



**(Shadow Report II)**

**Evaluation Report on Iraq's Compliance with the Convention against  
Torture and Other Cruel, Inhuman or Degrading Treatment or  
Punishment**

**High Commission for Human Rights – Iraq**

**Baghdad - 2022**

**Introduction:**

The Iraqi High Commission for Human Rights (IHCHR) was established by Law No. (53) of 2008 and has undertaken to work for achieving the objectives set forth in Article (3) of the aforementioned law to ensure the protection and promotion of respect for human rights, to protect the rights and freedoms set forth in the Constitution and international conventions and to consolidate and develop the values of human rights culture in Iraqi society.

To this end, as far as the provisions of the International Convention against Torture and its obligations are imposed on the Iraqi State, the IHCHR's teams in Baghdad and the governorates, in accordance with the legal mandate given to it based on the provisions of Article (5 \ Fifth) of the above-mentioned law, conduct visits to prisons, pre-trial detention facilities and all other places to meet convicts, detainees and inmates, and document cases of human rights violations, especially those related to torture or ill-treatment or cruel, inhuman or degrading punishments, then refer them to the competent authorities to take appropriate legal measures against human rights violators. The Commission has previously submitted the first shadow report on the reality of torture in prisons and detention facilities in June 2015 and the extent of Iraq's commitment to implement the articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Notwithstanding Iraq's accession to the Convention against Torture under Law No. (30) of 2008 and the deposit of the accession instrument on 7 July 2011, its accession to the Convention for the Protection of All Persons from Enforced Disappearance under Law No. (17) of 2010, and the adoption of the Act to Reform of Inmates and Detainees (14) For the year 2018, which has unified the administrations of the adult and juvenile prisons and placed them under the authority and supervision of the Ministry of Justice, which is a progress made in the administration of criminal justice, however, the Commission noted the weakness of the measures taken by the Government and the CoR to implement the recommendations of the concluding observations issued by the Committee against Torture, as well as the recommendations of the Commission's various reports relating to prisons and pretrial detention facilities, especially with regard to achieving the requirements of fair trial, redress and reparation for victims of torture, and prosecution of the perpetrators. The IHCHR also noted the almost complete absence of lawyers in the roles of the preliminary investigation in violation of the principle referred to in Article (19 /Fourth) of the permanent Iraqi Constitution of 2005 (the right to a defense shall be sacred and guaranteed in all phases of investigation and the trial). As well as it noted the small number of judicial investigators and competent courts that are not commensurate with the number of cases, that is incompatible with international legal standards relating to the requirements of a fair trial set forth in the Universal Human Rights Declaration and the Covenant on Civil and

Political Rights. The IHCHR also noted the failure of the investigating authorities, the investigating officers in particular, to comply with the provisions of Articles (123-127) of the Code of Criminal Procedure No. (23) (1971).

Furthermore, our Commission did not observe progress made in the legislative measures regarding the harmonization of national legislation relating to combating torture with the aforementioned international convention, as the draft law against torture is still suspended by the State Council, a statement of recognition and acceptance of the competence of the Committee against Torture in accordance with Article (22) of the CAT for the year 1984 has not been issued, Iraq has not acceded to its Optional Protocol, and police officers and members continue to conduct investigations rather than judicial investigators in violation of fair trial guarantees, the lack of law enforcement personnel involved in detention, investigation and medical care of expertise required to deal with prisoners in accordance with national and international laws. Our Commission has not noted cases of reparation and compensation for defendants and inmates who have been subjected to torture and ill-treatment due to the lack of a law to compensate victims of justice. The IHCHR continues to receive complaints regarding allegations of torture in pretrial detention centers and prisons without real and effective procedures to prove the facts relating to the crime of torture and punish the perpetrators, as well as the difficulty of proving the crime of torture because of the reservation of the perpetrators on the victims and Keeping them away from regulators until they are cured and the signs of torture are gone. It is worth mentioning in the same context that there are no procedures or measures to prove the crime of torture through the psychological and mental effects on the victim, and the bodies to which persons accused of the crime of torture belong have not cooperated with the judiciary to secure their prompt appearance before the competent courts and keeping procrastination, this is a manifestation of impunity for criminals, which prevents the realization of the philosophy of punitive measures in deterrence, restraint and the reduction and elimination of violations.

The evaluation of the performance of the competent authorities in Iraq will be reflected in this report in the light of the concluding observations made by the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the obligations on Iraq imposed by the International Convention.

**First: Absolute Prohibition of Torture:**

The concluding observations on Iraq's initial report indicated in paragraph (C\10) that there are no clear provisions in national legislation guaranteeing an absolute prohibition of torture without exception as stated in Article (2\2) of the Convention against Torture. Despite the guarantees set forth in Article (37\First\C) of the Permanent Constitution of Iraq of 2005 (All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under force, threat, or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law), and the provision of Article (218) of the Code of Criminal Procedures No. (23) of 1971, which states that (confession must not have been extracted by coercion), in addition to other provisions contained in separate procedural and substantive laws, our Commission noted that the procedures for the harmonization of national legislation in line with the provisions of the Convention have not made by the Government and the CoR, which is demanded by the Commission in its annual reports and the first shadow report submitted during the discussion of the government's initial report in 2014, either by amending the Iraqi Penal Code No. (111) of 1969 to be including a clear and precise definition of torture in line with the definition contained in Article (1) of UNCAT and amending the Paragraph (Second \ E) in Article (12) of the Supreme Criminal Court Act No. (10) of 2005 in accordance with Article (1) of the above-mentioned Convention, or enacting a law on the implementation of the UNCAT, that we have already pointed to the existence of its draft before the Council of State, which is the best option from the viewpoint of our Commission, but the passage of more than (5) years after the submission of the draft law without approval by the CoR is an evidence of the lack of seriousness of the legislative institution and the government over this, note that the Iraqi legislator has not realized harmonization of national legislation with international conventions especially in the absence of a definition for the crimes of torture and enforced disappearance and merely referred to the punishment in Article (333) of the Iraqi Penal Code No. (111) for the year 1969 amended, which stipulates 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 detention or by imprisonment. Torture shall include the use of force or menaces). The Iraqi legislator has not extended to the description of perpetrators of the crime of torture in conformity with the provisions of Article (1) of the International Convention against Torture, which states (when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Furthermore the purpose of torture is not limited to obtaining information or confessions, but may be to punish a person for an act committed or suspected of having committed it or for any other reason based on discrimination of any kind and may be intended to coerce a third person to confess). The

penalty in Article (333) above is incompatible with the gravity and seriousness of a crime that may lead to serious consequences on the life and the safety of the victim or on the integrity of the legal process where the person could be convicted and sentenced up to the execution of a crime he did not commit, but was forced to confess to committing, thus all of the above are in violation of the Iraq's commitments in accordance with the Convention.

**Recommendations:**

1. The need for the Iraqi government and the Council of Representatives to expedite the procedures for the enactment of a special law against torture in line with the provisions of the Convention in implementation of Iraq's obligations under it.
2. The new law should include all the obligations contained in the Convention, whether at the level of a description of the crime of torture in its elements (material, moral and the special element represented by the offenders who are officials, public servants or persons acting with the permission, consent or acquiescing of the State), and should impose penalties consistent with the grave nature of the crime and its consequences, prevention, deterrence and redress for victims, activation of complaints, education and dissemination procedures, and disregard the legal value of confessions obtained as a result of torture and extend the liability to include those responsible for and who order, instigate, consent or acquiesce in it.

**Second: Armed Conflicts, Acts of Terrorism and Violations of the Convention:**

With regard to paragraphs (11-12) of the concluding observations, we state the following:

During the years 2015, 2016 and 2017, Iraq witnessed the occupation of Daesh terrorist gangs (ISIS) in some governorates of Iraq, which some of their people joined those extremist gangs. The liberation operations accompanied by large arrests of high numbers of those involved in terrorist crimes. Referring to paragraph (C\11-12) of the concluding observations issued on the initial report of Iraq, the IHCHR condemns and denounces the criminal acts, crimes against humanity and genocide carried out by the ISIS against Iraqis, especially members of minorities living in the provinces controlled by the terrorist gangs, in terms of murder, rape, displacement and enslavement. The Commission noted cases of arrests, carried out by Iraqi security forces, popular mobilization forces and tribal members and popular, for Iraqis and foreigners accused of committing the aforementioned crimes.

In view of the recommendations made by the Committee against Torture in connection with paragraphs (C\11-12), we would like to state the following:

1. The IHCHR has monitored the absence of any elements to conduct prompt investigations of allegations of torture because of the institutions in charge of the administration of prisons and pretrial detention facilities, which prevent access of the IHCHR's monitoring teams and other oversight bodies to some of the prisons being investigated, as well as they prevent defense attorneys from attending interrogation sessions in addition to not subjecting interrogation and investigation to any techniques to monitor these acts, whether by documenting them through the video camera system, or documenting interrogation sessions by identifying the investigators, the time and place of investigation and the people who attended.
2. Article (50) of the Criminal Procedure Code No. (23) for the year 1971 granted an exception to the provisions of Article (49) to the investigating officers the power of a judicial investigator, which our commission indicated it as a breach of the principle of separation of powers, which was approved by Article (47) of the Iraqi Constitution In 2005. The commission noted the seriousness of allowing officers to carry out an investigation, as most of the allegations of torture have been leveled against them. Our Commission's concern is the death of (176) detainees, in Ninewa governorate (after being liberated from ISIS terrorist gangs), who were arrested on remand, especially no administrative and judicial investigation and forensic medical reports about them we received, which raising doubts that the death may be for criminal reasons or severe negligence.
3. The Forensic Medicine Law no. (37) of 2013 amended by law no. (56) for the year 2015, and specifically in chapter IV, Article (16\First) refers to the progress of work in the forensic medicine, which stipulates (Department of Forensic Medicine shall analyze medical cases referred from the judiciary and judicial investigative bodies exclusively to the forensic department according to a fundamental administrative and technical chain), consequently, the concept of infringement means that this department and its staff shall not initiate examinations and analyze cases on their own and makes them subject to judicial orders and investigative bodies, which proved to our Commission that they do not reach the forensic medicine only after time periods the physical effects of torture are eliminated, making these examinations mostly useless.
4. The Commission has noted the lack of cooperation between the ad hoc courts to consider violations of human rights (human rights courts) and the security bodies the persons accused of torture belong to. They refrain from securing

their presence before the competent court on the dates specified by those courts and the disclosure of their whereabouts, and procrastination in all this, which the judiciary considers a major obstacle in completing the procedures for investigating allegations of torture.

5. As for the prosecution of those alleged to have committed acts of torture and their accomplices, including persons in leadership positions, the IHCHR has observed, as mentioned in paragraph (2), that the security authorities shall act to protect their employees and refrain from disclosing their whereabouts or to bring them before the competent investigating courts. Moreover, the national legal system, in particular Article (40 \ First and Second) of the Iraqi Penal Code No. (111) of 1969 amended in Chapter Four (Reasons for Permission) states the irresponsibility of those who commit the act in implementation of an order by a superior who is obliged or feel obliged to obey him; or other cases when law does not allow the employee to discuss the order which is contrary to the provisions of the Article (2\3) of the Convention.
6. With regard to cases of reparation and redress for victims (fair and adequate compensation and rehabilitation), the national legislation in Iraq is devoid of provisions that specifically allow victims of torture or enforced disappearance to receive compensation commensurate with the extent of the damage suffered except for the general principles of the civil law, which refer to the theory of tort (fault, damage and causation), that emphasizes the need for the Iraqi state to accelerate the enactment of a special law to apply the Convention Against Torture and the Convention on the Protection of Persons from Enforced Disappearance.

#### **Recommendations:**

1. We affirm the recommendations of paragraph (1) above.
2. The need for the Iraqi government to provide the requirements and elements against the crime of torture and other cruel, inhuman or degrading treatment or punishment by subjecting the investigation sessions to strict surveillance through videotaping and documenting the investigation sessions by identifying the investigators, the time and place of the investigation and the persons who attended it. And to allow lawyers to attend the preliminary investigation sessions and as well as to comply fully with the provisions of Articles (123-127) of the Criminal Procedure Code No. (23) for the year 1971 amended.
3. To amend Article (16 \first) of the Forensic Medicine Act No. (37) of 2013 amended by Law No. (56) of 2015 and allow the Forensic Medicine Department

to conduct examinations at the request of the oversight bodies represented by the IHCHR or the Public Prosecution Authority.

4. To repeal the exception referred to in Article (50) of the Criminal Procedure Code abovementioned and not allow police officers to carry out an investigation.
5. Require government parties to cooperate with the judicial authorities in disclosing the whereabouts of persons accused of committing torture and bringing them before the competent courts within the dates specified by those courts.
6. Oblige the authorities supervising prisons and pretrial detention facilities to allow lawyers to meet detainees under investigation and attend the initial investigation sessions, as well as allow the families of detainees to visit and meet them for the purpose of knowing their place of detention and the charges against them so that they can arrange special procedures for their defense and a lawyer to provide legal assistance.

### **Third: Conflict-related Sexual Violence**

With regard to paragraph (13) of the concluding observations (conflict-related sexual violence), despite the Iraq's signing of a joint statement with the United Nations on the protection of women and girls from sexual violence, the Iraqi Council of Ministers issued its resolution No. (92) of 2014 that considers crimes suffered by minorities and components in the provinces liberated from ISIS terrorist gangs as genocide crimes, and the Resolution of the Iraqi CoR No. (43) of 2016 which includes taking all necessary measures and actions by the government to free the Yezidi abductees and intensifying efforts to search for them; at the international level, the International Security Council issued two resolutions ref. (2379) in 2017 and ref. (2474) in 2019 which include the formation of an international team to assist Iraq in the collection and documentation of evidence and a special team to investigate the fate of people missing as a result of armed conflicts (civilians and military), as well as (Mr. Karim Khan) the Head of the International Investigative Team to Promote Accountability for Crimes Committed by (Daesh)\ISIS considered the crimes committed by ISIS terrorist gangs as horrible and very clear and the evidence will be submitted to the competent courts in Iraq; the IHCHR has not observed any progress in the investigation of the crimes committed by these gangs at the national or even international level, especially since national criminal legal system has not address the national legislative deficiencies with respect to the definition of genocide, war crimes and crimes against humanity, and after more than four years on the liberation, the Commission has not noted the clear efforts to

rehabilitate and integrate survivors of women and children who were freed from Daesh's captivity.

**Recommendations:**

1. Prompt the government, the Council of Representatives and the Supreme Judicial Council for the purpose of expediting the investigation of the above-mentioned crimes and bringing the criminals to the competent Iraqi courts.
2. Amend the Iraqi Penal Code No. (111) of 1969 amended to contain provisions criminalizing genocide, war crimes and crimes against humanity.
3. Prompt the government to intensify efforts for the rehabilitation and reintegration women and children survivors of ISIS terrorist gangs through opening houses linked to the Ministry of Labor and Social Affairs in cooperation with the Ministry of Health and Environment in the liberated governorates.

**Fourth: Fundamental Legal Safeguards:**

The IHCHR confirms the contents of the concluding observations, paragraph (14), concerning the fundamental legal safeguards and the failure of the investigating authorities to comply with the provisions of Article (123) of the Criminal Procedure Code No. (23) of 1971 amended stipulates "the right of the accused to remain silent and not to be compelled to confess and the right to be represented by an attorney), where the IHCHR's teams found that the defense lawyers are not allowed to attend the preliminary investigation sessions and only to sign the power of attorney paper and attend the trial sessions. The Commission also noted the lack of seriousness of procedures for the attorney assigned, which is nothing but a formal and routine procedure, and observed to not allow the accused to access health services of his own physician during the investigation period before conviction, as well as noted that the security authorities do not allow the defendant to inform his relatives of the party that arrested him or his current whereabouts, in addition to not observe the 24-hour period, which can be extended once for the same period to be (48) hour referred to in Article (19\13) of the Iraqi Constitution.

The IHCHR's teams also observed the absence of a forensic medical examination conducted by forensic doctors who are in the places designated for the arrest and interrogation of the accused, and only the examination conducted by a health officer (medical assistant) for the detainees; Mostly, he does not have enough freedom to express his opinion, write a detailed report and notify the competent authorities about his observations. In addition, under the guidance of the prison administration, he shall treat those who are subjected to torture until they are fully recovered without documenting the prisoner's health condition upon picking up.

We also reiterate the above-mentioned failure to install video recorders or keep video recordings of all interrogation procedures, as well as the failure to keep recordings in secure facilities and access to investigators and lawyers of allegations of torture, not to mention the failure to document the investigation sessions in records mentioning the name of the investigator, the persons who attended the session and their capacities, and the procedures taken.

**Recommendations:**

We confirm our recommendations in paragraph (2) above.

**Fifth: Allegations of torture and ill-treatment**

The concluding observations in paragraph (15) referred to the subject of allegations of torture and ill-treatment, our Commission considers that the figures, reported by the complaints of persons alleged to have been tortured or received by our field teams directly during periodic and fact-finding visits, do not reflect the actual reality of those who are presumed to have been tortured and ill-treated. We can substantiate this according to a specialized technical point of view:

1. The nature of the arrest and investigation system in Iraq is based on the commonality of the investigation authority and the arrest one, which gives the investigation authority an additional advantage over the accused, who is subjected to injustice and an imbalance between what is granted to the defendants in comparison with what is granted to the investigating authorities according to this fact, which is established by Article (1 \ First) of the Law to Reform Inmates and Detainees No. (14) of 2018, which authorized the administration of prisons and pretrial detention facilities by the Ministry of Interior, which was passed by the Iraqi legislator in the Law on the Administration of Prisons and Detention Centers issued under the Coalition Provisional Authority No. (2) of 2003 repealed, which is a decline on the guarantees prescribed by the laws in force.
2. The reluctance of persons to submit complaints of torture for fear of any retaliatory measures or procedures resorted to by the investigating authorities that administrate, as mentioned above, the pretrial detention facilities and the control authorities have no powers to transfer the victim to another prison and provide protection for him and any other persons who can testify before the investigating authorities nevertheless the enactment of the Law on the Protection of Witnesses, Informants and Victims No. (58) of 2017.

3. Investigating bodies hide persons who have been subjected to torture from the attention of the oversight bodies, thus those bodies could not meet, monitor and document the cases of torture.
4. The absence of forensic doctors in the main or sub-health centers in prisons and detention facilities to examine the inmates and detainees upon picking up from the investigating authorities so that they can prepare a detailed report referred to the competent authorities. We have already referred to the role of forensic medicine in paragraph (2) mentioned above.

**Recommendations:**

1. We reiterate the recommendation to amend the provision of Article (50) of the Criminal Procedure Code No. (23) for the year 1971 and not to allow investigating officers to carry out an investigation with the accused and confine this to judicial investigators in line with the principle of separation of powers referred to in Article (47) of the Constitution.
2. Ensure that the inmates and detainees are held in prisons and pretrial detention facilities administered exclusively by the Ministry of Justice and take the necessary procedures regarding the delivery and picking up of the accused to and from the investigation bodies, provided that a medical examination by a competent forensic doctor is carried out upon picking up and delivery and the concerned authorities are notified of its contents.
3. Allow the oversight bodies to conduct unannounced visits without the need for prior permissions, and to meet the inmates and detainees without accompanying officers and those in charge of the administration of prisons or pretrial detention facilities. And grant these oversight bodies the power to transfer who alleged torture and witnesses to other prisons while providing protection from reprisals.

**Sixth: Secret detention in cases involving security concerns:**

With regard to paragraph (16) of the concluding observations, we would like to state the following:

For the existence of secret detention centers where suspects are detained and placed in solitary confinement and where detainees are severely tortured, the Iraqi government is obliged to disclose the places allocated for the inmates and detainees and inform the oversight bodies, allow them to visit, meet with inmates and detainees, and assess their legal and health conditions. The existence of any prison or pretrial detention facility not subject to the aforementioned disciplines can be counted as a secret prison that would subject its administrators to legal accountability, and if this

is raised, the Commission takes on the task of verifying any information on alleged existence of secret prisons or secret pretrial detention facilities.

As for the pre-trial detention periods, we would like to state the following:

The IHCHR's teams observed the pre-trial detention period exceeding the time line set by Article (109) for the following reasons:

1. Prolonged periods of detention as a pretrial measure in the absence of the detainee's right to contact the family and the outside world and access to the services of defense counsel are a violation of fair trial guarantees and create an appropriate environment for the crimes of torture and enforced disappearance.
2. Slow evidentiary procedures in the stage of investigation and collection of information, both in relation to linking the origin of the news to the criminal facts and recording the statements of the plaintiffs, and in linking medical reports, death certificates, the wounded's recovery reports, and recording the statements of the holding detachments.
3. The small numbers of investigative courts, judges and judicial investigators in a manner that is not consistent with the crime rate in Iraq and the number of cases before them.

The foregoing was one of the most significant direct reasons for prolonging the period of detention from the legal limit, which negatively affected the realization of the requirement to appear promptly before the competent judicial authority as one of the basic guarantees of fair trial approved by the international and national human rights protection system. The IHCHR noted the arrest of defendants for several cases and when convicted of a case, the previous time spent on other cases is not counted, which requires a review of the legal provisions contained in the Criminal Procedures Code abovementioned. As well as the Commission noted the presence of detainees with arrest warrants have not been renewed despite the lapse of long periods of time as in the case of (857) detainees held in Taji Prison (run by the Iraqi Ministry of Justice - Iraqi Reform Department) where our Commission observed in 2018 their arrest warrants have not renewed for more than one year, which can be considered as an arbitrary detention in light of the failure of the prison administration to support the existence of judicial decisions for the continuation of the detention and it is not consistent with the time limit referred to in Article (109) of the Criminal Procedure Code (If it is necessary to increase the period of detention to more than 6 months, the judge must submit the case to the Felony Court to seek permission for an appropriate extension).

In addition to the above, the number of male and female detainees for the year 2021 reached (23809) in the detention facilities of the Ministry of Interior, (869) male and female detainees in the Iraqi Reform Department, (82) male and female detainees in

the Juvenile Correction Department, (193) detainees in the Ministry of Defense and (85) detainees in the detention center of the Counter-Terrorism Service as well as (31) detainees in the detention center of the Committee of Diwani Order No. (29) of 2020, accordingly these large numbers of detainees support the opinion of the Commission that there is an unjustified delay in settling cases and exceeding the legal periods of arrest .

**Seventh: Incommunicado detention, overcrowding and medical care:**

With regard to the use of incommunicado detention, the Act to Reform of Inmates and Detainees No. (14) of 2018 and the Law on the Administration of Prisons and Detention Centers No. (2) of 2003 (repealed) refer to that inmates and detainees are either placed in single-occupancy cells or allocated to more than one person in case of temporary overcrowding in the prison, provided that the number of them does not exceed (3) people and the use of dormitories shall meet the maximum conditions of safety, health care and suitable for climatic conditions, especially air quantities and provide a minimum of floor space, lighting, heating and ventilation. The IHCHR noted, during its field visits, the existence of (punitive cells) in some prisons and pretrial detention centers as well as al-Rusafa Section (13) dedicated to confine detainees and convicts who have been subjected to disciplinary penalties pursuant to the provisions of Article (38\ First\ D) of the Act to Reform of Inmates and Detainees, which allows the Minister of Justice and the directors of the Iraqi Reform and Juvenile Reform Departments to impose penalties on the recommendation of the ad hoc investigative committee or inspection committees formed within the reform departments when he violates the regulations and instructions issued under the aforementioned law. The Commission also noted that the (punitive cells) lacked safety and health care conditions because of the lack of air conditioning, as well as forcing detainees to urinate or defecate inside the cells at night because they were not allowed to go out to the sanitary facilities and toilets. However, if the sanitary facilities are inside the punitive cells, they would cause unpleasant odors due to their small size, lack of water or lack of ventilation holes that allow the passage of the natural lighting in addition to the lack of adequate artificial lighting. The administrations place more than one inmate in the punitive cells, which causes many problems such as overcrowding and the spread of skin allergies diseases. The Commission observed in some detention facilities not to provide the detainees with blankets and mattresses, which is considered by the Commission as an affront to the dignity of the inmate or the detainee and can be considered a form of abuse or cruel, inhuman or degrading punishment

With regard to medical care, our Commission noted the following:

1. Poor infrastructures that do not provide a suitable place for permanent and visiting medical detachments to provide services.
2. The difficulty of health staff entering prisons and detention facilities due to security measures that take long periods of time.
3. The constant threat of medical and health personnel by some prison administrations and the unwillingness to work there because of the security situation.
4. The lack of concentration of health personnel at work due to pressure exerted by some prison administrations on health staff, especially in prisons and pretrial detention facilities for those accused or convicted of terrorist crimes.
5. Shortage and malfunction of many medical devices in most prisons such as dental extraction devices in Nasiriya Central Prison for light sentences and pathological analysis devices as in Taji Prison to name a few.
6. Failure to provide some necessary medicines and treatments, which is problematic in most central prisons, detention facilities and the juveniles houses, especially medicines for chronic diseases due to the reluctance of the General Company for the Marketing of Medicines and Medical Supplies (Kimadia) to provide them or that the available ones are from unstable origins.
7. The prevalence of skin allergies due to overcrowding in most prisons and pretrial detention facilities, lack of necessary medicines and insolation.
8. Lack of sanitary conditions in cells (quarantine or punitive cells) in most central prisons in Baghdad and the governorates as well as in most juvenile care houses.
9. Lack of ambulances in some prisons and pretrial detention facilities.
10. The weak role of health professionals working in prisons, pretrial detention facilities and juvenile houses and schools in monitoring and documenting cases of torture. International standards, the most important of which is the Convention against Torture, require them to play a role in the prevention of torture as well as to facilitate the prosecution of offenders through what is supposed to be documented by them, and to not be cooperated and involved in the crime of torture in any form of cooperation and involvement.
11. The detainees (who are considered from a legal point of view innocent until guilt is proved) are not allowed to meet their own doctor.
12. The administrations of some prisons or security authorities responsible for protecting the site do not comply with the recommendations of the competent physician regarding the need of some inmates and detainees to conduct further examinations or surgeries in specialized hospitals.

In the view of our Commission, all of the above constraints cause poor medical and health services for inmates and detainees in prisons and pretrial detention facilities.

With regard to overcrowding, the IHCHR observed the lack of commitment by most administrations of prisons and pretrial detention facilities to the specified capacity. The Commission noted the existence of cases of overcrowding that are considered, in accordance with the international legal standards binding on the Iraqi government, the Prison Administration Law (repealed) and the Act to Reform of Inmates and Detainees No. (14) of 2018 in force, as a form of ill-treatment. As well as it leads to poor services provided to prisoners, the widespread use of narcotic pills, and the negative impact on rehabilitation and reform efforts of inmates and detainees. The followings are the most significant problems caused by overcrowding contained in the annual and periodic criminal justice reports:-

- Lack of land space that preserves the human dignity of the prisoner.
- The difficult implementation of rehabilitation and social, educational and vocational reintegration programs.
- The difficult application of the separation under law in terms of categories of prisoners, as among the most serious negative effects of overcrowding is the use of combining different categories of prisoners without taking into account the seriousness of crime.
- The difficult communication with families and the outside world.
- Promotion and abuse of narcotic pills.
- The spread of diseases, especially skin allergies and infectious diseases.
- Difficulty in managing the daily work of employees and observers.

Through a comprehensive evaluation of prisons and pretrial detention facilities in Iraq, we note that the infrastructures do not meet the function of the reform institutions despite some development acts carried out by of the Iraqi Ministry of Justice in the rehabilitation of some existing prisons, but the existing system does not meet the function specified by law (i.e. rehabilitation, reform, and reintegration). As for the pretrial detention facilities (prisons of the ministries of interior and defense) and (detention centers of the Operations Command in Baghdad and the governorates), they adopt the wards (detention halls) in which prisoners and detainees are placed jointly, which leads to poor basic services provided for inmates and detainees and the failure to adopt separation among prisoners and continuous mixing resulting in the transmission of criminal behavior among them, leading to a negative impact on the health environment inside the pretrial detention facilities in addition to the prevalence of mental and skin diseases due to overcrowding.

#### **Recommendations:**

1. We affirm our recommendations in the paragraphs above.

2. Expedite the resolution of cases and adhere to the time limit set by Article (109).
3. Amend the legal provisions to ensure the calculation of the detention period for various cases when convicted of one of them.
4. Solve the problem of overcrowding in prisons and pretrial detention facilities, which requires expeditious resolution of cases, as well as the construction of model prisons in accordance with international standards to ensure the realization of the function entrusted to the reform institutions in reforming inmates and detainees and reintegrating them into society.
5. Involve health personnel in specialized courses, to deal with the categories of inmates, and detainees, include education on the humanitarian importance of the work done in the provision of services to groups lacking the ability to consult doctors for the issuance of custodial sentences.

#### **Eighth: Unannounced Visits, Deaths, Executions & Impunity**

With regard to the unannounced visits mentioned in paragraph (18) of the concluding observations, IHCHR noted that the Iraqi legislator has trend towards violating the international legal standards related to the system of prison management and detention facilities, which was confirmed by paragraph (4) of article (45) of the Act to Reform Inmates and Detainees no. (14) of 2018, which stipulates that (members of the inspection bodies mentioned in item (1) of Article (45) of this law shall be allowed to enter the prison on dates to be agreed upon with the reform department whenever requested by the inspection committee) which contradicts the international legal standards, as well as with the Article (5 / fifth) of IHCHR Law No. (53) of 2008.

IHCHR also pointed to the obligation of the Iraqi Reform Department to conduct periodic and sudden inspection of correctional institutions, inmates and detainees under Article (47) of the Act to Reform Inmates and Detainees that mentioned above, where the Act singles out the advantage of unannounced visits for the teams of the Ministry of Justice rather IHCHR

As for the performance of the institutions that supervise prisons and detention facilities, there has been no change in the position of some authorities that run prisons and pre-trial detention facilities, especially those dedicated to the placement of inmates accused or convicted of terrorist cases or serious crimes. Where these bodies continue to prevent IHCHR teams from entering the prisons run by them only in accordance with prior appointments and approvals from their highest references.

With regard to the deaths mentioned in paragraph (19) of the concluding observations, the IHCHR has indicated through the visits of its teams that the prison

administrations notify the families of detainees and inmates in cases of death, illness or transport.

The number of deaths in the prisons of the Ministry of Justice for the years (2019, 2020, 2021) respectively reached to (214, 355, 365), while we did not received the death statistics for 2018, and the Ministries of Interior and Defense did not provide us with the full statistics of deaths, their causes and the results of administrative and judicial investigations and forensic medical reports, which indicates a decline in the level of cooperation between the aforementioned institutions and the Commission, and it is considered a clear violation to the provision of article (6) of the IHCHR Law No. (53) of 2008.

The article (1/329) of the Iraqi Penal Code No. (111) of 1969 amended criminalized persons who prevent providing IHCHR with data and information that mentioned above in its article, where the article of the Penal Code stated “Any public official or agent who exploits the authority of his office and who prevents or hinders the execution of an order issued by the government or legal provision or regulation or judgment or order issued by a court or competent public authority or who delays the collection of revenues, taxes or such thing that is regulated by law is punishable by detention plus fine or by one of those penalties”

The Commission is concerned about the lack of cooperation, as the failure to provide us with preliminary and judicial investigations raises doubt about the possibility of criminal causes of death or at least the existence of gross negligence at the level of health conditions (whether at the level of medical care or the provision of drinking water and healthy and adequate food). IHCHR teams have monitored that the food provided to inmates, detainees and arrested does not take into account the health status of some of them, especially those suffering from chronic diseases, and we reiterate in this regard what was referred to in paragraph (2) of the indicator related to the death of (176) arrested in Ninewa

With regard to death penalty, IHCHR confirms its call in its previous reports for the restriction of the death penalty or limit it or restrict its execution to the most serious crimes and pursuant to paragraph (2) of Article (6) of the Covenant on Civil and Political Rights in preparation for Iraq's accession to the Second Optional Protocol of the ICCPR on abolishing Death Penalty. Through IHCHR teams visits to prisons and pretrial detention facilities, indicated that the number of people sentenced to death including men and women in the Iraqi Ministry of Justice prisons till 2018 reached (7379) men and women as well as ratified decisions and others not yet ratified as in the following details:

<b>No.</b>	<b>Prison</b>	<b>No. of persons sentenced to death</b>
<b>1</b>	Maximum Protection	862
<b>2</b>	Justice (1)	49
<b>3</b>	Tasferat Al-Rusafa (4)	901
<b>4</b>	Tasferat Al-Rusafa (3)	4
<b>5</b>	Women's Central Prison	43
<b>6</b>	Al-Harithya	30
<b>7</b>	Al-Rashad (Ibn al-Haitham Department)	1
<b>8</b>	Nasriya Central Prison	5374
<b>9</b>	Basra Central Prison	52
<b>10</b>	Emara Central Prison	2
<b>11</b>	Nasriya Prison for Light Sentences	3
<b>12</b>	Samawa Central Prison	1
<b>13</b>	Diyala Central Prison	33
<b>14</b>	Hilla Central Prison for (women)	23
<b>15</b>	Federal Suse	1
<b>Total</b>		<b>7379</b>

As for the years (2019, 2020 and 2021), the death sentences were issued against (1317, 715, 1438) respectively, and as for those executed against the death penalty, their number reached (976) for the period from (2005-2018), while the year 2019 did not witness the implementation of any death sentence. The year 2020 witnessed the execution of the sentence against (45) convicts, and we did not receive any information on whether the death sentence was carried out or not for the year 2021.

As far as the death penalty is concerned in Iraq, the Commission notes its reservation on Ministry of Justice's omission to provide us with statistics regarding the number of executions carried out in 2018 and the number of ratified and non-ratified sentences despite the official correspondence under the pretext of orders issued by the National Security Advisory of not providing any party with data and statistics, which indicates a decline in the level of cooperation by the aforementioned ministry as well as their non-compliance with the provision of Article (6) of IHCHR law No. (53) of 2008. With regard to the impunity mentioned in paragraph (21) of the concluding observations, IHCHR states the following:

Through IHCHR carrying out to its tasks in accordance with its Law No. (53) of 2008, the Commission has worked to ensure that the legal and institutional system in Iraq is in harmony with the international legal standards set out in the International Convention against Torture. In this regard, IHCHR teams observed that the environment of arrest, detention and interrogation is characterized by a lot of imbalances, especially in the legislative side. The Article (50) of the Criminal Procedure Law No. (23) of 1971 and exception to paragraph (1) of article (49) are still permit the official in police station to investigate any crime if he is ordered by the investigating judge or the investigator . Thus, the official in police station has the authority of an investigator according to articles mentioned above that authorized police officer to conduct investigations into various crimes at the request of the competent judge, which is contrary to the constitutional principle of separation of powers in accordance with the provisions of Article (47) of the Permanent Constitution of Iraq in 2005 and the seriousness of this in view of the allegations monitored by the Commission in relation to the torture of people, most of which were during the investigations conducted by police officers where the preliminary investigation is mostly conducted by them.

In the same context, the Commission monitored the delay in the procedures for investigating allegations of torture during the period of investigation or even after conviction. As well as the parties involved in torture refrain the victim and prevent him from meeting his relatives or his lawyer or any of the supervisory authorities during that period, until he is fully recovered and the effects of torture are removed. As well as what was pointed out by IHCHR team during its visit to the courts of human rights investigation (Karkh - Rusafa) of the lack of cooperation of government agencies with the above-mentioned tribunals where no information is sent concerning to

persons accused of committing the crime of torture, especially for officers and members of the security services and this prevent the completing of investigating procedures regarding the allegations of torture and their appearance before the courts. We cannot fail to point out that the places of investigation are unsupervised, where the oversight bodies are not allowed to attend the investigation sessions, not even defense lawyers, and the interrogation rooms are not provided by modern systems (cameras).

It was monitored by the Commission the failure to prove the means of psychological and mental torture where the judicial medical committee at Al-Rashad Hospital for mental and psychological diseases has confirmed to IHCHR teams that their competence is limited to examining the mental faculties and the extent of the criminals' perception of their actions in order to determine the criminal responsibility of the perpetrators and they can't receive any cases of persons who alleged that they were subjected to psychological and mental torture because this is not their competence, although the physical effects of torture can be eliminated in a short period of time, but the psychological effects may persist with the victim for long periods or may remain inherent for life. In addition, the investigators are lack to sophisticated means of investigation in collecting information and obtaining confessions such as establishing a national DNA database maintained by the government to store DNA data from its population that used for forensic purposes that include research and matching of DNA samples from potential criminal suspects, or through the use of a sophisticated camera system to detect the character of the offender by monitoring through them and follow-up to the place where he resides in preparation for his arrest, as well as through the activation of intelligence efforts and other means of investigation and collecting information.

With regard to the establishment of an independent body to conduct prompt and impartial investigations into all reports of torture and ill-treatment contained in paragraph (21 / a) of the concluding observations, the IHCHR proposed in its annual report of (2018, 2019 and 2020) to accede to the Additional Protocol to the Convention against Torture as well as to urge the Council of Ministers to establish a national team on combat torture, ill-treatment and other cruel, inhuman or degrading treatment, consisting of representatives from (Public Prosecution, Institute of Forensic Medicine, relevant and effective civil society organizations, Ministry of Interior, Ministry of Defense, Ministry of Justice, representatives of the Anti-Terrorism and National Security Service, the High Commission for Human Rights ) have the competence to conduct unannounced visits, attend preliminary investigation sessions, monitor and document violations and submit recommendations to the relevant authorities to act upon.

As regards paragraph (21/ b) of the concluding observations, the IHCHR considers that the Iraqi Government is not serious in responding to its recommendations regarding the need to take urgent measures to investigate the allegations of torture, on the contrary, it resort to procrastination and delay, which leads to the impossibility of proving the crime of torture due to the removal of physical effects of torture on the body of the victim.

With regard to paragraph (21 / c) of the concluding observations, IHCHR has already mentioned, during its visit to the courts of human rights investigation (Karkh - Rusafa), to the lack of cooperation of government agencies with the above-mentioned tribunals where the information on persons accused of committing the crime of torture, especially officers and members of the security services, which prevents the completion of the investigative procedures for the allegations of torture and their appearance before the judiciary, which leads to their impunity as well as their continuing to carry out their work and investigative functions.

#### **Ninth: Allegations of Torture**

With regard to paragraphs (22-23) of the concluding observations, the IHCHR's teams have monitored numerous allegations of torture and ill-treatment of persons deprived of their liberty in order to coerce them to confess or disclose information from him or another party or the cause of torture may be as a punishment for the commission of an act.

Based on the tasks of the IHCHR in monitoring and documenting violations, the Commission received (155) complaints related to allegations of torture, including complaints involving allegations that more than one person was tortured and the number of people claiming torture and ill-treatment (181) people for the year 2018, and received (540) complaints for the year 2019, as well as received (960) complaints in the year 2020, while the number of complaints received by the Commission for the year 2021 reached (2814) complaints in the capital, Baghdad and the governorates except for the Kurdistan Region.

In view of the foregoing, we would like to point out that a number of complaints of allegations of torture had been closed due to sentence the convict in more than one case, or the release of the accused, or due to the delay in presenting the victim to the medical committees until the traces of torture disappear, or on the pretext of not knowing the perpetrators (the perpetrators of the crime of torture), which raises the IHCHR concern due to the enshrinement of impunity and not prosecution of those who are accused of committing crimes of torture. The dropping of charges and closing the cases for the above reasons embark on the continuation of this approach in the investigation. The increase in the number of complaints related to allegations of

torture is clear evidence of the continuity of this approach which requires the Iraqi government to take more effective measures and tighten in the follow-up of those who violate the law.

According to the IHCHR view, condemning the crimes committed by persons alleging torture does not in any way deny that they have been tortured where the torture is an independent offense and the investigating procedures must continue and if the torture is proved , the penalties must impose on its perpetrators according to article (333) of the Iraqi Penal Code does , so there are no joint between the two issues, and should implement the constitutional provision (37 / c) which decides to disregard the legal value of confessions as a result of torture and thus re-investigate the crime attributed to the defendant who is tortured must be enforced.

The IHCHR did not see the implementation of the provisions of paragraph (c) of the constitutional article (37) and article (218) of the Criminal Procedure Code Amended No. (23) of 1971, which both decide to disregard the legal value of any confession extracted by force, threats or torture. Despite the progress achieved in the field of national legislation, especially in the provision of Article (9 / first) of the General Amnesty Law No. (27) of 2016, which grants anyone who claims to have been subjected to torture and coerced confessions or took legal action against him based on the statements of the secret informant or the confession of another defendant, the right to demand from amnesty committees formed under the above law to the scrutiny of judicial rulings of both form, substance and re-trial.

IHCHR expresses its concern over the environment of arresting the accused, method of investigating, Investigation Body, Prisons Management , pre-trial detention facilities ,the prevention of lawyers from attending the preliminary investigation sessions, the absence of a modern system to monitor the investigation sessions through the installation of surveillance cameras to record these sessions or document them through organized records recording the names of investigators, defendants and persons who attended the investigation sessions, indicating the time and place of the investigation and providing access to the regulators, as well as the police officers conducted initial investigation with the accused and they accompany them during interrogation sessions where the defendants alleged that the officers threatened them in order not to change their statements before the competent judge otherwise they subjected to retaliatory measures and may force other defendants to testify that they were with them in other crimes.

All these things raise IHCHR concern with regard to provide and fulfill the requirements of a fair trial and non-observance the independence principles of lawyers profession, where they are not allowed to attend the preliminary investigation sessions, as well as they subjected to threats . The Supreme Judicial Council informed IHCHR according

to its letter no. (2019/2743) dated 14/3/2019, that the number of cases concerning allegations of torture and ill-treatment reached to (16388) cases for the years (2017-2018) by (1774) in 2017 and (14614) in 2018. Where the number of resolved cases reached (15547), while the unresolved cases reached (841). The Supreme Judicial Council shows that the reasons for not resolving the cases is due to the following.

1. Lack of answers from relevant authorities.
2. Failure to secure the bringing of the accused to record their statements as complainants.
3. Delay in bringing the accused before a medical committee in order to link his medical report.
4. Failure to implement the arrest warrant for the accused because they have a functional character of a special nature.
5. Representing other courts to record the complainants' statements.

IHCHR does not have details about resolving those cases and the Supreme Judicial Council only reported the number, pointing out that IHCHR has approached the Supreme Judicial Council to inform the commission with details.

#### **Recommendations:**

1. Prompt the Supreme Judicial Council to oblige the competent courts to continue to investigate torture crimes and not close them under the pretext of convicting the accused (allegedly tortured) regardless of the number of cases that he convicted, as well as review the procedures of investigation and trial in the event that the convicted or arrested person has been tortured especially in cases where conviction is proven only on the basis of confessions of the accused.
2. IHCHR confirms its recommendations concerning fair trial guarantees contained in the above-mentioned paragraphs.

#### **Tenth: Combating Domestic Violence**

With regard to paragraph (24) of the concluding observations, the IHCHR states the following:

The Commission did not indicate progress in the area of legislating law on Combating Domestic Violence by the Iraqi Council of Representatives, despite the reading of the draft law twice on 1/3/2015 and 17/1/2017, which pushed the Commission and NGOs to put pressure towards its legislation, but it has not yet seen the light of the day.

The IHCHR also noted the lack of effective implementation of the contents of the strategies for combating violence against women (2013-2017) and (2018-2022) launched by the Iraqi government, as well as different types of violence practiced against women, may be termed violence resulting from social practices , including the

marriage of children (minors) , Nahwa (prevent the girl from marrying a stranger and force her to marry her cousin) , female genital mutilation and honor killings.

Under the Iraqi Penal Code, there are explicit and clear provisions on husband's irresponsibility if he beats and hurts his wife where the article (41) of the Iraqi Penal Code No. (111) of 1969 amended states that (There is no crime if the act is committed while exercising a legal right: the punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom) , where any acts of beatings and violence practiced by the husband, father and teacher towards the wife, son and pupil considered the use of right according to the mentioned article, which in turn is a cause of permissibility, under which they cannot be held criminally and civilly accountable for the harm caused physical or psychological damage as long as the use of his right Legally prescribed under the preceding Article and this is a form of impunity.

With regard to paragraph (24 /a) of the concluding observations on the investigation of sexual violence against women, the IHCHR noted that the Supreme Judicial Council issued Statement No. (9) on 10 Jan. 2021, which includes the formation of a specialized court to consider cases of domestic violence and a misdemeanor court to consider cases of domestic violence, in addition to its work, its headquarters shall be at the center of each appellate region in accordance with the provisions of Article (35\Second) of the Judicial Organization Law No. (160) of 1970 and Article (3\Ninth) of the Law of the Supreme Judicial Council No. (45) of 2017, as the formation of this court helps to combat domestic violence, punish its perpetrators and establish an assistance mechanism for victims of domestic violence crimes. The investigative court specialized in crimes of domestic violence is working to implement the laws in force, including the Iraqi Penal Code No. (111) for the year 1969 amended and the Juvenile Care Law No. (76) for the year 1983, as the Iraqi legislator has not issued a law to protect against domestic violence. the Commission considers the necessity of assigning specialized judges familiar with the international legal standards relating to women's rights and the obligations they impose on Iraq taking into account the privacy of women. As the presence of directorates of family and child protection inside police stations leads to women's reluctance to resort to them, not to mention the lack of staff working therein from female social researchers and police officers, which the Commission believes that the directorates of family and child protection should be located in independent buildings outside police stations.

With regard to paragraph (24 / b) of the concluding observations on the rehabilitation and treatment of victims of sexual violence, the IHCHR has already referred to the establishment of safe shelters in paragraph (13) mentioned above

1. Prompt the Council of Representatives to expedite the enactment of a special law on combating domestic violence and the Child Protection Law and ensure that its contents and provisions are consistent with the obligations of Iraq established by the international conventions to which Iraq has acceded to concerning the family and childhood.
2. Prompt the Council of Representatives to amend the provision of Article (41) of the Iraqi Penal Code No. (111) of 1969, which allows the husband to beat his wife, as well as enact law criminalize female genital mutilation as did by council of Representatives in Kurdistan region.

#### **Eleventh: Refoulement, Extradition & Expulsion:**

With regard to paragraph (26) of the concluding observations, the IHCHR did not indicate any progress made in the amendment of the legislation in force because it includes provisions relating to non-refoulement and non-expulsion or non-extradition of persons to states, except in the draft law against torture, the forgoing means that there are no need to create judicial body competent to consider appeals for refoulement. IHCHR also didn't indicate any progress towards Iraq's accession to the Convention on Status of Stateless Persons or the Convention on the Reduction of Statelessness.

With regard to paragraph (27) of the concluding observations, it can be noted in paragraph (10 / C) above mentioned that IHCHR believes that the current national legal system does not meet or achieve the actual and real implementation of Iraq's obligations under the Convention against Torture and other treatment or punishment cruel, inhuman or degrading.

With regard to paragraph (28) of the concluding observations, the IHCHR reiterates what referred to above over the necessary to include the implementation of the draft Law Against Torture by Iraq to establish its jurisdiction over torture and other crimes in cases where the alleged offender is present in any territory under its jurisdiction and it doesn't not extradite him or her.

#### **Twelfth: Combating Human Trafficking**

With regard to paragraph (29) of the concluding observations on combating human trafficking, the IHCHR likes to indicate the following:

Despite the enactment of Act No. (28) of 2012 on combating trafficking in persons and the formation of the National Committee to Combat Human Trafficking in 2012, but the Commission has made a number of observations which are:

- A. According to the provisions of Article (11 / eighth) of the above-mentioned Law, which states that the concerned State departments shall be committed to assisting victims of human trafficking, taking into account the special needs

of children as follows: (To provide social, psychological, and physical rehabilitation by establishing specialized rehabilitation centers or care houses based on special program to reintegrate the victims in society). The Council of Ministers issued a system for the care of victims of human trafficking No. (7) of 2017, which resulted in creating a safe house for victims of human trafficking in Baghdad. IHCHR has noted that the house is in the early stages of construction and this indicates that it is not considered among the priorities of the Iraqi government, which impedes the implementation of an important part of the Iraqi government's obligations to provide safe shelter for women victims of trafficking. The positive indication that noted by IHCHR is that the judiciary has started dealing with victims of prostitution in accordance with the provisions of Trafficking Act, where most of the women inside the house which amounted (5) are victims of prostitution brokers and have been sexually exploited.

- B.** The Ministry of Interior did not issue instructions to facilitate the implementation of the Human Trafficking Act No. 28 of 2012.
- C.** According to the decision of the Supreme Judicial Council, human trafficking cases have become under the in place- jurisdiction judges, which resulted in negative effects on the victim due to the appointment of judges who are not competent or trained to deal with such cases in accordance with international laws and conventions.
- D.** The Anti-Human Trafficking Act does not distinguish between a trafficked and sexually abused victim and for-profit worker, where IHCHR noted that through issuing some judicial decisions that considers traffickers and trafficked persons as partners in the crime.
- E.** There is no statistics on the number of human trafficking cases for the years (2018, 2020 and 2021), while the IHCHR noted (419) cases in 2019, as well as the statistics of the Supreme Judicial Council in 2017, which indicated that the number of human trafficking crimes reached (91) cases, and the Commission believes that this number is small as compared to the size of problem in Iraq.

## **Recommendations**

- 1.** Prompt the government to issue instructions to facilitate the implementation of the Anti-Human Trafficking Act No. 12 of 2012.
- 2.** Prompt the Supreme Judicial Council to train judges specialized in hearing human trafficking cases to be familiar with the legal standards related to human rights in general and human trafficking in particular.
- 3.** Prompt the government to expedite the establishment of safe shelter and to be commensurate with the number of victims in Baghdad and provinces.

### **Thirteenth: Dissemination & Education of the contents of International Convention against Torture**

With regard to paragraph (30) of the concluding observations, the IHCHR likes to state the following:

The IHCHR has worked since its establishment and in fulfillment of its duty in accordance with the provisions of Article (6) of its Law No. (53) of 2008 amended on the dissemination of human rights culture through courses, workshops, seminars , technical and social events, the issuance of publications and the preparation of information programs for human rights issues in cooperation with the concerned parties. The Convention against Torture has given priority and importance due to the seriousness and sensitivity of this crime. Thus, IHCHR trained its staff in Baghdad and provinces who worked in the field of monitoring and control. As well as IHCHR has organized many courses and workshops for Judges, members of judicial police , law enforcement officials, personnel working in prison administration and pre-trial detention in the Ministries of Justice and Interior to develop the skills of effective investigation and documentation of torture for the staff of IHCHR and forensic medicine, in addition to the mechanisms of work in accordance with the humanitarian and legal perspective for the staff of other ministries concerned with arrest and investigation.

In spite of the efforts carried out by IHCHR and some national and international organizations working in Iraq, the IHCHR has monitored many problems concerning law enforcement agencies which are:

1. Those who are selected to participate in courses and workshops are either not involved in the subject of combating torture or employees are involved in those courses and workshops at the first level and others are selected when carrying out advanced courses.
2. The contents of the International Convention against Torture and the obligations imposed on Iraq contradict and intersect with many of the national legal provisions in force and with the contexts adopted in the departments and directorates of the concerned ministries, which is an imbalance that could not be outrun by the trainers when it was raised by participants in those courses and workshops.
3. IHCHR observed the inability of law enforcement officials who participated in sessions and workshops to change the beliefs of their institutions in a manner consistent with our Commission's objective of providing and preparing the requirements for the implementation of the Convention.

#### **Fourteenth: Redress and Rehabilitation:**

Concerning paragraph (31) of the concluding observations on redress and rehabilitation, the Commission considers that it has not been proven to convict those accused of committing the crime of torture (except for individual cases that do not fit the number of allegations of torture), which is a form of redress for the victims of torture, although our Commission believes that the reason for not convicting those accused of torture is not due to the absence of proven cases of torture, but because of the reasons mentioned in paragraph (5) above, in addition to our Commission has not noted any redress for a victim of torture by punishing the perpetrator of one of the penalties referred to by the law or any compensation, whether financially or morally. With regard to the rehabilitation of victims, there are no specialized centers for them and the government has not adopted any project to establish such centers. In 2019, the IHCHR noted the death of two detainees in Najaf province through the forensic medical report, an Iraqi citizen (M.R.A.) who was found to have been tortured and is still under investigation, and an Iranian citizen who dead as a result of torture and Najaf Criminal Court convicted two officers implicated in his death and sentenced them to six years imprisonment.

#### **Fifteenth: Accession to the Additional Protocol to the Convention against Torture and the Rome Statute:**

With regard to the concluding observations (paragraphs 33-34-35), we would like to state the following:

In its first report in 2014, our commission mentioned that there was no a declaration of recognition and acceptance of the competence of the Committee against Torture in accordance with Article (22) of the Convention and that Iraq was not acceding to the Optional Protocol to the Convention against Torture. In view of the fact that the Iraqi government has voluntarily acceded to the Convention, its goodwill gesture requires that it ends what it started by expediting the enactment of a law against torture. Our Commission considers that urgent actions should be taken in this regard.

The IHCHR has not observed any progress in Iraq's accession to the Rome Statute and the Additional Protocol to the Geneva Conventions concerning victims of non-international armed conflicts.

#### **Recommendations:**

To accede to the Rome Statute and the Additional Protocol to the Convention against Torture and to declare recognition of the competence of the Committee against Torture in accordance with article 22 of the Convention.

In addition to the above recommendations, the IHCHR considers that the Government should:

1. Establish national team to combat torture, ill-treatment and other cruel, inhuman or degrading treatment, consisting of (Presidency of Public Prosecution, Institute of Forensic Medicine, effective NGOs, Ministry of Interior, Ministry of Defense, Ministry of Justice, representatives of the Anti-terrorism Service and National Security Service and IHCHR ) has the competence to conduct unannounced visits , attend preliminary investigation sessions and make recommendations to the concerned authorities to act accordingly
2. Abolish prisons and pretrial detention facilities run by the security ministries and attaching them to the Federal Ministry of Justice except the arrest rooms at the police stations.
3. Requires prisons and pretrial detention facilities to provide the necessary facilities for defendants' access to the services of lawyers and at all stages of investigation and prosecution in accordance with the provisions of Article 19 of the constitution , Article 123 and international standards relating to fair trial requirements.
4. Requires ministries and security agencies to cooperate with IHCHR teams within its granted mandate under Article (5/fifth) of IHCHR law No. (53) of 2008 and provide the Commission with documents, data and statistics pursuant to the provisions of Article (6) of the above-mentioned law, and any prevention faced by IHCHR teams indicates as a concealment of information and facts that reflect a human rights violation in prisons and detention facilities.
5. Amend the provision of article (45 / fourth) of the Act to Reform of Inmates and Detainees No. (14) of 2018, which contradicts the provision of Article (5 / fifth) of IHCHR Law No. (53) of 2008.
6. Adopt firm measures to face the mistreatment, torture or other forms of cruel, inhuman or degrading punishment imposed by national and international standards, and bring those responsible to justice.
7. Requires Ministries of Justice and Interior to determine the capacity of prisons and detention facilities and strict adherence to them in accordance with national and international standards and oblige all parties of not exceeding the absorptive capacity.
8. Requires Ministries of Justice and Interior to allocate a suitable land space for every prisoner that meets his psychological, physical and health needs and respects his privacy and dignity.