



IRAQ

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ADDITIONAL NOTE

SHADOW REPORT

ADDITIONAL NOTE OF THE REPORT SUBMITTED
TO THE COMMITTEE AGAINST TORTURE IN THE
CONTEXT OF THE SECOND REVIEW OF IRAQ

5 April 2022

CONTENTS

<i>CONTENTS</i>	3
<i>1 INTRODUCTION</i>	4
<i>2 Non refoulement (Articles 3)</i>	4
2.1 Violation of the principle of non-refoulement	4

1 INTRODUCTION

This is an additional note to the report submitted by Alkarama to the Committee against Torture on 31 March 2022 in the context of the second review of Iraq. It focuses on the implementation in law and practice of the State party's obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (thereafter "Convention" or "UNCAT"), highlights our main concerns, and makes recommendations.

Based on Alkarama's work, it includes an individual case of violations that has already been brought to the attention of the United Nations (UN) human rights mechanisms in 2013¹.

2 Non refoulement (Articles 3)

2.1 Violation of the principle of non-refoulement

In the list of issues in relation to the second periodic report of Iraq, the Committee asked to receive "updated information on the measures taken during the period under review to ensure that no person was returned to a country where he or she was at risk of being tortured"².

Alkarama regrets the lack of information provided by the State party as it did not share official number of cases in which refoulement, extradition and expulsion were carried out from the last periodic report to date.

The State party's silence is preoccupying regarding cases submitted in this regard by Alkarama and that have not been answered to date by the State Party due to a lack of cooperation.

Mr. Ayesha Al Harby, a Saudi citizen, was among those responsible for diverting without violence a Saudi Airways airplane from Jeddah to Baghdad in September 2000, together with Faisal Naji Hamoud Al Bilawi, reportedly to protest the dire human rights situation in Saudi Arabia. After arriving in Baghdad, they were granted political asylum in Iraq, although the Saudi authorities requested their extradition. After the US invasion

¹ Iraq: Saudi refugee detained in Al Nasiriyah prison at high risk of torture, <https://www.alkarama.org/en/articles/iraq-saudi-refugee-detained-al-nasiriyah-prison-high-risk-torture>

² Committee against Torture, List of issues regarding the second periodic report of Iraq, 23rd December 2020, CAT/C/IRQ/Q/2, para.7.

and the fall of Saddam Hussein in 2003, Mr. Al Harby's companion, Mr. Al Bilawi, was forcibly returned to Saudi Arabia in unclear circumstances, where he was put on trial. He seems to have been subjected to torture and sentenced to death. His family ignores if he was executed so his fate remains a mystery to this day. On 17 July 2005, Mr. Al Harby was arrested by the United States Armed Forces in Baghdad and interrogated about the flight diversion. He was subjected to torture and detained for three years, without charges or trial. Then, he was released on 27 September 2008.

On 17 July 2009, Mr. Al Harby was again arrested, this time by forces under the control of the Iraqi Ministry of Interior, and was interrogated again about the flight diversion and he suffered severe torture. He was subsequently put on trial in front of Al Rusafa Court in Baghdad and sentenced to 15 years in prison following a grossly unfair trial. He was pronounced guilty of terrorism-related, in spite of the fact that the Iraqi authorities knew he had been detained by the US Armed Forces at the time. Since his sentence, Mr. Al Harby is serving his term at Al Rusafa Prison, Baghdad. In July 2013, he was transferred to a section of Al Rusafa Prison reserved for detainees about to be returned, expelled and extradited. Therefore, Mr. Al Harby fears he will be extradited to Saudi Arabia, where he may face torture and even capital punishment. In addition, Mr. Al Harby reports particularly inhuman detention conditions at the section of Al Rusafa Prison. In March 2014, Mr. Al Harby was transferred to Al Nasiriyah prison before being brought back to Al Rusafa prison one year ago.

*Mr. Al Harby's case was first submitted by Alkarama to the Special Rapporteur on Torture and the Working Group on Arbitrary Detention in an initial communication dated 20 November 2013. On 25 November 2013, both special procedures sent an allegation letter³ to the Iraqi government to request detailed information about the victim's situation, to no avail. Indeed, no response was received regarding their requests. Subsequently, in a communication dated 17 April 2014, Alkarama informed the Special Rapporteur on Torture that Mr. Al Harby had been a victim of torture. As of today, and even though he has not yet completed his sentence, Mr. Al Harby was informed on 21 March 2022, by the prison administration, that he would probably be extradited to Saudi Arabia before serving his full sentence. Therefore, Alkarama decided to submit his case to the Special Procedures to ask them to urgently intervene. However, it is to be noted that Mr. Nils Melzer, the Special Rapporteur against Torture, resigned on 31 March 2022, which **makes us fear that Mr. Al Harby's case will not be taken into consideration.** It is obvious that if, **Mr. Al Harby is extradited***

³ Allegation Letter from the Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, dated 25 November 2013, Reference: UA G/SO 218/2 G/SO 214 (53-24) IRQ 7/2013, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=20105>

or sent back to Saudi Arabia, he would certainly be exposed to severe torture and sentenced to death and execution.

Recommendations:

- 1. Provide full information about the number of cases in which refoulement, extradition and expulsion were carried out from the last periodic report to date;*
- 2. Ensure the respect of the principle of non-refoulement in line with Iraq's obligation under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*
- 3. Ensure a full cooperation with the UN Special Procedures regarding the cases related to the principle of non-refoulement;*
- 4. Ensure procedural safeguards against refoulement including the right to contest the decision to hand detainees over to a foreign State in fair legal proceedings and refrain from extraditing Mr. Al Harby to Saudi Arabia;*
- 5. Recognize the competence of the Committee under Article 22 of the Convention relating to the submission of individual complaints.*