



# IRAQ: THE ROAD TO JUSTICE – A LONG WAY TO GO

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC  
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# INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Iraq in November 2019. In it, Amnesty International evaluates the implementation of recommendations made to Iraq in its previous UPR, including in relation to the death penalty, the administration of justice, enforced disappearance, Anti-Terrorism Law Number 13, freedom of peaceful assembly, torture and other ill-treatment and the situation of IDPs.

It also assesses the national human rights framework with regard to the General Amnesty Law w passed in August 2016 and the proposed draft Cybercrime Law.

With regard to the human rights situation on the ground, Amnesty International raises concern about arbitrary arrest, enforced disappearances, the rights of displaced persons, e collective punishment of individuals with suspected affiliation to IS, sexual violence including sexual harassment, rape and sexual exploitation. The organization also raises concerns regarding unfair trials and the death penalty, as well as concerns related to freedom of expression, assembly and association

# FOLLOW UP TO THE PREVIOUS REVIEW

In its previous review, Iraq accepted 175 of the 229 recommendations made to it by other states.<sup>1</sup> The majority of the accepted recommendations are related to women's rights, ratification of international instruments, and rights of the child.<sup>2</sup> Iraq has taken some steps towards implementing recommendations related to women's rights; for example, it is the first country in the Middle East to adopt a National Action Plan on UN Security Council Resolution 1325.<sup>3</sup>

Regrettably, the majority of recommendations that Iraq did not accept are related to the abolition of the death penalty which continues to be applied despite serious flaws in the justice system, which put individuals at risk of unfair trials in death penalty cases.

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Iraq, Addendum (A/HRC/28/14/Add.1), 17 March 2015

<sup>2</sup> Report of the Working Group on the Universal Periodic Review, Iraq (A/HRC/28/14), 12 December 2014

<sup>3</sup> UN Women, Arab States/North Africa, Iraq, <http://arabstates.unwomen.org/en/countries/iraq>

# THE NATIONAL HUMAN RIGHTS FRAMEWORK

Although Iraq is party to numerous international human rights conventions, its failure to uphold human rights obligations on the ground seriously undermines the protection and promotion of human rights in the country. The legislative body in Iraq has also passed laws that undermine human rights.

## THE GENERAL AMNESTY LAW AND THE ANTI-TERRORISM LAW

The parliament passed the General Amnesty Law in August 2016 with the declared aim of “fostering the spirit of tolerance and reform in society”, including by redressing cases of arbitrary detention. The general amnesty for individuals sentenced to prison terms and to death excludes 13 types of crimes, including “terrorist crimes that resulted in death or permanent disability and the crime of destroying state institutions and the crime of fighting against Iraqi armed forces and any other terrorist act, to which he [person to be excluded] contributed through aid, incitement or agreement”.<sup>4</sup> thereby excluding the majority of individuals convicted under the 2005 Anti-Terrorism Law. According to Amnesty International’s findings, individuals convicted under the Anti-Terrorism Law are often sentenced to lengthy prison sentences or the death sentence after grossly unfair trials, and often based on torture-tainted evidence. The General Amnesty Law further stipulates that amnesties are contingent upon plaintiffs or the relatives of the victims withdrawing their complaints. For the 13 excluded crimes, the General Amnesty Law explicitly grants the right to judicial review in cases where individuals were convicted on the basis of “confessions” extracted under duress and in cases where judicial proceedings were initiated on the basis of evidence provided by a secret informant or “confessions” by other suspects.

In practice, this places the burden of proof on defendants and presumes that procedures were respected during the trial, for example that court documents and verdicts registered complaints of torture by the detainees. However, according to information available to Amnesty International, fair trial procedures are often not respected. The organization has documented numerous cases in which the judges dismissed complaints of torture made by defendants, and other cases where the defendants did not raise concerns regarding their treatment for fear of retaliation. Court rulings reviewed by Amnesty International indicate that judges frequently place the burden of proof on defendants and fail to order independent investigations into defendants’ claims of torture and other ill-treatment. The General Amnesty Law does not address these patterns.

In one case documented by Amnesty International, two brothers were sentenced to death in August 2016 under the 2005 Anti-Terrorism Law based solely on “confessions during initial interrogations”<sup>5</sup> and witness testimonies of the complainants according to court documents

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<sup>4</sup> See Amnesty International, ‘*Punished for Daesh’s crimes: Displaced Iraqis abused by militias and government forces*’ (Index: MDE 14/4962/2016; hereinafter: Amnesty International, ‘Punished for Daesh’s Crimes’), Page 53, <https://www.amnesty.org/en/documents/mde14/4962/2016/en/>

<sup>5</sup> Amnesty International, Urgent Action, Sentenced to Death based on ‘Confessions’: Brothers Mahmoud Tale’ Nayef and Taleb Tale’ Nayef (Index: MDE 14/5722/2017) <https://www.amnesty.org/en/documents/mde14/5722/2017/en/>

reviewed by the organization. Both brothers alleged being tortured during the initial interrogations, including beaten with cables, fists, and the butt of Kalashnikov assault rifles, as well as being electrocuted and suspended by their hands from the ceiling for several hours and threatened with rape of their female relatives. The court ignored the brothers' retraction of their "confessions" and sentenced them to death, stating that their retractions "changed nothing".<sup>6</sup> Both brothers remain on the death row.

## THE DRAFT CYBERCRIME LAW

In January 2019, Parliament stated that it had completed the first reading of a draft cybercrime law.<sup>7</sup> This had been drafted in 2011 but was withdrawn in 2013 following an outcry from civil society that the vague wording of the law risked imposing restrictions on freedom of expression, including imposing a life sentence or a hefty fine. However, despite these concerns, no substantial changes were made to the draft law.<sup>8</sup> If passed in its current form, the cybercrime law could potentially grant the authorities significant powers to curtail freedom of expression, despite this right being guaranteed in Article 38 of the 2005 Constitution and in the International Covenant on Civil and Political Rights, to which Iraq is a party since 1971.

# HUMAN RIGHTS SITUATION ON THE GROUND

Since the outbreak and escalation of the conflict involving the armed group calling itself "Islamic State" (IS) in mid-2014, Iraq has faced major security challenges in which civilians have borne the brunt. Throughout the armed conflict, serious violations of human rights and international humanitarian law have been committed by all parties to the conflict, including war crimes and crimes against humanity.

The Iraqi authorities have continued to reject allegations of serious violations of human rights and international humanitarian law, both in the context of the conflict involving IS and elsewhere, as documented by Amnesty International and other international human rights NGOs. In some instances, the authorities have set up committees to investigate violations committed during certain military operations in the context of the armed conflict involving IS. However, the findings by these committees are rarely made public despite repeated requests, including by Amnesty International. Some of the committees have included security bodies which themselves may have been implicated in the human rights violations. Amnesty International is concerned that, as a result, witnesses have been reluctant to come forward out of fear for their safety. This has also led to a lack of trust by witnesses and victims and their relatives in the ability of the authorities to investigate the human rights violations.

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<sup>6</sup>Amnesty International, Urgent Action, Sentenced to Death based on 'Confessions': Brothers Mahmoud Tale' Nayef and Taleb Tale' Nayef (Index: MDE 14/5722/2017) <https://www.amnesty.org/en/documents/mde14/5722/2017/en/>

<sup>7</sup> Council of Representatives, Cybercrimes Law, First Reading, 12 January 2019, <https://bit.ly/2TXwuzX>

<sup>8</sup> Amnesty International, *Iraq: Fist around freedom of expression tightens* (Index: MDE 14/9962/2019), <https://www.amnesty.org/en/documents/mde14/9962/2019/en/>

## **ARBITRARY ARRESTS AND ENFORCED DISAPPEARANCES**

In the context of the armed conflict involving the IS, thousands of men and boys fleeing IS-held areas have been subjected to arbitrary arrest and enforced disappearance after arriving, either with their families or alone, at screening sites overseen by the Iraqi forces, including the Popular Mobilization Units (PMU) and Kurdish forces. All males considered to be of fighting age (roughly 13 to 65) are separated from their families to undergo screenings and interrogations to determine their involvement with IS. Iraqi forces, including the PMU, have also regularly arrested and forcibly disappeared men with perceived IS ties from camps for internally displaced persons (IDPs).

These basic screening processes are used to determine a person's possible affiliation with IS based primarily on whether their name appears on "wanted lists" compiled on the basis of publicly available information about IS members and on information provided by informants and members of the community. Those screened were arrested if their name was similar to a name on the "wanted lists." Amnesty International is concerned that these screening processes lack judicial oversight and fail to adhere to due process and basic safeguards to prevent ill-treatment.

The families of those arrested following the screenings were not told where their relatives had been taken or how they could communicate with them. Since then, the families have been searching for their relatives and many have reported that state agents deny holding them or refuse to provide information about their whereabouts. Amnesty International considers that these cases amount to enforced disappearances.<sup>9</sup>

According to documentation gathered by Amnesty International and other human rights organizations, some of those subjected to arbitrary arrest and enforced disappearance may have been extrajudicially executed while others may have entered a vast network of official and unofficial detention centres where they are routinely subjected to torture and other ill-treatment with the aim of extracting "confessions" of affiliation with IS.

## **DISPLACEMENT AND COLLECTIVE PUNISHMENT OF INDIVIDUALS PERCEIVED TO BE AFFILIATED WITH IS**

There has been an unprecedented scale of displacement since the 2014 takeover by IS of large parts of Iraq and millions of Iraqis have been displaced from their areas of origin. By September 2018, humanitarian organizations recorded that more than four million IDPs had returned to their areas of origin.<sup>10</sup> However, almost two million people remain displaced. The IDPs cite several reasons for not being able to return home, including damage and destruction of their homes; lack of job opportunities, basic infrastructure and public services, including health care; and insecurity due to unexploded ordnances, improvised explosive devices, arbitrary arrests, harassment and intimidation by armed people, and in some cases fear about a new insurgency by IS.<sup>11</sup>

Women and children with perceived ties to IS remain displaced in camps across Iraq - isolated, trapped and exploited. They have been denied food, water and health care, prevented from returning to their home areas, and unable to obtain documentation needed to work and move

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<sup>9</sup> When a person is arrested, detained or abducted by a state or state agents, who then deny that the person is being held or conceal their whereabouts, placing them outside the protection of the law. Enforced disappearance is in itself a crime under international law and places individuals at grave risk of extrajudicial execution, torture and other gross human rights violations.

<sup>10</sup> UN News, Iraq milestone: Some four million people return home, displacement drops to four-year low, 4 September 2018, <https://news.un.org/en/story/2018/09/1018282>

<sup>11</sup> Amnesty International, *Human Rights in Iraq: Review of 2018* (Index: MDE 14 14/9901/2019), <https://www.amnesty.org/en/documents/mde14/9901/2019/en/>

freely, which have rendered them in de facto detention. Displaced women with perceived ties to IS have been subjected to sexual harassment, rape and sexual exploitation at the hands of armed actors operating in the camps, camp authorities and others in positions of authority.<sup>12</sup> These women and children have been subjected to serious human rights violations and collective punishments. They have been stigmatized and punished for factors outside their control, including being related, however distantly, to men who were somehow involved with IS, or for fleeing from areas believed to be IS strongholds.

## UNFAIR TRIALS AND THE DEATH PENALTY

Since Iraq's previous UPR in 2014, unfair trials have been rampant and often lead to the imposition of the death penalty.

Hundreds of individuals have been convicted in unfair trials based on "confessions" obtained under torture or other ill-treatment, which the defendants have later retracted in court, or based on televised "confessions", or on information obtained through informants whose identities are not revealed and whose testimony can therefore not be challenged by defendants, in total disregard of international fair trial standards.

Despite such flagrant violations of the right to due process, the authorities continue to pass death sentences and to carry out executions. Since the last UPR, at least 300 individuals have been executed and at least a further 337 individuals have been sentenced to death.

The authorities increasingly resort to the death penalty in combating terrorism-related activities. In July 2016, following the execution of five individuals in response to a bombing that killed over 300 civilians in a busy shopping area of Baghdad, the Minister of Justice "categorically rejected" any international interference in the execution.<sup>13</sup> In June 2018, the then Prime Minister called for the swift execution of convicted "terrorists" whose death sentences had been confirmed. His call came in reaction to the killing of six members of the Iraqi security forces by IS fighters following their abduction by IS earlier that month. The Ministry of Justice subsequently confirmed that 13 people had been executed.<sup>14</sup>

A Special Committee was established in the Presidency Office in 2015 to address a backlog of about 500 death sentences and to speed up executions while ensuring that there were no procedural deficiencies or unaddressed torture allegations.<sup>15</sup> The deliberations of the Special Committee are not made public and it regularly confirms death sentences after these reviews. The annual number of executions puts Iraq on the list of the world's top executing countries.

Since the 2014 UPR, the Kurdistan Region of Iraq carried out three executions in 2015.<sup>16</sup> These three executions were the first and only executions in the Kurdistan Region since 2008. While the courts have continued to hand down death sentences, the Region has mostly observed a de facto moratorium on executions.

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<sup>12</sup> Amnesty International, *The Condemned: Women and Children Isolated, Trapped and Exploited in Iraq* (Index: MDE 14/8196/2019), <https://www.amnesty.org/en/documents/mde14/8196/2018/en/>

<sup>13</sup> Ministry of Justice, Statement from the Ministry of Justice, 4 July 2016, <https://www.moj.gov.iq/view.2459>

<sup>14</sup> Amnesty International, *Retaliatory executions do not amount to justice for victims of 'Islamic State'*, <https://www.amnesty.org/en/latest/news/2018/06/iraq-vengeful-executions-will-not-bring-justice-to-victims-of-is/>

<sup>15</sup> Amnesty International, Punished for Daesh's Crimes (Index: MDE 14/4962/2016), Page 53

<sup>16</sup> Amnesty International, The resumption of executions in the Kurdistan Region of Iraq is a step backwards (Index: MDE 14/2337/2015) <https://www.amnesty.org/en/documents/mde14/2337/2015/en/>



## **FREEDOM OF EXPRESSION, ASSOCIATION, AND ASSEMBLY**

Since late July 2015, protesters have been gathering regularly in Baghdad and across other southern governorates, calling for government reform and an end to corruption. Corruption is cited as the root cause of unemployment and the lack of public services such as water, electricity and medical services. There have also been largely peaceful protests against a series of bombings targeting majority-Shi'a neighbourhoods and calling for accountability.

In dispersing these protests, the security forces have used excessive force, including teargas, stun grenades, rubber bullets and live ammunition, injuring and killing both protesters and bystanders in Baghdad and cities in the southern governorates. They have also arrested and detained protesters and subjected them to beatings and other ill-treatment, including electric shocks. During large outbreaks of protests, the authorities have also disabled or limited access to the internet in what activists claim to be an attempt to prevent protesters from sharing images of human rights violations by the security forces in dispersing peaceful protests, including through the use of live ammunition.

In July 2018, the security forces arbitrarily arrested and detained protesters in Baghdad. They beat and used electroshock devices against the protesters and interrogated them and forced them to sign papers without disclosing their contents, before releasing them.<sup>17</sup>

In September 2018, the security forces, including SWAT (Special Weapons and Tactics) forces, killed over a dozen protesters and injured hundreds of others in Basra when they used excessive force, including live ammunition and tear gas, to disperse protesters demanding employment opportunities and better public services. The security forces chased the protesters as they fled the scene and, according to witnesses, trapped them and beat them with metal rods and rifle butts and used electroshock devices against some of them. They also assaulted and detained some of the journalists covering the protests, on the pretext that they had filmed security measures being taken around government buildings or had blocked the roads.<sup>18</sup>

The security forces often fail to give verbal warnings prior to using force or to conform to international policing standards to protect the rights to life and security of person.<sup>19</sup> Under international law, security forces can only use force where it is legal, necessary and proportionate to do so. This means lethal force can only be applied in order to address an imminent threat of death or serious injury.

In October 2018, the authorities ordered an investigation into the violence that occurred during the protests in Basra; however, to date, the findings have not been made public. However, the authorities have dismissed and replaced a number of security and local government officials.

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<sup>17</sup>Amnesty International, Iraq: Security forces deliberately attack peaceful protesters while internet is disabled, 19 July 2018, <https://www.amnesty.org/en/latest/news/2018/07/iraq-security-forces-deliberately-attack-peaceful-protesters-while-internet-is-disabled/>

<sup>18</sup> Amnesty International, Iraq: Effective investigations needed into deaths of protesters in Basra (Index: MDE 14/9055/2018), <https://www.amnesty.org/en/documents/mde14/9055/2018/en/>

<sup>19</sup> Amnesty International, Iraq: Government should investigate violence at Baghdad protests (Index: MDE14/4093/2016) <https://www.amnesty.org/en/documents/mde14/4093/2016/en/>

# RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

## AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF IRAQ TO:

### NATIONAL HUMAN RIGHTS FRAMEWORK:

- Ensure that draft laws that contravene Iraq's national and international human rights obligations are not introduced in parliament and withdraw any such draft laws that may already have been introduced;
- Uphold and protect the rights to freedom of expression and assembly as guaranteed in international human rights law and in Iraq's Constitution, and promptly investigate human rights violations against protesters.

### ARBITRARY ARRESTS AND DETENTION

- Ensure that those deprived of their liberty are held in officially recognized and supervised places of detention, have immediate access to their families and lawyers, and are registered in a central register of detainees accessible to their lawyers and families upon request and without delay;
- Inform the families of the fate, whereabouts and legal status of all persons in their custody and respond to any outstanding requests for such information;
- Ensure that detainees are able to communicate with their families and to inform them of their place of detention;
- Recognize the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-state communications under Articles 31 and 32 of the International Convention for the Protection of all Persons against Enforced Disappearance.

### COLLECTIVE PUNISHMENT

- Preserve the civilian and humanitarian character of IDP camps, including by preventing all armed actors, including security guards, military and militia personnel, from entering the camps, in line with the Prime Ministerial Directive of 3 April 2017;
- Hold the perpetrators of sexual violence, including rape and exploitation, accountable through effective investigation and, where sufficient admissible evidence of criminal wrongdoing is found, prosecution of suspects in fair trials and without recourse to the death penalty;
- Issue a public statement making clear that all Iraqi families are entitled to obtain civil documentation regardless of their relatives' perceived affiliation with IS;
- Ensure that all Iraqi civilians are able to voluntarily return to their places of origin or habitual residence and do not face threats or harassment by Iraqi forces, tribal authorities, local authorities or militias.

### UNFAIR TRIALS AND THE DEATH PENALTY

- Ensure that Constitutional provisions and laws prohibiting torture are effectively implemented, including the inadmissibility in court of statements obtained under torture;

- Immediately establish an official moratorium on executions and commute all death sentences with a view to abolishing the death penalty;
- Accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolishing the death penalty.

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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