

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

REFERENCE:  
UA IRQ 1/2021

27 January 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 40/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a Presidential decree allegedly authorizing the enforcement of 340 death sentences reportedly imposed in terrorism-related cases.**

We wish to recall that concerns at the imposition of death sentences under the Iraqi Anti-Terrorism Law no. 13 of 2005, following trials that allegedly did not respect due process and fair trial guarantees, including because 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)<sup>1</sup>. Subsequently, and largely in relation to the same reasons, we raised our concerns at the possible execution of fifty individuals in another communication (UA IRQ 9/2020)<sup>2</sup>, and in a public statement<sup>3</sup> dated 20 November 2020. We are grateful for the replies provided to the two communications<sup>4</sup> and wish to encourage Your Excellency's Government to provide a substantive reply to the present appeal, addressing the questions raised below and undertaking the necessary investigations.

In this connection, we regret that the responses provided by your Excellency's Government included an overview of the legal and procedural frameworks for the application of the death penalty in Iraq but lacked any instruction, or results thereof, of investigations into alleged torture and ill-treatment for the purpose of extracting forced confessions nor into the reported violations of the principles of due process.

We acknowledge and welcome the decision of Your Excellency's Government in the week of 23 November to stay the execution of a group of 50 individuals convicted on the same grounds and sentenced to death, and continue to encourage the Government to review all death sentences to ensure in each case, that they meet the

<sup>1</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25494>

<sup>2</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25736>

<sup>3</sup> Iraq: Wave of mass executions must stop, trials are unfair:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26526&LangID=E>

<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35862>;

<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35831>

critical requirements of fair trial. The stay of these executions is in accordance with the State of Iraq's international human rights obligations under the International Covenant on Civil and Political Rights (ICCPR). We regret however, the reported execution in the same week of 21 death convicts from al-Hoot prison.

According to the information received:

On 23 and 24 January 2021, the President of Iraq reportedly signed a decree authorizing the enforcement of 340 death sentences imposed on inmates held at the Nasiriyah central prison (also known as al-Hoot prison).

The decree did not contain any specific information with regard to the identity of the 340 individuals concerned, their age or trial history. Their cases are said to be part of a total of 542 execution orders that have already been signed off by previous Presidents. The executions may be carried out anytime.

Between 2019 and 2020, a total of 32 executions were reportedly carried out in al-Hoot prison. Of these, 21 in November 2020 only.

As of 22 December 2020, the prison had a total population of approximately ten thousand inmates, including Iraqi nationals (adults and juveniles) and foreigners. The vast majority of them are individuals convicted for terrorism or terrorism-related offences.

Of these, we understand that more than six thousand persons are on death row facing execution.

We express our utmost concern at the reported disposition to execute 340 convicts currently on death row.

Following her country-visit to Iraq in 2017, the Special Rapporteur on extrajudicial, summary or arbitrary executions raised alarm at the mass executions taking place in the country since 2016, and expressed concern that this could become the modus operandi in particular when dealing with terrorism cases<sup>5</sup>.

She also repeatedly expressed concerns in relation to the serious flaws 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 leading to death penalty in terrorism-related cases do not fully respect and protect

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<sup>5</sup> 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](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/44/Add.1)

international and constitutional guarantees of due process and a fair trial<sup>6</sup>.

**Based on the information available to us, and mindful that it would be hasty to formulate definitive conclusions at this stage, we nevertheless wish to express our concern at the risk that due process and fair trial guarantees might have not been met in every one of the 340 individual cases mentioned above. Should this be confirmed, the execution of these death sentences could be in violation of the right of every individual to life, liberty and security, as protected under Article 6 of the International Covenant on Civil and Political Rights, ratified by Iraq in 1971.**

Under international law, the death penalty may be imposed only for the “most serious crimes,” involving intentional killing and only following strict adherence to fair trial and due process guarantees. This is what distinguishes capital punishment from an arbitrary execution.

We take the opportunity to reiterate the concerns expressed with regard to 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, and with no assessment based on the severity of the act when rendering punishment, including the death penalty<sup>7</sup>.

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](http://www.ohchr.org) or can be provided upon request.

**In these circumstances, we respectfully urge Your Excellency’s Government to review any disposition, decision or plan to execute prisoners, particularly those possibly below the age of 18, or convicted for crimes committed when they were under 18, and to halt, pending their careful review, any pending execution.**

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<sup>6</sup> UNMAI/OHCHR, Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL, January 2020: [https://www.ohchr.org/Documents/Countries/IQ/UNAMI\\_Report\\_HRAAdministrationJustice\\_Iraq\\_28January2020.pdf](https://www.ohchr.org/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf)

<sup>7</sup> A/HRC/44/Add.1; as well as JAL IRQ 4/2018; JAL IRQ 1/2019; AL IRQ 3/2019.

**We respectfully call on Your Excellency's Government to take all necessary steps to address widespread reports of violations of fair trial and due process guarantees, including torture to obtain confessions, and to establish an official moratorium on executions, as a first step towards a complete abolition of the death penalty.**

We stand ready to support and assist your Excellency's Government in the implementation of needed reforms.

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 whether a Presidential decree authorizing the execution of the 340 death sentences alleged above was adopted on 23-24 January 2020. If yes, please explain why was such a decree adopted and what was the procedure followed. Please also clarify on what criteria were the 340 cases identified.
3. Please provide accurate information on the individuals listed in that decision including their names, gender, age, nationality, ethnic origin and other relevant characteristics. Please explain in detail the circumstances of their detention as well their trial history. Please also explain whether they had or might still have the possibility to apply for pardon or commutation of the death sentences.
4. Please provide information on the existing procedure for pardon in death penalty cases, if any, including the criteria on which pardon may be granted.
5. Please provide information as to whether the families the individuals listed have been informed that their relative was sentenced to death and might be imminently executed.
6. Please provide detailed statistics concerning the imposition of the death penalty and its execution in the past two years, broken down by sex, age, nationality, crime charge and conviction.
7. Please provide information concerning instances of commutation of death sentences, as well as pardon, and the criteria set for such decisions.
8. Please provide information about the number, name, sex and nationality of the so-called "foreign fighters" amongst those who have been sentenced to death, whether they are alive or have been executed. On what grounds were they sentenced? Were their governments

informed during their trial or before or after their execution?

9. How many of these “foreign fighters” are currently on trial, facing a possible death sentences; have been sentenced to death, and awaiting execution? Which countries are they coming from?
10. Please provide detailed information on measures taken or envisaged to be undertaken in the area of criminal justice, particularly to address allegations of violations of fair trial and due process guarantees in criminal proceedings, including torture to obtain confessions, especially in relation to death penalty cases.

While awaiting a reply, we respectfully reiterate our recommendation to the Government of Your Excellency, that measures be promptly taken to suspend any further execution pending careful judicial review; and establish an independent, competent, mechanisms to review any further instance of death penalty, so as to prevent the risk of arbitrary executions.

We may consider to publicly expressing our concerns in this regard in the near future, as we believe that the imposition of the death penalty is the ultimate, irreversible and irreparable sanction that can be imposed on an individual accused of a crime, no matter how abhorrent that crime may be. Sentencing someone to death is a very serious matter that merits the highest attention from any Government, to carefully ensure that the respect of the strictest guarantees for fair trial have been scrupulously respected to reduce the risk that the sentence of death is not arbitrary. What seems to be a current trend of large-scale death sentences and executions, the legality of which is dubious under international law, will continue to tarnish the image of Iraq in the eyes of many. Given these considerations, and the gravity of the issue, we believe that the public at large should be alerted to the implications for their enjoyment and exercise of their most fundamental human rights (to life, to freedom, to fair treatment and trial guarantees) of such a policy. Any public expression of concern on our part on this matter will indicate that we have been in contact with your Excellency’s Government 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.

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Fionnuala Ní Aoláin  
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