



# **Universal Periodic Review: Iraq**

## **Second Cycle**

### **Submission to the Stakeholders' Summary**

**Alkarama Foundation, 14 March 2014**

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## 1 Background

1. At its first Universal Periodic Review (UPR) in 2010, Iraq accepted numerous recommendations<sup>1</sup> in view of improving the overall human rights situation in the country. In the present stakeholder submission, Alkarama provides information regarding the implementation of these recommendations over the past four years, paying special attention to the issues of torture, arbitrary detention, extrajudicial executions, enforced disappearances, freedom of peaceful assembly and human rights and counter-terrorism.<sup>2</sup> In light of the recent deterioration of the security situation in regions directly controlled by the central Government and the expected continued degradation of the human rights situation due to these developments, we chose to focus on the human rights situation in these areas, as opposed to those governed by the Kurdistan Region Government.

2. Developments in the human rights situation in Iraq since its first UPR are a result of the effects of the US occupation, the ensuing civil war and internal division, as well as the regional turmoil. Political paralysis, which is due, in part, to a lack of Government compromise, has meant that grievances have swelled. 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, have favoured radicalisation over political dialogue. This tendency was further accentuated through the prosecution of prominent political figures who have stood up against the Government. Benefiting from the accumulated frustration and lack of perspective within Iraq's Sunni community and using Syria as a refuge, the former Al Qaeda in Iraq – now often referred to as the "Islamic State of Iraq and Greater Syria" (ISIS) – as well as other groups ready to defend their aims with violent means have re-gained strength and influence. 2013 was the deadliest year since 2008 in terms of civilian casualties and the confrontation of the Iraqi Armed Forces, local militia and ISIS in Ramadi and Fallujah as well as other cities in the early months of 2014 indicate that the security situation continues to decline.

3. With the legacy of occupation, conflict and dictatorship, and in conjunction with a lack of political will to address the ensuing challenges, Iraq's weak institutions are unable to prevent abuse 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. Sustained efforts should therefore be made by the international community to record violations, seek identification of perpetrators and bring them to justice.

### 1.1 Institutional and Framework

4. Iraq's Constitution<sup>3</sup>, approved by referendum on 15 October 2005, describes it as a "federal, independent and fully sovereign state (sic) in which the system of government is republican, representative, parliamentary, and democratic", recognising Kurdistan as a federal region. The Constitution further stipulates that the President of the Republic is the Head of the State, an office currently held by Jalal Talabani, and charges the nominee of the largest Council of Representatives block with the formation of the Council of Ministers. The Prime Minister, in turn, is the direct executive authority responsible for the general policy of the State and the commander-in-chief of the armed forces.

5. Having held the position of Prime Minister since 2006, Nouri Al Maliki has consistently widened the powers of his office, or weakened other institutions, and now influences or dominates both the judiciary and the legislative branches. Rampant nepotism among Ministers is illustrated by an incident on 6 March 2014, when a Baghdad-bound plane was denied permission to land and had to return back to Beirut, where the Iraqi Minister of Transport's son had missed his flight to Baghdad.<sup>4</sup> Iraq ranks 171 out of 177 countries on Transparency International's Corruption Perceptions Index in 2013.<sup>5</sup>

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<sup>1</sup> In the present report, we will refer to the recommendations accepted by Iraq during the first cycle of the UPR listed under paras. 81 to 83 of the Report of the Working Group on the Universal Periodic Review (A/HRC/14/14) while taking into account the views expressed by the State under review as published in the Report of the Human Rights Council on its fourteenth session (A/HRC/14/37, paras. 548-585).

<sup>2</sup> Reference to relevant recommendations and citations is, where appropriate, provided in the footnotes.

<sup>3</sup> The text of the *Constitution of Iraq*, approved by referendum on 15 October 2005, can be found in English (UN/US/UK agreed translation) at <http://giji.org/wp-content/uploads/2009/01/agreed-final-english-translation-of-constitution-25-jan-2006.doc> (accessed on 7 March 2014).

<sup>4</sup> Gulfnews, *Iraq airport official arrested over Lebanon flight row*, 7 March 2014, <http://gulfnews.com/news/region/iraq/iraq-airport-official-arrested-over-lebanon-flight-row-1.1300687> (accessed 7 March 2014).

<sup>5</sup> Transparency International, *Iraq Page*, <http://www.transparency.org/country#idx99> (accessed 7 March 2014).

6. In this context, it is not surprising that the judiciary cannot be qualified as independent. Prosecution, under the cover of counter-terrorism measures, of outspoken critics of the Prime Minister have become common, as demonstrated by the arrest of Member of Parliament Ahmed Al Alwani on 28 December 2013. Lawyers also face pressure, as best shown during the Prime Minister's speech delivered on 5 October 2012 before the Bar Association, where he issued barely veiled threats to the audience, should they chose to defend terrorism suspects.<sup>6</sup> In addition, Alkarama received consistent testimonies indicating heavily flawed judicial procedures, raising concerns that the judicial system is incapable of guaranteeing defendant's rights to a fair trial.

7. Iraqi legislative power should, according to the Constitution's article 48, consist of the Council of Representatives and the Federation Council. At the time of writing, the Federation Council was still to be established, more than eight year after the adoption of the Constitution.

8. In April 2012, the Council of Representatives agreed on the composition of the Independent High Commission for Human Rights, Iraq's National Human Rights Institution.<sup>7</sup> The Commission has since then overcome several obstacles, but is not yet fully operating according to the Paris Principles.

## 9. Recommendations:

- a) Take immediate and concrete steps to ensure effective independence of the legislative and the judiciary in general, and judges and lawyers in particular, to ensure real separation of powers;
- b) Strengthen the Independent High Commission for Human Rights and ensure it works in accordance with the Paris Principles.

## 1.2 International Obligations and Cooperation with Human Rights Mechanisms

10. Iraq, which ratified the International Covenant on Civil and Political Rights (ICCPR) in 1971, has neither ratified its Optional Protocol (ICCPR-OP1) nor the Second Optional Protocol (ICCPR-OP2). With a delay of thirteen years, Iraq submitted its 5<sup>th</sup> periodic report on 11 October 2013<sup>8</sup> and is scheduled for review by the Human Rights Committee in 2015.

11. Since Iraq's first UPR, it ratified the Convention against Torture (CAT) in July 2011, without making declarations under Articles 21 and 22 of the Convention. Pursuant to Article 19 of the Convention, Iraq's initial report should have been submitted to the Committee against Torture by 6 August 2012, but the State party has failed to comply with its reporting obligation to date. The authorities have also failed to fully implement the treaty's provisions<sup>9</sup>, and have not ratified the Optional Protocol to the Convention (OPCAT).

12. As recommended during the first cycle of the UPR<sup>10</sup>, Iraq acceded to the International Convention for the Protection of All Persons from Enforced Disappearance (CED) on 23 November 2010, but without making declarations under article 31 of the Convention. Its initial report was due on 23 January 2013.

13. A standing invitation was extended to all Special Procedures of the Human Rights Council on 16 February 2010<sup>11</sup> and Iraq has since received two mandate holders and agreed upon a visit by the Special Rapporteur on the situation of human rights defenders. Given that issues related to extrajudicial execution, enforced disappearance and independence of judges and lawyers remain one of Alkarama's main concerns with regard to the human rights situation in Iraq, we regret that the relevant mandate holders' requests for visits have remained without reply to date.<sup>12</sup> We further regret that no or insufficient replies were provided to the Special Procedures – especially the Special Rapporteur on extrajudicial, summary or arbitrary executions and Working Group on Arbitrary Detention – regarding cases submitted by Alkarama over the course of the past four years.

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<sup>6</sup> YouTube, *المالكي يهدد كل محامي يتوكل عن متهم بالارهاب!!* (EN translation), 7 October 2012, <http://www.youtube.com/watch?v=vUgAgd3OmZs> (accessed 7 March 2014).

<sup>7</sup> Recommendation 81.10 by Algeria has been implemented.

<sup>8</sup> Recommendation 81.32 by Norway was implemented.

<sup>9</sup> Recommendation 81.5 by Slovenia has not been implemented.

<sup>10</sup> Recommendation 81.4 by Argentina has not been implemented.

<sup>11</sup> Recommendation 81.38 by Chile has been implemented.

<sup>12</sup> Recommendation 81.58 by Canada has not been implemented.

## 14. Recommendations:

- a) Submit overdue reports, including its initial reports to the Committee against Torture and the Committee on Enforced Disappearances;
- b) Ratify ICCPR-OP1, ICCPR-OP2 and OPCAT and accept other individual complaints procedures, including under CAT Article 22 and CED Article 31;
- c) Receive visits by the Special Procedures working on human rights defenders, extrajudicial execution, enforced disappearance, torture and independence of judges and lawyers in order to establish a constructive dialogue with the aim of bringing an end to current human rights violations, preventing future abuse and addressing past crimes;
- d) Significantly improve the quantity and quality of replies to the Special Procedures regarding individual communications.

## 2 Torture and Impunity

15. The prohibition of torture is enshrined in article 37(c) of the Constitution, with the Criminal Procedure Code (CPC)<sup>13</sup> and the Penal Code (PC)<sup>14</sup> providing for criminalisation and punishment. Article 127 of the CPC, however, only gives a vague definition of torture, stipulating that “[t]he use of any *illegal* method to influence the accused and extract an admission is not permitted”, adding that acts such as mistreatment, threats, injury, enticement or the use of drugs are considered illegal. The penalties specified in articles 332 and 333 of the PC do not appropriately reflect the gravity of the crime of torture.<sup>15</sup> Iraq has not fully incorporated the provisions of the CAT into the Constitution and national legislation since its ratification in 2011.<sup>16</sup>

16. Since the last UPR, Alkarama continued to receive credible allegations of torture<sup>17</sup>, including the testimony of a Libyan special envoy, who was officially mandated to facilitate the repatriation of Libyan prisoners. The envoy was himself arrested in October 2012 and held in incommunicado detention for several weeks, before being released in mid-December. He reported to have been beaten with stun batons and insulted during his detention. Other detainees speak of severe beatings leading on occasion to bone fractures, burning with cigarettes, electrocution, prolonged solitary confinement or denial of access to health care as a means of pressure during investigations or as punishment.

17. Many of the persons alleging torture have raised the issue in court or reported it to other authorities, when they were given the possibility to do so. None of them are aware of subsequent investigations into the allegations<sup>18</sup> and prosecution of perpetrators<sup>19</sup>, and neither have they received compensation.<sup>20</sup> In some instances, statements made under torture – whether by the defendant or third persons – were clearly admitted as evidence in judicial proceedings, which constitutes a breach of Iraq’s obligations under international human rights law as well as national legislation and is contrary to pledges made during the first UPR cycle.

18. It had been recommended that Iraq unify the supervision of detention facilities under the Ministry of Justice, a process which has yet to be accomplished.<sup>21</sup> This is all the more concerning as abuse and detention conditions seem to be worse at prisons and detention centres controlled by the Ministry of Interior.<sup>22</sup>

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<sup>13</sup> The text of the *Criminal Procedure Code*, Law No. 23 of 1971 as amended to 14 March 2010, can be found in English (GJPI translation) at <http://gjpi.org/wp-content/uploads/gjpi-cpc-1971-v2-eng.doc> (accessed on 7 March 2014).

<sup>14</sup> The text of the *Penal Code*, Law No. 111 of 1969 as amended to 14 March 2010, can be found in English (GJPI translation) at <http://gjpi.org/wp-content/uploads/gjpi-pc-1969-v1-eng.doc> (accessed on 7 March 2014).

<sup>15</sup> 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 Chirs Ingelse, *United Nations Committee Against Torture: An Assessment*, Kluwer Law International, 2001, p. 342.

<sup>16</sup> Recommendations such as recommendation 81.9 by Ukraine have not been implemented.

<sup>17</sup> Recommendation 81.49 by Denmark has not been implemented.

<sup>18</sup> Recommendations such as recommendation 81.50 by Switzerland have not been implemented.

<sup>19</sup> Recommendations such as recommendation 81.84 by the Netherlands have not been implemented.

<sup>20</sup> Recommendation 81.51 by Sweden has not been implemented.

<sup>21</sup> Recommendation 81.57 from Japan has not been implemented.

<sup>22</sup> UNAMI Human Rights Office/OHCHR, *Report on Human Rights in Iraq: January – June 2013*, August 2013, [http://www.uniraq.org/index.php?option=com\\_k2&view=item&task=download&id=229\\_10235c032471d9e0fe94f42e0b76c452&Itemid=650&lang=en](http://www.uniraq.org/index.php?option=com_k2&view=item&task=download&id=229_10235c032471d9e0fe94f42e0b76c452&Itemid=650&lang=en) (accessed of 28 February 2013), pp. 4-7.

### **19. Recommendations:**

- a) Review national legislation, policies and directives to fully comply with the provisions of the CAT and implement them accordingly, ensuring adherence by all security and armed forces, as well as the judiciary at all levels of judicial proceedings;
- b) Thoroughly investigate all allegations of torture in order to avoid statements extracted under pressure being used as evidence in court, to identify perpetrators and to hold accountable all those responsible for individual cases violating the State's obligation under the CAT, as well as the larger systematic recourse to torture.

### **3 Arbitrary Detention**

20. The right to enjoy liberty and the prohibition of unlawful detention are enshrined in articles 15 and 19.12(a) of the Constitution, which also lists a number of other principles inherent to the right to a fair legal proceeding. Domestic legislation, however, does not sufficiently protect suspects from excessive pre-trial detention, for example. Article 109 of the CPC allows for indefinite renewal of remand under certain circumstances, effectively undermining the right not to be subjected to arbitrary deprivation of liberty.

21. In practice, sentences handed down after trials in the absence of legal counsel or based on confessions extracted under torture remain frequent<sup>23</sup>, to the point that the UN High Commissioner for Human Rights describes the criminal justice system as "seriously flawed."<sup>24</sup> Alkarama further documented cases where prisoners were detained in secret or kept in detention beyond the end of their terms or denied the right to appeal their sentences.

### **22. Recommendations:**

- a) Review domestic legislation with regard to pre-trial detention periods and bring it into conformity with international standards;
- b) Release all persons held without legal basis;
- c) Ensure that all defendants benefit from fair legal proceedings and review cases where reasonable grounds exist to believe that a detainee is held unlawfully, according to international standards.

### **4 Arbitrary Executions**

23. The evident shortcomings of the Iraqi judiciary are of particular concern considering the high numbers of capital punishments implemented or pronounced in the past years.<sup>25</sup> Documenting many such cases, Alkarama also followed the situation of a Tunisian national who was executed in November 2011, not even two weeks after his family had received guarantees that the implementation of his death sentence had been halted and that his case was to be re-examined. The unacceptable risk of judicial miscarriage and lack of transparency regarding the implementation of executions, make it a necessity to immediately adopt a moratorium on death penalty with a view to abolishing it completely.

### **24. Recommendations:**

- a) Abolish death penalty and, as an intermediary step, adopt a moratorium on executions; ensure independent review of all death row candidates' files;
- b) Review, as a matter of urgency, all trials resulting in death sentences and suspend their implementation should reasonable grounds exist to suspect non-observance of fair trial norms.

### **5 Enforced Disappearance**

25. Statistics on enforced disappearances in Iraq vary significantly, given the unstable situation in the country. Depending on the source, the numbers range between 250'000 and over a million missing persons over a period of three decades.<sup>26</sup> As the practices leading to enforced disappearances

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<sup>23</sup> Recommendations such as recommendation 81.52 by Switzerland have not been implemented.

<sup>24</sup> UN High Commissioner for Human Rights, *Pillay condemns rampant use of death penalty in Iraq*, 19 April 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13253&LangID=E> (accessed 4 March 2013).

<sup>25</sup> Recommendations such as recommendation 81.47 by Canada have not been implemented.

<sup>26</sup> International Commission on Missing Persons, *Iraq page*, <http://www.ic-mp.org/icmp-worldwide/middle-east/iraq/>, (accessed 6 March 2014).

remain deeply engrained in the security apparatus, Alkarama fears that the deteriorating situation may result in a resurgence of the phenomenon.

## **26. Recommendations:**

- a) Take concrete measures to end practices leading to enforced disappearance and prevent further occurrences;
- b) Undertake sustained efforts to establish the fate and whereabouts of all persons reported missing, regardless of the period during which the enforced disappearance occurred.

## **6 Right to Freedom of Expression, Peaceful Assembly and Association**

27. The Constitution guarantees freedom of expression, press and assembly (Article 38) and stipulates that it is incumbent on the State to strengthen the role of civil society institutions (Article 45.1). In practice, these rights are often impaired.

28. After months of peaceful demonstrations in several cities across the country, the Armed Forces, Special Weapons and Tactics (SWAT) units, and Police violently dispersed a protest camp in Hawijah, close to Kirkuk, on 23 April 2013. Evidence, such as death certificates and eye witnesses' accounts, suggests excessive force was used. A Parliamentary Committee published a report into the events, and a judicial commission was established to investigate potential transgressions by the security forces, which lead to the death of several dozens of demonstrators. But the refusal of the Ministry of Defence to authorise military personnel to be heard by this commission, for example, delayed the procedure by several months. In the absence of political will, no results have come from the enquiry at the time of writing of this report, close to a year after the violent dispersal of the protest camp.

29. Alkarama has knowledge of at least five cases where journalists were killed by unknown assailants and the authorities have failed to investigate their deaths<sup>27</sup>, let alone hold to account the perpetrators.<sup>28</sup>

## **30. Recommendations:**

- a) End excessive use of force against protesters and other practices leading to extrajudicial killings;
- b) Investigate all cases of extrajudicial killings and excessive use of forces with the aim of identifying perpetrators and holding them to account.

## **7 Human Rights and Counter-Terrorism**

31. Iraq's Anti-Terrorism Law, law No. 13 of 2005<sup>29</sup>, stipulates in its article 4 that anyone who is found guilty of acts of terrorism shall be sentenced to death, and that concealment of facts related to terrorist acts warrants life imprisonment. Preceding articles elaborate what acts are considered to be acts of terrorism, listing a range of transgressions, some of which do not fall under the definition of most serious crimes and should therefore not be sanctioned with capital punishment. The broad provisions of the Anti-Terrorism Law and their application by a judicial system that cannot guarantee fair trials in determination of the charges laid against defendants have resulted in a surge in arbitrary executions, some of which have been carried out in waves of up to 42 individuals at a time.<sup>30</sup>

32. In some cases, the Anti-Terrorism Law has been utilised to neutralise opponents of the Government or critics of its policies. The most prominent example is the prosecution of Tarik Al Hashimi, Vice-President at the time, who has been sentenced to death in absentia several times, based on testimonies by some of his security staff, who have reportedly been subjected to torture. More recently, an opposition figure, Member of Parliament Ahmed Al Alwani has been arrested and accused of terrorism.

## **33. Recommendation:**

- a) Review its Anti-Terrorism Law to prevent broad application of its provisions, ensuring that only most serious crimes warrant capital punishment.

<sup>27</sup> Recommendations such as recommendation 81.96 by Germany have not been implemented.

<sup>28</sup> Recommendations such as recommendation 81.94 by the United States have not been implemented.

<sup>29</sup> The text of the *Anti-Terrorism Law*, Law No. 13 of 2005, can be found in English at <http://qjpi.org/wp-content/uploads/anti-terrorism-law-iraqi-no-13-2005.doc> (accessed on 7 March 2014).

<sup>30</sup> The World Post, *Iraq Carries Out 42 Executions In Single Week*, 10 October 2013, [http://www.huffingtonpost.com/2013/10/10/iraq-executions\\_n\\_4076400.html](http://www.huffingtonpost.com/2013/10/10/iraq-executions_n_4076400.html) (accessed 5 March 2014).