

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to food and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/19, 35/15, 32/8 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **twenty Iraqi nationals**, who are currently detained in the Nasiriyah central prison, and allegedly subjected to torture and ill-treatment and facing the death penalty following flawed judicial proceedings under the counter-terrorism law no. 13 of 2005 (Anti-Terrorism Law).

According to the information received:

Twenty Iraqi nationals detained, over terrorism-related charges, including having links with the Islamic State of Iraq and the Levant (ISIL), in the Nasiriyah central prison (also known as al-Hoot prison) in Dhi Qar Governorate in southern Iraq, have been suffering from torture and inhuman detention conditions.

The twenty detainees have been sentenced to death, most of them further to the Anti-Terrorism Law, following a trial that allegedly did not comply with international fair-trial standards. Since their arrest and during criminal proceedings, detainees were denied fundamental safeguards, including access to a lawyer or a doctor and contact with their families; they were forced to give self-incriminating confessions under coercion and did not benefit from the right to defence. In the course of investigations, the twenty detainees were held in stress positions, received electric shocks and were beaten with metal bars and pipes to extract self-incriminating confessions. At the trial, judges failed to order an investigation into allegations of torture, even in the case of a defendant who provided a medical report substantiating his claims. The court pronounced death sentences against the defendants, relying primarily on forced confessions.

The twenty Iraqi nationals, along with other detainees held in the maximum-security prison of Nasiriyah, have been suffering from inhuman detention conditions and subjected to psychological and physical torture, a situation exacerbated by the restrictive measures imposed in the context of the Covid-19 pandemic.

Before the pandemic, the level of overcrowding in the Nasiriyah central prison had reportedly reached preoccupying levels, with an occupancy exceeding ten times the actual capacity of the prison. The prison detention conditions were described as inhuman, including overcrowded cells and the lack of adequate and edible food, clean drinking water, medical care and basic hygiene. In addition, detainees on death row have been subjected to physical and psychological torture by prison guards who have been sporadically threatening detainees by saying that their execution order has arrived and they will be executed imminently; inflicting a state of constant terror and stress amongst detainees. The Nasiriyah prison administration has been actively implementing death penalties against detainees, including up to 42 executions in one day in 2017.

Since March 2020, with the spread of the pandemic in Iraq, detainees have been deprived of any contact with the external world, including calls or visits from their families or lawyers. They have been spending 23 hours and 45 minutes a day in their overcrowded cells, where there is not enough space to sleep, except in a sitting position or by taking turns. During the fifteen-minute “yard time”, the detainees are pushed to run with their hands and ankles cuffed together, while security guards are beating and humiliating them.

Since the suspension of family visits, due to the pandemic, detainees have been suffering from malnutrition and lack of medication, which were usually provided by families. Furthermore, the prison administration has been allegedly keeping the food and money sent by families, and constraining detainees to buy food at inflated prices from the prison shop, which most detainees cannot afford. Medical care is also reportedly inexistent at the Nasiriyah prison, even for chronic health conditions, with no separation of prisoners with infectious diseases such as tuberculosis. Detainees suffering from serious illnesses are left to die, due to lack of medical treatment.

The prison has further failed to provide basic safety and hygiene conditions, including the lack of ventilation in overcrowded cells, with temperatures reaching 51 degrees Celsius during summer, and detainees are only allowed a five-minute shower once a week with extremely cold water, and no soap. Those conditions have prompted the development of vermin and allergies, which caused severe scratching and scarring of the skin. Only a few detainees, who were able to receive money from their families, could buy a medical ointment at the prison

shop, to stop the scratching. Furthermore, detainees are obliged to keep the same clothing, as each detainee has only one pair of trousers and one t-shirt. To buy additional clothing, detainees have to afford the high prices imposed at the prison shop.

Since the beginning of the year, dozens of deaths amongst detainees in the Nasiriyah central prison have been reported. Families were notified of deaths when they were contacted by prison authorities to recover the dead bodies and arrange burials. In the majority of cases, corpses were extremely thin from malnutrition and showed traces of torture and abuse. Some corpses' smell suggested that the person had died and was kept in the prison morgue for several days before contacting the family. In many cases, autopsies are believed to have been performed, even though, results remain unknown and death certificates fail to mention the cause of death.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned by the high number of reported deaths in the Nasiriyah central prison, and would like to remind your Excellency's government of its international legal obligation to protect the lives of persons in detention and to conduct a prompt and impartial investigation into any death in custody. Endangering the life of detainees by imposing inhuman detention conditions, including overcrowding, denial of medical care, deprivation of adequate food or clean drinking water, violates the State's non-derogable obligation to protect the right to life, codified in article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq on 25 January 1971.

We would also like to remind your Excellency's Government that the death penalty cannot be reconciled with full respect for the right to life, and that the abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights.¹ Therefore, the death penalty violates the right to life under article 6 of the ICCPR and, in practice, invariably amounts to cruel, inhuman or degrading treatment, or even torture, under article 7. Although, the ICCPR permits retentionist States such as Iraq to continue applying the death penalty, the Special Rapporteur on extrajudicial executions is of the view that such 'dispensation' does not make the execution of a death sentence, strictly speaking, legal. There are exemptions for retentionist States parties, provided that the death penalty is applied within stringent parameters, that is, it is carried out only for the most serious crimes and by a method causing the least possible suffering.² Only full respect for the most stringent due process guarantees distinguishes capital punishment, as possibly permitted under international

1 [CCPR/C/GC/36](#), para. 50.

2 See Supreme Court of the United Kingdom of Great Britain and Northern Ireland, *The Death Penalty Project (intervening), El Gizouli (AP) (Appellant) v. Secretary of State for the Home Department (Respondent)*, Case No. UKSC 2019/0057.

law, from an arbitrary execution. The Human Rights Committee (HRC) has repeatedly stated that the imposition of the death penalty in a manner that is contrary to another provision of the ICCPR also violates article 6. Any death sentence carried out on the basis of confessions extracted under torture, following an unfair trial or on the basis of an ambiguous law, amounts to an arbitrary deprivation of life.

In that connection, we are deeply concerned for the provision of the death penalty in article 4 of the Anti-Terrorism Law for anyone who committed, “as a main perpetrator or participant of terrorist acts, any person who incites, plans, finances or assist terrorists”. We are also gravely concerned for the broad definitions of terrorism, acts of terrorism, financing and membership of the legislation. We recall that the definition of terrorism and terrorism offences must be confined to acts that are ‘genuinely’ terrorist in nature in accordance to the elements identified by the Security Council in its resolution 1566 (2004). Criminal offences must thus be set out in precise and unambiguous language that narrowly defines the punishable. In addition, the Special Rapporteur on extrajudicial executions is of the view that international law should be regarded, at a minimum, as progressively abolitionist, in the sense that it requires States to move away from the death penalty, if not immediately then, at least, over time (see [A/67/275](#), paras. 39–42, and [A/69/265](#), para. 90).

We are equally alarmed by the allegations of torture and ill-treatment in the Nasiriyah central prison, and the absence of prompt and impartial investigations into those allegations, even though the alleged abuse reportedly has caused dozens of deaths in custody. Those allegations, if confirmed, would be clear violations of article 7 of the ICCPR, and articles 2 and 16 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT), to which Iraq acceded on 7 July 2011. In this regard, we would like to bring to your Excellency’s Government attention that “[A]ll methods of torture are subject to the same prohibition and give rise to the same legal obligations, regardless of whether the inflicted pain or suffering is of a “physical” or “mental” character, or a combination thereof” (A/HRC/43/49). Therefore, the direct threats of imminent execution, with the objective to spread fear amongst detainees, could amount to torture. This has been recognised by the Special Rapporteur on torture, the Committee against Torture and the Human Rights Committee (A/HRC/43/49; CAT/C/KAZ/CO/2, para. 7 and CAT/C/USA/CO/2, para. 24; HRC communication No. 74/1980 respectively).

We would further like to express our grave concerns in relation to the alleged deprivation of fundamental safeguards, the use of coerced confessions extracted under torture in criminal proceedings, and their admission by the court as evidence for conviction. Those allegations, if proven to be accurate, would constitute blatant violations of international standards of fair trial and due process in contravention of articles 9, 10 and 14 of the ICCPR and, beyond the prohibition of torture and ill-treatment, would also breach the exclusionary clause of article 15 of the CAT. In this connection, we

would like to stress the positive obligation of States to conduct a prompt and impartial investigation whenever there are reasonable grounds to believe that an act of torture has occurred, with a view to establishing facts, legal responsibilities, direct and supervisory, and to bringing those responsible to justice, according to, inter alia, articles 7 and 12 of the CAT.

From the beginning of the Covid-19 pandemic, a succession of UN individual experts, treaty bodies and agencies have warned against the disproportionate impact of Covid-19 on all persons deprived of their liberty and on the serious risks to their life. The UN Inter-Agency Standing Committee (WHO and OHCHR); the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings have pointed to the specific vulnerabilities of people deprived of their liberty, including their underlying health status and the risks of mass contamination and called on the authorities to effectively implement their obligations to respect and protect the right to life of detainees, without discrimination. They have specifically requested that States should undertake the immediate, unconditional release of all prisoners whose incarceration is illegal or arbitrary under international law, such as political prisoners, abandon or exclude detention as a sanction for persons found to be in breach of Covid-19 related measures such as curfews, and reduce the overall size of the prison populations and help tackle associated overcrowding, through a review of the prison population and consideration of alternative sentencing to imprisonment for misdemeanour.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we 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 factual and legal information on the charges related to terrorism levied against the aforementioned individuals and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).

3. Please provide information in details of how Counter-Terrorism Law No. 13 of 2005 comply with the United Nations Security Council resolutions [1373 \(2001\)](#), [1456\(2003\)](#), [1566 \(2004\)](#), [1624 \(2005\)](#), [2178 \(2014\)](#), [2341 \(2017\)](#), [2354 \(2017\)](#), [2368 \(2017\)](#), [2370 \(2017\)](#), [2395 \(2017\)](#) and [2396 \(2017\)](#); as well as Human Rights Council resolution [35/34](#) and General Assembly resolutions [49/60](#), [51/210](#), [72/123](#), [72/180](#) and [73/174](#) in particular with international human rights law, refugee law, and humanitarian law contained therein
4. Please provide detailed information on any investigation, which may have been undertaken, and any results thereof, concerning the cases of death in custody, including any results of autopsies performed, as well as concerning the allegations of torture and ill-treatment detailed above. If no investigations were undertaken, please explain how this is compatible with the international human rights obligations of Iraq.
5. Please provide detailed information on the criminal proceedings, and minimum safeguards guaranteed from the outset of arrest, in the cases of detainees accused with terrorism-related crimes. Please also provide detailed information on evidentiary elements used by the courts to pronounce the death penalty against defendants charged in terrorism-related cases and explain how those criminal proceedings are compliant with the international human rights obligations of Iraq.
6. In case the alleged violations have been confirmed, please provide the details of any measures which have been taken, or which are foreseen, for the purpose of bringing to justice those responsible for torture and ill-treatment. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of Iraq.
7. Kindly provide detailed information on the conditions of detention in the Nasiriyah central prison, including (but not limited to) the access to medical care, to adequate food and clean drinking water, the hygiene conditions and the rate of prison occupancy. Please also provide detailed information on the treatment of detainees by prison guards, including measures of restraint and the precise functioning of independent complaints mechanisms available to inmates.

While awaiting a reply, we 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s 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.

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri

Special Rapporteur on the right to food

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism