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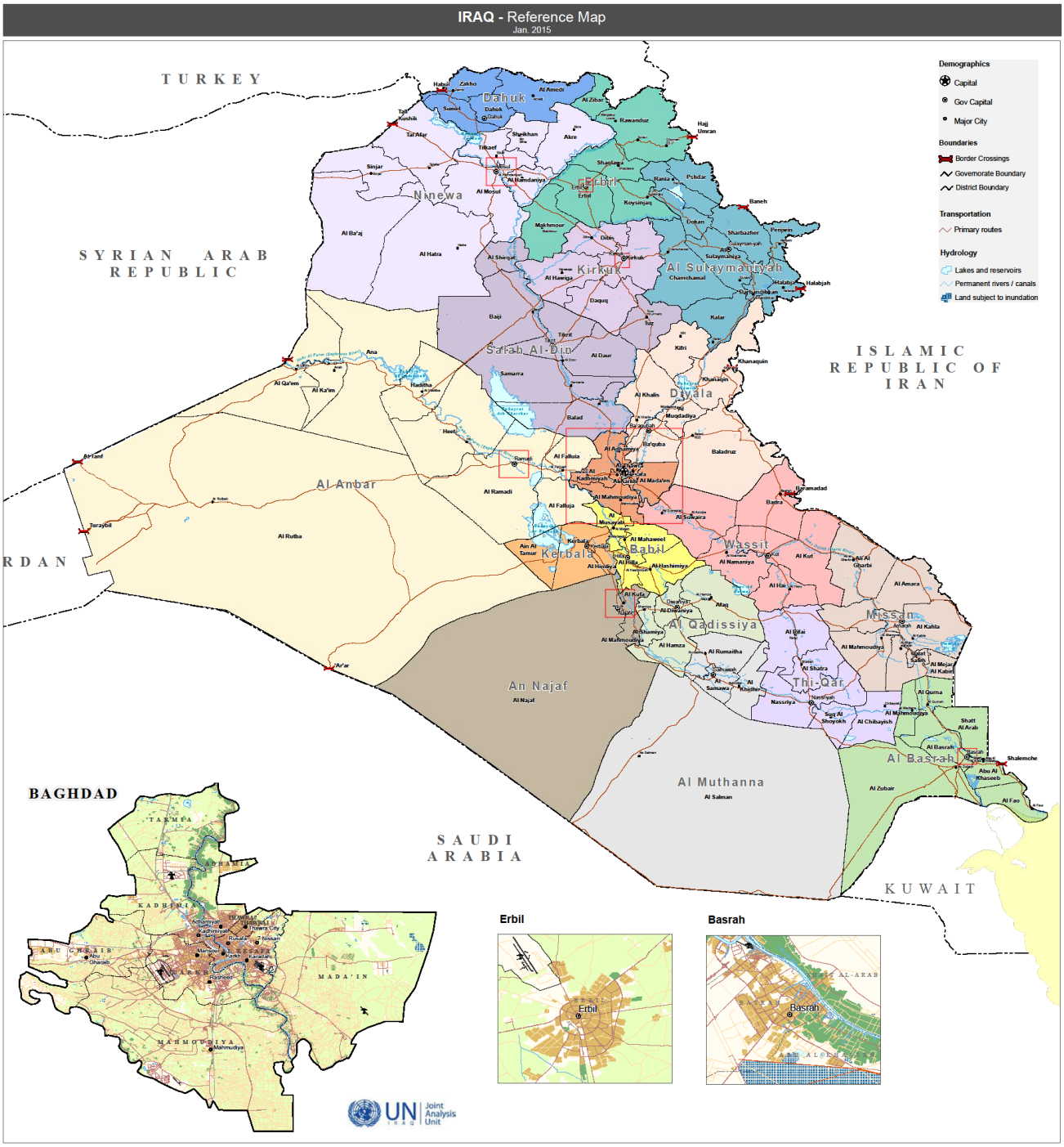
Report on the judicial response to allegations of torture in Iraq

Baghdad February 2015

Report on the judicial response to allegations of torture in Iraq

UNAMI HUMAN RIGHTS OFFICE
and
OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

February 2015, Baghdad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Executive Summary

This report, issued jointly by the United Nations Assistance Mission in Iraq (UNAMI) and the Office of the United Nations for Human Rights, examines the judicial response to allegations of torture in Iraq, based on monitoring by the UNAMI Human Rights Office (HRO) conducted between January and June 2014.

Many of the grievances expressed by Iraqi during protests in Ninewa, Anbar, Salah id-Din and Kirkuk governorates that commenced in late 2012, were concerned with rule of law issues. This included failures to respect due process and fair trial standards, perceived misuse of Anti-Terrorism Law no. 13 of 2005, and allegations of mistreatment of detainees and prisoners (particularly female detainees). Discontent about these and other issues, and the Government's lack of progress in addressing these grievances, was exploited readily by the Islamic State of Iraq and the Levant (ISIL) and other anti-government armed groups, which were among factors that led to a revolt centered in towns such as Fallujah and Ramadi in Anbar Governorate at the end of December 2013, which in turn spiraled into large scale armed conflict that led to ISIL and associated armed groups seizing large tracts of western Iraq in January 2014 and northern Iraq in June 2014.

As part of its monitoring and reporting activities, UNAMI HRO instituted a pilot project, conducted from October to December 2013, which involved preliminary monitoring of 21 trials in Iraq where a better security environment permitted a consistent monitoring of the criminal justice system. This was possible in other areas of Iraq outside of the Kurdistan Region (KR).[1] Preliminary findings indicated that in nine criminal trials (involving 11 defendants) where torture allegations were raised by the defendants during the proceedings, judges failed to investigate those allegations or to take any action in relation to them. In all cases, the presiding trial judge placed the onus on the defendant to prove that torture had taken place. In the majority of cases, defendants were convicted based, either solely or in large part, on disputed confession evidence. The preliminary monitoring also suggested strongly that police were failing to respect due process rights of detainees and other legal safeguards intended to prevent torture from occurring, creating and sustaining a permissive culture of impunity among law enforcement and judicial officials.

Based on these preliminary findings, between January and June 2014, UNAMI HRO monitored 92 criminal trials in four governorates of Iraq: Basra, Thi Qar, Maysan and Muthanna. Monitoring focused on trials for capital offences, including trials of persons charged under the Anti-Terrorism Law, and cases involving honour killing, involuntary or forced prostitution and trafficking in drugs. UNAMI HRO monitored substantive proceedings in 17 murder trials, two attempted murder trials, nine anti-terrorism trials (including two high profile anti-terrorism trials), nine capital drugs trials, five kidnapping trials, of which two involved trafficked women, and one rape trial.

[1] References in this report do not include the Kurdistan Region of Iraq which has a separate legal system from Iraq.

In 17 of the non-capital trials monitored by UNAMI HRO, in whole or in part, a total of 28 defendants alleged before the court that police had subjected them to torture and other serious mistreatment to force them to make confessions in relation to the crime for which they had been charged. In each instance where torture was alleged, presiding judges failed to order an investigation into the allegations. In only nine instances did the presiding judge ask the defendants whether he or she had a medical report to substantiate the allegation, but all defendants responded that they did not have medical reports as they were in police custody when the torture took place and the police did not permit them access to a medical doctor. In no case did presiding judges order investigations into the torture allegations and no further questioning of the defendant on the matter was undertaken by the court. Of the 28 defendants who alleged they had confessed under torture, the judges convicted 19 of them based solely or in large part on the contested confession testimonies; four defendants were acquitted; while the outcome of five cases remain unclear as the proceedings were adjourned.

In addition, UNAMI HRO monitored five other trials in which prosecution witnesses informed the court that the police had tortured them to force them to implicate the defendants on trial. One case involved an adult witness who claimed that police had tortured him to force him to implicate juvenile defendants. In all cases where witnesses claimed to have been subjected to torture, the courts similarly failed to ask questions or to order investigations into the allegations. In a number of cases before the criminal court in Basra, police were also accused of using the threat of torture as a way of extorting bribes from defendants and/or their relatives.[2]

In eleven capital cases monitored by UNAMI, a total of 22 defendants informed the court that police or intelligence officers had tortured them to force confessions. The judicial response to torture allegations was no different in capital cases than in those cases with less severe penalties. In each case the judge took no action, other than on occasion requesting the defendant to produce a medical report to support the allegation of torture. In all instances, the presiding judges failed to order investigations into torture allegations and failed to question the defendants further on the torture he or she alleged to have suffered.

In three cases where the defendant alleged torture in relation to confession evidence before the court, the court proceeded to convict the defendants and sentenced them to death. Two of these three trials involved high profile Anti-Terrorism cases. In both trials the defendants were convicted based solely or in large part on disputed confession evidence. UNAMI HRO also observed trials in which the judge amended non-capital charges to capital charges despite hearing defendants allege that police had tortured them into making confessions. UNAMI HRO monitoring of judicial procedures revealed other serious due process concerns, including limitations on, or disregard of, the right of accused persons to have a lawyer present during

[2] Corruption within the criminal justice system appears to be widespread; however no statistics on the scale of the problem are available. UNAMI HRO frequently receives allegations from detainees and family members that they were asked to pay bribes to ensure charges are dropped or not brought. UNAMI HRO obtained a number of videos filmed secretly with concealed phones by family members of detainees between July to September 2013 in which (identified) senior police and detention facility officials in Baghdad (*tasfiraat* under the authority of the Ministry of Interior) advise relatives to obtain the services of particular lawyers to represent their detained family members and to pay the fee required (usually USD100,000 or more) to ensure the charges are 'dropped' and their relative released.

interrogation by investigating judges prior to charges being laid, the rights of defendants to prepare and present a defence, and the right of defendants to be represented in proceedings by a solicitor of their choice. In most cases, defendants appeared for trial without a lawyer representing them. Trial judges routinely asked unrepresented defendants whether they had legal counsel, and if not, they would often appoint a lawyer who happened to be present in the court. No adjournments of the proceedings were granted and no time was given to defendants to converse with their lawyers before the trials continued. On no occasion did court-appointed lawyers request an adjournment to consult with their clients in order to prepare the defence case, and in nearly all cases, their only intervention was during sentencing where a formulaic plea for leniency would be entered, but without any argument to support the request.

Report on the judicial response to allegations of torture in Iraq

1. Introduction

This report on judicial responses to torture allegations in Iraq is published by the Human Rights Office of the United Nations Assistance Mission in Iraq (UNAMI HRO) in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) under their respective mandates.[3]

UNAMI HRO monitored proceedings in 92 criminal trials in four governorates of southern Iraq (Basra, Muthanna, Thi Qar and Maysan) from January to June 2014.[4] The project was limited to southern Iraq as security concerns did not permit similar court monitoring in other parts of the country outside of the Kurdistan Region of Iraq (KR-I). The KR-I was not included because it has a separate legal system from other parts of Iraq. UNAMI HRO observed trials in Basra Palace of Justice,[5] in Nassiriyah Criminal Court,[6] in Maysan Criminal Court,[7] and in Samawa Criminal Court.[8] UNAMI HRO focused its monitoring on capital cases, anti-terrorism cases, and trials involving honour killings, enforced prostitution, trafficking in human beings, and drug trafficking. This report does not refer to trials monitored for other offences except when torture allegations were raised during the conduct of those proceedings.[9]

Of the 92 trials monitored, 17 were murder cases, two were attempted murder cases, nine were anti-terrorism cases (including two high profile anti-terrorism cases), nine were capital drugs cases,[10] five related to kidnapping (of which two involved trafficked women), and one was a rape case. Most cases required more than one court session to reach a verdict. Wherever possible, UNAMI HRO returned to the relevant court to monitor all sessions related to individual proceedings or followed up with defence lawyers and/or judicial sources to ascertain the outcome of cases. However, this was not possible in every case. UNAMI HRO also compared findings and confirmed conclusions with other actors, including defence lawyers, human rights organisations (both governmental and non-governmental), and sources within the police and judiciary.

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[3] In resolution 1770 of 10 August 2006, the UN Security Council, at paragraph 2(c) specifically requested UNAMI to "promote the protection of human rights and judicial and legal reform in order to strengthen the rule of law in Iraq…" UNAMI's mandate was extended in the same terms for 2014 by Security Council resolution 2169 of 30 July 2014.

[4] OHCHR/UNAMI monitored proceedings in 47 trials in Basra, 30 in Thi Qar, 10 in Maysan and five in Muthanna governorates.

[5] 8, 12 and 19 January, 25 February, 9 March, 9, 17 and 24 April, 21 and 28 May and 9 June 2014.

[6] 23 and 29 January, 18 March, 7 May and 3 June 2014.

[7] 19 February, 3 April and 18 May 2014.

[8] 5 February and 25 March 2014.

[9] Other trials monitored included armed robbery, burglary, concealment of stolen goods, falsifying documents, fatal traffic accidents, indecent assault, integrity (corruption), marriage prevention, sodomy and threatening behaviour.

[10] Following a 2002 amendment, Article 14/1/b/2 of the Anti-Drugs Law 68/1969 provides the death penalty.

The findings are presented in two sections, one dealing with capital cases and the other dealing with non-capital cases. This is to ensure a separate focus on the judicial responses to torture allegations in cases with potentially irreversible consequences.

2. Background and Context

Since late 2012, many Iraqi civilians, mostly from the northern and western governorates, expressed grievances concerning alleged government failures to respect due process and fair trial standards, perceived abuse in the application of the Anti-Terrorism Law no. 13 of 2005, and alleged mistreatment of detainees and prisoners.[11]

While security deteriorated in many areas of Iraq outside of the KR-I, UNAMI HRO determined that security conditions in southern Iraq would permit a pilot project to assess the judicial response to torture allegations. During this pilot phase, UNAMI HRO monitored 21 trials from October to December 2013 during which 11 defendants in nine cases alleged that police tortured them during the investigation phase.[12] In no case where defendants claimed before the presiding trial judge that they had been tortured, did the judge order an investigation.[13] In all cases, the presiding judge placed the onus on the defendant to prove that torture had taken place and in most cases convicted defendants based wholly or in part on disputed confession evidence. In only one case was the defendant able to produce medical evidence in support of his claim to have been tortured.[14]

This initial trial monitoring also yielded information regarding the methods used to circumvent legal safeguards against torture. Under the Iraqi Constitution[15] and article 123 of Iraqi Criminal Procedures Code (ICPC)[16] accused persons are required to be brought before the investigative judge within 24 hours of arrest. During the period from initial arrest until the time charges are formally laid, detainees are usually held in detention facilities (known as *tasfiraat*) under the authority of the Ministry of Interior (MoI). UNAMI HRO heard defendants in separate trials tell trial judges that the policemen who had allegedly tortured them had also accompanied them to the sessions with the investigative judge, remained present during those sessions, and were responsible for transferring them back to the detention facility afterwards. None of the accused had been informed of their right to have a lawyer present during the interrogation by the investigating judge, and none had a lawyer present. As a result, suspects in criminal cases felt unable to inform the investigative judge about the torture they later claimed to have suffered. Defendants only raised allegations of torture at their trial, which invariably took place some months after the initial period of police detention and conclusion of the procedure before the investigative judge. By the time cases go to trial, defendants have usually been transferred from

[11] Other cited grievances were the exclusion of Sunnis from the political process and limited access to basic services in Sunni areas.

[12] The trials monitored included murder, robbery, armed robbery and drug trafficking cases which UNAMI HRO observed before Basra Palace of Justice from October – December 2013.

[13] See also OHCHR/UNAMI Six Monthly Report on Human Rights in Iraq July-December 2013.

[14] This was during a drug trafficking trial before Basra Palace of Justice on 7 November 2013

[15] Iraqi Constitution, Chapter Two, Article 19 (13)

[16] Iraqi Criminal Procedures Code No. 23 of 1971.

the *tasfiraat* to facilities under the authority of the Ministry of Justice (MoJ) where they remain on remand pending final conclusion of the legal proceedings.

Following analysis of the pilot project findings, UNAMI HRO decided to conduct an in-depth trial monitoring programme during the first six months of 2014 to provide a more comprehensive assessment of judicial responses to torture.

3. Findings: Part One

(i) Judicial Response to Torture Allegations from Defendants

In 17 non-capital trials out of 92 monitored by UNAMI HRO between January and June 2014, 28 defendants alleged to the court that they had been subjected to torture in order to force them to make confessions in relation to the charges for which they were standing trial. This included 13 defendants in eight trials before the Basra palace of Justice, 11 defendants in five trials before Nassiyiryah Criminal Court, three defendants in three trials before Maysan Criminal Court, and one defendant on trial before Muthanna Criminal Court.

In all cases, the presiding judges failed to order an investigation into the torture allegations.

In only nine cases did the presiding judge ask the defendant whether he or she had a medical report to prove the allegation of torture. Nearly all the defendants informed the court that they did not have medical reports to support their claims as they were in police custody when they had been subjected to torture and the police had denied them access to a doctor. Only in two cases were the defendants able to produce medical reports. In neither case did this affect the outcome of the trial, as the defendants were convicted irrespective of the medical reports apparently supporting their claims to have been subjected to torture to force their confessions.

One of these cases involved female defendants in a murder trial being conducted at the Basra Palace of Justice on 8 January 2014. They had been able to access doctors and had obtained medical reports as the result of the intervention of an international organisation. UNAMI HRO did not see the contents of the medical reports submitted in evidence, but observed that despite the medical reports that were tendered to the court, the judge convicted the defendants and sentenced them to 15 years imprisonment. The second case involved a man charged with sodomising an underage teenage girl in a case heard at the Basra Palace of Justice on 25 February 2014. He also alleged that police tortured him and he was able to submit a medical report to support his claim. In this case the man was convicted of a lesser offence and sentenced to eight months imprisonment.

Apart from requesting a medical report proving torture in less than one third of cases in which torture was alleged, judges failed to question defendants about the allegations in all but one instance. During a burglary trial conducted on 28 May 2014 at Basra Palace of Justice, the defendant told the court that police had blindfolded him, pulled his hair and beat the soles of his feet. The presiding judge questioned the defendant at length about the torture allegation and asked him to explain why he had not made the same allegation before the investigative judge, and why he had not obtained a medical report as evidence. The defendant told the court that he had not mentioned the torture before the investigative judge as he was afraid of the police. It appears that, similar to other cases monitored by UNAMI HRO, the police officers he

accused of torturing him had been present in the proceedings before the investigative judge.[17] UNAMI HRO noted that in this trial the defendant was represented in court by a well-respected, privately funded defence lawyer. From observation of the proceedings, it appeared that the judge may have felt compelled to ask questions about the torture allegation due to the defence lawyer's involvement.

The torture described in court was at times severe. On 12 January 2014, for example, a lawyer told a court at the Basra Palace of Justice that police had beaten a female defendant, causing her to have a miscarriage and breaking her arm. On 21 May 2014, a female defendant told the same court that police had threatened her with sexual assault. On 19 February 2014, a defendant in a trial conducted at the Basra Palace of Justice accused police of torturing his co-accused to death. UNAMI HRO later confirmed the death with the defence lawyer in the case (see below). Sometimes other forms of coercion were used in conjunction with torture; on 29 January 2014 a male defendant told Nassiriyah Criminal Court that police had brought his sister to the detention centre and implied that she would be raped should he fail to implicate a co-defendant. On 25 March 2014 a defendant told Samawa Criminal Court that police had forced him to confess with a gun to his head.

While UNAMI HRO cannot confirm whether the allegations of torture which individual defendants made during trial procedures were true, it notes that such allegations are consistent with accounts from multiple sources, including police whistleblowers, judicial sources, defence lawyers and human rights organisations with access to police detention centres. These accounts indicate that torture may be common police practice during pre-trial procedures in Iraq in order to obtain confessions that would secure convictions by the courts. UNAMI HRO is concerned that the severity of torture allegations raised in court did nothing to affect or influence the attitude of the presiding judges, who systematically failed to order investigations into the allegations.

(ii) Convictions Based on Disputed Confession Evidence

Instead of ordering investigations into the alleged torture or refusing to admit into evidence confession evidence tainted by allegations of torture, the courts often proceeded to convict the accused and sentence them to long periods in prison. In some instances it was difficult to assess whether the disputed confession evidence was the sole basis for the conviction and if not, to what extent the court relied upon it.

UNAMI HRO observed one case, a high profile anti-terrorism trial[18] conducted in Nassiriyah on 3 June 2014, in which the court convicted the defendant exclusively on the basis of a disputed confession. The defendant alleged to the court that police had tortured him several times during questioning, hanging him from the ceiling by a rope tied to his hands. In his summing up, the prosecutor asked the court to acquit the defendant in the absence of other evidence against him. The court instead chose to admit the confession into evidence and to convict the defendant, sentencing him to life imprisonment. However, the prosecutor's intervention may have saved the defendant from the death penalty, which was otherwise available in this case.

[17] See Background and Context, above

[18] The defendant was tried under article 4 of the Anti-Terrorism Law no.13 of 2005.

UNAMI HRO observed a similar decision in a trial conducted before the Basra Palace of Justice on 9 April 2014. Two defendants were accused of drug dealing under article 14/1/b/2 of the Narcotics Law no. 68 of 1965, which can carry the death penalty. The judge requested court police to remove the second defendant from the dock so that he could question the first defendant alone. Both defendants, questioned separately, told the court that police had tortured them and forced them to sign confessions that they could not read as they were blindfolded at the time. They also accused the police of planting the drugs in their car and acting on information from an unreliable secret informant. The trial judge failed to question the defendants about the details of the torture allegations or to order an investigation. No witnesses were called before the court. Summing up, the prosecutor asked the court to acquit the defendants for lack of evidence. Following an adjournment, the judge sentenced both defendants to seven years imprisonment.

Of the 28 defendants who alleged having confessed under torture, 19 were eventually convicted, four defendants were acquitted,[19] and five defendants had their cases adjourned. Two of the four defendants acquitted had been convicted previously of the same charges and had been sentenced to life imprisonment, despite disputed confession evidence. The defendants lodged an appeal to the Court of Cassation in Baghdad which ordered a retrial of their case. At the retrial, monitored by UNAMI HRO, the court determined that the evidence was insufficient and dismissed all charges against both of the accused.

(iii) Torture Allegations from Prosecution Witnesses

UNAMI HRO also observed five trials in which prosecution witnesses told judges that police had tortured them to force them to implicate those standing trial.

These cases included proceedings before a Juvenile Court in Basra, on 21 May 2014, during which an adult witness claimed that police had tortured him to force him to implicate the juveniles facing trial in relation to a robbery.[20] On 19 February 2014, UNAMI HRO heard a defendant in a drug trial tell Maysan Criminal Court that police had tortured his co-accused so badly to force him to confess and implicate the defendant that they ended up killing him.[21] The defendant's lawyer later confirmed this and accused the police of covering up the murder, who had claimed instead that the detainee had died of a heart attack and had then refused to release his body to the hospital for proper coronial investigation. As with the defendants who alleged torture, the courts failed to question or order an investigation into any of the torture allegations made by prosecution witnesses.

(iv) Allegations of Torture and Police Corruption

Sources also accused police in Basra of using the threat of torture to extort bribes from defendants and/or family members.

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[19] Two of the four defendants acquitted had been convicted previously of the same charges, despite disputed confession evidence, and had been sentenced to life imprisonment. The defendants lodged an appeal to the Court of Cassation which ordered a retrial of their case. At the retrial the court determined that the evidence was insufficient and dismissed all charges against both of the accused.

[20] The juvenile defendants were tried under Article 442 of the Penal Code 1969.

[21] The defendant was tried under Article 14 of the Anti-Drugs Law 68/1969..

During his trial on charges brought under the Anti-Terrorism Law no. 13 of 2005, conducted in Nassiriyah on 9 April 2014, the defendant recounted details of alleged police torture before telling the court that police had offered to stop torturing him and to release him if he paid them 20,000 USD.[22] The defendant was eventually convicted and sentenced to life imprisonment although the only evidence presented in court was disputed confession evidence. A Basra defence lawyer also told UNAMI HRO that, when visiting his client in police custody, the police had asked him for money and he was led to understand that by paying the money his client would thus be protected from torture. He said he had no option in the circumstances but to make the payment out of concern for his client's wellbeing. He also suggested that it was common for police to request money from defence lawyers visiting their clients in custody. This example is consistent with patterns previously monitored and reported from other areas of Iraq.

(v) Other Due Process Concerns

UNAMI HRO court monitoring revealed other serious due process concerns, including limitations on, or disregard of, the rights of the accused to have lawyers present during interrogation before investigative judges, to prepare an adequate defence, and to communicate with a lawyer of their choice.[23]

Private defence lawyers have often shared frustrations with UNAMI HRO about the difficulties they face in accessing clients held in police *tasfiraat* (MoI detention facilities).[24] Nearly all detainees and prisoners interviewed by UNAMI HRO in MoJ prisons stated that at no time during the investigation procedures, which were always conducted while they were held in police custody, were they informed of their right to have a lawyer present, and no lawyer was present during their interrogation by the investigating judge. In the few cases where defendants were able to appoint a lawyer (usually through relatives), the first opportunity they had to meet with their lawyer was after they had been transferred from police detention facilities to MoJ prisons when they had already been before an investigative judge and charges had been laid. Bail is rarely, if ever, granted, and nearly all accused persons are held on remand until conclusion of the legal proceedings.

The majority of criminal defendants in Iraq cannot afford private attorneys. In most cases monitored by UNAMI HRO, defendants appeared before the court unrepresented. Trial judges routinely ask defendants whether they were legally represented and, if not, would usually request lawyers present in the court to represent the defendants as court-appointed lawyers. In these cases, no adjournments were granted by the court in order for the defendants to consult with their lawyers before the commencement of the trials. Furthermore, in none of the trials monitored by UNAMI HRO did court-appointed lawyers request an adjournment to speak to their clients in order to prepare the case. UNAMI HRO is aware that court-appointed lawyers

[22] The defendant was tried under Article Four of the Anti-Terrorism Law 13/2005.

[23] International Covenant on Civil and Political Rights (ICCPR), article 14 3(b)

[24] UNAMI HRO has an agreement with the Ministry of Justice to visit and monitor the conditions in detention centres and prisons under its authority. However, there is no similar agreement with the Minsitry of Interior to visit its *tasfiraat* detention centres where accused persons are held prior to charges being laid and their transfer to MoJ facilties. UNAMI HRO has no access to MoI detention facilties.

are usually paid around 30,000 IQD (approximately 25 USD) for their services and are therefore reluctant to prolong cases or invest time outside the courtroom to prepare a defence.

4. Findings: Part Two

(i) Judicial response to torture in capital cases

Sixteen of the trials UNAMI HRO monitored, in whole or in part, related to capital crimes in which the defendant, if found guilty, could face the death penalty. In eleven of these trials UNAMI HRO heard 22 defendants allege to the court that police or intelligence officers had tortured them to force their confessions. The responses of the presiding trial judges to torture allegations were no different in capital cases than in cases with lesser penalties. In each of the 11 trials the presiding judges took no action, other than on two or three occasions to request the defendant to produce a medical report to support the allegations. In all cases the presiding judge failed to order any investigation into the torture allegations and did not question the defendant further about the matter.

In three of the above cases, defendants were sentenced to death. In one of these cases, tried before the Nassiriyah Criminal Court on 23 January 2014, three defendants stood accused of kidnapping and killing an 18 month old child. The defendants were a school teacher, his wife, and his adult son from a previous marriage. The alleged motive for the crime was ransom. All three were charged under article 406 of the Iraqi Penal Code (IPC),[25] which carries the death penalty. The court questioned four prosecution witnesses, as well as the two male defendants. The defendants denied any involvement in the crime. They retracted the confessions that they had made to the police, telling the court that the police had tortured them into confessing. The court considered other evidence in the case, including a ransom demand, which a handwriting expert maintained had been written by the female defendant. The judge convicted all three defendants and sentenced them to death. He did not order an investigation into the torture allegations and he did not question them on those allegations.

The second case was a high profile trial conducted before Maysan Criminal Court on 3 April 2014 of a defendant who was charged under article 4 of the Anti-Terrorism Law no. 13 of 2005. He was accused of killing 21 civilians and injuring 129 with car bombs in a public bazaar in Ali al-Shargi District of Maysan Governorate on 9 September 2012. The prosecution presented ample evidence to establish the commission of the crime, including testimony from victims' relatives and those maimed by the attack. However, no evidence was adduced before the court to establish that the defendant was the person responsible for the crime. Instead the judge referred to a statement made by a co-defendant in the case, who had implicated the defendant in his confession. The co-defendant was not present in court and no opportunity was presented to the defence to cross-examine him or to question the content of the alleged confession. The defendant simply told the judge that his co-accused had implicated him under torture. The judge noted to the defendant that he, too, had confessed to the crime. The defendant explained that Baghdad intelligence officers had tortured him many times and had forced him

[25] Iraqi Penal Code no. 111 of 1969.

to confess.[26] The presiding judge did not question the defendant about the alleged torture, and no further reference was made to it by the court. The judge ordered no investigation into the torture allegation. The court proceeded to convict the defendant based solely on the disputed confession of the defendant himself and the statement of the co-accused and sentenced the defendant to death.

The third case also involved a high profile anti-terrorism trial of three defendants charged under article 4 of the Anti-Terrorism Law no. 13 of 2005 that was heard by Nassiriyah Criminal Court on 3 June 2014. The three defendants were accused of involvement in an IED attack in the Aredo area of Nassiriyah perpetrated on 10 August 2013, which killed four people and injured 64. Two defendants, both from Nassiriyah, were accused of being accessories before the fact, by providing a third defendant with local information to help plan the attack, including street layouts and locations where to plant the IED and avoid detection. The third defendant, who was from Baghdad, was accused of planning and carrying out the attack. All three defendants told the court that police had forced them to confess under torture, including subjecting them to severe beatings on a number of occasions. The defendants did not give more details as they rushed their evidence in fear of a riotous crowd outside the courthouse that had attempted to attack them as they were brought into court. The judge made no enquiries about the torture allegations and failed to order an investigation. The court sentenced the two former defendants to life imprisonment while the third defendant was sentenced to death. The death sentence was based on his confession and a statement by one of the co-defendants implicating him, despite the fact that the latter had retracted his statement in court, alleging it had been extracted from him under torture.

(ii) Upgrading Charges from Non-Capital to Capital Despite Torture Allegations

UNAMI HRO also observed trials in which the judge amended non-capital charges to capital charges despite hearing defendants' allegations that the police had tortured them into making confessions.

On 21 May 2014, UNAMI HRO observed four trials conducted before the Basra Palace of Justice in which women defendants were accused of prostitution under article 3 of the Prostitution Law no. 9 of 1988, which carries a maximum seven year sentence. The defendants in each trial alleged that Basra police had tortured them on many occasions during the investigative stage of the case. One of the defendants accused police of threatening to force her to sit on a bottle and of torturing her family members, including her pregnant daughter, to force her to sign a blank piece of paper on which they later fabricated her confession. The trial judge took no action upon hearing the allegations. Instead, he informed the court that he would amend the charge from article 3 of the Prostitution Law to one under Revolution Command Council (RCC) Order No. 234 of 2001, which provides for the death penalty for prostitution.[27] The prosecutor

[26] The defendant was arrested on 27 March 2013 in Baghdad and held at various detention facilities in the capital including the Shu'aba al Khamsa and Muthanna Airport facilities, before being transferred to Maysan.

[27] Under the previous Iraqi Constitution the Revolutionary Command Council had legislative power. Coalition Provisional Authority (CPA), Order Number 2 (Dissolution of Entities), 23 May 2003 (Annex) dissolved the RCC, but did not expressly declare invalid its previous legislative acts. On 9 June 2003, the CPA promulgated Order Number 7 (Penal Code), which re-applied the third edition of the Iraqi Penal Code (IPC) to govern criminal matters in Iraq,

requested an acquittal because, apart from the disputed confession evidence, the case was built exclusively on a statement made by a secret informant that could not be challenged in court. In a subsequent hearing on 26 May 2014 the judge convicted the women and sentenced each of them to 15 years imprisonment. The conviction, under Revolution Command Council Order No. 234 of 2001, was based on the confessions of the women, despite their allegations that these confessions implicating each of the other defendants were made under torture.

(iii) Other due process concerns in capital cases

UNAMI HRO monitoring revealed grave concerns about respect for the right of defendants to prepare an adequate defence and to be represented by a lawyer of their choosing during trial.

Upon commencement of the trial of a defendant charged with acts of terrorism observed by UNAMI HRO on 3 April 2014 at al Amara Criminal Court (see above), the presiding judge asked the defendant whether he had a lawyer to represent him. When the defendant responded that he did not, the judge ordered five lawyers from the Maysan Bar Association to represent the defendant. UNAMI HRO interviewed one of the lawyers after the trial and learned that, in the lead up to the trial, the Maysan legal community had been unwilling to provide a defence given the nature of the accusations. The judge had ordered the Bar Association representatives to be present in court so that he could appoint them as defence lawyers. The lawyers representing the defendant had not met him before the trial and had had no time to prepare his defence. At the end of the session, the presiding judge found the defendant guilty under article 4 of the Anti-Terrorism Law no. 13 of 2005. The defence lawyer's only intervention in over four hours of trial was to request the court's leniency during the sentencing proceedings after the defendant had been convicted. The defence lawyer offered no reasons to support his leniency plea. The judge took no notice of this request and sentenced the defendant to death.

UNAMI HRO took note that even hiring a lawyer in a capital case does not guarantee the defendant's right to prepare an adequate defence or to be represented by a lawyer of her or his own choosing. During a trial monitored by UNAMI HRO at Nassiriyah Criminal Court on 3 June 2014 (see above) the three defendants charged under the Anti-Terorrism Law no. 13 of 2005 arrived at court with a privately funded defence lawyer. For reasons he did not explain, the presiding judge refused to hear the privately appointed lawyer and appointed instead another lawyer to represent the defendant. The court appointed lawyer had no time to confer with the defendants in order to prepare a defence. His only intervention was to ask the court to acquit the defendants and to enter a plea for leniency in sentencing should they be convicted. The court sentenced two of the defendants to life imprisonment and one to death.

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but did not clarify whether other legislative acts would remain in force. Order Number 7 (Art. 3.1) also suspended the application of the death penalty. In 2004, through Order Number 3, the Iraqi Interim Government (IIG) re-introduced the death penalty for a wide range of crimes under the IPC and other crimes that it had not formerly applied to. Whereas IIG Order Number 3 specifically revoked CPA Order Number 7 Art. 3.1, it did not clarify whether other crimes that had been punishable by death and that remained on the statute books would by revived. Art. 6.2 of the International Covenant on Civil and Political Rights, to which Iraq is state party, provides that the death penalty can only be imposed for the most serious crimes.

(iv) Misuse of Anti-Terror Legislation

Through its trial monitoring, UNAMI HRO observed that the authorities were inclined to apply anti-terrorism legislation in cases that had no connection to terrorism. This is of particular concern as defendants convicted under article 4 of the Anti-Terrorism Law no. 13 of 2005 face the death penalty.

On 8 January 2014, UNAMI HRO observed a trial at the Basra Palace of Justice, in which the defendant had been charged under this provision for alleged involvement in the murder of a taxi driver. The crime was financially motivated and did not fall within the definition of terrorism under the Anti-Terrorism Law. Sources close to the prosecutors in the case indicated that the charges under the Anti-Terrorism Law had been laid at the behest of a police officer, who believed the defendant had killed his father.

On 7 May 2014, UNAMI HRO was able to observe proceedings before an investigative judge in southern Iraq. The investigative judge processed a case in which nine Red Crescent workers were accused by Intelligence Services of committing acts of terrorism under article 4 of the Anti-Terrorism Law no. 13 of 2005. All of the accused were arrested on 21 April under arrest warrants issued by another investigative judge on the allegation that they had used out-of-date promotional material containing an image of Saddam Hussein. Intelligence Services detained the Red Crescent staff for nine days before presenting them to a second investigative judge. The accused told the investigative judge that Intelligence agents had planted the material in the case file. On this occasion the investigative judge dismissed the accusation and released the detainees.

5. Legal Framework

(i) Prohibition of Torture

International Legal Obligations

Iraq is a State Party to a number of international treaties that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR)[28] and the Convention on the Rights of the Child (CRC).[29] Furthermore, common article 3 of the four Geneva Conventions of 1949 expressly prohibits cruel treatment and torture "at any time and in any place whatsoever" in the territory of a state during non-international armed conflict.[30] The most definitive set of

[28] Iraq acceded to the International Convention on Civil and Political Rights on 25 January 1971

[29] Iraq acceded to the Convention on the Rights of the Child on 15 June 1994

[30] *Geneva Convention (I) for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field*, 12 August 1949, (1950) 75 UNTS 31 (hereinafter 'GCI'); *Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, (1950) 75 UNTS 85 (hereinafter 'GCII'); *Geneva Convention (III) Relative to the Treatment of Prisoners of War*, 12 August 1949, (1950) 75 UNTS 135 (hereinafter 'GCIII'); *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, (1950) 75 UNTS 248 (hereinafter 'GCIV'). All opened to signature on 12 August 1949 and entered into force on 21 October 1950. Iraq ratified the four Geneva Conventions of 1949 on 14 February 1956

obligations prohibiting torture are provided by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Iraq is a State party.[31]

The CAT provides the following definition of torture: "... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity …"[32]

This definition is interpreted as consisting of four elements: (1) the act of inflicting severe pain or suffering, (2) the act is intentional, (3) the act is for such purposes of obtaining information or a confession, punishment, intimidation or coercion, or discrimination and (4) the perpetrator is a public official or other person acting in an official capacity. The elements of "intent and purpose … do not involve a subject inquiry into the motivations of the perpetrator, but rather must be objective determinations under the circumstances" [33]

Under the CAT, Iraq is also obligated to take the following measures, among others: investigate torture allegations;[34] provide a prompt and impartial examination of allegations;[35] ensure inadmissibility of confession evidence obtained through torture;[36] and provide redress and compensation to torture victims.[37]

Iraq is also obligated to ensure that all acts of torture are offences under its criminal law and that these offences are punishable by appropriate penalties which take into account the grave nature of the offence,[38] to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody,

[31] Iraq acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 7 July 2011

[32] Convention Against Torture, Article 1

[33] Committee Against Torture, General Comment No.2, CAT/C/GC/(24 January 2008), para 9

[34] Convention Against Torture, article 12: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

[35] Convention Against Torture, article 13: "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

[36] Convention Against Torture, article 15: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

[37] Convention Against Torture, Article 14: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation."

[38] Convention Against Torture, article 4

interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment,[39] and to keep under systematic review 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 in any territory under its jurisdiction, with a view to preventing any cases of torture.[40]

The State's obligation to respect the prohibition against torture is considered "non-derogable", meaning it continues to apply in all circumstances and at all times without exception. As per CAT article 2 (2), "No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." Article 4 (2) of the ICCPR also stipulates that States cannot derogate from the prohibition of torture and cruel, inhuman or degrading treatment proscribed in ICCPR Article 7.

National Legal Framework

Iraqi national law does not provide the same level of detail as the obligations imposed on the State by the CAT. The Iraqi Constitution expressly prohibits torture, providing that, "[a]ll forms of psychological and physical torture and inhumane treatment are prohibited."[41] The Constitution also directly imposes upon judges the duty to disregard confessions forced by torture.[42] Victims of torture are granted the Constitutional right to seek compensation for material and moral damages.[43] There is no definition in Iraqi legislation of what constitutes torture. However, a definition of torture was provided in the Supreme Iraqi Criminal Tribunal Law,[44] as follows:

> '"Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising from, or related to legal punishments.'[45]

Article 127 of the ICPC prohibits the use of any illegal method to influence the accused to provide a confession. Article 333 of the ICPC criminalises any public official who tortures or orders torture, or threatens torture, of a person accused of a criminal act, including witnesses,

[39] Convention Against Torture, article 10
[40] Convention Against Torture, article 11
[41] Constitution of Iraq 2005, Chapter Two, article 37 (C)
[42] *Ibid*
[43] *Ibid*
[44] In December 2003, the Iraqi Special Tribunal was established as a domestic court within the national judicial structure by a statute passed by the Interim Governing Council (IGC), which had been appointed by the CPA. Following national elections in 2005, it was ratified and renamed as the Iraq High Tribunal by the Iraqi Transitional National Assembly. The Tribunal Statute provides jurisdiction for certain international crimes committed by Iraqis during the Ba'athist regime, which lasted from July 1968 to May 2003. Article 10 the Statute includes crimes of genocide, crimes against humanity and war crimes that were previously unknown to Iraqi law. The IHT was staffed by Iraqi judges and prosecutors and followed the Iraqi criminal procedure. For its constitution, see online <http://law.case.edu/saddamtrial/documents/IST_statute_official_english.pdf> at 12 February 2012.
[45] Iraqi Supreme Criminal Tribunal Law, article 12 (E)

with the aim of compelling a confession.[46] Any statement of the accused during investigation or trial must be recorded in writing by the magistrate or the investigator and should then be signed by the accused and the judge or investigator. If the accused is unable to sign, this and the reasons for it must be clearly recorded in the written record.[47] Despite this, under the former regime, judges were allowed to rely on forced confession evidence. The ICPC stipulated that an admission must not be obtained by coercion but went on to state that, "…if there is no causal link between the coercion and the admission or if the admission is corroborated by other evidence which convinces the court that it is true or which has led to uncovering a certain truth…".[48] Although this was amended by the CPA in 2003,[49] there is uncertainty among some judges whether legislation passed by the CPA in fact is applicable or remains in force. This may offer some explanation to judges' continuing reliance on disputed confession evidence as, since the ICPC allows them to do so.[50]

The Iraqi Penal Code no. 111 of 1969 remains in force and ensures that torture is a criminal offence punishable by imprisonment.[51]

(ii) Time to Prepare an Adequate Defence

The ICCPR, to which Iraq is party, obligates the government to ensure fair trial rights to all within its territory and under its jurisdiction. Among the rights expressly listed by the ICCPR is the right to adequate time and facilities for the preparation of a defence and counsel of (the defendant's) choosing.[52]

The Iraqi Constitution provides that arrested persons have the right to a defence, which is inviolable and guaranteed in all phases of investigation and trial.[53] Every person has the right to be treated with justice in judicial and administrative proceedings.[54] The Court shall delegate a lawyer at the expense of the State for a person accused of a felony or misdemeanour who does not have a defence lawyer.[55] All untried detainees are to be permitted to apply for free legal aid where such aid is available, and to receive visits from his or her legal adviser.

Following arrest, persons are held at facilities administered by the detaining authority for a period not exceeding 24 hours. According to article 19, paragraph 13 of the ICPC, a preliminary

[46] Unfortunately, article 136(b) only permits the prosecution of a State official who has allegedly engaged in abuse or torture where the offence took place in the connection with carrying out official duties only if the Minister responsible grants permission for the referral by the investigating officials of the case for trial.
[47] CPA *Memorandum Number 2* (2003) s128A.
[48] ICPC, article 218
[49] CPA *Memorandum Number 3*, Section 4(k), signed 18 June 2003 deleted the words "whether it be physical or moral, a promise or a threat. Nevertheless, if there is no causal link between the coercion and the admission or if the admission is corroborated by other evidence which convinces the court that it is true or which has led to uncovering a certain truth, then the court may accept it", as published in the Official Gazette, issue 3978 of 17 August 2003
[50] CPA *Order Number 7* (2) (CPA/ORD/9 June 2003/07) also provided a general prohibition on torture.
[51] IPC, article 333
[52] ICCPR, article 14(3)(b)
[53] Iraqi Constitution, Article 19(4).
[54] Iraqi Constitution, article 19(6)
[55] Iraqi Constitution, article 19(11)

investigation report must be submitted to the competent investigatory judge within 24 hours from the time of arrest. According to the same law, this period can only be extended once for a further 24 hours. In practice however, it appears that this period is often extended to 72 hours. For all non-terrorist related crimes, the accused is then transferred to the competent investigation judge to carry out an inquiry and to decide on whether charges will be laid.

Persons accused of terrorist crimes are detained by the arresting authority or transferred to the Directorate of Counter Terrorism and Organised Crime, which is staffed with at least 20 investigating judges, each of whom is supposed to be a counter terrorist specialist as required by the Anti-Terrorism Law no. 13 of 2005.[56] If the person is accused of an offence punishable by death, as is the case for conviction in terrorism crimes, the accused can be held in remand for as long as is necessary for the investigation to proceed and until the examining judge issues a decision as to whether charges will be laid.[57]

Article 8(1) of the Coalition Provisional Authority (CPA) *Memorandum No. 3* (2003)[58] provides that any person accused of a *felony* has the right to access a lawyer while in detention during all stages of proceedings, including during preliminary investigation by the investigating judge and during trial. Interviews between detainees and their lawyers can be held within the sight, but not within the hearing, of a police or institutional official.[59]

Despite the constitutional guarantee of the right to defence during all stages of investigation and trial, and CPA *Memorandum No. 3* (2003) providing for the right of any person accused the right to access a lawyer while in detention, persons accused of terrorism charges can be, and generally are, held incommunicado for the duration of the investigation process.

(iii) Right to Life

The ICCPR, to which Iraq is a party, obligates the government to respect and protect every individual's right to life.[60] The ICCPR allows the death penalty only for the most serious crimes

[56] According to art 109 of the ICPC, if a person is accused of an offence punishable by a period of detention not exceeding 3 years, by imprisonment for a fixed term of years or by life imprisonment, the judge may order that the accused be held for a period of no more than 15 days (which is extendable for further 15 day periods) or may release the accused on a pledge with or without bail from a guarantor, if the judge is satisfied that release of the accused will not lead to her or his escape and will not prejudice the investigation. In any event the total period of pre-trial detention should not exceed one quarter of the maximum sentence applicable for the crime, and should not exceed 6 months. If it is considered necessary to extend the period of pre-trial detention to a period of more than 6 months, the examining judge must submit the case to the criminal court to seek its authority for an appropriate extension, which then itself should not exceed one quarter of the maximum applicable sentence; otherwise the investigating judge or the criminal court should order the individual's release, with or without bail.

[57] Once the accused person is transferred to the competent court for investigation, the presiding judge is required to issue a detention order containing the full name of the accused, the relevant legal clause under which she or he is held, the date of the start of detention and the date of its expiry. This order should be signed by the issuing judge and then be stamped by the court: ICPC, article 113.

[58] ICPC subsection B. Subsection B was added by CPA *Memorandum Number 3*, Section 4(c), signed 18 June 2003 - published in the Official Gazette, issue 3978 of 17 August 2003 and a revised version, signed on 27 June 2004, which was never published in the Official Gazette (which is the version on the CPA archive website at <http://www.cpa-iraq.org/regulations/index.html>.

[59] CPA *Memorandum Number 2* (2003), s30 para14.

[60] ICCPR, article 6 (1)

in accordance with the law in force at the time of the commission of the crime".[61] It also provides that the death penalty "can only be carried out pursuant to a final judgment rendered by a competent court".[62] This has been interpreted to mean that the death penalty cannot be imposed in a way that is contrary to the other rights protected by the ICCPR, which provides due process rights, such as freedom from being compelled to confess to a crime and the right to be given the opportunity to prepare an adequate defence.[63] The Iraqi Constitution provides that "[e]very individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority."[64]

6. Conclusions

Based on the monitoring of 92 criminal trials conducted by UNAMI HRO from January to June 2014, UNAMI HRO observed that the judiciary frequently failed to uphold Iraq's obligations under national and international law to provide adequate safeguards against torture. Although similar large scale trial monitoring could not be conducted in many other parts of Iraq, all indicators (including some trials monitored by UNAMI HRO) revealed suggested similar failings in the conduct of proceedings carried out elsewhere in the country outside the KR-I.

Article 123 of the ICPC requires the investigating magistrate to question the accused within 24 hours of arrest, while CPA amendments to the law passed in 2003 require the investigating magistrate to inform the accused that she or he has a right to have an attorney present during questioning and the right to remain silent.[65] This is an important safeguard against torture but in practice UNAMI HRO has observed that it is rarely respected.

Proceedings before investigative judges are generally not open to the public (UNAMI HRO was only able to access one instance during the conduct of the project). UNAMI HRO was only able to monitor trials, which are in principle open to the public.[66] However, testimony of detainees and prisoners and information obtained during trial monitoring by UNAMI HRO indicates that

[61] ICCPR, article 6 (2)
[62] *Ibid*
[63] Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994).
[64] Iraqi Constitution, article 15
[65] Art. 123 was amended by CPA *Memorandum Number 3* section 4(c) signed 18 June 2003 published in the Official Gazette issue 3978 of 17 August 2003. This added subsections (b) and (c) to article 123, which requires the investigating magistrate to inform the defendant prior to questioning that she or he has the right to remain silent and has the right to appoint an attorney or have a court appointed attorney to represent her/him; and that the questioning of the accused should not proceed whether he or she has indicated that she/he wants an attorney to be present during the questioning. Also note Memorandum 3, section 8, which expands the right of representation at trial beyond those accused of felonies to those accused of any crimes. Note also CPA *Memorandum Number 3*, section 5 which provides the right to be informed upon arrest of the right to remain silent and the right to an attorney.
[66] Trials are generally public in Iraq, unless involving juveniles or restricted by the judge in accordance with Iraqi Constitution, article 19 (7) of which provides that "Trial proceedings are public unless the court decides to make them secret". Sessions before investigative judges are not. UNAMI HRO was able to observe a session before an investigative judge on only one occasion during the reporting period

CPA amendments to the ICPC are not respected and that rarely are accused persons informed of their right to remain silent or of their right to have an attorney present during questioning. Questioning of accused persons nearly always takes place without the presence of attorneys, and is frequently conducted by the investigating judges in the presence of police officers, who many detainees and prisoners alleged had subjected them to torture in order to force confessions.

Detainees and prisoners informed UNAMI that they were particularly unwilling to raise allegations of torture until trial, owing to the fact that, during the investigation phase and prior to charges being formally laid and transfer to MoJ prisons on remand, they remained in the police *tasfiraat* and subject to the control and authority of the police who had tortured them. Detainees only raised torture allegations with trial judges because by the time they appear for trial, the investigation had been completed and they had been transferred from police or intelligence custody to prisons under the authority of the MoJ.

UNAMI HRO main conclusions from its trial monitoring are twofold: firstly, the right to remain silent and the right to have a lawyer present during questioning by the investigatory judge are not respected - whether from lack of resources or of judicial oversight of the conduct of investigatory judges. Secondly, the system currently operates to permit the torture of accused persons to force confessions that the investigating judges rely upon to justify formally charging the accused.

Trial judges fail to protect defendants from torture in various ways. By allowing the admissibility into evidence of confessions allegedly obtained under torture and by foregoing the opportunity to establish the veracity of allegations of torture made by defendants, judges sustain a culture of reliance on torture to obtain confessions among members of the police and intelligence forces. The effect is a vicious cycle – instead of encouraging police and investigative judges to carry out appropriate forensic investigations into crimes so as to obtain a range of evidence that is sufficient to justify bringing charges against accused persons, that discharges satisfactorily the burden of proof placed on prosecutors during trials, and that meets the standard of proof required for conviction in criminal cases, the system perpetuates reliance on confessions, irrespective of how those confessions were obtained. As police officers have often stated to UNAMI HRO, “confessions are the king of evidence” and once a confession is obtained, law enforcement officials largely believe that this absolves them from obtaining proper forensic evidence that substantiates the guilt or innocence of accused persons.

By failing to properly and appropriately inquire into allegations of torture to induce confessions, judges are largely responsible for sustaining a system that is reliant on torture to ensure convictions. They also miss the opportunity to make police and intelligence officer accountable for torture and to provide remedies to victims. In capital cases, the failure to protect defendants from torture has a catastrophic effect upon the rights of defendants and risks systemic violations of the State’s responsibility to protect the right to life.

Moreover, this pattern seriously undermines the rule of law and further erodes public trust in the administration of justice.

7. Recommendations

To the Government of Iraq

- Issue a moratorium on the death penalty, at least in respect of all those currently on death row, in all cases where fair trial rights were not respected, and in all cases where a defendant's allegations of torture or statements by secret informants did not result in reasonable inquiries by the judge to test the veracity of the allegations and no further investigation of the allegations was ordered;
- Consider ratifying the Optional Protocol to the Convention Against Torture (CAT);
- Introduce legislation or amend existing laws to fully implements Iraq's obligations under the CAT, by introducing detailed provisions providing protection against torture, including the obligations to investigate all allegations, to prosecute alleged perpetrators, and to compensate victims;
- Amend the ICPC to prohibit the practice whereby the investigating police or intelligence officers are permitted to accompany suspects to and be present in sessions before the investigative judge. Prison officers should collect the suspect from the police or intelligence facility and transport him or her to the investigative judge. After seeing the investigative judge, prison officers should then take the suspect to the prison, as opposed to returning him or her to the investigating unit;
- Establish new police units within each governorate tasked with investigating allegations of police torture;
- Issue instructions to the Ministry of Health (MoH) to establish detention inspection teams in each governorate. These teams should be responsible for conducting unannounced visits to police and intelligence detention facilities and to document medical evidence of torture when they encounter it;
- Establish a compensation programme for any detainee where torture is found to have taken place, or for detainees' families in the event of death of the detainee resulting from torture.

To the High Judicial Council

- Establish a legal framework empowering and requiring investigative judges to monitor conditions of detention and treatment of prisoners in police and intelligence service detention facilities;
- Cooperate with the Ministry of Human Rights and permit its monitors to be present during preliminary proceedings before investigative judges and during trials to monitor the judicial response to torture allegations;
- Ensure both investigative judges and trial judges are adequately trained and fully aware of their obligations in ensuring that persons subject to the criminal justice system are

free from torture and apply appropriate rules of evidence on the admission of evidence obtained through torture;

- Monitor the judicial response to torture allegations raised in court, and dismiss judges who persistently fail to respond appropriately to allegations of torture raised during judicial proceedings;
- In cases where no medical reports are available as evidence to support an allegation of torture, judges should order a medical review as part of their inquiries to determine the veracity of the allegation.

To the Ministry of Human Rights

- Vastly increase monitoring of police and intelligence detention centres across Iraq, ensuring visits are frequent, unannounced and include all facilities - particularly those in which individuals suspected of terrorism and other capital offences are held;
- Ensure that its staff are adequately trained and equipped to conduct effective monitoring of all detention centres; enlist international assistance, where needed, to increase the capacity of staff;
- Establish regular monitoring of public trials similar to the monitoring outlined in this report in order to assess judicial responses to torture and contribute to an ongoing improvement of compliance with relevant rules and standards.

To the Iraqi Independent Commission of Human Rights

- Undertake monitoring of places of detention, prisons and trials;
- Conduct an awareness-raising campaign to ensure that procedures whereby allegations of human rights violations reach the Human Rights Courts established in each governorate in January 2014 are understood by both members of the public and ICHR staff.

To United Nations Agencies and the International Community

- Formulate a coordinated capacity building strategy for police and judiciary to respond appropriately in relation to torture allegations within the criminal justice system.
- Support the Government of Iraq to develop a public information strategy aimed at raising public awareness of Iraq's international obligations under the CAT and to prevent torture within its territory.

Report on the judicial response to allegations of torture in Iraq

UNAMI/OHCHR
Baghdad Iraq

www.uniraq.org/www.ohchr.org