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Iraq

Submission to the UN Universal Periodic Review

**Seventh session of the UPR Working Group of the
Human Rights Council**

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Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

Under section B, Amnesty International raises concerns over shortcomings in national legislation and national institutions to promote and protect human rights.

Section C highlights Amnesty International's concerns about human rights violations, specifically the extensive use of the death penalty, prolonged detention without charge or trial, torture and other ill-treatment, and unfair trials.

In section D, Amnesty International makes a number of recommendations for action by the government in each of these areas of concern.

¹ Contained in *Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1*, section I adopted 27 September 2007.

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B. Normative and institutional framework of the state

National legislation

In recent years the Iraqi authorities have introduced new laws and proposed amendments to others while also retaining legislation dating from the period before 2003. A permanent Constitution was approved by national referendum in October 2005, but the Council of Representatives (the parliament) is now planning to amend some of its provisions.

The 1969 Penal Code and the 1971 Code of Criminal Procedures have also been amended. In August 2008 Iraq ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and in November 2008 parliament passed a law to establish a national High Commission for Human Rights; however, by August 2009 this had yet to be established and the provisions of CAT had not been incorporated into national law. Many laws still require amendment if they are to conform to international human rights standards, and Iraq has yet to ratify key international treaties, including the First and Second Optional Protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of Discrimination Against Women, the Optional Protocol to the Convention on the Rights of the Child and the Optional Protocol to CAT.

The death penalty

The death penalty is used extensively and there were at least 34 executions in 2008. The death penalty was briefly suspended by the Coalition Provisional Authority (CPA) in 2003, but restored by the interim government on 8 August 2004; its scope and application have been widened by the present government.

Under domestic law, the death penalty may be imposed for a wide range of offences, including crimes without lethal consequences. The 1969 Penal Code, despite recent amendments, prescribes the death penalty for premeditated murder, all crimes compromising the internal security of the state, attacks on means of transportation resulting in fatalities, attempts to overthrow the government by violent means, and damage to public property. Further capital crimes were created with the introduction of both the Anti-Terrorism Law of 2005 and Law 10 of 2005. The latter established the Supreme Iraqi Criminal Tribunal, empowered to impose the death penalty for genocide, crimes against humanity, war crimes, and membership and support of armed groups. The Internal Security Forces' Penal Code, enacted in February 2008, and the Military Code, promulgated in April 2007, impose the death penalty for offences committed by members of the military, police and other security forces, including passing secrets, plans and instructions to an armed group, passing state secrets to other governments, and deliberately sabotaging or damaging means of communication and transportation, as well as damaging weapons and explosives.

In the semi-autonomous Kurdistan Region of Iraq, the authorities broadened the scope of the death penalty when enacting the temporary Anti-Terrorism Law (Law 3) of 2006, applicable in the Kurdistan region. This prescribes the death penalty for kidnapping, membership of a terrorist organization, espionage, aiding

presumed terrorists to enter or leave the country, and other offences. In June 2008, the Kurdistan Parliament extended the Anti-Terrorism Law's application for a further two years.

The Status of Forces Agreement (SOFA), a security agreement signed by Iraq and the USA in November 2008 which came into force on 1 January 2009, removed the immunity from prosecution of contractors employed in Iraq by the US Department of Defence. However, the SOFA is silent on other contractors, such as private military and security contractors employed by the US State Department, some of which have been accused of unlawful killings of civilians and other serious abuses.

C. Promotion and protection of human rights on the ground

Hundreds of Iraqis are being killed every month in the violence which pervades the country, some in targeted assassinations, but the majority in bomb explosions or suicide attacks in crowded areas chosen to maximize civilian casualties. Armed groups opposed to the Iraqi government and to the presence of US-led forces continue to kidnap, torture and kill civilians. The continuing violence is responsible for the displacement of at least four million people, including two million refugees in Syria, Jordan and other countries in the region and over 2.2 million internally displaced inside Iraq.

The death penalty

In July 2009, at least 1,000 prisoners were believed to be on death row, including about 150 prisoners who had exhausted all means of appeal or clemency. The authorities publicly justify the use of the death penalty as a response to "terrorism" and the activities of insurgent groups; however, judging from the continuing high level of violence in the country, the death penalty has not been an effective deterrent. The government has provided very little information on executions and some of these have been carried out in secret. For example, on 10 June 2009 some 19 people, including one woman, were executed, but this was not officially announced and only made known when the information was leaked to the media. Many of the death sentences were handed down following court proceedings which did not meet international standards for fair trials.

One example is the case of Samar Sa'ad 'Abdullah, aged 27, who was sentenced to death by the Central Criminal Court of Iraq in al-Karkh in Baghdad on 15 August 2005. She had been found guilty of the murder of her uncle, his wife and one of their children in Baghdad. She reportedly blamed the killings on her fiancé, who, she said, had carried them out in order to rob her uncle. At her trial, she alleged that, after her arrest, police in Hay al-Khadhra, Baghdad, had beaten her body with a cable, beaten the soles of her feet (*falaqa*) and subjected her to electric shocks to make her "confess". The judge failed to order an investigation into these allegations and sentenced her to death. Her father, Sa'ad 'Abdel-Majid 'Abd al-Karim, told Amnesty International that the trial was concluded in less than two days, that he was not permitted entry to the court, and that one of Samar's lawyers, Amal 'Abdel-Amir al-Zubaidi, was ordered out of the court by the trial judge. Her death sentence was confirmed by the Court of Cassation on 26 February 2007. Samar Sa'ad 'Abdullah, along with nine other women prisoners under sentence of death, were recently transferred from the women's prison in Baghdad's al-Kadhimiya district to al-Shu'ba al-Khamisa (Fifth Section) of al-Kadhimiya Prison, which suggests that their executions may be imminent.

As of August 2009, at least 127 people, including seven women, were under sentence of death in the Kurdistan Region of Iraq. The Kurdistan Regional Government is not known to have carried out any executions since April 2008.

Prolonged detention without charge or trial

At least 30,000 people are being held in prisons and detention centres controlled by the Iraqi government. The vast majority of them are held without charge or trial – some have been in detention for several years –

and many have no access to a lawyer. Many are held incommunicado in detention facilities controlled by the Ministries of Interior and Defence where torture and other ill-treatment are reported to be rife. The majority of those held are Sunni Muslims from central, northern and north-western Iraq, arrested on suspicion of assisting, supporting or sympathizing with insurgent Sunni groups fighting against the government and against the presence of US forces in Iraq. However, over the last two years an increasing number of Shi'a Muslims, mostly members of the Mahdi Army, followers of Moqtada al-Sadr, have been targeted for arrest and detention, many without charge or trial, in Baghdad and in southern Iraq. Iraqi prisons are overcrowded and there are consistent reports of diseases spreading, especially skin diseases.

An Amnesty Law (Law 19 of 2008), passed on 27 February 2008, which was supposed to pave the way for the release of those who did not commit a serious crime, remains largely unimplemented. While some detainees have indeed been released, several thousand others have not. These include prisoners recommended for release by judicial committees set up by the Supreme Judicial Council, as stipulated by Law 19. This is due to a number of factors, including the archaic and bureaucratic nature of the judicial system, the lack of a computerized filing system, the reluctance of judicial officials, especially at the level of the governorates, to release detainees because they suspect their release orders may be forged, and the difficulties judicial and other officials face in travelling around the country because of the security situation.

According to the SOFA, the US forces were supposed to release or hand over all detainees held in prisons and detention facilities under their control. As of the end of July 2009, the US military officials in Iraq had released 4,532 detainees and transferred 855 to Iraqi custody. The US military have stated that by the end of autumn 2009 all detainees held by them, amounting to 9,969 as of the end of July, will have been released and/or transferred to the Iraqi authorities.

Torture and other ill-treatment

Torture and other ill-treatment of detainees, including children, is widespread in prisons and detention centres controlled by the Iraqi security forces. Amnesty International has received numerous reports of detainees, especially those suspected of direct or indirect involvement in armed groups, being tortured by Iraqi security forces, particularly those belonging to the Ministry of Interior. Methods of torture include beating with cables and hosepipes, prolonged suspension by the limbs, electric shocks to sensitive parts of the body, breaking of limbs, removal of toenails with pliers and piercing of the body with drills. Some detainees have been forced to sit on sharp objects such as broken bottles. Others have been raped or threatened with rape. Torture often occurs immediately following arrest when detainees are held incommunicado in police stations or in prisons and detention centres controlled by the Ministries of Interior and Defence.

In May 2009, following a visit to the women's prison in al-Kadhimiya, Baghdad, a delegation from the Human Rights Committee of the Council of Representatives told Iraqi and international press that two female prisoners testified that they had been raped repeatedly after their arrest and before they were transferred to the prison.

In June 2009, a member of the Council of Representatives reported that more than 21 male detainees, including 11 held in al-Rusafa Prison in Baghdad and 10 in al-Diwaniya Prison, in southern Iraq, had suffered sexual assaults by members of the security forces. Detainees in both prisons went on hunger strike in protest against torture and other ill-treatment in the prisons. A senior official of the Ministry of Interior admitted that there had been "violations and excesses against the detainees held in the Ministry's prisons".²

On 28 July 2009, Iraqi security forces stormed Camp Ashraf, north of Baghdad, home to about 3,500 unarmed members of the People's Mojahedeen Organization of Iran, an Iranian opposition group based in Iraq

² Al-Hayat Newspaper, 17 June 2009.

since 1986. Thirty-six camp residents were detained and reportedly tortured following arrest, including by being beaten with batons and guns. Several people needed medical treatment for their injuries.

The Iraqi authorities have announced on numerous occasions the setting up of investigations into incidents of torture and deaths in custody; however, the outcome of such investigations has never been made public. This raises suspicion that such investigations have not been carried out. This failure to seriously and effectively deal with torture and other human rights violations by the Iraqi security forces has encouraged a culture of impunity.

The UN Special Rapporteur on Torture was supposed to visit Iraq in October 2008; however, the visit has been postponed.

Unfair trials

Trials in Iraq consistently fall short of international standards for fair trials. The Central Criminal Court of Iraq (CCCI), established by the CPA in June 2003, is the main criminal court, with jurisdiction over crimes relating to terrorism, sectarian violence, organized crime and government corruption. This Court, which sits in Baghdad and other governorates, has handed out the vast majority of death sentences. Defendants commonly complain that “confessions” were extracted under torture during pre-trial interrogation, often when they were held incommunicado in police stations or in detention facilities controlled by the Ministry of Interior. Defendants are often not brought before an investigative judge within a reasonable time and not told of the reason for their arrest. The “confessions” extracted from them are often used as evidence against them at their trials, and accepted by the courts without taking any or adequate steps to investigate defendants’ allegations of torture. Defendants also complain that they are not able to choose their own defence lawyers; the vast majority, including those tried on capital charges, have defence lawyers appointed by the court whom they have never met before. The quality of such representation is often low and the lawyers have very little knowledge of the substance of the charges. Some lawyers refuse to represent defendants accused of “terrorism”, mostly Sunni Muslims, fearing reprisals by armed militia groups linked to Shi’a political parties. Trial proceedings before the CCCI are very brief, often lasting only a few minutes before verdicts are handed down.

Trials before the Special Iraqi Criminal Tribunal (SICT), established by the Iraqi government with US assistance through Law 10 of 2005, also do not meet international standards for fair trials. The SICT was set up to try former President Saddam Hussain and officials from the former Ba’ath administration accused of war crimes, genocide and crimes against humanity. Proceedings before this tribunal have been marred by political interference, undermining its independence and impartiality. It was reported in September 2008 that the government had engineered the removal of one of the judges who had tried Saddam Hussain shortly before the year-long trial ended in 2006, replacing him with a judge considered more likely to support the imposition of the death penalty. The tribunal regularly fails to ensure the safety of defence lawyers, witnesses and others, and a number of lawyers, judges and prosecutors have been murdered by armed groups. As of August 2009, at least 11 people had been sentenced to death by the SICT; four, including Saddam Hussain, have been executed, while at least seven are still under sentence of death.

Gender-based violence

The Iraqi authorities have not afforded women adequate protection against violence, including by other family members. Women have been threatened and attacked for not complying with strict codes of behaviour, including dress codes. Some women have apparently been killed by male relatives who the authorities failed to bring to justice. Leila Hussein was shot dead on 17 May 2008 in Basra while walking with two other women, who were injured in the attack. Her life was known to be in peril because she had denounced and parted from her husband after he allegedly killed their teenage daughter, Rand ‘Abd al-Qader, in March 2008 because of her friendship with a British soldier. No prosecutions for either murder are known to have been initiated.

The government has also failed to provide adequate protection to men who identify themselves as gay, or who are assumed by their attackers to engage in same-sex sexual relations. During the first few months of 2009, dozens of young gay men and boys were killed in Baghdad because of their sexual orientation or gender expression. This was most common in the predominantly Shi'a district of al-Sadr City, reportedly by members of the Mahdi Army, followers of Moqtada al-Sadr. Many were mutilated and their bodies dumped in the streets. Many others were forced to flee Iraq after receiving death threats.

Abuses against minorities and others on account of their religion, ethnicity or profession

The government has failed to provide adequate protection to members of religious and ethnic minority groups, such as Christians, Yazidis and Sabeans, journalists and human rights activists. These groups have been targeted for kidnapping, torture and killing by armed groups and militias. Many have been forced to leave the country and those who have decided to stay in Iraq do so in constant fear.

Over the last few years, members of the Christian minority have borne the brunt of the political violence in Iraq. Hundreds, possibly thousands, of Iraqi Christians have been murdered by armed groups. Thousands others have been forced to leave the country. On 11 and 12 July 2009, several bombs hit Christian targets in Baghdad, mostly churches. At least four people were killed and dozens injured.

At least 140 journalists have been killed in Iraq since the 2003 US-led invasion. On 11 March 2009, two journalists working for the TV satellite station al-Baghdadiya, Haydar Hashem Suhail and Suhaib 'Adnan, were killed and four other media workers were injured when a suicide bomber detonated an explosives belt. At least 30 other people were killed.

D. Recommendations for action by the State under review

Amnesty International calls on the Iraqi government to:

National legislation

- Bring the country's laws and practice into conformity with international human rights standards;

Death penalty

- Immediately halt all executions and establish a moratorium;
- Commute all pending death sentences;
- Take steps towards the abolition of the death penalty, such as reducing the number of crimes punishable by death and, pending abolition, respect international standards restricting the scope of the death penalty;

Prolonged detention without charge or trial

- Release or charge with recognizably criminal offences all those who are currently held without charge or trial;

Torture and other ill-treatment

- Set up prompt, independent and impartial investigations into allegations of torture and other ill-treatment and bring to justice all those found responsible for committing such violations in fair trials and without recourse to the death penalty;

Unfair trials

- Ensure the most rigorous standards for fair trial in all cases, including:
 - the right to be tried before an independent and impartial tribunal;
 - the right to have access to a competent defence counsel of one's choice at all stages of the proceedings;
 - the right to be presumed innocent until proven guilty according to law;
 - the right to call witnesses in one's own defence;
 - the exclusion of evidence elicited as a result of torture or other ill-treatment from use in proceedings against the accused;

Gender-based violence

- Investigate all incidents of violence against women, as well as against men who identify themselves as gay or who are assumed by their attackers to engage in same-sex sexual relations and bring those responsible to justice;
- Provide greater protection for women, especially those at particular risk;

Abuses against minorities and others on account of their religion, ethnicity or profession

- Set up prompt and impartial investigations into attacks against members of religious and ethnic minority groups, journalists and human rights activists and bring to justice those responsible;
- Announce publicly, including through media outlets and awareness-raising programmes, that the targeting of people on account of their religion, ethnicity or profession will not be tolerated, but be firmly punished.

Appendix: Amnesty International documents for further reference³

- *Iraq: Decades of suffering – Now women deserve better* (Index: MDE 14/001/2005, February 2005)
- *Iraq: In cold blood – abuses by armed groups* (Index: MDE 14/009/2005, July 2005)
- *Iraq: Beyond Abu Ghraib – Detention and torture in Iraq* (Index: MDE 14/001/2006, March 2006)
- *Iraq: Unjust and unfair – The death penalty in Iraq* (Index: MDE 14/014/2007, April 2007)
- *Iraq: Human rights abuses against Palestinian refugees* (Index: MDE 14/030/2007, October 2007)
- *Iraq: Carnage and despair – Iraq five years on* (Index MDE 14/001/2008, March 2008)
- *Iraq: Hope and Fear – Human rights in the Kurdistan Region of Iraq* (Index: MDE 14/006/2009, April 2009)
- *Iraq: A thousand people face the death penalty* (Index: MDE 14/020/2009, August 2009)

³ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/iraq>