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INTRODUCTION

Iraq's ratification of the United Nations (UN) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture or Convention) in July 2011 was no doubt a positive step. However, Amnesty International remains deeply concerned that torture and other ill-treatment remain widespread in Iraq and key provisions to safeguard detainees against torture and end impunity have yet to be introduced in law and implemented in practice. This submission provides updates to and should be read in conjunction with Amnesty International's report *Iraq: A Decade of Abuses*¹ published in March 2013, which contains numerous cases and accounts of torture and other ill-treatment by government security forces.

According to official records disclosed by the Ministry of Human Rights in 2012, there were 237 cases of death in custody for the three year period to the end of 2011, including 16 in which "suspicion of torture" was given as a possible cause of death and 14 cases in which no cause of death was indicated. In addition, Iraq has announced before the Universal Periodic Review of the UN Human Rights Council that they had investigated 516 torture cases between 2008 and 2014. The real number of cases of torture and other ill-treatment may still be higher.

In April 2015, Shireen Ridha, a member of the Iraqi parliamentary Human Rights Committee, stated that violations, including torture, forced confessions and prolonged pre-trial detention, continue in Iraqi prisons and detention centres, highlighting concerns that the situation continues to be similar under the new government of Haider Al-Abadi.

THE USE OF TORTURE AND OTHER ILL-TREATMENT AND DEATH IN CUSTODY (ARTICLES 1 & 16)

Torture and other ill-treatment is widespread in practice in Iraq and in the Kurdistan Region of Iraq and often used to coerce "confessions" from detainees. Amnesty International has continued to gather reports of torture and other ill-treatment by government forces, notably of Sunni men detained under Article 4 of the Anti-Terrorism Law (Law 13 of 2005), which covers acts such as provoking, planning, financing, committing or supporting others to commit terrorism.

¹ Amnesty International, *Iraq: A Decade of Abuses*, March 2013 (AI Index: MDE 14/001/2013), available at:

<https://www.amnesty.org/en/documents/document/?indexNumber=MDE14%2F001%2F2013&language=en>

The security authorities commonly hold suspects – and in particular, terrorism suspects – incommunicado for weeks and months following arrest and during the initial period of interrogation. Detainees are totally cut off from the outside world; they have no access to legal advice or to their families and no knowledge of how long they will be held in those conditions. In many cases, incommunicado detention has amounted to enforced disappearance.

The detainees are regularly held in secret facilities that are not open to inspection by the Office of the Public Prosecution or to any official regulation. Members of the Iraqi High Commission for Human Rights told Amnesty International in September 2014 in a meeting in Baghdad that despite repeated requests they had not been allowed to visit detainees in interrogation and detention centres and prisons managed by the Ministries of the Interior, Justice and Defense, and were only allowed to visit children detained in facilities managed by the Ministry of Labour and Social Affairs.

Deaths in custody apparently caused by torture also continue to be a persistent phenomenon in Iraq.

- **Udai Taha Kurdi**, a 33-year-old lawyer and father of two children, was arrested on 10 June 2014 from Baghdad Central Court. Two weeks later, on 25 June, his family were informed that he had died. In a letter dated 24 July, addressed to the Iraqi Lawyers' Union, the Iraqi Ministry of the Interior, seemingly in response to the lawyers' questions about the case, stated that on 24 June Udai Taha Kurdi had suffered a "health problem" while in detention in the Anti-Terrorism General Directorate in Baghdad, and was taken to Yarmouk Hospital on 25 June. It added that a judge had said that Udai Taha Kurdi was "from the IS [Islamic State] leadership", that he was "from a terrorist family", that his brother was in prison on terrorism-related charges, and that at his last hearing the judge had asked Udai Taha Kurdi if he had been tortured and he had responded that he had not. On 7 September 2014 a deputy leader of the Lawyers' Union told Amnesty International that the Judicial Council (Majlis al-Qada') had informed the Union that Udai Taha Kurdi had died of kidney failure and not as a result of torture as alleged in the Lawyers' Union letter. However, photographs of Udai Taha Kurdi's body obtained by Amnesty International and verified by an independent forensic expert, tell a different story. There are bruises, open wounds and burns on his body. According to his family Udai Taha Kurdi was in perfectly good health prior to his detention.²

- **Ibrahim** (real name withheld) was arrested in Mosul in March 2014 under the Anti-terrorism Law. He was kept in Mosul for 26 days before being transferred to an interrogation centre in Baghdad Military Airport. After his release on 29 August 2014, he told Amnesty International that he had been tortured in both places. He said that he had been repeatedly beaten with cables and sticks; subjected to prolonged electric shocks, notably to the pubic area, after he had water thrown on him to increase the impact of the electric shocks. He said he was threatened with being raped with a stick and that virtually all the other detainees held with him were likewise tortured. He was eventually ordered to be released by Baghdad Central Court in May 2014 but remained in detention for a further three months, during which he said that he continued to be tortured on an almost daily basis.³

² For more information, see Amnesty International's report, *Absolute Impunity: Militia Rule in Iraq*, (October 2014, Index: MDE 14/015/2014), p. 19, available at: <https://www.amnesty.org/en/documents/mde14/015/2014/en/>

³ For more information, see Amnesty International's report, *Absolute Impunity*.

- On 20 June 2012 **Ramze Shihab Ahmad**, 72, a dual Iraqi-UK national, was sentenced to 15 years' imprisonment by the Resafa Criminal Court [case number 1901 of 2012, First Branch] after it convicted him under the Anti-Terrorism Law. He had already been held for over two years. Arrested in December 2009 at Mosul, he was held at the secret al-Muthanna detention prison, where he said interrogators tortured him with electric shocks, partially suffocated him with a plastic bag, suspended him by his ankles, and threatened to rape his wife until he agreed to sign a statement admitting to links with al-Qa'ida in Iraq. Prior to his conviction, he had been tried and acquitted of charges under the Anti-Terrorism Law on eight previous occasions. The court that eventually convicted him based its guilty verdict on three pieces of oral testimony that it accepted as evidence against him – the pre-trial “confession,” even though Ramze Shihab Ahmad had retracted it, an allegedly coerced testimony of a co-defendant in a previous trial, and information from a secret informant.⁴

On 22 November 2013, Ramze Shihab Ahmad told his family that he and other inmates were taken out of their cells at random and beaten for three hours that day. They were hit with hoses, metal rods and wooden planks. They were not interrogated during the beatings. He told his family that he could not move his arms and legs and was bloodied all over. This was the second time he and others were beaten over a period of three weeks. He said that wounded inmates were not checked by doctors causing wounds to get infected. Amnesty International wrote to the Iraqi authorities in December 2014 raising concerns about Ramze Shihab Ahmad's torture allegations. In response, the Iraqi authorities stated in January 2015 that they were investigating these allegations but no outcome of the investigation has so far been communicated to his family.

- **Brothers Subhi and Safwan** (full name withheld) were arrested from their home by army officers in August 2011. Their family had no news for over two months, after which Subhi and Safwan phoned to say they were held by Brigade 54 in Baghdad Military Airport. They were repeatedly tortured. They had broken teeth and had some nails pulled. Their mother was only able to visit them every two weeks once they were moved to Abu Ghraib prison. When Abu Ghraib prison was attacked and its gates opened by armed insurgents believed to be linked to al-Qa'ida in July 2013, Subhi and Safwan did not escape because by then they had been acquitted of most charges and wanted their trial to finish as they were expecting acquittal of the remaining charges. Following the attack, both brothers were moved to a different prison but their relatives did not know where to and had no news of them until 5 April 2014, when the two brothers called and said they were being moved but did not know where. Their mother then received a phone call telling her to go to the Jumhuri hospital in Baghdad and bring the sons' papers – which she did not have because their IDs were with them when they were arrested back in 2011. At the hospital, she found only one of her sons, Subhi. She said that he was in a terrible state, and that she could barely recognize him. He told her he had been held in al-Taji prison but did not know where his brother was. She was able to see him again on 4 August by bribing a guard and he was much better but told her not to come back to visit him because 'Asa'ib militiamen were watching him and may harm her and him. She nevertheless went back every day and brought him food but could not see him again. On 11 August a guard told her Subhi had been dead for days. The mother said the family was too scared to go to the forensic medical authority (al-Tibb al-'Adli) so they got Shi'a friends to go get his body. The death certificate, seen by Amnesty International, states that he died on 9 August but no cause of death is provided. When the family received Subhi's body they noticed a strike mark at the back of his head. They have no news of the other son, Safwan, since he was moved from Abu Ghraib jail in July 2013.⁵

⁴ For more information, see Amnesty International's report, *Iraq: A Decade of Abuses*.

⁵ For more information, see Amnesty International's report, *Absolute Impunity*, p. 20.

INVESTIGATIONS INTO ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT (ARTICLES 12, 13 AND 15)

Torture is prohibited by Iraq's Constitution (Article 37, 1.c) and under Iraqi Law, notably Articles 218 and 127 of the Criminal Procedure Code, the latter of which states: "the use of any illegal method to influence the accused and extract an admission (confession) is not permitted."

In spite of these prohibitions, torture remains widespread. Allegations of torture are seldom investigated and those responsible for torture or other ill-treatment of detainees are very rarely brought to justice. Although some cases of death in custody get reported, in general no action is taken to independently and impartially investigate that such allegations of deaths in custody were the result of torture and to bring those responsible to justice. Impunity therefore remains rife.

The Iraqi central government delegation to the Universal Periodic Review of the UN Human Rights Council told the Council that the authorities had investigated 516 torture cases between 2008 and 2014 with many resulting in prosecutions. However, no additional information was provided as to the nature of the cases and which security bodies were responsible for these abuses.

There are no provisions in Iraq's legislation explicitly placing the burden of proof on the prosecution to demonstrate that "confessions" submitted in court have not been obtained under torture. In practice, the burden of proof seems to be on the alleged victims of torture. Defendants who allege that they were coerced to "confess" to a crime while in pre-trial detention face numerous obstacles in proving it. For example, medical examinations, if carried out at all, are usually undertaken only months later, when most physical evidence of torture is likely to have disappeared. Even when injuries consistent with defendants' allegations of torture have been identified in such examinations, the injuries often cannot be conclusively attributed to torture while the courts tend to give greater weight to the denials of security force interrogators than the unsupported allegations of defendants accused of serious crimes. As detainees undergoing interrogation are usually held incommunicado, the only witnesses to their torture or other ill-treatment, other than the perpetrators, are likely to be other detainees held in much the same conditions who may still be detained when the defendant goes to trial or, if released, may fear to give evidence on his behalf for fear that this will result in their re-arrest. Many defendants have been convicted of terrorism and other serious crimes wholly or largely on the basis of pre-trial confessions that they repudiated when they got to trial.

- **Samir Naji 'Awda al-Bilawi**, 38, a pharmacist and father of seven children, was detained with his son Mundhir, 13, when security forces stopped their vehicle at a checkpoint in early September 2012 in Ramadi. Days later, on 12 September, the authorities informed his family that Samir had died in custody. The next day, his brother told al-Sharqiya TV Channel that he had seen marks on the deceased's body that appeared to have been caused by beatings. The TV station and other media published images showing these marks and what appeared to be other injuries on the dead man's head and hands. Mundhir al-Bilawi

told al-Sharqiya TV after his release that security forces had first taken him and his father to a Ramadi police station, where they were both beaten, then to the Directorate of Counter-Crime in Ramadi. There, he said, they were tortured with electric shocks and he was induced by interrogators to implicate his father in terrorism, including in front of an investigating judge. Members of the family told Amnesty International that they had received anonymous threats after they lodged a formal complaint with the authorities. An autopsy conducted by the Forensic Medical Institute in Baghdad is reported to have found that the detainee's death was caused by torture, including electric shocks. In January 2013, lawyers representing the family said that a judicial request to disclose the identities of the officers responsible had been refused by the Anbar province police authorities. A year later, no officer was brought before the court for questioning.⁶

- **Hussein Hama Ali Tawfiq** told Amnesty International that he was arrested on 27 March 2012 after he was summoned to the Directorate of General Security (Asayish Gishti) in Suleimaniya and that while in detention he was tortured, including by being threatened with death. In early April 2012, members of the Human Rights Committee of the Kurdistan Parliament visited the detention centre of Asayish Gishti and noted in their written report that they had seen Hussein Hama Ali Tawfiq and that he had been tortured. Hussein Hama Ali Tawfiq alleged that, while detained by the Asayish Gishti, senior judiciary as well as security officials pressed him to sign a statement that his interrogators had prepared before eventually deciding instead to forge his signature on it. He was taken before an investigating judge on 1 April, five days after his arrest, when for the first time his lawyer was allowed to be present. He rejected the incriminatory statement and pointed to injuries on his body that he told the judge had been caused by torture. However, he was returned to detention in the headquarters of the Asayish Gishti and, according to him, his torture continued. In July 2012, while still in custody, he filed a formal complaint against the security officials he accuses of torturing him.⁷

In December 2013, a Suleimaniya Criminal Court acquitted Hussein Hama Ali Tawfiq of charges of bribery and ordered his release but this decision was appealed by the Public Prosecution. In September 2014, his case was sent for retrial. A few weeks after his release, he said he received a phone call from someone in the headquarters of the Asayish Gishti in Suleimaniya and asked whether he was going to withdraw his torture complaint or not and if he could go to their office. Because there was no official judicial warrant, Hussein Hama Ali Tawfiq was advised by his lawyers not to go. No investigation into his torture allegations is known to have taken place.

⁶ For more information, see Amnesty International's report, *Iraq: A Decade of Abuses*.

⁷ Ibid.

RECOMMENDATIONS

Amnesty International has recommended that the Iraqi authorities:

- Rigorously enforce the prohibition of torture as stipulated in the Convention against Torture as well as in Iraq's laws;
- Rigorously enforce the prohibition on the admissibility of all "confessions" and other statements obtained by torture and other acts of ill-treatment in all proceedings, except against a person accused of such acts as evidence that the statement was made;
- Instruct all members of the police, army and other security forces that it is a crime to subject any individual to enforced disappearance or to torture or otherwise ill-treat detainees or other people under their control, and that any police, army, security or other officials who participate in such crimes, whether by ordering, perpetrating, instigating, consenting or acquiescing will be held fully accountable and will be liable to prosecution and punishment as well as dismissal from office;
- Prohibit the use of incommunicado detention and guarantee, in both law and practice, detainees' right to prompt access to an independent court and legal counsel of their own choosing and to prompt and regular contact with, including visits from, their families;
- Establish mechanisms to ensure that all allegations of torture and other ill-treatment are investigated promptly, impartially, independently and effectively, and authorise those carrying out such investigations to question officials under oath and to have access to all places, including places of detention, and official records that they consider relevant to their investigation.

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