

# IRAQ

## State cruelty: branding, amputation and the death penalty

### 1. INTRODUCTION

In 1994, the Revolutionary Command Council (RCC), Iraq's highest executive body, introduced a series of decrees which called for amputation of hands and ears, branding of the forehead and execution for at least 30 criminal offences. These punishments were first introduced in April 1994, apparently in response to the rising crime rate resulting from worsening economic conditions in Iraq. The economic sanctions against Iraq imposed by a UN Security Council cease fire resolution in April 1991 remained in force.<sup>1</sup> Between April and September of that year, the RCC promulgated 15 such decrees for offences ranging from theft in certain circumstances and the monopolisation of rationed goods, by hoarding or refusing to sell, to desertion from the military and purchase of foreign currency from non-licensed bureaux.

On 18 January 1996, according to a report by Reuters news agency, Justice Minister Shabib al-Maliki stated that Iraq had abolished several laws curbing the freedom of citizens, and that the decree covering the amputation of ears was "null and void". He also said penalties such as amputation of hands and branding of the forehead had been stopped and would be officially abolished. However, there have been no reports to date to confirm or refute his statements. While there have been no reports of amputations and brandings since late last year, executions of political opponents continue, and the RCC has not to date officially abolished or changed the 1994 decrees.

On 17 March 1996, the Iraqi News Agency reported that President Saddam Hussain had ordered an end to the practice of ear amputations for army desertion and the release of hundreds of army deserters and evaders. There has been no known official decree issued to that effect.

Amnesty International had meanwhile received reports of hundreds of individuals who have been subjected to such punishments. Indeed, Iraqi television broadcast the amputation and branding of one of the victims of these decrees, 'Ali 'Ubaid 'Abd 'Ali, who was sentenced to amputation and branding following his conviction for theft (see below). Individuals subjected to these punishments have in the past allegedly been forced to pay the sum of 600 Iraqi dinars for anaesthetics used during the operation. Some individuals sentenced under these decrees have reportedly had their sentences reduced after paying officials unspecified sums of money. Amnesty International has received reports of several individuals whose sentences of amputation were reduced to 50 lashes following payments to the Iraqi authorities.

These judicial punishments are unprecedented in Iraqi legislation.

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<sup>1</sup>Amnesty International takes no position on the use of economic sanctions by the international community.  
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Although Iraq has a secular judicial system, Iraqi authorities have defended the introduction of these punishments by stating that they are prescribed by *Shari'a* (Islamic) law. In Amnesty International's opinion, these punishments constitute torture or cruel, inhuman or degrading treatment.<sup>2</sup>

In July 1995, after many of these punishments had been carried out, the RCC announced two amnesties which, it appeared, would have a significant impact on the implementation of these punishments. However, both amnesties included a number of exclusion clauses and time limitations on applicability which minimized their effect. Furthermore, Amnesty International remains concerned that through these amnesties the Iraqi Government may have been attempting to bring suspected political opponents out from hiding or back into the country. The organization has documented several previous amnesty declarations following which hundreds of those who came forth to take advantage of the amnesties later "disappeared" in custody, or were tortured or executed.<sup>3</sup>

Amnesty International's concerns regarding the overall human rights situation in Iraq have repeatedly been placed on public record. The organization has documented gross human rights violations committed on a massive scale throughout the 1980s and 1990s in Iraq. These violations have included the detention of tens of thousands of suspected government opponents and their relatives; widespread torture and ill-treatment, often resulting in deaths in custody; the "disappearance" or extrajudicial execution of hundreds of thousands of people - including whole communities - for political reasons, and the widespread use of the death penalty for numerous criminal and political offences after unfair trials. The Iraqi Government has sanctioned mass killings and torture as a matter of policy and violated its obligations under international law as a state party to the International Covenant on Civil and Political Rights (ICCPR).

## 2. AMPUTATIONS

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<sup>2</sup>The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons".

<sup>3</sup>See Amnesty International's report, *Iraqi Kurds: At risk of forcible repatriation from Turkey and human rights violations in Iraq* (AI Index MDE 14/06/90).

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### **2.1 Decree 59: Amputation of the hand/foot for theft**

On 4 June 1994, the RCC passed Decree 59, which prescribed amputation of the right hand at the wrist for offenders convicted of the theft of items valued in excess of 5,000 Iraqi dinars, and amputation of the left foot on conviction of a second theft. Amnesty International has in the past documented the use of mutilation, including the amputation of ears and limbs, both as torture to extract information and as punishment by Iraqi military personnel, security forces and intelligence officials. However this decree was the first known legislation of such penalties.

The potential scope of Decree 59 is vast. The Minister of Trade, Muhammad Mahdi Salih, was reported in the state-owned Iraqi newspaper *Al-Jumhuriya* on 6 July 1994 as having stated that this decree could, for example, allow for the amputation of the hand of bakers who did not follow government guidelines regarding the production of flat bread and loaves.

### **2.2 Decree 115: Amputation of the ear and branding for army desertion**

Articles 1 and 2 of Decree 115, which was passed on 25 August 1994 and came into effect following its publication in the 12 September 1994 edition of the *Official Gazette*, state:

"1. The auricle of one ear shall be cut off any person committing the following crimes:

- (a) defaulting from military service
- (b) deserting from the army
- (c) sheltering a defaulter or deserter and providing cover for him

2. The auricle of the other ear shall be cut off in the case of a second offence involving any of the crimes specified in Article 1 of this decree."

In practice, the implementation of this decree appears to have been modified and, while some deserters have been subjected to the amputation of the entire outer ear, others have had only the upper portion removed.

The decree further stated that legal proceedings against army deserters and defaulters would be halted if they turned themselves in to the authorities within seven days of the date of the decree, or within one month if they were outside Iraq. Article 8 of the decree states that its provisions shall also apply to defaulters and

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deserters who committed these crimes at a date prior to the issuing of the decree and who fail to surrender within the time period specified.

Both amputation of the hand and severing of the ear were to be accompanied by branding of the forehead. Amnesty International believes that these decrees contravene Iraq's obligations 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". According to Article 5 of the United Nations Committee General Comment 20, corporal punishment is a violation of ICCPR Article 7. Although Iraq is not a state party to the UN Convention Against Torture, these judicial punishments contravene its obligations under its Unilateral Declaration against Torture or Other Cruel, Inhuman and Degrading Treatment or Punishment which Iraq made on 3 September 1979. In addition, torture is prohibited by Article 22 (a) of the Iraqi Constitution and by Article 127 of the Iraqi Code of Criminal Procedure. The penalties are also prohibited internationally by the Universal Declaration of Human Rights (UDHR).

When these penalties were first announced, Iraqi authorities reportedly stated that individuals who were to be subject to them would be required to pay 600 Iraqi dinars for anaesthetics used during the operation. In cases where the individual was unable to pay this sum, the penalties would still be carried out, but without the benefit of anaesthesia. This is consistent with known Iraqi Government policy in executions, where it has been a longstanding 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 without charge.

Since the issuing of these decrees in 1994, Amnesty International has received numerous reports of their implementation. In late June 1994, the organization learned that two men convicted of stealing carpets from the Bahriz al-Kabir mosque had been sentenced to amputation of the hand by the Criminal Court in Diyala. The sentences were subsequently carried out in July 1994.

Amnesty International has also received information regarding an alleged army deserter who was arrested in September 1994. He was detained in a military prison, where he had one ear severed in punishment for his desertion. He was released from prison after his family paid an unknown sum of money to the Iraqi authorities. Since that time, he has left Iraq and sought asylum abroad.

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In Article 6 of Decree 115, desertion is defined as "any person who absents himself from his military unit for more than 15 days without legitimate reason". At least ten deserters have testified that they deserted because they were no longer financially able to support their families; others defaulted by evading call-up for similar reasons. Hassan 'Abdullah Hussain, who deserted from the army in December 1994 when he was no longer able to support his family, was later detained by Iraqi authorities in Kirkuk, and was subjected to amputation of the upper part of one ear.

In addition to amputation and the accompanying branding, individuals who have been sentenced to these penalties were subjected to further hardships and penalties. Article 3 of Decree 117 of 25 August 1994 (detailed below) states:

"The penalty imposed on anyone punished by amputation of the hand or ear and branding shall be registered in the civil status identity card, the certificate of nationality, the military service record and other official documents establishing identity."

They are also subjected to reduction of rations. Furthermore, in some instances deserters who have been punished in this manner are relocated with their families to living areas designated for deserters. Article 3 of this decree stipulates that:

"references to the penalty of amputation of the hand or ear and branding shall be deleted from the convicted person's civil and criminal records if he performs a witnessed nationalistic or heroic deed."

Amnesty International has received testimony from two Iraqi doctors (names withheld)<sup>4</sup> who stated that nearly 100 individuals were taken to the hospital where they worked for amputation every week during late 1994 and up to the summer of 1995. These individuals were often dragged into operating theatres, where part or all of the outer ear was removed. They were then taken from hospital, apparently without adequate follow-up care, despite severe bleeding in many instances and the high risk of infection.

According to testimony received by the UN Special Rapporteur on Iraq,<sup>5</sup> the number of amputations being carried out in Iraq was so great

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<sup>4</sup>Some names of individuals are withheld in this document to protect their safety.

<sup>5</sup>Published in his November 1994 report on the human rights situation in Iraq (A/49/651).

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during 1994 as to necessitate civilian doctors being taken directly to the prisons to perform the amputations. In addition, Amnesty International has received at least ten reports of amputations and branding being carried out by non-medical personnel. For example, one victim testified to AI delegates that his amputation and branding had been performed by non-medical members of the military.

A number of individuals subjected to amputation are reported to have died following the procedure. Two men from the city of Nasiriyah (names withheld) died ten days after they had their ears severed in a military hospital, reportedly following general infection (as documented in the Special Rapporteur's November 1994 report). Other victims haemorrhaged severely and one such victim is reported to have died from loss of blood. A victim (name withheld) whose ear was amputated told Amnesty International of the cases of ten individuals who had been sentenced to amputation of the hand; seven of these had reportedly died as a result of subsequent infection. Amnesty International has also received information about individuals who committed suicide after the amputation, including ten army deserters who reportedly committed suicide on 10 September 1994 in a military camp in Diyala province following the severing of their ears. According to Human Rights Watch/Middle East,<sup>6</sup> their wounds had become infected, and they could not obtain medical care.

In some instances, it appears that the penalty of amputation has been applied even before the defendant had been brought to trial. 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 military in September 1994. According to his testimony, he was taken to a military hospital five days after his arrest, where his ear was severed and his forehead branded. He had not been brought to trial.

Amnesty International has received reports of dozens of other individuals who were subjected to amputation of the ear in the months following the announcement of Decree 115. Sa'id (full name withheld) stated that he was tied to a bed and his outer ear was then cut off with a razor. The doctor who performed the amputation then took a pair of scissors and trimmed the site of amputation. Amnesty International has received the names of at least ten more people subjected to the same penalty in late 1994 and up to the summer of 1995.

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<sup>6</sup>See Human Rights Watch/Middle East's report, *Iraq: Iraq's Brutal Decrees: Amputation, Branding and the Death Penalty*, Vol. 7, No. 3, June 1995.  
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### **2.3 Amnesty of July 1995**

On 23 July 1995 the RCC issued Decree 61, which provided an amnesty for individuals imprisoned for a variety of offences. Article 3 of this decree stated that those sentenced to amputation of the hand shall be exempted from the punishment if they have already served two years of detention. Article 8 said that legal proceedings against deserters, defaulters or evaders of military service shall be halted if the offender turns himself in to the authorities or if the offender was arrested before the decree came into effect. Those wishing to take advantage of Article 8 were required to hand themselves over to the authorities within two weeks of its announcement if they were inside Iraq and within one month of this date if they were outside Iraq. Decree 61 excludes a number of crimes from the amnesty, including bribery, embezzlement or theft of public funds, and drug offences. However, due to the restricted time frame within which individuals could apply for this amnesty, and to the large number of crimes which are excluded from it, Amnesty International remains concerned that only a few people are likely to have benefited from the amnesty, and that the Iraqi Government may have been attempting to bring suspected political opponents out of hiding.

### **3. BRANDINGS**

On 18 August 1994, the RCC promulgated Decree 109 (published in the *Official Gazette* on 29 August 1994), Articles 1 and 2 of which state:

"1. Any person whose hand has been amputated for a crime punishable thus by law shall be branded between the eyebrows with an "X" symbol, each line measuring 1 centimetre in length and 1 millimetre in width.

2. The branding shall be carried out in the public hospital where the amputation was performed."

The RCC further declared that this decree would be retroactive, and would apply to those whose hands were amputated before Decree 109 went into effect. This decree is in violation of ICCPR Article 15 which states that "nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed".

In addition, Article 3 of Decree 115 of 25 August 1994 states that a horizontal line measuring 1 millimetre in width and no less than 3 centimetres in length will be branded on the forehead of all those whose ear has been amputated for evasion of military service or

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desertion.

In Amnesty International's opinion, the practice of branding constitutes torture and cruel, inhuman or degrading treatment. Torture is prohibited by the Iraqi Constitution and by the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture). The Iraqi Government stated as far back as 1979 that it would comply with the Declaration against Torture and that it intended "to continue the implementation, through its national legislation and other effective measures, of the provisions of the said Declaration".<sup>7</sup>

Amnesty International has documented the cases of several individuals who have been sentenced to branding in Iraq, including at least three who were subjected to hand amputation and branding. On 9 September 1994, Iraqi television broadcast the amputation and branding of 37-year-old 'Ali 'Ubaid 'Abd 'Ali. He had been convicted earlier of the theft of a television and of 250 Iraqi dinars. Iraqi state television broadcast the entire process, including both the amputation and the branding. The newscast also featured pictures of the severed hand.

In another instance, Amnesty International received a report of at least one individual who was subjected to the branding of a straight line on his forehead after his ear was severed under Decree 115.

#### **4. THE INVOLVEMENT OF HEALTH PROFESSIONALS IN JUDICIAL PUNISHMENTS**

Both amputations and branding have been carried out in hospitals, and health professionals have been forced to perform these operations against their will. This is not the first instance in which medical personnel have been coerced by the Iraqi authorities to perform unethical acts. Health professionals have testified that they have been forced to falsify death certificates for prisoners who were in fact executed and to record false dates of birth for juveniles who had been sentenced to death. The recent decrees, in particular Decree 96 of 28 July and Decree 109 of 18 August 1994 (see below), make it clear that the Iraqi authorities continue to force health professionals to perform unethical activities, in the face of discontent among professionals (see below).

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<sup>7</sup>See "Report on the situation of human rights in Iraq", prepared by Max van der Stoep, Special Rapporteur for Iraq of the Commission on Human Rights (E/CN.4/1992/31).



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Decree 96 of 28 July 1994 (published in the *Official Gazette* of Iraq on 1 August 1994) and Decree 109 state that amputations and brandings shall be carried out in a public hospital and that the public hospital shall be equipped with the necessary tools to facilitate the branding operation. In his 1994 report on the human rights situation in Iraq, the UN Special Rapporteur on Iraq commented on the forced involvement of health personnel in amputations and brandings, describing "the entire application of the amputation punishments as a gross violation of human rights", and stating that resources were being shifted "away from health-related applications in order to implement disabling and disfiguring punishments".<sup>8</sup>

On 25 August 1994, the RCC introduced Decree 117, which prohibited the removal of brand marks from the forehead of offenders as well as any form of cosmetic surgery on an amputated hand or ear. Individuals found guilty of violating this decree would themselves be punished by the amputation of a hand or ear in addition to branding of the forehead. According to the UN Special Rapporteur on Iraq, health professionals employed by the military are under even greater pressure than civilian doctors to perform amputations and brandings, as refusal to carry out these operations can result in imprisonment or possible execution in addition to the penalties prescribed by the RCC. Following the announcement of Decree 115 on punitive ear amputation and branding in August 1994, a protest strike was called by several hundred doctors. However, this strike was called off after Iraqi authorities reportedly threatened doctors with imprisonment and execution.

Medical professionals who have refused to implement these decrees have themselves become victims of human rights violations. Amnesty International has received reports of the arrest and detention of scores of health professionals who have refused to carry out the operations. According to these reports, 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, Drs. Amjad al-Timimy and Hatim 'Abd al-Waheed of al-Kadhimiyya General Hospital were arrested; Sami Hashim al-Jawmaily, from Baghdad's Ahli Hospital, was also detained that same month. At around the same time, the Director of the Al-Basra Military Hospital was arrested and then apparently executed for refusing to carry out the provisions of the decrees. According to the Human Rights Watch/Middle East report, a doctor in Nasiriyah at Saddam Hospital was executed for refusing to perform amputations. Amnesty

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International has received reports of the detention of a number of other health professionals who were detained due either to their refusal to implement the punishments or for having performed cosmetic surgery on victims. Among these professionals are 'Abbas Qalander and Nahrain Yusuf.

The involvement of medical professionals in these judicial punishments contravenes internationally accepted norms of medical ethics, including the World Medical Association's Declaration of Tokyo, the International Council of Nurses' statement on Nurses and Torture and the UN Principles of Medical Ethics. Article 2 of the UN Principle of Medical Ethics states:

"It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment."

## 5. EXPANSION OF THE USE OF THE DEATH PENALTY

The death penalty in Iraq initially covered a wide range of criminal and political offences. A number of the new decrees widened the scope of the death penalty even further, covering at least 18 new offences. The first such decree issued by the RCC was Decree 39 of 2 April 1994, published in the *Official Gazette* on 11 April 1994. The decree summarized a number of offences as committing "sabotage of the national economy", including:

- removing medicines and medical equipment illegally from public facilities;
- forging official documents pertaining to medicines and medical equipment in order to hide the illegal use of such equipment or medicines;
- possessing medicines and medical equipment with intent to trade in these items;
- possession of medicines and medical equipment by non-governmental health institutions if they are obtained from non-official sources.

The penalty stipulated in this decree is death or life imprisonment, with a fine ranging between 10,000 and 100,000 Iraqi dinars. The personal assets of the offender are also to be confiscated.

On 21 July 1994, the RCC declared in Decree 92 that individuals found

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guilty of the forgery of an official document which results "in illegal gain or depriving others of their rights" shall be executed. Later that same month, the RCC issued Decree 95 of 27 July 1994, which prohibits the smuggling of cars, lorries or certain items of construction equipment out of Iraq. This was deemed to be a capital offence. This is inconsistent with international human rights law which requires that "sentence of death may be imposed only for the most serious crimes" (ICCPR Article 6).

A number of crimes specific to members of the military were also declared capital offences. Decree 91 of 21 July 1994 (published in the Official Gazette on 1 August 1994), states that military personnel who use their position as members of the armed forces to commit a premeditated crime normally punishable by not less than 15 years' imprisonment shall be sentenced to life imprisonment. However, if the accused is a member of the internal security force or the special security forces, he shall be sentenced to death. A month later, the RCC passed Decree 111 of 23 August 1994, which established a special court in the Ministry of Defence to hear cases regarding specific crimes committed by military personnel and punishable by death sentence or life imprisonment. Article 2 of this decree states:

"The court shall be competent to hear the following offences committed by military personnel:

1. Offences involving theft or embezzlement of funds or material belonging to the armed forces
2. Offences involving the falsification of documents concerning military service affairs
3. Offences involving bribery in a manner detrimental to the public interest."

It is of particular concern that Decrees 39 and 111 call for the trial of the defendant before special courts at the Ministries of the Interior and Defence, respectively. Amnesty International has raised concerns about these courts in the past, for by their nature such courts would lack judicial independence. Defendants in such courts are reportedly denied any right to appeal and it is evident that trials before these courts do not meet international standards for fair trial, including Article 14 of the ICCPR. These fair 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 provide for fair trial and appeal for those sentenced to death.

In some decrees, a sentence of death is mandatory when the offence is

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committed under specific circumstances. For example, according to Decree 59, individuals who have committed theft for the third time are subject to execution. Decree 76 of 29 June 1994, which prohibits the smuggling of antiquities, states that if the crime is committed on an archaeological site or on a large scale, the perpetrator shall be sentenced to death. Similarly, Decree 115 calls for the execution of those who have defaulted, deserted or evaded military service on three occasions.

Article 7 of Decree 61 of 23 July 1995 states that all death sentences handed down before the decree came into effect should be reduced to life imprisonment. The decree however, contains a large number of exclusion clauses to this reduction of sentence covering specific offences which include drug offences, embezzlement and adultery. Amnesty International remains concerned that Iraqi authorities may be attempting to bring deserters and government opponents out of hiding in order to penalize them.

## 6. RECOMMENDATIONS

While Amnesty International welcomes the statement made by the Minister of Justice, Shabib al-Maliki, in January 1996, and President Saddam Hussain's reported orders to end the practice of ear amputations for army desertion and to release hundreds of army deserters and evaders, official confirmation is still pending. Amnesty International urges the Iraqi Government to implement the following recommendations urgently as a means of improving the human rights situation in Iraq.

**6.1 Abolish the penalties of amputation and branding.** Iraq should immediately and officially abolish the penalties of amputation and branding, which violate both the international law and standards to which Iraq has bound itself, as well as Iraqi law itself, which under Article 22(a) of the Iraqi Constitution and Article 127 of the Iraqi Code of Criminal Procedure prohibits torture.

**6.2 Commute all death sentences.** Amnesty International opposes the death penalty unconditionally, in all cases and in all countries, as the ultimate form of cruel, inhuman and degrading treatment and a violation of the right to life as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments.

**6.3 Review legislation regarding the death penalty.** It is

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unacceptable that Iraq should be introducing new decrees increasing the scope of the death penalty. It should instead be working towards reducing the number of crimes punishable by death. In particular, these recent increases in the scope of the death penalty involve a further violation of international law, which requires that "sentence of death may be imposed only for the most serious crimes" (ICCPR Article 6). They are also contrary to the UN resolution which states that emphasis should be placed upon limiting the scope of the death penalty pending its abolition (UN General Assembly resolution 32/61 of 8 December 1977).

**6.4 Provide compensation for victims, or for the families of victims.** The Iraqi Government should offer compensation to victims of these cruel, inhuman and degrading punishments, or to the families in circumstances where individuals have died as a result of amputation or branding.

**6.5 Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, and the 2nd Protocol to the ICCPR.** Although Iraq has ratified the ICCPR, it should now expedite steps to ratify additional instruments, such as the Convention against Torture, and the 2nd Protocol to the ICCPR, and bring law and practice into full conformity with them.**TABLE OF CONTENTS**

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