

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: UA IRQ 1/2024
(Please use this reference in your reply)

26 January 2024

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 53/4, 51/8 and 49/10.

We would like to bring to the attention of your Excellency's Government information we have received concerning the **imminent execution of a significant number of detainees primarily held at the Nasiriyah central prison. The number of detainees scheduled for execution, according to reports exceeds 250.**

We wish to recall that concerns at the imposition of unannounced 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 those based on confessions extracted under torture, were raised in previous communications addressed to your Excellency's Government, including JUA IRQ 4/2020, JUA IRQ 9/2020 and JUA IRQ 1/2021. We are grateful for the replies provided to the above communications 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.

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.

According to the information received:

On 25 December 2023, 13 male Iraqi convicts, previously sentenced to death, were executed at the Nasiriyah Central Prison. This is the largest number of convicted prisoners reported to have been executed by the Iraqi authorities on one day since 16 November 2020, when 20 convicted prisoners were executed.

Of the 13 executed on 25 December, 11 were reportedly sentenced to death under the anti-terrorism law, and two were allegedly sentenced for the murder of police officers and narcotics related charges. On the evening of 24 December, the names of the 13 were reportedly called through a loudspeaker of the prison. Reportedly, they were picked up from their cells before being executed the next morning, and they were not allowed to call their families nor their lawyers.

It is reported that the executions took place without prior notification to family and autopsies have been refused. Reportedly, some of these detainees had received visits from their families a few weeks before being executed. The families were unaware that these would be their final visits to their loved ones. It is also reported that families of executed detainees had been asked to sign a paper before collecting the remains of their loved ones testifying that they will not initiate any further legal action.

With these latest executions, at least 28 cases of executions have been reported in 2023. According to the information received; four (4) detainees were executed in May 2023 at the Nasiriyah Prison; four (4) detainees were executed in July 2023 at the Nasiriyah Prison; one (1) detainee was executed (location of execution unknown) in May 2023; three (3) detainees were executed in August 2023 at the Nasiriyah Prison; three (3) detainees were executed in November 2023 (location of execution unknown); and 13 detainees were executed on 25 December at Nasiriyah Prison.

It has now been brought to our attention that a significant number of detainees (according to reliable reports over 250) have recently been approved for execution.

While details are unclear due to the secretive nature of executions taking place, there is reasonable information to believe that previously announced executions have taken place in the Nasiriyah central prison since 25 December 2023.

It is reported that many detainees are unaware of their legal status, some are awaiting decisions on appeals and often unaware if their sentences have been ratified. Some detainees have been reportedly forced to appear on a television show of the Ministry of Interior to “confess” to crimes under duress and suspected torture. Several victims of torture have reportedly requested for medical reports from the Prosecutor’s office and/or the Iraqi Commission for Human Rights, which is now under the supervision of the Ministry of Justice. It is informed that such reports have been either denied or, on the rare occasion when reports are provided, they do not conform to the [Istanbul Protocol](#) criterions.

Considering the past practice in Iraq of sudden, unannounced, mass executions of detainees, as witnessed on 25 December 2023, a significant number of detainees are now reportedly considered to face the imminent threat of execution.

We express our utmost concern at the reported disposition to execute hundreds of detainees currently on death row. 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 universal standards of due process and fair trial, the imposition of the death penalty is always arbitrary and unlawful when the court ignores or discounts essential facts that may significantly influence a capital defendant’s motivations, situation and conduct. Only full respect for stringent fair trial and due process

guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

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.” 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.

We remind your Excellency’s Government that according to article 5 of the [United Nations Safeguards Protecting the Rights of those Facing the Death Penalty](#), approved by the Economic and Social Council on 25 May 1984 “Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.” Further, individuals under sentence of death have a right to appeal their sentence to a court of higher jurisdiction.

We are deeply concerned of the secretive nature of the implementation of the death penalty in Iraq and reports of executions without prior notification to families or lawyers. In this regard, we remind your Excellency’s Government that transparency is a minimum requirement in the application of the death penalty. Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty calls upon all Member States “to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law.”

The Human Rights Committee has held that “failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the Covenant” (CCPR/C/GC/36, para. 40).

The United Nations Safeguards provide that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that pardon or commutation may be granted in all cases of capital punishment.

We also draw the attention of your Excellency’s Government that in the 40 years of experience of the Special Procedures mandate on extrajudicial, arbitrary or summary executions, and a careful review of numerous studies and evidence, the death penalty has never been proved to be an effective deterrent for crimes (A/HRC/42/28).

The General Assembly has consistently called upon all States to establish a moratorium on executions with a view to abolishing the death penalty since its

resolution 62/149 of 18 December 2007 (para. 7) and most recently, in its resolution A/RES/77/222 of 15 December 2022, called upon all States to respect the safeguards guaranteeing protection of the rights of those facing the death penalty. We reiterate that any measures to abolish the death penalty should be seen as progress towards the realization of the right to life.

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. Article 4 of the Anti-Terrorism Law applies to anyone who committed, “as a main perpetrator or participant of terrorist acts, any person who incites, plans, finances or assist terrorists.” 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.

We recall that the definition of terrorism and terrorism offences must be confined to acts that are ‘genuinely’ terrorist in nature in accordance with 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 acts. We remind your Excellency's Government that any counter-terrorism legislation should be limited to criminalising conduct that is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments, including UN Security Council resolution 1566 and the model definition set out by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and should be strictly guided by the principles of legality, necessity, proportionality and non-discrimination. We underscore that the definition of terrorism and related offences must be accessible, formulated with precision, non-discriminatory and non-retroactive (A/HRC/16/51). We recall that the principle of legal certainty, enshrined in article 11 of the Universal Declaration of Human Rights (UDHR), requires that criminal laws be sufficiently precise so that it is clear in advance what types of behaviour and conduct constitute a criminal offence and the consequence of committing such an offense.

We are equally alarmed by the allegations of torture and ill-treatment in the Nasiriyah central prison, and the reported absence of prompt and impartial investigations into those allegations, even though the alleged abuse has reportedly 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's 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). For example, the Committee against Torture in its concluding observations

(CAT/C/IRQ/CO/2) noted that “prisoners on death row in Nasiriyah central prison have been held in deplorable material conditions of detention and have often been subjected to torture and ill-treatment, including false threats from the prison guards about their imminent execution.”

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.

International law prescribes that State parties must conduct prompt, impartial and thorough investigations when complaints of torture or other ill-treatment are made (article 12 and 13, CAT; and article 7 and 2(3), ICCPR) and that “any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.”

Based on the information available to us and the past practice of mass executions carried out without prior notice, we are concerned of the imminent, mass, unannounced execution of prisoners at the Nasiriyah central prison and elsewhere.

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 view of the urgency of the matter and the irreversibility of the execution of the death penalty, we respectfully call upon your Excellency’s Government to take all necessary steps to immediately halt all executions, especially in the Nasiriyah central prison. We urge your Excellency’s Government to grant clemency and commute the sentences of those on death row 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 for 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 as to whether there is a policy to execute detainees, currently in the Nasiriyah central prison and

elsewhere within the coming days/ weeks. If yes, please explain why such policy was adopted and what was the procedure followed. Please also clarify on what criteria the inmates were identified for execution.

3. Please clarify if the President of Iraq has approved these executions and if so, please provide accurate information on the number of individuals listed in that decision including their names, gender, age, nationality, ethnic or religious background and other relevant characteristics.
4. Please provide information on the locations of detention of individuals who are currently sentenced to death.
5. Please provide information on the safeguards in place during detention of these individuals to ensure that they are not tortured or otherwise ill-treated and indicate whether the allegations of torture were investigated, as required under the Convention against Torture. If no, please explain why. If, yes please provide the findings of such investigations and explain the actions taken against perpetrators and remedial measures taken to prevent recurrence.
6. Please provide information on the existing procedure for pardon/ amnesty in death penalty cases, if any, including the criteria on which pardon may be granted.
7. Please provide information as to whether the detainees on death row and their families have been informed of their respective death sentences and dates of their imminent execution.
8. Please provide detailed statistics concerning the imposition of the death penalty and its execution in the past three years (2021-2023) in Iraq, broken down by gender, age, nationality, ethnic or religious background, crime charged and conviction.
9. 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 and the lack of access to appeal, especially in relation to death penalty cases.

While awaiting a reply, we respectfully reiterate our recommendation to your Excellency's Government, 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 would like to inform your Excellency's Government that having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to this urgent appeal and the regular

procedure.

We may consider 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. We wish to note that 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 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 issues in question.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Matthew Gillett

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