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Human Rights in the Administration of Justice in Iraq:

legal conditions and procedural safeguards to prevent torture and ill-treatment



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Eradicating torture will be one of the most effective tools to build public trust in the state's ability to deliver justice and uphold the principle of fairness. However, when the authorities themselves break the law, it has the opposite effect. The prevention of torture in reality, and not just on paper, would contribute to peace and stability in the long term, and is therefore in the State's interest as well as the victims'.

- UN High Commissioner for Human Rights Michelle Bachelet, 3 August 2021

No circumstances, however exceptional, justify torture or any form of impunity. I encourage increased efforts towards prevention and accountability, in line with Iraq's obligations under international and domestic law.

- Special Representative for Iraq of the United Nations Secretary-General, Jeanine Hennis-Plasschaert, 3 August 2021

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I. Executive summary

Torture is a reality in places of detention throughout Iraq. It is not, however, possible to determine the exact scale and scope of torture and other forms of ill-treatment,¹ as they typically occur behind locked doors of detention facilities. Iraqi judges, lawyers and medical practitioners confidentially acknowledge the prevalence of such acts. Additionally, the accounts of victims leave no doubt that torture and ill-treatment do take place in Iraq. The limited accountability for torture and ill-treatment outlined in this report suggests acquiescence and tolerance of these practices as a means of eliciting a ‘confession’.

Although the Iraqi legal framework explicitly criminalises torture and sets out the key legal conditions and procedural safeguards aimed at its prevention, respect for these provisions is lacking. Consequently, non-compliance with the regulatory framework for the prevention of torture enables the realities of interrogation rooms and places of detention to be hidden from effective legal oversight, perpetuating a cycle of defensiveness and denial.

This report, *Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment*, prepared by the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), pursuant to its mandate under Security Council Resolution 2576 (2021), and the Office of the United Nations High Commissioner for Human Rights (OHCHR), urges renewed attention by the Government of Iraq and the Kurdistan Regional Government to address the continued practice of torture and/or other forms of ill-treatment in places of detention. It covers the period from 1 July 2019 through 30 April 2021, during which human rights officers conducted interviews with 235 persons deprived of their liberty and held discussions with prison staff, judges, lawyers, families of detainees and other relevant interlocutors throughout Iraq. Consistent with patterns and trends documented in the past,² more than half of all the detainees interviewed by UNAMI/OHCHR for this report provided credible and reliable accounts of torture.

The central objective of this report, however, is to move beyond debating the extent of these practices and to encourage efforts to build stronger compliance with key legal conditions and procedural safeguards as set out in the international and Iraqi legal framework. In addition to ensuring fair proceedings and adequate conditions of detention, the main purpose of these legal provisions is to reduce the likelihood of torture or ill-treatment by addressing the conditions that enable their occurrence.

In support of this central objective, the report provides an analysis of risk factors for torture and ill-treatment during interrogations and in places of detention, noting concern that the most fundamental legal conditions and procedural safeguards are routinely not respected. In particular, the findings indicate that:

1. Access to a lawyer is systematically delayed until after suspects have been interrogated by the security forces and to a large extent by the investigative judge.

¹ Ill-treatment refers to ‘cruel, inhuman or degrading treatment or punishment’.

² See for example: UNAMI/OHCHR, Report on the judicial response to allegations of torture in Iraq (February 2015); Committee against Torture, Concluding Observations on the initial report of Iraq, CAT/C/IRQ/CO/1 (2015); Human Rights Committee, Concluding Observations on the fifth periodic report of Iraq, CCPR/C/IRQ/CO/5 (2015).

2. Medical screenings of detainees upon arrival to a facility to detect prior ill-treatment are not standard practice in Iraqi places of detention, particularly with respect to pre-trial detention.
3. The opportunity for detainees to inform persons of their choice of their whereabouts is often (significantly) delayed, particularly during the investigation phase, and family visits face restrictions.
4. Pre-trial detention is used as a standard practice during criminal investigations; legal procedures to bring interrogations and detention under judicial control within 24 hours following arrest are not respected.
5. Information about security organs with official powers of detention, the conditions under which they may carry out detention and the location of all official detention sites remains opaque.
6. Interrogations by security forces are generally aimed at eliciting confessions, contributing to a coercive environment, while interrogations by investigative judges are reported to focus on confirming statements made before security forces.
7. The mechanisms to address complaints of torture or ill-treatment do not appear to be effective nor do they provide remedy. Complaints and signs of torture are often ignored by authorities. Many detainees choose not to report such treatment due to fear of retaliation.

The report provides targeted recommendations to the Government of Iraq and Kurdistan Regional Government to build compliance with the protective framework set out in international and Iraqi law. In doing so, UNAMI/OHCHR seeks to foster forward-looking, constructive, results-based engagement on the prevention of torture and ill-treatment.

II. Mandate

This report is prepared pursuant to United Nations Security Council resolutions, including Security Council Resolution 2576 (2021) that mandates UNAMI to ‘promote accountability and the protection of human rights, and judicial and legal reform, with full respect for the sovereignty of Iraq, in order to strengthen the rule of law and improve governance in Iraq, [...]’. The report, prepared by UNAMI through its Human Rights Office and OHCHR, is part of the ongoing engagement between the Government of Iraq and the United Nations on issues of administration of justice and detention.

III. Background

“I experienced the worst days of my life. As soon as I arrived, the officers beat me using metal pipes. The following days, they used two exposed electricity wires to electrocute me. In my second week of detention, they made me squat and they tied my legs to a metal pipe, so that I could not stand up. They then beat the palms of my feet with a hard object, that brought me terrible pain. I fainted. When I woke up, I saw the other detainees were rubbing my chest to revive me.”³ Interviewee #88

Efforts to prevent torture and other forms of ill-treatment serve to build public trust in the State’s ability to deliver justice and uphold the principle of fairness. Effective prevention of torture may counter terrorist and other extremist narratives and justifications used to incite violence, thereby contributing to peace and stability in the long term.

Against this backdrop, and as part of its broader efforts to promote and protect human rights in the criminal justice system in Iraq, UNAMI/OHCHR began its programme of systematically monitoring the treatment of persons deprived of their liberty in July 2019. The purpose is to support the Government’s ongoing efforts in implementing its commitments under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴ (Convention against Torture), as underlined by Iraq’s membership in the Group of Friends of the Convention against Torture Initiative.⁵

As of November 2020, the Iraqi Ministry of Justice reported 39,518 adult detainees held in facilities under its authority, out of which 2,115 were women, 1,264 pre-trial detainees and 11,595 convicts who had been sentenced to death.⁶ The Ministry of Justice separately reported a total of 1,464 juvenile detainees within facilities under its authority in 2019, out of which 100 were girls and 893 detainees on terrorism-related charges.⁷ In addition, in its annual report for 2020, the Iraqi High Commission for Human Rights (IHCHR) reported the following overall numbers of detainees held in facilities under the authority of the Ministry of Interior (24,853),⁸ Ministry of Defence (197) and Counter Terrorism Service (116).⁹

As of May 2021, the Ministry of Labour and Social Affairs of the Kurdistan Region of Iraq (KRI) reported 5,324 male adult detainees, 90 female adult detainees and 106 juveniles held in

³ Interviewee details withheld for all quotes for confidentiality purposes.

⁴ Iraq acceded to the Convention against Torture on 7 July 2011.

⁵ The Convention against Torture Initiative is an inter-governmental initiative to strengthen institutions, policies and practices and reduce the risks of torture and ill-treatment by applying the UN Convention against Torture, see <https://cti2024.org> (accessed 28 July 2021).

⁶ Letter from the Ministry of Justice dated 9 November 2020 (ref: 12/Arabic letter Meem/7/1026), on file with UNAMI. The number of persons sentenced to death held in a facility under the authority of the Ministry of Justice includes 25 women.

⁷ Letter from the Ministry of Justice dated November 2020 (12/Arabic letter Meem/7/1081), on file with UNAMI.

⁸ Despite official requests, UNAMI/OHCHR did not receive official figures from the Ministry of Interior.

⁹ For facilities under the Ministry of Justice, the IHCHR reported slightly higher numbers in 2020: 43,478 (adults and juveniles combined). In addition, 311 children were detained with their mother; see IHCHR 2020 Annual Report on The Situation of Human Rights in Iraq (excluding the Kurdistan Region) <http://www.ihchr.iq/upload/upfile/ar/145.pdf> (last accessed 25 May 2021), pp. 49-52.

facilities under their authority.¹⁰ Comprehensive data on the population in other places of detention in Iraq are not available.

IV. Methodology

A. *Preventive monitoring approach*

UNAMI/OHCHR follows a ‘preventive monitoring’ approach. It seeks to prevent violations of rights of persons deprived of their liberty, particularly torture or ill-treatment, by identifying and reducing risk factors and eliminating possible causes.

The prevention of torture and ill-treatment is influenced by a broad variety of factors, including general respect for human rights and adherence to the rule of law. A central aspect includes ensuring that legal conditions and safeguards for those deprived of their liberty are recognized and realized in practice, throughout all phases of proceedings and detention. A main purpose of such provisions, in addition to ensuring fair proceedings and adequate conditions of detention, is to reduce the likelihood of torture or ill-treatment occurring.¹¹

B. *Methods of collecting information*

UNAMI/OHCHR’s findings are primarily based on interviews with detainees, which were conducted both during visits to places of detention and after their release. In addition, human rights officers met with detention authorities, judges, defence lawyers (including the Iraqi Bar Association), prosecutors, members of the IHCHR and other relevant interlocutors, such as civil society activists and families of detainees. They also gathered and analysed legislation and information from official documents and reports. In a limited number of cases, UNAMI/OHCHR obtained photographic and other evidence of injuries consistent with torture and ill-treatment of detainees.

C. *Number of interviews conducted with persons deprived of their liberty*

In the period from 1 July 2019 until 30 April 2021, UNAMI/OHCHR interviewed 235 persons deprived of their liberty throughout Iraq, including 11 women and 15 boys,¹² who reported about 535 instances of detention in 18 governorates of Iraq. Out of the total, 92 individuals were charged with terrorism-related crimes. Almost half of the instances of detention recorded refer to places in the KRI (265 out of 535). Only interviews with individuals arrested after 1 January 2016 are included in the statistics.¹³

¹⁰ Phone call with the head of the statistics department in the general directorate of reformatories under the Ministry of Labour and Social Affairs in Erbil on 23 May 2021.

¹¹ The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Geneva, 15-19 November 2010, CAT/OP/12/6, para. 5 (a) and (c) (SPT approach on torture prevention).

¹² The interviewees were below 18 years of age at the time of arrest. UNAMI/OHCHR did not interview children in detention due to protection concerns. The number of women and boys compared to men is representative of the prison population.

¹³ UNAMI/OHCHR aims to reflect recent detention and judicial practices.

In Federal Iraq, UNAMI/OHCHR primarily conducted visits to places of detention under the authority of the Ministry of Justice, but sporadic visits have also taken place to facilities run by the Ministries of Interior and Defence and the Baghdad Operations Command.¹⁴ In the KRI, UNAMI/OHCHR visited facilities under the authority of Ministries of Labour and Social Affairs and Interior as well as Asayish.¹⁵ Following the outbreak of the COVID-19 pandemic in February 2020, UNAMI/OHCHR temporarily suspended such visits as a precautionary measure. Visits to places of detention resumed in the KRI by January 2021 under strict compliance with COVID-19 prevention measures.

D. *Interview safeguards and modalities*

UNAMI/OHCHR's overarching priority while undertaking interviews with persons deprived of liberty is to 'do no harm', which includes mitigating potential risks for reprisals following interviews. For that reason, and in accordance with standard practice, UNAMI/OHCHR kept the identities of individual interviewees confidential and did not share information about individual cases, nor intervened with the authorities.

E. *Assessment of interviews and legal determination*

UNAMI/OHCHR evaluated all interviews conducted, and other materials used, for credibility and reliability. Where UNAMI/OHCHR was not satisfied as to the veracity of a detainee's account, it was not included.

All UNAMI/OHCHR interviewers received standardized guidance and training on how to conduct interviews, assess credibility and reliability of the information collected, protect confidentiality and cross-check information on matters of detention, torture and ill-treatment, with extensive supervision and oversight from experts in the UNAMI Human Rights Office and OHCHR.

This report makes no distinction between acts amounting to torture or ill-treatment, as in practice the definitional threshold between the two can be often unclear. The conditions that give rise to ill-treatment frequently facilitate torture and therefore relevant measures must be applied to prevent any such treatment.¹⁶ Only severe violence was categorized as torture or ill-treatment, while less severe forms of violence were recorded separately.

UNAMI/OHCHR does not purport to make a formal determination as to whether torture or ill-treatment occurred in a specific case. However, consistent information collected over a period

¹⁴ Access to places of detention in Federal Iraq has been difficult and remains patchy. Visits to facilities under the authority of the Ministry of Justice require notification of the place of detention and date of visit by *Note Verbale* at least four weeks in advance. Even with approval, UNAMI/OHCHR has on several occasions not been able to access a place of detention and/or privately speak to detainees. UNAMI/OHCHR notes that private and confidential interviews in places of detention were facilitated by the Ministry of Defence and the Baghdad Operations Command.

¹⁵ UNAMI/OHCHR obtained permission to visit places of detention under the authority of Asayish in the KRI in January 2021, which included private and confidential individual interviews. The Asayish is a security force and is one of the organs of the Security Council of Kurdistan Region. It operates under the authority of the President of the Kurdistan Region, which has jurisdiction over economic crimes and political crimes, including espionage and acts of sabotage and terrorism.

¹⁶ See Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2 (24 January 2008), para. 3.

of time through interviews can give rise to reasonable grounds to conclude the existence of pattern or trend of acts of torture and ill-treatment.

UNAMI/OHCHR also highlights that legal conditions and safeguards are of utmost relevance for the conduct of fair proceedings and the reduction of rights violations, irrespective of whether there is any evidence of torture or ill-treatment actually taking place.¹⁷

V. Legal framework prohibiting torture and ill-treatment in Iraq

A. *International law*

Several international treaties to which Iraq is a party guarantee rights to liberty and security and prohibit torture and ill-treatment. These include the Convention against Torture, the International Covenant on Civil and Political Rights, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of the Child and the Geneva Conventions of 1949.¹⁸ The State obligation to respect the prohibition of such practices is absolute and non-derogable, meaning that no exceptional circumstances whatsoever may be invoked as justification to suspend or fail to observe the ban on its use.¹⁹

The Convention against Torture and the International Covenant on Civil and Political Rights prohibit torture and other cruel inhuman or degrading treatment or punishment. Complying with this prohibition requires States to make torture a crime. Further, States must take legislative, administrative, judicial and other measures to prevent and punish acts of torture and ill-treatment.²⁰ In this context, the Committee against Torture has called upon Iraq to ensure that all persons deprived of their liberty, both in law and practice, are afforded fundamental legal safeguards to prevent torture and ill-treatment.²¹ Furthermore, the Human Rights Committee has recommended that Iraq, *inter alia*, adopt the legislative measures necessary to ensure that the Criminal Code includes a definition of torture that is fully aligned with article 7 of the Covenant on Civil and Political Rights and other internationally established norms, preferably by codifying it as an independent crime, which stipulates sanctions that are commensurate with the gravity of the act. The Human Rights Committee also recommended that Iraq should take more vigorous steps to prevent torture and ill-treatment and to ensure

¹⁷ SPT approach on torture prevention, para. 5 (c).

¹⁸ Iraq ratified the International Covenant on Civil and Political Rights on 25 January 1971; acceded to the International Convention for the Protection of All Persons from Enforced Disappearance on 23 November 2010; acceded to the Convention on the Rights of the Child on 15 June 1994; and ratified the Geneva Conventions of 1949 on 14 February 1956.

¹⁹ International Covenant on Civil and Political Rights, art. 4, para. 2; Convention against Torture, art. 2, para. 2.

²⁰ Convention against Torture, arts 2 and 16; Human Rights Committee, General Comment No 20 Article 7 - Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, forty-fourth session (1992), para. 8.

²¹ Committee against Torture, Concluding Observations on the initial report of Iraq, CAT/C/IRQ/CO/1 (2015), para. 14; Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2 (24 January 2008), para. 13.

that all such cases are promptly, independently and thoroughly investigated, that perpetrators are brought to justice and that victims receive full reparation.²²

B. Iraqi law

The Iraqi Constitution prohibits unlawful detention and all forms of “*psychological and physical torture and inhumane treatment*” and guarantees the right to seek compensation for material and moral damages (art. 37). It also sets out the rights to security and liberty, prohibiting the deprivation or restriction of these rights “*except in accordance with the law and based on a decision issued by a competent judicial authority*” (art. 15).

Art. 333 of the Iraqi Penal Code criminalizes acts of torture. It sets out that “[a]ny public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information or to give a particular opinion in respect of it is punishable by imprisonment or by penal servitude. Torture shall include the use of force or menaces”.²³ The Penal Code further criminalizes “*cruel treatment*” by a public official or agent if it causes a person “*to suffer a loss of esteem or dignity or physical pain*” (art. 332). At the time of the publication of this report, a draft Anti-Torture Law has been under discussion before the Council of Representatives in Federal Iraq since 2017.²⁴

In addition, the Iraqi Criminal Procedure Code and other relevant domestic laws establish conditions and safeguards aimed at guaranteeing that persons deprived of their liberty are not subjected to torture and ill-treatment. The report examines the relevant provisions of the Iraqi legal framework in more detail in part VII below. Unless specifically differentiated, legal provisions mentioned in the report apply in Federal Iraq and the KRI.

VI. Allegations of torture and ill-treatment in Iraq

“It was the same routine, every day hanging me up and beating me. There are things they did to me there that I am too ashamed to talk about - but one thing I can tell you is that two times they made me sit on a bottle”. Interviewee #106

Allegations of torture and ill-treatment are common in places of detention throughout Iraq. More than half of the interviewees (122 out of 235), and among them three women and seven boys, provided accounts, assessed as credible and reliable by UNAMI/OHCHR, of torture or ill-treatment whilst in custody in 17 different governorates. Fifty-five interviewees credibly and reliably alleged torture or ill-treatment in places of detention in the KRI. UNAMI/OHCHR found

²² Human Rights Committee, Concluding observations on the fifth periodic report of Iraq, CCPR/C/IRQ/CO/5 (2015), para. 30.

²³ UNAMI/OHCHR notes that art. 333 of the Iraqi Penal Code does not fully ensure that all acts covered under the internationally accepted definition of torture as set out in art. 1 of the Convention against Torture are criminalized; see Committee against Torture, Concluding Observations on the initial report of Iraq, CAT/C/IRQ/CO/1 (2015), para. 27; Human Rights Committee, Concluding Observations on the fifth periodic report of Iraq, CCPR/C/IRQ/CO/5 (2015), para. 29.

²⁴ This bill, aimed at combating torture, was submitted to the Speaker of the Council of Representatives on 1 August 2017.

similar patterns in terrorism-related and other criminal cases (in terrorism cases, 48 out of 92 interviewees reported torture or ill-treatment). Twenty-six of the 122 individuals reported they had experienced torture or other forms of ill-treatment in more than one facility (in 157 instances of detention in total).

In addition, 27 interviewees reported slapping, insults, humiliation and threats while detained or interrogated and 43 detainees provided eyewitness accounts of others facing torture or ill-treatment. UNAMI/OHCHR notes that on a number of occasions interviewees were not willing to share information on the treatment received, especially during interviews in detention facilities. This indicates that the actual numbers of cases may be higher as detainees may be afraid to report abusive treatment.

The main forms of torture reported include severe beatings, including on the soles of the feet and with sticks, electric shocks, stress positions, hanging from the ceiling, suffocation and severe threats. Sixteen interviewees, including one woman and one boy, reported sexual violence during interrogations, particularly the application of electric shocks to their genitals and objects such as bottles or sticks forced up their anus. Further interviewees made references to ‘treatment [they] cannot speak about’.

Most allegations of torture or other forms of ill-treatment referred to facilities under the authority of the Ministry of Interior in Federal Iraq (in 61 out of 149 instances of detention recorded) and Asayish in the KRI (in 51 out of 181 instances of detention recorded). UNAMI/OHCHR also received allegations of torture and ill-treatment in facilities under the authority of the Ministry of Defence (3 out of 16), the National Security Service (6 out of 10), the Iraqi National Intelligence Service (2 out of 2) and the Ministry of Justice (5 out of 31) in Federal Iraq; the Ministry of Interior in the KRI (4 out of 27); and places of detention unknown²⁵ to the detainee (15 out of 28).²⁶ UNAMI/OHCHR notes that the sample size should be larger to arrive at more meaningful findings on patterns of treatment of detainees in individual facilities.

The figures in this report do not include accounts received of poor conditions of detention that may constitute or contribute to ill-treatment or, in certain circumstances, even torture, which include lack of access to healthcare, water, sunlight/outdoor exercise or the bathroom, limited hygiene and severe overcrowding. For example, since January 2020, UNAMI/OHCHR received information of at least 62 cases of death in custody in Nasiriyah Central prison, also known as Al Hoot, many of which allegedly were related to insufficient healthcare or ill-treatment.²⁷

²⁵ “Unknown detention” is used when a detainee was not told his or her location of detention and not able to identify the detaining authority. Often, they described being blindfolded in these places. Except in three instances, all were later transferred to official places of detention.

²⁶ UNAMI/OHCHR note that no claims of torture or ill-treatment were received for the facilities under the authority of the Ministry of Labour and Social Affairs in the KRI (43 instances of detention recorded) nor the Baghdad Operations Command at the Muthanna airport in Baghdad (20 instances of detention recorded).

²⁷ While UNAMI/OHCHR is not in a position to verify these claims, UNAMI/OHCHR notes that all requests to the Ministry of Justice regarding measures taken to address these reports remained unanswered. Independent of UNAMI/OHCHR, on 17 August 2020, Special procedures mandate holders issued a joint Urgent Appeal to the Government of Iraq regarding 20 prisoners detained in Nasiriyah Central Prison, alleging that they suffer from inhuman detention conditions and are subject to psychological and physical torture by guards, including humiliating practices and threats. They also raised concern about the high number of deaths reported in the prison (UA IRQ 4/2020). The IHCHR documented 355 deaths in custody in facilities under the authority of the Ministry of Justice in Federal Iraq in 2020, see IHCHR 2020 report, p. 70-71.

VII. Analysis of risk factors for torture and ill-treatment during interrogations and in places of detention in Iraq

Full implementation of legal conditions and safeguards from the onset of arrest and detention is generally considered among the most effective measures in preventing torture and ill-treatment; it constitutes an integral part of any protective framework. Legal conditions and safeguards, in addition to ensuring fair proceedings and adequate conditions of detention, serve to remove many of the opportunities for torture or ill-treatment to occur. They also serve to deter false allegations by detainees and to some extent support the collection and documentation of evidence. Such legal conditions include systematically reviewing interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment.²⁸

UNAMI/OHCHR analysis and findings on the implementation of a non-exhaustive list of key legal conditions and safeguards against torture and ill-treatment while in custody in the Iraqi context follow below. Unless specifically indicated, patterns observed are similar for Federal Iraq and the KRI.

A. Access to legal representation

Effective protection of the detainee requires prompt and regular access to lawyers.²⁹ The physical presence of lawyers during interrogations may not only deter acts of torture and ill-treatment; lawyers can also intervene at an early stage to detect such acts, initiate procedures for identifying and investigating officials who are allegedly involved in torture or ill-treatment and ensure that forced confessions are not used as evidence in investigation or trial.

Under international law, the right to be assisted by legal counsel of his/her own choosing, including free of charge if the interests of justice so require, is established as an essential fair trial guarantee in criminal justice.³⁰ Counsel provided by the competent authorities must be effective in the representation of the accused. Blatant misbehaviour or incompetence may entail a violation of this right.³¹ Equally, the Iraqi Constitution guarantees the right to a defence in all phases of investigation and the trial and sets out that courts must “*appoint a lawyer at the expense of the state for an accused of a felony or misdemeanour who does not have a*

²⁸ See for instance Convention against Torture, art. 11. Human Rights Committee, General Comment No 20 Article 7 - Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, forty-fourth session (1992), para. 11; and General Comment No. 35 on Article 9 (Liberty and security of person), paras. 34 and 58.

²⁹ Human Rights Committee, General Comment No 20 Article 7 - Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, forty-fourth session (1992), para. 11; and General Comment No. 35 on Article 9 (Liberty and security of person), para. 58.

³⁰ International Covenant on Civil and Political Rights, art. 14, para. 3(d); see also United Nations Standard Minimum Rules for the Treatment of prisoners, A/RES/70/175, adopted on 17 December 2015 (Mandela Rules), rules 53, 61, 119-120.

³¹ Human Rights Committee, General Comment No 32- Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32), para. 38.

defence lawyer” (art. 19, paras 4 and 11). The Criminal Procedure Code provides further details on the right to a lawyer during investigation and trial (arts 123 and 144).³²

UNAMI/OHCHR findings indicate that, in Iraq, access to a lawyer is systematically delayed until after suspects have been interrogated by the security forces and, to a large extent, by the investigative judge (on the requirement under Iraqi law for investigative judges to lead interrogations, see subsection D). Out of 285 instances of detention which involved interrogation by security forces, no interviewee reported that a lawyer was present. More than three-quarters of interviewees who were brought before an investigative judge (144 out of 189) stated that they were not represented by a lawyer during the investigative hearing, whereas almost all had a lawyer during trial. Five out of 91 interviewees indicated that their trial proceeded without legal representation. About 40 percent of the interviewees stated that they had a court-appointed lawyer during trial (37 out of 91).³³

Court-appointed lawyers in criminal cases

In order to implement the right to a defence in criminal cases, the High Judicial Council in Federal Iraq facilitates access to court-appointed defence lawyers.³⁴ They are assigned by judges at the beginning of a hearing if a suspect/accused person is not assisted by a legal counsel on his/her own choosing. The lawyers’ compensation ranges from 10,000 – 30,000 Iraqi dinars for investigative and trial hearings.³⁵

In the KRI, the Lawyers’ Law sets out that the court assigns an attorney to defend an accused who has not appointed a lawyer. The fees to be borne by the treasury range between 60,000 to 120,000 dinars (art. 36).

Interviewees regularly reported that they had no contact with court-appointed lawyers prior or during their trial and described them as passive, having no role in the proceedings. The findings from UNAMI/OHCHR trial monitoring in both jurisdictions equally indicated that the role of court-appointed lawyers is mainly limited to the mere attendance of single court hearings and signing of documents without noticeable substantive involvement in a case,³⁶ thus leaving suspects and accused without an effective legal defence.

The 2012 *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, adopted by the UN General Assembly, are drawn from international standards and recognized good practice. They provide guidance for all countries in setting up an effective system of legal aid.

Lawyers also regularly reported that they face restrictions to access places of detention, particularly in the investigative phases of the proceedings and in terrorism-related cases. UNAMI/OHCHR further observed that detainees lacked a clear understanding of the benefits of having legal counsel, or believed that requests for a lawyer would negatively impact their case during investigation.

³² Art. 123 C of the Criminal Procedure Code stipulates that “[t]he investigative judge or [judicial] investigator must determine whether the accused desires to be represented by an attorney before questioning the accused. If the accused desires an attorney, the investigative judge or [judicial] investigator shall not question the accused until he or she has retained an attorney or until an attorney has been appointed by the court”.

³³ The overall figures for comparison differ as not all interviewees saw an investigative judge or had a trial. Some interviewees may have had two or more interrogations in places of detention under different authorities.

³⁴ In Federal Iraq, the Lawyer’s Law sets out a framework for legal aid under the authority of the Iraqi Bar Association for indigent persons (arts 66 – 73). However, according to interviews with key stakeholders, the system is not operational due to lack of funding.

³⁵ Decision of the Iraqi Council of Ministers of 6 June 2013.

³⁶ See also UNAMI/OHCHR, *Human Rights in the Administration of Justice in Iraq: trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL* (January 2020), p. 6-7 (UNAMI/OHCHR report on trials).

B. Medical check-ups

Independent medical examinations upon arrival at a place of detention are necessary to identify existing physical or mental illness. They also provide an opportunity to detect injuries which may stem from torture or ill-treatment occurring before entry into a detention facility. The timely documentation of injuries serves to safeguard evidence for investigations into potential criminal acts but also to protect the interest of staff in places of detention, not to be falsely accused.³⁷

According to international standards, persons deprived of their liberty have the right to prompt and regular access to independent medical personnel.³⁸ Every prisoner should be examined by a qualified health-care professional as soon as possible following his or her admission and thereafter as necessary.³⁹ In Federal Iraq, the Prisoners and Detainees Reform Act (Law No. 14 of 2018) only allows for the admission of individuals to places of detention upon judicial order along with “a medical report issued by a medical committee testifying to the person’s state of physical and mental health” (art. 8).

The Law further envisages free medical treatment for detainees and prisoners as well as periodic visits by medical committees to check up and monitor their health condition (art. 12). The Law regulating the System of the Department of Social Reform in the Kurdistan Region (No. 1 of 2008) establishes a health affairs unit responsible for providing preventive and curative services in places of detention (art. 26).

The findings indicate that initial medical screenings are not standard practice in Iraqi places of detention, particularly during pre-trial detention. Out of 416 instances of detention, detainees indicated on 71 occasions that they had a medical check-up (17 per cent).⁴⁰ UNAMI/OHCHR notes that all interviewees held in Suse prison under the authority of the Federal Ministry of Justice and two-thirds held in facilities under the authority of the Ministry of Labour and Social Affairs in the KRI (30 out of 40) reported having received medical checks. Interviewees, however, also indicated that the procedure is often mainly aimed at identifying prior illnesses rather than discovering acts of torture.

Effective documentation and investigation of cases of torture or ill-treatment

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) provides guidelines and minimum standards for the effective documentation and investigation of cases of alleged torture or ill-treatment and for reporting

³⁷ See Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, OHCHR, Professional Training Series No. 8/Rev.1, 2004.

³⁸ Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2 (24 January 2008), para. 13; and Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), para. 58.

³⁹ Mandela Rules, rule 30 and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), principle 24. Every human being has a right to the highest attainable standard of physical and mental health (International Covenant on Economic, Social and Cultural Rights, art. 12) which is reflected in art. 31 of the Iraqi Constitution. When a State deprives someone of their liberty, it takes on a particular duty of care as detainees must rely on the authorities to provide medical treatment and to protect their physical and mental health.

⁴⁰ Only instances of detention were included if the interviewee provided information on medical check-ups.

findings to the judiciary or other investigative bodies, including on the role and ethical considerations of healthcare staff in this regard.⁴¹

C. Information on the whereabouts of a detained person and contact with the outside world

Information on the whereabouts of a detained person and contact with the outside world serve as crucial deterrents to violations, besides reassuring families and detainees. It may also facilitate reporting and possible action on treatment or other complaints. According to international standards, detainees have the right to promptly notify a close relative or third person of the fact and location of their detention or changes thereof. They should also be allowed to be in contact with their families at regular intervals.⁴²

According to the Iraqi Constitution no one may be detained unless a competent judge issues a court order (art. 37, para. 2), which is implemented by the Criminal Procedure Code (arts 109-110). The Prisoners and Detainees Reform Act applicable in Federal Iraq sets out that families or other designated persons must be notified in case of transfer of prisoners and pre-trial detainees.

In general, detainees interviewed were given the opportunity to inform their families of their whereabouts, but this was often (significantly) delayed, particularly during the investigation phase. UNAMI/OHCHR notes that since the outbreak of the COVID-19 pandemic in early 2020, family visits in places of detention have largely been suspended as a precautionary measure. While detention authorities in Federal Iraq and the KRI have taken measures to compensate for the restrictions, such as the introduction of WhatsApp calls, interviewees countrywide reported that such phone calls have been limited to a few minutes and are infrequent.

Solitary confinement

According to the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (Mandela Rules), *solitary confinement* is the physical and social isolation of a person deprived of liberty in a cell for 22 or more hours a day. While solitary confinement is not a violation of international human rights law *per se*, it is permissible only in exceptional circumstances and for a strictly limited time. The Mandela Rules absolutely prohibit the use of indefinite (meaning that the detained does not know when this type of confinement will end) and of prolonged solitary confinement (defined as confinement that lasts for more than 15 continuous days), both of which may amount to torture or other ill-treatment (rules 43 – 45).

In addition, UNAMI/OHCHR recorded 60 instances of detention in which the detainees alleged that they had been held in solitary confinement for at least two days or more, with more than half referring to detention facilities under the authority of Asayish in the KRI. Out of the total, 26 interviewees indicated that they spent more than 15 days in solitary confinement, reaching up to almost two months in some cases. Most of the interviewees reported that solitary confinement took place during the initial stage of investigation in pre-trial detention.

⁴¹ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, OHCHR, Professional Training Series No. 8/Rev.1, 2004; see also the relevant sections of the Mandela Rules.

⁴² See Nelson Mandela Rules, rule 58; Body of Principles, principles 15-16. See also: Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2 (24 January 2008), para. 13; and Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), para. 58.

While restrictions on visits and/or communication, in particular for the purpose of protecting an ongoing criminal investigation, are not necessarily in violation of relevant standards, they need to be based on an individual assessment of the risk and cannot be applied indiscriminately. UNAMI/OHCHR further notes that the denial of the rights to visit and communication, combined with the lack of access to lawyers during the interrogation phase, may create conditions amounting to *incommunicado* detention.

Incommunicado detention

Incommunicado detention occurs when a person deprived of liberty is denied contact with the outside world. According to the Human Rights Committee, *incommunicado* detention that prevents prompt presentation before a judge inherently violates article 9(3) of the International Covenant on Civil and Political Rights. Depending on its duration and other facts, *incommunicado* detention may also violate other rights under the Covenant, including articles 6, 7, 10 and 14.⁴³ According to the Body of Principles, it violates international law if it “exceeds a matter of days”.⁴⁴ It may also be considered as enforced disappearance when the family is not notified about the detention location and remains unaware about the whereabouts of the person deprived of liberty.⁴⁵ Prolonged *incommunicado* detention has been also regarded as a form of torture and ill-treatment in certain cases.⁴⁶

D. Use of pre-trial detention and judicial control

Pre-trial detention in the context of criminal proceedings is a measure to ensure the appearance of suspects before a court, prevent further criminal activity, and/or prevent unlawful interference with justice. However, pre-trial detention can substantially lessen a suspect’s ability to prepare an effective defence.⁴⁷

Any deprivation of liberty constitutes a significant limitation on an individual’s rights and freedoms. International standards therefore require that pre-trial detention be used as an exceptional measure and be based on an individualized determination that it is reasonable and necessary.⁴⁸ Children may only be deprived of their liberty as a measure of last resort and for the shortest possible period of time.⁴⁹ Persons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defence. Extremely prolonged pretrial detention may *inter alia* jeopardize the presumption of innocence.⁵⁰

Persons arrested or detained on a criminal charge also have the rights to be brought promptly before a judge, to challenge the legality of detention and to be tried within a reasonable time or to be released.⁵¹ Judicial oversight, including through independent assessment of the material and living conditions of persons deprived of liberty, is an indispensable tool for

⁴³ Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), para. 35.

⁴⁴ Body of Principles, principle 15.

⁴⁵ International Convention for the Protection of All Persons from Enforced Disappearance, art. 2.

⁴⁶ See for example: Human Rights Committee, Communication No. 1469/2006, *Sharma v. Nepal*, (2008), para. 7.2; Communication No. 1196/2003, *Boucherf v. Algeria* (2006), para. 9.6.

⁴⁷ Art. 19, para. 5 of the Constitution sets out the presumption of innocence of suspects until they are found guilty in a fair trial.

⁴⁸ Art. 9(3) International Covenant on Civil and Political Rights. See, Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), para. 38.

⁴⁹ Convention on the Rights of the Child, art. 37. The right of the child to have his or her best interests taken as a primary consideration should be paramount in any decision-making and action taken (art. 3). See also Committee on the Rights of the Child, General Comment No. 24 (CRC/C/GC/24), paras. 82-91; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985, rule 13.

⁵⁰ Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), para. 37.

⁵¹ International Covenant on Civil and Political Rights, art. 9; Convention on the Rights of the Child, art. 37.

safeguarding the non-derogable prohibition against torture and cruel, inhuman or degrading treatment or punishment.⁵²

The Iraqi Criminal Procedure Code refers primary responsibility for interrogation of suspects to the investigating judge or the judicial investigator under the former's supervision, which must happen within 24 hours (arts 51 and 123). The investigative judge is also empowered to take decisions on the necessity of pre-trial detention to prevent flight and interference with justice.⁵³ The decisions must be reviewed every 15 days and pre-trial detention should generally not exceed six months. The investigative judge may submit an application to the felony court to extend the maximum period, which must not exceed one quarter of the permissible sentence. Pre-trial detention for offences involving the death penalty can be extended indefinitely (arts 109-110).

The findings indicate that interrogations of the suspects by security forces in Iraq are common practice. Almost all interviewees (215 out of 235) indicated that they were initially interrogated by the detaining authorities rather than the investigative judge – exclusively without the presence of a lawyer (see above under subsection A). The length of time before being brought to an investigative judge varied between less than 24 hours up to six months, with most cases ranging between three-four days to several weeks. Interviewees also regularly indicated that, following the investigative hearing, they returned to the custody of security forces, i.e. the authorities conducting the interrogations, rather than being referred to pre-trial detention facilities.

The information received further indicates that pre-trial detention in criminal cases is frequently used throughout Iraq.⁵⁴ While many interviewees reported that their trials were completed within 6-8 months, UNAMI/OHCHR also documented cases of extended pre-trial detention, exceeding one year. For example, in Ninewa governorate an interviewee stated that he was released by the trial court for lack of evidence following 21 months of pre-trial detention.

Detainees have also pointed at delays in being released from detention, including due to waiting periods to appeal court decisions - even after being acquitted during trial - or due to outstanding checks to determine whether the person was wanted for a different crime. For example, in the KRI, a juvenile detainee reported having been acquitted by the trial court. By the time the court of cassation had issued its decision to change the sentence to two months of imprisonment, he had already spent six months in detention.

⁵² Convention against Torture, art. 2 (2) and International Covenant on Civil and Political Rights, arts 4, 7 and 10(1).

⁵³ The aim of judicial control over detention is to ensure independent review of necessity of detention. The Human Rights Committee clarified that *"[i]t is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with"*. Given the role of the investigative judge in Iraq as the investigating authority with control over a detainee similar to a prosecutor, UNAMI/OHCHR argues that this right cannot effectively be guaranteed. See Human Rights Committee, General Comment No 35 Article 9 - Liberty and security of person (CCPR/C/GC/35) (14 December 2014), para. 32.

⁵⁴ For instance, UNAMI/OHCHR documented the pre-trial detention of two boys at 10 and 13 years of age for begging in Kirkuk. Both remained in detention for at least several days and were interrogated by security forces.

Non-custodial measures to address overuse of detention and overcrowding

The excessive use and length of pre-trial detention constitutes one of the underlying causes of overcrowding, which results in conditions that may amount to ill-treatment or even torture.⁵⁵ Overcrowding is a key problem in Iraqi places of detention. Interviewees indicated at least 32 places of detention in 10 different Governorates in Iraq where they had faced (severe) overcrowding. The Government of Iraq also reported that prisons under the authority of the Ministry of Justice are at a capacity of 200 per cent.⁵⁶

The UN Standard Minimum Rules for Non-custodial Measures and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders provide guidance for all countries on non-custodial measures to avoid unnecessary and often more expensive use of detention.⁵⁷

Furthermore, the UN System Common Position on Incarceration highlights that sufficiently resourced and well-managed prison services and entities in charge of non-custodial measures are an important enabler of the 2030 Agenda for Sustainable Development.⁵⁸ In this context, the Sustainable Development Goal 16, on peace, justice and strong institutions, establishes the percentage of pretrial detainees within prison populations as an indicator for measuring the efficiency of, and access to, justice systems.⁵⁹

E. *Lawfulness of detention*

Fair, transparent and accountable processes foster trust in State institutions. In the context of deprivation of liberty, due to the limitations it imposes on individuals, it is of particular importance that it only be carried out in strict accordance with such procedure as established by law and by persons authorized for that purpose.⁶⁰

International law and the Iraqi Constitution unequivocally prohibit unlawful detention. The Iraqi Constitution further specifies that only detention in places designated for these purposes, pursuant to prison laws covering health and social care, and subject to the authorities of the State, is allowed (art. 19). The Penal Code criminalizes unlawful detention (art. 421).

The Inmates and Prisoners Corrections Law applicable in Federal Iraq prohibits the establishment of prisons or detention centres that are not supervised, managed and controlled by the Ministries of Justice and Interior (art. 1).⁶¹ In the KRI, the Law regulating the System of the Department of Social Reform outlines the conditions for places of detention under the Ministry of Labour and Social Affairs.

In Federal Iraq, information received indicates that detainees were held in a variety of locations other than under the authority of the Ministries of Interior or Justice, including the Ministry of Defence, National Security Service, Iraqi National Intelligence Service, Counter Terrorism

⁵⁵ For details see: Report of the United Nations High Commissioner for Human Rights, Human rights implications of overincarceration and overcrowding, A/HRC/30/19 (10 August 2015), para. 37.

⁵⁶ Human Rights Committee, Replies of Iraq to the list of issues, CCPR/C/IRQ/RQ/6, received 9 December 2020, para. 70.

⁵⁷ See also relevant sections of the Beijing Rules for juveniles.

⁵⁸ https://www.unodc.org/res/justice-and-prison-reform/nelsonmandelarules-GoF/UN_System_Common_Position_on_Incarceration.pdf, p. 7 (accessed 23 June 2021).

⁵⁹ Indicator 16.3.2 (Unsentenced detainees as a proportion of the overall prison population) of target 16.3 (Promote the rule of law at the national and international levels and ensure access to justice for all) under Sustainable Development Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels).

⁶⁰ International Covenant on Civil and Political Rights, art. 9; Body of Principles, principle 2.

⁶¹ In a letter dated December 2020, the High Judicial Council in Federal Iraq clarified that “*there are no places of detention that belong to entities other than those which fall under the authorities of the Ministries of Interior and Justice.*” The Arabic original letter is on file with UNAMI/OHCHR.

Service and the Popular Mobilization Forces. UNAMI/OHCHR also recorded 28 instances of detention where the interviewee was not aware of the detaining authority (except in three instances, the detainees were later referred to official places of detention).

In the KRI, the Ministry of Interior and Asayish run places of detention in addition to the prisons under the authority of the Ministry of Labour and Social Affairs. UNAMI/OHCHR has not been able to identify laws regulating places of detention under the authority of these entities.

Abductions in the context of demonstrations in Federal Iraq

UNAMI/OHCHR documented the cases of 39 individuals who appeared to have been abducted in the context of demonstrations in Federal Iraq in circumstances indicating that the perpetrators may be armed actors operating outside State control.

Out of the total, 38 interviewees described that they were subjected to various acts amounting to torture and/or ill-treatment while being 'interrogated', including severe beatings, electrocution, hosing/bathing in cold water, hanging from the ceiling by the arms and legs, threats of death and sexual violence to them and their family, as well as degrading treatment (such as being urinated on and photographed naked).

UNAMI/OHCHR qualified the incidents as 'abductions' based on the information available. However, this does not exclude that some incidents may constitute instances of unlawful detention. The interviews referring to abductions in the context of demonstrations have not been included in the analysis for the present report.⁶²

F. Confessions and documents signed without the knowledge of detainees or under duress

"They cuffed my hands behind my back and hanged my handcuffs from a hook on a chain from the ceiling. They didn't really ask me questions, they just kept shouting to confess". Interviewee # 107

Overreliance on confessions in criminal proceedings as opposed to other sources of evidence contributes to a climate where security forces may be incentivized to sidestep legal safeguards to obtain a confession. However, experience has shown that the use of torture and other forms of ill-treatment as a tool for obtaining confessions is a dangerous paradigm. Besides being illegal and immoral, it is also an unreliable and ineffective tool for gathering accurate information.

According to international standards, and in addition to the absolute prohibition of torture, every person has the right not to be compelled to testify against oneself or to confess guilt.⁶³ Any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.⁶⁴ The Iraqi Constitution (art. 37) and the Criminal Procedure Code (arts 123, 127 and 218) prohibit the use of any unlawful means to obtain a confession and set out the right to remain silent. Unlawful means are understood to include ill-treatment, threats, enticement, promises, psychological pressure or the use of drugs and/or other intoxicants.

Out of 122 interviewees who alleged torture or ill-treatment, 107 stated that the treatment was inflicted during interrogation in order to force them to confess (87 per cent). In many cases, they reported that the treatment would stop following a confession. Interviewees also

⁶² For further details, see: UNAMI, *Human Rights Special Report: Abductions, torture and enforced disappearances in the context of ongoing demonstrations in Iraq* (May 2020); UNAMI/OHCHR, *Human Rights Violations and Abuses in the Context of Demonstrations in Iraq October 2019 to April 2020* (August 2020).

⁶³ International Covenant on Civil and Political Rights, art. 14.

⁶⁴ Art. 15 Convention against Torture; Human Rights Committee, General Comment No 32- Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32), para. 41.

consistently stated that interrogations by security forces were generally aimed at eliciting confessions. The hearings with the investigative judge primarily focused on the confirmation of statements made during interrogation by security forces.⁶⁵

Moreover, 77 detainees interviewed reported that they were required to sign or thumb-print statements during or after interrogations without being provided an opportunity to read the document or have its content explained.

Effective Interviewing for Investigations and Information-Gathering

There has been growing international consensus that legally grounded, evidence-based interviewing methods designed to obtain accurate and reliable information reduce the risk of unlawful and coercive measures being used and improve the legitimacy and quality of criminal investigations.⁶⁶

G. Complaints and investigations into allegations of torture or ill-treatment

“At the time I made a complaint against the police, I still had scars from the beating - but it took so long to deal with my complaint that the scars healed”. Interviewee #100

The documentation, independent investigation, prosecution and, if applicable, sanction of the perpetrators of acts of torture or other forms of ill-treatment, contribute to the deterrence of such acts and aim at avoiding their recurrence. Well-functioning complaints and accountability mechanisms also protect security forces and detention staff from wrongful allegations and safeguard the reputations of the respective entities.

International human rights law requires that allegations of torture and ill-treatment be promptly, impartially and effectively investigated, even in the absence of a formal complaint, and, if applicable, prosecuted regardless of the position or rank of those who committed, authorized or ordered the act.⁶⁷ In accordance with the jurisprudence of the Committee against Torture, *“the investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might be involved”*.⁶⁸

According to the Iraqi Criminal Procedure Code, criminal proceedings are initiated through a complaint submitted to an investigative judge or judicial investigator, a policeman in charge of a police station, any crime scene officer or the public prosecutor by an injured party or any person who knows that the crime has taken place (art. 1). It also requires public servants and medical professionals who in the course of their duties learn or suspect that an offence has been committed, as well as any person who is present when a felony is committed, to inform the investigative judge, judicial investigator or the public prosecutor (art. 48).

Fifty-three interviewees reported that they had made complaints about their ill-treatment, mostly reporting concerns to the investigative or trial judges. Moreover, 47 interviewees indicated they had visible injuries from the treatment (out of which 27 also initiated a complaint). Only in four of these cases in Federal Iraq, the interviewees were aware that an

⁶⁵ The findings of the UNAMI/OHCHR trial monitoring efforts also showed that confessions played a central role in criminal proceedings; see UNAMI/OHCHR report on trials, p. 8.

⁶⁶ See A/HRC/RES/46/15, para. 9; A/CONF.234/L.6, para. 47.

⁶⁷ Committee against Torture, arts 12 and 13. See also Human Rights Committee, General Comment No. 31- The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 18.

⁶⁸ See Committee against Torture, Blanco Abad v. Spain, Communication 59/1996, 14 May 1998, para. 8.8.

investigation was initiated, resulting in the perpetrator being fined in three cases.⁶⁹ The overwhelming majority (48 out of 51) indicated that their complaints were either ignored or denied, or they did not have any knowledge as to whether their complaints had been followed-up.⁷⁰

Forty-six interviewees indicated that fear of reprisals - including 'being sent back' to the same facility, threats by security officers, who would often accompany a detainee to the sessions before the investigative judge - or the belief that their complaint would be fruitless, prevented them from reporting ill-treatment, particularly to the investigative judge. Additionally, only a small minority of detainees (17 out of 136)⁷¹ reported that they had access to inspection mechanisms such as the IHCHR, prosecution office⁷² or parliamentary committees during their detention.

In order to facilitate its analysis, UNAMI/OHCHR requested the High Judicial Council and Ministry of Interior in Federal Iraq, as well as the High Judicial Council and Asayish in the KRI to provide information on the number of allegations of torture and ill-treatment of detainees and the outcome of any investigations.

Human Rights Courts in Federal Iraq
In January 2014, the High Judicial Council in Baghdad set up specialized human rights investigative courts dealing with complaints about human rights violations received by the Office of the Public Prosecutor through the IHCHR.⁷³ Accordingly, the IHCHR conducts a preliminary investigation into alleged human rights violations, which includes visits to alleged torture victims in detention. It then submits the case documents to the Office of the Public Prosecutor to take legal action. They, in turn, refer the case to the human rights courts for judicial investigation. If a perpetrator is identified, the case is transmitted to the trial court for adjudication. In 2020, the IHCHR reported that it received 960 complaints about torture, out of which 384 were sent to the Office of the Public Prosecutor, 555 remain under their investigation and 21 were rejected for not fulfilling the criteria.⁷⁴ However, according to information received, the human rights courts mainly deal with torture allegations made by convicted prisoners. During ongoing proceedings, the same investigative judge leading the investigation into an alleged criminal offence remains responsible for investigations into torture claims. This may raise serious concerns about his or her impartiality.

The High Judicial Council in Federal Iraq reported that in 2020 they had received 1,406 complaints of torture or ill-treatment in places of detention which are being dealt with by

⁶⁹ The remaining case was still under investigation at the time of the interview. Twenty-two complaints referred to the KRI.

⁷⁰ The findings of the UNAMI/OHCHR trial monitoring similarly indicated that judges generally did not question evidence obtained from confession, including when defendants claimed it was extracted under duress, see UNAMI/OHCHR report on trials, p. 9.

⁷¹ See Prisoners and Detainees Reform Act, art. 45. This figure only refers to interviewees who provided relevant information. It does not include visits by the International Committee of the Red Cross. Out of the 17, only one case referred to a place of detention in the KRI.

⁷² Monitoring and inspection of places of detention is among the main functions of the office of the public prosecutor in Iraq, see General Prosecution Law Number (49) of 2017, art. 5.

⁷³ High Judicial Council statement No. (5/Q/A) of 11 January 2014, based on the provisions of Article (5) of the Law of the High Commission for Human Rights No. (53) of 2008.

⁷⁴ IHCHR 2020 report, p. 67-68. IHCHR reported that 30 cases were closed temporarily by a judicial decision due to lack of evidence or unknown perpetrators, or were closed permanently due to lack of torture marks according to the medical report.

courts in 12 different governorates. While one official of the Ministry of Defence received a sentence of five years and one month imprisonment in Ninewa governorate under art. 410 of the Iraqi Penal Code (assault leading to death), 18 investigations were closed and the remaining were ongoing.⁷⁵ No official data has been provided by the other authorities at the time of the publication of the report.

VIII. Conclusion

“Perpetrators are not really afraid about the consequences of torture since they know they will not be punished by the official system”: Interview with lawyer

Allegations of torture and ill-treatment of detainees are frequent in Iraqi places of detention throughout all governorates, concerning both terrorism and other criminal cases. More than half of the 235 detainees interviewed by UNAMI/OHCHR for this report provided credible and reliable accounts of acts of torture or other forms of ill-treatment. Iraqi judges, lawyers and medical practitioners also confirmed the prevalence of these practices in private discussions. While UNAMI/OHCHR is not in a position to make formal determinations on torture and ill-treatment in individual cases in Iraq, the patterns and trends are clear.

Additionally, the findings give rise to serious concerns that most fundamental legal conditions and procedural safeguards as set out in the international and Iraqi legal framework are routinely not respected. A main purpose of these provisions, in addition to ensuring fair proceedings and adequate conditions of detention, is to reduce the likelihood of torture or ill-treatment occurring. Moreover, the mechanisms in place to receive complaints of torture do not appear to be effective or to provide remedy.

Many of the concerns raised in this report are also identified as priority areas of work under the Iraqi National Human Rights Action Plan for 2021-2025 which *inter alia* focuses on strengthening the prohibition of torture and monitoring of places of detention; addressing overuse of detention, prolonged pre-trial detention and overcrowding; as well as ensuring reparations for judicial mistakes.⁷⁶ The report therefore urges renewed attention by the Government of Iraq and the Kurdistan Regional Government to these commitments.

Non-compliance with legal conditions and procedural safeguards not only renders impossible the provision of fair and transparent justice, it also allows space for abhorrent practices such as torture and ill-treatment to prevail. By enabling the realities of interrogation rooms and places of detention to be hidden from effective legal oversight, a cycle of acquiescence and denial is being perpetuated. Full implementation of a protective legal framework builds public trust in the criminal justice system and more generally the legitimacy of government.

⁷⁵ Letters of the High Judicial Council in Baghdad of 7 June and 11 July 2021. In a letter dated 29 June 2021 (ref 59/Rights/2021), the office of the public prosecutor in Federal Iraq indicated that they received 2,191 claims of torture by the Iraqi security forces. They further stated that 51 claims were rejected and 184 accepted, with most cases under investigation. No information on the time frame or outcome of the remaining claims was provided. All letters on file with UNAMI Human Rights Office.

⁷⁶ The current report did not cover the issue of reparations for torture cases or violations of procedural guarantees but UNAMI/OHCHR emphasizes the importance of this topic.

IX. Recommendations

With a view to supporting the Government of Iraq and the Kurdistan Regional Government in their efforts to prevent cases of torture or ill-treatment in line with commitments to implement the Convention against Torture, UNAMI/OHCHR provide the following recommendations:

Regulatory framework

- Prioritize the adoption of a comprehensive Anti-Torture Law and National Action Plan which should be fully in line with international human rights law, particularly the Convention against Torture.
- Establish a legal aid scheme that is accessible and effective, and allocate the necessary human and financial resources.
- Review/adopt laws to ensure that conditions of detention are regulated in full compliance with international human rights law in all official places of deprivation of liberty.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Compliance

- Ensure that detention is only carried out by duly authorized entities in full compliance with the law and Iraq's international human rights obligations.
- Make available transparent information about the security entities with official powers of arrest and detention, the conditions under which they may carry out arrests and detention and the location of all official detention sites.
- Take immediate practical steps to ensure that:
- Suspects and accused persons effectively benefit from access to lawyers at all stages of the investigation and trial, including in places of detention.
- All persons deprived of their liberty can contact a person of their choosing to inform such person about their detention and whereabouts and to facilitate family visits.
- A full examination by a medical practitioner is available on arrival at each detention facility as promptly as possible after admission and that results of every examination are duly recorded and made available to the detainee.
- Timelines for pre-trial detention and judicial proceedings are respected.
- Allegations of torture or ill-treatment are promptly, thoroughly, independently and impartially investigated by judicial and detaining authorities, including *ex officio* on suspicion of such acts.
- Allow for unannounced visits to places of detention by independent monitoring bodies, which should include full access to all places of detention and the possibility to conduct private and confidential interviews with detainees.
- Publish statistics on the number of complaints, investigations, prosecutions of alleged cases of torture and ill-treatment, and the results of such proceedings.

Review of interrogation rules and practices, as well as custody arrangements

- Establish a standardized, centralized and accessible recording system for places of detention while ensuring that the right to privacy of individuals is maintained.
- Adopt guidelines on non-coercive interviewing techniques and other measures that limit reliance on confessions and disseminate them among all officials involved in investigations.
- Take steps to reduce the use of pre-trial detention in line with Sustainable Development Goal 16, including by specifying the considerations for individual decisions on pre-trial detention and ensuring its use is reasonable and necessary, based on strong evidence for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Pre-trial detention for children should always be a measure of last resort and for the shortest possible time.
- Clearly outline the complaint procedures – confidential, safe and accessible to all detainees including children – and require that they are made widely known, and ensure no reprisals if used.
- Widely disseminate the information regarding protection measures and the mechanisms by which those who feel they are at risk of torture or ill-treatment can apply for protection.

Training

- Strengthen training of any person who may be involved in the custody, interrogation or treatment of individuals deprived of their liberty on the prohibition of torture and ill-treatment and associated legal requirements, including safeguards to prevent torture and ill-treatment.

Annex I - Response by the Government of Iraq to the UNAMI/OHCHR report⁷⁷

Republic of Iraq
Ministry of Foreign Affairs
Human Rights Department

Ref. 12/Arabic letter Haa/4/ 794

Date: 29/07/2021

The Ministry of Foreign Affairs (MoFA) of the Republic of Iraq presents its compliments to the United Nations Assistance Mission for Iraq (UNAMI)/Office of High Commissioner for Human Rights (OHCHR). It is honored to request that the Ministry of Justice's comments to be annexed to the report of the Office of the United Nations High Commissioner for Human Rights entitled (Legal conditions and procedural safeguards to prevent torture) to be issued on 3 August 2021.

The Ministry would be grateful if the Mission would have annexed the Ministry of Justice's notes with the above-mentioned report.

MOFA avails itself of this opportunity to renew the assurances of its highest consideration for UNAMI/OHCHR.

Attachment:

- Notes

United Nations Assistance Mission for Iraq (UNAMI)/ Office of the United Nations High Commissioner for Human Rights in Baghdad

The Ministry of Justice's response to the UN report entitled (Legal conditions and procedural safeguards to prevent torture).

- 1- There is a national bill on combating torture, which is currently before the State Shura Council. It includes provisions on reporting, information and complaints about the crime of torture to ensure that victims and their relatives reach the judiciary and to prevent impunity, procedures for medical examination for allegations of torture; punishments to be imposed on the perpetrators of these crimes, mitigating and aggravating circumstances; and prevent the invoking of exceptional circumstances as an excuse to commit torture. The draft also contains provisions on the responsibility of the supervisors and the leaders, the prohibition of participation of those accused of these crimes in investigations and the responsibility of the investigative judge or judicial investigator to investigate all crimes. Furthermore, it prohibits military courts and internal security forces

⁷⁷ This is an unofficial translation. For the official response of the Government of Iraq to the UNAMI/OHCHR report (received on 29 July 2021; reference: 12/Arabic letter Haa/4/ 794), please see the Arabic version of this report.

from hearing cases of torture, ensures the application of universal jurisdiction to prevent impunity, and includes a statute of limitations, capacity-building and fair trial guarantees.

2- Executive officials have no role or opinion in the conduct of investigative proceedings that are limited to the judiciary.

- The Corrections Directorate has a section responsible for the accommodation of inmates by age group and coordinates with the High Judicial Council for the purpose of completing the investigative papers, while allowing the appointment of lawyers to follow-up cases.
- Rehabilitation of prisoners in rehabilitation courses and special workshops.
- The Corrections Directorate receives female detainees around the clock to avoid staying more than 24 hours under an official order by the investigative judge. The file is examined (the penalty order and medical examination to indicate the presence of severe signs of abuse, torture or pregnancy), and a pledge created with a signature and a thumbprint on the information in the event that there are severe external marks or torture.
- Upon arrival, a file is opened for each prisoner including a card, and the duration of the sentence is mentioned. The arrest and criminal registration authority is approached for the purpose of recording all information until the completion of the sentence and release (release or acquittal). A rehabilitation and training program is developed, and all means of legal support are provided.
- When the sentence is completed and if the person not wanted for other crimes, they will be released from the department without notification of the arresting authority.
- Secure the placement of the detainee within the geographical area as much as possible to facilitate the communication and contact process.
- Allowing them to communicate externally through official interviews at least twice per month, except during the Corona epidemic crisis for the safety of inmates. The Minister of Justice's directives also emphasize the need for visits as well as telephone calls (communication and contacts).
- Providing health care including screening procedures in coordination with the medical center in the prison with the opening of health tests (medical file) containing all medical information and securing appropriate treatments. The Ministry of Health provides all medical equipment and supplies with specialized staff, and the Ministry of Justice disburses a risk allocation of 450,000 Iraqi dinars with coordination with the Ministry of Health to provide some medical supplies independently.
- Ensure that there is a complaints box in all prison departments in case of any violation, and a complaints box for the prisoner's relatives during the official visits.
- Coordination and cooperation with the authorities and institutions for female prisoners who do not have a breadwinner or family, who we fear being killed or to prevent reoffending.

- 3- Some prisons have been vandalized by ISIL terrorist gangs, especially in Badoush Central Prisons (complete destruction of infrastructure) and Abu Ghraib prison.
- 4- The Prime Minister met with the Minister of Justice and other officials on 18 July 2021 to speed up the procedures for special amnesty; to discuss the current conditions of prisons, and the mechanism for their development and rehabilitation to turn them into places of psychological support and rehabilitation and activate rehabilitation and guidance programs.
- 5- Law enforcement and judicial officials need support in capacity-building and capacity development.
- 6- Formation of a high committee of senior judges in the High Judicial Council with the responsibility to review legal provisions in accordance with international human rights standards, as well as the formation of a committee to amend the Penal Code in the Presidency of the Republic.
- 7- There are continuous visits by the Minister of Justice to follow-up on the conditions of prisoners, rehabilitation, the mechanism of dealing with them and the infrastructure of prisons for rehabilitation, such as Al-Baldyiat prison and Babil Central Prison. The work is under way on Abu Ghraib prison, one of the largest prisons which has been exposed to terrorist acts by ISIL terrorist gangs, entailing the loss of staff and guards, and the smuggling of hundreds of terrorists.
- 8- The formation of a sector committee in the Ministry of Justice concerning violations and verification of allegations, reporting and presenting them to the Minister.
- 9- The report mentions the cases of ill-treatment in Nasiriyah Central Prison for 20 out of 12,000 prisoners. That cannot be considered a general image of the prison, and this does not prevent action against anyone found guilty of these offences.
- 10- With regard to deaths in prisons, the Ministry is working to follow-up on the matter and has instructed the departments of the Corrections Directorate to conduct administrative investigations to find out the causes of the deaths and hold those who failed to account if applicable.
- 11- In accordance with Article 46/VI of the Prisoners and Detainees Reform Act (Law No. 14 of 2018), the report is contrary to the functions of the UNAMI mission in Iraq under the visit and inspection permit which does not authorize sharing information on complaints.
- 12- The topics contained in the paragraphs of the report need time to verify and follow-up since the allegations have not yet been confirmed, so the report expresses a unilateral view.

Annex II - Response by the Kurdistan Regional Government to the UNAMI/OHCHR report⁷⁸

Statement by KRG Coordinator for International Advocacy (OCIA)

KRG Heeds the Findings of the UNAMI/OHCHR's Report and Deplores the Detested Practice of Torture

The United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) released a report on the status of torture in the Kurdistan Region. The preliminary commentary of the KRG Office of the Coordinator for International Advocacy (OCIA) is attached to the report in the annex. OCIA has an arrangement with UNAMI/OHCHR to submit the final commentary in the next few days, due to the short time limit set by the latter.

KRG has embraced coherent policies and legislations to preserve individual liberty and dignity. The underpinning foundation of the legal framework in place is empowered by a robust policy-making process, fair execution, and consistent monitoring and enhancement by international counterparts and organizations.

Torture is a horrendous practice, and it is alien to the democratic values by which KRG governs. KRG strives to accommodate reformatory policies in the detention and prison facilities. Furthermore, the right of legal defence and family contact are indifferently upheld for the inmates.

Since the outbreak of Covid-19, the visits to the detention and prison facilities have been considerably restricted, making the bureaucratic procedures to obtain permission for the visits more cumbersome. Nevertheless, there have been no shackles on UNAMI/OHCHR's requests to visit the facilities since January 2020, where the Covid-19 witnessed a moderate decline. Furthermore, KRG is willing to cooperate with the aforementioned counterparts to make further improvements, and it reiterates its commitment to materialize procedural safeguards for zero tolerance for torture across the Kurdistan Region.

KRG respects UNAMI/OHCHR's mandate for confidentiality. Nevertheless, for the end of broadening areas of cooperation and therefore for the efforts to be more productive, we request UNAMI/OHCHR to funnel down to some specifications, underlining the focused territorial scopes where, according to their findings, torture is noticed. This will help the government and the judicial authorities to swiftly identify the allegations and issue punitive measures for the perpetrators accordingly.

KRG has exhibited the embodiment of the crucial democratic values and has exemplified the consolidation of pillars of good governance. The legal proceedings solely rely on the laws and rules in place. KRG has a consistent and reciprocal connection with UN agencies, chief among them UNAMI/OHCHR, and looks forward to actualizing the required improvements and enhancements cooperatively.

⁷⁸ Official document received in English by UNAMI/OHCHR on 1 August 2021.

KRG Preliminary Comments on UNAMI/ OHCHR report on Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture

Office of the Coordinator for International Advocacy (OCIA)

Overview:

Kurdistan Regional Government (KRG) has strived to abide by the stipulations of the UN and other international bodies and conventions. This has been a firmly consistent policy.

The Iraqi Constitution, Article 37(1), provides the following foundations on liberty: A) The liberty and dignity of man shall be protected; B) No person may be kept in custody or investigated except according to a judicial decision; C) All forms of psychological and physical torture and inhuman treatment are prohibited. Any confession made under force, threat or torture shall not be relied on and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the Law No. 20. In the Kurdistan Region, the authorities prohibit the use of torture and are committed to investigating allegations of ill-treatment and abuse within all prisons in the Region. The Ministry of Labor and Social Affairs (MOLSA), under Law No 7, Art I, 27 and 28, permits disciplinary punishment only to deter and reform detainees who do not abide by the rules and regulations of the prison.

Torturing detainees and obtaining confessions from them under torture is utterly prohibited. The torture of a detainee or convicted person or any inhumane action against them is a crime under Article 333 of the Iraqi Penal Code No. 111 of 1969 as amended. According to this law, any defendant tortured during interrogation is entitled to complain against the person who tortured him. Accordingly, each detainee can bring any case through the prison administration or the prosecutor and his relatives during their visit or through human rights organizations about torture by the competent authorities. Any confession made under torture is deemed null, and the perpetrators will be punished by law. Any accused person who is tortured throughout investigations, he/she has the right to file a complaint against the person who tortured him/her.

Judicial investigator from the Ministry of Interior accompanied with members from the General Prosecutor's Office, are provided an office in General Asayish building to observe and pursue cases involving torture of detainees. This practice is strictly prohibited, and no torture case has been recorded. Under Art 333 of the amended Iraqi Penal Code No. 111 of 1969 and Art 9 (3) of Iraqi Constitution, every detainee has the right to issue a complaint after which the case ought to undergo investigation. However, no complaint has been issued throughout 2020.

As far as the allegations of torture are concerned-which are mentioned in the UNAMI/OHCHR report, KRG welcomes any enhancement efforts presented by its international counterparts.

Under the custody of the Asayish, a detainee can be held for a duration of 24 hours or until the investigations are finalized and a hearing for the detainee in front of a judge is held in the Asayish's premises. However, in the event that further evidence is needed before the case goes into trial, the investigation period may be extended based on orders from the judge. According to Iraqi Penal Code, No. 111 (1969), after the order of arrest from the court, the accused will

be detained by the court and all the legal actions will be taken pursuant to the Iraqi Code of Criminal Procedures No. (23), 1971.

The situation in the detention facilities in the Kurdistan Region is monitored and enhanced by international counterparts, including the International Committee of the Red Cross (ICRC) and United Nations Assistance Mission for Iraq (UNAMI). The latter also represents the Office of the High Commissioner for Human Rights (OHCHR).

If the accused was subjected to torture by police officers, this must be reported at the time of the investigation and the statements must be taken by the judicial investigator and the investigative judge (because the accused, after his confession, will be asked by the judicial investigator, whether he was under pressure or not to confess). Also, the investigative judge will ask the same question.

Detainees can report on cases of torture through the prison administration, the public prosecutor, their family, or through human rights organizations. Legal measures are taken against any police or security element accused of torturing detainees once it is proven that the individual has committed this act and that the detainee was subjected to torture and ill-treatment.

All the reformatory facilities are subject to the censorship of parliamentary committees, the attorney general, the Independent Commission for Human Rights, the Public Right Association in the Ministry of Justice, international and local organizations and special teams in the Ministry of Labor and Social Affairs. Their reports are also taken seriously and we deal with them with great importance. International organizations concerned with human rights are also allowed to visit the reformatory facilities without any restrictions, particularly the International Committee of the Red Cross.

As for the provision of health services, there is a health centre and a medical team in the reformatory facilities working for 24 hours. The laboratory and medicines are also available. Medical examinations are conducted for detainees during their entry to the detention and transfer centres, especially the examination of infectious diseases such as (hepatitis, AIDS and Tuberculosis) and chronic diseases such as (diabetes and blood pressure) and special medical files are made for them.

Every accused person referred to the reformatory facilities, information about his/her health condition are recorded, and the concerned authorities conduct the necessary examinations for him/her before being mixed with the other detainees to ensure that he is not infected with any diseases that may be transmitted to the rest. No cases of death has been recorded as a result of torture or ill-treatment.

In the Kurdistan Region, those who have not reached the age of 18 and are suspected of being involved with terrorists or have ties to terrorist organizations are dealt with as (ISIS victims) and not as ISIS members. The security authorities are obligated to give information to the detainees' families, according to Law No. (14) for the year (2001) issued by the parliament of the region.

Women and children who are arrested on charges of links with terrorist groups are placed in reformatory facilities affiliated to the Ministry of Labor and Social Affairs and are not kept in Asayish detention centres.

Detainees with disabilities

In the reformatory facilities there are a number of detainees with disabilities and special needs. The following services are provided to them:

- 1- Clothing;
- 2- Sanity services;
- 3- Carrying out medical examinations and treating them when necessary;
- 4- Securing a private room for them;
- 5- Laundry;
- 6- Haircuts and shavings;
- 7- Contact with their families;
- 8-Library;
- 9- Securing special toilets;
- 10- Securing what they need when necessary.