

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

Ref.: OL IRQ 1/2025
(Please use this reference in your reply)

27 March 2025

Excellency,

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

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning certain provisions of the **Second Amendment to the General Amnesty Law No. 27 of 2016 ("Second Amendment")**, adopted by the Iraqi Parliament on 21 January 2025.

We welcome that article 4 of the Second Amendment repeals and replaces articles 9(1) and (2) of the Amnesty Law and that the new provisions allow the Judicial Committee to reopen investigations and trials based on confessions extracted under torture, secret evidence provided by informants, or confessions obtained from third parties. We note in this respect that article 15 of the Convention Against Torture (CAT), acceded to by Iraq on 7 July 2011, provides that "each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". We further welcome that the Amnesty Law may have the effect of reducing overcrowding in prisons.

We are nonetheless concerned that some of these provisions would not be consistent with international human rights law relating to the death penalty, as well as best practice international standards concerning amnesty in armed conflict under international humanitarian law. We note that Special Procedures mandate holders have repeatedly drawn attention to concerns about the systematic imposition of the death penalty in Iraq in terrorism cases (e.g. [IRQ 3/2024](#), [IRQ 2/2024](#), [IRQ 1/2024](#), [IRQ 9/2020](#), [IRQ 4/2020](#)), including for offences which are not "most serious", following unfair trials, and confessions obtained under torture or cruel, inhuman or degrading treatment or punishment.

The General Amnesty Law No. 27 of 2016, as amended, relevantly entitles Iraqis sentenced to death or imprisonment to a general and inclusive amnesty (article 1) where the plaintiff or the family of the victim waives the penalty and the offender satisfies applicable financial obligations (article 3(1)). Article 4 of the Law excludes certain crimes from eligibility for amnesty. Following the First Amendment adopted in 2017, these included offences under the Anti-Terrorism Law No. 13 of 2005 committed after 10 June 2014, and the same offences committed before 10 June 2014 where they resulted in murder or permanent disability (article 4(2) of the Law, as amended).

The recent Second Amendment (article 2) replaces article 4(2) of the Law with a new provision excluding from amnesty:

“Crimes of terrorism that resulted in death or permanent disability, crimes of destroying state institutions, crimes of fighting against the Iraqi Armed Forces, and any terrorist crimes committed through assistance, incitement, or agreement, as well as those who recruited individuals into terrorist organizations or voluntarily joined them.”

The amendment broadens the terrorist offences excluded from amnesty, since it covers certain terrorist offences committed before 10 June 2014 even where they do not involve murder or permanent disability – namely, “any terrorist crimes committed through assistance, incitement, or agreement, as well as those who recruited individuals into terrorist organizations or voluntarily joined them”, as well as the other offences of “destroying state institutions” and “fighting against the Iraqi Armed Forces”. The Second Amendment may accordingly result in an increase in the number of executions carried out by Iraq.

Death penalty under international human rights law

We are concerned that the amendments are not consistent with international law for a number of reasons. First, we remind your Excellency’s Government that retentionist States are required to strictly limit the death penalty to the “most serious crimes” (ICCPR article 6(2)), meaning crimes of “extreme gravity involving intentional killing”. In this regard, we note that the Second Amendment excludes from amnesty various terrorist crimes which may not involve deliberate killings, namely those resulting in permanent disability, “any terrorist crimes committed through assistance, incitement, or agreement” and terrorist recruitment; as well as the other crimes under the Anti-Terrorism Code No. 13 (2005) of “destroying state institutions” and “fighting against the Iraqi Armed Forces”, irrespective of the harmfulness of such acts. Excluding amnesty for terrorist crimes could accordingly violate Iraq’s obligation to protect the right to life under article 6(2) of the ICCPR.

In this respect, we reiterate our previous concerns that Anti-Terrorism Law No. 13 of 2005 contains a definition of terrorism that is vague and overly broad and covers certain conduct that is not genuinely terrorist in nature according to best practice international standards, as set out in Security Council resolution 1566 (2004) and the model definition of terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism ([A/HRC/16/51](#), paras. 26-28). The principle of legal certainty under international law (ICCPR article 15(1)) requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. We reiterate the Human Rights Committee’s recommendation to “revoke death sentences issued for crimes not qualifying as the most serious crimes and pursue the necessary legal procedures to resentence those convicted for such crimes” (general comment No. 36 (GC36), para. 35).

Furthermore, we emphasize that article 6(4) of the ICCPR entitles anyone sentenced to death to the right to seek pardon or commutation of the sentence, and amnesty pardon or commutation of the sentence of death may be granted in all cases. Thus, “[n]o category of sentenced persons can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner” (Human Rights Committee, General Comment No. 36, para. 47). Excluding amnesty for terrorist crimes, whether “most serious” or not, would accordingly violate Iraq’s obligation under article 6(4) of the ICCPR.

We also draw attention to the statement by the Human Rights Committee that States, “should not afford the families of victims of crime a preponderant role in determining whether the death sentence should be carried out” (general comment No. 36, para. 47). As mentioned, the Law requires the victim or their family to waive the death penalty. The Second Amendment provides an alternative allowing tribal settlements to substitute for a waiver from the complainant or the victim’s family (article 3(1)(B) of the Law). Allowing victims or tribes to be the effective decision-maker in waiving the death penalty is not consistent with the protection of the right to life under article 6 of the ICCPR. This approach does not enable all relevant factors to be objectively considered and risks, according vengeance by aggrieved parties a disproportionate weight in the amnesty decision.

We further recall that “States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future”, since the death penalty cannot be reconciled with full respect for the right to life and human dignity (general comment No. 36, para. 50). In particular, the Human Rights Committee has emphasized that it is contrary to the object and purpose of article 6 for States parties to take steps to increase de facto the rate of use of and the extent to which they resort to the death penalty, or to reduce the number of pardons and commutations they grant (*ibid*) – which would be the effect of the Second Amendment. There is also increasing agreement between States parties to consider the death penalty as cruel, inhuman or degrading punishment (*ibid*, para. 51).

Amnesty under international humanitarian law

Special Procedures mandate-holders have noted that the death penalty for terrorism offences in Iraq has been in the context of conduct committed in non-international armed conflict between non-state armed groups and the Iraqi authorities ([IRQ 3/2024](#), [IRQ 1/2024](#), [IRQ 9/2020](#), [IRQ 4/2020](#)). In this regard, we emphasize that customary international humanitarian law provides that “[a]t the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes” (International Committee of the Red Cross, Customary International Humanitarian Law rule 159).

The commission of international crimes is excluded from amnesty under humanitarian law, including because amnesty for such crimes would be incompatible with the duty under international law to investigate and prosecute them (*ibid*, rule 158). Amnesty for international crimes, such as torture, is also incompatible with the right to

an effective remedy, including reparation and rehabilitation (Human Rights Committee, general comment No. 20, para. 15). We recall that in many cases, terrorism offences under Iraqi law may not constitute international crimes or be of an equivalent gravity. International humanitarian law does not prohibit mere participation in armed conflict, opposing the State, or support for the activities of armed groups, but instead focuses on specific harmful acts such as the intentional killing of civilians.

Further, we note that internationally recognized processes of “disarmament, demobilization and reintegration” and Security Council framework on “prosecution, rehabilitation and reintegration” in counter-terrorism contexts specifically (e.g. resolutions 2178, 2396 and 2427), envisage the use of amnesties even for “terrorist” offences in appropriate circumstances, including where the accused are themselves victims, again subject to the caveat that there should be no impunity for international crimes. The Madrid Guiding Principles 2015 provides that “Member States should consider appropriate administrative measures and/or rehabilitation and reintegration programmes as alternatives to prosecution in appropriate cases” (principle 31).

We respectfully emphasize, consistent with Iraq’s international human rights law obligations and resolutions of the General Assembly, Security Council and Human Rights Council, that all measures to counter terrorism must fully respect human rights, which also makes counter-terrorism efforts more effective. Consequently, we urge your Excellency’s Government to immediately review and repeal (1) the Second Amendment, (2) other limitations on amnesty under General Amnesty Law No. 27 of 2016 that are not consistent with international law, and (3) provisions of the underlying Anti-Terrorism Law No. 13 of 2005 that are not consistent with international law.

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 analysis.
2. Please indicate whether your Excellency’s Government intends to immediately review and repeal all provisions in the amnesty law which preclude eligibility for amnesty for terrorist crimes other than those that involve intentional killing or constitute international crimes.
3. Please indicate whether the provisions on waiver of the death penalty will be amended to ensure that neither victims nor tribes have predominantly influence in decisions and that all factors relevant to amnesty will be objectively considered.
4. Please explain whether Iraq is envisaging to review and amend the definition of terrorism and terrorist offences under the Anti-Terrorism Law No. 13 of 2005 to ensure they are consistent with international human rights law, including the principle of legality.
5. Please explain whether your Excellency's Government is considering to review the imposition of the death penalty for terrorism-related offenses,

in particular not involving intentional killing, in view of the exclusion of this category from the possibility to seek amnesty under the law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. 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.

Ben Saul

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions