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Group

Iraq

Alternative Report

Alternative report submitted to the UN Human Rights Committee in the context of the review of Iraq's sixth periodic report

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1. Introduction

The present report analyses Iraq's implementation in law and practice of the International Covenant on Civil and Political Rights (ICCPR) ratified on 25 January 1971, in light of the State party's report¹ and the Reply to List of Issues.²

This analysis will examine the progress made by the State party to implement the recommendations issued by the Human Rights Committee's (HR Committee) during the period spanning from the issuance of the last Concluding Observations³ on 3 December 2015 and January 2022.

2. Constitutional and legal framework

2.1 Iraqi High Commission for Human Rights

In 2008, the Council of Representatives passed the Law of the High Commission for Human Rights No. 53 (Law No. 53/2008). In April 2012, the Commission was effectively established. Since then, the enabling law was amended three times.

It should also be noted that a national human rights institution has also been established in Kurdistan under Law No. 4/2010.⁴

In 2015, the Iraqi High Commission for Human Rights (IHCHR) was granted B status to mark its partial compliance with the Paris Principles. The same year, the HR Committee raised concerns over "reported difficulties faced by the High Commission for Human Rights in carrying out its mandate, including a lack of adequate resources and constraints in practice to effectively discharging certain mandated activities, such as visiting and inspecting places of deprivation of liberty".⁵

In June 2021, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI), recommended that the IHCHR be re-accredited with A status. Irrespective of that decision, we believe that IHCHR does not

¹ Human Rights Committee, *Sixth periodic report submitted by Iraq under article 40 of the Covenant, due in 2018*, received on 5 August 2019, UN Doc. CCPR/C/IRQ/6 (hereinafter "Sixth periodic report of the State party").

² Human Rights Committee, *Replies of Iraq to the list of issues in relation to its sixth periodic report*, date received: 9 December 2020, UN Doc. CCPR/C/IRQ/RQ/6 (hereinafter "Reply to List of Issues").

³ Human Rights Committee, *Concluding Observations on the fifth periodic report of Iraq*, 3 December 2015, UN Doc. CCPR/C/IRQ/CO/5 (hereinafter "2015 Concluding Observations").

⁴ The website of the Independent Human Rights Commission in Kurdistan Region is available here: <https://ihcrkr.org/en/ihcrkr/> (accessed 31 January 2022).

⁵ Human Rights Committee, *Concluding Observations on the fifth periodic report of Iraq*, 3 December 2015, UN Doc. CCPR/C/IRQ/CO/5, para. 7.

play the role expected of an independent, impartial, and effective national human rights institution.⁶

Regarding the selection and appointment process, article 7 of the amended law stipulates that the Council of Representatives shall form a Committee of Experts, of a maximum of 15 members, and that this Committee shall select members of the Board of Commissioners.

In June 2021, the SCA highlighted with concern that the law did not provide for a specified number of civil society or non-government representatives within the Committee of Experts, leaving open the possibility for the Committee of Experts to be comprised predominantly of government representatives.⁷

Although members of the Commission are not supposed to be affiliated with a political party, our reports found that the nomination process of the Commission is, quite contrary to this requirement, under the excessive influence of political parties.

Indeed, members are nominated according to a quota system, which allows the main political parties to have a representation within the Commission.⁸ This quota system is not grounded in law and appears to stem from a political compromise among the parties that have a political representation at the Council of Representatives. The lack of independence from political parties undermines the independence and impartiality of the IHCHR.

Although some members of the Board of Commissioners appear to protect and promote human rights in good faith, others are accused of pursuing individual or party-based interests.

Even if the IHCHR has denounced human rights violations committed in the context of the 2019-21 protests, the political affiliation of certain commissioners undermined the credibility of the institution with regards to the steps taken to remedy these violations. Some of the political parties that have a representation within the IHCHR's Board of Commissioners are affiliated with the very armed groups that perpetrated attacks against peaceful protesters.

In the course of the summer 2021, the IHCHR experienced hurdles with regard to the nomination of its commissioners. Prior to the legislative elections, the tenures of the IHCHR's commissioners ended in June 2021, causing administrative issues within the IHCHR. On 9 November 2021, the President of Iraq issued a communication reinstating the IHCHR Commissioners whose term had expired.⁹ However, this decision caused some controversy. In fact, though under article 7 of the Law of the IHCHR, the 15

⁶ For more information, read MENA Rights Group's evaluation report of the IHCHR available at: <http://www.menarights.org/en/documents/evaluation-report-iraqi-high-commission-human-rights> (accessed 27 January 2022).

⁷ Global alliance of national human rights institutions, *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation, 7-18 December 2020*, available at: <https://ganhri.org/wp-content/uploads/2021/01/SCA-Report-December-2020-24012021-En.pdf> (accessed 25 January 2022).

⁸ Iraqi Civil Society Solidarity Initiative, *The New Iraqi High Commission for Human Rights Faces Serious Objections from Civil Society*, 29 June 2017, <https://www.iraqicivilsociety.org/archives/7502> (accessed 25 January 2022).

⁹ The President's communication made reference to a similar letter sent on 17 August 2016.

commissioners should be selected by a Committee of Experts appointed by the Council of Representatives, at the time of writing, the said Committee has not been formed, thus delaying the appointment of Commissioners for the 2021-2025 term.

Recommendations:

- Amend article 7 of the enabling Law No. 53/2008 relating to the Committee of Experts in charge of the nomination of the Board of Commissioners as to ensure a fair representation of civil society organisations working in the field of human rights;
- Move away from the informal quota system, which currently governs the nomination of Commissioners based on political party affiliation;
- In accordance with the Law No. 53/2008, form a Committee of Experts in order to expedite the selection and appointment of IHCHR Commissioners for the 2021-2025 tenure.

3. Right to life (article 6)

Capital punishment in Iraq is a legal penalty prescribed by article 86 of the Penal Code. In 2019, Iraq was the fourth largest executioner in the world with more than 100 executions carried out this year.¹⁰

According to a study conducted by the UN Assistance Mission for Iraq (UNAMI), since the re-introduction of the death penalty in 2004, nearly all cases to which it applied relate to convictions for crimes under the Anti-Terrorism Law and the Iraqi Penal Code.¹¹

In its General Comment No. 36, the HR Committee sets out a number of conditions for the application of the death penalty in countries that have not abolished the death penalty and have not ratified the Second Optional Protocol, namely that the death penalty must be imposed only for the most serious crimes. Furthermore, it may only be carried out pursuant to a final judgement rendered by a competent court after proceedings that offer all possible guarantees of a fair trial. Finally, any person sentenced to death has the right to seek a pardon or commutation of the sentence.¹²

Although the State party claims that “the death penalty is imposed only for the most serious crimes”¹³, Iraqi law contains various provisions that go beyond “intentional crimes with lethal or other extremely grave consequences”.

¹⁰ Amnesty International, *Death penalty in 2019: Facts and figures*, 21 April 2021, <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/> (accessed 12 January 2022).

¹¹ UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, <https://www.refworld.org/pdfid/5445189a4.pdf> (accessed 28 January 2022), p. 1 (hereinafter “Report on the Death Penalty in Iraq”).

¹² Human Rights Committee, *General Comment No. 36*, 3 September 2019, UN Doc. CCPR/C/GC/36 1 (hereinafter “General Comment No. 36”).

¹³ Reply to List of Issues, *op. cit.*, para. 54.

3.1 The Penal Code

On 28 April 2004, the Iraqi Interim Government issued Order No. 3 that re-introduced the death penalty for a wide range of crimes prescribed in the Penal Code, including “premeditated and aggravated murder”.¹⁴

However, several other offences contained in the Penal Code carry the death penalty for crimes that do not meet the threshold of “most serious crimes” including compromising the internal security of the state,¹⁵ any crime that constitutes a public danger or the use of bacteriological materials,¹⁶ and crimes relating to attacks on transport and telecommunication systems.¹⁷

Abductions not resulting in death may also carry the death penalty in case of aggravating circumstances – in particular kidnapping by armed persons and/or threatening the victim with death¹⁸ and kidnapping of a child under the age of 18.¹⁹

Iraq also retains the death penalty for drug trafficking for the purpose of aiding or funding insurgency not resulting in death.²⁰ No death sentences or executions for non-violent offences, including drug offences, were reported in 2020.²¹

3.2 Anti-Terrorism Law

The State party has consistently stated that the death penalty is required because of the “extraordinary security situation” and serves as a deterrent to acts of terrorism. In fact, the State party’s report explains that the death penalty was reinstated to “preserve national peace and security”.²²

In 2019, Amnesty International observed a 92 % increase in recorded executions due to the continued use of the death penalty against individuals accused of being members of, or affiliated to the Islamic State of Iraq and the Levant (ISIL).²³

With regard to the increase in the number of death sentences imposed in 2019, the State party claimed in its Replies to the List of Issues that “this penalty is handed down only for the most serious crimes and on dangerous criminals who do not respect

¹⁴ Article 406 of the Penal Code.

¹⁵ Articles 190, 191, 192 (iii), 193, 194, 195, 196 and art. 197, paras i and ii of the Penal Code.

¹⁶ Articles 349 and 351 (i) of the Penal Code.

¹⁷ Articles 354 and 355 of the Penal Code.

¹⁸ Article 421 of the Penal Code.

¹⁹ Article 422 of the Penal Code.

²⁰ Narcotics Control Law No. 68 of 1965, article. 14.

²¹ Harm Reduction International, *The death penalty for drug offences: global overview 2020*, https://www.hri.global/files/2021/04/07/HRI_Death_Penalty_Report_2020_FINAL.pdf (accessed 25 January 2022).

²² Sixth periodic report of the State party, *op. cit.*, para. 99.

²³ Amnesty International, *Death sentences and executions in 2019*, https://www.amnesty.ch/de/themen/todesstrafe/dok/2020/todesstrafen-bericht-2019-gesunkene-fallzahlen-doch-rekordzahl-in-saudi-arabien/amnesty_death_sentences_and_executions_2019.pdf (accessed 31 January 2022).

human life. The death penalty is the legal punishment they deserve for the acts they have committed.”²⁴

In November 2020, 4,000 prisoners were reportedly on death row, most of them charged with terrorism offences.²⁵

For such cases, the authorities rely on Decree No. 14 of 2005, also known as the Anti-Terrorism Law. Article 1 of the Anti-Terrorism Law defines terrorism in broad and vague terms as:

any criminal act carried out by an individual or an organized group, targeting an individual, a group of individuals, groups, public or private organizations, and causing damage to private or public property with the aim of undermining security and stability or national unity, or instilling fear, terror and panic in people or creating chaos in order to achieve terrorist goals.

Following a country visit in November 2017, the former Special Rapporteur on extrajudicial, summary or arbitrary executions stated that the above definition was not in line with the 1999 International Convention for the Suppression of the Financing of Terrorism, which Iraq ratified in 2012.²⁶ It encompasses serious and petty crimes, ranging from mass killings to vandalism. Additionally, according to the American Bar Association, rather than precisely defining the necessary criminal intent, the provision refers in a circular manner to acts committed to achieve “terrorist goals.”²⁷

Article 2 prescribes acts that fall within the definition, while article 3 prescribes crimes against state security, which are also considered as acts of terrorism under the law. Among the broad range of activities defined as terrorist acts, many do not meet the threshold of “most serious crimes”, including 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.

The above provisions of the Anti-Terrorism Law run against the principle of the legality of offences and penalties, enshrined in article 15 of the ICCPR, and include acts whose

²⁴ Reply to List of Issues, *op. cit.*, para. 55.

²⁵ OHCHR, *Iraq: Wave of mass executions must stop, trials are unfair - UN experts*, 20 November 2020, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26526&LangID=E> (accessed 25 January 2022).

²⁶ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, 5 June 2018, UN Doc. A/HRC/38/44/Add.1, para. 47.

²⁷ American Bar Association, *Compliance of Iraq’s Anti-Terrorism Law (2005) with international human rights standards (Memorandum)*, June 2014, https://www.americanbar.org/content/dam/aba/administrative/human_rights/ABA%20Center%20for%20Human%20Rights%20Analysis%20of%20Iraq%20CT%20Law.authcheckdam.pdf (accessed 13 January 2022).

gravity fall below the threshold of the “most serious crimes”, in violation of article 6 ICCPR.

The trials of those prosecuted on the basis of the Anti-Terrorism Law suffer from grave irregularities. UN human rights experts have regularly and consistently raised concerns about death sentences under the Anti-Terrorism Law being pronounced after trials that did not respect the fundamental principles of due process and fair trial, with confessions extracted under torture admitted as evidence (see sections 4.3 and 6.1).²⁸

In June 2019, a member of the Iraqi Parliament’s Human Rights Committee, Wahda Al Jumaili, declared that “80 per cent of inmates sentenced to death were convicted on the basis of confessions extracted under torture”.²⁹

3.3 Application of the death penalty

Although Iraqi law provides for an automatic appeals process in death penalty cases – including appeal to the Court of Cassation and the requirement of a final decree by the President of the Republic sanctioning the implementation of the penalty in individual cases – once death sentences are handed down by the court of first instance, they are almost never overturned on appeal.³⁰

While the Penal Code allows courts to consider mitigating excuses, legally extenuating circumstances, and the general circumstances of the offense and offender in determining whether a sentence lighter than death is appropriate,³¹ according to UNAMI, the Anti-Terrorism Law 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.³²

Despite the mandatory application of the death penalty required by the Anti-Terrorism Law, in practice, Iraqi courts can pronounce alternative sentences, according to a research conducted by the UNAMI. However, UNAMI also received information that

²⁸ See OHCHR, UA IRQ 9/2020, 20 November 2020, and UA IRQ 1/2021, 27 January 2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25736> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25990> (accessed 25 January 2022).

²⁹ Assabel, "أبرياء" والمؤبد بالإعدام عليهم من المحكوم عراقيّة: 80% من البرلمانية العراقية: <https://assabeel.net/news/2019/6/28/%D8%A8%D8%B1%D9%84%D9%85%D8%A7%D9%86%D9%8A%D8%A9-%D8%B9%D8%B1%D8%A7%D9%82%D9%8A%D8%A9-80-%D9%85%D9%86-%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%88%D9%85-%D8%B9%D9%84%D9%8A%D9%87%D9%85-%D8%A8%D8%A7%D9%84%D8%A7%D8%B9%D8%AF%D8%A7%D9%85-%D9%88%D8%A7%D9%84%D9%85%D8%A4%D8%A8%D8%AF-%D8%A7%D8%A8%D8%B1%D9%8A%D8%A7%D8%A1> (accessed 28 January 2022).

³⁰ Report on the Death Penalty in Iraq, *op. cit.*, p. 2.

³¹ See section five of the Penal Code: “Legal excuse and legally extenuating circumstance”.

³² Report on the Death Penalty in Iraq, *op. cit.*, p. 9.

such judgments were frequently overturned by the Court of Cassation, leading to the imposition of harsher punishments, including the death penalty.

It must be recalled that “mandatory death sentences that leave domestic courts with no discretion on whether or not to designate the offence as a crime entailing the death penalty, and on whether or not to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature.”³³

Article 136 (1) of the Penal Code permits criminal courts to commute a sentence of life imprisonment to death where there were aggravating circumstances in the commission of the crime for which the individual is convicted. This provision was criticised as it “provides latitude to the Court to determine, according to its own interpretation, whether those aggravating circumstances exist and results in arbitrary application of the death penalty depending on how the presiding judge views the facts of the case.”³⁴

Iraq’s Code of Criminal Procedure lays out the procedure to implement the death sentence.³⁵ After confirmation of the death sentence, the Court of Cassation sends the file to the Prime Minister who must pass the sentence to the President for ratification by issuing the decree (Republic Decree). Once the President issues the Republic Decree ratifying the sentence, the Prime Minister has to issue an order to implement it.

Under article 73 of the Iraqi Constitution, the President can commute the sentence or grant a special pardon, except for some crimes, including terrorism crimes, for which no pardon can be granted.

This last provision is in clear violation of article 6 (4) ICCPR as anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

Recommendations:

- Ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty;
- Pending a *de jure* abolition of the death penalty, ensure that it is imposed only for the “most serious crimes”;
- Ensure that all defendants, including those prosecuted under the Anti-Terrorism Law No. 13 of 2005 carrying the death penalty, receive a fair trial with their due process rights met;
- Comprehensively review all relevant legislation, including the Penal Code and the Anti-Terrorism Law, with a view to repealing the death penalty and substituting it with life imprisonment or other appropriate penalties;
- Prohibit the mandatory use of the death penalty;

³³ General comment No. 36, *op. cit.*, para. 37.

³⁴ Report on the Death Penalty in Iraq, *op. cit.*, p. 8.

³⁵ See articles 285-293 of the Code of Criminal Procedure.

- Lift the exception for pardons and commutation of sentences by the President.

4. Prohibition of torture (article 7)

4.1 Prohibition of torture under Iraqi law

Iraqi law still does not define or criminalise torture in a manner consistent with the Convention against Torture (UNCAT), which Iraq ratified in 2011.

Article 37 of the Iraqi Constitution³⁶ prohibits unlawful detention and all forms of “psychological and physical torture and inhumane treatment” and guarantees the victim the right to seek compensation for material and moral damages. The same article imposes upon judges the duty to disregard confessions forced by torture.

Article 333 the Iraqi Penal Code criminalises acts of torture, setting out that “[a]ny public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information or to give a particular opinion in respect of it is punishable by imprisonment or by penal servitude. Torture shall include the use of force or menaces”.

The Penal Code further criminalises “cruel treatment” by a public official or agent if it causes a person “to suffer a loss of esteem or dignity or physical pain” under article 332.

None of the above provisions are fully in line with article 1 UNCAT.

In addition, there is still a lack of clarity regarding the penalties associated with the crime of torture. Article 333 of the Penal Code merely states that “any public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information or to give a particular opinion in respect of it is punishable by imprisonment or by penal servitude.”

These shortcomings have already been addressed by the HR Committee and the Committee against Torture in their last Concluding Observations.³⁷

³⁶ English version available at: https://menarights.org/sites/default/files/2016-11/IRQ_constitution_EN.pdf (accessed 14 January 2022).

³⁷ 2015 Concluding Observations, *op. cit.*, para. 9; Committee against Torture, *Concluding Observations on the initial report of Iraq*, 7 September 2015, UN Doc. CAT/C/IRQ/CO/1, para. 27.

4.2 Draft Anti-Torture Law

At the time of writing, a draft Anti-Torture Law³⁸ is still pending before the Council of Representatives since 2017.³⁹ It is currently unclear when the law will be voted on. The adoption has been further delayed by an unprecedented wave of country-wide demonstrations that took place in 2019, which resulted in new parliamentary elections in October 2021.⁴⁰ The parliamentary sessions have not resumed since then.

Although article 4 of the bill requires a judge to order a medical examination of any detainee alleging torture within 24 hours of learning of the allegation and article 8 states that “[t]he Investigating Court shall not take the statements obtained from the person who has been tortured as evidence against him.”, the text contains a number of provisions that do not comply with international standards.⁴¹

The State party claims that the “bill includes a definition of torture and inhuman or degrading treatment that is consistent with the Convention and with the views of the Committee.”⁴²

However, the definition of torture contained in article 2 of the draft law is limited to any act or inaction that constitutes an “assault”, carried out by an interrogator, for the purpose of obtaining a confession.⁴³

This is substantially more limiting than the definition contained in article 1 UNCAT, which provides that torture can also be inflicted in order to punish, intimidate, coerce an individual or a third person, or for any reason based on discrimination of any kind. Furthermore, the draft law only applies to acts that occur during arrest, investigation, and detention. However, the prohibition of torture should also apply, among others, where security forces resort to unnecessary, excessive or otherwise unlawful force.

In addition, article 5 (2) of the draft law forbids anyone “to invoke orders issued by the highest-ranking employees to justify the crime if such orders are illegal.” We are concerned over the wording used in this provision as the expression “if the order is

³⁸ English version available at: https://menarights.org/sites/default/files/2019-12/IRQ_Draft_AntiTortureLaw_tbc_EN_0.pdf (accessed 14 January 2022).

³⁹ UNAMI/OHCHR, *Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment*, August 2021, p. 10 (hereinafter: “Human Rights in the Administration of Justice in Iraq”).

⁴⁰ UN News, *Importance of sound, inclusive elections in Iraq ‘cannot be overstated’*, 23 November 2021, <https://news.un.org/en/story/2021/11/1106412> (accessed 14 January 2022).

⁴¹ MENA Rights Group, *Iraqi draft laws on torture and enforced disappearances fall short of international human rights standards*, 11 December 2019, <https://www.menarights.org/en/articles/iraqi-draft-laws-torture-and-enforced-disappearances-fall-short-international-human-rights> (accessed 15 January 2021).

⁴² Sixth periodic report of the State party, *op. cit.*, para. 114.

⁴³ Article 2 of the draft law defines the crime of torture as “[a]ny act or inaction constituting an assault, which takes place in order to obtain a confession from a person during the stages of arrest, investigation or detention and which causes harm as a result of physical or psychological pain or suffering or inhuman or degrading treatment inflicted by an investigator.”

illegal” implies that the crime of torture could be justified if it results from a lawful order.

There are also serious concerns over the competency of Iraqi courts and their ability to deliver independent and impartial justice under the text. The draft Anti-Torture Law sets out that cases will be tried before the “Human Rights Court”, which is not yet operational, and provides no guarantees of the appointment process of judges or of the court’s organisational and functional independence.

Finally, article 13 (1) of the draft law does not establish a minimum prison sentence for individuals who have committed torture, except where the torture leads to death. This grants the court discretionary power to impose whatever sentence it deems appropriate. In addition, the text does not specify penalties for complicity, participation, and attempt, although each are components of the crime of torture.

4.3 Torture in practice

According to a recent research by UNAMI and the Office of the UN High Commissioner for Human Rights (OHCHR), the majority of torture cases take place during the interrogation phase.⁴⁴ Mistreatment can also occur during the arrest as it has been reported in the context of the 2019 Iraqi protests, with protesters being beaten during arrest, including with rifle butts.⁴⁵

Interrogations by security forces are generally aimed at eliciting forced confessions, contributing to a coercive environment, while interrogations by investigative judges are reported to focus on confirming statements made before security forces.

Many detainees – particularly those accused of terrorism-related crimes – make their first “confession” while under interrogation at police stations or detention centres controlled by the Ministries of Interior and Defence, not in the presence of either investigating judges or a legal counsel, and many have alleged that they made such confessions under torture.⁴⁶

The most commonly reported acts of torture include severe beatings, electric shocks, housing or bathing in cold water, being hung from the ceiling by the arms and legs, death threats and threats to their families, as well as degrading treatment, such as being urinated on or being photographed naked. Women detained described being beaten and threatened with rape and sexual assault.⁴⁷

⁴⁴ Human Rights in the Administration of Justice in Iraq, *op. cit.*, p 19.

⁴⁵ Home Office, *Country Policy and Information Note Iraq: Actors of protection*, December 2020, p. 42.

⁴⁶ Amnesty International, *Iraq: a decade of abuses*, 11 March 2013, <https://www.amnesty.org/en/documents/mde14/001/2013/en/> (accessed 19 January 2022), p. 36.

⁴⁷ U.S. Department of State, *2020 Country Reports on Human Rights Practices: Iraq*, 30 March 2021, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/iraq/> (accessed 20 January 2022), p. 6-7

The administration of justice, most notably in terrorism-related cases, suffers from frequent violations of fair trial rights, ineffective legal representation, over-reliance on confessions, and frequent allegations of torture or mistreatment.⁴⁸

Although article 37 (1) (c) of the Constitution and article 218 of the Code of Criminal Procedure both stipulate that confessions extracted under torture shall be disregarded, judges regularly fail to take any action when defendants raised allegations before the court that they had been subjected to torture in order to force confessions in relation to the crimes for which they were standing trial.⁴⁹

The State party claims that “all allegations of torture and ill-treatment are immediately investigated, and precautionary and procedural measures are taken to prevent torture in all its forms”.⁵⁰ In practice however, Iraqi judges routinely fail to investigate security forces credibly alleged to have tortured suspects, in particular those accused of terrorism-related offences. They also frequently ignore allegations of torture and convict defendants based on confessions that defendants credibly claim were coerced.⁵¹ They rarely order forensic medical examinations to investigate torture, and even when they order a forensic report, they rarely order a retrial.⁵²

The mechanisms to address complaints of torture or ill-treatment do not appear to be effective nor do they provide remedy for victims. Complaints and signs of torture are often ignored by the authorities. Many detainees choose not to report such treatment due to fear of retaliation.⁵³ Moreover, due to the fact that defendants are frequently brought before the judicial authority months, if not years, after the arrest, forensic medical reports may be unable to document the torture suffered.⁵⁴ As a consequence, impunity prevails in Iraq for acts of torture.

In June 2019, MENA Rights Group documented the cases of seven French nationals who have been sentenced to death by the Central Criminal Court of Iraq (CCCI) between 26 May and 3 June 2019.⁵⁵ They had previously been transferred from northeast Syria to Iraq, where they were reportedly subject to torture or other ill-

⁴⁸ OHCHR, *Deeply troubling reports of 21 executions in Iraq yesterday – Bachelet*, 17 November 2020, <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=26515&LangID=E> (accessed 28 January 2022).

⁴⁹ Report on the Death Penalty in Iraq, *op. cit.*, p. 24.

⁵⁰ Reply to List of Issues, *op. cit.*, para. 60.

⁵¹ Human Rights Watch, *Iraq: judges disregard torture allegations*, 31 July 2018, <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations> (accessed 20 January 2022).

⁵² *Ibidem*.

⁵³ “Human Rights in the Administration of Justice in Iraq”, *op. cit.*, p. 5.

⁵⁴ Human Rights Watch, *Iraq: French Citizens Allege Torture, Coercion*, 31 May 2019, <https://www.hrw.org/news/2019/05/31/iraq-french-citizens-allege-torture-coercion> (accessed 24 January 2022).

⁵⁵ MENA Rights group, *French nationals accused of terrorism at risk of execution if not repatriated from Iraq*, 10 July 2019, <https://www.menarights.org/en/articles/french-nationals-accused-terrorism-risk-execution-if-not-repatriated-iraq> (accessed 24 January 2022).

treatment. They were then prosecuted in Baghdad for ISIL affiliation under article 4 of the 2005 Anti-Terrorism Law.

Their trials were marked by the non-observance of fair trial norms: state-appointed lawyers could only access their clients' files a few hours before the trial session began, and torture allegations were systematically ignored. The individuals were all sentenced to death after a few hours of summary hearings with no adversarial proceedings.

During a hearing held on 27 May 2019, one of the defendants told the court that officers tortured him in detention. The presiding judge had the defendant lift his shirt. After seeing marks on his back and shoulder, he ordered a forensic medical exam and for the defendant to reappear in court on 2 June 2019. It has been reported that the judge did not ask for details about where or when the torture occurred, who had tortured him, or in what way.⁵⁶

Another defendant told the judge that officers had forced him under duress to confess and to sign a statement in Arabic that he could not understand. The judge also asked him to lift his shirt and seemingly because there were no obvious signs of torture, sentenced him to death without asking any questions regarding the allegation.⁵⁷

In August 2021, MENA Rights Group documented the case of Abdullah Ahmed Faleh Ahmed Al Taei, currently detained in Nasiriyah Central Prison, and sentenced to death in August 2018, on the basis of the Anti-Terrorism Law.⁵⁸

Similarly, his trial was marked by the non-observance of fair trial norms: state-appointed lawyer was not able either to access the client file or to speak to Al Taei before the hearings and Al Taei was not given the opportunity to raise the issue of the torture and ill-treatment he had suffered.

In particular, in the sentence, the court stated that Al Taei had confessed his affiliation to terrorist groups. However, the court based its decision entirely on the statements that Al Taei had signed under duress. Consequently, in December 2021, Al Taei's lawyer submitted to the Federal Court of Cassation an "intervention request" under article 264 of the Code of Criminal Procedure, appealing the sentence on the ground that *inter alia* the court did not take into account the retraction of his client over his confessions before the investigating officer and the investigative judge, citing the fact that the confessions were extracted under duress in violation of the Iraqi Constitution and the Code of Criminal Procedure.

⁵⁶ Human Rights Watch, *Iraq: French Citizens Allege Torture, Coercion*, 31 May 2019, <https://www.hrw.org/news/2019/05/31/iraq-french-citizens-allege-torture-coercion> (accessed 24 January 2022).

⁵⁷ *Ibidem*.

⁵⁸ For more information see MENA Rights Group, *Abdullah Al Taei is awaiting his appeal while on death row in Nasiriyah prison*, 1 September 2021, <http://www.menarights.org/en/case/abdullah-al-taei> (accessed 26 January 2022).

4.4 Conditions of detention

Prison and detention centre conditions are harsh and occasionally life threatening due to food shortages, gross overcrowding, physical abuse, inadequate sanitary conditions and medical care, and the threat of COVID-19 and other communicable illnesses.⁵⁹

With particular regard to the Nasiriyah Central Prison, on 17 August 2020, Special Procedures mandate holders issued a joint urgent appeal regarding 20 prisoners, alleging that they suffer from inhuman detention conditions and are subject to psychological and physical torture by guards, including humiliating practices and threats. The UN experts also stated that, since the beginning of 2020, dozens of deaths had been reported in the prison.⁶⁰

In this regard, the IHCHR documented 355 deaths in custody in facilities under the authority of the Ministry of Justice in Federal Iraq in 2020 alone.⁶¹

According to 2019 IHCHR's figures, the prison system had 57,000 prisoners for a capacity of 29,303 available places.⁶² In 2020, the prison population may have exceeded 60,000, including 1,000 women.⁶³

Recommendations:

- Introduce a modified version of the Anti-torture law before the Council of Representatives that contains a definition of torture in line with international standards;
- Respect the exclusionary rule, conduct impartial and thorough investigations into allegations of torture and clarify the penalties for perpetrators of torture;
- Ratify the Optional Protocol to the Convention against Torture.

5. Enforced disappearances

5.1 A flawed legal framework

The State party has yet to adopt legislative measures to ensure that the crime of enforced disappearance is incorporated into domestic law as an autonomous offense, in accordance with the definition contained in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

⁵⁹ U.S. State Department of State, *Custom Report Excerpts: Iraq*, <https://www.state.gov/report/custom/c7b75f7daf-2/> (accessed 28 January 2022).

⁶⁰ See, OHCHR, *UA IRQ 4/2020*, 17 August 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25494> (accessed 20 January 2022).

⁶¹ Human Rights in the Administration of Justice in Iraq, *op. cit.*, p. 12.

⁶² World Prison brief, Iraq, <https://www.prisonstudies.org/country/iraq> (accessed 27 January 2022).

⁶³ Euro-Med Monitor, *Horrific testimonies, secret prisons portend catastrophe in Iraq*, 13 July 2020, <https://reliefweb.int/report/iraq/horrific-testimonies-secret-prisons-portend-catastrophe-iraq> (accessed 27 January 2022).

In August 2017, Iraqi Parliament's Human Rights Committee began working on a draft Law on the Protection of Persons from Enforced Disappearance. The initial draft law is available on the website of the Iraqi Parliament. However, on 30 June 2019, another version was introduced, and is currently pending before the Council of Representatives. The text, in its current form, fails to comply with the standards set out in the ICPPED.

In 2020, the UN Committee on Enforced Disappearances (CED) expressed concerns that the bill does not include a reference to enforced disappearance as a potential crime against humanity, while the Iraqi Supreme Criminal Court Act No. 10 limits such qualification to enforced disappearances committed between 1968 and 2003.⁶⁴ It is further concerned that the death penalty is still one of the penalties applicable to crimes invoked to deal with enforced disappearances under the Criminal Code and in the bill.⁶⁵

5.2 The practice of enforced disappearance

Iraq remains the country with the highest number of enforced disappearances in the world, with estimates ranging from between 250,000 and one million missing persons.⁶⁶ The practice dates back to the late 1960s and peaked following the US-led invasion in 2003 and the fight against ISIL. The authorities have failed to resolve most cases of disappearances, provide remedy to the relatives of missing persons and prosecute those responsible. Illustrative of this practice are the UN Working Group on Enforced or Involuntary Disappearances (WGEID) records of 16,427 outstanding cases for Iraq as of 21 May 2021.⁶⁷

Similarly, as of 1 April 2021, the CED had registered 492 cases under its urgent action procedure. In its 2021 annual report, the CED raised concerns over the "failure of the State party, despite repeated reminders, to reply to the majority of the registered requests for urgent action concerning cases of disappearance reported in its territory."⁶⁸

The CED also found that "where the State party submitted replies to the Committee, they followed the same trend observed by the Committee in its previous reports, namely that the State party did not provide any information on action taken to search

⁶⁴ Committee on Enforced Disappearances, *Concluding Observations on the additional information submitted by Iraq under article 29 (4) of the Convention*, 1 December 2020, CED/C/IRQ/OAI/1, para. 6 (hereinafter: "CED's Concluding Observations").

⁶⁵ *Ibidem*.

⁶⁶ Kilner, J. *Accounting for missing persons is vital for stability in a post-war scenario – ICRC*, 13 November 2009, <https://reliefweb.int/report/serbia/accounting-missing-people-vital-stability-post-war-scenario-icrc> (accessed 14 January 2022)

⁶⁷ Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, 4 August 2021, UN Doc. A/HRC/48/57, p. 9.

⁶⁸ General Assembly, *Report of the Committee on Enforced Disappearances, 2021*, UN Doc. A/76/56, para. 60.

for disappeared persons or to investigate their alleged enforced disappearance. Furthermore, the State party failed to clarify the procedures available to victims.”⁶⁹

When responding to the CED, the State party regularly “assert that the alleged victims were affiliated with terrorist groups, without providing any further information about any specific criminal charges brought, proceedings initiated or arrest warrants issued against them.”⁷⁰ In these cases, the Committee has continuously reminded the State party that the duty to search for disappeared persons and to investigate their disappearance applied irrespective of their background or political affiliation.

Indeed, the issue of enforced disappearances remains prevalent, particularly in the context of counter-terrorism operations.⁷¹ Between 2014 and 2017, the Iraqi forces, including government-affiliated militias from the Popular Mobilisation Units (PMU), disappeared hundreds of individuals perceived to be, or who were actually of the Sunni faith and who were from or lived in areas that were under ISIL control.⁷² On 18 April 2019, MENA Rights Group and Al Wissam Humanitarian Assembly documented the cases of 192 internally displaced persons who had been arrested by the Hezbollah Brigades at the Al Razaza checkpoint in Iraq’s Al Anbar Province.⁷³ All 192 individuals – some of whom were minors at the time of their arrest – remain disappeared to date. Hezbollah forces manned the checkpoint until 2017 when it was dismantled.

On 1 October 2019, protests started in Baghdad and southern cities calling for improved services and more action to curb corruption. The demonstrations were met with excessive and unnecessary use of lethal force and live ammunition by Iraqi security forces. In this context, MENA Rights Group noted an increase in the number of abductions of peaceful demonstrators by state security forces and militias – most of which are affiliated with the Popular Mobilisation Units (PMU) – acting with the authorisation, support, acquiescence or approval of the Iraqi government.⁷⁴ The IHCHR recorded 72 cases of enforced disappearance as of 7 February 2020.⁷⁵ Some of the demonstrators who were released have reported having been tortured during their detention.

⁶⁹ *Ibidem*.

⁷⁰ *Ibid.*, para. 61.

⁷¹ Human Rights Watch, *Iraq: Secret Detention, No Recourse*, 27 September 2018, <https://www.hrw.org/report/2018/09/27/life-without-father-meaningless/arbitrary-arrests-and-enforced-disappearances-iraq> (accessed 14 January 2022).

⁷² Sixth periodic report of the State party, *op. cit.*, para. 123.

⁷³ MENA Rights Group, *192 internally displaced persons disappeared from infamous Al Razaza Checkpoint in Iraq in a single day*, 10 May 2019, <https://www.menarights.org/en/articles/192-internally-displaced-persons-disappeared-infamous-al-razaza-checkpoint-iraq-single-day> (accessed 14 January 2021).

⁷⁴ Al Jazeera, *Iraq protests: Increase in number of disappearances*, 19 December 2019, <https://www.aljazeera.com/news/2019/12/iraq-protests-increase-number-disappearances-191219111900491.html> (accessed 14 January 2022).

⁷⁵ France 24, *Nearly 550 killed in Iraq protest violence: commission*, 7 February 2020, <https://www.france24.com/en/20200207-nearly-550-killed-in-iraq-protest-violence-commission> (accessed 27 January 2022).

The UNAMI also found that “since the beginning of the [2019] demonstrations, Iraqi security forces arrested and detained thousands of demonstrators, typically without warrant and mostly without providing those arrested the means to contact their families or defence lawyers, prompting fears that those arrested were being held incommunicado or had disappeared.”⁷⁶

The CED has registered 28 requests for urgent action with regard to the disappearance of persons who had participated in the protests that had begun in October 2019 in Baghdad, or who had provided some kind of support to demonstrators.⁷⁷ Although 12 of these urgent actions have been closed after the persons were located and released, 13 of those requests remained pending before the CED as of 1 April 2021,⁷⁸ including the urgent action pertaining to the disappearance of Ali Jasib Hattab Al Helijii.

Ali Jasib Hattab Al Helijii is a human rights lawyer who was representing several demonstrators arrested in connection with the anti-government October demonstrations.⁷⁹ On 8 October 2019, he went to the southern city of Amarah to meet one of his clients. Shortly after arriving at the rendezvous point, he was arrested by members of the Ansar Allah al-Awfiya militia. Two days before his arrest, two armed men from the PMU came to his home to warn him to stop speaking out on Facebook about the killing of protesters and to stop accusing certain factions of the PMU of being responsible for these killings. When his relatives reported his abduction, local security forces told them that they were not aware of his arrest. His fate and whereabouts remain unknown to date. On 23 October 2019, MENA Rights Group and Amnesty International requested urgent intervention of the CED; however, the authorities have never responded to the numerous communications sent by the CED.

On 10 March 2021, Ali Jaseb Hattab’s father, Jaseb Hattab Al Heliji, was shot dead in the city of Amarah, in the Iraqi governorate of Maysan. He was a vocal advocate for his son, constantly calling for his release and for criminal sanctions against the parties responsible for his disappearance.

5.3 Secret detention

Article 19 (b) of the Iraqi Constitution prohibits unlawful detention and imprisonment in places not designated for that purpose. The State party recalls that it is prohibited

⁷⁶ United Nations Assistance Mission for Iraq, *Human Rights Special Report, Demonstrations in Iraq – 2nd update*, 5 November – 9 December 2019, p. 5 https://reliefweb.int/sites/reliefweb.int/files/resources/3rd%20UNAMI%20report_Human%20Rights%20and%20Demonstrations_9%20Dec%202019.pdf (accessed 28 January 2022).

⁷⁷ Committee on Enforced Disappearances, *Report of the Committee on Enforced Disappearances*, 19th session (7 September–25 November 2020), 20th session (12 April–7 May 2021), A/76/56, para. 62.

⁷⁸ *Ibidem*.

⁷⁹ MENA Rights Group, *Human rights lawyer Ali Jaseb Hattab Al Heliji disappeared since arrest in Amarah on October 8, 2019*, 23 October 2019, <http://www.menarights.org/en/caseprofile/human-rights-lawyer-ali-jasib-hattab-al-helijii-disappeared-arrest-amarah-october-8-2019> (accessed 27 January 2022).

to establish any prisons or detention centres not supervised, managed and controlled by the Ministry of the Interior and the Ministry of Justice.⁸⁰

In 2016, both the Central Iraqi and Kurdistan Regional Government (KRG) operated secret detention facilities, according to international observers and to the head of the KRG parliamentary Human Rights Committee.⁸¹

In July 2018, the National Security Agency (NSS), an Iraqi intelligence agency reporting directly to Iraq's prime minister, admitted detaining over 400 individuals in a secret detention facility in east Mosul, despite not having a mandate to do so.⁸²

It has also been reported that the destruction of official detention facilities during the war against ISIL led to the use of temporary facilities; for example, the Ministry of Interior reportedly held detainees in homes rented from local residents in Ninewa Governorate.⁸³

According to the Euro-Mediterranean Human Rights Monitor, although there are 13 government prisons across the country, militias, political parties, and various tribal and other factions run dozens of secret prisons.⁸⁴

In 2020, the CED's Concluding Observations made reference to Camp Justice, Camp Honor, Jadriya bunker, al-Muthanna airport prison, Baghdad airport prison, and the city of Jurf al-Sakhar, allegedly transformed into a secret prison.⁸⁵

The CED also raised concerns at "reports that secret detention [was] still used, including during the demonstrations initiated in October 2019."⁸⁶

MENA Rights Group documented the case of Abdel-Messih Romeo Sarkis, who, on 1 March 2020, joined an anti-government demonstration in Baghdad's Al Khulani square where he was arrested by anti-riot police who were trying to forcibly disperse the demonstration. Although he remains disappeared to date, there have been reports indicating that he may have been transferred to al-Muthanna airport in Baghdad following his arrest.⁸⁷ On 10 March 2020, MENA Rights Group requested the urgent

⁸⁰ Sixth periodic report of the State party, *op. cit.*, para. 123.

⁸¹ U.S. State Department, *2016 Country Reports on Human Rights Practices - Iraq*, 3 March 2017, p. 8.

⁸² Human Rights Watch, *Iraq: Intelligence Agency Admits Holding Hundreds Despite Previous Denials*, 22 July 2018, <https://www.hrw.org/news/2018/07/22/iraq-intelligence-agency-admits-holding-hundreds-despite-previous-denials> (accessed 14 January 2022).

⁸³ U.S. Department of State, Iraq 2018, human rights report, <https://www.ecoi.net/de/dokument/2004254.html> (accessed 31 January 2022).

⁸⁴ Euro-Med Monitor, *Horrific testimonies, secret prisons portend catastrophe in Iraq*, 13 July 2020, <https://reliefweb.int/report/iraq/horrific-testimonies-secret-prisons-portend-catastrophe-iraq> (accessed 27 January 2022).

⁸⁵ CED's Concluding Observations, *op. cit.*, para. 16.

⁸⁶ *Ibidem*.

⁸⁷ Mustafa Saadoun, "In dramatic move, Iraqi PM visits prisons in response to protester appeals", *Al-Monitor*, 13 October 2021, <https://www.al-monitor.com/originals/2020/08/iraq-disappeared-protests-prisons-human-rights.html> (accessed 24 January 2022).

intervention of the CED. The Iraqi authorities have so far failed to respond to the CED's communications and have never clarified his fate and whereabouts.

Recommendations:

- Amend the draft law on enforced disappearances to bring it in line with international standards and expedite its adoption;
- Urgently clarify the fate and whereabouts of disappeared individuals, including by responding to all urgent actions sent by the CED;
- Establish an independent commission of inquiry to investigate all cases of enforced disappearances;
- Adopt all measures necessary to ensure that no person is held in secret detention;
- Immediately suspend, pending a full and impartial investigation, any member of the Iraqi authorities alleged to have committed an act of enforced disappearance;
- Create an enabling environment for human rights defenders to carry out their work, including by ceasing all acts of reprisals, and launching impartial and thorough investigations into all allegations of reprisals;
- Ensure greater effective control and oversight over the Popular Mobilisation Units.

6. Right to liberty and security of the person (articles 9 and 14)

6.1 Legal safeguards in law and practice

In its previous Concluding Observations, the HR Committee recommended that Iraq “adopt[s] the measures necessary to guarantee that anyone arrested or detained enjoys in practice from the outset of the deprivation of liberty all fundamental legal safeguards enshrined in article 9 of the Covenant.”⁸⁸

Article 15 of the Iraqi Constitution, which sets out the rights to security and liberty, prohibits the deprivation or restriction of these rights “except in accordance with the law and based on a decision issued by a competent judicial authority”.

Article 19 of the Constitution mandates that authorities submit preliminary documents to a competent judge within 24 hours of arrest, a period that may be extended once. In addition, article 37 (b) states that “no person may be kept in custody or interrogated except in the context of a judicial decision”.

Article 19 (4) of the Constitution provides that arrested persons have the right to mount a defence, which is inviolable and guaranteed in all phases of investigation and trial. Similarly, article 8 (1) of the Coalition Provisional Authority (CPA) Memorandum No. 3

⁸⁸ 2015 Concluding Observations, *op. cit.*, para. 34.

(2003) provides any person accused of a felony the right to access a lawyer while in detention during all stages of proceedings.

The Code of Criminal Procedure (CCP) contains additional safeguards applicable to persons deprived of liberty. Article 92 of the CCP states that the “arrest or apprehension of a person is permitted only in accordance with a warrant issued by a judge or court or in other cases as stipulated by the law.”⁸⁹ Article 322 of the Penal Code sanctions, with up to seven years of imprisonment, any law enforcement official who arrests, imprisons or detains a person in unlawful circumstances.

Under article 123 of the CCP, police may detain suspects only after a court-issued arrest warrant and must bring suspects before an investigative judge within 24 hours in order to mandate their continued detention. In addition, the investigative judge must inform the accused of his or her right to be represented by an attorney before the investigation starts.

It must be noted that the CCP contains no obligation to present an arrest warrant, the accused should be merely informed of its existence at that time. Security forces with the power of arrest operating under the direct supervision of the Prime Minister’s Office (e.g. the Baghdad Operation Command and Counter Terrorism Unit), may arrest individuals prior to obtaining a warrant.⁹⁰

Regarding the right to prompt and regular access to independent medical personnel, article 8 of the Prisoners and Detainees Reform Law No. 14 of 2018 only allows for the admission of individuals to places of detention upon judicial order along with “a medical report issued by a medical committee testifying to the person’s state of physical and mental health”.

While Iraqi law contains some safeguards, albeit incomplete, aimed at guaranteeing that persons deprived of their liberty are not subjected to torture and ill-treatment, in practice, those safeguards are routinely not respected.

In this regard, reports by UNAMI and the OHCHR have found that access to a lawyer is systematically delayed until after suspects have been interrogated by the security forces and to a large extent by the investigative judge, medical screenings of detainees upon arrival to a facility to detect prior ill-treatment are not standard practice in Iraqi places of detention, particularly with respect to pre-trial detention, the opportunity for detainees to inform persons of their choice of their whereabouts is often delayed for long periods of time, particularly during the investigation phase, and family visits face restrictions, pre-trial detention is used as a standard practice during criminal

⁸⁹ Under article 122 of the Code of Criminal Procedures, arrests may be carried out in the absence of a warrant where: “a) the offence was committed in front of witnesses or b) if the person has escaped after being lawfully arrested by the authorities; c) the person has been sentenced in his or her absence to a penalty restricting his or her freedom; or d) the person is found in a public place in a clear state of intoxication or confusion or has lost his or her reason.”

⁹⁰ Report on the Death Penalty in Iraq, *op. cit.*, p. 11.

investigations; legal procedures to bring interrogations and detention under judicial control within 24 hours following arrest are not respected.⁹¹ Human Rights Watch has found that terrorism suspects in Baghdad typically saw a judge between 10 and 20 days after arrest. Others waited months or even years before being brought to court.⁹²

Although article 13 of the Kurdistan Region of Iraq Anti-Terrorism Law stipulates that accused persons should be treated fairly in accordance with the law during interrogation, including through the provision of a lawyer, the Federal Anti-Terrorism Law No. 13 of 2005 does not contain any fair trial rights and procedural guarantees. Arrests conducted under the Anti-Terrorism Law tend to be carried out without warrants.⁹³ It has also been reported that the warrants are usually being issued by the judge after the arrest.⁹⁴

Following her country visit of 2018, the Special Rapporteur on extrajudicial, summary or arbitrary executions found that “the Criminal Procedure Code appears to be set aside for those charged under the Anti-Terrorism Law, thereby denying defendants their fair trial rights and due process guarantees. This includes the right to be informed upon arrest of the reasons thereof and the charges brought, access to legal representation from the moment of arrest, the right to have arrest and detention status reviewed by an independent and competent judge in a timely manner, and the prohibition of torture to extract a confession.”⁹⁵

Recommendations:

- Ensure that the detention of suspects is carried out pursuant to article 123 CCP, requiring a court-ordered arrest warrant and bringing detainees before a judge within 24 hours;
- Ensure that families of detainees are informed within a reasonable period of time of the time and place of arrest and the place of detention;
- Ensure timely access to a lawyer from the outset of deprivation of liberty;
- Ensure that a full examination by a medical practitioner is available on arrival at each detention facility as promptly as possible after admission and that results of every examination are duly recorded and made available to the detainee.

⁹¹ Human Rights in the Administration of Justice in Iraq, *op. cit.*, pp. 4-5.

⁹² Human Rights Watch, *Iraq: Judges Disregard Torture Allegations*, 31 July 2018, <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations> (accessed 19 January 2022).

⁹³ U.S. Department of State, *2018 Country Reports on Human Rights Practices: Iraq*, March 2019, <https://www.state.gov/wp-content/uploads/2019/03/IRAQ-2018.pdf> (accessed 28 January 2022), p. 13.

⁹⁴ Report on the Death Penalty in Iraq, *op. cit.*, p. 12.

⁹⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, *op. cit.*, para. 47.

7. Fundamental freedoms

7.1 Freedom of expression (article 19)

Although the right to freedom of expression is protected under article 38 of Iraq's Constitution, existing laws and the introduction of new legislation threaten the exercise of this right in the country.

In 2011, the Iraqi Council of Representatives introduced a draft Law on Combating Cybercrime, which was eventually withdrawn in 2013 as a result of the pressure exerted by Iraqi and international organisations objecting to the restrictive provisions contained in the text.

In 2020, the draft Law on Combating Cybercrimes was reintroduced before parliament. Though the Council of Representatives has yet to vote on the law, its provisions set a dangerous precedent in the country. In December 2020, a coalition of ten organisations, including MENA Rights Group, sent a joint letter to members of the Iraqi Parliament, calling on them to withdraw or sufficiently amend the draft Law on Combating Cybercrime.⁹⁶ The signatories put forward that the draft law criminalises vague and imprecise acts, such as using the internet “with the intention of obtaining data or information affecting the national security or the national economy of the country” and imposes a prison sentence not exceeding ten years on such acts.⁹⁷ The use of vague terms such as “affecting the national security” provide the judicial authorities with widespread discretion that may enable the targeting of journalists, activists and whistle blowers.

Under article 8(3), the draft law criminalises violating “the sanctity of individuals’ private or family life by taking pictures or publishing news or audio or video recordings related to them even if they were true.”⁹⁸ In light of the targeted repression against human rights defenders and Iraqi activists, the aforementioned provisions threaten to further restrict civic space in the country and subject individuals exercising their fundamental freedoms to undue penal sanctions and restrictions. Under the current provisions of the law, individuals could be sentenced to prison for merely criticising government or public officials.

It is all the more concerning that the draft law promotes the establishment of specialised courts tasked with hearing criminal cases related to cybercrime, despite the ban on the establishment of special or extraordinary courts under article 95 of the

⁹⁶ MENA Rights Group, *Coalition of NGOs call on the Iraqi parliament to withdraw or sufficiently amend Iraq's Draft Law on Combating Cybercrime*, 17 December 2020, <http://www.menarights.org/en/articles/coalition-ngos-call-iraqi-parliament-withdraw-or-sufficiently-amend-draft-law-combating> (accessed 28 January 2022).

⁹⁷ Iraq's draft Law on Combating Cybercrime, article 5(3), https://menarights.org/sites/default/files/2020-11/New%20version_CyberCrimeDraftLaw%282%29.pdf (accessed 28 January 2022).

⁹⁸ *Ibid.*, article 8(3).

Iraqi Constitution. The establishment of specialised courts in Iraq, however, is not new. In 2010, Iraq's Supreme Judicial Council established a special court to prosecute journalists.⁹⁹

Existing laws in Iraq already restrict the right to freedom of expression. Under article 16 of the 1968 Publications Law for example, insulting the Iraqi President, Prime Minister, and the government of Iraq's relationship with other Arab and allied countries is prohibited.

Similarly, articles 202, 226, 227 and 229 of the Penal Code criminalise speech that "insults" the "Arab community or the Iraqi people or any section of the population or the national flag or the State emblem," as well as any government body or individual or "a foreign state or any international organization having an office in Iraq or that country's Head of State or its representative in Iraq or its flag or national emblem." These provisions contain disproportionate sentences including article 202, which provides for a prison sentence of up to 10 years.

Article 210 and 211 of the Penal Code criminalise the act of "willfully broadcast[ing] false or biased information, statements or rumors or disseminat[ing] propaganda which, by its nature, endangers the public security, spreads panic among the population and disturbs the public peace," or "publish[ing] by any means false information or fake or forged documents or documents falsely attributed to others which, by their nature, endanger the public security or disturb the public peace."

Article 212 criminalises inciting "by any means of publication" the commission of a crime which endangers public security even "if such incitement has no effect." Article 403 criminalises producing, possessing, obtaining, or translating any written, pictorial, or visual content that "violates the public integrity or decency with intent to exploit or distribute such material." Iraqi law does not contain a definition of what would constitute a violation of "public integrity or decency."

Article 433 criminalises defamation, defined as "the imputation to another in public of a particular matter which if true, would expose such person to punishment or cause him to be scorned by society." It carries a sentence of up to one year and/or a fine but if the targeted person is a public official, charges will be dropped if the alleged defamer can prove the truth of his or her statements. Article 434 criminalises insulting someone, defined as "the imputation to another of something dishonorable or disrespectful or the hurting of his feelings even though it does not include an imputation to him of a particular matter."

Due to the vagueness of the terms used, and the lack of clear definitions provided in the Penal Code, it has been reported that the above provisions have been used to criminalise lawful critiques of existing policies or officials, calling for political change,

⁹⁹ Freedom House, *Freedom of the Press 2014 - Iraq*, 25 August 2014, <https://www.refworld.org/docid/53fc79ab3.html> (accessed 27 January, 2022).

or expressing a range of other opinions,¹⁰⁰ in a way that is not consistent with article 19 (3) ICCPR.

We would also like to recall the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.¹⁰¹

In the context of the October 2019 nationwide protests, individuals exercising their right to freedom of expression have faced increasing restrictions and limitations. In the early days of October 2019, the Iraqi government restricted various social media sites and imposed a telecommunication shutdown in most Iraqi regions, imposing severe limitations on journalists covering the protests.¹⁰² According to the Committee to Protect Journalists, four journalists have been killed and another seven journalists have been imprisoned since the beginning of the protests in October 2019.¹⁰³

MENA Rights Group documented the case of Tawfiq Al Tamimi, a journalist and editor of regional news for Al Sabah, who was abducted on 9 March 2020 in Baghdad.¹⁰⁴ On 10 March 2020, Al Tamimi's family lodged a complaint at the Directorate of Crime Prevention, to no avail. The same day, the Ambassador of the United Kingdom to Iraq, raised concern over Al Tamimi's abduction and urged the Iraqi authorities to conduct a prompt investigation. On 6 April 2020, MENA Rights Group requested the urgent intervention of CED. However, Al Tamimi's fate and whereabouts remain unknown to date.

On 14 October 2019, several UN experts, including the Special Rapporteur on the promotion and protection of freedom of opinion and expression, expressed concern over "the use of excessive and lethal force by security forces, including live ammunition, against peaceful protestors, reports of deadly targeted sniper fire and targeted killings of protestors, resulting in dozen of death and thousands of injuries, as well as the arbitrary arrests and detention of protestors and civil society activists."¹⁰⁵ The UN experts also highlighted the intimidation and harassment of journalists and civil society activists, in cities and governorates across central and southern Iraq, including in Baghdad, since the beginning of October 2019.¹⁰⁶

¹⁰⁰ Human Rights Watch, "We Might Call You in at Any Time", 15 June 2020, <https://www.hrw.org/node/375258/printable/print> (accessed 28 January 2022).

¹⁰¹ Human Rights Committee, *General comment No. 34*, 12 September 2011, UN Doc. CCPR/C/GC/34, para. 47.

¹⁰² Al Jazeera, *Iraq protests: all the latest updates*, 11 October 2019, <https://www.aljazeera.com/news/2019/10/11/iraq-protests-all-the-latest-updates> (accessed 27 January 2022).

¹⁰³ Committee to Protect Journalists, *Journalists attacked in Iraq since 1992*, <https://cpj.org/mideast/iraq/> (accessed 27 January 2022).

¹⁰⁴ MENA Rights Group, *Iraqi journalist, Tawfiq Al Tamimi, abducted after criticising the government on social media*, 7 April 2020, <http://www.menarights.org/en/caseprofile/iraqi-journalist-tawfiq-al-tamimi-abducted-after-criticising-government-social-media> (accessed 27 January 2022).

¹⁰⁵ OHCHR; UA IRQ 4/2019, 14 October 2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24898> (accessed 27 January 2022).

¹⁰⁶ *Ibidem*.

In this context, on 12 November 2019, the Communications and Media Commission ordered the closure of eight television broadcasters and four radio stations for three months for allegedly violating media licensing rules, and issued a warning against five more broadcasters over their coverage of protests.¹⁰⁷

Further violations to freedom of expression have been reported in the semi-autonomous Kurdistan Region of Iraq. As protests intensified in the Kurdistan region in August 2020, Kurdish security forces ramped up their arrests of journalists, community activists and academics in response to their expressions of support and publicisation of protests taking place in the Kurdistan region. Between March 2020 and April 2021, more than 100 people were arrested by Kurdish security forces.¹⁰⁸ Among them, 14 individuals were arbitrarily arrested as a result of their journalistic work and perceived criticism of the authorities, with many of these individuals being subjected to torture, enforced disappearances and *incommunicado* detention.¹⁰⁹ Five of the aforementioned 14 individuals were later sentenced, based on coerced confessions extracted under torture, to six years in prison, including journalist Sherwan Sherwani, who is known for his reports and investigations of human rights violation in the Kurdish region.¹¹⁰ The defendants' claims that their confessions were extracted under torture were rejected by the court as their trial lacked basic fair trial guarantees.¹¹¹

After the sentence against Sherwani and the other four defendants was upheld on appeal on 28 April 2021, MENA Rights Group seized the UN Working Group on Arbitrary Detention (WGAD) on behalf of the defendants. In November, the WGAD issued Opinion No. 71/2021 finding their detention to be arbitrary.¹¹² In particular, the WGAD concluded that there was no legal basis for their detention, that they were detained for the peaceful exercise of their rights to freedom of expression, to participate in the conduct of public affairs, and to peaceful assembly. Furthermore, the WGAD explained that the fair trial violations observed were of such gravity as to give the five individuals' detention an arbitrary character. Finally, the WGAD found that there was a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.

¹⁰⁷ OHCHR, *UA IRQ 6/2019*, 13 January 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25020> (accessed 27 January 2022).

¹⁰⁸ Amnesty International UK, *Kurdistan Region of Iraq: 'chilling' crackdown on journalists and activists*, 15 June 2021, <https://www.amnesty.org.uk/press-releases/kurdistan-region-iraq-chilling-crackdown-journalists-and-activists> (accessed 21 January, 2022).

¹⁰⁹ Human Rights Watch, *Kurdistan Region of Iraq: Flawed Trial of Journalists, Activists*, 22 April 2021, <https://www.hrw.org/news/2021/04/22/kurdistan-region-iraq-flawed-trial-journalists-activists> (accessed 21 January 2022).

¹¹⁰ MENA Rights Group, *Increasing repression against activists, journalists and other critics in Iraq's Kurdistan region*, 9 July 2021, <https://menarights.org/en/articles/increasing-repression-against-activists-journalists-and-other-critics-iraqs-kurdistan>, (accessed 21 January 2022).

¹¹¹ *Ibidem*.

¹¹² Working Group on Arbitrary Detention, *Opinion No. 71/2021 concerning Sherwan Amin Naou, Kahdar Hammad Amin Zebari, Ayaz Karam Rachid, Hariwan Issa, Mohammad and Mulla Shafan Saeed Omar Brushki (Iraq)*, 18 November 2021, UN Doc. A/HRC/WGAD/2021/71, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session92/A_HRC_WGAD_2021_71_Iraq_AEV.pdf (accessed 28 January 2022).

7.2 Freedom of peaceful assembly (article 21)

Since the beginning of nationwide protests in October 2019, Iraqi security forces and armed militias have subjected peaceful demonstrators to extremely violent attacks, resulting in the death of hundreds and injuries to tens of thousands of individuals. In February 2020, Iraq's High Commission for Human Rights estimated that over 500 people were killed since the protests erupted in October 2019, and another 23,500 people injured.¹¹³ Protest organisers have also faced increasing threats and intimidation campaigns, with many activists being arrested and, in some cases, killed with complete impunity.¹¹⁴

In the Kurdistan Region of Iraq, Kurdish security forces have arbitrarily arrested activists and journalists for attending, reporting and calling for peaceful demonstrations, subjecting those arrested to lengthy prison sentences and other human rights violations, including torture and enforced disappearance.¹¹⁵ During peaceful demonstrations taking place in the region, security forces used unlawful force to beat protesters and disperse demonstrations, while arresting many activists and journalists, who were later charged with inciting violence.¹¹⁶ Furthermore, several TV stations in the Kurdistan region have received targeted threats seeking to deter them from covering protests and demonstrations in the Kurdistan Region of Iraq.¹¹⁷

In this context, Iraq's Council of Representatives reintroduced a recently amended draft Law on Freedom of Assembly and Peaceful Demonstrations in March of 2020.¹¹⁸ Although the Iraqi parliament has yet to vote on the law, the draft threatens to place severe restrictions on the right to protest in the country. According to its article 11, for example, the text authorises the use of force to disperse peaceful assemblies organised "contrary to the provisions of the Law", and punishes assembly organisers

¹¹³ Al-Arabiya, *Over 500 people killed since protests erupted in Iraq: Human Rights Commission*, 3 February 2020, <https://english.alarabiya.net/News/middle-east/2020/02/03/Over-500-people-killed-since-protests-erupted-in-Iraq-Iraqi-Human-Rights-Commission> (accessed 21 January 2022).

¹¹⁴ France24, *Iraqis protest to 'end impunity' as killings of activists go unpunished*, 19 July 2021, <https://www.france24.com/en/middle-east/20210719-iraqis-protest-to-end-impunity-as-killings-of-activists-go-unpunished> (accessed 21 January 2022).

¹¹⁵ "Increasing repression against activists, journalists and other critics in Iraq's Kurdistan region", *op. cit.*

¹¹⁶ Human Rights Watch, *Kurdistan Region of Iraq: Protesters Beaten, Journalists Detained*, 15 April 2018, <https://www.hrw.org/news/2018/04/15/kurdistan-region-iraq-protesters-beaten-journalists-detained> (accessed 21 January 2022).

¹¹⁷ Reporters without Borders, *Iraq: Wave of arrests of journalists covering protests in Iraqi Kurdistan*, 16 December 2020, <https://rsf.org/en/news/iraq-wave-arrests-journalists-covering-protests-iraqi-kurdistan> (accessed 21 January 2022).

¹¹⁸ MENA Rights Group, *A coalition of ten NGOs calls on the Iraqi parliament to amend Iraq's Draft Law on Freedom of Assembly and Peaceful Demonstrations*, 16 March 2021, <https://menarights.org/en/articles/coalition-ten-ngos-call-iraqi-parliament-amend-iraqs-draft-law-freedom-assembly-and> (accessed 21 January 2022).

with imprisonment for six months to one year if the demonstration was organised without providing the authorities with prior notification.¹¹⁹

The draft law further criminalises and punishes with imprisonment of up to one year “insulting a figure or symbol that is respected by or sacred to a religious group”.¹²⁰ The law also prohibits “denigrating religions, religious doctrines, sects and beliefs or degrading them or their adherents” and “carrying foreign flags or signs that offend public sense and morals.”¹²¹

Recommendations:

- Refrain from arbitrarily detaining of journalists, human rights defenders and activists and release those who remain in arbitrary detention;
- Investigates the full circumstances of all human rights violations linked to the 2019-2021 demonstrations and related attacks on protestors and critics;
- Decriminalise defamation;
- Withdraw or sufficiently amend the draft Law on Combating Cybercrime to bring it in line with international standards;
- Amend the proposed Draft Law on Freedom of Assembly and Peaceful Demonstrations in order to bring it in line with the Iraqi Constitution and article 21 ICCPR.

¹¹⁹ Iraq’s Draft Law on Freedom of Assembly and Peaceful Demonstrations is available at: https://menarights.org/sites/default/files/2021-03/DraftLaw_2020_AR%20%283%29.pdf (accessed 28 January 2022), article 11.

¹²⁰ *Ibid*, article 13(2).

¹²¹ *Ibid*, articles 5(2) and 9(4).