

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

REFERENCE:
UA IRQ 9/2020

20 November 2020

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, and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; pursuant to Human Rights Council resolutions 43/20, 44/5 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **recent execution of 21 prisoners at the Nasiriyah central prison (al-Hoot), and the imminent execution of 50 others.**

In this context, we would like to note that concerns about death sentences under the anti-terrorism law no.13 of 2005, after trials that allegedly did not respect the fundamental principles of due process and fair trial, and based on confessions extracted under torture were raised in a previous communication addressed to your Excellency's Government, on 17 August 2020 (UA IRQ 4/2020). Given the gravity of the alleged violations, we very much regret that, to-date, your Excellency's Government still has not responded to this communication.

According to the information received:

Since October 2020, the Iraqi authorities have carried out a wave of executions of individuals who have been on death row over terrorism-related charges in the Nasiriyah central prison (also known as al-Hoot prison). Reportedly, twenty-one persons were executed during the month of October, followed by another twenty-one on 16 November 2020 alone.

Information we have received indicate that around 4000 persons are currently on death row in Iraq with hundreds facing imminent execution after reports that the Iraqi President has signed their execution order.

We further received allegations according to which fifty persons are expected to be executed on Monday, 23 November 2020. This seems to be part of a larger plan to execute all persons on death row.

Despite the confirmation of the Iraqi Government of some of the executions, no information was provided as to the identity of the individuals who have been executed and their families were not informed. The latter are usually notified by

the prison administration two or three months after the death of their family members in prison, in order to recover the dead bodies.

Several reports have documented grave irregularities in the administration of justice with relation to trials under the anti-terrorism law no.13 of 2005. Trials were frequently marked by violations of the most fundamental principles of due process, including ineffective legal representation, reliance on confessions extracted through torture or ill-treatment, and the failure to investigate allegations of such abuse.

We herewith express our utmost concern at the Iraqi authorities' reported plan to imminently execute numerous convicts on death row, in violation of the State's absolute and non-derogable obligation to protect the right to life as codified in the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq on 25 January 1971. In this regard, we wish to stress that the 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.

We recall that the, following her country-visit to Iraq in 2017, the Special Rapporteur on extrajudicial, summary or arbitrary executions raised alarm at the mass executions reported to take place in the country since 2016, and expressed concern that this could become the *modus operandi* in particular in dealing with terrorism cases¹.

Furthermore, she repeatedly expressed concerns in relation to the serious flaws reportedly affecting the administration of Justice in Iraq, 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-treatment and the use of forced confessions. These allegations have 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 trial².

In addition, we reiterate our serious concerns about the Iraqi 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,

¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/44/Add.1): https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/44/Add.1

² UNAMI/OHCHR, *Report on the Protection of Civilians in the Armed Conflict in Iraq*, 11 December 2014, 30 April 2015, p. 22.

and with no assessment based on the severity of the act when rendering punishment, including the death penalty³.

Therefore, we 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. Furthermore, when carried out on a widespread and systematic basis, arbitrary executions may well amount to crimes against humanity and may entail universal criminal responsibility for any official involved in such acts.

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 these circumstances, we urge Your Excellency's Government to immediately halt all executions of prisoners, and to ensure they are re-tried in accordance with the strictest international standards of due process and fair trial.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the identity of the prisoners at Al-Nasiriyah Central Prison, who were executed in October and November 2020. Also, please explain whether and, if so, how their parents were duly notified.
3. Please provide detailed information on the number of persons on death row in Iraq, and all plans, present and future, to execute prisoners sentenced to death and the legal grounds for this decision.
4. Please provide detailed information on any investigation, which may have been undertaken, and any results thereof, concerning the allegations of torture and ill-treatment. 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.
6. Please provide information in detail of how Anti-Terrorism Law no. 13 of 2005 and your Excellency's Government's counter-terrorism efforts 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

³ A(HRC/44/Add.1; as well as JAL IRQ 4/2018; JAL IRQ 1/2019; AL IRQ 3/2019.

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.

7. Please 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.

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.

We will publicly express our concerns, 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 to clarify the issue/s in question.

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(s) responsible for the alleged violations.

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

Fionnuala Ní Aoláin

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