

Report on Iraq's compliance with the implementation of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (criminal justice & rule of law)

Report to the United Nations Committee against Torture during its 73rd session (April 19 - May 13, 2022) submitted by Sawa Organization for Human Rights / Iraq

Sawa Organization for Human Rights
Iraq – Al.Muthanna Province
Hu_samawa@yahoo.com
Haider Al-Awadi (about the report writing team)
009647801056752

Introduction:

Sawa Organization for Human Rights works to improve the reality of human rights in Iraq, by following up on the implementation of the concluding observations of the contractual committees, and contributing to the implementation of some of them, in partnership with governmental and non-governmental institutions, and by monitoring and documenting violations and writing national and international reports, and it works to strengthen the state's responsibility towards Implementation of its obligations with the United Nations, and despite Iraq's accession to 8 human rights conventions, and despite the government's approval and desire to implement its obligations, the response is still weak and delayed, especially in the files of criminal justice, rule of law, torture, and the use of excessive force during demonstrations.

Information is collected through field monitoring and from government officials in an informal way, and through cases of reporting and communication with victims of torture or their families, and through some lawyers. Justice periodically announces the number of inmates, as well as the numbers to be released through the official website of the Ministry of Justice, while allowing periodic visits by United Nations Mission in Iraq (UNAMI) and International Committee of the Red Cross (ICRC) to prisons and detention centers in coordination with the Iraqi government, and it is not allowed Local organizations may visit prisons or detention centers, despite the impartiality and professionalism of some specialized human rights organizations.

The objective of the report is to provide a national response, and also for the purpose of reviewing challenges and violations in accordance with Iraq's obligations with the United Nations, including the implementation of the concluding observations of the Committee against Torture, and the recommendations issued by the Human Rights Council within the universal periodic review mechanism, in which we seek to support the government's efforts to achieve principles of justice criminal justice, and improving the reality of human rights in Iraq in cooperation and partnership with governmental institutions and non-governmental organizations.

National legislation and plans:

Article 37 of the Iraqi constitution states: “All kinds of psychological and physical torture and inhumane treatment are prohibited. Any confession extracted under duress, threats, or torture is not considered, and the victim has the right to claim compensation for the material and moral damage he sustained, in accordance with the law.”

We appreciate the Iraqi government’s announcement in May 2021 of the National Human Rights Plan (2021-2025), which included a part of the implementation of its commitments regarding the recommendations and concluding observations of the torture file, which we hope will be implemented effectively in line with human rights priorities.

As we appreciate sending a draft (the new Iraqi Penal Code) from the Presidency of the Republic to the Iraqi Parliament in 2021, we stress the need to observe international standards and constitutional guarantees within the legal articles related to criminal justice and the rule of law.

The legislation of the Inmates and Depositors Reform Law No. 14 of 2018, was a good step towards improving the reality of the inmates, but we still urgently need the actual application of the law, including building new prisons, and providing the requirements of inmates, especially women, girls and juvenile children.

Despite the legislation (Law No. 58 of 2017 for the Protection of Witnesses, Experts, Detectives and Victims), and with the announcement of Instructions No. 1 of 2019 to facilitate the implementation of the provisions of the law, it has not been implemented tangibly, and many workers in law enforcement institutions are still not implemented the law.

Despite Iraq’s accession to the Convention against Torture on July 7, 2011, and with a preliminary draft of the anti-torture bill in Parliament from 2017, the response is still weak.

In general, Iraq is still in great need of enacting criminal justice laws and legislation related to torture, including the law against enforced disappearance, the law on the right of the innocent accused, and the law on freedom of expression, assembly and peaceful demonstration.

prisons:

The phenomenon of overcrowding in Iraqi prisons is one of the very big challenges, sometimes exceeding its absorptive capacity by up to 50%. Despite the efforts made by the Ministry of Justice, the implementation of plans to construct new buildings and restore existing buildings is progressing very slowly, while the Ministry of Justice is working to ensure the transfer of detainees and prisoners with health conditions To hospitals, most detention facilities and prisons still lack medical staff and appropriate medical equipment, and the Ministry of Justice is forming a joint committee from the Ministries of Justice and Health to deal with such cases.

It is not easy to obtain accurate numbers of detainees and those convicted, and all detainees are placed under the authority of government institutions, namely the ministries of Justice, Interior and Defense, Operations Command and the Anti-Terrorism Service.

However, they do not receive any qualification or specialized training to move from the prison stage to the stage of integration into society, and until 2020, the total number of convicts and detainees in prisons and detention facilities, except for the Kurdistan Region, reached 68,560.

There is no prison designated for women, except for the reform prison in Baghdad and Hilla. In the rest of the governorates, women are in reform prisons in one or more rooms, and they suffer overcrowding, lack of rehabilitation and follow-up after release, and the absence of social and psychological support services.

The organization receives or monitors cases of ill-treatment of women in Baghdad and Hilla prisons, which requires the provision of a safe environment in accordance with human rights principles and Nelson Mandela standards.

Juveniles:

The Ministry of Justice periodically follows up the reality of juveniles , and works to facilitate their release, but challenges still exist, as it is noted that the number of social researchers in juvenile reform homes is low compared to the number of people placed in homes and correctional departments in Baghdad and their absence in the provinces.

Despite the efforts made to include juveniles in psychological and social support courses before their release in order to reinstate them, they do not correspond to the required amount of support that is supposed to be provided to the juvenile, which was referred to in Articles (99-117) of the Juvenile Welfare Law No. 76 of 1983.

The number of inmates is double the absorptive capacity of most centers, in the Rehabilitation School for Boys and the School for Young Adults in the Baghdad Governorate affiliated to the Ministry of Justice, and it is noted that the infrastructure is weak and the lack of rehabilitation, where most of the buildings are old and dilapidated and are not suitable for depositing juvenile children, such as (Baghdad Observation House). The Department of Rehabilitation of Convicted Boys, and the Department of Rehabilitation of Young Adults in the Jaifer District), and in most of the Iraqi governorates, there are no dormitories or correctional schools, but the juvenile police stations affiliated to the Ministry of Interior receive juveniles, male or female (convicted or accused), It is also noted that the actual number is more than the capacity in the halls of juveniles centers and they are small in size and contain a small room as a health unit, and most of them lack means of ventilation or good lighting or appropriate cooling and heating methods.

Most of the crimes for juveniles fall within the crimes (terrorism, theft, then murder, and then immoral crimes) and to a lesser extent crimes (drugs, robbery), and it is noted the absence of separation between age groups and the type of crime in some detention centers, due to the lack of buildings covering these groups.

On December 4, 2022, the Juvenile Reform Department of the Ministry of Justice clarified the monthly data on the number of those released, as their number reached (90) juveniles, including (41) detainees who were released and (38) released after the end of their sentences and (10) On conditional release.

Badush Prison:

In June 2014, after taking control of Badush Central Prison in Mosul, ISIS killed 670 people on sectarian grounds (from the Shiite sect). The arrested prisoners were transferred to locations close to the prison, and they were sorted and separated on the basis of their religion, humiliation and then systematically killed. In May 2021, the Department of Mass Graves Affairs and Protection carried out procedures for opening mass graves

In 2December 2021, the UNITAD team investigating ISIS violations in Iraq in accordance with Security Council Resolution 2389 (2017), during its report to the UN Security Council, indicated that these attacks amount to war crimes and crimes against humanity, and the team has finalized them, to support Local prosecutions for these crimes, at the same time, there is not enough attention on the part of the competent authorities in Iraq.

The International Committee for Missing Persons, in cooperation (ICMP) with the government, works to discover mass graves and conduct laboratory examinations to identify the victims.

Torture and inhuman or degrading treatment:

On a regular basis, torture is monitored and documented by the security institutions in cases (arrest, detention, investigation, trial, and sometimes even after the verdict is issued), and the most systematic and high-risk cases of torture are during the investigation, and many of the complaints that are documented are coercion against Confessing to the crime through torture, which led to misleading the Iraqi judiciary and the competent courts, and cases of torture are not limited to the type of accusation, the place or the security institution, as it is practiced systematically, and many torture victims hesitate to file a complaint, for fear of retaliation from some policemen .

In the province of Najaf in July 2019, and in the case of the death of the accused (M.R.A.) during the investigation, and when the case was followed up, the police answered that the accused was ill and there was no torture, but the details of the report (forensic medicine department) in the Najaf Health Department proved that the death It was due to torture.

During the protests on December 20, 2020, and in a dangerous precedent, the first of its kind in Iraq, when the Iraqi authorities published pictures and names of a group of children who were arrested and detained without a clear legal justification, and torture was practiced against them, which is a clear violation of the legal guarantees of the constitution, and a punishable measure. The Juvenile Welfare Law of Article 63 (First - it is not permissible to announce the name of the juvenile, his address, the name of his school, his photograph, or anything that leads to knowing his identity), which is also a grave violation of international conventions, including the Convention on the Rights of the Child, binding on Iraq.

In May 2020, grave violations of law enforcement forces were documented with the child (HS), as he was verbally and physically abused without justification and humiliating behavior and immoral behavior by the police, which aroused public opinion, and despite the announcement of an investigation committee, it is not sufficient, where the law enforcement forces competent to protect the demonstrators are chosen without the presence of professional standards and ethical behavior, and the absence of competence or information on human rights standards.

During the month of July 2021, and in the case of the accused (Hisham Muhammad Hashem), who died, according to his family, due to torture during his arrest by the Basra Crime Control Directorate. His family said that their son was arrested as a result of the names being similar to one of the wanted men and he has a release book, and despite the formation of an investigative committee by the Ministry of Interior to investigate the crime, the results of the investigation have not been officially announced.

In Kirkuk governorate, the case of (H.M.A) (28 years old) was arrested from his workplace while working as a guard for a private company in the industrial zone in June 2021 by a security force affiliated with the Federal Police Intelligence. According to his father, Hassan was tortured inside the prison, which led to the cutting of his fingers His left hand, while the right hand, one finger was cut off, while several areas of his body suffer from serious wounds and damage to the outside of the head, forcing the security forces to take him to the hospital.” Despite the Ministry of Interior’s follow-up to the case, the results of the investigation were not officially announced.

In September 2021 in Al-Muthanna Governorate, Mr. (S.W.G) was subjected to ill-treatment and verbal humiliation with torture in various forms, according to an unrealistic accusation, and despite the complaints submitted to government institutions and the Human Rights Court, but according to what the victim mentioned, the response is weak, He feels disinterested, as a result of his transformation from an innocent to an accused.

Many of the accused are reluctant to file the complaint, fearing that they will be subjected to ill-treatment or torture again, and sometimes the investigative authorities hide the accused who were tortured from the supervisory authorities, and the absence of forensic doctors in prisons and detention centers has led to the loss of the rights of the accused.

Therefore, there is no data on all received complaints alleging torture or other ill-treatment, including the nature of the complaint, the authority receiving the complaint, investigation procedures taken, investigation results, accountability procedures followed, and remedies provided to the victim.

Excessive use of force by security forces:

In Babylon Province (Hilla city) : during month of September 2021, the Iraqi government confirmed that the confession was extracted under torture in the case of the accused Ali Kadhim Abdul Hamidan, who was tortured to confess to killing his wife, who was later found alive in another province, and according to the interview of the victim Ali, he was beaten With a stick, punching him for hours on end, and hitting him on the feet using electricity, in addition to verbal abuse, suspension of the body from various sides, and humiliating and immoral mistreatment by the investigation officer.

Despite Ali's demand for a medical examination by the court during the investigation period, the Crime Prevention Department in the Al-Seddah area worked to delay the medical examination by 35 days, in order for the effects of torture to disappear, and the case aroused public opinion, which necessitated the follow-up of the Prime Minister Iraqi , who stressed the conduct of investigations and the punishment of those involved in the investigation .

Also in Babylon Province, on 30December 2021, a security force raided a house in the (Jableh) area north of the city of Hilla (the home of the victim Rahim Kadhim Al-Ghurairi), and deliberately used excessive force, which led to the killing of 14, including women and children, and it was a crime High risk and indicates the exploitation of the governmental function in the security establishment, as well as the use of authority and misleading the government with incorrect information, on the pretext of personal revenge. In the first moments of the crime, the Babylon Governorate Police worked to mislead the federal government and public opinion with incorrect information. The National Security Agency, despite the confession of 14 security officials, including officers, to the crime, but the details of the investigation and judicial procedures are still not announced.

Excessive force in demonstrations:

In the governorates of Iraq and the Kurdistan region, and for the purpose of dispersing the demonstrators, especially in Baghdad, tear gas canisters were used, which led to civilian casualties, and in other cases, some security forces used hunting rifles to fire very small iron balls, which led to various injuries, as happened in the square Al-Khilani in Baghdad, and in different governorates, shots are fired randomly, and in other cases, unknown armed groups in cars without official plates fired shots at the demonstrators, which led to the killing and wounding of a number of demonstrators in Basra and Nasiriyah during January 2020, as well as in Najaf Governorate On January 5, 2020, 7 civilian demonstrators from unknown armed groups were killed and 186 wounded, and during the years 2019 and 2020, the security forces work to arrest and detain demonstrators, who are often released by the court for the lack of convicting evidence, and sometimes Some protesters are delayed in detention for the purpose of investigation, with the use of torture and inhuman or degrading treatment, and the Bar Association and some human rights organizations rely on the protester Harin before the courts for the purpose of their release.

The number of deaths in the demonstrations (protesters and security forces) from October 2019 until June 2020, there are 558 (541 civilians, 17 security forces), and 24,688 were injured (20,597 civilians, 4,091) security forces, and the number of demonstrators is among the missing And 75 abductees, 22 returned to their families, including 5 cases of abduction of women in Baghdad.

In August 2021, the Supreme Judicial Council indicated in a press statement that “the Council rejects any practice that leads to a violation of human rights, and among these practices are cases of torture that occur by some members of the security services during the investigation of the accused wanted by the judiciary.” The Supreme Judicial Council works to follow up on violations On July 7, 2020, a judicial investigative body was formed to investigate cases of assassinations in the capital, Baghdad, and the rest of the provinces.

Despite the existence of the Human Rights Court, there are no official procedures clarifying the mechanism for filing a complaint by persons who have been subjected to torture.

Recommendations:

- 1- Disclosing the results of the investigation of the Supreme Governmental Fact-Finding Committee formed by Diwani Order 293 of 2020 to investigate the violations during the October 2019 demonstrations and the subsequent assassinations, and to compensate the victims of violations in a manner appropriate to the damage.
- 2- We call on the judicial authorities, and the Public Prosecution, and in accordance with Judicial Order No. 206 of July 7, 2020, to investigate all cases of assassination, kidnapping, arbitrary arrest and cases of unlawful detention in a manner that achieves the principles of justice and the rule of law.
- 3- We call on the Iraqi parliament to follow up on the procedures of a fair and transparent investigation and work to prosecute and punish the perpetrators of violations and not go unpunished for the violations that led to the killing, wounding and disappearance of young demonstrators.
- 4- Disclosing the results of investigations carried out by the Ministry of Interior of cases of torture and inhuman or degrading treatment against the accused, especially the investigation of cases of torture that leads to death.
- 5- Speeding up the legislation of the Iraqi Penal Code, the Anti-Torture Law, the Anti-Disappearance Law, the Law on the Right of the Innocent Accused.
- 6- Effective implementation of the National Human Rights Plan (2021-2025), including the sections on combating torture and ill-treatment through training law enforcement institutions and prison administrations.
- 7- We call upon the Parliament, the government and the judiciary in Iraq to make more efforts to follow up and prosecute the perpetrators of the murder of the Badoush prison inmates and not to escape punishment, in accordance with international and national investigations, and to provide reparation to the families of the victims, including the completion of the handover of the remains.
- 8- The necessity of including the bodies responsible for juveniles, including judges, prosecutors and law enforcement forces, in training courses to deal with juvenile delinquents in accordance with international standards.



9- Speeding up the establishment of prisons, providing a safe environment for inmates in line with the standards of Nelson Mandela, providing all basic services, with rapid response to patients with chronic diseases, and providing a forensic doctor in reform prisons.

10- The necessity of announcing and in clear statements about complaints of torture received by the Human Rights Court, the Ministry of Interior, the Ministry of Justice, and the Human Rights Commission, also clarifying the investigation procedures and results, including the mechanism for protecting and redressing victims.

11- Authorizing some specialized human rights organizations to visit prisons and detention centers in coordination with the government and the concerned authorities, in accordance with specific standards and procedures.