

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	1330
Land:	Irak
Kilde:	Advocates for Human Rights og World Coalition
Titel:	Iraqs Compliance with the CAT. Suggested List of Issues Regarding to the Death Penalty
Udgivet:	22. juni 2020
Optaget på baggrundsmaterialet:	27. januar 2021



**Iraq's Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Suggested List of Issues Relating to the Death Penalty**

Submitted by The Advocates for Human Rights
a non-governmental organization in special consultative status with ECOSOC since 1996
and
The World Coalition Against the Death Penalty

**70th Session of the Committee Against Torture (Pre-Sessional Working Group)
9 November–4 December 2020**

Submitted 22 June 2020

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. Established in 1983, 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 publications. 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 postconviction 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, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 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.

EXECUTIVE SUMMARY

1. This report addresses Iraq's compliance with its human rights obligations with regard to the death penalty. In 2019, Iraq had the fourth-highest number of executions in the world.¹ Between 2018 and 2019, Iraq experienced a sharp spike in executions, nearly doubling from around 50 in 2018 to at least 100 in 2019.² This high number of executions is particularly concerning in light of evidence of due process violations, including the use of torture to extract confessions, inadequate access to counsel for people accused of capital crimes, a lack of transparency in court proceedings, and the reluctance of judicial authorities to investigate allegations of ill-treatment and torture. Reports suggest many people sentenced to death are innocent and are targeted for political or sectarian reasons.

Iraq fails to uphold its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

I. Iraq does not limit the imposition of the death penalty to the most serious crimes. (Concluding Observations Paragraph 20)

2. In its 2015 Concluding Observations, the Committee expressed concern about the number of death penalty cases in Iraq and the wide range of crimes punishable by death. The Committee recommended that Iraq consider enacting a moratorium on executions, or at a minimum take action to ensure that the death penalty is imposed only for the "most serious crimes."³
3. In its Second Periodic Report, Iraq asserts that its use of the death penalty is appropriately limited.⁴
4. Iraq's laws allow for the application of the death penalty for crimes other than the intentional killing of a person. Iraqi law authorizes the death penalty under the Penal Code and Counter-Terrorism Law No. 13.⁵ Death-eligible offenses include inter alia, aggravated murder, rape, prostitution, kidnapping,⁶ drug trafficking for the purposes of funding or abetting insurgency or where death results,⁷ committing or aiding acts of terrorism including causing damage to public buildings, and various military offenses.⁸ For crimes with a penalty of life

¹ Amnesty International, *Death Penalty 2019: Global Executions Fell by 5%, Hitting a 10-Year Low*, (April 20, 2020), <https://www.amnestyusa.org/reports/death-penalty-2019/>.

² Ibid.

³ Committee Against Torture, *Concluding observations on the initial report of Iraq*, (Sept. 7, 2015), UN Doc. CAT/C/IRQ/CO/1, ¶ 20.

⁴ Committee Against Torture, *Second periodic report submitted by Iraq under article 19 of the Convention, due in 2019*, (Nov. 20, 2019), UN Doc. CAT/C/IRQ/2, ¶¶ 258–268.

⁵ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Iraq*, (Oct. 16, 2013), U.N. Doc. CCPR/C/IRQ/5, ¶ 76.

⁶ United Nations Assistance Mission for Iraq Human Rights Office and Office of the United Nations High Commissioner for Human Rights, *Report on the Death Penalty in Iraq*, (Oct. 2014), 1. Available at https://www.ohchr.org/Documents/Countries/IQ/UNAMI_HRO_DP_1Oct2014.pdf.

⁷ United Nations Assistance Mission for Iraq Human Rights Office and Office of the United Nations High Commissioner for Human Rights, *Report on the Death Penalty in Iraq*, (Oct. 2014), 7. (As defined by the Narcotics Act No. 68 of 1965, art. 14; As provided for in the Iraqi Penal Code, art. 190.) Available at https://www.ohchr.org/Documents/Countries/IQ/UNAMI_HRO_DP_1Oct2014.pdf.

⁸ United Nations Assistance Mission for Iraq Human Rights Office and Office of the United Nations High Commissioner for Human Rights, *Report on the Death Penalty in Iraq*, (Oct. 2014), 9. Available at https://www.ohchr.org/Documents/Countries/IQ/UNAMI_HRO_DP_1Oct2014.pdf.

imprisonment, the Penal Code permits judges to sentence a person to death in the event of any aggravating circumstances.⁹

5. Iraq's 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.¹⁰
6. Iraq's Anti-Terrorism Law permits the use of the death penalty for any person who "assists in acts of terrorism."¹¹ This provision has led to the execution of persons not directly involved in terrorist acts such as cooks and drivers for alleged terrorists.¹² 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.¹³
7. Iraq also retains the death penalty for drug trafficking. Though official information on death sentences for drug-related offences is unavailable, in 2017 Amnesty International reported four death sentences imposed for this crime—6% of total confirmed death sentences for the year.¹⁴
8. Iraqi officials have made statements calling for anyone convicted of a terrorism offense to be sentenced to death, regardless of the severity of the offense or any mitigating circumstances.¹⁵

II. Violations of rights to due process and a fair trial threaten the right to life. (Concluding Observations Paragraphs 12, 14-16, 19, 21-23, 27, 28, 31)

9. In its 2015 Concluding Observations, the Committee expressed concern about reports of due process violations, the widespread use of torture to obtain confessions from individuals in detention, and the failure to investigate allegations of torture.¹⁶ The Committee also expressed concern about reports of extrajudicial killings.¹⁷ The Committee recommended that Iraq initiate prompt independent investigations into allegations of human rights abuses

⁹ Penal Code of Iraq, Paragraph 136.

¹⁰ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, (Jun. 20, 2018), UN Doc. A/HRC/38/44/Add.1, ¶ 60.

¹¹ Margaret Coker and Falih Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, The New York Times, Apr. 17, 2018, <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>.

¹² Margaret Coker and Falih Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, The New York Times, Apr. 17, 2018, <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>; *Retaliatory Executions do not Amount to Justice for Victims of 'Islamic State'*, Amnesty International, Jun. 29, 2018, <https://www.amnesty.org/en/latest/news/2018/06/iraq-vengeful-executions-will-not-bring-justice-to-victims-of-isl/>.

¹³ Human Rights Watch, *Flawed Justice: Accountability for ISIS Crimes in Iraq*, (Dec. 5, 2017), <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq#page>.

¹⁴ Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2018*, by Giada Girelli (London: Harm Reduction International, Feb. 2019), 30. Available at https://www.hri.global/files/2019/02/22/HRI_DeathPenaltyReport_2019.pdf; Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2017*, (London: Amnesty International, 2018), 32. Available at <https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF>.

¹⁵ Margaret Coker and Falih Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, The New York Times, Apr. 17, 2018, <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>.

¹⁶ Committee Against Torture, *Concluding observations on the initial report of Iraq*, (Sept. 7, 2015), UN Doc. CAT/C/IRQ/CO/1, ¶¶ 14, 15, 20, 21.

¹⁷ Committee Against Torture, *Concluding observations on the initial report of Iraq*, (Sept. 7, 2015), UN Doc. CAT/C/IRQ/CO/1, ¶ 12.

and ensure perpetrators are appropriately sanctioned, while victims receive redress.¹⁸ Other recommendations included taking greater official steps to eradicate torture and hold its perpetrators accountable, and to guarantee due process and an independent judiciary.¹⁹

10. The Criminal Procedure Code recognizes several due process rights. Article 123 guarantees the right to legal representation to all arrested persons during investigation and trial.²⁰ Article 127 prohibits the extraction of a confession under duress.²¹ The Iraqi Constitution prohibits all forms of psychological and physical torture and inhumane treatment.²²
11. In its Second Periodic Report, Iraq notes existing due process protections and opportunities for appeal.²³ Iraq also references its constitutional and legislative sanctions on torture or inhumane conditions of detention, and procedures for investigating torture and holding perpetrators accountable.²⁴
12. During her 2017 country visit to Iraq, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted several concerns relating to the rights of the accused.²⁵ In particular, she noted the large number of allegations of violations of the right to due process in capital cases, including confessions obtained under torture and “swift trials resulting in mass executions.”²⁶
13. In one case, over the course of two hours, 14 women were tried, convicted, and sentenced to death for allegedly supporting the Islamic State, with each trial lasting approximately 10 minutes.²⁷ This case is emblematic of a “judicial assembly line” which methodically produces convictions in terrorism cases at a rate of around 98%.²⁸ Bystanders and persons related to Islamic State members are apparently being swept up in these terrorism trials.²⁹ The defeat of the Islamic State has massively increased the number of persons on death row, with official numbers rising from 1,724 in August 2014 to 8,022 in August 2019.³⁰

¹⁸ Committee Against Torture, *Concluding observations on the initial report of Iraq*, (Sept. 7, 2015), UN Doc. CAT/C/IRQ/CO/1, ¶¶ 12, 15, 16, 19, 21, 27, 28, 31.

¹⁹ Committee Against Torture, *Concluding observations on the initial report of Iraq*, (Sept. 7, 2015), UN Doc. CAT/C/IRQ/CO/1, ¶¶ 14, 15, 21–23, 27, 28.

²⁰ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, (Jun. 20, 2018), UN Doc. A/HRC/38/44/Add.1, ¶ 61.

²¹ *Ibid.*

²² *Ibid.*, ¶ 20.

²³ Committee Against Torture, *Second periodic report submitted by Iraq under article 19 of the Convention, due in 2019*, (Nov. 20, 2019), UN Doc. CAT/C/IRQ/2, ¶¶ 22–30, 36–44, 128–135, 181–182, 213–214, 258–267.

²⁴ Committee Against Torture, *Second periodic report submitted by Iraq under article 19 of the Convention, due in 2019*, (Nov. 20, 2019), UN Doc. CAT/C/IRQ/2, ¶¶ 5, 12–18, 23–30, 45–47, 57–62, 65, 128–130, 132–135, 179–180, 250.

²⁵ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, (Jun. 20, 2018), UN Doc. A/HRC/38/44/Add.1, ¶ 68.

²⁶ *Ibid.*, ¶ 67.

²⁷ Margaret Coker and Falih Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, New York Times, Apr. 17, 2018, <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, (Jun. 20, 2018), UN Doc. A/HRC/38/44/Add.1, ¶ 64; Lawk Ghafuri, *Iraq has executed 100 since January, 8,000 on death row: official*, Rudaw, Aug. 19, 2019, <https://www.rudaw.net/english/middleeast/iraq/190820191>.

14. The Special Rapporteur also expressed concern about the “lack of openness from the Federal Government on judicial proceedings and the use of the death penalty.”³¹ Since 2015, Iraqi officials have not published any information relating to the charges and trials of people who have been sentenced to death.³² The Ministry of Justice in August 2019 released data on the number of executions and persons on death row in 2019, but more detailed data about capital punishment in Iraq remain elusive.³³
15. Access to counsel is inadequate, particularly for individuals accused of terrorism-related offenses. Defense lawyers are often absent from interrogations and hearings in capital cases.³⁴ One state-appointed lawyer in a terrorism case admitted not having prepared for his clients’ trials and said he could not access the evidence against his clients because it was classified.³⁵ Moreover, he said he would receive his pay only after the client’s final appeal or execution, so he had little financial incentive to prolong the judicial process on behalf of his clients.³⁶
16. Iraq does not have laws or judicial guidelines requiring judges follow a certain course of action when defendants allege torture or ill-treatment or when they seek to dispute the veracity of their confessions.³⁷ In certain cases where there may not be enough evidence to convict a defendant, judges may order a “deeper investigation.”³⁸ Interrogators understand this phrase as a signal to exert more pressure on the defendant through the use of torture.³⁹
17. Ill-treatment and due process violations also affect foreign nationals held in Iraqi custody for alleged involvement with the Islamic State. Foreigners accused of terrorism do not receive a presumption of innocence; rather, courts presume any foreigner present in territory controlled by the Islamic State is involved with terrorism.⁴⁰ Some people sentenced to death are citizens of countries that have abolished the death penalty.⁴¹ Some foreign governments are unwilling to take back their nationals and try them in national courts, preferring to outsource the prosecution and detention of their nationals to the Iraqi government.⁴²

³¹ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, (Jun. 20, 2018), UN Doc. A/HRC/38/44/Add.1, ¶ 64.

³² *Ibid.*

³³ Human Rights Watch, *World Report 2020*, (2020), 301, <https://www.hrw.org/world-report/2020>.

³⁴ News Release, Human Rights Watch, Iraq: Judges Disregard Torture Allegations, (July 31, 2018). Available at <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations>.

³⁵ Margaret Coker and Fali Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, The New York Times, Apr. 17, 2018, <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>.

³⁶ *Ibid.*

³⁷ News Release, Human Rights Watch, Iraq: Judges Disregard Torture Allegations (July 31, 2018). Available at <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations>.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Margaret Coker and Fali Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, The New York Times, Apr. 17, 2018, <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>.

⁴¹ *Iraq Sentences Two More Frenchmen to Death for IS Membership*, France 24, Jun. 3, 2019, <https://www.france24.com/en/20190603-iraq-two-more-french-islamic-state-group-suspects-sentenced-death>.

⁴² Majdoulin Sendadi, *Unfair Trials and the Death Penalty for Terrorism in Iraq*, World Coalition Against the Death Penalty, Jan. 13, 2020, <http://www.worldcoalition.org/UNFAIR-TRIALS-AND-THE-DEATH-PENALTY-FOR-TERRORISM-IN-IRAQ.html>.

18. Anti-Terrorism Law No. 13 “is systematically misused by the Iraqi authorities in order to dispose of critics of the regime, often seemingly on a sectarian basis.”⁴³
19. The Special Rapporteur concluded “that existing procedural guarantees to ensure fair trials either are not implemented in practice or have proven insufficient to protect against abuses of due process rights, resulting in systematic violations of the right to life.”⁴⁴

III. Suggested questions for the Government of Iraq:

- What steps have Iraqi authorities taken to reduce the number of crimes eligible for the death penalty and to limit the availability of the death penalty to the “most serious” crimes?
- Please provide disaggregated data broken down by age, race or ethnicity, nationality, and sex relating to all persons sentenced to death or executed during the reporting period, including: date of the alleged crime; age of defendant on the date of the alleged crime; the crime(s) of conviction; location and date of arrest; date of charge; location, date, and duration of trial; date of sentencing; location of post-trial detention; date(s) of any decisions on appeal; and location and date of execution, if applicable. For all convictions based on terrorism-related charges, please describe the factual circumstances that formed the basis for the conviction and sentence, whether any evidence in mitigation was presented to the court, and whether the court acknowledged any mitigating evidence.
- What procedures are in place to promote public transparency with respect to criminal proceedings in which a person may be sentenced to death and with respect to death sentences and executions?
- What procedures exist when a defendant in a criminal proceeding alleges having been tortured or otherwise ill-treated? What measures are taken to hold persons who commit acts of torture accountable and to compensate victims of torture?
- How do courts ensure that evidence obtained under torture is not used to obtain a conviction in any case other than the prosecution of the person responsible for the alleged torture?
- Please provide data about all complaints received alleging torture or other ill-treatment, including the nature of the complaint, the authority receiving the complaint, investigative measures taken, results of the investigation, accountability measures pursued, and remedies provided to the victim, in the following circumstances: during investigation of an alleged crime; during the period in which a person is on trial for a criminal offense; while a person is held in pre-trial detention; while a person is detained after conviction while any appeals are pending; while a person is detained after conviction after the exhaustion of any appeals.

⁴³ News Release, Geneva International Centre for Justice, *Death Penalty in Iraq: Latest Developments*, (July 2016). Available at <http://www.gicj.org/un-special-procedures-appeals/iraq/450-death-penalty-in-iraq-latest-developments>.

⁴⁴ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, (Jun. 20, 2018), UN Doc. A/HRC/38/44/Add.1, ¶ 68.

- Please provide information about all cases in which officials have been criminally prosecuted for committing acts of torture against suspects or defendants in criminal proceedings, including the outcomes of those cases.
- What concrete measures is the government taking to ensure respect for the rights of defendants to a fair trial and adequate legal representation, particularly in capital cases?
- What procedures are in place to ensure that any foreign national at risk of being sentenced to death is afforded the right to consular notification under the Vienna Convention on Consular Relations? What remedies are in place if an accused person is not provided notification of those rights?
- How does the judiciary ensure that defense counsel in terrorism-related cases is able to present all relevant mitigating evidence and that courts consider all evidence that warrants a sentence other than death?