

**ORGANIZATION FOR JUSTICE & DEMOCRACY IN IRAQ
(OJDI)**

**Report to the 20th session of the Human Rights Council's Working
Group on Universal Periodic Review**

OCTOBER-NOVEMBER 2014

**Organization for Justice & Democracy in Iraq (OJDI), independent, non-governmental organisation,
working for enhancing rule of law and democracy in Iraq, monitoring the independence of the
justice system and opposing any threat to judges and lawyers**

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Executive summary

Between 2010 and 2013 **large-scale executions** by the Iraqi government have severely increased. In 2013 Iraq has become number three among the world's top executioners, with a sharp increase of over 30% in executions compared to 2012. The high rise of executions stands in direct relation with the **failure of Iraq's justice system** to meet international fair trial standards. Nevertheless the Iraqi government has expressed on numerous occasions that it is unwilling to review its execution policy.

Executions in Iraq are often carried out under the pretext of combating terrorism yet the 2005 anti-terror law approves the **death penalty** for a multitude of offenses, most of which cannot be considered as "most serious crimes". The weakness of the Iraqi judicial system furthermore leads to a situation where confessions are often obtained under **intimidation, ill-treatment and torture**. Such abuses take place at the time of arrest, during pre-trial detention, interrogation and following conviction and even women are not safe. Frequently they are held in detention rather in order to retrieve information about their male relatives' activities rather than crimes in which they themselves are implicate and many of these women are subjected to torture and ill-treatment, including **sexual abuse and rape** sometimes in front of family members. **Impunity** due to the failure by the authorities to investigate allegations of abuse and hold the abusers responsible however encourages the police to continue such abuses. Confessions or the testimony of secret informers remain the cornerstone of criminal prosecution. **Arbitrary detentions** and administrative arrests on farfetched reasons are the rule rather than the exception.

Report

On 16 February 2010, at its 13th meeting, the Working Group on the Universal Periodic Review considered the first Universal Periodic review of Iraq. This stakeholder information highlights several key issues reflected in the report as well as developments since the previous review.

Key issues reflected in the Report of the Human Rights Council on its fourteenth session and their implementation

1) Death penalty

One of the major concerns raised by several countries and stakeholders as reflected in the Report of the Working Group on the Universal Periodic Review A/HRC/14/14 from March 2010 was the application of the death penalty in Iraq. In the view expressed by the Country Iraq insisted that “because of the exceptional circumstances in Iraq and the prevalence of terrorist crimes targeting the right to life, the death penalty had been maintained as a means of deterrence and to provide justice to the families of victims.” It was further underlined that “The number of cases in which the death sentence is pronounced has been reduced and its application is limited to the most serious crimes, including genocide, crimes against humanity and crimes of terrorism. All legal guarantees are provided to the accused in all stages of prosecution and until the sentence is carried out, and efforts are being made to reduce the number of executions to a minimum.” Subsequently the country rejected all recommendations (such as made by France, Slovakia, Chile, Australia and Germany) that called for a moratorium on the death penalty. The following paragraph shall examine these claims and present developments since 2010.

1.2 Rise of executions

Since 2010 there has been a sharp increase in executions in Iraq. It was the year when Khodair Al-Khuzai, a supporter of the death penalty and well-known hardliner, was appointed Vice President of Iraq. Many believe that the appointment was based on the desire to have a presidential deputy that would be ready to sign executions orders in case the President might be reluctant to do so. Consistently between 2010 and 2013 execution rates rose dramatically: From 18 executions in 2010 over 67 executions in 2011 and 129 executions in 2012 up to 177 executions in 2013. In 2013 Iraq has become number three among the world’s top executioners, with a sharp increase of over 30% in executions compared to 2012. The trend continued in the first 3 months of 2014 during which 44 people were executed. Most of the executed had only been convicted in 2013 on alleged charges of terrorist activities; it is however important to mention that these are the official data given by the Iraqi Minister of justice but that our sources from the ground believe the dark figures to be much higher.

1.2 Executions in Iraq are arbitrary

The high rise of executions in Iraq stands in direct relation with the failure of Iraq's justice system to meet international fair trial standards. Confessions remain the cornerstone of criminal prosecution and arbitrary detentions and administrative arrests on farfetched reasons are the rule rather than the exception. The ever-mounting application of death penalty in Iraq therefore has drawn increasingly harsh condemnation from many international human rights bodies.

In April 2013 the UN High Commissioner Navi Pillay stated that “Executing people in batches like this is like processing animals in a slaughterhouse. The criminal justice system in Iraq is still not functioning adequately ... with a weak judiciary and trial proceedings that fall short of international standards. In 12 October 2013 UNAMI then reiterated its call on the Government of Iraq to adopt a moratorium on the implementation of all death sentences. Also the Secretary General himself wrote in his report to the Security Council in March 2014 “I am concerned that Iraq continues to implement the death penalty, the prevailing flaws in its criminal justice system notwithstanding. “

1.3 The Iraqi government’s position

It is highly worrying to see that the Iraqi government is unwilling to review its execution policy. On multiple occasions the Iraqi Minister of Justice, Hassan Al-Shammari publicly stated that the government of Iraq was determined not only to further implement but even to accelerate executions, whatever may be the cost and the numerous international outcries. In summer 2013 he thus decided that in order to execute at a higher rate several “legal obstacles” needed to be overcome. To this end the Al-Shammari announced that the government had sent a draft to the Iraqi Council of Ministers in order to amend the Iraqi Criminal Proceeding Law Nr.23. The law provides legal rights basic human rights to accused.

Executions in Iraq are even supported by the Iraqi Minister of Human Rights, who in summer 2013 publicly declared that 1200 prisoners on death row could not be considered a very high number anyway and reiterated his words in December 2013, when he said that in view of the situation in Iraq it is far too early to speak about Human Rights in Iraq and that he considered it the government’s legal as well as pious duty to unwaveringly assume its responsibility against what he termed criminals. International calls to Iraq were not applicable, he continued. He further stretched that the government of Iraq’s position on the implementation of the death penalty was firm and clear, and that terrorists needed to be punished without any mercy. The time to implement a Human rights Culture in Iraq was far too early, he concluded.

1.4 The Anti-terror law

Executions in Iraq are often carried out under the pretext of combating terrorism. A short look at the Iraqi definition of terrorist crimes however makes clear that basically any act can be fit into the description. The law passed in 2005, approves the death penalty for a multitude of offenses, most of which cannot be considered as “most serious crimes”. Today, under Iraqi law, a person can be sentenced to death for some 48 crimes, including anyone who commits, as a main perpetrator or a participant, a terrorist act, along with anyone who incites, plans, finances or assists terrorists to commit such a crime or anyone who intentionally covers up any terrorist act or harbors a terrorist with the purpose of concealment. The same law offers amnesty and anonymity to secret informers who report alleged terrorist activities.

As a result of false reports many have been wrongly arrested and executed. Iraqi officials have frequently made the case that strictly speaking no presidential decree is needed to implement a death sentence. In many cases deputies of the president signed presidential decrees, thereby completing the procedure specified in the constitution. Such a law is by definition susceptible to misuse and it remains a matter of great concern that its provisions are frequently applied on a sectarian base. Numerous voices have thus called to amend this law; however the Iraqi Minister for Human rights has never joined these voices, despite the well-known abuse and incompatibility with international law.

1.4 Example

To exemplify the worrying haste with which death sentences are currently carried out, the official data of people executed published on 21 January 2014 **did not contain the names of those people executed, except for their abbreviations. It was particularly alarming that even on request by the Human Rights Committee of the Iraqi House of Representatives (Parliament) no proofs were given of the alleged crimes and that most of the executed were only convicted in 2013**, which one more time proves that announcements by the Iraqi government that it would continue executions at any cost are no empty rhetoric. Consistently, in a press conference given on 22 January 2014, the Iraqi Minister of Justice once again reaffirmed the government's determination continue its capital punishment policy without any compromises. In addition we received the information from the ground that Amer Faris Nasrat was among the executed during the latest wave. According to the judgment, he was accused of having deposited an explosive device which injured six policemen in a car. His family however stands firm against these accusations.

2) The Iraqi judicial system

A second major concern raised by several countries and stakeholders concerned the issue of torture and ill-treatment in detention as well as the subsequent lack of fair trials standards. In the view expressed by the Country Iraq claimed that torture and ill-treatment "do not represent a systematic policy, but rather occur because of lack of experience on the part of investigators, and constitute individual cases," and further stretched that "The judiciary has attached importance to the protection and implementation of legal guarantees at all stages, and confessions obtained under torture are not taken into account. Iraq has finalized the national process of acceding to the Convention against Torture (CAT)."

In this sense recommendations made by Switzerland, the United States, the Netherlands, the UK and Sweden were accepted. **Until this day Iraq is however far from implementing these recommendations and the situation has even deteriorated. Confessions remain the cornerstone of criminal prosecution, and in order to extract information and obtain these confessions torture continues to be systematic.**

2.1 Arbitrary detention

The Iraqi judicial system is known to be flawed and inhumane on all levels. People are held in prison for years without knowing the charges held against them and without seeing a lawyer. Sentences largely rely on confessions obtained under horrific intimidation, ill-treatment and torture or are based on testimonies provided by secret informants. Such abuses take place at the time of arrest, during pre-trial detention, interrogation and following conviction and include techniques such as beatings and threats, handcuffing and suspension from iron bars, electric shocks, heated metal nails driven under finger nails, burns, and suffocation with plastic bags over the head, deprivation of food, water and sleep.

A report of the Secretary-General submitted to the Security Council in March 2014 (S/2014/190) reiterates such concerns: UNAMI continues to receive reports of individuals being arrested during security operations without any evidence [...] of individuals being held in prolonged occupation without charge, and of detainees, being tortured and ill-treated to extract confessions that justify charge, trial and conviction."

2.2 Women in detention

Thousands of Iraqi women are illegally held in detention and commonly subjected to torture and ill-treatment, including sexual abuse and rape sometimes in front of husbands, brothers, and children. Many women were detained for months or even years without charge before seeing a judge, and many of them said that they were rather questioned about their male relatives' activities rather than crimes in which they themselves were implicated.

One of the main demands of the widespread protests going on in Iraq since December 2012 therefore was a reform of the ailing justice system in Iraq and the end of torture and the rape of women in detention, but instead of giving an ear to such demands the government of Iraq fobbed off the demonstrators with empty promises and responded with excessive force, violence and mass arrest campaigns, killing many.

2.3 The Iraqi government's position

Unfortunately instead of acting and promoting the respect for human rights within the Iraqi authorities as it would be his task, the disastrous situation of the Iraqi judicial system has never been denounced by the Iraqi Minister for Human Rights, who instead repeats the official rhetoric by the Iraqi government, claiming that the Iraqi judicial system is exemplary and that all sentences are in accordance with international law. Failure by the courts to investigate allegations of abuse and hold the abusers responsible thus continue to encourage the police to falsify confessions and use torture.

3. Recommendations:

- Iraq should immediately halt all executions unless a fair trial can be guaranteed
- Iraq should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights
- Iraq should amend the anti-terror law No. 13 of 2005
- Iraq should consider issuing a standing invitation to UN special Procedures including the Special Rapporteur on torture, the Special Rapporteur on extrajudicial executions and the Special Rapporteur on the independence of the judges and lawyers
- A UN Special Rapporteur on the human rights situation in Iraq should be appointed
