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Iraq's compliance with the International Covenant on Civil and Political Rights (ICCPR) regarding the death penalty

Submitted by ECPM (Together against the death penalty) and the World Coalition Against the Death Penalty

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ECPM (Together against the death penalty) is a French non-governmental organisation that fights against the death penalty worldwide and in all circumstances by uniting and rallying abolitionist forces across the world. The organisation advocates with international bodies and encourages universal abolition through education, information, local partnerships and public awareness campaigns. ECPM earned its legitimacy as a unifying group of the abolitionist movement because of its strong sense of ethics and values. ECPM is the organiser of the World Congresses against the death penalty and a founding member of the World Coalition Against the Death Penalty. In 2016, ECPM was granted consultative status with ECOSOC.

The World Coalition Against the Death Penalty (World Coalition), an alliance of more than 160 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 effect. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.



I- Right to life (Art.6)

1. The Iraqi Constitution of 2005¹ guarantees numerous fundamental rights. Article 37 protects explicitly human dignity and prohibits psychological and physical torture and inhumane treatment. The right to life is enshrined in the Constitution in Article 15 but it can be subjected to restrictions “in accordance with the law and based on a decision issued by a competent judicial authority.”
2. The Iraqi law authorises the death penalty for a large number of offenses under the Criminal Code and the Anti-Terrorism Law No.13 from 2005. Offenses punishable by death include aggravated murder, rape, prostitution, kidnapping, drug trafficking for the purposes of funding or abetting insurgency or where death results, committing or aiding acts of terrorism including causing damage to public buildings, and various military offenses.
3. The Constitution in Article 73-1 gives the President the power to grant pardon “except [...] for those who have been convicted of committing international crimes, terrorism, or financial and administrative corruption”. People sentenced to death are *de facto* excluded from the clemency procedure in contravention of Article 6-4 of the ICCPR.
4. In 2020, at least 45 people have been executed in Iraq, the fourth highest number of executions worldwide. Iraq is in fact one of the world's top executioner, with more than 145 executions in the past two years. In addition, the number of death sentences had quadrupled between 2017 and 2018, from at least 65 to 271 sentences. However, this number has fallen sharply to at least 87 in 2019.
5. In 2020, at least 27 sentences of death have been issued by Iraqi courts. Amnesty International recorded a decrease in the number of death sentences between 2019 (at least 87) and 2020, a consequence of restrictions to judicial proceedings during the first month of Covid-19 pandemic.
6. Most of the death sentences are issued on terrorism-related charges. The Anti-Terrorism Law gives a very broad definition of a terrorist act (see Article 2 of the law). Furthermore and according to the law, a “person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator” (Article 4). There is no gradation in the penalties prescribed. Therefore, people are sentenced to death under the Anti-Terrorism Law regardless of their responsibility within the organisation or the offenses they are accused of. Both a nurse working in a hospital controlled by the Islamic State or a cook for the organisation can be sentenced to death such as someone directly involved in hostilities. In addition, the death penalty is mandatory under the Anti-Terrorism Law, meaning that the judges do not have any other choice than sentencing people to death.²
7. In 2020, the Iraqi authorities conducted mass executions at the Nasiriyah Central prison with 21 executions in October and likewise in November. At that time, several UN experts³, the European Union and the UN High Commissioner for Human Rights

¹ Official translation in English : <https://www.wipo.int/edocs/lexdocs/laws/en/iq/iq004en.pdf>

² ECPM, *10 questions pour mieux comprendre la situation des citoyens français condamnés à mort en Irak*, 2019, updated in 2021, available in French at: <https://www.ecpm.org/wp-content/uploads/10-questions-confe%CC%81rence-Irak-061021-GRIS-MD2.pdf>

³ United Nations experts, “Iraq: Wave of mass executions must stop, trials are unfair”, 20 November 2020, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26526&LangID=E>



expressed deep concern about the waves of executions of nationals on terrorism-related charges, worrying that it was part of a wider plan to execute 4,000 prisoners on death row in Iraq.⁴

8. The last reported executions in Iraq took place in December 2021 when three men were hanged at Nasiriyah Central Prison.

Recommendations

- Amend the Anti-Terrorism Law in order to:
 - Narrow the broad definition given to a terrorist act and ensure that people are not sentenced to death regardless of their position within the organisation
 - Ensure the death penalty is never imposed automatically
- Resentence any individual previously automatically sentenced to death.
- Amend the legislation to limit the application of the death penalty to the most serious crimes as defined by the United Nations Human Rights Committee
- Amend the legislation to ensure that every person has the right to request pardon no matter what crime has been committed
- Establish a moratorium on executions with a view to abolishing the death penalty
- Consider voting in favour of the UNGA moratorium resolution
- Consider ratifying the Second Optional Protocol to the ICCPR

II- Prohibition of torture and cruel, inhuman and degrading treatments (Art.7)

9. Iraq has ratified several international instruments prohibiting the use of torture including the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2011. However, Iraq has not ratified the OPCAT.
10. Iraqi legislation criminalises the use of torture and set out procedural safeguards to prevent it, in particular in Article 37-1-C of the Constitution of 2005 and Article 333 of the Criminal Code. A draft Anti-Torture Law is also under discussion before the Council of Representatives in Federal Iraq since 2017. Despite a protecting legal framework, it is known that the use of torture and ill-treatment is widespread throughout the country, in pre-trial phases and during detention.
11. Numerous non-governmental organisations regularly reported that Iraqi judges issue sentences based on confessions obtained under coercive measures or torture rather than corroborating evidence. For instance, in 2019, two French citizens tried in Iraq for affiliation with the Islamic State alleged that they were tortured or coerced to confess.⁵
12. The practice of torture to obtain confessions seems very common for terrorism-related trials leading to death sentences. One example is the case of Mr Al Dulaimi sentenced to death in 2016 under Article 4 of the Anti-Terrorism Law. Mr Al Dulaimi had claimed

⁴ United Nations High-Commissioner for Human Rights, “Deeply troubling reports of 21 executions in Iraq yesterday – Bachelet”, 17 November 2020; European Union, “Iraq: Statement by the Spokesperson on the reported executions of convicted terrorists”, 19 November 2020

⁵ Human Rights Watch, “Iraq: French Citizens Allege Torture, Coercion”, 31 May 2019, available at: <https://www.hrw.org/news/2019/05/31/iraq-french-citizens-allege-torture-coercion>



that he had been tortured and forced to sign a "confession" and that he still bore the marks of the abuse. The judge did not request a medical examination or an investigation and the court decision stated that Mr Al Dulaimi had inflicted the injuries shown during the hearing on himself in order to convince the court that he had been ill-treated.⁶

13. Allegations of torture and ill-treatments are also common in detention places. At the beginning of 2020, two French citizens sentenced to death in Iraq reported constant threats, both verbal and physical, from Al-Rosafa prison guards, as well as acts of torture and humiliation.⁷ A recent report published by the United Nations Assistance Mission for Iraq (UNAMI) acknowledges that torture is a reality within Iraqi detention centres.⁸ The UNAMI conducted interviews with persons deprived of liberty including prisoners sentenced to death. The main forms of torture reported include severe beatings, including on the soles of the feet and with sticks, electric shocks, stress positions, hanging from the ceiling, suffocation and severe threats.
14. Under international law, courts should never rely on evidence obtained by torture. The use of torture to obtain confessions especially in terrorism-related cases has been documented. Reports have also shown that Iraqi judges completely ignore allegations of torture, in spite of corroborating medical examination results.⁹

Recommendations

- Adopt all measures to fight against torture and ill treatments
- Carry out investigations on allegations of torture and ill-treatments conducted during pre-trial phases and during detention.
- Ensure that forced confession obtained under torture and ill treatments are not admitted as evidences during trials and more especially in death penalty cases
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish an independent mechanism to prevent torture.

III- Conditions of detention of prisoners sentenced to death (Art.6, 7 and 10)

15. In 2019, at least 57,000 people were detained in Iraqi prisons according to the Iraq High Commission for Human Rights.¹⁰ At the end of 2020, at least 11,595 people were on death row according to the Ministry of Justice but their number is probably higher.¹¹ The Ministry of Justice manages 24 detention facilities on the territory. The other places of detention are managed by the Ministry of Interior, the Ministry of Defence, the

⁶ See opinions adopted by the Working Group on Arbitrary Detention in 2017, A/HRC/WGAD/2017/33

⁷ ECPM, *10 questions pour mieux comprendre la situation des citoyens français condamnés à mort en Irak*, 2019, updated in 2021, available in French at: <https://www.ecpm.org/wp-content/uploads/10-questions-confe%CC%81rence-Irak-061021-GRIS-MD2.pdf>

⁸ United Nations Assistance Mission for Iraq, *Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment*, August 2021

⁹ Human Rights Watch, "Iraq: Appeals Courts Ignoring Torture Claims", 25 September 2019, available at: <https://www.hrw.org/news/2019/09/25/iraq-appeals-courts-ignoring-torture-claims>

¹⁰ World Prison Brief, ICPR, available at: <https://www.prisonstudies.org/country/iraq>

¹¹ United Nations Assistance Mission for Iraq, *Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment*, August 2021



Counter Terrorism Service and the Ministry of Labour and Social Affairs of the Kurdistan Region of Iraq. Most of the prisoners sentenced to death are being held at Nasiriyah Central Prison located in the south of the country.

16. For years, several NGO and UN reports have been describing the conditions of detention in Iraqi prisons as “degrading”. Torture is a widespread practice and prison overcrowding is an endemic problem in Iraq.
17. According to information made available to ECPM at the beginning of 2021, the French citizens sentenced to death and detained at Al-Rosafa prison in Bagdad were allowed to go out of their cells only once every two weeks. They were held in cells containing 20 to 70 prisoners depending on the period. Only the nationals were allowed a few visits, but only from their mothers.
18. Limited access to court decisions and to places of detention as well as the absence of publication of official data result in difficulties to collect accurate annual data on death sentences, the number of people sentenced to death, their places of detention as well as their charges. Some independent authorities - the Iraq High Commission for Human Rights and the UNAMI – however had access to places of detention and had been able to publish some information.
19. The Covid-19 pandemic increased the lack of transparency on detention places and the restrictive measures resulting from it worsened the conditions of detention of prisoners, including prisoners sentenced to death. In Iraq in 2020, at least 79 prisoners were infected with Covid-19. However, the Ministry of Justice announced at the end of June 2021 that all prisoners in Iraq were vaccinated, allowing them receiving some visits.
20. Shortly after the beginning of the pandemic, several sources reported an increase in the use of torture and ill-treatment. Prisoners’ health has been affected by disease, poor hygiene and insufficient food.
21. The pandemic worsened the conditions for foreigners sentenced to death in Iraq since consular authorities were not allowed to enter the places of detention. For instance, the French citizens sentenced to death in Iraq did not receive any consular visit during the year 2020.
22. At Nasiriyah Central Prison, where two of the French prisoners on death row were temporarily transferred in early 2021, the prison’s director is suspected of stealing money sent by families to the prisoners.

Recommendations

- Provide annual disaggregated and public data on the number of people sentenced to death, their jurisdiction, their age and their nationality in order to develop a policy of effective transparency on the topic.
- Improve conditions of detention of people sentenced to death to ensure they comply with international human rights standards, in particular:
 - Increase budgets allocated to nutrition and health of detainees
 - Take measures to combat prison overcrowding
 - Ensure that death row prisoners can receive visits from their family
 - Ensure that all prisoners can move around within the prison



- Ensure that all foreign prisoners can be in contact with their lawyers, family and consular representation

IV- Right to a fair trial (Art.14)

23. The independence of the judiciary and the right to a fair trial are enshrined in Article 19 of the Iraqi Constitution. However, violations of due process have been reported by numerous NGOs and UN experts, especially in terrorism-related trials.
24. A report published by the UNAMI at the beginning of 2020 highlights the ineffective legal representation, the lack of adequate time and facilities to prepare a case, and the limited possibility to challenge prosecution evidence. In most of terrorism-related trials, the court-appointed lawyers met their clients right before the audience and they had little or no opportunity to familiarise themselves with case files or prepare their defence.¹²
25. Judges and lawyers are subject to numerous threats and fear reprisals.
26. Article 14 of the ICCPR provides for the right to a public hearing. However, restrictions in access to courts have been recorded in death penalty cases and more especially in terrorism-related cases. For example, UNAMI observed instances when family members of defendants were not permitted inside the courtroom and trials where the participation of victims or witnesses of Islamic State abuse were excluded.¹³
27. Lawyers are very often nominated 5 minutes before the audiences without any information on the cases they are supposed to defend.
28. The appeal procedure in Iraq is a very long and opaque process. Some of the French citizens sentenced to death in May 2019 appealed their judgments by the end of June 2019. In January 2022, nobody had information regarding their appeal procedures. Furthermore, once death sentences are handed down at first instance, they are almost never overturned on appeal.¹⁴

Recommendations

- Adopt measures including allocating the necessary resources to ensure that all defendants have access to a lawyer before court hearings and that lawyers have time to familiarise with cases and have access to files before the audiences.
- Review the cases of people convicted in proceedings which failed to respect national standards and international guarantees of the right to a fair trial.
- Contact the diplomatic representations of detained foreign nationals to inform them of the status of case files of their nationals
- Adopt measures to strengthen the capacities of lawyers and judges

¹² UNAMI, *Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL*, January 2020

¹³ *Ibid.*

¹⁴ UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014