



## **Iraq**

### **Follow-up to the Human Rights Committee's recommendations**

**Alkarama Foundation – 6 October 2017**

## Table of contents

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1. INTRODUCTION .....	3
2. ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF THE ONGOING ARMED CONFLICT ...	3
3. DEATH PENALTY .....	4
4. PROHIBITION OF TORTURE AND ILL-TREATMENT .....	6

## 1. Introduction

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In its Concluding Observations to Iraq's fifth periodic report (CCPR/C/IRQ/CO/5), the Human Rights Committee highlighted four priority issues and requested that the State provide follow-up information with regards to each of these four sets of recommendations.

On 18 August 2017, Iraq submitted its follow-up report (CCPR/C/IRQ/CO/5/Add.1) in which the majority of recommendations are left unaddressed. In fact, on the basis of information provided by victims themselves, their families and lawyers, as well as local human rights NGOs, Alkarama is convinced that none of these recommendations have been implemented to date.

In this report, Alkarama evaluates the State party's response to three of these priority recommendations: allegations of human rights violations in the context of the ongoing armed conflict, the execution of the death penalty, and the prohibition of torture and ill-treatment. The remaining recommendation highlights the issue of violence against women.

## 2. Allegations of human rights violations in the context of the ongoing armed conflict

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*The State party should make more vigorous efforts to ensure that: (a) All serious human rights violations are independently, promptly and thoroughly investigated, that perpetrators are brought to justice and adequately sanctioned as soon as feasible, and that victims receive full reparation; (b) Its forces, groups under its control and forces collaborating with it do not perpetrate human rights violations, and that they take all necessary precautionary measures to avoid civilian casualties; (c) All persons under its jurisdiction, in particular those who are most vulnerable owing to their ethnicity or religion, are afforded the necessary protection from violent attacks and gross human rights violations; (d) Victims, particularly women and girls released from ISIL, receive adequate support, and that children who have been used in or recruited into armed conflict receive adequate assistance for their physical and psychological recovery and reintegration.<sup>1</sup>*

In its follow-up report, Iraq begins by addressing the security situation prevailing in the country.<sup>2</sup> Indeed, the fighting between the Islamic State (IS) and the Iraqi army supported by affiliated militias and the coalition led by the United States has intensified over the past two years. However, the authorities are operating outside any legal framework by continuing to invoke the fight against terrorism and the war against IS to justify and carry out mass arrests followed by *incommunicado* detention.

Since Iraq's review by the Human Rights Committee in October 2015, Alkarama has documented numerous cases of enforced disappearances in the context of the ongoing armed conflict.

One such example is the case of Ahmad and Abdullah Al Janabi, two brothers from Al Mahawil, Babil governorate, who were arrested at a military checkpoint in Al Iskandariya, Babil governorate on 8 November 2016. They were stopped by members of the Iraqi Army and the Hezbollah brigade, a Shia militia affiliated with the Popular Mobilisation Units (PMU), an umbrella organisation composed of 67 militias currently embedded in the Iraqi army. Fearing retaliation, their relatives did not denounce the brothers' disappearance to the authorities. They have received no information on their fates and whereabouts since, and they remain disappeared to this date.

Alkarama and Al Wissam Humanitarian Assembly also submitted the case of Saleh Al Mashhadani to the United Nations Committee on Enforced Disappearances. Al Mashhadani, a 22-year-old farmer, was

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<sup>1</sup> UN Human Rights Committee, *Concluding observations on the fifth periodic report of Iraq*, 3 December 2015, CCPR/C/IRQ/CO/5, para. 20.

<sup>2</sup> UN Human Rights Committee, *Follow-up State Party's Report*, 18 August 2017, CCPR/C/IRQ/CO/5/Add.1, paras 1-4.

disappeared after being arrested by a patrol composed of Military Intelligence officers, the Counter-terrorism unit, and militiaman belonging to the PMU on 22 February 2016. The enforced disappearance occurred at the farm of Salam Al Hashimi, the founder and director of Al Wissam Humanitarian Assembly, an NGO that documents cases of enforced disappearances in Iraq. There is a high probability that Saleh Al Mashhadani was arrested because he was working on the farm of Al Hashimi, as a form of reprisals against the latter.<sup>3</sup>

Failing to abide by the Committee's recommendation, we note that the State did not provide in its follow-up report any relevant information regarding efforts towards reconciling the fight against terrorism with the protection of human rights.

Moreover, the State party declares that the authorities provided humanitarian assistance "without discrimination" to the forcibly displaced population fleeing the clashes in the provinces of Diyala, Salah al-Din, Anbar and Nineveh.<sup>4</sup> However, Alkarama received numerous testimonies in 2016 according to which Sunni civilians fleeing the besieged city of Fallujah were summarily executed under the pretext that they were supporting IS.<sup>5</sup> Hundreds of local residents were detained in order to "determine their involvement with IS" and reported having been severely tortured by means of beatings, floggings, and being dragged by armoured military vehicles. Furthermore, Alkarama notes that the operations to recapture areas from IS are preceded by indiscriminate and disproportionate bombing, which has resulted in numerous civilian casualties and the destruction of civilian objects. The use of indiscriminate amunitions by the Coalition and Iraqi forces in densely populated civilian areas is in violation of international humanitarian law.<sup>6</sup>

On 4 June 2016, Prime Minister al-Abadi announced the opening of an investigation into allegations of abuse in the Fallujah operations.<sup>7</sup> However, this investigation has been criticised for its lack of transparency.<sup>8</sup> Similar allegations have been made in connection with the government's offensive to retake Mosul from IS between June 2016 and July 2017.<sup>9</sup> In its follow up report, the State party claims that "there is no impunity in Iraq when a crime is found to have taken place, as defined in with domestic law."<sup>10</sup> However, the report does not mention any investigation into these allegations of abuse.

### 3. Death penalty

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*The State party should give due consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, the State party should take all measures necessary, including legislative action, to ensure that: (a) the death penalty is provided only for the most serious crimes; (b) it is never mandatory; and (c) pardon or commutation of the sentence is available in all cases, regardless of the crime committed. The State party should also ensure that, if imposed at all, the death penalty is never imposed in violation of the Covenant, including in violation of fair trial procedures.*

<sup>3</sup> Alkarama, *Iraq: Enforced Disappearance of Saleh Al Mashhadani as Reprisal for Human Rights Work*, 7 March 2017, <https://www.alkarama.org/en/articles/iraq-enforced-disappearance-saleh-al-mashhadani-reprisal-human-rights-work>, (accessed on 28 September 2017).

<sup>4</sup> *Follow-up State Party's Report*, para. 12.

<sup>5</sup> Alkarama, *Iraq: Alkarama Calls Upon the UN to Establish a Commission of Inquiry on the Crimes Committed by Iraqi Security Forces and Affiliated Militias in Fallujah*, 23 June 2016, <https://www.alkarama.org/en/articles/iraq-alkarama-calls-upon-un-establish-commission-inquiry-crimes-committed-iraqi-security> (accessed on 8 September 2017).

<sup>6</sup> For more information see Airwars, *Airwars joins call for Iraqi forces and Coalition to end use of indiscriminate weapons at Mosul*, 8 June 2017, <https://airwars.org/news/airwars-joins-call-for-iraqi-forces-and-coalition-to-end-use-of-indiscriminate-weapons-at-mosul/> (accessed on 8 September 2017).

<sup>7</sup> AlHurra, *معركة الفلوجة.. لجان لمراقبة انتهاكات حقوق الإنسان*, 8 June 2016, <https://www.alhurra.com/a/iraq-fallujah-human-rights/308810.html> (accessed on 8 September 2017).

<sup>8</sup> Human Rights Watch, *Iraq: Fallujah Abuses Inquiry Mired in Secrecy*, 7 July 2016, <https://www.hrw.org/news/2016/07/07/iraq-fallujah-abuses-inquiry-mired-secrecy> (accessed on 8 September 2017).

<sup>9</sup> Human Rights Watch, *Iraq: New Abuse, Execution Reports of Men Fleeing Mosul*, 30 June 2017, <https://www.hrw.org/news/2017/06/30/iraq-new-abuse-execution-reports-men-fleeing-mosul>, (accessed on 8 September 2017).

<sup>10</sup> *Follow-up State Party's Report*, para. 11.

In its follow up report, Iraq does not address the possibility of abolishing the death penalty and acceding to the Second Optional Protocol to the ICCPR. To the contrary, Iraq has repeatedly justified the use of the death penalty by citing the exceptional circumstances prevailing in the country and the fight against terrorism, alleging that capital punishment would have a “deterrent effect” and would “satisfy the demands of justice and retribution”.<sup>11</sup>

Iraq claims that the death penalty is only applicable to the “most serious crimes” under existing legislation. However, Alkarama notes that several crimes and offenders punishable by death do not meet the threshold of “the most serious crimes” prescribed by the Human Rights Committee, which states that the death penalty should only be applied to the crime of intentional killing.<sup>12</sup> For example, the Iraqi Penal Code imposes the death penalty for compromising the internal security of the State, any crime that constitutes a public danger, including the use of bacteriological materials, and crimes relating to attacks on transport and telecommunication systems.

Furthermore, the Anti-Terrorism Law No. 13 of 2005 mandatorily applies the death penalty to those convicted of committing or threatening to commit acts of terrorism, including those who incite, plan, aid or abet (before or after the fact), or finance such acts either as principals or as accomplices.<sup>13</sup> Thus, the death penalty can be imposed on individuals who have not been convicted of an intentional crime with lethal or extremely grave consequences.

Regarding the Committee’s recommendation to ensure that the death penalty is never imposed in violation of fair trials procedures, Alkarama notes that criminal investigations and judicial proceedings in death penalty cases systematically fail to respect and protect international and constitutional guarantees of due process and fair trial standards.

Most of the prisoners executed in Iraq are convicted on the basis of the Anti-Terrorism Law. The death sentences are handed down by the Central Criminal Court of Iraq (CCCI) – a court lacking any guarantee of independence – which systematically considers confessions extracted under torture as evidence.

For example, Salih Al Dulaimi, an engineering professor at Anbar University, was sentenced to death by the CCCI for terrorist acts on 12 May 2016, on the sole basis of information allegedly provided by the US intelligence and statements he made under torture. The judge refused to take into account Mr Al Dulaimi’s testimony of torture and stated that his wounds were “self-inflicted”. On 27 April 2017, the United Nations Working Group on Arbitrary Detention (WGAD) issued an Opinion deeming Al Dulaimi’s detention as arbitrary due to several violations of his fair trial rights.<sup>14</sup> The Opinion has not been implemented by the Iraqi authorities to date.

In another case, Mohamad Al Jabouri, a 36-year-old construction worker, was sentenced to death by the Central Criminal Court on 17 March 2016, on the sole basis of confessions extracted under torture while he was being held in the secret detention centre of the International Airport of Baghdad.<sup>15</sup>

Regarding recommendation (c), we also note that the follow-up report does not indicate any draft law aiming at granting the President of the Republic (or any other authority) the power to commute the sentence or grant a special pardon, including for terrorism-related crimes for which no pardon can be granted under existing legislation.

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<sup>11</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, Baghdad, October 2014, p. 21.

<sup>12</sup> Human Rights Committee, General Comment No. 6: Article 6 (Right to life), Sixteenth session (1982), paras 6-7.

<sup>13</sup> Anti-Terrorism Law No. 13 of 2005, arts. 2-4. Article 4 (1): Anyone who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator.

<sup>14</sup> Working Group on Arbitrary Detention, Opinion No.32/2017 concerning Salih Mohammed Salih Mansour al. Dulaimi (Iraq), adopted on 24 May 2015.

<sup>15</sup> Alkarama, *Iraq: A Man Sentenced to Death While Disappeared on the Basis of Confessions Under Torture*, 5 October 2016, <https://www.alkarama.org/en/articles/iraq-man-sentenced-death-while-disappeared-basis-confessions-under-torture>, (accessed 7 September 2017).

## 4. Prohibition of torture and ill-treatment

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*The State party should: (a) Adopt the legislative measures necessary to ensure that the Criminal Code includes a definition of torture that is fully in line with article 7 of the Covenant and other internationally established norms, preferably by codifying it as an independent crime which stipulates sanctions that are commensurate with the gravity of the act; (b) Take more vigorous steps to prevent torture and ill-treatment and to ensure that all such cases are promptly, independently and thoroughly investigated, that perpetrators are brought to justice and that victims receive full reparation; (c) Ensure that confessions obtained in violation of article 7 of the Covenant are not accepted by courts under any circumstances, that allegations made by defendants that a statement was made under torture or ill-treatment are promptly and adequately investigated, and that the burden of proving that the confession was made voluntarily falls on the prosecution; (d) Ensure that all cases of death in custody are promptly, independently and thoroughly investigated and, if it is determined that they were the result of torture, ill-treatment or wilful negligence, that the perpetrators are brought to justice.*

Torture is yet to be criminalised under the Iraqi Criminal Code, and the only definition of torture, which falls short of international standards, is contained in article 12.2.e of the Iraqi Supreme Criminal Court Act No. 10 of 2005.

Iraq announced in its report that a bill is currently being drafted that would bring the definition of torture into line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the ICCPR. In the follow-up report, the State party reiterates its explanation already developed in its national report, arguing that the absence of a definition would "allow leeway for discretionary juristic interpretation without restricting the concept of torture to a specific definition which, with the passage of time and increasingly sophisticated methods of investigation and interrogation, might not be sufficiently all-embracing and exclusive."<sup>16</sup>

We remain very concerned by this explanation considering it opens the door for judges to arbitrarily redefine what constitutes an act of torture, likely becoming more exclusive than inclusive. This is all the more alarming as the judiciary systematically suffers from interference from the executive.

Regarding recommendations (b) and (c), the follow-up report further mentions the following non-exhaustive list of safeguards enshrined in Iraq's legal system: confessions are not the sole evidence necessary for a prosecution; the right to a defence and legal assistance is guaranteed and if the accused person does not have a lawyer, a counsel should be appointed by court; when the defendant is being brought before the public prosecutor, he must be asked whether he has been subjected to torture or ill-treatment. Finally, it refers to the fact that the Code of Criminal Procedure (CCP) states that confessions must not have been extracted by coercion.<sup>17</sup>

However, we note that Iraqi courts give undue weight to confessions when evaluating evidence. This practice is enshrined in article 217 CCP, according to which the trial court has absolute authority to decide whether a confession is admitted as incriminating evidence, even if the witness subsequently withdraws his statement.

Furthermore, the State party makes no reference to its obligation to carry out prompt, thorough and impartial investigations into all allegations of torture, ill-treatment, and death in custody. Alkarama received testimonies showing that the filing of complaints by victims' relatives of human rights violations – namely torture and ill-treatment, suspicious deaths in custody, and enforced disappearances – with the relevant authorities never leads to the opening of an investigation. Complaints lodged with authorities in police stations, headquarters of security services, courts including the General Prosecutor of the Central Criminal Court of Iraq, the Ministry of Human Rights, the Ministry of Justice, the Ministry of Interior, the Health Ministry, the Higher Judicial Council, the Office of the Prime Minister, and the Council of Representatives remain systematically unanswered.

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<sup>16</sup> *Follow-up State Party's Report*, para 42.

<sup>17</sup> *Follow-up State Party's Report*, paras 48-49.