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Iraq
Stakeholder Report for the United Nations Universal Periodic Review:
The Death Penalty

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status

Abolition Death Penalty of Iraq Organization
and
The World Coalition Against the Death Penalty

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Founded in 1983, **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty (WCADP), an alliance of more than 150 NGOs, bar associations, local authorities, and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Abolition Death Penalty in Iraq Organization is a non-governmental organization that has been fighting since 2010 to abolish the death penalty in law and application in Iraq. It struggles to stop torture and use international and humanitarian standards in the judiciary and courts. It is a member of the World Coalition Against the Death Penalty at the global level for a world free of the death penalty. In Iraq, it conducts field visits to prisons, organizes educational seminars and organizes demonstrations against executions and violations of the rights of detainees, and contacts anti-execution organizations and figures, judges, lawyers, parliamentarians, and activists against the death penalty to build a broad front to end the death penalty.

EXECUTIVE SUMMARY

1. This report addresses Iraq's compliance with international human rights obligations with respect to the death penalty, prohibition of torture and cruel, inhuman or degrading treatment, conditions of detention, and administration of justice and fair trial.

2. Iraq has neither abolished the death penalty nor implemented a moratorium on executions, nor has it limited the application of the death penalty to the most serious crimes.

3. Execution rates in Iraq increased by 45% between 2022 and 2023, with 11 executions in 2022 and over 16 executions in 2023.[1] Iraq currently ranks fifth among countries that carry out the most death sentences globally. The high number of executions in 2023 is particularly concerning in light of evidence of the use of torture in coercing confessions related to crimes punishable by the death penalty, lack of access to counsel for many suspects charged with death-eligible offenses, the judicial system's reluctance to investigate allegations of torture, allegations of unfair trials, and a lack of transparency in court proceedings. Reports suggest that many of the people sentenced to death are innocent and have been targeted due to sectarianism.

4. This report examines the current state of the death penalty in Iraq and recommends Iraq (1) abolish the death penalty. In the meantime, this report recommends Iraq : (2) institute an official moratorium on executions, (3) limit the death penalty to the most serious crimes in which the defendant commits an intentional killing, (4) take comprehensive steps to eliminate the use of torture, (5) ensure conditions of detention are in line with the Nelson Mandela and Bangkok Rules, (6) and take measures to guarantee fair trial to defendants.

IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A12 Acceptance of international norms

Status of Implementation: Not Accepted, Not Implemented

5. In its third Universal Periodic Review in 2019, Iraq received seven recommendations to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, with the aim to abolish the death penalty,[2] and noted each one without explanation.[3] To date, Iraq has not ratified the Second Optional Protocol.

D23 Death penalty

Status of Implementation: Partially Accepted, Not Implemented

6. In its third UPR, Iraq received 26 recommendations concerning the death penalty (excluding recommendations limited to OP2 ratification),[4] and supported just one, to "[l]imit capital punishment to the most serious crimes and reform anti-terrorist legislation so as to guarantee a fair trial for the accused."[5]

7. The Penal Code, Anti-Terrorism Law No. 13, and Narcotic Drugs Law No. 68, authorize the death penalty for a wide variety of offenses not limited to intentional killings. Capital crimes include murder, other offenses resulting in death (including arson, intentionally causing a flood, damaging public structures, rape, robbery, and human trafficking), aggravated murder, treason, rape, attempted rape of an abductee, kidnapping, drug trafficking for the purposes of funding or abetting insurgency, treason, espionage, and various military offenses.[6] Most of the offenses eligible for the death penalty do not require or entail an intentional killing by the accused person, such as drug trafficking, participation in an armed terrorist gang, or assault with firearms.[7]

8. The Anti-Terrorism Law authorizes capital punishment for membership in an armed terrorist gang, armed assault with a terrorist motive, and kidnapping or otherwise impeding the freedom of individuals. Iraqi authorities systematically misuse Anti-Terrorism Law No. 13 "to dispose of critics of the regime, often seemingly on a sectarian basis."[8] Anti-Terrorism Law No. 13's definition of terrorism is broad, allowing the death penalty for any person "who commits, incites, plans, finances or assists in acts of terrorism," regardless of whether such conduct results in death [9] This provision has led to the execution of persons not directly involved in terrorist acts such as cooks and drivers for alleged terrorists.[10] Medical workers have also been charged with these crimes, even though international humanitarian law prohibits the prosecution of medical personnel for actions compatible with medical ethics.[11]

9. Iraq also retains the death penalty for drug trafficking. Though official information on death sentences for drug-related offences is unavailable, in 2023 courts imposed death sentences in 19 drug cases, up from just 3 in 2022.[12]

10. In April 2024, the Iraqi parliament adopted a draft amendment to Iraq's Anti-Prostitution Law (Law No. 8 of 1988)[13] and President Abdul Latif Rashid ratified the amendments in June 2024.[14] An earlier version of the bill would have authorized the death penalty for consensual same-sex conduct between adults,[15] but the law as adopted had lesser sentences.[16]

11. The imposition of the death penalty in Iraq is not mandatory.[17] Judges are allowed to consider mitigating "excuses" for a limited number of crimes including cases involving so-called honor killings, and in all other cases, judges may specify "extenuating" circumstances that justify the imposition of a sentence other than death. It is not clear how often judges exercise such discretion. Authorities in Iraq continue to sentence people to death and carry out executions without providing official statistics or sharing information with international organizations.[18]

12. A law in Kurdistan provides that persons sentenced to death will have their sentences reduced to 15 years in prison if they reconcile with victims.[19]

13. For crimes with a penalty of life imprisonment, the Penal Code authorizes judges to sentence a person to death if there is any aggravating circumstance.[20]

14. Iraqi authorities carried out 11 executions in 2022 and over 16 executions in 2023—the fifth-highest number of documented executions in the world.[21]

15. Currently, over 8,421 people are reported to be under sentence of death, with the majority facing terrorism charges.[22] Courts sentenced at least 138 people to death in 2023.[23]

16. Amnesty International reported in April 2024 that there was an alarming lack of transparency around executions in Iraq.[24]

17. Iraqi authorities carry out mass executions, including one of 13 people in the Nasiriyah Central Prison in December 2023. Most of the men had been convicted of terrorism and authorities carried out their executions without transparency or advance notice, so the people being put to death were not able to call their families or lawyers.[25] Human Rights Watch observed that this event was the first mass execution since the previous government largely halted the practice in 2020. Authorities carried out more mass executions in 2024, such as a mass execution on April 22, 2024, in Nasiriyah Central Prison of at least 13 people convicted on overly broad and vague terrorism charges.[26]

D25 Prohibition of torture and cruel, inhuman or degrading treatment

Status of Implementation: Accepted, Not Implemented

18. In its third-cycle UPR, Iraq received seven recommendations concerning torture (excluding recommendations to ratify the Optional Protocol to the Convention Against Torture).[27] Iraq accepted all but one, including recommendations to align its draft laws with the Convention Against Torture,[28] and to investigate promptly all allegations of torture and ill-treatment.[29]

19. The Iraqi Constitution prohibits all forms of torture and inhumane treatment and prohibits courts from relying on any confession made under duress. Article 123 of the Iraqi Criminal Procedure Code of 1971 states that a person accused of a crime has the right to legal representation starting before the initiation of questioning. Article 127 prohibits mistreatment, threats, or other forms of "pressure to influence the accused or extract a confession."[30] Article 333 of the Iraqi Penal Code criminalizes acts of torture and Article 332 criminalizes cruel treatment by public officials.[31]

20. These safeguards are falling short in practice. Many death sentences and executions are based on confessions extracted through torture or other ill-treatment.[32]

21. Judicial authorities remain reluctant to properly investigate allegations of torture, and vulnerable groups continue to be targeted (e.g., members of the LGBT+ community, woman, children etc.). In addition, parliament has not yet adopted an anti-torture bill.[33]

22. Despite Iraq's obligations under the Convention against Torture, interviews with detainees reveal that authorities routinely use torture to extract confessions. Torture in this context sometimes results in death.[34] For example, people describe their arms being held behind the back and having their wrists hung by rope, [35] and a person detained in Mosul described both witnessing and being a victim of torture, seeing at least two men die from abuse, and seeing other men return from interrogations with signs of torture on their bodies.[36]

23. The UN Assistance Mission in Iraq published a report in August 2021 confirming that torture is a common reality in Iraqi detention facilities. Through interviews with 235 detainees, the report identified that over half of people in detention (122 out of 235) provided detailed and credible accounts of torture and/or ill-treatment whilst in custody. Forms of torture and ill-treatment included slapping, insults, humiliation, threats, and severe beatings. The people carrying out the torture and ill-treatment acted under the authority of the Ministry of Interior in Federal Iraq.[37] The UN contends that these findings show that authorities do not respect legal conditions and procedural safeguards that could prevent torture and there is no effective legal oversight to address the realities of interrogation rooms.[38]

24. These findings are consistent with Human Rights Watch findings that authorities tolerate the use of torture and ill-treatment to extract confessions, that torture contributes to unlawful death,[39] and that judges often ignore torture allegations and rely on confessions obtained in suspicious circumstances.[40]

25. Curricula for police and military personnel incorporate training programs on human rights conventions including the Convention against Torture. These programs aim to educate officials on the principles of human rights and the prohibition of torture.[41] UN agencies also continue to engage with the Iraqi Government to promote compliance with human rights obligations, including the Convention against Torture. More positively, Iraq has extended an open invitation to United Nations Special Procedures mandate-holders, including the Special Rapporteur on torture. Planned visits, however, have been postponed on several occasions.[42]

26. While Iraq has made legislative strides towards compliance with the Convention Against Torture, significant challenges remain. Defense lawyers are routinely absent from interrogations, and many suspects are without lawyers during their hearings.[43] Further, Iraq does not have laws or judicial guidelines directing that judges take a particular investigative course of action when defendants allege torture or ill-treatment.[44]

27. Iraq's Criminal Procedure Code allows judges full discretion to decide the admissibility of confessions, even if the defendant denies the veracity of the confession during the hearing.[45] One of the primary obstacles to compliance with the Convention Against Torture is the weakness of Iraqi institutions tasked with preventing torture. The judiciary lacks independence and adequate resources, undermining its ability to conduct fair trials and hold torturers accountable. Additionally, law enforcement agencies and prison personnel often lack adequate training on human rights and the prohibition of torture.

D51 Administration of justice and fair trial

Status of Implementation: Accepted, Not Implemented

28. In its third-cycle UPR, Iraq received ten recommendations touching upon the administration of justice and the right to a fair trial.[46] Iraq accepted each of these recommendations, including recommendations to "reform anti-terrorist legislation so as to guarantee a fair trial for the accused," and to "ensure an impartial and independent judiciary."[47]

29. Judicial proceedings fail to meet international fair trial standards.[48] For example, the April 2024 mass execution was subsequent to convictions on overly broad and vague terrorism charges.[49] The lawyer and relatives of two of the men said they were tortured and then forced to sign documents that they were not allowed to read. The lawyer said a judge later informed them that the documents were confessions and sentenced them to death. [50]

30. Throughout Iraq's judicial system, death threats, attacks, and other security concerns impair the independence of judges[51] and the practice of law.[52] Corruption and intimidation influence some judges in criminal proceedings.[53]

31. In the Kurdistan Region, OHCHR/UNAMI has documented several statements by regional authorities that may amount to undue influence in the judicial process, including over appeal outcomes,[54] and practices which may be 'indicative of targeted criminal prosecutions intended to stifle criticism of the public authorities.'[55] Other sources confirm that even though the Kurdistan Judicial Council is independent from the Ministry of Justice, senior leaders reportedly influenced politically sensitive cases and political parties influenced judicial appointments and judicial decisions.[56]

32. Civil society organizations have expressed concern that Iraqi courts lack sufficient judges and support personnel, resulting in prolonged pretrial detention and backlogs in court hearings.[57]

33. People charged with criminal offenses often have inadequate and delayed access to counsel. Some people in conflict with the law reported that they had been detained and prosecuted but had "no contact with court-appointed lawyers prior or during their trial and described them as passive, having no role in the proceedings."[58] Absence of counsel during interrogations by security forces is typical. UN staff found that 144 of 189 interviewees who had been brought before an investigative judge 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 % stated that they had a court-appointed lawyer at trial.[59]

34. Defendants in both Federal Iraq and the Kurdish Region of Iraq experience severe limitations on access to legal counsel: "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, thus leaving suspects and accused without an effective legal defence."[60] Court-appointed lawyers complain that they do not have sufficient access to their clients and therefore are not able to adequately prepare for trial.[61]

35. Iraqi law allows judges to appoint counsel for indigent defendants.[62] The High Judicial Council in Federal Iraq is responsible for facilitating access to court-appointed defense lawyers, and the Lawyers' Law in the Kurdish Region is responsible for assigning lawyers to unrepresented defendants.[63] But compensation for court-appointed lawyers is low, ranging from 10,000 to 30,000 dinars for investigative and trial hearings.[64] Inadequate compensation can undermine the quality of legal services.

36. Defendants in criminal proceedings often do not have sufficient time or sufficient access to counsel to prepare a defense, particularly in counter-terrorism courts.[65] Protracted pretrial detention, often exceeding 12 months, also hampers trial preparation.[66] Moreover, authorities often use pretrial detention as an opportunity to coerce confessions.[67] Investigative judges then focus on confirming statements made during these interrogations, making it almost inevitable that trial courts will rely on those confessions.[68] Judges lack concern about allegations of coerced confessions and do not investigate credible allegations, particularly when alleged terrorism suspects make them.[69]

D26 Conditions of detention

Status of Implementation: Accepted, Not Implemented

37. In its third-cycle UPR, Iraq received three recommendations concerning detention conditions.[70] Iraq supported each of these recommendations, including to "[c]ontinue promoting actions to promote the observance of human rights in prisons," to facilitate visits to detention facilities by the Special Rapporteur on torture, and to ensure that people "deprived of their liberty are held in supervised places of detention and have access to their families and lawyers."[71]

38. People in detention facilities face degrading and inhuman treatment. Prison authorities keep male prisoners in small cell areas that do not provide enough room for a person to lie down to sleep.[72] Prison rules allow detainees to use the toilet only twice per day; if they take too long, guards beat them.[73] Overcrowding remains a significant issue. The Kurdistan Regional Government has plans to construct new facilities to accommodate 5,000 people to alleviate overcrowding and has established four female detention facilities. The Baghdad Central Prison had been expanded to house 15,000 inmates. Health services in prisons continue to be inadequate.[74] Over the course of just four weeks in the Spring of 2021, 18 people housed in the Nasiriyah prison died under unclear circumstances, and post-mortem examinations of two people showed that they did not die of natural causes.[75]

D28 Gender-based violence; D29 Domestic violence; F12 Discrimination against women

Status of Implementation: Accepted, Not Implemented

39. In its third-cycle UPR, Iraq received 40 recommendations related to women's rights, gender equality, discrimination against women, and gender-based violence.[76] Iraq supported all but one of these recommendations,[77] including recommendations to "prevent[] the risk of discrimination, stigmatization and marginalization of internally displaced women . . . with alleged Da'esh affiliation," and to strengthen efforts to eradicate child early and forced marriage.[78]

40. Evidence suggests that women are disproportionately at risk of the death penalty in Iraq. Iraq is one of 42 countries where women are known to be on death row, and one of just 12 retentionist countries where the number of women on death row is unknown.[79] Iraq is also one of 14 countries known to have executed women in the last decade.[80] Indeed, Iraq is known to execute women on a regular basis and is considered to be among the "top ten

executioners of women in the world."[81]

41. Global trends show that women sentenced to death face intersectional discrimination. According to a groundbreaking Cornell Center study, many women in criminal legal systems throughout the world, and the vast majority of women on death row, are from poor and marginalized communities.[82] Most women who are detained are unable to afford a lawyer and are more likely to be illiterate and unaware of their legal rights.[83] They are therefore more vulnerable to discrimination, coercion, and exploitation.[84]

42. On a global scale, many women under sentence of death are victims of gender-based violence.[85] In many countries, however, courts fail to take into account a defendant's experience as a survivor of gender-based violence when making sentencing decisions.[86]

43. Under the Iraq Penal Code, the willful killing of another person is punishable by death.[87] The Penal Code authorizes judicial mitigation under certain circumstances when husbands kill their wives,[88] but there is no similar provision when wives kill their husbands.[89]

44. Iraq lacks comprehensive legislation to protect and punish violence against women; Iraqi law recognizes "honor" as a mitigating circumstance, and although it criminalizes sexual assault, it allows authorities to drop charges if the perpetrator marries the victim. Several hundred women and girls are killed every year in "honor" crimes, and such crimes are underreported to the authorities.[90]

5. Women in Iraq are sentenced to death not only for intentional killings, but also for drug trafficking and terrorism. For example, according to the Iraqi News Agency, on May 22, 2024, Basra Criminal Court sentenced a woman and three men to death for alleged drug trafficking.[91] The Cornell Center found that "[g]ender dynamics and female disempowerment are salient factors associated with women's involvement in drug smuggling. Many women engage in drug smuggling to counteract their marginalization and improve their socioeconomic status."[92] The study observed that "most drug offenses involving women are small-scale offenses committed by women from economically deprived backgrounds."[93]

45. On July 10, 2024, a court sentenced a wife of the former ISIS leader Abu Bakr al-Baghdadi to death for complicity in crimes committed by that group against Iraq's Yazidi minority, with Iraq's judicial council describing the sentence as being in accordance with Iraq's anti-terrorism law and the "Yazidi survivors law."[94]

46. Women face barriers to accessing justice due to the discriminatory attitudes of police and other government officials. Women face broad discriminatory treatment in society and under the laws; marriage and divorce laws tend to favor men. Legal protections for women against domestic violence in Iraq are insufficient and violence in the family is underreported due to shame, fear of family or community reprisals, or harassment and abuse from police and security forces.[95]

47. Iraqi courts sentence women foreign nationals to death. In 2018, an Iraqi court sentenced at least 15 Turkish women to death after finding them guilty of joining Da'esh. According to Human Rights Watch, the women argued that their husbands had coerced

them into going to Da'esh-controlled territory and the women contended that they did not engage in violent acts.[96] In May 2023, authorities imprisoned approximately 400 women for being part of Da'esh. Courts ultimately sentenced some of them to death. Some of these women engaged in a hunger strike in the Rusafa high-security prison in Baghdad to bring attention to what they say were unfair trials.[97] Among the women are foreign nationals from Azerbaijan, France, Germany, Russia, Syria, Turkey, Ukraine, and the United States.[98]

48. Women often face intersecting forms of discrimination, including discrimination based on other elements of their identity, such as age, sexual orientation, disability, and race. Such prejudices can influence sentencing, particularly when prosecutors or judges invoke stereotypes of the defendant as a bad mother, a witch, or a femme fatale.[99] At trial, courts rarely examine important mitigating factors, such as a woman's experience with gender-based violence.[100]

II. RECOMMENDATIONS

49. The coauthors of this stakeholder report suggest the following recommendations for the Government of Iraq:

- Abolish the death penalty and replace it with sentences that are fair, proportionate, and aligned with international human rights standards.
- In the interim:
    - Establish a moratorium on the use of the death penalty.
    - On an annual basis, publish comprehensive data on all people sentenced to death, executed, or under sentence of death, disaggregated by sex/gender, race, nationality, age of the person at the time of the offense, measures taken to ensure the right to consular notification (if any), number and age of dependent children, relationship to any codefendant and/or victim, crime of conviction, date of conviction, status of any appeals or requests for pardon, current location or date of execution.
    - Ensure that no person is subject to a mandatory death penalty and commute the sentences of all persons sentenced to death pursuant to a mandatory scheme.
    - Fully implement the death penalty recommendations presented by the Special Rapporteur on executions.
    - Prohibit judges from sentencing any person to death who is not proven to have been at least 18 years old on the date of the alleged offense.
    - Amend the Penal Code to limit the death penalty to offenses entailing an intentional killing committed by the accused person.
    - Ensure that any person charged with a capital offense has a fair trial, including, at a minimum: (1) observers from local and/or international humanitarian organizations, (2) a lawyer with capital experience who is present at the time of the investigation through and including any appellate proceedings.

  - Commute the sentences of persons sentenced to death and immediately adopt a formal moratorium on the death penalty with a view to its eventual abolition.
  - Initiate a public dialogue regarding the death penalty, with a view toward its abolition.
  - Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
  - Ensure that all sentencing authorities in capital cases take into account a woman defendant's experiences with child marriage and other forms of gender-based violence, particularly at the hands of her spouse, in determining whether to sentence her to death for killing her spouse.
- In collaboration with civil society and relevant international human rights institutions, develop and implement systematic training to ensure that judges, prosecutors, defense counsel, police, and other individuals in positions of power within the criminal legal system are knowledgeable about gender-based discrimination, domestic violence, and tactics of coercive control that may lead women to commit death-eligible offenses.
- Ensure full application of the Vienna Convention on Consular Relations in consular cases involving foreign nationals.
- Amend the Anti-Terrorism Law to ensure that people are not sentenced to death for giving food to a spouse or neighbor.
- Prohibit the introduction of evidence obtained under duress, and issue guidelines on the steps judges must take when a defendant alleges torture, including investigating all credible allegations and taking immediate steps to protect individuals alleging torture or ill-treatment from retaliation.
- Promptly and openly review all allegations of torture to ensure persons who commit acts of torture are held accountable, and victims are fully compensated for their injuries in accordance with Articles 12-14 of the Convention against Torture.
- Adhere to the Iraqi Constitution and the laws of Iraq with regard to detainees and criminal proceedings, including bringing detainees before a court within 24 hours to be formally charged with a crime and ensuring that all detainees are provided prompt access to legal counsel of their choosing, and consider video or other monitoring of all interrogations to deter the use of torture and ill-treatment during questioning.
- Improve conditions in detention facilities, ensuring they comply with the Nelson Mandela Rules and the Bangkok Rules.
- Enhance institutional capacity, including by providing adequate training on human rights and the prevention of torture, as well as ensuring that these institutions are adequately resourced and independent.
- Establish independent oversight bodies, such as a national human rights institution or ombudsperson, to help monitor places of detention, investigate allegations of torture, and ensure transparency and accountability.
- Provide enhanced technical support for courts handling terrorism cases to ensure that they provide defendants with heightened procedural protections and access to well qualified

legal counsel.

- Ensure that courts and prosecutors handling terrorism cases prioritize prosecution of the most serious crimes and in all cases consider mitigating evidence that warrants a sentence other than death.

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