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مركز جنيف الدولي للعدالة

منظمة غير حكومية مستقلة
مؤسسة طبقا للقانون المدني السويسري

Report to

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Working Group on Universal Periodic Review
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By

Geneva International Centre *for* Justice (GICJ)

State under review

Iraq

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Executive Summary

During the Universal Periodic Review (UPR) of 2010, Iraq was intensively criticised for the violations of the core international instruments ratified by Iraq. In the end of the review, the government of Iraq reiterated its commitment to the realisation of its international obligations to advance human right protection. However, during the past four years, the Iraqi government and its state agents consistently implemented policies and carry out actions in violation of the **right to life, right to liberty and security of a person, right to a fair trial, including habeas corpus, and an absolute prohibition of torture and ill-treatment**. These violations are widespread and systematic. The perpetrators know that their conduct is part of an attack against civilians, which amount to **crimes against humanity** under international law.

Despite numerous recommendations made during the 2010 UPR on respect for the **right to life**, Iraq neither abolished **the capital punishment** nor established a moratorium. The high rate of executions is the result of accusing the opponents, human rights defenders and protesters in terrorism. During 2010-2013, most of the 391 executions carried out were based on the Anti-Terrorism Law. In addition to that secret executions in Iraq take place on a daily basis – the execution of ‘secret prisoners’ and summary executions of those arrested or detained.

Right to liberty and security is infringed in Iraq at alarmingly increasing rate through targeted and random arrests without warrant, charges or based on suspicion of involvement in terrorist activity. The arrests are often indiscriminate in nature and represent a regular well-known practice with the excessive use of force, including lethal force during the arrest raids, especially those conducted by the Minister of Interior, Counter-Terrorism Directorate and the Ministry of Defence. The majority of the arbitrary arrests are sectarian and politically motivated under the pretext of the fight against terrorism. The governmental police units arrest thousands of persons but refuse to give any information about the fate of the arrestees. Just to give few examples, at least 4000 people were indiscriminately arrested in one single act in March 2012 and earlier approximately 1,500 persons were arrested under the direct orders by Maliki accused of being “Saddam Hussein’s loyalists plotting against the government.”

Enforced disappearances and secret detentions is the issue downplayed by the Iraqi government and treated with secrecy by the authorities. Thousands arrested persons were found dead. However, the Iraqi government says it has no central database to link the bodies found or buried anonymously with the list of names of the missing. Moreover, the victims’ families are often reluctant to claim the bodies from the Medico-Legal Institutes for fear of reprisals.

During the last UPR, Iraq was repeatedly recommended to improve the respect for **due process and fair trial**. The current situation of the Iraqi judicial system represents an environment of human rights violations, corruption and interference of the executive in the affairs of the judiciary. The administration of justice undermines the credibility and casts doubts on conviction of persons accused in such a serious crime as an act of terrorism. During the last four years, lawyers and judges from Iraq provided Geneva International Centre for Justice with information that they were regularly subjected to intimidations and threats by the authorities, by the Prime Minister and his office in particular. There are continuous complaints on lengthy and unreasonable delays in informing the detainees about charges against them. The confessions obtained by **torture and ill-treatment** are often used as evidence in the court to convict in the absence of credible evidentiary material.

Right to Life

Iraq is placed among the top three executioner-states of the world.¹ During the Universal Periodic Review (UPR) of 2010, around 40 states recommended Iraq to abolish the capital punishment. In addition, the UN Secretary-General, the UN High Commissioner on Human Rights and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions called Iraq for establishing moratorium and amendment of the legislation. However, Iraq disregarded the numerous calls concerning the death penalty. The numerous arrests campaigns, which targeted the opponents, the human rights defenders and protesters on a highly discriminatory sectarian basis in certain areas and cities resulted in a number of accusations in terrorist activity, which in its turn rapidly increased the rate of executions on ‘terrorist charges’.

Domestic legislation

While the Iraqi constitution in Article 73 (8) makes clear that all death sentences shall be signed by the president himself, Iraqi officials have frequently made the case that strictly speaking no presidential decree is needed to implement a death sentence. In the vast majority of the cases, deputies of the president sign presidential decrees. The majority of the executions have been carried out under the pretext of fighting terrorism and with the legal grounding in Art.4 (1) of Anti-Terrorism Law. It does not only legalise capital punishment for those who commit terrorist acts, but also for those who are accused by the government to finance, provoke, plan, or enable such acts.

Under Anti-Terrorism Law, a person can be sentenced to death on 48 charges. The definition of perpetrators is as following: “anyone who commits, as a main perpetrator or a participant, a terrorist act, along with anyone who incites, plans, finances or assists terrorists to commit such a crime; anyone who intentionally covers up any terrorist act or harbours a terrorist with the purpose of concealment”. The same law offers amnesty and anonymity to secret informers who report alleged terrorist activities. As a result of false reports many have been wrongly arrested and executed. The Prime Minister and his authorities are using this notorious law to arrest, detain and sentence hundreds of individuals, claiming that those sentenced to death and executed are terrorists and threaten national security.

Interestingly, the Minister of Justice revealed plans to amend the Iraqi Criminal Proceedings Nr.23 of 1971, which ensure basic human rights to the accused. According to the Minister, a draft to this end is currently under review by the Iraqi Council of Ministers. It needs however to be seen as a travesty of justice to amend legislation protecting Iraqis’ human rights. Such practices increase concerns regarding the ‘just’ application of capital punishment in Iraq. Furthermore, the Iraqi authorities never provide exact information about the identities of those executed, the charges against them, or the evidence presented against them at trial.

Executions in numbers

The execution of ‘secret prisoners’ and summary executions is a common practice in Iraq. It is however well documented that the official number of executions in Iraq is rapidly and continuously increasing. As recorded by various organisations, 18 persons were executed in 2010, 67 executions in 2011, in 2012 there were 129 executions. The year of 2013 was the year of a record execution rate in Iraq. According to March 2014 report of the UN Secretary-General, a total of 177 executions were carried out in 2013, most of which under Anti-Terrorism Law.²

¹ Al Arabiya (2013) at: <http://english.alarabiya.net/en/perspective/analysis/2013/12/31/Increase-in-Iraq-executions-draws-international-ire.html>

²Second Report of the UN SG submitted pursuant par. 6 of resolution 2110 (2013), S/2014/190, 14 March 2014.

To prove the government's power and disrespect for international pressure and all demands to halt this inhumane practice. According to the official statements given by the Iraqi Minister of Justice al-Shammari, 37 people were hanged between the 19 and 23 January 2014, other credible sources mention at least another 12 secret executions that have additionally been carried out. The NGOs found that on the same day of the latest executions in January 2014, the President's office ratified around 200 further cases of people sentenced to death, paving the way for their executions to be carried out in near future. As of 24 March 2014 to a horrifying total number of 60 persons.

Secret executions

It is strongly believed by contacts on the ground, lawyers and several NGOs that a high number of secret executions in Iraq are committed on a daily basis. In numerous cases, security forces arrest and detain individuals without giving their families any information after the arrests on the detainees' whereabouts or physical condition. In their responses to the families, they pretend the specific individual has never been arrested. This leaves the detained highly vulnerable to any abuse by the security forces and denies him any right for justice or accountability. In numerous cases these 'secret prisoners' are executed and their bodies found days later with signs of torture in many cases and obvious traces of the execution. This practice of 'secret execution' raises the number of actual capital punishment to almost a double and demonstrates the Iraqi government's abuse of capital punishment and flawed justice system.

Right to Liberty and Security

Unlawful Arrests

An alarmingly increasing rate of targeted and random arrests without warrant, charges or based on suspicion of involvement in terroristic activity further agitated the sectarian tensions and caused more violence in Iraq during the years of 2010-2014. The arrests are often indiscriminate in nature and represent a regular well-known practice with the excessive use of force, including lethal force during the arrest raids, especially those conducted by the Minister of Interior, Counter-Terrorism Directorate and the Ministry of Defence. The majority of the arbitrary arrests are sectarian and politically motivated under the pretext of the fight against terrorism.

The Iraqi society suffers from massive arbitrary arrests in the interest of the supposed public safety and security. In 2011, thousands of people were arrested in Iraq during the operation launched by the security forces against members of the banned Ba'ath party. Police forces in Basra arrested about 2312 wanted persons in six months of 2011. On 31 October 2011, the government security forces arrested 115 civilians during raids and by early November 2011, the government announced that 655 former Baathists were 'picked up'. In one of the cases, approximately 1,500 persons were arrested under the direct orders by Maliki accused of being "Saddam Hussein's loyalists plotting against the government." At least 4000 people were indiscriminately arrested in one single act in March 2012 before preceding a summit of the Arab League to take place in Bagdad. On 23 April 2013, the Iraqi army and militia stormed the demonstration area attacking protestors in Hawija. This was a direct military attack during which armed forces shot heavily and indiscriminately using live ammunition, tanks and helicopters in addition to trucks with water hoses with extremely hot water, causing serious burns and death of demonstrators. At least 50 demonstrators were killed, 150 injured and more than 400 arrested.³ Moreover, they attest that many wounded

³ 'GICJ requests that an independent international investigation mission be dispatched to Iraq', GICJ - Urgent Appeal on the massacre of Iraqi demonstrators in Al-Hawija at: http://gicj.org/index.php?option=com_content&task=view&id=290&Itemid=52

protesters were executed while lying on the ground following their arrest by SWAT forces.’⁴ Further alarming waves of arrests occurred in August 2013 at the end of the Muslim holiday Eid Al-Fitr under the campaign officially named “Thár al-Shuhadá” or “Martyrs’ Revenge” with 1,000 persons arrested and dozens killed in the operation around Baghdad and Al-Anbar and other provinces as “terrorists”, which also undermines the presumption of innocence.

Enforced Disappearances and Secret Detentions

The problem of the disappeared and/or missing persons in Iraq is treated with secrecy by the authorities and the given figures are downplayed and very unreliable. Iraq says it has no central database to try to link the unidentified bodies that have been buried anonymously with the list of names of the missing. Moreover, the victims’ families are often reluctant to claim the bodies from the six Medico-Legal Institutes around the country for fear of reprisals. Even looking for missing relatives in hospitals is not safe. In addition, there are reports of bodies that end up buried in mass graves and are not recorded at the morgues. The governmental police units arrest thousands of persons but refuse to acknowledge it and give any information about arrestees.

Disappearances still occur on a very regular basis in Iraq. The most important parties involved now are the Iraqi army, police, and various militias linked to the government. Often, forced disappearance implies murder, “the victim in such a case is first abducted, then illegally detained and often tortured; the victim is then killed, and the body is then hidden. Typically, a murder will be surreptitious, with the corpse disposed of in such a way as to prevent it ever being found, so that the person apparently vanishes. The party committing the murder has deniability, as there is no body to prove that the victim has actually died.”⁵

Moreover, the growing phenomenon of secret prisons in Iraq, which even international organizations have failed to locate, leads to a large number of reported and unreported cases of forced disappearances. “There is no safe place in Iraq. People can be disappeared and sent to secret, illegal detention centres anywhere in the country, without the knowledge of the family or the person’s lawyer,” Al-Haidari said. “Many are assassinated and buried in secret.

Right to Due Process and Fair Trial

During the last UPR, Iraq was repeatedly recommended to improve the rule of law. Since 2010, the international and local NGOs as well as the UN agencies were continuously reporting and alarming on the faults of the justice system in Iraq. The current situation of the Iraqi judicial system represents an environment of human rights violations. **The corruption in the administration of justice undermines the credibility of justice** system and casts doubts on conviction of persons accused in such a serious crime as an act of terrorism. The interference of the executive in the affairs of the judiciary undermines one of the core elements of a democratic state such as separation of powers. During the recent years, lawyers and judges from Iraq provided Geneva International Centre for Justice and other NGOs with credible and reliable information that they were regularly subjected to **intimidations and threats by the authorities** and by the Prime Minister and his office in particular. The Prime Minister al-Maliki’s congratulations to those lawyers who refuse to represent the ‘terrorist’ detainees and clear threats to those lawyers

⁴ GICJ together with two hundred NGOs strongly condemn the execution of wounded protesters in al-Hawija and request that a Special Rapporteur on the human rights situation in Iraq be appointed and a special session on Iraq be held’ at http://gicj.org/index.php?option=com_content&task=view&id=301&Itemid=52

⁵ “Enforced Disappearance: The Missing Persons of Iraq”, Dirk Adriaensens at: <http://www.globalresearch.ca/enforced-disappearance-the-missing-persons-of-iraq/22164>

who defend them expressed during the 79th anniversary of the Iraqi Bar Association is one of the outrageous examples of public interference.⁶

The fate of an arrestee can be easily predicted in advance: unlawful detention, most likely torture and/or ill-treatment and questionable sentence. Following the arbitrariness of arrests, the detainees face abuse of due process and fair trial guarantees. There are a number of complaints on lengthy and unreasonable delays in informing the detainees about charges against them. The confessions obtained by torture and ill-treatment are often used as evidence in the court to convict in the absence of credible evidentiary material. According to the Iraqi law, the accused are provided with free legal representation, but there are complains that the accused meet the state-appointed lawyers for the first time at the court proceeding and those defence lawyers are not active due to a low pay.

Torture and Ill-treatment

During the period of 2010-2014, the use of torture and other cruel, inhuman or degrading treatment by the law-enforcement and military agents of Iraq did not decline but rather further increased. The practice of torture and ill-treatment during interrogations in the places of detention run by the Ministry of Interior and Anti-Terrorism Directorate are documented. This practice is also widespread in pre-trial detention centres and prisons often used to obtain confessions of persons under the charges of committing crimes of terrorism. The prohibition of torture and ill-treatment is not even a norm in Iraq let alone enforcing it as an absolute prohibition.

Recommendations:

- The Iraqi government to undertake genuine actions to ensure the implementation of its international obligations under both international humanitarian law and human rights law;
- The Iraqi government should investigate together with the Working Group on Arbitrary Detention, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to visit Iraq and fully investigate the cases of arbitrary detention, torture and ill treatment;
- The Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism to actively encourage the Iraqi government to amend the Anti-Terrorism Law;
- The UN and the Human Rights Council to ensure that all human rights violations in committed in Iraq to be investigated by an international independent body;
- The reinstatement of the position of a Special Rapporteur for Iraq;
- To halt any military aid to the Iraqi government until the human rights investigation by an independent body is finalised.

⁶ “Iraq - Continuous interference of the executive in the judiciary”, at: http://gicj.org/index.php?option=com_content&task=view&id=116&Itemid=52