



# UNIVERSAL PERIODIC REVIEW

## IRAQ

(THIRD) CYCLE

SUBMISSION TO THE STAKEHOLDERS' SUMMARY

**Alkarama Foundation, 28 March 2019**

### Contents

1	GENERAL CONTEXT AND RECENT DEVELOPMENTS.....	2
1.1	<b>Scope of international obligations</b> .....	2
1.2	<b>Human rights infrastructure</b> .....	3
2	COOPERATION WITH INTERNATIONAL HUMAN.....	4
	RIGHTS MECHANISMS.....	4
2.1	<b>Cooperation with the Treaty Bodies</b> .....	4
2.2	<b>Cooperation with the Special Procedures</b> .....	5
3	IMPLEMENTATION OF HUMAN RIGHTS LAW OBLIGATIONS .....	5
3.1	<b>The Right to Life, Liberty and Security of Persons</b> .....	5
3.2	<b>The Right to Freedom of Expression</b> .....	9

# 1 GENERAL CONTEXT AND RECENT DEVELOPMENTS

1. Since the US-led coalition invasion of Iraq in 2003, the country has been torn by civil war, internal division, as well as regional turmoil.
2. This situation has resulted in a weak government that is unable or unwilling to combat misuse of power or to bring perpetrators of severe human rights violations to justice.
3. Since the last UPR cycle in 2014, Iraq faced the threats and violations of the so-called Islamic State of Iraq and Syria (IS) which controlled large areas of the country. The war on IS was used by the Iraqi government as a pretext for committing the most heinous human rights crimes, including against Sunni civilians. This is particularly through the practices of the Popular Mobilisation Forces (Al-Hashd Al-Shaabi), which consist of about 40 state-affiliated militias.
4. During its last UPR cycle, Iraq has accepted numerous recommendations made by several countries regarding developing its human rights situation, yet most of these recommendations have not been implemented so far and the human rights situation is worsening.
5. Moreover, over the course of the past four years, Iraq received numerous recommendations from different UN bodies such as the Human Rights Committee<sup>1</sup>, the Committee on Enforced Disappearance<sup>2</sup>, and the Committee against Torture<sup>3</sup>. However, the country has not implemented most of the recommendations until now.

## 1.1 Scope of international obligations

6. Iraq has not ratified the first and the second optional protocols of the International Covenant on Civil and Political Rights (ICCPR), although it has committed in the last UPR cycle<sup>4</sup> to ratify both protocols.

<sup>1</sup> "Treaty bodies Download", in Tbinetnet.ohchr.org, 2019, <[https://tbinetnet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRQ/CO/5&Lang=en](https://tbinetnet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRQ/CO/5&Lang=en)> [accessed 11 March 2019].

<sup>2</sup> "Treaty bodies Download", in Tbinetnet.ohchr.org, 2019, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/234/74/PDF/G1523474.pdf?OpenElement>> [accessed 11 March 2019].

<sup>3</sup> "Treaty bodies Download", in Tbinetnet.ohchr.org, 2019, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/201/57/PDF/G1520157.pdf?OpenElement>> [accessed 11 March 2019].

<sup>4</sup> Among the countries that have recommended to ratify OP1 and OP2 of ICCPR were: Spain, Australia, Portugal, Sierra Leone, Paraguay, Chile, Uzbekistan. Resource: UPR Info's Database on UPR recommendations", in UPR Info, 2019, <<https://www.upr-info.org/database>> [accessed 11 March 2019].

7. Despite the numerous calls on Iraq by the Committee against Torture,<sup>5</sup> the Human Rights Council, and UN member states in the previous UPR<sup>6</sup> to adopt a definition of torture that complies with article 1 of the Convention against torture (UNCAT), a broad and vague definition which allows judges to arbitrarily determine what constitutes acts of torture remains.<sup>7</sup> Moreover, Iraq has not ratified article 22 UNCAT on individual complaints. It has also not ratified the optional protocol to the UNCAT which requires the creation of national preventive mechanisms.
8. Although many countries<sup>8</sup> have called on Iraq to ratify the Rome Statute of the International Criminal Court (ICC), Iraq has yet to ratify the statute.
9. Although it has ratified the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), Iraq has not accepted the individual complaint procedure under article 31.

## RECOMMENDATIONS

- a) Ratify OP1 and OP2 of ICCPR, the OPCAT, Rome Statute of ICC, as well as accept article 22 of UNCAT and 31 of ICPPED.
- b) Align the definition of torture with article 1 UNCAT.

## 1.2 Human rights infrastructure

10. The Iraqi National Human Rights Institution (NHRI), the Iraqi High Commission for Human Rights, was created in April 2012. However, the institution suffers from a lack of independence and impartiality and rarely addresses issues such as unfair trials, torture, and summary executions are rarely addressed by the NHRI.

<sup>5</sup> "Treaty bodies Download", in Tbineternet.ohchr.org,2019, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/201/57/PDF/G1520157.pdf?OpenElement> > [accessed 11 March 2019].

<sup>6</sup> UPR Info's Database on UPR recommendations received by Iraq", in UPR Info, , 2019, <<https://bit.ly/2u71rS> > [accessed 13 March 2019].

<sup>7</sup> [A Foundation, "Iraq Shadow report", 2016.](https://www.alkarama.org/sites/default/files/documents/ALK_CED_IRQ_Shadow%20Report_14082015_EN_Final.pdf) <[https://www.alkarama.org/sites/default/files/documents/ALK\\_CED\\_IRQ\\_Shadow%20Report\\_14082015\\_EN\\_Final.pdf](https://www.alkarama.org/sites/default/files/documents/ALK_CED_IRQ_Shadow%20Report_14082015_EN_Final.pdf)> [accessed 11 March 2019].

<sup>8</sup> Among the countries called on Iraq to ratify the Rome Statute in the last UPR cycle: Switzerland, France, Germany, Poland, Austria, Netherlands, Hungary, Belgium and many others. Source: UPR Info's Database on UPR recommendations", in UPR Info, 2019, <<https://www.upr-info.org/database>> [accessed 11 March 2019].

11. The NHRI was graded "B" by the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions, which means that it is only "partly complying with the Paris Principles".<sup>9</sup>
12. The SCA stated in its report that the commissioners in the Iraqi NHRI have been chosen based on political affiliation rather than experience which made the whole Institution politicized.<sup>10</sup>
13. NHRI has faced shortcomings of funding by the government which hindered its work and prevented it from opening offices in many provinces.
14. There have been claims by individuals subjected to torture that their situation got worsen after asking for meeting members of NHRI who has never responded.
15. Therefore, NHRI seemed to be highly politicized and not correspondent with the need of people whose rights are severely violated.

## RECOMMENDATION

- a) Iraq should detach its NHRI from any political influence and commissioners should be chosen based on qualifications.
- b) Iraqi government should provide enough funding for NHRI to fulfil its missions.
- c) NHRI should be improved to serve the real human rights situation in the country.

## 2 COOPERATION WITH INTERNATIONAL HUMAN RIGHTS MECHANISMS

### 2.1 Cooperation with the Treaty Bodies

16. Iraq did not submit its periodic report to the Human Rights Committee (HR Committee) which was due on 6 November 2018.
17. Iraq did not submit its periodic report to the Committee on Enforced Disappearances (CED), which was due on 18 September 2018.
18. Furthermore, Iraq does not cooperate in good faith with the CED, before which over 150 urgent actions related to disappeared individuals, and raised by Alkarama, are still

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<sup>9</sup> Ohchr.org, 2019, <[https://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](https://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf)> [accessed 14 March 2019].

<sup>10</sup> [A Foundation, "Iraq Shadow report", 2015, https://www.alkarama.org/sites/default/files/2017-06/ALK\\_HRCTee\\_IRQ\\_Shadow%20Report\\_28092015\\_LastVersion.pdf](https://www.alkarama.org/sites/default/files/2017-06/ALK_HRCTee_IRQ_Shadow%20Report_28092015_LastVersion.pdf) P.7 [accessed 9 March 2019].

pending to date. In their responses to the Committee, the authorities have not provided any information allowing to clarify the fate and whereabouts of these individuals.

## RECOMMENDATION

- a) Iraq should comply with the stated deadlines for submitting its periodic review reports to the Treaty Bodies.
- b) Iraq should submit its overdue reports to both the HR Committee and the CED.
- c) Iraq should cooperate in good faith with the CED regarding pending urgent actions.

## 2.2 Cooperation with the Special Procedures

19. Iraq has extended its standing invitation to all thematic Special Procedures.<sup>11</sup> However, it has not implemented the decisions and recommendations made by Special Procedures.

### RECOMMENDATIONS

- a) Iraq should enhance and improve its cooperation with the Special Procedures and their visits must be facilitated.
- b) Iraq should respond to Special Procedures communications and implement their recommendations.

## 3 IMPLEMENTATION OF HUMAN RIGHTS LAW OBLIGATIONS

### 3.1 The Right to Life, Liberty and Security of Persons

#### 3.1.1 *Enforced Disappearance*

20. Iraq has one of the highest numbers of enforced disappearances in the world with almost one million disappearances since the period of Saddam Hussein. Three quarters of the disappearances happened following the U.S. invasion of Iraq making it a systematic phenomenon in the country.

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<sup>11</sup> "Special procedures Country visits", in Spinternet.ohchr.org, 2019, <[https://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/StandingInvitations.aspx#iraq.>](https://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/StandingInvitations.aspx#iraq.>) [accessed 14 March 2019].

21. Most of the disappearances in the last few years follow the same pattern. People are usually detained after raids on their houses or at checkpoints by the security forces. Then victims are detained in secret places with no trial or charge and their families are denied information about their fate and whereabouts.
22. Alkarama is concerned that Iraq is not complying with the recommendations of the (CED). One important recommendation was the call on criminalization and prohibition of enforced disappearances in Iraq's national legislation as the Iraqi criminal code is silent on the issue.<sup>12</sup> In addition, Iraq has not taken measures to prohibit secret prisons or investigate cases of enforced disappearances as was recommended by the CED.
23. Alkarama has submitted 150 cases to the CED and several other cases to the UN Working Group on Involuntary and Enforced Disappearances.<sup>13</sup>
24. Enforced disappearance is also used against human rights activists<sup>14</sup> and journalists<sup>15</sup> in order to silence them if they denounce the violations committed by the authorities and affiliated militias. Moreover, speaking out about enforced disappearances leads to reprisals by the authorities.<sup>16</sup>

## RECOMMENDATIONS

- a) Iraq should comply with the recommendations of CED to clearly define and criminalize the crime of enforced disappearance in its domestic legislation.
- b) Comply with the recommendations of CED in totally prohibiting and revealing any secret detentions, and to transparently investigate cases of enforced disappearances.
- c) Iraq must reveal the fate and whereabouts of all individuals subjected to enforced disappearances.
- d) Iraq should stop its acts of repression against human rights activists and journalists working on the issue of enforced disappearances in the country.

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<sup>12</sup> Check Alkarama's Shadow report 2017 for further details:

[https://www.alkarama.org/sites/default/files/2017-08/ALK\\_IQ\\_CED\\_FollowUpReport\\_20170724\\_EN.pdf](https://www.alkarama.org/sites/default/files/2017-08/ALK_IQ_CED_FollowUpReport_20170724_EN.pdf).

<sup>13</sup> Examples in the following link: <https://www.alkarama.org/en/articles/iraq-alkarama-and-al-wissam-humanitarian-assembly-submit-ten-cases-enforced-disappearances>.

<sup>14</sup> See for example case of Jalal Al Shahmani: <https://www.alkarama.org/en/articles/iraq-activist-baghdad-missing-september-2015-following-abduction-militia>

<sup>15</sup> See for example case of Journalist Samir Al-Daami: <https://www.alkarama.org/en/articles/iraq-journalist-and-political-commentator-samir-al-daami-rearrested-and-forcibly>.

<sup>16</sup> See for example cases of : 1) Faisal Al Tamimi and Iyad Al Roumy: <https://www.alkarama.org/en/articles/human-rights-defenders-subjected-reprisals-iraqi-authorities-speaking-out-against-enforced>.

2) Imad Al Tamimi and Israa Al Dujaili: <https://www.alkarama.org/en/articles/iraq-human-rights-defenders-working-enforced-disappearances-continue-face-reprisals>.

### 3.1.2 Arbitrary Detention

25. Arbitrary arrests are systematic since people are usually arrested by Iraqi security forces without official warrants, including under the anti-terrorism law or the exception provided by the Presidential Order No.207/S which allows such arrests in cases of *flagrante delicto* or confrontation with the security forces. These provisions have allowed for abuses to be committed by the Iraqi authorities.
26. According to Iraqi law, detained people must be brought before the judge within 48 hours. However, evidence show that this is not likely to happen and persons who were arbitrarily arrested are waiting for long periods before being brought to court which is contrary to both national laws and articles 9.1 and 9.3 of ICCPR.
27. Arbitrarily detained persons could in fact be held in secret prisons which amounts to enforced disappearance mentioned above.
28. Alkarama is concerned about the country's lack of compliance with the international due process and fair trial standards.
29. Alkarama has submitted numerous cases of arbitrary detention to the UN Working Group on Arbitrary Detention (WGAD)<sup>17</sup> which has issued two decisions in 2017 deeming the detention of 19 staff of former vice-president Tariq Al Hashimi,<sup>18</sup> and the parliamentarian and member of opposition Ahmad Alwani<sup>19</sup> as being arbitrary. The WGAD has considered the two cases as arbitrary detentions and called the Iraq government to immediately release detainees. Iraq has not complied with the decisions to date.

## RECOMMENDATION

- a) Iraq should ensure in law and practice that arrests are only conducted using legal warrants.
- b) Iraq should ensure in law and practice that detainees are brought before judges no later than 48 hours and enjoy their due process rights.

<sup>17</sup> See for example cases of : 1) <https://www.alkarama.org/en/articles/iraq-un-experts-recognize-detention-engineering-professor-salih-al-dulaimi-arbitrary>.

2) <https://www.alkarama.org/en/articles/iraq-moroccan-prisoner-arbitrarily-detained-could-be-executed-any-time>.

<sup>18</sup> "Iraq: UN reiterates call for the immediate release of staff of former vice-president Al Hashimi | Alkarama Foundation", in Alkarama.org, 2019, <<https://www.alkarama.org/en/articles/iraq-un-reiterates-call-immediate-release-staff-former-vice-president-al-hashimi>> [accessed 14 March 2019].

<sup>19</sup> "Iraq: UN Calls for the Release of Parliamentarian Al Alwani and Denounces Political Suppression of Criticism | Alkarama Foundation", in Alkarama.org, 2019, <<https://www.alkarama.org/en/articles/iraq-un-calls-release-parliamentarian-al-alwani-and-denounces-political-suppression>> [accessed 14 March 2019].

- c) Iraq should release all the arbitrarily detained persons and ensure the respect of fair trial standards.
- d) Iraq should comply with the decisions of the WGAD.

### 3.1.3 **Death Penalty and Summary Executions**

30. The issuance of death sentences after flawed or unfair trials or based on confessions extracted under torture has suffered from a sharp increase since 2005.
31. The vague anti-terrorism law of 2005 mandatorily applies the death sentence. In September 2017, 42 persons were executed under charges of "terrorism". The UN High Commissioner for Human Rights stated that he was "extremely doubtful" that those persons have any means of fair trial before the death penalty decision.<sup>20</sup>
32. Moreover, in 2015, the Iraqi cabinet approved an amendment that would allow for the application of executions without the approval of the president following an inquiry by the Minister of Justice Haider Al-Zamili to speed up the application of death penalties. Alkarama is concerned about the consequences of this amendment as it allows for more executions to be issued and directly implemented.
33. Iraqi authorities are using the security situation in the country as a pretext for its wide issue of death penalty. In this regard, Alkarama is reiterating that the right to life is non-derogable according to ICCPR and thus must be respected in all cases. The Iraqi authorities have also systematically failed to respond to the numerous calls of the UN High Commissioner for Human Rights and independent UN experts in this regard.
34. Alkarama has submitted numerous cases to the Special Rapporteur on extrajudicial, summary or arbitrary execution regarding the abusive sentencing of individuals to the death penalty as well as the execution of individuals by state-sponsored militias belonging to the Popular Mobilisation Units.<sup>21</sup>

## RECOMMENDATIONS

- a) Iraq should establish a moratorium on the death penalty and put an end to arbitrary and summary executions in the country.
- b) Iraq should amend the anti-terrorism law.
- c) Fair trials must be ensured and decisions based on confessions extracted under torture must not be used as a ground for issuing death penalty.

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<sup>20</sup> "Alkarama Annual Report 2017 | Alkarama Foundation", in Alkarama.org, 2019, <https://www.alkarama.org/en/documents/alkarama-annual-report-2017>. P.36. [accessed 14 March 2019].

<sup>21</sup> <https://www.alkarama.org/en/articles/iraq-professor-engineering-salih-al-dulaimi-sentenced-death-basis-confessions-under>.

### 3.1.4 Torture

35. Alkarama has found that torture is a systematic interrogation practice in the country. It is widely used by the security services after arrest and during interrogation and as a form of reprisal.
36. The widespread character of the practice of secret detention and enforced disappearances creates a breeding ground for the systematic use of torture against detainees.
37. Torture is not clearly defined in the Iraqi legislation despite the many calls during the last UPR cycle as well as by the Committee against Torture in its 2015 concluding observations. The vague definition of torture creates a climate of impunity.
38. In fact, Alkarama found that in no single case of torture, perpetrators have been brought to court and held accountable.
39. Confessions made under torture are in most of the cases are the sole evidence based on which heavy decisions are made by a flawed justice system.
40. Alkarama has submitted numerous cases to the Special Rapporteur on Torture and other Cruel, Inhumane, and Degrading Treatment highlighting this pattern.<sup>22</sup>

## RECOMMENDATION

- a) Iraq must amend its definition of torture to ensure it is in line with UNCAT.
- b) Iraq has to stop using torture for interrogation and perpetrators must be brought to account.
- c) The Iraqi judicial system has to be reformed and judges must reject confessions made under torture as evidence.

## 3.2 The Right to Freedom of Expression

41. Journalists and Human Rights activists' right to freedom of expression is highly restricted and they continue to be harassed and subjected to reprisals. Forms of reprisals include the practice of enforced disappearance, arbitrary detention, and torture.
42. Alkarama has documented several cases of repression against human rights activists for documenting human right violations in the country. For example, in 2016, Iraq has

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<sup>22</sup> For example, check the case of Mohamad Al Jabouri: <https://www.alkarama.org/en/articles/iraq-man-sentenced-death-while-disappeared-basis-confessions-under-torture>.

arrested and tortured two human rights activists, Imad Amara and Faisal Al Tamimi, for covering the issue of enforced disappearances. Alkarama has sent an urgent appeal to the UN Special Rapporteur on the situation of human rights defenders calling for urgent intervention in Iraq to stop reprisals against activists.<sup>23</sup>

43. The Iraqi parliament is currently in the process of approving a draft law that would highly restrict freedom of expression in the social media. According to the currently proposed cybercrime law the violation of any “religious, moral, family or social principles or values” might to sentencing of one year in prison, meanwhile “harming the reputation of the country” carries a life sentence.<sup>24</sup>
44. Alkarama is concerned about the systematic violation of the right of freedom of Expression in the country and has filled several complaints to the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression.<sup>25</sup>

## RECOMMENDATIONS

- a) Iraq should stop violating the right to freedom of expression and prevent reprisals against peaceful dissenting voices.
- b) Iraq should not adopt the new proposed cybercrime law that will allow for further violations against practicing freedom of expression.

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<sup>23</sup> "Iraq: human rights defenders arrested and tortured for documenting cases of enforced disappearances | Alkarama Foundation", in Alkarama.org, 2019, <<https://www.alkarama.org/en/articles/iraq-human-rights-defenders-arrested-and-tortured-documenting-cases-enforced>> [accessed 14 March 2019].

<sup>24</sup> "Iraqi draft law on cybercrimes threatens freedom of expression", in Amnesty.org, , 2019, <<https://www.amnesty.org/en/latest/news/2019/03/iraq-draconian-cybercrimes-law-threatens-freedom-of-expression/>> [accessed 14 March 2019].

<sup>25</sup> Example cases:1) <https://www.alkarama.org/en/articles/iraq-human-rights-activist-disappeared-year-state-sponsored-militia>.

2) <https://www.alkarama.org/en/articles/human-rights-defenders-subjected-reprisals-iraqi-authorities-speaking-out-against-enforced>.