

Mandates of the Working Group on Arbitrary Detention; 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

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(Please use this reference in your reply)

8 February 2024

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; 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 51/8, 53/4 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the urgent risk of execution of **Mr. Abdullah Ahmed Faleh Ahmed al-Taei**, an Iraqi national who was arrested in 2017 and was accused of being involved in terrorism-related activities. On 13 August 2018, Mr. Al-Taei was sentenced to death on the basis of articles 2 (1), (3) and (5) and 4 (1) of the Anti-Terrorism Law in case no. 850/2018 by the first chamber of the Niniveh Criminal Court.

In March 2022, the Working Group on Arbitrary Detention examined Mr. Al-Taei's deprivation of liberty ([Opinion no. 5/2022](#)). It determined that his deprivation of liberty is arbitrary and urged your Excellency's Government to immediately take steps to remedy the situation of Mr. Al-Taei to bring it into conformity with the relevant international norms, including by releasing him immediately, and to ensure a full and independent investigation of the circumstances surrounding his arbitrary detention.

According to the information received:

Mr. Al-Taei is facing imminent execution. He was sentenced to death in August 2018 on the basis of the 2005 Anti-Terrorism Law and has remained detained in Al Nasiriyah prison, the only prison in Iraq that carries out executions.

In September 2018, the lawyer of Mr. Al-Taei filed an appeal before the Federal Court of Cassation. However, reportedly, Mr. Al-Taei's family has not received any news of the outcome of this appeal. Allegedly, practice has shown that families are not notified when the Court rejects an appeal, and it is possible that the Court may have rejected the appeal without notifying the family and subsequently transferred Mr. Al-Taei's death penalty decree to the President.

Reportedly, once the President ratifies death penalty decrees that he receives from the Supreme Judicial Council, executions can be carried out very quickly. In 2018, 13 people were hanged within just 3 hours of the President ratifying their death sentences. Therefore, it is alleged there is an imminent risk of Mr. Al-Taei being executed at any moment.

Allegedly, this case is particularly concerning in light of the reported recent events of 25 December 2023, when 13 men were executed in Al Nasiriyah prison, marking a renewal of mass executions since hiatus in 2020. The executions were reportedly carried out without regard for the basic rights of those facing the death penalty; the names of the 13 men to be executed were reportedly called out on the prison's loudspeaker the evening prior, following which the authorities collected them from their cells and allegedly executed them in the morning. They were reportedly not allowed to call their families or their lawyers before they were executed.

Since the 25 December 2023 executions, a list of over 150 prisoners of Al Nasiriyah prison facing imminent executions has reportedly been circulating.

We express our utmost concern at the reported disposition to execute hundreds of detainees currently on death row, including Mr. Al-Taei. 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 articles 6 and 9 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 (then) 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."

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. 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.

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), the offences in international counter-terrorism instruments, and the model definition of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Terrorist offences must also respect the principle of legality under article 15 of the ICCPR and article 11 of the Universal Declaration of Human Rights, which requires that criminal laws are sufficiently precise, unambiguous and accessible so that it is clear in advance what types of behaviour constitute an offence and the consequence of committing such an offence (A/HRC/16/51). Offences must further be strictly guided by the principles of necessity, proportionality and non-discrimination.

The Human Rights Committee has previously criticized the Anti-Terrorism Law no. 13 of 2005 for its broad definition of terrorism, recommending that measures to combat terrorism be fully compatible with the Covenant (CCPR/C/IRQ/CO/5, paras. 9-10).

Based on the information available to us and the past practice of mass executions carried out without prior notice, we are concerned by the imminent execution of Mr. Al-Taei at the Nasiriyah central prison and elsewhere, particularly in view of the Working Group's findings that his right to a fair trial and due process was violated, and we request that he be released immediately.

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 systemic 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 commuting 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 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 detailed information on the extent to which the imposition of the death penalty in the case of Mr. Al-Taei is consistent with international human rights law.
3. Please explain what steps have been taken to implement Opinion no. 5/2022 concerning Mr. Al-Taei and the recommendations contained therein.
4. Please provide information on the existing procedures for persons sentenced to death to seek clemency or pardon, and also provide detailed information on how Mr. Al-Taei can access such procedures.
5. Please provide detailed information on the terrorism-related charges against Mr. Al-Taei, including information on the grounds for his death sentence. Please explain how his conviction and sentence comply with the principles of legality, necessity, proportionality, and non-discrimination.
6. 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 a policy was adopted and what was the procedure followed. Please also clarify on what criteria the inmates were identified for execution.

7. Please clarify if the President of Iraq has approved these executions and if so, please provide accurate information on the individuals listed in that decision including their names, gender, age, nationality, ethnic or religious background and other relevant characteristics.
8. 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.
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, 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 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. 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 issue/s 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.

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Vice-Chair on Communications of the Working Group on Arbitrary Detention

Morris Tidball-Binz
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