions-obtained-under-torture> (last accessed on 10 December 2014).

Furthermore, the existence of state-controlled militias in the country which also conduct unlawful arrest and abduction is problematic, as documented by civil society organisations.²⁰ With the current internal crisis in the country, their power has arisen significantly, which is all the more worrying as they operate outside any legal framework. One example of these militias is the Badr Brigades, currently headed by Hadi al Ameri, former Ministry of Transport.

Questions:

17. What measures are being taken to put these militias under the control of the law?

18. Which authority has jurisdiction to investigate cases of human rights violations, amongst which enforced disappearance, torture and summary executions, committed by these militias and according to which rules of procedure? What was the outcome of these investigations and were members of militias ever prosecuted for the crimes committed? If so, what sanctions were handed down?

Alkarama will now raise two examples of cases that show Iraq's blatant disrespect for due process guarantees.

In April 2010, Mrs Hasna Ali Yahya Husayn's²¹ home was raided by the American Forces in Iraq as they were searching for her husband, Abu Ayub, leader of Al Qaida in Iraq. Whilst her husband was killed during the raid, she was taken with her three children (aged 5, 3 and 6 months) to the premises of the security services. She was detained *incommunicado* for several months during which she was tortured. She was never presented to a judge nor was she made aware of the charges against her.

It is only a year after her arrest, in May 2011, that her children were released and that she was notified of the charges against her. Her trial was held on 23 June 2011. She was not allowed to defend herself in court and hearings were held in the absence of her lawyer, who could not access her file or present her defence. All the more, the session was closed and the hearing only lasted 10 minutes. Mrs Husayn was sentenced to life imprisonment under article 4 of the Anti-Terrorism Law and article 49 of the Penal Code for concealing the whereabouts of her husband.

On 21 November 2011, the UN Working Group on Arbitrary Detention (WGAD) issued an Opinion (No. 59/2011) on her case, calling her detention arbitrary as per Category III and requesting her release. To date, she is however still detained in Iraq.

In October 2004, Shawki Omar,²² a 52 year-old Jordanian national with American citizenship, who had gone to Iraq hoping to find a job to help rebuild the country's infrastructures, was abducted along with his pregnant wife by American soldiers. While they were secretly detained for two weeks, he was subjected to severe torture, including electric shocks and simulations of drowning.

Whilst still being held in U.S.-controlled facilities, Omar was sentenced in June 2010 to 15 years of imprisonment by the Central Criminal Court for "illegal entry to Iraq" following an utterly unfair trial during which confessions obtained under torture were admitted as evidence. In 2011, his sentence was reduced to seven years in prison by the Court of Cassation.

²⁰ Amnesty International, *Absolute impunity – Militia rule in Iraq*, October 2014, http://www.amnesty.org.uk/sites/default/files/absolute_impunity_iraq_report.pdf (last accessed on 10 December 2014).

²¹ Alkarama, *Iraq: The Yemeni Hasna Ali Yahya Hussein was sentenced in prison at a hearing that did not exceed 10 minutes*, 23 June 2011, <http://en.alkarama.org/iraq/769-iraq-the-yemeni-hasna-ali-yahya-hussein-was-sentenced-to-life-in-prison-at-a-hearing-that-did-not-exceed-10-minutes> (last accessed on 10 December 2014).

²² Alkarama, *Iraq: UN Calls Shawki Amed Omar's Detention "arbitrary" and Calls for his Release*, 14 November 2014, <http://en.alkarama.org/iraq/1553-iraq-un-calls-shawki-ahmad-omar-s-detention-arbitrary-and-calls-for-his-release> (last accessed on 10 December 2014).

On 23 April 2014, the UN Working Group on Arbitrary Detention issued an Opinion (No. 5/2014) which concluded that his case revealed "serious procedural violations", including lack of access to legal assistance, and concluded that the sentence he was given after his unfair trial was "harsh and disproportionate". The WGAD consequently requested Iraq to immediately release Shawki Omar.

However, to date, Mr Omar still remains detained and the Opinion has not been implemented.

Question:

19. Is the State Party going to comply with the Opinions of the WGAD by releasing both Mrs Husayn and Mr Shawki Omar?

20. What steps will the State party take to remedy similar cases of arbitrary detention following unfair trials?

7. The Rights to Freedom of Opinion and Expression and the Use of the Anti-Terrorism Law to Neutralise Political Opponents

Alkarama wishes to raise here cases that demonstrate how the Anti-Terrorism Law has been utilised to neutralise opponents of the Government or critics of its policies.

The most prominent example is the prosecution of Tariq Al Hashimi, former Vice-President, who has been sentenced to death in absentia several times, based on testimonies by some of his security staff (as explained above), who have been subjected to severe torture.

In December 2011, Iraqi security forces, ordered by Prime Minister al Maliki, surrounded the house of Tariq Al Hashimi, a leading member of the Iraqiya coalition, al Maliki's main electoral rival, who was criticising what he considered 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. The security services, tightly controlled by Prime Minister al Maliki, continued to arrest dozens of Mr Al Hashimi's staff and bodyguards and took them to secret locations where they were severely tortured and forced to sign confessions incriminating Mr Al Hashimi.

In September 2012, Mr Al Hashimi, who had fled to Turkey, was sentenced to death after his first trial *in absentia* by the Central Criminal Court of Iraq (CCCI), on the basis of his bodyguards' coerced testimonies. In November 2012, the CCCI issued a second death sentence against him for "plotting to assassinate government officials" and "having ordered bombings and other attacks from 2005 to 2011".

More recently, an opposition figure, Member of Parliament Ahmed Al Alwani, a prominent supporter of anti-government protestors, has been sentenced to death on terrorism charges.

In December 2013, Mr Ahmed Al Alwani was arrested during a violent raid at his house, which left his brother and five of his security guards dead.

On 23 November 2014, he was sentenced to death by the Central Criminal Court for the "killing of two soldiers" under article 4 of the Anti-Terrorism Law. During the trial, he was denied access to his family and lawyer, who was intimidated until he withdrew from the case.

The reason behind Mr Alwani's sentencing to death is that he had been a leading public supporter of a protest camp set up in Ramadi by Sunni protestors who were denouncing their marginalisation by the Shia majority government. Few days after his arrest, the protest was violently shut down.

Questions:

21. *What is the State party doing to prevent the Anti-Terrorism Law from being used against government critics and opponents?*
22. *Is the State party, in view of the unfairness of both trials and the politically motivated sentences, considering repealing the rulings on both Messrs Al Hashimi and Al Alwani? How is the State party going to address similar cases of wrongful condemnations on a political basis?*