



IRAQ

Shadow report

**Report submitted to the Human Rights Committee in the
context of the fifth review of Iraq**

Alkarama Foundation – 25 September 2015

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1. Introduction

Iraq's fifth periodic report (CCPR/C/IRQ/5) was provided to the Human Rights Committee in October 2013, thirteen years overdue. The Committee will examine this report during its 115th session in October/November 2015. In the context of this review, Alkarama provides the present report in which it seeks to evaluate the effective implementation of provisions of the International Covenant on Civil and Political Rights (ICCPR) in Iraq. This report also presents Alkarama's main concerns and makes recommendations to the State party.

This report is based on the documentation of the human rights situation over the past ten years in the country presented by Alkarama to the United Nations (UN) special procedures with the cooperation and participation of local actors, including victims themselves, their families and lawyers as well as local non-governmental organisations (NGOs) working for the promotion and protection of human rights.

In order to review the human rights situation in a holistic manner, this report begins by providing an overview of the **current context of Iraq (1)**, particularly in light of the current situation of armed conflict and fight against terrorism. The **implementation of the Covenant in Iraq (2)** is then evaluated, in particular as it concerns the **scope of application of the Covenant** (Article 2), the **right to life** (Article 6), the right to **physical integrity and the prohibition of torture** (Articles 7 and 10). The report then focuses on Iraq's implementation of the **prohibition of arbitrary detention** and the **right to a fair trial** (Articles 9 and 14). **Freedom of opinion and expression** will be subsequently addressed, as well as the **impact of counterterrorism measures on the respect of the rights guaranteed by the Covenant** (Articles 2, 6, 7, 9, 10 and 14), which is essential in light of the current internal situation. For each of these subsections, recommendations to the State party are formulated. The report ends with a **conclusion** on the human rights situation in the country.

2. The Current Situation in Iraq

The deterioration over the past years of the human rights situation is a result of the effects of the United States (US) and the international coalition occupation leading to the ensuing civil war and internal division, as well as the regional turmoil.

Following the invasion of Iraq by a US-led coalition in March 2003, a Coalition Provisional Authority (CPA) aiming at ousting Saddam Hussein was established as the interim authority. The years of occupation were then marked by intense violence between the Iraqi insurgency and the Multi-National Force (MNF), composed essentially of American military forces. Before handing over sovereignty to an interim Iraqi government in June 2004 on the basis of a UN Security Council Resolution, the CPA issued an order granting immunity for all foreign forces and contractors operating under the auspices of the MNF for any offences including serious crimes committed in Iraq. However, the MNF remained in the country until 2008 while the US retained significant *de facto* power.

After the election of a Transitional National Assembly in 2005 and the adoption of the new Constitution creating an Islamic federal democracy, Prime Minister Nouri Al-Maliki put together a unity government in spring 2006. However, sectarian violence continued to escalate following a bomb attack on a Shia shrine in Samarra in February 2006 and continued throughout 2007, bringing the civil war to its height, with 34 000 civilians killed in 2006 alone.

In November 2008, as coalition forces started to hand over control of the territory to the Iraqi forces, the Iraqi Parliament approved the Status of Forces Agreement (SOFA) which established that US troops would leave the country by the end of 2011, releasing or transferring custody of all detainees they held to the Iraqi authorities. In 2009, six years after the invasion, US troops started to withdraw.

In March 2010, parliamentary elections were held and a new government headed by Nouri Al-Maliki was approved after nine months of political stalemate. Spates of bombings, ethnic tensions over

Kirkuk, the re-emergence of sectarianism, and political manipulation of state institutions were all recorded by international observers at the time of the elections. The ensuing political paralysis, the failure to respond to demands that were first discussed in Parliament and the violent response to the subsequent protest movement, which began in December 2012, favoured radicalisation over political dialogue. This tendency was further accentuated through the arrest and prosecution in December 2011 of prominent political figures who had peacefully criticised the government, as US troops finished withdrawing from the country.

In 2012 attacks targeting Shia areas on one hand and the crushing of peaceful protests denouncing the marginalisation of Sunni Muslims on the other plunged the country back to a state of sectarian war. As a result, 2013 experienced a serious escalation of violence, which allowed armed groups to grow in strength and increase the number of attacks on public institutions. Benefitting from the deterioration of the security situation, the former Al Qaeda in Iraq now referred to as "the Islamic State" (IS), reached the Al Anbar governorate in January 2014 and took over the cities of Fallujah and Ramadi, creating a grave humanitarian crisis followed by the exodus of hundreds of thousands of people.

In response to the intensification of fighting and the advance of IS in the northern and central parts of the country, including in Mosul and Tikrit, militias were mobilised by the government, kidnapping and executing hundreds of people. In August 2014, an international coalition led by the US intervened to stop the southern advance of IS by carrying out air raids, causing further civilian casualties.

Today, with the legacy of occupation, ensuing internal conflict and dictatorship, Iraq's weak institutions are unable to prevent abuses of power or hold perpetrators of serious human rights violations to account. Given the likelihood of a further deterioration in the situation, an increase in human rights violations, already generalised, is likely if sustained efforts are not made to record violations, identify perpetrators and bring them to justice.

In such a context, the recommendations issued by the Human Rights Committee as well as their follow-up would be instrumental in enhancing the respect of human rights in Iraq.

3. Implementation of the Covenant in Iraq

3.1 Scope of Application of the Covenant (Article 2)

3.1.1 Application of the Covenant to violations committed by the occupying forces, government-backed militias and the violation of the right to an effective remedy

During the occupation of Iraq by the international coalition led by the United States, serious human rights violations were recorded, including arbitrary detentions, torture in several detention centres – such as the infamous Abu Ghraib prison – enforced disappearances and extrajudicial executions. In particular, Alkarama has documented numerous cases of individuals who were tortured and often detained *incommunicado* by US forces before being handed over to the Iraqi authorities. Whilst some were sentenced by national Iraqi courts on the basis of confessions extracted under torture, others are still disappeared today, such as the following persons:

On 16 October 2005, 21-year-old **Wissam Salam Ali Al Hashimi** was supposed to meet his friend **Ali Hamid Abdul-Wahab Hamad Al Jeyali** and the latter's uncle, **Jabbar Ali Aati Al Suhayli**¹ at the Babylon Hotel in Karrada Street, Al-Jadria, Baghdad. However, once there, they were immediately arrested by US soldiers, without any warrant and without providing any explanation for the arrest. The forces took the three men to an unknown location, and they have been disappeared since.

¹ Alkarama, *Iraq: Three citizens arrested by American forces in 2005 and disappeared since*, 27 June 2014, <http://en.alkarama.org/component/k2/1246-iraq-three-citizens-arrested-by-american-forces-in-2005-and-disappeared-since?Itemid=> (accessed on 18 September 2015).

In August 2011, former co-detainees told Wissam's father that he was detained in Camp Cropper – now known as Al Karkh Prison – a detention centre which was handed over to the Iraqi authorities in late 2010. Although Wissam's father inquired at the Green Zone of Baghdad, Camp Bucca, the Ministry of Human Rights and the Ministry of Interior, while Ali and Jabbar's relatives filed a complaint at the police station of Al Jafar and contacted the Ministry of Human Rights, they have never been informed of their relatives' fate or whereabouts.

Due to the legal regime currently in force in Iraq, such cases of enforced disappearance and other human rights violations committed by US forces have still not been investigated.

A first legal impediment to investigation, prosecution and accountability is to be found in article 11 of the Iraqi Penal Code (PC), which provides that "[t]his Code is not applicable to offences that are committed in Iraq by persons who benefit from statutory protection under the terms of international agreements or international or domestic law."

Secondly, the sharing of jurisdiction between Iraq and the US as determined by the "Agreement Between the United States of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq" – also known as Status of Forces Agreement (SOFA) of 2008 – hinders the process of investigation, accountability and redress for victims. Indeed, article 12.3 SOFA provides the U.S with primary jurisdiction over US forces and civilian personnel for matters arising from inside agreed facilities and areas and committed on duty even outside these facilities and areas². Although the Iraqi authorities can theoretically request the US to waive this right of primary jurisdiction in specific cases³, there is no information available to us that would prove that Iraq ever demanded the US to waive its jurisdiction in order to exercise its own over specific cases of abuse. This is even more concerning considering that the US have consistently failed to investigate allegations of torture committed by its nationals over suspects held in custody abroad, as pointed out by the Committee against Torture⁴.

On the other hand, Iraq has primary jurisdiction over human rights violations committed by the US military and civilian personnel deployed in its territory for off-duty activities outside the agreed facilities, as per article 12.1 SOFA. However, even in these cases, there is no information available on any measure taken by Iraqi authorities to investigate abuses and bring perpetrators to justice.

It is therefore concerning to note that human rights violations committed during the US-led occupation by the US forces remain uninvestigated and unpunished. This infringes article 2.3 of the Covenant and in particular the right to an effective remedy for victims of violations.

Application of the Covenant to violations committed by government-backed militias

In the current context of armed conflict and internal strife, human rights violations are committed not only by the Iraqi security services, but also by several government-backed Shia militias operating with varying degrees of cooperation with the Iraqi armed forces, ranging from tacit consent to coordinated, or even joint operations.

Iraq's main Shia militias are currently the Badr Brigades – the armed wing of the Islamic Supreme Council of Iraq –; the Saraya al-Salam (Peace Brigades) – formerly the Mahdi Army, the armed wing of the Sadrist movement –; 'Asa'in Ahl al-Haq (the "League of Righteous"), as a splinter group of the Mahdi Army – and the Kata'in Hizbullah.⁵ The origins of these militias are to be found in a general

² Article 12.3 SOFA states "[t]he United States shall have the primary right to exercise jurisdiction over members of the United States Forces and of the civilian component for matters arising inside agreed facilities and areas; during duty status outside agreed facilities and areas".

³ As per Article 12.6 SOFA stating "the authorities of either Party may request the authorities of the other Party to waive its primary right to jurisdiction in a particular case".

⁴ Committee against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, 19 December 2014 (CAT/C/USA/CO/3-5), para.12.

⁵ Amnesty International, *Absolute impunity – Militia Rule in Iraq*, October 2014 (MDE 14/015/2014), p.17.

context of repression of any form of opposition by the Iraqi government prior to the US invasion, followed by its mobilisation and activism, especially after the Ba'athist coup in 1968.

Following the fall of Saddam Hussein and the reorganisation of Iraqi security forces, Shia militants were integrated into the reconstituted Iraqi army and police forces⁶, whereas all the commanders belonging to the previous Ba'atist regime were excluded. Some Shia militants, however, formed armed militia groups, which became increasingly widespread and powerful. This has enhanced the division of Iraqi society along sectarian lines.

In June 2014, following the seizure by the IS of territory in northern and western Iraq – including the city of Mosul –, “volunteers” were called by government officials, including the former Prime Minister Nouri Al-Maliki, and leading political and religious figures such as Grand Ayatollah Ali al-Sistani to take up arms against the IS⁷. As a result, an umbrella organisation composed of about 40 Shia militias was created – the “People’s Mobilisation Unit” or “al-Hashd al-Shaabi”⁸ – led by Hadi al-Amiri, former Minister of Transport⁹ and commander of the Badr Brigades¹⁰. On 30 September 2014, the Cabinet passed a resolution calling on Prime Minister al-Abadi to ensure that all militias under the al-Hashd al-Shaabi be provided with weapons, logistics, training, and salaries, while on 28 October 2014, the Council of Ministers approved a decree authorising the organisation to fight against the IS¹¹.

Since then, these militias have been carrying out security operations not only with the tacit consent but with the full endorsement of the government. However, they commit abductions, torture, mass killings as acts of sectarian retaliation against Sunni prisoners¹² and civilians¹³ in complete impunity, and are never held accountable for the abuses they commit.

The two following cases are particularly illustrative of how militias operate with the tacit consent or under the direct control of the governmental authorities and conduct arrests before transferring people to official detention facilities.

Abbas Fadhil Abboud Kadhim Al Batawi¹⁴, a 20-year old Iraqi student, was abducted on 16 September 2006 in the city centre of al-Mada'in, in the Baghdad Governorate, by a patrol of the “Jaish al-Mahdi” or “Mahdi Brigade” – which was replaced in 2014 by “Saraya al-Salaam” or “Peace Brigades”. The men were wearing civilian clothes and checked his identity before forcing him into a military vehicle that left for an unknown location.

Worried about his fate and convinced that he was being secretly detained by the authorities, his relatives visited many detention centres and filed complaints to the Ministry of Human Rights. However, the authorities continued to deny his detention. Oddly, in 2007, during a visit of former Vice-President Al Hashimi to Al Rusafa prison, which was broadcasted on national television, Al Batawi was among the detainees filmed. Although he could clearly be identified in the video footage, the authorities continue to this day to deny his detention and his family does not know where he is or even whether he is still alive.

⁶ Ranj Alaaldin, “Iraq: Growth of the Shia militia”, *BBC*, 17 April 2015, <http://www.bbc.com/news/world-middle-east-32349379> (accessed on 11 September 2015).

⁷ Amnesty International, *Absolute impunity – Militia Rule in Iraq*, October 2014 (MDE 14/015/2014), p.17.

⁸ Mustafa al-Khadimi, Why Iraq needs to depoliticize their Popular Mobilization Units, *Al Monitor*, 10 July 2015, <http://www.al-monitor.com/pulse/originals/2015/07/iraq-popular-mobilization-forces-politics-isis.html> (accessed on 11 September 2015).

⁹ Joel Wing, “Iraq’s Badr Organization Maintains Its Longtime Ties With Iran”, *Musings on Iraq*, 10 July 2013, <http://musingsoniraq.blogspot.com/2013/07/iraqs-badr-organization-maintains-its.html> (accessed on 11 September 2015).

¹⁰ *Ibidem*.

¹¹ UNAMI/OHCHR, Report on the Protection of Civilians in the Armed Conflict in Iraq: 11 December 2014 – 30 April 2015, p.19, footnote 40.

¹² Human Rights Watch, *Iraq: Campaign of Mass Murders of Sunni Prisoners*, 11 July 2014, <http://www.hrw.org/news/2014/07/11/iraq-campaign-mass-murders-sunni-prisoners> (accessed on 11 September 2015).

¹³ Human Rights Watch, *Iraq: Pro-Government Militias’ Trail of Death – Attacks on Sunnis in At Least 3 Provinces*, 31 July 2014, <http://www.hrw.org/news/2014/07/31/iraq-pro-government-militias-trail-death> (accessed on 11 September 2015).

¹⁴ Alkarama: *Iraq: Authorities Deny Detention of Disappeared Student Seen on Video Footage in Iraqi Prison*, 12 August 2014, <http://en.alkarama.org/iraq/press-releases/1471-iraq-authorities-deny-detention-of-disappeared-student-seen-on-video-footage-in-iraqi-prison> (accessed on 9 July 2015).

Likewise, members of an unidentified militia abducted 67-year-old farmer **Mohammed Hazza Rayes Al Aseymi**¹⁵ on 8 May 2006 at his house in Baghdad. That day, after five cars surrounded his property, a group of 15 heavily armed and hooded men entered his house and arrested him before taking him to an unknown location.

His family had not heard from him for about seven years until a documentary was broadcasted on Al Rafideen TV in July 2013, showing Al Aseymi in Tasfirat prison during a visit by Iraq's former Vice-President Al Hashimi. However, to date, the Iraqi authorities continue to deny his detention.

Despite the fact that the families of the two victims, similarly to numerous other relatives of persons abducted by militia groups, submitted requests to shed light on the fate and whereabouts of the victims to the judicial authorities, no response has ever been provided.

These cases are thus clearly illustrative of the fact that victims of abuses committed by militias do not have access to any redress mechanism, which amounts to a violation of article 2.3 of the Covenant.

3.1.2 The Iraqi High Commission for Human Rights

As article 2.2 of the Covenant demands State parties to take the necessary steps to adopt the necessary laws and measures as to give effect to the rights recognised in the ICCPR, we wish to present in this part the Iraqi High Commission for Human Rights (IHCHR) and point out its shortcomings.

The Iraq National Human Rights Institution (NHRI), the Iraqi High Commission for Human Rights (IHCHR) was created in April 2012. Following its review by the International Coordinating Committee of NHRIs (ICC) in March 2015, ahead of which Alkarama together with Iraqi NGOs submitted a report highlighting the major shortcoming of the IHCHR, it was granted B status to mark the Iraqi NHRI's partial compliance with the Paris Principles¹⁶.

In fact, the Sub-Committee on Accreditation (SCA) of the ICC noted that the IHCHR founding law did "not include a provision to address a situation where members have actual or perceived conflicts of interest"¹⁷ and that, during the appointment of its 15 members, political pressure and interference from the government and political parties strongly influenced the choice of commissioners, who were selected on the basis of their political affiliation rather than their competence. In addition, the SCA expressed concern over the fact that the IHCHR activities were hampered by governmental interference. For instance, when the IHCHR carried out visits to official detention centres, they were always done with prior permission from the relevant ministry and under its previously set conditions¹⁸. It is also reported that when detainees addressed the IHCHR on several occasions in 2012 and 2013, denouncing ill-treatment and torture in detention centres and asked to meet with members of the IHCHR, they never received any response. On the contrary, following these demands, they reported that conditions of detention then significantly worsened.

In addition, although the mandate of a NHRI is to promote a culture of rights through training and education, the SCA noted in its report that "the range of promotional activities undertaken by the IHCHR to date has been limited"¹⁹ and therefore encouraged the IHCHR "to undertake a wider range of promotional functions including through education, training, public outreach and advocacy"²⁰. Undertaking such activities is of the outmost importance considering that major human rights

¹⁵ *Ibidem*.

¹⁶ Alkarama, *Iraq: National Human Rights Institution Gets B Status to Mark Non-Compliance with International Standards*, 3 June 2015, <http://en.alkarama.org/component/k2/1725-iraq-national-human-rights-institution-gets-b-status-to-mark-non-compliance-with-international-standards?Itemid=> (accessed on 22 September 2015).

¹⁷ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, Geneva 16-20 March 2015, p.9.

¹⁸ UNAMI Human Rights Office, OHCHR, *Report on Human Rights in Iraq, January – June 2013*, August 2013, Baghdad, p.24.

¹⁹ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, Geneva 16-20 March 2015, p.7.

²⁰ *Ibidem*.

violations in Iraq are the result of ethnic and sectarian strife as well as widespread practices of discrimination.

Furthermore, the IHCHR had to operate without funding for the first half of 2013 and once it started to receive funds from the government, those were insufficient to enable it to effectively carry out its mandate. In particular, this impacted the Iraqi NHRI's ability to open regional offices, an issue in the current context of Iraq, where vulnerable persons are often located in geographically remote parts of the country. As a consequence, the IHCHR remains inaccessible for most victims of serious abuses. Additionally, when the Commission has received complaints from Iraqi citizens on violations of human rights in prisons and detention centres, it has referred them to the Ministry of Interior and Ministry of Justice²¹, while human rights violations should be referred to the Public Prosecutor for investigation and, when appropriate, prosecution of those responsible. This is also worrisome considering that numerous human rights violations are committed by agents of the Ministry of Interior acting under its order or at least with its tacit approval.

Finally, the IHCHR seems totally disconnected from the Iraqi society, as its 13 priority areas²² of work do not reflect the major human rights issues that should be addressed in the country such as the widespread violations of fair trial guarantees, the systematic use of torture and summary executions.

The IHCHR is therefore an "empty box" and has not been playing the role expected of a national human rights institution, due to its lack of independence, its composition and official activities, which do not allow it to ensure an effective and efficient role in promoting and protecting human rights in the country²³.

Recommendations:

1. Ensure that the Iraqi authorities can exercise jurisdiction over all violations that occurred on their territory through appropriate legislative measures and that complaint mechanisms are accessible to the victims' and other right holders;
2. Ensure that all those involved in the perpetration of human rights violations, including members of the Coalition forces and militias, as well as military and civilian superiors and State officials giving their authorisation, support or acquiescence to the latter, are prosecuted and, if found guilty, punished in accordance with the gravity of their acts;
3. Implement the recommendations issued by the Sub-Committee on Accreditation of the International Coordinating Committee of NHRIs and in particular:
 - Amend the founding Law to ensure the screening and selection process includes requirements for broad consultation and / or participation;
 - Provide the IHCHR with all the due means to carry on its mandate without external interference, in particular to empower it to visit detention centres in total independence, investigate cases of violations and refer them to the relevant judicial authorities.

3.2 Right to Life (Article 6)

3.2.1 The issue of the death penalty

²¹ UNAMI Human Rights Office, OHCHR, Report on Human Rights in Iraq, July-December 2013, June 2014, Baghdad, p. 30.

²² The endorsed priority areas are: Minority rights, Family and child rights; Relationships with national and international institutions and organisations; Social security; Health and environment; Immigration and displacement; Education; Rights of women; Missing persons; Freedom of expression; Rights of people with disabilities; Mass graves; Victims of terrorism. See: UNAMI, *Report on Human Rights, January-June 2013*, August 2013, Baghdad, p.23.

²³ Alkarama, *Iraq: National Human Rights Institution Gets B Status to Mark Non-Compliance with International Standards*, 3 June 2015, <http://en.alkarama.org/iraq/1725-iraq-national-human-rights-institution-gets-b-status-to-mark-non-compliance-with-international-standards> (accessed on 10 September 2015).

In Iraq, the issue of death penalty is particularly concerning, due to the high number of executions carried out in total disrespect of the ICCPR and its instrumental recourse in the name of the “fight against terrorism”.

After a brief suspension of the death penalty following the US invasion in mid-2003, the capital punishment was reintroduced under the terms of Order No. 3 of 8 August 2004 promulgated by the Council of Ministers, and the death penalty was re-applied from 2005. In 2013 alone, the Iraqi authorities executed 177 detainees, the highest figure since the death penalty was reintroduced, whereas in 2014 Iraq ranked as the fourth country worldwide in the number of executions²⁴. In addition, on 15 July 2014, a new execution site in Nasiriyah prison was established, adding to the existing one in Baghdad. As recently as 15 June 2015, Justice Minister Haide Al-Zamili demanded for a speedier application of death sentences, justified under the pretext of “the extraordinary security situation in the country”²⁵.

The arguments put forward by Iraq in order to justify the use of the death penalty usually refers to the exceptional circumstances prevailing in the country and the fight against terrorism, as capital punishment would allegedly have a “deterrent effect” and would “satisfy the demands of justice and retribution”²⁶. For instance, in its report Iraq affirms that the abolition of the death penalty “would constitute a flaw in our criminal justice policy since we are facing not only the most ruthless and odious acts of organized and unorganized terrorism and organized crime designed to undermine democratic institutions, but also acts of violence motivated by racial, ethnic or religious affiliation in an unstable security situation”²⁷. Alkarama wishes to recall, however, that the right to life is non derogable, hence a right that must be respected at all times, including in times of emergency²⁸.

Additionally, the many flaws of the Iraqi judicial system affect the administration of the capital punishment, thus contravening the ICCPR, and more generally, International Human Rights Law. Indeed, according to article 6 ICCPR, the application of capital punishment is allowed under very strict circumstances, in particular it shall be limited to the “most serious crimes” and shall not be contrary to other provisions of the Covenant. The imposition of the death penalty in Iraq, however, does not satisfy any of these conditions.

Indeed, and as reported in Iraq’s report to the Committee, death penalty should be imposed for “felonious homicide and some crimes of a grievous terrorist nature”²⁹. These crimes are defined in the Iraqi Penal Code and the vague Anti-Terrorism Law No. 13 of 2005, the latter being the main legal basis upon which most executions are carried out. The Anti-Terrorism Law, which defines terrorism very broadly, provides under its article 4.1 for the mandatory application of death penalty to those convicted for committing or threatening to commit acts of terrorism, including through incitement, planning, aiding and abetting, or financing, a list that goes far beyond the threshold of the internationally recognised definition of “most serious crimes”. This adds to the fact that this law foresees the mandatory application of the death sentence, which is *per se*, contrary to International Human Rights Law Standards.

On the other hand, according to article 6.2 of the Covenant, the imposition of the death penalty should not be contrary to other provisions enshrined in the ICCPR. The State report claims that guarantees and safeguards in the application of the death penalty exist in national law, in particular in the Code of Criminal Procedure and the Public Prosecutions Act No. 159 of 1979³⁰. These guarantees allegedly include subsequent checks, in particular a mandatory review of the court judgement

²⁴ Human Rights Watch, *Iraq: Don't Ease Death Penalty Process*, 22 June 2015, <https://www.hrw.org/news/2015/06/22/iraq-dont-ease-death-penalty-process> (accessed on 11 September 2015).

²⁵ *Ibidem*.

²⁶ UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, Baghdad, October 2014, p. 21.

²⁷ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Fifth periodic reports of States parties due in 2000, Iraq*, 12 December 2013, (CCPR/C/IRQ/5), para. 86.

²⁸ Human Rights Committee Sixteenth session, Adopted: 30 April 1982, *General Comment No.6, Article 6 (the right to life)*, HRI/GEN/1/Rev.9 (Vol. I), para. 1.

²⁹ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Fifth periodic reports of States parties due in 2000, Iraq*, 12 December 2013, (CCPR/C/IRQ/5), para. 80.

³⁰ *Ibid.* para. 81.

imposing the death penalty by a plenary session of the Court of Cassation³¹, the subsequent issuance of the enforcement orders by the Office of the Prime Minister³², coupled by the ratification by the President of the Republic.

However, and as denounced by a joint UNAMI and OHCHR report from October 2014, "once death sentences are handed down by the court at first instance, they are almost never overturned on appeal, and clemency is rarely granted"³³.

The Iraqi authorities also affirm that further guarantees are enshrined in the Iraqi Constitution and Penal Code, referring to the general safeguards against arbitrary detention³⁴, fair trial guarantees³⁵, as well as general principles of criminal law³⁶. Nevertheless, as it will be highlighted below, the Iraqi judicial system suffers from major flaws, which include the widespread use of torture for the purposes of extracting incriminating statements which will later be admitted as evidence in the course of unfair trials. Such serious violations acts have the most extreme consequences since they will often lead to the issuance of the death sentence, in violation of articles 6, 9 and article 14 ICCPR altogether.

In addition, a further guarantee enshrined in the ICCPR is that every person sentenced to death has the right to seek clemency, pardon or commutation of the sentence³⁷. On the contrary, article 75.1 of the Iraqi Constitution prohibits the granting of clemency or pardon for terrorism related crimes, in blatant violation of the Covenant.

Finally, the prohibition of the imposition of capital punishment for crimes committed by minors is recognised in article 6.5 ICCPR as well in article 79 of the Iraqi Penal Code. Nevertheless, it is concerning to record that this right is not abided by in practice.

Alkarama documented, for instance, the case of **Saleh Musa Ahmed Al Baydani**³⁸, a Yemeni citizen who was sentenced to death for a crime he had allegedly committed as a minor. At the time, 17-year-old Al Baydani was arrested by US forces in Tal Afar a district in north western Iraq on 12 August 2009. Subsequently detained in Abu Ghraib Prison for 10 months, he was then transferred to a detention facility in the Green Zone controlled by the Baghdad brigade and then to Baghdad's central prison, the three detention centres being infamous for the use of torture on inmates.

On 18 July 2011, Al Baydani was brought before the Central Criminal Court in Al Karkh where, following a heavily flawed trial, he was sentenced to death on the sole basis of "evidence" obtained under torture for association with a terrorist group under the Anti-terrorism Law, in violation of both Iraqi and international law.

Finally, Iraq is not only severely violating article 6 of the Covenant due to the manner death penalty is administered, but also because the authorities are also seeking to speed its application, under the pretext of the current prevailing "exceptional circumstances". In fact, on 16 June 2015, Iraq's Cabinet approved an amendment that would allow for the application of executions without the President's ratification³⁹. On the contrary, the Justice Minister could ratify the sentence if the President did not react within the 30 days following the final verdict of the Court of Cassation. This is a particularly concerning development as this amendment would further infringe article 6 ICCPR.

³¹ Article 254.1.a Iraq Criminal Code of Procedure.

³² Article 286 Iraq Criminal Code of Procedure.

³³ UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, Baghdad, October 2014, p. 21.

³⁴ Article 15, Iraqi Constitution.

³⁵ Article 19, Iraqi Constitution.

³⁶ I.e. the following Articles of the Iraqi Penal Code of 1969: Article 1 states the principle of *nullum crimen sine lege* and *nulla poena sine lege*, Article 39 stating the principle of functional immunity, Article 42 enshrining the right to a legal defence.

³⁷ Article 6.4 ICCPR.

³⁸ Alkarama, *Iraq: Yemeni Citizen Arrested by US Forces in 2009 Disappears in Iraqi Prison*, 11 May, <http://en.alkarama.org/1681-iraq-yemeni-citizen-arrested-by-us-forces-in-2009-disappears-in-iraqi-prison> (accessed on 14 September 2015).

³⁹ Human Rights Watch, *Iraq: Don't Ease Death Penalty Process*, 22 June 2015, <https://www.hrw.org/news/2015/06/22/iraq-dont-ease-death-penalty-process> (accessed on 12 September 2015).

3.2.2 Extrajudicial executions: reprisals against the civilian population and the excessive use of force during peaceful protests

It is noteworthy to recall that the State report affirms that “in the Republic of Iraq, the only reported cases of extrajudicial executions consist in the indiscriminate homicidal acts committed by criminal and terrorist groups against all sections of Iraqi society”⁴⁰. It is however difficult to see how this could be true, as several cases of extrajudicial executions – namely the killing committed outside legal or judicial process, that is in contravention of, or simply without, due process of law⁴¹ – have been documented.

Reprisals against the civilian population

First, cases of extrajudicial killings occurring within the context of fight against IS have been recorded. This is the case, for instance, of the killings and attacks perpetrated by the Iraqi Security Forces (ISF) and their associated forces as reprisals against persons believed or perceived to support or to be associated with IS, particularly Sunni Arabs⁴².

For instance, witnesses have reported that on 26 January 2015, following a three-day offensive in which the ISF and affiliated militias captured tens of villages inhabited by Sunni communities from IS control in Diyala province, the ISF and their associates entered the village of Barwanah and killed at least 70 unarmed civilians, among which several children⁴³. Following the request of Iraqi Prime Minister Haider Al-Abadi on 5 February 2015, a joint committee headed by the Minister of Defence was established by the Government and Council of Representatives to investigate the allegations of unlawful killings of civilians. On 20 March 2015, the Speaker of the Council of Representatives, Dr Salim Al-Jabouri, announced its findings and referred the report to the Council of Representatives’ Security and Defence Committee for review. However, to date, the Committee’s findings have still not been published⁴⁴.

Excessive use of force during peaceful protests

Violations of the right to life in Iraq are also constituted by the deaths caused by the excessive use of force systematically employed against peaceful protestors.

For example, on 23 April 2013, the Iraqi Armed Forces led by the 12th Division of the Army, military and police divisions as well as the Special Weapons and Tactics Units (SWATs) – a special security force that has considerably strengthened since its creation by the US Army during the occupation – attacked protestors in Hawijah, a town west of Kirkuk. According to the account of witnesses, the forces employed tear gas, stun grenades, and live ammunition in an operation that caused the death of 91 persons⁴⁵. The 23 death certificates Alkarama could collect reports of bullet wounds on various parts of the killed men, indicating that military and police forces did use live ammunition against unarmed protestors, clearly using excessive force against them⁴⁶. The Parliamentary Fact-Finding Committee formed immediately after the incident recommended that an independent investigation

⁴⁰ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Fifth periodic reports of States parties due in 2000, Iraq*, 12 December 2013, (CCPR/C/IRQ/5), para. 87.

⁴¹ UN term, *Extrajudicial execution*, <http://unterm.un.org/dgaacs/unterm.nsf/8fa942046ff7601c85256983007ca4d8/6e3e8435a06fed9852569fd00029b39?OpenDocument> (accessed on 15 September 2015).

⁴² UNAMI/OHCHR, *Report on the Protection of Civilians in the Armed Conflict in Iraq: 11 December 2014 – 30 April 2015*, pag. 26.

⁴³ Al Jazeera, *Shia fighters accused of killing civilians in Iraq*, 27 January 2015, <http://www.aljazeera.com/news/middleeast/2015/01/shia-fighters-accused-killing-civilians-iraq-150127062642331.html> (accessed on 14 September 2015); BBC News, *Iraq probes alleged massacre by Shia militia in Diyala*, 29 January 2015, <http://www.bbc.com/news/world-middle-east-31037426> (accessed on 14 September 2015).

⁴⁴ UNAMI/OHCHR, *Report on the Protection of Civilians in the Armed Conflict in Iraq: 11 December 2014 – 30 April 2015*, p. 26.

⁴⁵ Alkarama, *Iraq – Shadow Report, Report Submitted to the Committee against Torture in the context of the review of the initial report of Iraq*, Alkarama Foundation, 13 July 2015, p. 20.

⁴⁶ Alkarama, *Iraq: No Justice Six Months after 91 Demonstrations Deaths in Hawijah*, 20 October 2013, <http://en.alkarama.org/about-us/1159-iraq-no-justice-six-months-after-91-demonstrator-deaths-in-hawijah> (accessed on 14 September 2015).

into the incident be carried out and that judicial proceedings be initiated. Therefore, on 13 May 2013, a Supervising Investigative Judicial Commission was established through an order from the Iraqi Supreme Judicial Council. Although the Commission has received 500 complaints from the families of the victims, the Ministry of Defence continues to refuse the referral of Military Personnel to justice, so that as of today no result has come from the inquiry⁴⁷.

Similarly, on 30 December 2013, hundreds of security force personnel, among which the SWAT forces with armoured vehicles, descended on the Ramadi protest camp, where hundreds of Sunnis had been protesting in a one-year long sit-in against the government's use of abusive counterterrorism measures and opened fire on the protesters, leaving at least 17 dead and ten wounded⁴⁸. The speaker of Iraqi Parliament, Osama al-Nujaifi, head of the Sunni "Mutahidun" block, stated that he had sent a parliamentary committee to investigate the attack on the Ramadi square, but that forces from the Baghdad Operations Command prevented the committee from entering Anbar province on orders from Prime Minister Al-Maliki⁴⁹. There is no other information available at the time of writing concerning other attempts to investigate the deaths caused by the excessive use of force employed against pacific protestors.

Recommendations:

1. Place an immediate stay on all pending death sentences and issue a public and permanent moratorium on the death penalty, in view of its full abolition by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights;
2. Pending full abolition, undertake an independent, full and comprehensive review of all relevant laws, rules and procedures involved in the administration of the death penalty and review their compliance with the ICCPR in order to ensure that capital punishment is provided only for the most serious crimes, that the mandatory appliance of the death penalty for all "terrorist crimes" be abolished, that convicted have an actual right to seek for pardon and clemency and that the prohibition of the application of the death penalty on minors is respected;
3. Ensure that International Humanitarian Law and International Human Rights Law are fully respected in the context of the fight against IS and especially protect the right of civilians who must not be victims of acts of sectarian retaliation;
4. Ensure that law enforcement officials refrain from resorting to excessive use of force and comply with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
5. Investigate effectively, promptly, thoroughly and impartially all allegations of violations or abuses of international human rights law and violations of international humanitarian law including those committed by government-backed militias, and where appropriate, prosecute those responsible and provide an effective remedy to the victims.

3.3 The Right to Physical Integrity and the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 7 and 10)

The State report submitted by Iraq to the Committee affirms that acts of torture occurring in Iraq do not constitute a systematic practice⁵⁰. However, as it will be pointed out in this part of Alkarama's shadow report, the lack of adequate guarantees under Iraqi law, although Iraq ratified the Convention

⁴⁷ Alkarama, *Iraq – Shadow Report, Report Submitted to the Committee against Torture in the context of the review of the initial report of Iraq*, Alkarama Foundation, 13 July 2015, p. 20.

⁴⁸ BBC World, *Ten die as Iraq security forces dismantle Sunni camp*, 30 December 2013, <http://www.bbc.com/news/world-middle-east-25548776>, Human Rights Watch, *Iraq: Investigate Violence at Protest Camp*, 3 January 2014, <https://www.hrw.org/news/2014/01/03/iraq-investigate-violence-protest-camp> (accessed on 14 September 2014).

⁴⁹ Human Rights Watch, *Ibidem*.

⁵⁰ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Fifth periodic reports of States parties due in 2000, Iraq*, 12 December 2013, (CCPR/C/IRQ/5), para.92.

against Torture (UNCAT) in 2011, and the heavy flaws in the administration of justice and in the treatment of detainees, lead to the widespread and systematic use of torture in the country.

3.3.1 Prohibition and criminalisation of torture

The Iraqi State report affirms that torture and cruel and inhumane treatment are prohibited under article 37.1.c of the Iraqi Constitution, as well as under the provisions of the Iraqi Penal Code and the Management of Detention and Prison Facilities Act No. 3 of 2003⁵¹.

However, in Iraq's national law, torture is not defined as required by the Convention against Torture. Instead, the only definition of torture is comprised in article 12.2.e of the Iraqi Supreme Criminal Court Act No. 10 of 2005, according to which "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, on a person in the custody or under the control of the accused; except that torture does not include pain or suffering arising from, or incidental to, lawful sanctions." This definition is flawed as it applies only to the direct perpetrator and does not include the four different levels of involvement – infliction, instigation, consent and acquiescence – which render an official complicit in the act of torture⁵². Additionally, the definition lacks the purpose requirement, such as extracting a confession, punishing, intimidating, coercing or discriminating the victim and it foresees that pain or suffering caused by "lawful sanctions" may not amount to torture.

Moreover, it is concerning that Iraq explains this lack of definition in its domestic legislation as "[to] allow leeway for discretionary juristic interpretation without restricting the concept of torture to a specific definition which, with the passage of time and increasingly sophisticated methods of investigation and interrogation, might not be sufficiently all-embracing and exclusive."⁵³ This stand is extremely concerning and indicative of a legal migration of the "enhanced interrogation techniques" – an euphemism referring to the use of torture – a policy that was introduced by the Bush administration and used during the occupation of Iraq. This interpretation opens doors to an arbitrary redefinition by judges of what constitutes an act of torture, which would become more exclusive than inclusive. This is all the more alarming as the judiciary suffers from interference from the executive.

We also note that the absence of any legal provision in Iraqi legislation specifying that no exceptional circumstance of any kind, be it a state of war or the threat of war, internal political instability or any other state of emergency, can justify the use of torture. In a country where the deteriorating security situation is systematically used as a justification for human rights abuses, such a provision should be incorporated into the law as a matter of priority.

As for punishment of acts of torture, the State report claims that the Ministry of Human Rights has compiled a database of cases of torture in order to ensure that they are followed-up and perpetrators are brought to justice⁵⁴. However, several setbacks in law and its application gives the perpetrators complete impunity.

Indeed, torture is not punishable by the appropriate penalties⁵⁵, as article 333 PC only provides for "a penalty of imprisonment" for acts of torture, without specifying its length. Similarly, article 332 PC which seems to refer to the commission of cruel, inhumane or degrading treatment only foresees "a period of detention not exceeding one year plus a fine not exceeding 100 dinars" – around 10 cents

⁵¹ *Ibid.*, paras. 88-89.

⁵² OMCT, "A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies – Seeking Remedies for Torture Victims", *OMCT Handbook Series Vol.4*, April 2014, p. 224.

⁵³ Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.17.

⁵⁴ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Fifth periodic reports of States parties due in 2000, Iraq*, 12 December 2013, (CCPR/C/IRQ/5), para. 92.

⁵⁵ Chris Ingelse establishes through interviews with members of the Committee against Torture, that "the penalty for the predicate offence of torture should be a custodial sentence of between six and twenty years." In Chris Ingelse, *United Nations Committee Against Torture: An Assessment*, Kluwer Law International, 2001, p. 342.

US dollars – which corresponds to penalties attached to minor crimes and therefore does not take adequate consideration of the gravity of the crime.

Furthermore, article 136.b of the Code of Criminal Procedure limits the prosecution of public officials for acts of torture since it subjects the referral to the competent judicial authorities of a perpetrator of torture to the authorisation from the relevant Minister – for example, the Ministry of Interior in a case involving police –. Although the Iraqi Council of Representatives passed a law to amend this provision in 2007 and 2011, the Presidency Council never ratified the draft law, which as a result did not enter into force⁵⁶.

In addition, the fact that Iraqi domestic law does not contain any provision regarding the non-applicability of the statute of limitations⁵⁷ to the crime of torture is another factor that encourages impunity. What is more, even in the event of a perpetrator of torture facing prosecution, an order from a superior officer or a public authority can be invoked as a justification of torture, since according to article 40.2 PC there is no crime if the perpetrator commits the act in performance of an order from a superior, which he is obliged to obey, or “feels he is obliged to obey”. Finally, the Amnesty Law No. 19 of 2008 provides a *de facto* immunity for members of the security forces. Aimed at providing a benchmark in facilitating political reconciliation, the law offers amnesty for convicted Iraqis, not exempting from the amnesty those who have committed torture. In fact, according to a 2010 report from the Ministry of Human Rights, the passing of the law was said the main cause of the closure of official investigations into torture complaints⁵⁸.

These legal loopholes on the definition, criminalisation and punishment of torture are even more concerning in light of the systematic violations of the legal safeguards related to the deprivation of liberty and fair trial guarantees, as detailed below, thus creating an environment conducive to torture.

3.3.2 The practice of torture: from the investigation stage to harsh conditions of detention

Torture usually occurs during the investigation stage, that is, following initial arrest and before charges are formally laid by the investigative judge, when suspects are held in police facilities (known as “tasfiraat”) or in the Directorate of Counter Terrorism and Organised Crime under the authority of the Ministry of Interior – in order to induce the suspect to make confessions in relation to the crimes for which they are detained⁵⁹, or to compel witnesses to implicate defendants on trial⁶⁰. It is only once they are charged and that their case is referred to a criminal court for trial that defendants may be transferred to a facility falling under the authority of the Ministry of Justice.

However, it is worrisome that most detention centres remain under the jurisdiction of the Ministry of Interior. In this regard, in addition to the claim that the government is making “every endeavour” to ensure that detention centres are managed only by the Ministry of Justice⁶¹, Iraq reports that according to Presidential Order No. 207/S, the Ministry of Interior shall designate a number of investigating officers entitled to conduct investigation procedures⁶². This is concerning given that the detention centres are under the jurisdiction of the same Ministry.

⁵⁶ To understand the successive attempts to amend this provision, read: Global Justice Project: Iraq, *The many lives of article 136(b) of Criminal Procedure Code, Law 23 of 1971*, 23 May 2009, <http://gjpi.org/2009/05/23/the-many-lives-of-article-136b-criminal-procedure-code-23-of-1971/> (accessed on 10 July 2015).

⁵⁷ Article 150 Iraqi Penal Code: “An offence lapses for the following reasons: (1) the death of the accused (2) a general amnesty (3) the dropping of charges by the victim in such circumstances as are prescribed by law.” Article 151 Iraqi Penal Code: “A sentence imposing a penalty or precautionary measure lapses with a general amnesty or rehabilitation or with the dropping of charges by the victim in such circumstances as are prescribed by law or, in the event of a suspension of sentence and without anything that would call for the reinstatement of the suspended sentence occurring during the period of suspension, by the termination of that period of suspension.”

⁵⁸ Amnesty International, *Iraq: A Decade of Abuses*, March 2013 (MDE 14/001/2013), p. 62.

⁵⁹ UNAMI/OHCHR, *Report on the death penalty in Iraq*, Baghdad, October 2014, p. 13.

⁶⁰ UNAMI/OHCHR, *Report on the judicial responses to allegations of torture in Iraq*, p. 2.

⁶¹ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Fifth periodic reports of States parties due in 2000, Iraq*, 12 December 2013, (CCPR/C/IRQ/5), para. 93.

⁶² *Ibid.*, para. 113.

Moreover, following their arrest, suspects are often taken to one of the several secret detention facilities where torture is routinely and systematically used. An emblematic example is the Al Muthanna detention centre, located in an old military airport in West Baghdad. This secret detention centre is said to be running since September 2009, when security forces kept about 400 men in the facility after mass arrests were carried out around Mosul against individuals accused of "aiding and abetting terrorism"⁶³. This facility continues to operate and falls under the authority of the 54th and 56th Brigades of the Army, under the control of the Baghdad Operations Command (BOC) – a regional security command set up by former Prime Minister Al-Maliki – which reports directly to the office of the Prime Minister as the Commander in Chief of the Armed Forces. The government however continues to deny all allegations that torture is practiced there as former Prime Minister Al-Maliki qualified torture allegations as "lies" and "a smear campaign", even going as far as to declare on state-run Al Iraqiyya TV that inmates would have inflicted the scars on themselves "by rubbing matches on some parts of their body parts"⁶⁴. In addition, instead of opening an inquiry, Al-Maliki suspended the work of the Ministry of Human Rights' prison inspection team, who first uncovered the abuses in Al Muthanna airport detention centre⁶⁵.

Finally, we also wish to point out that conditions of detention in Iraqi prisons do not uphold international standards and amount to inhuman or degrading treatment, if not torture. First, overcrowding remains a systematic problem. Additionally, it is also reported that the provision of health care is badly managed, as most detention facilities lack medical personnel and adequate medical equipment⁶⁶. The situation is particularly dire for female detainees, who denounce having been subjected to torture, violence and threats while in custody, including acts or threats of sexual violence. Additionally, access to detention centres is usually denied both to the IHCHR⁶⁷ as well as the United Nations⁶⁸, contrary to what is affirmed in the State report, according to which investigation teams of, among others, the Ministry of Human Rights could visit detention facilities⁶⁹.

Finally, the threat of or the use of torture is used by prison officers to extract bribes from defendants, their family members and/or their lawyers as well⁷⁰.

3.3.3 Reliance on information extracted through torture as evidence in proceedings

Given that torture is used first and foremost to extract information from defendants, it is not surprising to note that "confessions" extracted under torture are then systematically used during trial as the main, if not the sole, source of evidence, despite the fact that during its review before the Human Rights Council in 2010 Iraq had agreed to "[i]ncrease its efforts at eradicating torture" and to "consider inadmissible the confessions obtained under torture or ill treatment"⁷¹, commitments that were reaffirmed during its last Universal Periodic Review in November 2014⁷².

Police officers commonly state that "confessions are the king of evidence", as once a "confession" is obtained, law enforcement officials largely believe that this absolves them from obtaining proper evidence that substantiates the guilt or innocence of suspects⁷³. The Iraqi authorities recognise that

⁶³ Human Rights Watch, *Iraq: At a Crossroads, Human Rights in Iraq Eight Years after the US-Led Invasion*, 2010, p. 54.

⁶⁴ *Ibid.*, p. 59

⁶⁵ *Ibidem.*

⁶⁶ *Ibidem.*

⁶⁷ Despite repeated requests members of the IHCHR have not been allowed to visit detainees in interrogation and detention centres and prisons managed by the Ministries of the Interior, Justice and Defense Amnesty International, *Militia Rule in Iraq*, London, 2014, p. 21.

⁶⁸ The United Nations Assistance Mission for Iraq (UNAMI) was denied access to detention facilities under the authority of Ministry of Interior, UNAMI/OHCHR, *Report on Human Rights in Iraq: January – June 2014*, Baghdad, August 2014, p. 7.

⁶⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Iraq*, 12 December 2014, (A/HRC/28/14), para.92.

⁷⁰ *Ibid.*, p.6.

⁷¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Iraq*, 15 March 2010, (A/HRC/14/14) para.81.51 and 81.52.

⁷² Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Iraq*, 12 December 2014, (A/HRC/28/14) para. 127.124 "Do not to admit as evidence confessions obtained through torture or other illegal means (Uruguay)" and "Drive forward legislative reforms and adopt administrative measures to eradicate torture in law and in practice (Costa Rica)".

⁷³ UNAMI/OHCHR, *Report on the judicial responses to allegations of torture in Iraq*, February 2015, p. 16.

confessions carry “considerable weight” and “significantly influence” before the judicial body before which it is made⁷⁴. This heavy reliance on confessions is allowed by article 217 CCP, according to which the trial court has absolute authority to decide whether a pre-trial confession is admitted as incriminating evidence, even if the witness subsequently withdraws his statement. The judge can also “divide the admission up”, i.e. “accept the part which it believes to be correct and reject the rest.”⁷⁵

In addition, except from a Constitutional provision according to which “no account shall be taken of any confession extracted under duress, threat or torture”⁷⁶, no other provision addressing this issue refers to the term “torture” *per se* but instead to “illegal methods” or “coercion”. In particular, article 127 CCP prohibits the use of “illegal means to influence the accused for the purpose of extracting [an admission]”⁷⁷, i.e. “[i]ll-treatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants”. Although Iraq’s national report uses the word “confession”, the Arabic version of the CCP refers instead to the term *iqrar* (admission) rather than *i’tiraf* (confession). Likewise, article 218 CCP states that admissions must not have been made as a result of coercion.⁷⁸

However, it is noteworthy that this provision was amended in 2003 by CPA Memorandum No. 3 which removed the following: “if there is no causal link between the coercion and the admission or if the admission is corroborated by other evidence which convinces the court that it is true or which has led to uncovering a certain truth, then the court may accept it.” These terms clearly allowed for the admission of forced confessions in the course of the proceedings.

Nevertheless, although this provision was theoretically repealed, according to UNAMI, there is still uncertainty among some judges as to whether the legislation passed by the CPA is applicable or remains in force, which “may offer some explanation to judges’ continuing reliance on disputed confession as evidence, since the Iraqi Criminal Procedure Code allows them to do so.”⁷⁹ In such a flawed system, judges not only accept to use information extracted through torture as a source of evidence, but also systematically reject all torture allegations brought to their attention and subsequently refuse to open investigations. In this way, judges are largely responsible for sustaining a system that is reliant on torture to ensure convictions and also provide immunity to police and intelligence officers responsible for torture, thus impeding victims from having access to a remedy.

The case of **Mr Riad Abdel Majeed Al Obeidi**⁸⁰ Alkarama submitted to Committee on Enforced Disappearances is particularly illustrative of the practice of torture during secret detention and the reliance of the judicial authorities on information extracted under torture as a base for conviction. Mr Al Obeidi, a 61-year-old retired Air Force Brigade pilot from Al-A'miriya, was abducted on 1 June 2014 by a patrol of the 54th and 56th Brigades of the Army – also known as the “Baghdad Brigade” –, the Iraqi National Intelligence and the Military Intelligence, who forced him into a car before taking him to Al Muthanna airport’s detention facility. Four months later, in October 2014, his family was finally allowed to visit him in detention once a month.

His relatives then learned that during the first 45 days of his secret detention, he was held in solitary confinement in a sewage room, blindfolded and with his hands tied. He was severely tortured, beaten up with sticks, whipped, and repeatedly electrocuted, including on the most

⁷⁴ Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.102.

⁷⁵ According to Article 219 CCP.

⁷⁶ Article 31(1)(c) of the Constitution. See Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.99.

⁷⁷ See: Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.100.

⁷⁸ Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), para.101.

⁷⁹ OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.2.

⁸⁰ Alkarama, *Iraq: Riad Al Obeidi Set Free After 10 Months in Secret Detention Centre in Baghdad*, 16 April 2015, <http://en.alkarama.org/iraq/press-releases/1661-iraq-riad-al-obeidi-set-free-after-10-months-in-secret-detention-centre-in-baghdad> (accessed on 2 July 2015).

sensitive parts of his body. As a consequence of the torture he suffered, he lost sight in one eye and part of his hearing.

Al Obeidi was then forced to sign confessions that were later used to indict him in two cases, including on the basis of article 4 of the 2005 Anti-Terrorism Law under which defendants face the death penalty. On 12 April 2015, the judicial authorities ordered his release. To this day, no investigation has been opened into his disappearance and subsequent torture and he was therefore unable to obtain redress.

3.3.4 Lack of accountability

When defendants allege having been subjected to torture, judges normally do not question the defendant further about the allegations, while in rare cases judges would simply request the defendant to produce a medical report to support the allegation⁸¹. It is rare that the accused are able to provide the judge with any medical certificate, since they are normally denied access to a doctor while in police custody. Even in the rare cases in which the defendants were able to provide a medical report, this did not affect the outcome of the trial and they were convicted to heavy sentences⁸².

When an inquiry is conducted, the acts of torture are covered up by the investigative authorities. For example, in cases of deaths in custody caused by torture – a persistent phenomenon in Iraq⁸³ – such as the case of Al Batawi, the results of the investigation usually only state the final mechanism of the death and always leave unclear its underlying causes, i.e. the practice of torture.

Amir Al Batawi⁸⁴, a 40-year-old member of former Vice President Al Hashimi's security personnel, was arrested by the Iraqi Security Forces on 21 December 2011. Charged with terrorism on the basis of the Iraqi Anti-Terrorism Law No.13 of 2005, Al Batawi was transferred to Baladiyah prison in Baghdad – a detention centre falling under the control of the Ministry of Justice where other members of Al Hashimi's staff were detained *incommunicado* – where he died under torture on 15 March 2012.

Five days later, when his body was shown at the Forensic Laboratory of Baghdad, Al Batawi's lawyer saw the victim had lost an enormous amount of weight and that he bore obvious signs of torture on his body, such as wounds on sensitive parts of his body, burn marks, and a cut-off tongue.

On 25 March 2012, a committee was established to investigate the circumstances of his death, following a request by the Ministry of Human Rights. The Committee found that Al Batawi's state of health had started "deteriorating since December 2012" because of several diseases – bronchitis, colon irritation, headache, tonsillitis, inflammation of the intestines, stomach ulceration and bleeding of the higher oesophageal – for which it is said Al-Batawi had received the required medical treatments. No mention was made of his loss of weight or even the clear signs of torture that the victim bore on his corpse. To the contrary, the committee concluded that Al Batawi "died from a renal deficiency" according to a report from the forensic doctor of the Medical City Hospital, where Al Batawi had been transferred to on 14 March 2012 to undergo kidney dialysis.

Contesting the committee's findings, on 29 May 2014, Al Batawi's lawyer submitted a request to open an investigation into his death to the Al Karkh Criminal Court in Baghdad, which was

⁸¹ UNAMI/OHCHR, *Report on the death penalty in Iraq*, Baghdad, October 2014, p. 24.

⁸² OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.2.

⁸³ Alkarama, *Iraq: Death Under Torture of Former Vice President Tariq Al Hashimi Security Personnel*, 3 July 2015, <http://en.alkarama.org/iraq/1770-iraq-death-under-torture-of-former-vice-president-tariq-al-hashimi-security-personnel>, (accessed on 20 September 2015); Amnesty International, *Iraq, Submission to the United Nations Committee against Torture*, 55th session, 27 July to 14 August 2015, p. 7.

⁸⁴ Alkarama, *Iraq: Death Under Torture of Former Vice President Tariq Al Hashimi Security Personnel*, 3 July 2015, <http://en.alkarama.org/iraq/press-releases/1770-iraq-death-under-torture-of-former-vice-president-tariq-al-hashimi-security-personnel> (accessed on 3 July 2015).

immediately rejected under the pretext that “the circumstances of Al Batawi’s death had already been established.”

It is noteworthy that Al Batawi died three weeks following the publication of a report by the Supreme Judicial Council⁸⁵ in which its judicial investigating committee concluded that none of the 73 people detained in relation to Al Hashimi had complained of torture or other ill-treatment.

Finally, it is also of great concern that judicial responses to allegations of torture in cases involving the administration of the death penalty were no different than in cases with a less severe penalty, since the judge did not take any further action, and in some instances even decided to amend non capital charges to capital charges⁸⁶.

Recommendations:

1. Implement the Concluding Observations issued by the Committee against Torture issued at its last review of Iraq in August 2015⁸⁷;
2. Ensure that the principle of the absolute prohibition of torture is incorporated in Iraqi legislation and is strictly applied and that torture is adequately criminalised, ensuring that an adequate punishment is provided in the law;
3. Ensure that all detainees are afforded, by law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty and that no one is detained in any secret detention centres, investigate and disclose the existence of any other such facility and put them under the protection of the law;
4. Bring all detention facilities under the exclusive authority of the Ministry of Justice and guarantee that the High Commission for Human Rights is granted access to all places of detention;
5. Take the necessary measures to alleviate the overcrowding of the penitentiary institutions and other detention facilities, and ensure that inmates have access to health care and medical visits;
6. Ensure effective measures to guarantee that information extracted under torture are inadmissible, except when invoked against a person accused of torture as evidence that the statement was made and take sanctions against judges who fail to respond appropriately to allegations of torture raised during judicial proceedings;
7. Ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of their acts;
8. Ensure that all victims of torture and ill-treatment are identified, obtain redress and have an enforceable right to fair and adequate compensation, including the means for a full rehabilitation.

3.4 The Practice of Arbitrary Detention and the Infringements of Fair Trial Rights (Articles 9 and 14)

Fair trial guarantees in Iraq as well as the right not to be subjected to arbitrary detention are two areas of particular concern. Despite Iraq’s report reference to several guarantees contained in national law⁸⁸, the Iraqi judicial system has been severely criticised for being “seriously flawed”⁸⁹ as it consistently fails to respect fair trial guarantees at all stages of legal proceedings.

⁸⁵ Supreme Judicial Council, *Bayan hawal wafa athnein min afrad himaya al-hashemi*, 11 April 2012, <http://www.iraqja.iq/view.1393/> (accessed on 10 July 2015).

⁸⁶ *Ibid.*, p. 8.

⁸⁷ Committee Against Torture, *Concluding observations on the initial report of Iraq*, (CAT/C/SR.1349 and 1350).

⁸⁸ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Fifth periodic reports of States parties due in 2000, Iraq*, 12 December 2013, (CCPR/C/IRQ/5), para.138 and following.

⁸⁹ *Pillay condemns rampant use of death penalty in Iraq*, Geneva, 19 April 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13253&LangID=E#sthash.9rJbxoJD.dpuf> (accessed on 16 September 2015).

3.4.1 Arbitrary arrests

In Iraq, the public authorities with the power to arrest are the Iraqi police and the Iraqi Security Forces, which, depending on the force, are under the authority of the Ministry of Interior, the Ministry of Defence or the Prime Minister's Office. The latter also exercises direct control over the Baghdad Operation Command and Counter Terrorism Unit, the 56th Brigade of the Army (the "Basra Brigade", responsible for the security in the Green Zone) and the 54th Brigade of the Army (the "Al Muthanna Brigade") although they fall administratively under the authority of the Ministry of Justice⁹⁰.

Article 9.2 ICCPR states that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest. According to article 92 of the Criminal Code of Procedure, the arrest of a person is permitted only "in accordance with a warrant issued by a judge or court or in other cases as stipulated by the law", while Paragraph 10 of Presidential Order No. 207/S states that "no one shall be arrested without a prior warrant except in cases of *flagrante delicto* or confrontation with the security forces". The fact that these provisions regulating arrest do not require the presentation of a warrant at the time of the arrest, but only that the arrest is "based on a warrant", leaves the door open to abuses. In fact, almost all the arrests, especially under the Anti-Terrorism Law (2005) as well as conducted by forces controlled by the office of the Prime Minister, are carried out without the presentation of warrants – the latter usually being issued by the judge *post arrest*⁹¹. At the same time, the possibility to arrest someone without an arrest warrant in cases of *flagrante delicto* or confrontation with the security forces is often used as a justification in cases where arrests are carried out with the use of excessive force and the suspects act in self-defence.

This is the case for instance of **Ahmad Suleiman Jami Muhanna Al Alwani**⁹² – whose case will be detailed further below – a prominent member of the secular Al Iraqiya political block at the Iraqi Council of Representatives, well known for his denunciation of corruption within the Iraqi bureaucracy, as well as his criticism of both the Iraqi Prime Minister's policies and the central government's marginalisation of Iraqi Sunnis.

Al Alwani was arrested at his house on 28 December 2013, during a night raid carried out by a task force of the Iraqi Security Forces in military uniforms, who did not provide any arrest warrant. During the raid, the task force opened fire at Mr Al Alwani's security guards, leaving two dead and a few others injured.

Charged under Article 4 of the Anti-terrorism Law No. 13 of 2013, Al Alwani was sentenced to death on 23 November 2014 by the Iraqi Central Criminal Court for the alleged killing of security force members "for terrorist ends", due to the fact that he and his bodyguards opened fire to defend themselves when the house was broken into by unknown armed forces⁹³.

Moreover, article 9.3 ICCPR states that anyone arrested or detained on a criminal charge shall be brought promptly before a judge. In this regard, we recall that article 19.3 of the Iraqi Constitution states that the preliminary investigative documents shall be submitted to the competent judge in a period not exceeding 24 hours from the time of the arrest of the accused, which may be extended only once and for the same period, while article 123.a CCP states that the investigative judge must question the accused within 24 hours of his presentation. This means that a person arrested shall be brought before a judge within 48 hours to be interrogated. Nevertheless, this is never abided by as persons arrested are usually presented for the first time before a judicial authority several days or even weeks after the date of arrest⁹⁴, in violation of both national law and the ICCPR.

⁹⁰ UNAMI/OHCHR, *Report on the death penalty in Iraq*, Baghdad, October 2014, p. 12.

⁹¹ *Ibidem*.

⁹² Alkarama, *Iraq: MP Ahmad Al Alwani Sentenced to Death After Flawed Trial*, 16 January 2015, <http://en.alkarama.org/1593-iraq-member-of-council-of-representatives-al-alwani-sentenced-to-death-after-flawed-trial> (accessed on 20 September 2015).

⁹³ Inter-Parliamentary Union, *Iraq IQ/62 - Ahmed Jamil Salman Al-Alwani, Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session*, Geneva, 24-27 January 2015.

⁹⁴ UNAMI/OHCHR, *Report on the death penalty in Iraq*, Baghdad, October 2014, p. 12.

3.4.2 Prolonged pre-trial detention

In addition, accused are systematically held for long periods of pre-trial detention. Article 109 CCP details in its paragraphs A and C that detention of suspects for non capital crimes shall be limited to 15 days renewable, but cannot exceed six months, or, in any event, one quarter of the maximum sentence that could be handed down. It is however common that detainees held for such crimes are being detained for excessive periods beyond what is permitted by law and claims of people detained for up to two to four years, and in some cases 10 years, have been reported⁹⁵. Paragraph B of the same provision requires instead that a person charged with the death penalty can be held in detention "until the investigation phase is completed, or until the final decision is issued by the court in relation to the charges", therefore allowing for indefinite pre-trial detention, which is contrary to articles 9.1 and 9.3 ICCPR⁹⁶.

We recall that during the period of investigation, suspects are normally held in police facilities (known as "tasfiraat") or in the Directorate of Counter Terrorism and Organised Crime under the authority of the Ministry of Interior. It is precisely in these places, and during this investigation stage that suspects are subjected to torture in order to extract information (or "confessions") that will be later used in trials as evidence, as detailed in the previous section.

3.4.3 Secret and *incommunicado* detention

In addition, despite the fact that the Prisons Administration Act recognises in its Section 14 the right to family visits and contact with the outside world, still several cases of *incommunicado* and secret detention were recorded by Alkarama⁹⁷ and other human rights organisations⁹⁸. These occur often in secret detention facilities, such as in the infamous Al Muthanna detention centre described above, in violation of domestic law, such as article 19.13 of the Constitution, according to which imprisonment and detention are permitted only in facilities which are designated for that purpose.

Secret detention also amounts to enforced disappearance, a widespread practice in Iraq, even though Iraq is a party to International Convention for the Protection of all Persons from Enforced Disappearances (ICPPED) since 2010. Indeed, the provisions of the Convention are not adequately implemented into the national legislation and cases of enforced disappearance continue to be recorded.

First recorded during the regime that ruled Iraq from 1968 until 2003 and especially during the Iran-Iraq war, and continuing throughout the US-led invasion after 2003 up until today, estimates of cases of enforced disappearances run from 250 000 to 1 million people, making Iraq the country with the highest number of enforced disappearances in the world⁹⁹. Victims of enforced disappearance are usually arrested by members of the security forces, often during raid operations at their homes, following which their families are denied any information on their fate and whereabouts. It is then common that the victims are secretly detained and tortured in official or secret detention facilities.

⁹⁵ *Ibid.*, p. 13-14

⁹⁶ It is in fact a violation of article 9.1 ICCPR, as the jurisprudence of the Human Rights Committee recognised that detention may become "arbitrary" if it is unduly prolonged or not subject to periodic review. I.e. Human Rights Committee, *Van Alphen v. The Netherlands*, Case No.305/1988, UN Doc. A/45/40, Vol. 2, Annex IX, Sect. M, para. 5.8. Indefinite detention amounts as well to a violation of Article 9.3 ICCPR according to which "anyone arrested (...) shall be promptly brought before a judge.

⁹⁷ I.e. Alkarama, *Iraq: When will Shawki Omar be free?*, 7 April 2014, <http://en.alkarama.org/component/k2/1211-iraq-when-will-shawki-omar-be-free> (accessed on 20 September 2015).

⁹⁸ Human Rights Watch, *Iraq: Mass Arrests, Incommunicado Detentions*, 5 May 2015, <https://www.hrw.org/news/2012/05/15/iraq-mass-arrests-incommunicado-detentions>, (accessed on 20 September 2015); Amnesty International, *Iraq: Men Detained Incommunicado (UA 124/12)*, 3 May 2012, <http://www.amnestyusa.org/get-involved/take-action-now/iraq-men-detained-incommunicado-ua-12412>, (accessed on 20 September 2015).

⁹⁹ International Commission on Missing Persons (ICMP), Middle East and North Africa, <http://www.icmp.int/where-we-work/middle-east-and-north-africa/> (accessed on 16 September 2015).

The case of **Mohammed Abbas Kadhim Al Sudani**¹⁰⁰ is illustrative of this practice. Al Sudani, a 29-year-old married worker, was arrested on 20 November 2014 at around 2 am in his house in the Al Wahda neighbourhood of Baghdad by a squad of 15 members of the of the Special Weapons and Tactics (SWAT) unit. The security forces arrested him – and even mistreated his mother and sisters as well as the children who were asleep – before taking him to an unknown location. Following his disappearance, Al Sudani's family submitted a complaint to the police station of the Al Khalesa neighbourhood in Baghdad, but to no avail.

It was only on 4 May 2015, i.e. five months after Al Sudani's arrest, that his mother received a call by the authorities informing her that her son was detained in Taji prison, a detention centre located in a rural district north of Baghdad, where she was able to visit him the following day.

He told his mother that he had spent six months detained in Al Muthanna airport, where he suffered severe torture, including beatings with iron wire on every part of his body, electrocution on his genitals and several instances of sexual assault, all acts of torture inflicted on him to make him "confess" to having poisoned his father as well as kidnapped and killed other people. He was also forced to sign documents while blindfolded.

Al Sudani reported having been tortured by "Captain Ahmad" and "Captain Osama", who both belong to the 54th Brigade, a unit of the Iraqi Army reportedly under the command of Colonel Firas Al Azerj, which has in the past been commonly referred to by military and police as "Maliki's forces" as its chain of command bypasses the Ministry of Defence under which it technically falls and reports directly to the Prime Minister (as the Commander in Chief of the Armed Forces) through its security office.

Since 2014, Alkarama has submitted several urgent actions to the Committee on Enforced Disappearances on behalf of disappeared individuals such as Al Sudani and has noted that some of these individuals were never found in any of the registers available to the different Ministries. This additionally demonstrates the alarming absence of proper registers in places of detention, even though legally required by, for instance, section 3 of the CPA memorandum 2 of 2003 and the Management of Detention and Prison Facilities Act No. 2 of 2003. In addition, it is common that inmates "disappear" when the victim has been convicted and is transferred from one place of detention to another.

Moreover, national law does not provide sufficient guarantees against enforced disappearances, as it does not appropriately transpose the provisions of the ICCPED into domestic law. For instance, the offence of "enforced disappearance" is not defined in Iraq's national law nor recognised as a criminal offence. In fact, article 12.2.g of the Iraqi Supreme Criminal Tribunal provides a definition for enforced disappearances as a "crime against humanity", which therefore is not applicable to enforced disappearances committed outside the context of a widespread or systematic attack against the civilian population. The Iraqi authorities argue that enforced disappearance constitutes an "autonomous offence" as provisions of the Constitution and Penal Code cover "many offences that would constitute enforced disappearance" such as "unlawful detention and imprisonment" criminalised by articles 322, 323, 324 PC or "abduction", criminalised under articles 421 to 429 PC. However, none of these provisions would be applicable to unlawful detention by state-controlled militias and do not contemplate the "refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person", as required by the ICCPED.

In addition, and similarly to the concerns raised regarding torture, although officers resorting to enforced disappearances could be prosecuted under the charges of "unlawful imprisonment" or "abduction", this is limited by article 136.b CCP, which subjects the referral for prosecution to the backing of the Ministry to which the officer is affiliated. Moreover, none of the provisions mentioned above provides minimum sentences for the perpetrators of the crime, nor are the penalties

¹⁰⁰ Alkarama, *Iraq – URGENT APPEAL: Electrocuted and Sexually Abused by Army, Now at High Risk of Being Sentenced on Sole Basis of Confessions under Torture*, 28 May 2015, <http://en.alkarama.org/iraq/press-releases/1722-iraq-urgent-appeal-electrocuted-and-sexually-abused-by-army-now-at-high-risk-of-being-sentenced-on-sole-basis-of-confessions-under-torture> (accessed on 2 July 2015).

appropriate as to take into account the extreme seriousness of the crime of enforced disappearance¹⁰¹. Also, the Iraqi Penal Code maintains superior orders as a possible defence in certain circumstances¹⁰².

Impunity for acts of enforced disappearances therefore prevails in Iraq, as few allegations lead to the opening of investigations. In 2011, the Iraqi government announced the establishment of a committee to investigate the cases of Iraqis missing since the 2003 invasion composed by representatives of the Ministry of Defence, the Ministry of Interior, National Security, Health, Justice and Human Rights, as well as representatives of the intelligence services and anti-terrorism forces¹⁰³. Several of these ministries, however, were involved with or were themselves leading militias responsible for serious human rights abuses, including enforced disappearances. Testimonies collected by Alkarama show that complaints lodged by relatives of disappeared persons with different authorities such as police stations, criminal courts including the Central Criminal Court and the General Prosecutor, the Ministry of Human Rights and the Ministry of Interior, remain systematically unanswered.

In addition, even in those rare cases where investigations are actually carried out, the Iraqi domestic law does not provide for the suspension from duties of the alleged offenders. Indeed, the relevant provisions of the Criminal Code, State Officials Discipline Act, Army Act and Internal Security Forces Act only refer to sanctions applied to officials once a court has issued a decision ; the only provision providing for the suspension of the suspect at the investigative stage being article 17 of the State Officials Discipline Act, according to which "the Minister or the head of department may suspend an official for a period of not more than 60 days if they consider that his remaining in public service would be prejudicial to the public interest or could affect the course of investigation" and is rarely applied¹⁰⁴.

3.4.4 Denial of the right to a defence and legal assistance

In Iraq, as documented by Alkarama in several cases, the right to a counsel is highly curtailed although domestic law theoretically guarantees it.

Indeed, article 19.4 of the Iraqi Constitution provides that the right to a defence shall be guaranteed in all phases of investigation and trial, while article 19.6 provides that accused persons who do not have a lawyer shall have a counsel appointed by court. In addition, article 8.1 of the CPA Memorandum No.3 (2003) provides that any person accused of felony has the right to access a lawyer while in detention during all stages of proceedings and article 30 of the same law provides that interviews between detainees and their counsels can be held within the sight but not the within the hearing of police officers or other authorities. Furthermore, article 123.c CCP states that the investigative judges shall not question the suspect until an attorney has not been chosen or appointed by the court for him/her. However, these guarantees are rarely respected in practice.

It is in fact reported that when suspects arrested in relation to criminal charges are brought before the investigating judges, they are never informed of their right to remain silent or to have a lawyer so that they do not have a lawyer present during their interrogation¹⁰⁵. In addition to the fact that this is a clear violation of the right to have a counsel, it can also entail serious consequences: suspects in criminal cases feel unable to inform the investigative judge about the torture they may have been subjected to, which then may be raised only later during their trial¹⁰⁶.

Moreover, most defendants appear in court without a lawyer representing them, to the extent that defendants usually meet their lawyer for the first time in court. As courts will then appoint lawyers to

¹⁰¹ I.e. article 322 of the Penal Code only prescribes a penalty of up to 7 years.

¹⁰² I.e. article 40.2 of the Penal Code states that there is no crime if the perpetrator commits the act in performance of an order from a superior act, which he is obliged to obey, or which he feels he is obliged to obey.

¹⁰³ Alkarama, *Iraq, Shadow Report, Report Submitted to the Committee on Enforced Disappearances in the context of the review of the initial report of Iraq*, 14 August 2015, p. 5.

¹⁰⁴ *Ibid.*, p. 5.

¹⁰⁵ UNAMI/OHCHR, *Report on the death penalty in Iraq*, Baghdad, October 2014, p. 13.

¹⁰⁶ OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.2.

represent defendants during trials, adjournment of the proceedings is rarely granted to enable the defendants to prepare their defence with their lawyers, especially in cases where persons are accused of serious crimes carrying the death penalty¹⁰⁷. Additionally, even court appointed lawyers do not normally request adjournments to consult with their clients in order to prepare the defence and in several cases they only intervene during sentencing, where a formulaic plea for leniency is formulated, but without any argument to support the request¹⁰⁸. Finally, it is also reported that charges are laid down against individuals in the absence of evidence even in cases where defendants' right to legal assistance of their own choosing was violated, with public officials requesting extra money to the defendants in order to assign them a specific lawyer who would then ensure that the charges against him or her are dismissed¹⁰⁹.

3.4.5 Disrespect for the principle of presumption of innocence

Article 19.6 of the Iraqi Constitution enshrines the presumption of innocence, while article 235 PC prohibits the publication of any matter likely to "influence a judge or magistrate entrusted with the judgment on cases brought before a legal authority".

However, these legal guarantees enshrined in domestic law are blatantly violated. In particular, Iraqi TV continues to publicly broadcast "confessions" of alleged terrorists, whose faces and bodies are clearly visible in the videos and presented as "criminals". They are normally suspects arrested but not yet formally charged, such as in the programme "In the grip of the law" broadcasted on Al Iraqiya TV, which is produced in cooperation with the Iraqi Ministry of Interior, or other programmes broadcasted to Iraq from abroad, such as al-Horra TV and al-Faya TV.

As the suspects are brought on TV and presented as "terrorists confessing" their serious crimes or implicating other defendants guilty of such crimes, this practice does not only breach the principle of presumption of innocence, but also puts pressure on judges that would then be encouraged to issue guilty verdicts against them, often on the sole basis of these forced confessions. Moreover, public press conferences are regularly organised by the Ministry of Interior, during which persons accused of serious crimes are presented to the media to confess their crimes and video footages of interrogations of pre-trial detainees are released over the internet via the Youtube channel¹¹⁰.

In this regard, the prosecution of former **Vice-President Tariq Al Hashimi** on the basis of confessions under torture from his bodyguards broadcasted on national television in 2011 is emblematic. At the time, an Interior Ministry official, Major General Adel Daham commented that: "If we say we caught the leader of Al Qaeda, who will believe it? This is to show credibility. We are sure we are doing the right thing."¹¹¹

In December 2011, Iraqi security forces, ordered by Prime Minister Al-Maliki, surrounded the house of Vice-President Tariq Al Hashimi, a leading member of the Iraqiya coalition, Al-Maliki's main electoral rival, who was criticising what he saw as Al-Maliki's attempts to centralise power. This was marking an escalation of tensions between Al-Maliki and Al Hashimi who had been at odds over the formation of a unity government.

As Al Hashimi was not home, the security forces arrested several of his relatives and members of his staff instead. On 19 December 2011, forced confessions at gunpoint of three of his bodyguards who were severely tortured beforehand were aired on state-run channel Al Iraqiya incriminating Al Hashimi. The same day, the Ministry of Interior held a press conference to announce that an arrest warrant had been issued against Al Hashimi for having

¹⁰⁷ UNAMI/OHCHR, *Report on the death penalty in Iraq*, Baghdad, October 2014, p. 13.

¹⁰⁸ OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.iii.

¹⁰⁹ UNAMI/OHCHR, *Report on the death penalty in Iraq*, Baghdad, October 2014, p. 22.

¹¹⁰ Amnesty International, *Iraq: A Decade of Abuses*, 2013, p. 37-38.

¹¹¹ Jack Healy, "Iraq Turns Justice Into a Show, and Terror Confessions a Script", *New York Times*, 7 January 2012, <http://www.nytimes.com/2012/01/08/world/middleeast/iraq-turns-justice-into-a-show-and-terror-confessions-a-script.html> (accessed on 9 July 2015).

“orchestrated bombing attacks” and broadcasted the coerced confessions, in violation of the principle of presumption of innocence.

Meanwhile, the security services, tightly controlled by Al Maliki, continued to arrest dozens of Al Hashimi's staff and bodyguards and took them to secret locations where they were severely tortured and forced to sign confessions incriminating both Al Hashimi and themselves.

Alkarama has gathered testimonies regarding 21 of Al Hashimi's staff, their relatives and friends¹¹², who were all arrested between December 2011 and March 2012. All reported having been severely tortured while detained *incommunicado* for several months, following the same pattern. While the purpose of torture was at first to have them confess that they took part in terrorist acts on behalf of Al Hashimi, it also turned to a collective punishment simply for having worked for him. In addition to being held in solitary confinement, they were being beaten up (*falaqa*), forced to strip and exposed to extremely low temperatures. They were also choked with plastic bags and subjected to electric shocks via electrodes placed on sensitive parts of their bodies. The security services agents, who had access to the prison facilities, also threatened to arrest their wives and mothers and rape them in front of them. Mrs Rasha Nemer Jaafar Al Hussein, Al Hashimi's personal secretary and media officer, was also raped.

They were all later charged on the basis of their confessions extracted under torture with “carrying out terrorist attacks” by the investigating judge of the Central Criminal Court of Iraq (CCCI) branch in Al Karkh. After heavily flawed trials during which their confessions under torture were admitted as the sole pieces of evidence, they were all sentenced to death on the basis of article 4 of the Iraq's Anti-terrorism Law of 2005.

3.4.6 Flawed convictions based on confessions under torture or information provided by “secret informants”

Finally, when trials are held, judges rely heavily on the information extracted under torture, as detailed in the previous paragraph. In addition, it is common that, especially in cases of crimes against the “national security”, investigative and trial judges rely on testimonies of secret informants, as permitted by article 47.2 CCP¹¹³.

This is a worrisome practice, especially considering that in 2009, article 243 PC was amended in order to increase the penalty for falsely accusing an innocent person due to the problems that had arisen from the widespread use of secret informants. At the same time, the Supreme Judicial Council issued a directive urging investigative judges to review the reliability of information provided by secret informants and not to consider it sufficient, in the absence of other evidence, to issue arrest warrants or detention orders. This heavy reliance on information extracted under torture or provided by secret informants is all the more concerning in the numerous cases involving the administration of the death penalty.

3.4.7 The lack of independence of the judiciary

The serious flaws in the Iraqi judicial system detailed above are coupled with a general lack of independence of the judiciary as the executive power and the Prime Minister exercises powerful influence to the extent that courts become a tool of political control. Prosecution under the cover of terrorism of outspoken political opponents is common, as will be detailed in a next section. At the same time, even harassment of lawyers of critics of the government is a common practice.

¹¹² See about four of his security officers here: Alkarama, *Iraq : Four Security Officers of Former Vice-President Al Hashimi Arbitrarily Detained on the Basis of False Confessions Obtained Under Torture*, 21 August 2014, <http://en.alkarama.org/iraq/press-releases/1482-iraq-four-security-officers-of-former-vice-president-al-hashimi-arbitrarily-detained-on-basis-of-false-confessions-obtained-under-torture> (accessed on 6 July 2015) ; and about 11 of his staff in addition to their relatives and friends here : Alkarama, *Iraq : Politically-Driven Mass Arrests and Arbitrary Detention Target Former Vice-President Al Hashimi's Staff*, 15 April 2015, <http://en.alkarama.org/iraq/press-releases/1659-iraq-politically-driven-mass-arrests-and-arbitrary-detention-target-former-vice-president-al-hashimi-s-staff> (accessed on 6 July 2015).

¹¹³ UNAMI/OHCHR, *Report on the death penalty in Iraq*, Baghdad, October 2014, p. 23.

Iraqi national law includes provisions protecting the independence of the judiciary, as stated by articles 19.1 and 87 of the Constitution as well as the Management of Detention and Prison Facilities Act No. 2 of 2003 and article 2.1 of the Judicial Organisation Law No. 170 of 1979.

However, political interference, threats from militias and the judges' fear for their lives weigh heavily upon the issuance of many verdicts. This is often linked to the widespread corruption present in the judicial and administrative system. It is in fact rare that cases of police corruption, such as instances in which police officers demand money to relatives of inmates (i.e. to stop torture on them, or to obtain a specific lawyer¹¹⁴), reach the stage of prosecution, and when it does, it has proved ineffective. For example, UNAMI has reported that many judges have voiced their concerns over the insufficient level of protection they receive to counter security risks they run by investigating and prosecuting corruption of security forces personnel¹¹⁵.

Moreover, the Iraqi justice system also suffers from a shortage of qualified and trained judges in comparison to the high number of inmates who face prosecution. Therefore, they have no time to sufficiently scrutinise each case and do nothing more than rubber stamp the police investigation before transferring the case to trial¹¹⁶. The same issue is encountered at the Central Criminal Court of Iraq (CCCI), which has jurisdiction over serious criminal offences such as those that entail the death penalty and organised crime, where trials sometimes last five minutes, even when handing down the death penalty¹¹⁷. Another solution found to tackle the shortage of judges is to swiftly appoint new judges among the lawyers, and provide them with a short training – normally lasting no longer than three months¹¹⁸–, so that those newly appointed judges would clearly lack the appropriate training and preparation demanded for their work.

Even lawyers are subjected to intimidation and harassment, simply for representing critics of the governmental policies or political opponents. This constitutes a violation of articles 24 and 28 of Iraqi Law of Lawyers No. 173 of 1965 which provides that lawyers shall not be considered responsible for the arguments they put forward in their defence and shall not be accused nor arrested for defamation while exercising their professional activity in compliance with recognised professional duties, standards and ethics. Furthermore, according to article 30 of the same law, the Bar Association must be informed if any of its members is under a judicial inquiry for any act committed during the exercise of his/her functions before opening the actual inquiry procedure, another provision that is rarely respected.

We also wish to recall that on 5 October 2012, Prime Minister Nouri Al Maliki made a public declaration during the 79th anniversary of the constitution of the Iraqi Bar Association praising and congratulating those lawyers who "refuse to represent terrorists, murderers and criminals", while expressing his disapproval for those that "stand publicly in court to defend a murderer or a criminal"¹¹⁹. This political declaration is of the outmost gravity and represents by itself a clear threat to the independence of lawyers as well as their physical security.

It is in fact extremely worrisome to note that nowadays, three years after this declaration, Iraqi lawyers are still victim of harassment and reprisal for undertaking their mere professional duties, as shown by the cases of Mouayad Obeed Al Ezzi, Ziad Ghanem Shaaban Al Naseri, Salah Khabbas Al Obeidi, all representing several employees or persons with alleged personal connections with the former Vice President Tariq Al Hashimi who have been arrested by the Iraqi Security Forces between

¹¹⁴ *Ibid.*, p.6.

¹¹⁵ UNAMI Human Rights Office, OHCHR, *Report on Human Rights in Iraq, January – June 2013*, August 2013, Baghdad, p.9.

¹¹⁶ *Ibid.* p. 10.

¹¹⁷ Human Rights Watch, *Iraq: Set Aside Verdict in Massacre of Cadets*, 16 July 2015, <https://www.hrw.org/news/2015/07/16/iraq-set-aside-verdict-massacre-cadets> (accessed on 17 September 2015).

¹¹⁸ Interview carried out by Alkarama.

¹¹⁹ YouTube, *بالارهاب منهم عن يتوكل محامي كل يهدد المالكي*, (EN translation), 7 October 2012, <http://www.youtube.com/watch?v=vUgAqd3OmZs> (accessed 22 April 2015).

November 2011 and March 2012 and sentenced to death by the CCCI¹²⁰, as well as Badee Aref Izzat, lawyer of Ahmad Al Alwani¹²¹.

Mouayad Obeed Al Ezzi was notified an arrest warrant on 31 March 2013, issued by the Central Investigating Court in Al Karkh on the basis of article 4 of the Anti-Terrorism Law (case No. 1282/2013). On 24 June 2013, the arrest warrant was cancelled.

Ziad Ghanem Shaaban Al Naseri was arrested on 21 November 2012 and detained in inhumane conditions in the Anti-Terrorism prison in central Tikrit. On 28 November 2012, he was released, after one week of detention.

Salah Khabbas Al Obeidi, a lawyer since 22 July 2008, was also a candidate in the provincial elections in the Saiidiya district of Baghdad in 2013. He represented the National Iraqi Alliance, an Iraqi coalition mainly composed of Shi'a parties, an opposition party contesting the results of the 2010 Parliamentary elections.

On 24 March 2013, in the morning, Mr Al Obeidi was in his office in the Al Saiidiya district of Baghdad when an armed group broke in and executed him. At the time, a detachment of the Security Forces was standing near Mr Al Obeidi's office. Some neighbours, who witnessed the incident, testified that the members of the Security Forces did not intervene neither during the execution nor after it, letting the armed men leave¹²². According to the information Alkarama was able to collect, no inquiry was opened on the killing of Al Obeidi.

Badee Aref Izzat has been working as a lawyer since 8 June 1978, often in politically sensitive cases. While working for the case of Tareq Aziz, former Minister of Foreign Affairs and Deputy Prime Minister of Iraq, a close adviser to Saddam Hussein, Mr Izzat was arrested on 15 March 2007 by Iraqi and US security forces for contempt of the court, a charge reportedly used for political reasons due to the fact that he was defending a prominent member of the former regime. Held in a detention centre under the US forces control in the Green Zone in Baghdad, he was then set free on 19 March 2007.

Mr Izzat later became the lawyer of Ahmad Al Alwani, which led to his arrest on 20 March 2014 by the Iraqi Special Forces, while going to a meeting with officials from UNAMI, under the pretext of "carrying false identity documents". He was then blindfolded and taken to an interrogating centre within the Green Zone, where he was questioned about his motives for defending Mr Al Alwani. After having been kept blindfolded for 12 hours, he was forced to make a video recording in which he had to state that he was not subjected to torture and was allowed to call his family to pick him up.

Recommendations:

1. Ensure in law and in practice that arrests are carried out upon presentation of an arrest warrant previously issued by the judicial authorities;
2. Ensure both in law and in practice that the use of indefinite pre-trial detention is abolished, in particular by repealing article 109.b of the Iraqi Criminal Code of Procedure;
3. Ensure that the right to defence is ensured at all stages of trial as well as the professionalism of court appointed lawyers;
4. Ensure that the principle of the presumption of innocence is respected and prohibit the practice of broadcasting "confessions" on TV;
5. Prohibit the admissibility of testimonies of secret informants, by repealing article 47.2 of the CCP;

¹²⁰ Alkarama, *Iraq: Politically-Driven Mass Arrests and Arbitrary Detention Target Former Vice-President Al Hashimi's Staff*, 15 April 2015, <http://en.alkarama.org/1659-iraq-politically-driven-mass-arrests-and-arbitrary-detention-target-former-vice-president-al-hashimi-s-staff> (accessed on 22 April 2015).

¹²¹ Alkarama, *Iraq: Broad Pattern of Harassment and Persecution of Lawyers through Arbitrary Arrest and Detention, Torture and even Death*, 12 May 2015, <http://en.alkarama.org/iraq/1683-iraq-reprisals-against-4-lawyers-through-arbitrary-arrest-detention-torture-and-even-execution> (accessed on 17 September 2015).

¹²² Voice of Iraq, *Iraqi coalition condemns the assassination of lawyer Salah al-Obeidi*, <http://www.sotaliraq.com/mobile-news.php?id=93481#axzz3VUahif1d> (accessed 27 April 2015).

6. Ensure that judges are free from any threat, political pressure or any other form of interference and ensure that only appropriately trained lawyers are appointed;
7. Ensure that lawyers are not subjected to intimidation and harassment.

3.5 The Rights to Freedom of Opinion and Expression (Article 19) and Peaceful Assembly (Article 21)

Iraq's Constitution guarantees freedom of expression, press and assembly in its article 38 and stipulates that it is incumbent on the State to strengthen the role of civil society institutions in article 45.1. In practice, nevertheless, these rights are often impaired.

For instance, Alkarama has knowledge of several confirmed cases in which journalists were killed by unknown assailants and the authorities have failed to investigate their deaths, let alone hold to account the perpetrators¹²³.

Additionally, as reported previously in this report, it is commonplace in Iraq that peaceful protests are repressed with excessive use of force. We recall for instance that on 23 April 2013, Iraqi security forces attacked the protestors in Hawijah, a town west of Kirkuk using tear gas, stun grenades, and live ammunition in an operation that caused the death of 91 persons. Despite the establishment on 13 May 2013 of a Supervising Investigative Judicial Commission to carry out investigations which has received 500 complaints from the families of the victims, the Ministry of Defence continues to refuse the referral of Military Personnel to justice, so that as of today no result has come from the inquiry¹²⁴.

Similarly, on 30 December 2013, hundreds of security force personnel, among which the SWAT forces with armoured vehicles, descended on the Ramadi protest camp, where hundreds of Sunnis had been protesting in a one-year long sit-in against the government's use of abusive counterterrorism measures and opened fire on the protesters, leaving at least 17 dead and ten wounded¹²⁵. In this case as well, at the time speaker of Iraqi Parliament, Osama al-Nujaifi, head of the Sunni "Mutahidun" block, stated he had sent a parliamentary committee to investigate the attack but that forces from the Baghdad Operations Command prevented the committee from entering the Anbar province on orders from Prime Minister Maliki¹²⁶, so that as of today there is no information available on any attempt to investigate the death caused by the excessive use of force employed against peaceful protestors.

In addition, prosecution of outspoken political opponents and critics of the Prime Minister under the cover of "terrorism" has become common. The issuance of the death penalty on the basis of confessions under torture of Ahmad Al Alwani in complete disregard of the rules providing for parliamentary immunity is an iconic example of how politically motivated sentences are handed down by the judiciary against individuals who were only exercising their right to freedom of opinion and expression.

Ahmad Al Alwani¹²⁷, a prominent member of the secular Al Iraqiya political block within the Iraqi Council of Representatives, is well known for his denunciation of corruption within the Iraqi bureaucracy, as well as his criticism of both the Iraqi Prime Minister's policies and the central government's marginalisation of Iraqi Sunnis. He was arrested on 28 December 2013,

¹²³ Alkarama, *Universal Periodic Review: Iraq, Second Cycle, Submission to the Stakeholders' Summary*, 14 March 2014, para.29.

¹²⁴ Alkarama, *Iraq – Shadow Report, Report Submitted to the Committee against Torture in the context of the review of the initial report of Iraq*, 13 July 2015, p. 20.

¹²⁵ BBC World, *Ten die as Iraq security forces dismantle Sunni camp*, 30 December 2013, <http://www.bbc.com/news/world-middle-east-25548776>, Human Rights Watch, *Iraq: Investigate Violence at Protest Camp*, 3 January 2014, <https://www.hrw.org/news/2014/01/03/iraq-investigate-violence-protest-camp> (accessed on 14 September 2014).

¹²⁶ Human Rights Watch, *Iraq: Investigate Violence at Protest Camp*, 3 January 2014, <https://www.hrw.org/news/2014/01/03/iraq-investigate-violence-protest-camp> (accessed on 14 September 2014).

¹²⁷ Alkarama, *Iraq: MP Ahmad Al Alwani Sentenced to Death After Flawed Trial*, 16 January 2015, <http://en.alkarama.org/component/k2/1593-iraq-member-of-council-of-representatives-al-alwani-sentenced-to-death-after-flawed-trial?Itemid=> (accessed on 9 July 2015).

after having held meetings with the provincial authorities of Ramadi – the theatre of a one-year long protest – in order to ease the tensions between demonstrators and the government.

The following day, the Iraqi Minister of Defence threatened to keep Al Alwani in detention if the protests did not cease within two days. As clashes continued between demonstrators and the Iraqi army, he remained detained.

Shortly after his arrest, Al Alwani was taken to a secret place of detention where he was subjected to ill-treatment and torture and forced to sign official documents containing statements extracted under torture. As a consequence of this treatment, he now suffers from serious physical and psychological health conditions for which he does not benefit from the appropriate medical treatment while in detention.

Neither his family nor members of the Parliament were able to obtain information on his whereabouts or on the charges pending against him until his first hearing on 27 January 2014. That day, Al Alwani was brought before the Central Criminal Court of Baghdad handcuffed and hooded and charged with “assault on military assets and killing and injuring security forces for terrorist ends”, on the basis of article 4 of the 2005 Anti-Terrorism Law.

During the trial, his lawyer was never allowed to contact or visit him in prison to prepare his defence. Instead, he was only briefly allowed to talk to him for a few minutes in court. Following several episodes of intimidation, Al Alwani's lawyer was also arrested, blindfolded and questioned about his motives for defending this client.

On 23 November 2014, Al Alwani was sentenced to death on the sole basis of confessions extracted under torture. His lawyer filed an appeal, which is still pending to date. Al Alwani is also currently being prosecuted for “incitement to sectarianism”, which is also punished by death.

Today, he remains in detention and is being forbidden to see his family and lawyer, leaving him in a situation of *incommunicado* detention.

Recommendations:

1. Ensure that freedom of opinion and expression as well as of peaceful assembly are fully respected;
2. Ensure that law enforcement officials refrain from resorting to the excessive use of force when confronting peaceful protests and comply with the Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
3. Investigate effectively, promptly, thoroughly, and impartially any allegations of violations or abuses committed by the security forces in the context of the repression of pacific protests;
4. Amend the Anti-Terrorism Law No. 13 of 2005 in order to ensure the crime of terrorism is strictly defined in order to leave no room for abusive interpretation and application of the law.

3.6 The abuses committed under the Anti-Terrorism Framework (Articles 2, 7, 9, 10 and 14)

The Iraqi Anti-Terrorism Law No. 13 of 2005 has been widely criticised for having opened the door to abuses due to its broad definition of terrorism, for mandating the death penalty and especially for its abusive use against political opponents and critics of the government, as highlighted above.

First of all, article 1 defines terrorism very broadly, as “every criminal act committed by an individual or an organised group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals”.

What is of great concern is the fact that article 4.1 provides for the mandatory application of the death penalty to those convicted for committing or threatening to commit acts of terrorism and this not only applies to the main perpetrator, but also to all those inciting, planning, aiding and abetting, or financing terrorism. Not only this list goes far beyond the threshold of the internationally recognised definition of “most serious crimes”, but it can also be applicable to acts that have little to do with actual acts of terrorism due to the catch-all definition provided in article 1 of the law.

Furthermore, as stated above, provisions of the Anti-Terrorism Law are applied within a judicial system that cannot uphold the right to fair trial, thus resulting in a surge in the imposition of the death penalty, which is carried out mostly under this very law. In particular, the competent jurisdiction to investigate and try suspects of crimes of terrorism is the Central Criminal Court of Iraq, as per article 18.2 of the CPA Order No. 13 of 22 April 2004, a court which is notorious for being entrenched with severe flaws in the administration of justice, such as the heavy reliance on confessions obtained under torture or the common denial of the right to defence, and which orders the death penalty after expeditious trials, as highlighted above.

Moreover, the widespread use of this law has been criticised by several political parties, which have been accusing the government of “discrimination,” “selective application of the law,” “fabricating charges” and “sectarian targeting”¹²⁸. Such a large number of persons sentenced to death indeed raise serious questions about the real number of those involved in violence and whether those sentences are effective in fighting terrorism in Iraq. UNAMI, after having conducted a trial monitoring study, has denounced that the authorities were usually inclined to apply anti-terrorism legislation in cases that had no connection to terrorism¹²⁹. Such practices are best illustrated with the cases of Tariq Al Hashimi and Ahmad Al Alwani.

Finally, it is also reported that many female detainees claim that they had been detained in lieu of male family members, or had been arrested on charges of aiding and abetting or of withholding information related to crimes committed by male family members, particularly under the Anti-Terrorism Law of 2005¹³⁰.

Recommendations:

1. Amend the Anti-Terrorism Law No. 13 of 2005 to ensure the crime of terrorism is strictly defined in order to leave no room for abusive interpretation and application of the law;
2. Review Iraq’s policy with regards to the imposition of the death penalty, especially when imposed abusively on the basis of the Anti-Terrorism Law No. 13 of 2005;

4. Conclusion

This report has demonstrated the serious flaws in the implementation of the Covenant in Iraq. Serious human rights violations continue to occur, such as the widespread and systematic use of torture, the practice of enforced disappearances, a total lack of fair trials guarantees during proceedings often initiated under the pretext of the fight against terrorism and in a climate of repression of every form of dissent.

National legislation often fails to adequately implement the Covenant, as for instance it does not provide for the adequate legal safeguards on the administration of the death penalty or a definition and criminalisation of torture and enforced disappearances as enshrined in the Convention against Torture and the International Convention for the Protection of All Persons against Enforced

¹²⁸ Mushreq Abbas, “Iraq’s Anti-Terrorism Law Criticized”, *Al Monitor*, 16 April 2013, <http://www.al-monitor.com/pulse/originals/2013/04/iraq-terrorism-law-executions-controversy.html#ixzz3m4bhQPC5> (accessed on 18 September 2015).

¹²⁹ OHCHR/UNAMI, *Report on the judicial response to allegations of torture in Iraq*, February 2015, p.10.

¹³⁰ Human Rights Watch, “No One is Safe”, *The Abuse of Women in Iraq’s Criminal Justice System*, 6 February 2014, <https://www.hrw.org/report/2014/02/06/no-one-safe/abuse-women-iraqs-criminal-justice-system> (accessed on 18 September 2015).

Disappearances. We also recall that the Anti-Terrorism Law No.13 of 2005 provides for an all-encompassing definition for the crime of terrorism and allows for the abusive application of the death penalty.

At the same time, even where legal safeguards exist, they are not respected in practice. The lack of independence of the judicial system, the widespread corruption as well as the total impunity enjoyed by the government-backed militias also contribute to widespread abuses that remain unpunished. Allegations of human rights violations are rarely investigated or brought to justice so that victims are systematically denied any right to redress and compensation.

Alkarama hopes that the review of Iraq before the Human Rights Committee will represent a real chance for promoting the actual implementation of the Covenant. In the current context where the armed confrontation with the IS and the fight against terrorism are used as a leeway allowing for violations to be perpetrated, strengthening the protection of human rights is a priority and would be of even greater benefit for the entire Iraqi society.