

Human Rights Committee Briefing

Iraq

Introduction

Over the past six years, since the Government of Iraq submitted its third periodic report to the Human Rights Committee, Amnesty International has continued to document gross human rights violations committed on a massive scale in Iraq affecting all sectors of society. These violations, which have been committed by Iraqi military, intelligence and security personnel, have included the arbitrary arrest and detention of tens of thousands of suspected government opponents and their relatives without charge or trial; widespread torture and ill-treatment often resulting in deaths in custody; unfair trials; the “disappearance” and extrajudicial execution of hundreds of thousands of people, for political reasons; the introduction of judicial punishments amounting to cruel, inhuman or degrading punishments or to torture; and the widespread use of the death penalty.

The human rights violations described below are part of a pattern of abuses committed in Iraq over many years. Amnesty International has repeatedly placed these violations on the public record and pressed the Iraqi Government to stop extrajudicial executions, torture, the use of the death penalty and other human rights violations, and to clarify the fate of the hundreds of thousands who have “disappeared”. The organization’s concerns have been consistently ignored by the Iraqi authorities or rejected through blanket denials.

This briefing is not intended as a comprehensive portrayal of the human rights situation in Iraq. It merely highlights some of the flagrant human rights violations, which have continued unabated in Iraq in the six years since Iraq submitted its third periodic report to the Human Rights Committee. In particular, this briefing, and other documentation submitted by Amnesty International shows that the Iraqi Government has sanctioned mass killings, torture and other atrocities as a matter of policy, and violated its obligations inter alia under Articles 6, 7, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR). Although the government has complied with its obligation under Article 40 of the ICCPR to submit periodic reports to the Human Rights Committee, it has failed to address the grave human rights violations which continue to be reported in Iraq, or to address some of the serious concerns raised by members of the Committee during their examination of the government’s previous reports.

Article 6: Right to life

I. Legislative developments

The death penalty in Iraq covers a wide range of criminal and political offences. Since the submission by the Iraqi Government of its third periodic report in June 1991, the scope of the death penalty has been further expanded through decrees passed by the Revolutionary Command Council (RCC), Iraq's highest executive body which is invested with the power to promulgate laws and decrees. Many of these decrees prescribe the death penalty for various offences that do not appear to have lethal or other extremely grave consequences.

In its fourth periodic report, scheduled to be considered by the Human Rights Committee in October 1997, the Iraqi Government refers to a number of RCC decrees which impose heavier punishments than those previously in force, including the death penalty, for certain offences deemed to be "prejudicial to the security and safety of society, with a view to bringing about general deterrence and reducing the rate of these offences". The Government's report states that the imposition of these harsh penalties is intended to combat rising crime, which, it says, is attributable to the poverty and hardship brought about by the economic sanctions imposed on Iraq since its invasion of Kuwait in 1990. As soon as the objective of reducing crime rate was achieved to a satisfactory extent, the report argues, a second legislative development ensued, namely the promulgation of "general amnesty decrees" which resulted in the suspension or commutation of death sentences.

However, the continued enactment by the Iraqi Government of legislation prescribing the death penalty for offences not previously punishable by death is contrary to the spirit of Article 6(6) of the ICCPR. In its General Comment 6 on Article 6 of the ICCPR, the Human Rights Committee stressed that the "*right to life ... is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (article 4)*"¹.

The Committee further pointed out that "... while it follows from article 6(2) to (6) that state parties are not obliged to abolish the death penalty totally, they are obliged to limit its use and, in particular, to abolish it for other than the 'most serious crimes'"². The "most serious crimes" punishable by death have been defined by the 1984 ECOSOC Safeguards guaranteeing protection of the rights of those facing the death penalty as "intentional crimes, with lethal or other extremely grave consequences"³.

Some of the RCC decrees referred to in the government's report prescribe the death penalty for such non-violent offences as car theft (RCC Decree 13/92), counterfeiting (RCC Decree 9/93), the smuggling of cars, lorries or any machine used for drilling or construction out of Iraq (RCC Decree 95/94), organizing a group of two or more persons for procurement purposes (RCC

¹Human Rights Committee, General Comment 6, adopted at the Sixteenth Session, 1982, UN Doc. HRI/GEN/1, para.1.

²Ibid., para. 6.

³Safeguards guaranteeing protection of the rights of those facing the death penalty, annex to Resolution 1984/50 adopted by the United Nations Economic and Social Council on 25 May 1984, para. 1.

Decree 118/94), falsification of military service documents (RCC Decree 179/94), and theft committed by a member of the armed forces or internal security forces, or by a government employee (RCC Decree 114/94).

Moreover, the government's report omits mention of several other RCC decrees which introduced the death penalty for non-violent offences. These include Decree 39 of 2 April 1994, published in the Official Gazette on 11 April 1994, which prescribes the death penalty for a number of offences deemed to constitute "sabotage of the national economy and to be dishonourable offences", including the following:

- removing medicines and medical equipment illegally from health institutions and other public facilities;
- forging official documents pertaining to medicines and medical equipment with the intention of concealing any illegal disposal of such items;
- possession of medicines and medical equipment with intent to trade in these items, if these have been obtained from non-official sources;
- possession of medicines and medical equipment by non-governmental health institutions, if these items have been obtained from non-official sources.

The penalty stipulated in this decree, for committing, facilitating or participating in the commission of these crimes, is death or life imprisonment, with a fine ranging between 10,000 and 100,000 Iraqi dinars.

Similarly, RCC Decree 76 of 29 June 1994, published in the Official Gazette of 4 July 1994, imposes the death penalty for smuggling antiquities outside the country or any smuggling perpetrated on such a scale that seriously undermines the national economy. In this respect, Amnesty International notes that the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "*the death penalty should be eliminated for crimes such as economic crimes and drug-related offences.*"

A number of crimes were also declared capital offences if committed by members of the military or security forces. RCC Decree 91 of 21 July 1994, published in the Official Gazette on 1 August 1994, prescribes the death penalty for members of the internal security forces or special security services, who intentionally use their position to commit a crime normally punishable by not less than 15 years' imprisonment, irrespective of whether the accused is the perpetrator or an accomplice. Similarly, RCC Decree 111 of 23 August 1994, published in the Official Gazette on 5 September 1994, imposes the death penalty or life imprisonment on members of the armed forces who commit any of the following offences:

- theft or embezzlement of money or other property belonging to the armed forces;
- forgery of official documents pertaining to military service;
- bribery which is prejudicial to public interest.

Article 5 of RCC Decree 115 of 25 August 1994, published in the Official Gazette of 12 September 1994, calls for the execution by firing squad of anyone who has committed any of the following offences:

- evading military service for a third time;
- evading military service and then deserting twice;

- sheltering and hiding a draft evader or army deserter on three occasions.

Furthermore, RCC Decree 115 has retroactive application; Article 8 of the Decree states that *“the provisions of this Decree shall apply to those who committed the crimes of evasion and desertion before the date of its coming into force, and who have failed to surrender themselves within the period specified in article 7 of this Decree”*. This contravenes Article 15(1) of the ICCPR, which states:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.”

Indeed, it even contravenes the Iraqi Penal Code itself:

“No act or omission shall be penalized except in accordance with a legislative provision under which the said act or omission is regarded as a criminal offence at the time of its occurrence.”
(Article 1)

The Iraqi Government maintains in its report that the enactment of laws and decrees prescribing harsher penalties, including the death penalty, for certain offences is a deterrent measure intended to combat rising crime, implying that this is alleviated or counteracted by the introduction of “general amnesties” leading to the suspension or commutation of death sentences, when the desired deterrent effect has been achieved. However, this argument is flawed for a number of reasons. The death penalty is the ultimate and irreversible violation of the right to life and the right not to be subjected to cruel, inhuman and degrading punishment. Any extension of the scope of this penalty by a state party to the ICCPR is a retrograde step which, as the Committee has previously noted elsewhere, raises questions as to the compatibility with article 6 of the Covenant.⁴

⁴Preliminary observations of the Human Rights Committee on the third periodic report of Peru, UN Doc. No. CCPPR/C/79/Add.67, 25 July 1996, para. 15.

Widening the scope of the death penalty also runs counter to the worldwide trend towards abolishing this penalty, which is reflected in the UN General Assembly's assessment that "the main objective to be pursued in the field of capital punishment is that of progressively reducing the number of offenses for which the death penalty may be imposed, with a view to the desirability of abolishing this punishment..."⁵. Similarly, the UN Commission on Human Rights has recently called on all states that have not yet abolished the death penalty "progressively to restrict the number of offences for which the death penalty may be imposed".⁶ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has also stated that "The scope of application of the death penalty should never be extended..."⁷

There is no conclusive evidence based on international studies that the death penalty has a unique deterrent effect. The government has failed to provide any statistical evidence for this alleged deterrent effect of the death penalty. Moreover, the government's claim that the promulgation of amnesty decrees will serve to reduce the number of executions is less than convincing, given that when on past occasions general amnesty decrees have been issued, a number of those who surrendered themselves were later executed.

Furthermore, the two amnesty decrees referred to in the government's report, RCC Decree 61/95 and RCC Decree 64/95, contain a large number of exclusion clauses. For example, while Decree 61/95 commuted death sentences which had been ratified before the amnesty to life imprisonment, it excluded a number of crimes such as drug offences, espionage, murder in the course of robbery and embezzlement or theft of public funds.

RCC Decree 64/95, on the other hand, declares a general amnesty for Iraqi nationals, inside Iraq or abroad, convicted of political offences. It stipulated that those benefiting from this decree must return to Iraq within two months of its date of effect if they are outside Iraq. It was not known to what extent the provisions of these two decrees were implemented nor how many people benefited from them. But given the Iraqi Government's past human rights record, Amnesty International remained concerned that, by decreeing such general amnesties, the Iraqi authorities may have been seeking to bring deserters and government opponents out of hiding in order to penalize them. The organization has recorded the names and other details of scores of Iraqi nationals who in the past surrendered to government authorities in order to benefit from various amnesties, and who were subsequently arrested, tortured or simply "disappeared".

II. Use of the death penalty

The death penalty continues to be applied on a wide scale in Iraq, with hundreds of executions reported every year. The actual total number of executions may well be much higher than that suggested by the reports received by Amnesty International. The government rarely announces executions or makes public any official statistics in relation to the death penalty. The relatives of scores of political detainees executed have even been forbidden from holding public mourning. In

⁵Resolution 32/61 Dec. 8,1977.

⁶UN Commission on Human Rights, Resolution 1997/12, UN Doc. No. E/CN.4/1997/L.11/Add.1.

⁷UN Doc. No. E/CN.4/1994/7, 7 December 1993, para. 677.

many cases, the climate of fear and secrecy makes it impossible to determine whether reported executions were judicial or extrajudicial.

Since 1991, the death penalty has been imposed for various crimes, including economic offences which have no lethal consequences. The following are a small sample of the executions documented by Amnesty International since 1991.

On 26 July 1992, for example, at least 42 merchants and businessmen were hanged in Baghdad, having reportedly been charged with illegal hoarding and profiteering. They were among several hundred members of prominent Sunni and Shi'a families who were detained that month in a wave of arrests. The government stated that those executed had been tried and convicted, but reports received by Amnesty International indicated that several of them were shot dead immediately following their arrest. Among those executed was Salim 'Abd al-Hadi Hamra, former head of the Baghdad Chamber of Commerce.

In October 1993, four suspected members of the Syrian Ba'ath party were executed and their bodies were subsequently returned to their families; among them was Walid al-'Ubaidi, a former employee of Iraq's Ministry of Oil. Two of the others were said to have had their eyes gouged out.

Mass executions of suspected government opponents arrested since the March 1991 uprising were reported throughout 1993. Many former detainees interviewed by Amnesty International reported that some of the victims were executed by firing squad and buried in mass graves inside al-Radwaniya Garrison. The mutilated bodies of others, who had been detained in Abu Ghraib prison, were returned to their families who were forbidden from mourning in public. In September and October 1993, scores of military personnel were executed after two alleged coup attempts.

In February 1994, the Court of Cassation upheld the death sentences passed on five people convicted of drug-trafficking in December 1993. The five were: Kabed Sabri Sa'id Shahada, 'Ali 'Issa, Sirwan Hassan, Ghazi 'Abd al-Majid and Qais Latif. In response to a letter from Amnesty International urging that these death sentences be commuted, the Iraqi Ministry of Foreign Affairs stated that the death sentences were based on the evidence that the defendants had "perpetrated the most serious of drug-related crimes" (drug-trafficking), and that Iraq's law on drugs reflected the seriousness of the crime and its effect on society, health and the economy. The Ministry sought to justify the imposition of the death penalty on drug-traffickers by noting that the international community considers drug-related crimes to be particularly serious and that severe punishment is called for.

In March 1994, eight people convicted of murder and theft were executed; several of them were members of the Iraqi Communist Party, who had reportedly been arrested on account of their political affiliation. They were apparently tried before a special court, but no further details were known about the legal proceedings followed in their cases. On 26 March 1994, five others were executed in Abu Ghraib prison, reportedly after being convicted of currency speculation; among them was 'Abbas al-'Aoun, a moneychanger from Baghdad, Jum'a al-Sa'di, Qassim 'Abd al-Karim Hassan, and Majed Halou. Several military and intelligence personnel were reportedly executed in October and November 1994 after being accused of involvement in alleged coup attempts.

Reports were also received in 1996 that at least 12 Iraqi army officers were executed for disobeying orders when the Iraqi Government forces entered Arbil in conjunction with the forces of the Kurdistan Democratic Party. These included Brigadier General Adham al-‘Alwani, Major Jihad ‘Abd al-‘Aziz al-‘Alwani and Major Faisal ‘Abd al-Hamid al-‘Issawi. More than 120 army officers, believed to be connected to the opposition Iraqi National Accord, were executed following an alleged coup attempt against President Saddam Hussain in June 1996.

In May 1997, six prisoners held at Abu Ghraib prison were reportedly executed. They were among the hundreds of suspected government opponents who were arrested by government forces after they entered Arbil in August 1996. Four of those executed had reportedly been sentenced to life imprisonment following their conviction of “offences prejudicial to the external security of the state”. Among them was Ahmad Nuruddin, whose family in Kirkuk were informed of his execution in July 1997, and instructed to collect his body from Abu Ghraib prison.

On 6 September 1997, a state-owned Iraqi newspaper, al-Jumhuriya, reported that six people, including a woman, were sentenced to death by hanging in July 1997, following their conviction of organized prostitution and smuggling alcohol across the border between Iraq and Saudi Arabia. According to the newspaper report, the six were Humaid Hatif Hamza, Mardan Suwadi Shadhan Muhawish, ‘Ali Hussain ‘Askar Jabbar, Haidar Muhammad Ni‘ma Majhul, Ghali Muhammad Safi ‘Abdullah and ‘Athra’ Subhi Naiyef Saleh. They were reportedly tried before a special court at the Ministry of the Interior headquarters in Baghdad. In September 1997, Amnesty International wrote to the Iraqi Government asking for clarification regarding these prisoners and urging that their death sentences be commuted. The government, however, responded by saying that the organization’s information was not accurate and based on “allegations”, even though the case was reported by a state-owned newspaper.

In October 1997, Amnesty International received reports that a number of officers of the intelligence, special and security forces and former members of the Ba‘th Party were executed on charges of plotting to assassinate President Saddam Hussain. These included Faruq Falih al-‘Ali, Fawzi Mahmud al-Samarra’i, ‘Ali Ahmad Muhammad al-Samarra’i, ‘Abd al-Wahab Salih al-Darwish and ‘Ali Hasan ‘Alyan al-Samarra’i, a former Ba‘th party leader who was reportedly executed on 28 September 1997. Another six men were reportedly sentenced to death in September 1997 by the same special court in Baghdad, having been arrested in December 1996 for their alleged involvement in a plot to overthrow the government. These included Ahmad Taha al-‘Azzuz, Usama Sobhi, Hamed ‘Abd al-Karim and Wahran Yassin al-‘Azzuz.

III. Extrajudicial executions and mass killings

In spite of the difficulty of investigating extrajudicial executions and mass killings in Iraq, it is estimated that hundreds of thousands of people have been the victims of such killings since the 1980s. Various methods have been used, including the use of chemical weapons; mass executions by firing squad; burying people alive or tying heavy weights to their feet and pushing them into rivers; poisoning with thallium and other toxic substances; and “accidental deaths” supposedly occurring in rigged car accidents or helicopter crashes. In addition, thousands of people have died in custody apparently as a result of torture or in unclear circumstances.

Since the March 1991 uprising, when government forces temporarily lost control of major cities and towns in northern and southern Iraq, additional information has come to light about the scale of atrocities committed in previous years. Another source of information has been the series of mass graves discovered in northern Iraq, where the absence of government forces enabled some

international human rights organizations to investigate the graves. For example, one mass grave on the outskirts of the Kurdish town of Arbil contained the remains of 107 Kurdish villagers killed in 1987. Amnesty International had reported in 1988 that they were said to have been executed.

Hundreds of people were extrajudicially executed by government forces in the wake of the March 1991 uprising. Among the victims in the north were Kurdish women and children, who were shot from helicopter gunships as they fled towards Iraq's borders. At least 28 Kurds arrested in Kirkuk in March 1991 were said to have been extrajudicially executed. They included Ibrahim Qader Taha, who was shot by Republican Guards on 18 March. In April 1991, 40 civilians were reportedly burned to death by government forces in 'Arbat village, near Sulaimaniya.

On 16 March 1991, around 150 men and boys from the Shi'a community were shot dead at al-Mahawil Garrison, near al-Hilla in southern Iraq. Others were reportedly thrown to their death from the top floor of al-Hilla Hospital on 9 March 1991, or pushed into the Tigris River and Shat al-'Arab waterway with weights tied to their feet. Victims' bodies were said to have been dragged through the streets or left hanging from electricity pylons to terrorize the local population.

In April 1992, President Saddam Hussain stated publicly that Shi'a Muslims who participated in the March 1991 uprising in the south should be machine-gunned for treason. Before the imposition of the southern "air exclusion zone" by United States, British and French forces in August 1992, government forces repeatedly launched military attacks on the marshes region in the south using helicopter gunships and fighter aircraft. In one incident, in May 1992, 13 civilians, including women and children, were reportedly killed after helicopter gunships attacked a wedding ceremony in the village of al-Agir in al-'Amara province. Scores of others were killed in similar attacks in the same province in July and August 1992.

In 1993, several hundred civilians, including women and children, were reportedly killed or injured during attacks by government forces on civilian targets in the southern marshes. Through these attacks, the government was seeking to secure control of the vast marshlands area located between Basra, al-'Amara and al-Nasiriya, which has traditionally served as a hiding place for government opponents and army deserters. It is estimated that by the end of 1993 up to 8,000 people had fled the southern marshes as a result of the military attacks on villages, the draining of large stretches of marshland and the destruction of the local community. Military and special forces continued their deliberate and indiscriminate attacks on civilian targets in the southern marshes region during 1994. Armed government opponents were reportedly shot dead after capture. Among them were Faleh al-Bazzuni and 'Adnan Khashan, who were arrested following an attack on Umm al-Juwaish near al-Madaina in March 1994.

In April 1994, a prominent Iraqi government opponent, Shaikh Talib al-Suhail al-Tamimi was shot dead in Beirut. The Lebanese authorities arrested two Iraqi diplomats said to have been implicated in the killing; they reportedly confessed to working for Iraqi intelligence. However, the Lebanese authorities released them without trial in 1997 on account of their diplomatic status. Several cases of thallium poisoning were also reported in 1994 and 1995. The poison was believed to have been administered to the victims by Iraqi government agents operating in Kurdish-controlled territory. Among the victims were Shaikh Faisal al-Sha'lan and 'Abd al-Amir Shahin, who were both poisoned in January 1995 in Shaqlawa, and 'Abdullah al-Shubbar, who died from poisoning in March 1995 in Shaqlawa. All three were involved in opposition activities within the Iraqi National Congress. In August 1995, several other suspected opponents, including members of the Supreme Council for the Islamic Revolution in Iraq and some armed opposition

Pesh Merga fighters, were poisoned in Sulaimaniya Province; among them was Muhammad Sati al-Anbaki.

In February 1996, Lieutenant-General Hussain Kamel al-Majid and his brother Lieutenant-Colonel Saddam Kamel, both sons-in-law of President Saddam Husssain, who had defected to Jordan in August 1995, were killed within days of their return to Iraq after reportedly being pardoned. Their father, a brother and three other relatives were also killed. The government announced that the killings constituted an act of revenge by other members of al-Majid family, but it was widely believed that the killings had been carried out with the acquiescence of the President. There was no investigation into these killings and no one was brought to justice.

At the end of August 1996, Iraqi government forces entered Arbil, in conjunction with the forces of the Kurdistan Democratic Party, taking control of the city and ousting the forces of the Patriotic Union of Kurdistan. It is estimated that at least 96 members of the opposition Iraqi National Congress and four members of the Iraqi National Turkman Party were extrajudicially executed by government forces following their capture in Qoshtapa, near Arbil. Among the victims were Lieutenant Ra'd 'Umar al-Khalidi and Fahd Muhammad Sultan. Hundreds of suspected governments opponents and their families were also arrested in Arbil at the time, and then transferred to prisons and detention centres in government-controlled areas; but their fate and whereabouts remain unknown. They included members of the INC, suspected members of Turkman and Islamist parties, and other non-Kurdish political opponents.

Article 7: Torture and cruel, inhuman or degrading treatment or punishment

I. Torture and ill-treatment

The routine and systematic use of torture in Iraqi prisons and detention centres has been well documented over the years. Amnesty International continues to receive reports that detainees and prisoners, including minors and women, are subjected to the most brutal forms of torture before being executed. In some cases, the bodies of the victims have been returned to their families with evident signs of torture. Badly mutilated bodies have also been dumped in the street outside the victims' homes. It has been reported that some of the political detainees who have "disappeared" since their arrest, or who have been reported by the authorities to have been executed for political offences, have actually died as a result of torture before any alleged trial.

For example, a large number of those arrested following the March 1991 uprising were tortured. Torture methods reportedly used included severe beatings with truncheons and rubber hoses, breaking of limbs, burning of the skin, electric shocks to the tongue and genitals, suspension from a rotating fan, prolonged isolation, deprivation of food and water for several days, mock executions, threats of dismemberment, and sexual abuse.

According to eyewitnesses, some detainees were mutilated before execution by having their eyes gouged out, their limbs severed or by being doused with petrol and set alight. On 21 March 1991, the mutilated body of Falah Bilal, a Shi'a Arab was found outside al-Najaf: his tongue, ears and left hand had apparently been severed before he was executed. A former soldier who was imprisoned for 26 days in Abu al-Khasib, near Basra, described to Amnesty International how he had been subjected to electric shocks and had suffered a broken wrist as a result of beatings. He also said that other detainees had been deprived of food and water, and had been forced to drink urine to survive, and that he witnessed 100 executions at the prison.

In October 1992, arbitrary and widespread arrests of unarmed civilians were carried out by the military and security in al-‘Amara, as part of what the government called a “punitive campaign” against the Shi‘a Muslim population in the south. Most were held at the 4th Army corps’ headquarters, where they were reportedly tortured. Two Shi‘a Muslims released from al-Radwaniya garrison, southwest of Baghdad, stated that they had been repeatedly beaten and subjected to electric shocks during their four months’ detention. They also stated that a fellow detainee died from severe burns after being tied to skewer-like device and “roasted” over a flame.

In 1993, a Shi‘a Muslim testified that while being detained for several days in al-Radwaniya he was suspended by an arm and a leg from the ceiling, given electric shocks to his genitals, beaten with cables and burned with cigarettes. He was released after paying 30,000 Iraqi dinars. He also said that, while he was in al-Radwaniya, two fellow detainees died as a result of torture. In another case, a Shi‘a Muslim peasant was beaten with cables and given electric shocks while in detention in al-‘Amara in April 1993. He was then transferred to al-Radwaniya where several detainees allegedly suffered critical burns after being pushed into a fire during interrogation.

In 1994, seven Ba‘thist government opponents detained since 1993 died in custody. It was not clear whether they died under torture or were tortured and then executed. Among them were Muhammad ‘Abd al-Ta’i from Diyala, Muhammad Aiyub al-Dulaimi from Mosul and Walid Shakir al-‘Ubaidi from Baghdad. Their bodies were returned to their families, in August and September 1994, reportedly disfigured by torture. The eyes of six of the victims had allegedly been gouged out. Among the detainees who were said to have died as a result of torture shortly after their arrest was Karim al-Jihari, who was arrested in April 1994 in Misan Governorate during a wave of arbitrary arrests in the south.

II. Judicial punishments amounting to torture or to cruel, inhuman or degrading punishments

In 1994, the RCC introduced a series of decrees prescribing punishments amounting to torture or to cruel, inhuman or degrading punishments for at least 30 criminal offences. These punishments consisted of the amputation of the right hand for a first offence, and of the left foot for a second offence, or the severance of one or both ears. People convicted under these decrees were also branded with an “X” mark on the forehead. These punishments were apparently introduced in response to the rising crime rate resulting from worsening economic conditions in Iraq. The enactment and implementation of these decrees patently contravene Iraq’s obligation as a state party to the ICCPR, Article 7 of which states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Moreover, Article 4 of the ICCPR, which allows derogation from some obligations, does not allow derogation from Article 7 under any circumstances even in “time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed”.

In its General Comment 20, the Human Rights Committee stated with regard to Article 7 of the ICCPR that “the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.”⁸ The UN Special Rapporteur on torture noted in his 1997 report to the Commission on Human Rights

⁸Human Rights Committee, General Comment 20 (Article 7), Forty-fourth Session, 1992, CCPR/c/21/Rev.1/Add. 3, para 5.

that “corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment...”⁹ In 1997 the Commission on Human Rights reminded governments that “corporal punishment can amount to cruel, inhuman or degrading treatment or punishment or even to torture”.¹⁰

Offences punishable by the above-mentioned decrees include theft in certain circumstances, monopolizing rationed goods, defaulting or deserting from military service, and performing plastic surgery on an amputated arm or leg, or removing the mark branded on the forehead. In August 1996, Amnesty International was informed by the Iraqi Government that the RCC had issued Decree 81/96 suspending the application of Articles 1, 2 and 3 of RCC Decree 115/94, which prescribe the punishment of amputation of the auricle of the ears and the branding of the foreheads of army deserters, draft evaders or persons providing them with shelter or protection. However, the abolition of these penalties seems to be confined to RCC Decree 115/94, and does not apply to other RCC Decrees which prescribe punishments of amputation and branding, notably RCC Decrees 59/94, 74/94, 92/94, 96/94 and 109/94.

During the period between the enactment of these decrees in 1994 and the reported abolition of one of them in 1996, Amnesty International received reports of hundreds of individuals who had been subjected to such punishments. For example, the organization has received testimony from two Iraqi doctors who stated that, during late 1994 and up to the summer of 1995, nearly 100 individuals were brought to the hospital where they worked for amputation every week. Indeed, on 9 September 1994, Iraqi television broadcast the amputation and branding of one of the victims of these decrees, 37-year-old ‘Ali ‘Ubaid ‘Ali, who was sentenced to amputation and branding following his conviction of stealing a television set and 250 Iraqi dinars. Iraqi state television broadcast the entire process, including both the amputation and the branding, and showed pictures of the victim’s severed hand.

When these penalties were first announced, Iraqi authorities reportedly stated that individuals subjected to them would be required to pay 600 Iraqi dinars for anaesthetics used during the operation. In cases where the victim could not afford this sum, the operation would have to be carried out without anaesthesia. This is consistent with known Iraqi Government policy in executions, where it has been a long-standing and well-documented practice for the authorities to demand payment from families for the bullets used in the execution. Amnesty International later received reports that President Saddam Hussain had issued an order that individuals sentenced to amputation of the ear would receive anaesthetics free of charge.

In some instances, the penalty of amputation was apparently applied even before the defendant had been brought to trial. For example, Amnesty International received detailed testimony from one individual (name withheld) who was subjected to amputation and branding after he was arrested for desertion from the army in September 1994. He testified that he was taken to a military hospital five days after his arrest, where his ear was severed and his forehead branded without trial. At least ten deserters who were subjected to this punishment testified that they had deserted because they were no longer able to support their families. Among these victims was

⁹E/CN. 4/1997/7, p.5, para.6.

¹⁰UN Commission on Human Rights, Resolution 1997/38; E/CN.4/1997/L.11/Add.3, para. 9.

Hassan ‘Abdullah Hussain, who deserted from the army in December 1994. He was later detained by the Iraqi authorities in Kirkuk and subjected to amputation of the upper part of one ear.

These corporal punishments were usually carried out by medical personnel in public hospitals. However, according to testimony received by the UN Special Rapporteur on Iraq, which was published in his November 1994 report on the human rights situation in Iraq, the number of amputations carried out in Iraq was so great during 1994 that civilian doctors had to be taken directly to the prisons to perform the amputations.¹¹ Health professionals have been forced to perform these operations against their will; those who have refused have become themselves victims of human rights violations. For example, Amnesty International received reports that 60 medical students were arrested in Basra in December 1994 after refusing to carry out the punishments and/or after performing cosmetic surgery on those subjected to them. In September 1994, the Director of the Al-Basra Military Hospital was also arrested and then apparently executed for refusing to carry out the provisions of the decrees prescribing these corporal punishments.

In addition, Amnesty International has received at least ten reports of amputations and branding being carried out by non-medical personnel. A number of individuals subjected to amputation are reported to have died of haemorrhage or infection following the procedure. Other victims are reported to have committed suicide after the amputation.

Article 9: Right to liberty and security of person

I. Arbitrary arrest and prolonged incommunicado detention

Mass arrests of suspected government opponents and their relatives continue to be commonplace in Iraq. Hundreds of arrests of political opponents, including prisoners of conscience, are reported every year, while tens of thousands arrested in the past are believed to be still held without charge or trial. Such arrests are usually carried out without any warrant by security and intelligence forces, often following demonstrations or alleged assassination or coup attempts. The routine practice of holding detainees in incommunicado detention for months or even years means that information about their fate is very difficult to obtain.

Relatives of detainees or suspected opponents who have fled abroad are frequently arrested or placed under house arrest on account of their family links. However, as recently as late 1996, former detainees have told Amnesty International how they were arrested, beaten, tortured and then released without ever knowing the reason for their arrest. In general, relatives of those arrested would not dare to make inquiries about their whereabouts or contact international bodies for fear of suffering a similar fate. When such inquiries are made, Iraqi officials would deny holding the persons in question in their custody, even in cases where there were witnesses to the arrests.

After government forces entered Arbil at the end of August 1996, taking control of the city and ousting forces of the Patriotic Union of Kurdistan, hundreds of suspected government opponents, including prisoners of conscience, were arrested. These included members of the Iraqi National Congress and the Iraqi Communist Party, suspected members of Turkman and Islamist parties and

¹¹A/49/651.

other non-Kurdish political opponents. They were said to be detained in government-controlled areas, but their fate and whereabouts remain unknown.

Hundreds of arrests were reportedly carried out in Baghdad and other cities in connection with an assassination attempt on the President's eldest son, 'Uday Saddam Hussain, in December 1996. The fate and whereabouts of those arrested remain unknown; some of them are feared to have been executed.

The fate and whereabouts of hundreds of detainees arrested in previous years are still not known, and there are fears that they may have been extrajudicially executed while in custody or may have died under torture, which is rife in Iraqi prisons and detention centres (see above). In 1992 several mass graves were uncovered near Arbil, Sulaimaniya and other regions, each containing the remains of scores of Kurdish civilians and combatants who had "disappeared" in custody.

II. "Disappearances"

Since the early 1980s hundreds of thousands of people have "disappeared" in Iraq, and their fate and whereabouts remain unknown to this date. The victims include a wide variety of people and groups: Kurds, Arabs, Turcomans, Assyrians; Sunni and Shi'a Muslims, Christians and others; men, women and children; members of prohibited political parties and their families; military personnel and deserters; disaffected members of the ruling elite; Iraqi nationals returning from abroad to benefit from officially-declared amnesties and others.

In most cases of "disappearances", it is virtually impossible to discover the fate or whereabouts of the victims. The families of the "disappeared" usually remain ignorant of their fate until they are either released or confirmed to have been executed, sometimes after many years have elapsed. The bodies of the victims are sometimes returned to the families, who are forced to pay a fee to cover "state expenses", including the cost of the bullets used in the execution. In the majority of cases, however, the bodies are never returned, and families live for years in hope of seeing "disappeared" relatives who may long since be dead.

Amnesty International has on numerous occasions over the years expressed its concern at the practice of "disappearances" by the Iraqi authorities. The organization has obtained the names of thousands of victims who are still unaccounted for. It is estimated, for example, that over 100,000 Kurdish civilians "disappeared" in 1988 alone, in a space of three to four months, during the so-called Operation Anfal when the Iraqi Government implemented a program of destruction of villages and towns all over Iraqi Kurdistan under the pretext of resettling the inhabitants in areas which offered improved living conditions.

Among the people who "disappeared" on account of their or their relatives' political activities are the seven brothers of al-Hashimi family, Ahmad, 'Abd al-Wahab, Ibrahim, Hussain, Iyad, 'Abd al-Ridha, and Isma'il; they have all "disappeared" since their arrest in Baghdad on 1 October 1980. They were believed to have been arrested as "hostages" in lieu of another brother, Ja'far al-Hashimi, who had fled Iraq and who was wanted by the authorities for his suspected opposition to the Government. Amnesty International issued several appeals on behalf of the al-Hashimi brothers and raised their case with Iraqi authorities in 1993 but to no avail. Their case was also submitted to the UN Working Group on Enforced or Involuntary Disappearances in March 1994. Amnesty International has not received any response from the Iraqi Government regarding this case.

In June 1993, Amnesty International obtained an official document, dated April 1984, containing a list of 58 people, including the names of three of the al-Hashimi brothers, whose properties were being confiscated by the Iraqi Government; it is common practice for Iraqi political detainees or suspected opponents who flee abroad to have their properties and possessions confiscated by the government. This was the first time the authorities had, albeit indirectly, acknowledged the detention of at least three of the brothers.

In April 1997, Amnesty International received confirmation that the eldest of the brothers, Isma‘il, was executed on 3 August 1983. A copy of the death certificate was made available to Amnesty International. Isma‘il al-Hashimi was accused of failing to provide the authorities with information about Ja‘far’s opposition activities. No further information is available on the six remaining brothers.

At the end of 1990-1991 Gulf war, and following the March 1991 uprising by Arab Shi‘a Muslims in the south and by Kurds in the north, serious human rights violations were reported, including “disappearances” and extrajudicial executions. The fate and whereabouts of 106 Shi‘a Muslim clerics and students remain unknown. It is believed that around 12,000 people arrested in connection with the 1991 uprising continue to be detained in al-Radwaniya garrison, south-west of Baghdad. During the same period, when the Iraqi forces pulled out of Kuwait, more than 600 Kuwaiti and other nationals were arrested and taken to Iraq. Despite repeated appeals and international pressure, nothing has been heard of them. The sole exception is Nadia Muhammad al-‘Anaizi, a Kuwaiti woman believed to be one of those arrested in Kuwait and taken to Iraq, who was released by the Iraqi authorities in May 1996.

At the end of August 1996, when Iraqi forces entered the northern city of Arbil, until then under the control of the Patriotic Union of Kurdistan, hundreds of suspected members of opposition groups and their relatives are believed to have “disappeared”. They were reportedly taken to detention centres and prisons in areas under the control of the Iraqi Government.

Amnesty International continues to receive reports of “disappearances” and has raised its concerns on the issue with the Government of Iraq on a number of occasions. So far the Government has failed to clarify the fate of the “disappeared” or take concrete measures to end this practice.

Article 14: Unfair trials

There is no independent judiciary or independent Bar Association in Iraq. Although the Iraqi Constitution stipulates that the Judiciary is independent and subject only to the authority of the law¹², the organization and jurisdiction of the judicial authority are in actual fact subject to the control of the RCC, which frequently promulgates decrees intervening in the judicial process. These decrees have the force of law and are not subject to any judicial control or review. Many of the safeguards provided for in Article 14 of the ICCPR are either lacking or blatantly ignored in practice even for those facing the death penalty or other irreversible punishments.

Over the years, Amnesty International has repeatedly expressed its concern about the persistent violation of the right to a fair trial in Iraq. The basic internationally recognized standards for fair

¹²Article 63, paragraph (a), of the 1970 Constitution.

trial are routinely flouted in Iraqi courts, particularly the special courts which are frequently set up by decision of the RCC to try persons accused of particular offences..

For example, both RCC Decrees 39 (see above) and 111 provide for the trial of defendants accused of capital offences under these Decrees before special courts set up at the Ministries of Interior and Defence, respectively. Amnesty International has in the past raised concerns about these courts, which by their nature lack judicial independence. Article 5 of RCC Decree 111, for example, states that the sentences issued by the special court, which is established in the Ministry of Defence, are final with the exception of death sentences which are only subject to ratification by the Minister of Defence. These unfair trial concerns are particularly disturbing in capital cases, as highlighted in the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, Articles 5 and 6 of which underscore the importance of a fair trial and require an appeal to a higher court for all those facing the death penalty.

Accurate monitoring of such courts is hampered by the lack of public access to their verdicts and sentences. Indeed, in many cases it is not even possible to ascertain whether any kind of judicial process has actually taken place prior to sentencing. In other cases, judicial punishments amounting to torture or to cruel, inhuman or degrading punishments such as amputation were apparently meted out to some individuals even before they were brought to trial (see p.10 above).

The majority of trials conducted before these special courts fall far short of internationally recognized standards for fair trial. The courts' benches usually consist of appointed military, security or intelligence officers or civil servants, who lack adequate training and independence. Access to a government appointed lawyer is severely restricted and occasionally confined to the day of the trial, which is conducted *in camera*. The role of the defence counsel is said to be often restricted to pleading for clemency or reduction of sentence. Defendants charged with capital offences are frequently denied their legal right to call witnesses on their behalf or to submit evidence refuting the charges. Confessions are also extracted under torture, and are often used as the sole basis for conviction.

