Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolution 35/15.

In this context, I would like to draw the attention of your Excellency's Government to information I have received concerning the reported transfer of seven French nationals, alleged members of the Islamic State of Iraq and the Levant (IS), from Syria to Iraq, where they were charged with terrorism-related offences, subjected to torture and sentenced to death following unfair trials. Please note that a letter expressing similar concerns was sent to the Government of France. Similarly, a letter will be sent to the Government of Iraq and to other actors concerned.

In a different but related vein, I should note, at the outset, that, on 14 September 2018, I sent an allegation letter to the Government of the United States of America (USA or US), together with other Special Rapporteurs, concerning the risk of arbitrary deprivation of life and violations of other human rights of US nationals facing prosecution and capital punishment under Iraq’s Anti-Terrorism Law no. 13, in relation to their alleged membership in the IS. I hope to receive a reply from your Excellency’s Government soon.

According to the information received:

Alleged events in Syria

Between 2014 and 2016, Mr. Fodil Tahar Aouidate, Mr. Mourad Delhomme, Mr. Karam El Harchaoui, Mr. Bilel Kabaoui, Mr. Léonard Lopez, Mr. Brahim Nejara and Mr. Vianney Ouraghi, French nationals, reportedly went to Syria, in the areas controlled by the IS.

They allegedly assumed different functions within the IS. Mr. Bilel Kabaoui reportedly was a "caregiver" in Minbej, then a "jailer" in one of the IS’s courts. Mr. Léonard Lopez, reportedly was an active member of the French-speaking website "Ansar Al Haqq" during the 2000s. He is said to be the founder of "Fraternité musulmane Sanâbil (Les Epis)", a French association providing assistance to detainees, which was reportedly dissolved, by Presidential Decree, on 24 November 2016. Mr. Vianney Ouraghi was reportedly an IS’s
"administrative officer" in charge of "widows and families". According to Iraqi justice, he allegedly participated in combats in which he was injured to the stomach. Mr. Brahim Nejara reportedly appeared on propaganda videos broadcast after the terrorist attacks, in Paris, of 13 November 2015.

In January 2018, the seven individuals concerned were reportedly arrested. More specifically, it is alleged that Mr. Karam El Harchaoui and Mr. Bilel Kabaoui surrendered to the Syrian Democratic Forces (SDF) while the other five were arrested. Mr. Kabaoui, in particular, reportedly claimed that he surrendered to the SDF advised by the French Directorate General for External Security (DGSE).

Subsequently, the seven individuals were reportedly interrogated by members of the SDF. It is also alleged that the latter were assisted by members of the US forces.

Allegations concerning the transfer from Syria to Iraq

Between 25 and 28 February 2019, the seven persons concerned were reportedly handed over to the Iraqi authorities. It is alleged that the transfer took place at the request of the French Government, or allegedly involved the French Government. It is reported that the seven French nationals were transferred to Iraq while, in Syria, they were about to be released.

The convoy was initially reportedly transported from Syria to Erbil with the help of the US Forces of the "Coalition" forces. The prisoners were allegedly interrogated in Erbil and in Sulaymaniyah. Subsequently, according to the testimony of one of them, Iraqi and French nationals reportedly led the convoys to Baghdad.

Alleged events in Iraq

During the period from 25 to 28 February 2019, the seven persons concerned were reportedly held incommunicado in the Muthanna prison, without access to a lawyer. It is reported that, during the interrogations, they were beaten numerous times on different parts of the body, particularly on the feet, and that they were tortured with electricity in order to make them confess that they belonged to the IS. At no time were they brought before a judicial authority.

In this regard, it should be recalled that Article 19 of the Iraqi Constitution and Article 123 of the Iraqi Code of Criminal Procedure guarantee every detainee the right to be assisted by a lawyer during interrogations.
Subsequently, the seven individuals were reportedly charged with "membership of a terrorist organization" on the basis of the provisions of Article 4 of the Iraq’s Anti-Terrorism Law no. 13 of 2005. Under Iraqi law, this charge does not provide for any sanction other than the death penalty.

Unfair trials

The trials against the seven detainees reported took place between 26 May and 3 June 2019 before the Central Criminal Court of Iraq (CCCI). The seven individuals, as well as four other French nationals, were reportedly sentenced to death by the CCCI in Baghdad after allegedly expeditious and unfair trials.

It is reported that the accused were not given sufficient time to prepare their defence. Their lawyers were allegedly only allowed to consult the case-files a few moments before the hearings began. It is also reported that the French nationals in question did not receive effective consular assistance. The French consular services allegedly did not ensure any link between the complainants and their families and did not provide interpreters during the trials. It is also alleged that the French lawyer of the detainees, appointed by their families with their consent, did not obtain a visa to travel to Iraq.

Furthermore, several defendants who did not speak Arabic allegedly did not have the opportunity to be assisted by an interpreter and were also forced to sign written statements without a French translation. The trials were also reportedly conducted in an expeditious manner. The hearings allegedly only lasted between twenty minutes and one and a half hour and were held without adversarial procedure. With the exception of Mr. Fodil Tahar Aouidate, all other individuals concerned were reportedly informed of their death sentences after only one hearing.

All the accused reportedly stated that they had been tortured during their interrogations. At a hearing on 27 May 2019, the presiding judge of CCCI reportedly asked Mr. Fodil Tahar Aouidate to lift his shirt after he alleged that he had been tortured. After noting several injuries on his back and shoulders, the judge reportedly ordered that the accused be examined by a medical expert and that he appear in court again on 2 June 2019. The judge allegedly did not ask any question on the nature and the circumstances of the alleged acts of torture. The medical expertise reportedly concluded that Mr. Aouidate had suffered no ill-treatment. Therefore, the evidence obtained while he was held in police custody, i.e. possibly obtained under torture, was used in trial and served to sentence him to death. It is also reported that Mr. Aouidate's lawyer did not adequately defend him.
Iraqi law provides for an automatic appeal procedure for persons sentenced to death. This also includes an appeal to the Supreme Court. It is reported that only three individuals who confessed their "crimes" were able to appeal. The others did not have such an opportunity. It is also alleged that torture and ill-treatments resumed after the death penalties were handed down.

In Iraq, the application of the death penalty must also be approved by presidential decree. In practice, however, first instance judgements are very rarely overturned or quashed on appeal. In addition, Article 75 of the Iraqi Constitution prohibits the granting of a presidential pardon in terrorism cases.

At present, it is reported that the risk that the death sentences are carried out is extremely high. Many other foreigners, who have been sentenced to death on the same charges, have already been executed by the Iraqi authorities.

While I do not wish to prejudge the accuracy of these allegations, I would like to reiterate the concerns already expressed in the above-mentioned letter of 14 September 2018, particularly and primarily with regard to the right to life of the seven persons concerned. I wish to note that the International Covenant on Civil and Political Rights (ICCPR) sets out specific safeguards for ensuring that the death penalty, when not prohibited, is applied only for the most serious crimes, and only in the most exceptional cases and under the strictest limits aimed at ensuring a fair trial.

In this regard, I wish to emphasize the concerns already expressed in relation to the serious flaws affecting the administration of the Iraqi criminal justice system, particularly with regard to the independence and competence of the courts and the related lack of due process and fair trial guarantees, the allegations of torture and other ill-treatments and the use of forced confessions. This has been corroborated by the United Nations Assistance Mission for Iraq and the Office of the United Nations High Commissioner for Human Rights. In a joint report, they pointed out the shortcomings of the Iraqi judicial system, stressing in particular that criminal investigations and judicial proceedings in death penalty cases do not fully respect and protect international and constitutional guarantees of due process and a fair trial.

In addition, I would like to highlight the concerns I have already expressed on many occasions regarding the serious limitations of Iraq’s Anti-Terrorism Law no. 13 of 2005. The law contains a definition of terrorism that is vague and overly broad. Pursuant to this law, even petty crimes, such as vandalism, may be considered as a terrorist act. In addition, the Law does not require proof of terrorist intent. As a result, an individual can face trial on terrorism charges and can be sentenced to death for a non-violent crime committed without intent to terrorize the population. Furthermore, Article 4 of the law provides that those who “incite[ ], plan[ ], finance[ ], or assist[] terrorists . . . shall face the same penalty as the main perpetrator”, thus failing to distinguish between different levels
of participation, involvement and responsibility, and with no assessment based on the severity of the act when rendering punishment, including the death penalty.

Therefore, I would like to stress, once again, that any death sentence carried out following an unfair trial or on the basis of an ambiguous law, amounts to an arbitrary deprivation of life.

As a party to the ICCPR, the USA have the duty to take appropriate measures to protect individuals against the arbitrary deprivation of life by other States and/or international organizations in all areas subject to their jurisdiction (CCPR/C/GC/36paragraph 22). On these grounds, the USA are expected to take all reasonable steps to ensure that no individual under their jurisdiction face the unfair and unlawful imposition, and the execution, of the death penalty anywhere in the world, including Iraq. In addition, States also have obligations under international law not to aid or assist activities undertaken by other States and non-State actors that violate the right to life (CCPR/C/GC/36, paragraph 63).

I would like to express my most serious concerns at what could have been the role of the US authorities in the transfer of the seven individuals concerned from north-eastern Syria to Iraq. The transfer was, in fact, reportedly carried out despite the risks faced by these individuals of being subjected to torture, of not receiving a fair trial and of being sentenced to death and arbitrarily executed; and without credible and effective assurances against exposing the individuals to the death penalty having been obtained.

In this regard, I would like to recall that Article 16 of the Draft articles on Responsibility of States for Internationally Wrongful Acts prohibits complicity in the commission of internationally wrongful acts. It is internationally wrongful for any State to impose the death penalty in violation of international law. Therefore, all States must refrain from providing assistance in situations where the death penalty could be imposed in this way. It seems difficult to me to imagine that the USA authorities were not aware of the how trials are conducted, particularly in terrorism cases, in Iraq.

In these circumstances, I urge Your Excellency's Government to take all possible steps to ensure that the seven French nationals detained in Iraq, as well as any other foreigner held under the same conditions, are not arbitrarily deprived of their lives and that they can return to their country to be tried in a manner consistent with international law.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.
As it is my responsibility, under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.

2. Please provide information as to whether the Government of the United States of America has intervened, in any way, or failed to take action, in order to facilitate the transfer of the above-mentioned seven persons from Syria to Iraq. If so, please explain the reasons why. Could you please explain whether the US Government made any effort to avoid these transfers and what actions have been taken in this regard?

3. Please provide information as to whether the Government of the United States of America is aware of a reported agreement between France and Iraq aimed at facilitating the transfer to Iraq of French nationals, allegedly members of the IS, captured in Syria.

4. Please provide information as to whether the US Government has intervened, at any time, and if so to what extent and in what form, to ensure protection of the rights of the above-mentioned persons, and of any other foreign national in the same situation, in particular to physical and psychological integrity and to a fair trial. Could you please explain whether, at present, the US Government envisages to take any action in order to prevent the persons concerned, as well as any other individual in a similar situation, from being executed in Iraq in an arbitrary manner?

5. Could you please explain what is the position of the Government of the United States of America on the administration and the functioning of the justice system in Iraq, particularly in terrorism cases?

6. Could you please explain what is the position of the Government of the United States of America on the possibility of setting up an ad hoc or hybrid international tribunal to prosecute alleged IS fighters for their crimes?

In view of the reported risk of execution incurred by the persons concerned by this communication, I would be grateful if your Excellency's Government could reply to this letter as soon as possible. While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.
I intend to publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency’s Government’s to clarify the issues in question.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions