

Iraq

*Alternative report submitted in the context of the review
of Iraq's second period report (confidential)*

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About MENA Rights Group

MENA Rights Group (MRG) is a Geneva-based legal advocacy NGO defending and promoting fundamental rights and freedoms in the Middle East and North Africa (MENA) region. Adopting a holistic approach, we work at both the individual and structural level. We represent victims of human rights violations before international law mechanisms. In order to ensure the non-repetition of these violations, we identify patterns and root causes of violations on the ground and bring key issues to the attention of relevant stakeholders to call for legal and policy reform.

We have been working on Iraq since our inception in 2018. We have thus far represented 773 Iraqi individuals who have been subjected to gross human rights violations before international protection mechanisms. The majority of these individuals are victims of enforced disappearances (ED); out of the 480 cases registered by the CED since the ratification of the Convention by Iraq in 2010, 323 have been filed by MRG. In addition, we have produced analysis of four Iraqi draft laws incompatible with international standards. When possible, we lobbied members of Parliament urging for the amendment of these texts. To carry out these activities, we relied on a solid network of victims, their families, lawyers, grass-roots activists, CSOs on the ground, with whom we closely collaborate.

1 Introduction

Widely practiced during the time of Saddam Hussein, torture remains widespread in Iraq, despite the ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 2011.

Over the past 10 years, torture has affected all communities and most recently, peaceful protesters arrested in the context of the October 2019 popular uprisings. Judges regularly fail to investigate members of the security forces suspected of committing such acts, creating a climate of impunity. Coerced confessions have been used in court proceedings when they should not have. In addition, it is not uncommon for persons deprived of their liberty to be held *incommunicado*, thus increasing the risk of abuse in detention.

Perpetrators of crimes of torture are multiple and include, among others, the police, the Iraqi army, armed groups acting with the acquiescence or consent of the state, the intelligence services of the Kurdish region, and counter-terrorism units. Despite the seriousness and scale of the problem, Iraq still lacks adequate legislation to effectively curb this practice.

Already in 2015, the Committee against Torture (hereinafter “CAT” or “Committee”) stated it had received reports of a “routine and widespread use of torture and ill-treatment of suspects in police custody, as well as in pretrial detention centres run by the Ministry of the Interior and the Ministry of Defence, primarily to extract confessions or information to be used in criminal proceedings.”¹

The Committee has set that “torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time but are seen to be

¹ UN Committee against Torture, *Concluding observations on the initial report of Iraq*, 7 September 2015, UN Doc. CAT/C/IRQ/CO/1, para. 15.

habitual, widespread and deliberate in at least a considerable part of the territory of the country in question.”²

Given the persistence of a widespread and systematic pattern of torture and ill-treatment in Iraq, as demonstrated in this report, MENA Rights Group (MRG) kindly requests that the Committee considers opening a confidential enquiry under article 20 UNCAT.

2 Methodology

The present report is based on a collection of 22 testimonies of victims that demonstrate the widespread nature of the practice of torture in Iraq.

Cases we have documented show that victims originate from different geographical areas. In addition, torture affects different age groups and is not confined to a particular profile. Based on the assumption that the practice of torture was rooted in time, we documented cases that occurred at different times in post-2003 Iraq.

Regarding perpetrators, we wanted to verify whether torture was being practiced by a diversity of actors. We made the assumption that torture was not only practice by various Iraqi security forces (police, army) but also by state-sponsored militias affiliated with the Popular Mobilisation Units.

While documenting cases of torture, we took into account the various purposes of the practice. For each case, we asked the victims or their families if they knew the perpetrators’ intent, i.e., whether torture was employed to extract a confession, used as a punishment, practiced in the context of the fight against terrorism or the result of excessive use of force during demonstrations. Our research also aimed to reflect the whole spectrum of what can amount to torture, including physical and mental pain.

MRG has gathered the said testimonies through contact with organisations working in the field and direct contact with the victim or victim’s family. MRG consulted several organisations working on the issue of torture in Iraq – in particular, the Iraqi War Crime Documentation Centre, End Impunity in Iraq, and Al Wissam Humanitarian Assembly –, which were able to gather testimonies or to put MRG directly in contact with the victims. As MRG works on a regular basis on cases of torture in the MENA region, we were able to document cases of torture directly from the victims or their relatives.

We have developed a questionnaire that we used to structure our interviews with the victims and/or their families. The questionnaire used contains questions related to the personal information of the victim, the arrest, the detention, the acts of torture suffered, and, when applicable, the end of detention (reparation, access to domestic remedies, psychological sequels stemming from acts of torture, etc.).

Finally, this report analyses Iraq’s implementation in law and practice of the UNCAT in light of the State party’s report³ and the Reply to List of Issues⁴ ahead of Iraq’s upcoming second periodic review. This analysis will pay close attention to the progress made by the State party to implement the

² Committee against Torture, *Confidential inquiries under article 20 of the Convention against Torture*, n.d., available at: <https://www.ohchr.org/en/hrbodies/cat/pages/inquiryprocedure.aspx> (accessed on 9 September 2021).

³ Committee against Torture, *Second periodic report submitted by Iraq under article 19 of the Convention, due in 2019*, received on 20 August 2019, UN Doc. CAT/C/IRQ/2, (hereinafter “Second periodic report of the State party”).

⁴ Committee against Torture, *Replies of Iraq to the list of issues in relation to its second periodic report*, received on 5 January 2022, UN Doc. CAT/C/IRQ/RQ/2, (hereinafter “Reply to List of Issues”).

recommendations issued by the CAT during the period spanning from the issuance of the last Concluding Observations⁵ on 7 September 2015 and March 2022.

3 Background

3.1 Iraq under the Ba’athist regime

Prior to 2003, under Saddam Hussein and the Ba’ath party, torture, violence, killings, executions, arbitrary arrests, enforced disappearances, and various other forms of repression were used in a widespread manner.⁶ According to Human Rights Watch, between 250’000 to 290’000 persons were forcibly disappeared under the Ba’athist’s rule,⁷ including an estimated 100’000 Kurdish victims during operation Anfal.⁸

The security apparatus systematically and routinely resorted to various torture methods such as beatings, rape, the denial of food and water, electric shocks to genitalia, the pulling of fingernails, the suspension of individuals from the ceiling, the burning of victims with a hot iron, and crucifixion.⁹ In addition, punishments such as branding, and amputations were inflicted on individuals including those convicted of military desertion or accused of having criticised the regime.¹⁰

The infliction of torture and ill-treatment was part of the regime’s methods to crush dissent and opposition, and used to extract information and “confessions” from detained individuals.¹¹ It resulted in a high incidence of deaths in detention, and those who survived torture were left marked by physical or psychological injury.¹² Such practices also gave rise to a “confession culture” resting at the heart of Iraq’s criminal justice system, and which continues to prevail to date.¹³

3.2 Iraq after 2003

The human rights situation after 2003 remained dire. Human rights violations, including torture and ill-treatment, were committed by members of the U.S.-led Coalition Forces (renamed the “Multinational Force” – MNF – after the official end of the occupation on 30 June 2004 and subsequently “U.S. Forces” after the departure of all non-U.S. forces in 2010),¹⁴ and members of the Iraqi security forces and

⁵ Committee against Torture, *Concluding observations on the initial report of Iraq*, 7 September 2015, UN Doc. CAT/C/IRQ/CO/1 (hereinafter “2015 Concluding Observations”).

⁶ European Asylum Support Office (EASO), *Crimes committed during the regime of Saddam Hussein*, January 2021, available at: <https://easo.europa.eu/country-guidance-iraq-2021/crimes-committed-during-regime-saddam-hussein> (accessed on 10 August 2021).

⁷ Human Rights Watch, *Justice For Iraq - Policy Paper*, December 2002, available at: <https://www.hrw.org/legacy/backgrounders/mena/iraq1217bg.htm> (accessed on 10 August 2021).

⁸ Amnesty International, *Getting Away with Murder: Political Killings and ‘Disappearances’ in the 1990s*, 1994, available at: <https://www.amnesty.org/download/Documents/184000/act330011994en.pdf> (accessed on 10 August 2021).

⁹ Archive of the U.S. Department of State, *Iraq: A Population Silenced*, December 2002, available at: <https://2001-2009.state.gov/g/drl/rls/15996.htm> (accessed on 11 August 2021).

¹⁰ *Ibidem*.

¹¹ Amnesty International, *Iraq: A Decade of Abuses*, 2013, available at: <https://www.amnestyusa.org/files/mde140012013en.pdf> (accessed on 11 August 2021), p. 12.

¹² *Ibidem*.

¹³ *Ibidem*.

¹⁴ *Ibidem*, p. 7

insurgents.¹⁵ Between 2003 and 2013, the Iraqi Body Count recorded over 110'000 civilian deaths at the hands of international forces, Iraqi forces as well as private military and security contractors hired to guard and protect foreign nationals.¹⁶

The context of armed conflict, widespread sectarian and political violence was accompanied by the arrest of tens of thousands of individuals by the authorities. Many of them were detained for months or years without being charged or tried and held in conditions that facilitated the use of torture and other forms of ill-treatment.¹⁷ Many of those arrested in the early stages of the U.S. intervention were registered at random only and not properly accounted for.¹⁸ While some of the detainees arrested by the international forces were held in official detention facilities, such as Abu Ghraib prison in Baghdad, Camp Bucca or Camp Cropper, these facilities also hosted a large number of unregistered detainees.¹⁹ Additionally, U.S. forces also ran secret detention facilities.²⁰

In the early stages of the occupation, reports of abuses of detainees by foreign forces emerged.²¹ A particularly prominent example was made public through the wide dissemination in media of photographs showing U.S. forces torturing Iraqi detainees in Abu Ghraib prison in April 2004.²² Former detainees described having been subjected to systematic abuse while detained there.²³ Following these revelations, U.S. authorities adopted new measures to improve safeguards against abuses by their forces. However, incidents of torture and ill-treatment continued to be reported throughout the coalition forces' operational presence in Iraq.²⁴

Reports of torture and ill-treatment were also raised against the Interim Government of Prime Minister Ayad 'Allawi, to which power was handed over in June 2004.²⁵ Abuses against detainees by Iraqi forces became endemic in 2006 amid attacks by armed groups following the election of the first Iraqi government and the escalation of sectarian and political violence. Iraqi and coalition forces rounded up thousands of suspects in an effort to identify the insurgents. In addition, armed militia members affiliated with political parties also engaged in the abduction of perceived rivals and opponents, detained them, and tortured them in unofficial detention sites.²⁶

The abuses continued after 2009, when U.S. forces began transferring detainees in their custody – many of whom had been held for years without charge or trial –²⁷ and detention facilities they managed – including Camp Cropper, Camp Bucca and Camp Taji – to the Iraqi authorities.²⁸ In the months and

¹⁵ Amnesty International, *Beyond Abu Ghraib: detention and torture in Iraq*, 6 March 2006, available at: <https://www.amnesty.org/download/Documents/76000/mde140012006en.pdf> (accessed on 11 August 2021), p. 3.

¹⁶ "Iraq: A Decade of Abuses", *op. cit.*, p. 7.

¹⁷ *Ibidem*, p. 8.

¹⁸ Ceasefire Centre for Civilian Rights, *The Forever Crime: Ending enforced disappearance in Iraq*, December 2020, available at: https://www.ceasefire.org/wp-content/uploads/2021/01/CFR_Iraq_EN_Jan21.pdf (accessed on 7 August 2021), p. 10.

¹⁹ *Ibidem*.

²⁰ *Ibidem*.

²¹ "Iraq: A Decade of Abuses", *op. cit.*, p. 12.

²² *Ibidem*.

²³ *Ibidem*, pp. 12-13.

²⁴ *Ibidem*, p. 14.

²⁵ Human Rights Watch, *The New Iraq? - Torture and ill-treatment of detainees in Iraqi custody*, 24 January 2005, available at: <https://www.hrw.org/report/2005/01/24/new-iraq/torture-and-ill-treatment-detainees-iraqi-custody> (accessed on 11 August 2021).

²⁶ "Iraq: A Decade of Abuses", *op. cit.*, p. 14.

²⁷ Amnesty International, *Broken Bodies, Tortured Minds - Abuse and Neglect of Detainees in Iraq*, 8 February 2011, available at: <https://www.amnesty.org/download/Documents/32000/mde140012011en.pdf> (accessed on 11 August 2021), p. 2; "Iraq: A Decade of Abuses", *op. cit.*, p. 16.

²⁸ "Broken Bodies, Tortured Minds - Abuse and Neglect of Detainees in Iraq", *op. cit.*, p. 4; Amnesty International, "Iraq: A Decade of Abuses", *op. cit.*, p. 16.

years following the transfer, reports of torture and ill-treatment allegations by Iraqi security forces were reported, including rape, beatings, electric shocks, suspension by the limbs.²⁹ In this context, the U.S. government was urged to investigate whether its forces breached international law by transferring thousands of Iraqi detainees from U.S. to Iraqi custody despite the clear risk of torture.³⁰ Many of the detainees were held *incommunicado*, some in secret detention facilities.³¹ In the same period, serious abuses were also reported in the Kurdistan Region of Iraq.³²

Throughout 2012, reports of torture and ill-treatment continued to be made, with Amnesty International, concluding that they “indicated the extent to which these serious violations remain both common and widespread”.³³

3.3 Torture by ISIL and state security forces

The rise of the Islamic State in Iraq and the Levant (ISIL) in 2014 triggered an internal conflict of more than three years that was marked by serious violations of international human rights and humanitarian law. Members of ISIL abducted individuals perceived to be critical of them or affiliated with the government, committed massacres, persecuted minorities and subjected their female members to sexual slavery.³⁴ ISIL members also resorted to further torture and ill-treatment methods, such as executing individuals by stoning and amputation or crucifixion.³⁵ Torture and ill-treatment were also specifically reported in relation to women who lived in the areas under the group’s control, including but not limited to different forms of sexual violence.³⁶

In the context of the fight against ISIL, grave human rights violations were also committed by Iraqi and Kurdish Iraqi security forces as well as militias affiliated with the Popular Mobilisation Units (PMU).³⁷ The PMU are an umbrella organisation composed of various paramilitary groups initially mobilised in 2014 to support the Iraqi armed forces during the fight against ISIL,³⁸ which, on 19 December 2016 was incorporated into the Iraqi armed forces,³⁹ and on 8 March 2018, formally included into the country’s

²⁹ “Broken Bodies, Tortured Minds - Abuse and Neglect of Detainees in Iraq”, *op. cit.*, Amnesty International, *Broken Bodies, Tortured Minds - Abuse and Neglect of Detainees in Iraq*, p. 4.

³⁰ Human Rights Watch, *Iraq: Wikileaks Documents Describe Torture of Detainees*, 23 October 2010, <https://www.hrw.org/news/2010/10/23/iraq-wikileaks-documents-describe-torture-detainees> (accessed on 7 March 2022).

³¹ *Ibidem*.

³² “Iraq: A Decade of Abuses”, *op. cit.*, p. 10.

³³ *Ibidem*, p. 19.

³⁴ “The Forever Crime: Ending enforced disappearance in Iraq”, *op. cit.*, p. 11.

³⁵ Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*, A/HRC/28/18, 13 March 2015, available at: <https://undocs.org/A/HRC/28/18> (accessed on 11 August 2021), paras 48 and 49.

³⁶ Human Rights Watch, *Iraq: Sunni Women Tell of ISIS Detention, Torture*, 20 February 2017, available at: <https://www.hrw.org/news/2017/02/20/iraq-sunni-women-tell-isis-detention-torture> (accessed on 13 August 2021); Amnesty International, *Escape From Hell - Torture and Sexual Slavery in Islamic State Captivity in Iraq*, 2014, available at: https://www.amnesty.org.uk/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf (accessed on 13 August 2021).

³⁷ “2015 Concluding Observations”, *op. cit.*, para. 12; Human Rights Watch, *Flawed Justice – Accountability for ISIS Crimes in Iraq*, December 2017, available at: https://www.hrw.org/sites/default/files/report_pdf/iraq1217web.pdf (accessed on 1 September 2021), p. 18.

³⁸ Middle East Eye, *Iraq's Sistani-backed factions break from Popular Mobilisation in blow to Iran*, 9 December 2020, available at: <https://www.middleeasteye.net/news/iraq-popular-mobilisation-sistani-forces-break-najaf> (accessed on 1 September 2021).

³⁹ Al Masdar News, *Law passes making the PMU a part of Iraq's national forces*, 19 December 2016, available at: <https://www.almasdarnews.com/article/law-passes-making-pmu-part-iraqs-national-forces/> (accessed on 1 September 2021).

security forces by a Prime Minister's decree.⁴⁰ These serious violations included torture and ill-treatment, enforced disappearances and extra-judicial killings.⁴¹

Many family members of actual or perceived ISIL members have been in camps across Iraq for internally displaced persons, often for years, with others having been forced to return home. In the camps, they have often been subjected to severe human rights violations and collective punishment, including arbitrary arrests, harassment, and exploitation by armed elements, including PMU-affiliated and other militias, Iraqi security forces and camp authorities. Those who were forced to return to their areas of origin have often been unable to do so for the risk of being exposed to arbitrary arrests – and, as result, torture –⁴² on the way due to a lack of identity documents or for the fear of revenge attacks at home.⁴³

3.4 The 2019-2020 protests

In the context of the 2019-21 anti-government protests – the largest mass protest movement in Iraq's recent history, in which participants called, among other things, for social justice, an end to corruption and the 2003 ethno-sectarian political system, better services and increased accountability –,⁴⁴ security forces detained thousands of protesters from 1 October 2019 to 30 April 2020. Many of these individuals were held in circumstances which raised concerns over the arbitrary nature of their arrest, the lack of judicial oversight and procedural guarantees afforded to persons deprived of their liberty.⁴⁵

In this context, UNAMI/OHCHR received credible allegations of torture or ill-treatment of arrested demonstrators. Information provided suggests that incidents of torture or ill-treatment of demonstrators occurred mostly during the initial interrogation, with additional accounts of protesters being beaten during arrest, including with rifle butts. Victims reported that the torture or ill-treatment was generally for the purpose of extracting confessions, forcing signature of documents of unknown content, and in some cases as a form of punishment. Beatings, including to the soles of the feet, and severe threats (more information in section 5.3).⁴⁶

The protests were met with excessive violence both by the Iraqi security forces and militias of the PMU, resulting in a high number of deaths – mostly caused by shots to the head or chest through live ammunition or the use of grade tear-gas canisters or because of arson of buildings –, with sources referring to up to 600 casualties, and an even higher number of injuries, with estimates running from 9'000 to 25'000.⁴⁷

⁴⁰ Reuters, *Iraq's Shi'ite militias formally inducted into security forces*, 8 March 2018, available at: <https://www.reuters.com/article/us-mideast-crisis-iraq-militias/iraqs-shiite-militias-formally-inducted-into-security-forces-idUSKCN1GK354> (accessed on 1 September 2021).

⁴¹ "Concluding observations on the initial report of Iraq", *op. cit.*, para. 12.

⁴² Human Rights Watch, *Iraq: Not a Homecoming*, 14 June 2019, available at: <https://www.hrw.org/news/2019/06/14/iraq-not-homecoming> (accessed on 3 September 2021).

⁴³ EASO, *Country Guidance: Iraq – Common analysis and guidance note*, January 2021, available at: https://easo.europa.eu/sites/default/files/Country_Guidance_Iraq_2021.pdf (accessed on 1 September 2021), p. 65; Human Rights Watch, *Iraq: Not a Homecoming*, 14 June 2019, available at: <https://www.hrw.org/news/2019/06/14/iraq-not-homecoming> (accessed on 3 September 2021).

⁴⁴ EASO, *Country Guidance: Iraq – Common analysis and guidance note*, January 2021, available at: https://easo.europa.eu/sites/default/files/Country_Guidance_Iraq_2021.pdf (accessed on 1 September 2021), p. 69 (hereinafter "EASO's Country Guidance: Iraq").

⁴⁵ UNAMI, *Human Rights Violations and Abuses in the Context of Demonstrations in Iraq October 2019 to April 2020*, August 2020, p. 24.

⁴⁶ Home Office, *Country Policy and Information Note Iraq: Actors of protection*, December 2020, p. 42.

⁴⁷ *Ibidem*.

Prominent activists, protests' leaders and organisers, or individuals critical of the authorities were further subjected to threats and intimidation, arrests, abductions, enforced disappearances, ill-treatment as well as assassinations and killings. Those forcibly disappeared – with sources pointing mostly at militias as the perpetrators – were subjected to torture and ill-treatment while in detention.⁴⁸

Victims or family members who reported persons missing did either not receive any support by the authorities or were subjected to reprisal measures, such as renewed kidnappings by the same perpetrators or threats.⁴⁹

In May 2021, the UNAMI reported that across Federal Iraq, “unidentified armed elements” had been responsible for the abduction and subsequent torture or ill-treatment of at least 32 protesters, of which 20 remained missing, without the Iraqi authorities showing any apparent efforts to locate and release them or establish their fate.⁵⁰

While victims of enforced disappearances were often targeted along ethno-sectarian lines in the context of the war against ISIL,⁵¹ demonstrators who were subjected to these severe violations mostly did not belong to a particular political party nor subscribe to a specific view or ideology.⁵²

4 Torture in law and practice

4.1 Lack of definition and criminalisation

Iraq is party to several international treaties containing provisions pertaining to the prohibition of torture, in particular the UNCAT, the International Covenant on Civil and Political Rights (ICCPR), the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), the Convention on the Rights of the Child, and the Geneva Conventions of 1949. However, to date, Iraqi law does not define nor criminalise torture in a manner consistent with the international human rights standards.

The Iraqi Constitution⁵³ prohibits unlawful detention and all forms of “psychological and physical torture and inhumane treatment” and guarantees the victim the right to seek compensation for material and moral damages (art. 37). It also sets out the rights to security and liberty, prohibiting the deprivation or restriction of these rights “except in accordance with the law and based on a decision issued by a competent judicial authority” (art. 15).⁵⁴

As the State party admits, the Penal Code does not include a definition of torture.⁵⁵ Nonetheless, article 12 (2) (e) of the Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005) does define torture in the

⁴⁸ *Ibidem*, p. 70.

⁴⁹ “EASO’s Country Guidance: Iraq”, *op. cit.*, p. 70.

⁵⁰ Accountability for Human Rights Violations and Abuses by Unidentified Armed Elements, *op. cit.*, pp. 4-5 and 8.

⁵¹ See, for instance, OHCHR, *Committee on Enforced Disappearances reviews report of Iraq*, 8 September 2015, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16395&LangID=E> (accessed on 1 September 2021); “The Forever Crime: Ending enforced disappearance in Iraq”, *op. cit.*, pp 9-11.

⁵² EASO’s Country Guidance: Iraq, *op. cit.*, p. 69.

⁵³ English version available at: https://menarights.org/sites/default/files/2016-11/IRQ_constitution_EN.pdf (accessed on 15 December 2021).

⁵⁴ UNAMI/OHCHR, *Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment*, 3 August 2021, p. 10 (hereinafter: “Human Rights in the Administration of Justice in Iraq”).

⁵⁵ Second periodic report of the State party, *op. cit.*, para. 14.

following terms: “[t]he intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; torture shall not include pain or suffering arising from or related to legal punishments.”

In addition, there is still a lack of clarity regarding the penalties associated with the crime of torture. Article 333 criminalises acts of torture, setting out that “[a]ny public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information or to give a particular opinion in respect of it is punishable by imprisonment or by penal servitude. Torture shall include the use of force or menaces”.⁵⁶ The Penal Code further criminalises “cruel treatment” by a public official or agent if it causes a person “to suffer a loss of esteem or dignity or physical pain”.⁵⁷

At the same time, article 25 of the Internal Security Forces Criminal Code⁵⁸ provides that “whoever assaults what is below it or causes harm to his body, or performs an act that unnecessarily impairs his health with the intent of torture, or allows others to harm him, shall be punished by imprisonment for a period not exceeding two years.” We affirm that such sanction does not reflect the extreme gravity of the crime in question, and discourage any practice of torture. The CAT recommends that States parties penalise torture with punishments ranging from a minimum of six years of imprisonment.⁵⁹

However, none of the above legislations adequately ensure that “acts covered by the internationally accepted definition of torture are fully criminalized”.⁶⁰ Following the review of Iraq by the Human Rights Committee and CAT in 2015, both committees found that Iraq should adopt the legislative measures necessary to ensure that the Penal Code includes a definition of torture that is fully in line with article 7 ICCPR, article 1 UNCAT, and other internationally established norms, preferably by codifying it as an independent crime which stipulates sanctions that are commensurate with the gravity of the act.⁶¹

4.1.1 Draft Anti-Torture Law

At the time of writing, a draft Anti-Torture Law⁶² is still pending before the Council of Representatives since 2017.⁶³ According to the State party, the text was proposed by the Human Rights Committee of the Council of Representatives and has undergone its first reading. Since a second bill has been submitted by the Ministry of Justice, the Council of Representatives has postponed the second reading until the bill has been endorsed by the Council of Ministers.⁶⁴

⁵⁶ English version available at: https://menarights.org/sites/default/files/2016-11/IRQ_Penal%20Code%201969%20as%20amended_eng.pdf (accessed on 15 December 2021).

⁵⁷ “Human Rights in the Administration of Justice in Iraq”, *op. cit.*, p. 10.

⁵⁸ Act No. 14 of 2008.

⁵⁹ APT, Guide on anti-torture legislation, 2016, <https://www.apr.ch/fr/resources/publications/guide-sur-la-legislation-contre-la-torture> (accessed on 10 March 2022).

⁶⁰ Human Rights Committee, *Concluding observations on the fifth periodic report of Iraq*, 3 December 2015, UN Doc. CCPR/C/IRQ/CO/5 (2015), available at: <https://undocs.org/en/CCPR/C/IRQ/CO/5>, para. 29.

⁶¹ *Ibidem*, para. 30; UN Committee against Torture, *Concluding observations on the initial report of Iraq*, 7 September 2015, UN Doc. CAT/C/IRQ/CO/1, para. 27.

⁶² English version available at: https://menarights.org/sites/default/files/2019-12/IRQ_Draft_AntiTortureLaw_tbc_EN_0.pdf (accessed on 14 January 2022).

⁶³ “Human Rights in the Administration of Justice in Iraq”, *op. cit.*, p. 10.

⁶⁴ “Reply to List of Issues”, *op. cit.*, para. 30.

It is unclear when the law will be voted on. The adoption has been further delayed by an unprecedented wave of country-wide demonstrations that took place in 2019, which resulted in new parliamentary elections in October 2021.⁶⁵ The parliamentary sessions have not resumed since then.

Although article 4 of the bill requires a judge to order a medical examination of any detainee alleging torture within 24 hours of learning of the allegation, while article 8 states that “[t]he Investigating Court shall not take the statements obtained from the person who has been tortured as evidence against him”, the text contains a number of provisions that do not comply with international standards.⁶⁶

The State party claims that the “bill includes a definition of torture and inhuman or degrading treatment that is consistent with the Convention and with the views of the Committee.”⁶⁷

However, the definition of torture contained in article 2 of the draft law is limited to any act or inaction that constitutes an “assault”, carried out by an interrogator, for the purpose of obtaining a confession.

Article 2 of the draft law defines the crime of torture as “[a]ny act or inaction constituting an assault, which takes place in order to obtain a confession from a person during the stages of arrest, investigation or detention and which causes harm as a result of physical or psychological pain or suffering or inhuman or degrading treatment inflicted by an investigator.”

This is substantially more limiting than the definition contained in article 1 UNCAT, which provides that torture can also be inflicted in order to punish, intimidate, coerce an individual or a third person, or for any reason based on discrimination of any kind. Furthermore, the draft law only applies to acts that occur during arrest, investigation, and detention. However, the prohibition of torture should also apply, among others, where security forces resort to unnecessary, excessive or otherwise unlawful force.

In addition, article 5 (2) of the draft law forbids anyone from “[invoking] orders issued by the highest-ranking employees to justify the crime if such orders are illegal.” We are concerned over the wording used in this provision as the expression “if the order is illegal” implies that the crime of torture could be justified if it results from a lawful order.

There are also serious concerns over the competency of Iraqi courts and their ability to deliver independent and impartial justice under the text. The draft Anti-Torture Law sets out that cases will be tried before the “Human Rights Court”, which is not yet operational, and provides no guarantees of the appointment process of judges or of the court’s organisational and functional independence.

Finally, article 13 (1) of the draft law does not establish a minimum prison sentence for individuals who have committed torture, except where the torture leads to death. This grants the court discretionary power to impose whatever sentence it deems appropriate. In addition, the text does not specify penalties for complicity, participation, and attempt, although each are components of the crime of torture.

⁶⁵ UN News, *Importance of sound, inclusive elections in Iraq ‘cannot be overstated’*, 23 November 2021, <https://news.un.org/en/story/2021/11/1106412> (accessed on 14 January 2022).

⁶⁶ MENA Rights Group, *Iraqi draft laws on torture and enforced disappearances fall short of international human rights standards*, 11 December 2019, <https://www.menarights.org/en/articles/iraqi-draft-laws-torture-and-enforced-disappearances-fall-short-international-human-rights> (accessed on 15 January 2021).

⁶⁷ Human Rights Committee, *Sixth periodic report submitted by Iraq under article 40 of the Covenant, due in 2018*, received on 5 August 2019, UN Doc. CCPR/C/IRQ/6 (hereinafter “Sixth periodic report of the State party”), para. 114; See also “Second periodic report of the State party”, *op. cit.*, para. 5.

4.2 Violations of legal safeguards

Iraqi law contains a number of legal safeguards, albeit incomplete, aimed at guaranteeing that persons deprived of their liberty are not subjected to torture and ill-treatment. However, in practice, they are routinely violated.

4.2.1 Arrest warrant

According to article 92 of the Iraqi Code of Criminal Procedure (CCP), the “arrest or apprehension of a person is permitted only in accordance with a warrant issued by a judge or court or in other cases as stipulated by the law.”⁶⁸ Article 322 of the Penal Code punishes, with up to seven years of imprisonment, any law enforcement official who arrests, imprisons, or detains a person in unlawful circumstances.

It must be noted that the CCP contains no obligation to present a warrant while conducting the arrest, but only requires that a person is arrested on the basis of a judicial warrant. Consequently, the accused should be merely informed of its existence at that time. Moreover, security forces with the power of arrest operating under the direct supervision of the Prime Minister’s Office (e.g., the Baghdad Operation Command and Counter Terrorism Unit), may arrest individuals prior to obtaining a warrant.⁶⁹

Finally, arrests conducted under the Anti-Terrorism Law tend to be carried out without warrants.⁷⁰ It has also been reported that the warrants are usually being issued by the judge after the arrest.⁷¹

4.2.2 Prolonged custody and right to be brought before a judicial authority

Article 19 of the Iraqi Constitution states that authorities submit preliminary documents to a competent judge within 24 hours of arrest, a period that may be extended once. In the same vein, under article 123 of the CCP, police must bring the arrested suspects before an investigative judge within 24 hours in order to mandate their continued detention.

The aforementioned deadline is frequently exceeded in practice and many detainees are held for days or weeks before being brought before an investigating judge, particularly in terrorism-related cases. Human Rights Watch has found that terrorism suspects in Baghdad typically saw a judge between 10 and 20 days after arrest. Others waited months or even years to be brought to court.⁷² In addition, these extended delays undermine the right of detainees to challenge the lawfulness of their detention (i.e. *habeas corpus*).

4.2.3 Registration of detainees

In its Observations on the additional information submitted by Iraq, the Committee on Enforced Disappearances raised concerns on the fact that the registers of detainees “are not interconnected, that

⁶⁸ Under article 122 of the Code of Criminal Procedures, arrests may be carried out in the absence of a warrant where: “a) the offence was committed in front of witnesses or b) if the person has escaped after being lawfully arrested by the authorities; c) the person has been sentenced in his or her absence to a penalty restricting his or her freedom; or d) the person is found in a public place in a clear state of intoxication or confusion or has lost his or her reason.”

⁶⁹ UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, available at https://www.ohchr.org/Documents/Countries/IQ/UNAMI_HRO_DP_1Oct2014.pdf (accessed on 11 January 2022), p. 11 (hereinafter: “Report on the Death Penalty in Iraq”).

⁷⁰ U.S. Department of State, Iraq 2018, human rights report, p. 13, available at <https://www.state.gov/wp-content/uploads/2019/03/IRAQ-2018.pdf> (accessed on 14 March 2022).

⁷¹ “Report on the Death Penalty in Iraq”, *op. cit.*, p. 12.

⁷² Human Rights Watch, *Iraq: Judges Disregard Torture Allegations*, 31 July 2018, <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations> (accessed on 24 February 2020).

they do not include all the information referred to in article 17 (3) of the Convention, and that the data they contain are often inaccurate”.⁷³ Moreover, the Committee highlighted that “neither current national legislation nor the bill on enforced disappearances guarantee that any person with a legitimate interest can have access to the information”, thus complicating “any search for and localization of persons deprived of liberty, putting them at risk of enforced disappearance, and causing distress and suffering to their relatives”.⁷⁴

According to Section 3 of the Coalition Provisional Authority Memorandum No. 2 of 2003,⁷⁵ in every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received the information concerning his identity, the reasons for his commitment and the authority thereof, and the day and hour of his admission and release.

However, although detention facilities are legally required to do so, it is rarely the case. Indeed, according to NGO reports, many of the disappeared individuals were never found in the registers available to the different Ministries, which demonstrate the alarming absence of proper registers in places of detention.⁷⁶

In this regard, local media and human rights groups reported that authorities arrested suspects in security sweeps without warrants, particularly under the Anti-Terrorism Law, and frequently held such detainees for prolonged periods without registration.⁷⁷

4.2.4 Secret detention

Article 19 (b) of the Iraqi Constitution prohibits unlawful detention and imprisonment in places not designated for that purpose. The Inmates and Prisoners Corrections Law applicable in Federal Iraq prohibits the establishment of prisons or detention centers that are not supervised, managed and controlled by the Ministries of Justice and Interior (art. 1).⁷⁸ However, there are still credible reports that secret and *incommunicado* detention remain widespread despite the denials of the State Party in its replies to the List of Issues.⁷⁹

In 2016, both the Central Government and the Kurdistan Regional Government (KRG) operated secret detention facilities, according to international observers and to the head of the KRG parliamentary Human Rights Committee.⁸⁰

⁷³ Committee on Enforced Disappearances, *Observations on the additional information submitted by Iraq under article 29 (4) of the Convention*, CED/C/IRQ/OAI/1, 1 December 2020, para. 20 (hereinafter: “CED’s Observations on the additional information submitted by Iraq”).

⁷⁴ *Ibidem*.

⁷⁵ English version available at: https://menarights.org/sites/default/files/2016-11/CPAMEMO_2_Management_of_Detention_and_Prison_Facilities_2003_EN.pdf (accessed on 15 December 2021). See also: Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014, UN Doc. CAT/C/IRQ/1, para. 73.

⁷⁶ Alkarama Foundation, *Report submitted to the Committee against Torture in the context of the review of the initial report of Iraq*, 13 July 2015, available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRQ/INT_CAT_CSS_IRQ_21162_E.pdf (accessed on 12 December 2021), p. 8.

⁷⁷ U.S. Department of State, *2020 Country Reports on Human Rights Practices: Iraq*, 30 March 2021, available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/iraq/> (accessed on 26 January 2022).

⁷⁸ “Human Rights in the Administration of Justice in Iraq”, *op. cit.*, p. 19.

⁷⁹ “Reply to List of Issues”, *op. cit.*, para. 29.

⁸⁰ U.S. Department of State, *2016 Country Reports on Human Rights Practices: Iraq*, 3 March 2017, p. 8.

In July 2018, the National Security Agency, an Iraqi intelligence agency reporting to Iraq's Prime Minister, admitted detaining more than 400 individuals in a secret detention facility in east Mosul, despite not having a clear mandate to do so.⁸¹

As of July 2020, Iraq's prison population is composed of 60'000 prisoners, including about 1'000 women, across 13 government prisons.⁸² According to the Euro-Mediterranean Human Rights Monitor, there are dozens of secret prisons run by militias, political parties, and various tribal and other factions.⁸³

In its 2020 Concluding Observations, the Committee on Enforced Disappearances (CED) expressed concern over "reports that secret detention is still used" and that it had "received allegations about 420 places of secret detention, including in Camp Justice, Camp Honor, Jadriya bunker, al-Muthanna airport prison, Baghdad airport prison, and the city of Jurf al-Sakhar".⁸⁴

The Iraqi government continues to deny the existence of secret detention centres where demonstrators are held,⁸⁵ even if the CED has raised concerns at "reports that secret detention [was] still used, including during the demonstrations initiated in October 2019."⁸⁶

MENA Rights Group documented the case of Abdel-Messih Romeo Sarkis, who, on 1 March 2020, joined an anti-government demonstration in Baghdad's Al Khulani square where he was arrested by anti-riot police who were trying to forcibly disperse the demonstration. Although he remains disappeared to date, there have been reports indicating that he may have been transferred to al-Muthanna airport in Baghdad following his arrest.⁸⁷ On 10 March 2020, MENA Rights Group requested the urgent intervention of the CED. The Iraqi authorities have so far failed to respond to the CED's communications and have never clarified his fate and whereabouts.

Finally, we are concerned that the State party, in its replies to the List of Issues, explained that there have been no deaths in facilities run by the Ministry of Defence, the Ministry of the Interior, the Popular Mobilisation Forces or the Counter-Terrorism Service.⁸⁸ By affirming this, the State party seems to acknowledge the fact that Popular Mobilisation Units have the authority to detain people in their facilities. According to the PMU commission, the PMU's governing body, the PMU militias do not detain any individuals in Iraq because they legally have no mandate to do so.⁸⁹

⁸¹ Human Rights Watch, *Iraq: Intelligence Agency Admits Holding Hundreds Despite Previous Denials*, 22 July 2018, <https://www.hrw.org/news/2018/07/22/iraq-intelligence-agency-admits-holding-hundreds-despite-previous-denials> (accessed on 14 January 2022).

⁸² Euro-Med Monitor, *Horrific testimonies, secret prisons portend catastrophe in Iraq*, 13 July 2020, <https://reliefweb.int/report/iraq/horrific-testimonies-secret-prisons-portend-catastrophe-iraq> (accessed on 27 January 2022).

⁸³ *Ibidem*.

⁸⁴ "CED's Observations on the additional information submitted by Iraq", *op. cit.*, para. 16.

⁸⁵ Committee on Enforced Disappearances, *Information received from Iraq on follow-up to the concluding observations on the additional information submitted under article 29 (4) of the Convention*, 30 November 2021, UN Doc. CED/C/IRQ/FOAI/1, para. 8.

⁸⁶ *Ibidem*.

⁸⁷ Mustafa Saadoun, "In dramatic move, Iraqi PM visits prisons in response to protester appeals", *Al-Monitor*, 13 October 2021, <https://www.al-monitor.com/originals/2020/08/iraq-disappeared-protests-prisons-human-rights.html> (accessed on 24 January 2022).

⁸⁸ "Reply to List of Issues", *op. cit.*, para. 130.

⁸⁹ Human Rights Watch, *"Life Without a Father is Meaningless"*, 27 September 2018, <https://www.hrw.org/report/2018/09/27/life-without-father-meaningless/arbitrary-arrests-and-enforced-disappearances> (accessed on 10 March 2022)

4.2.5 Use of information tainted by torture and the exclusionary rule (article 15)

In its second periodic report to the CAT, Iraq states that “[n]o weight is given to confessions extracted by coercion, threats or torture and persons have the legal right to demand compensation for any physical or mental harm they may have suffered.”⁹⁰

The Iraqi Constitution provides that “no account shall be taken of any confession extracted under duress, threat or torture” (art. 37). However, no other provision addressing this issue refers to the term “torture” *per se* but instead to “illegal methods” or “coercion”.⁹¹ In particular, article 127 CCP prohibits the use of “illegal means to influence the accused for the purpose of extracting [an admission]”, i.e., “[i]ll-treatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants”.⁹² Likewise, article 218 CCP states that admissions must not have been made as a result of coercion.⁹³ However, it is noteworthy that this provision was amended in 2003 by CPA Memorandum No. 3 which removed the following: “if there is no causal link between the coercion and the admission or if the admission is corroborated by other evidence which convinces the court that it is true or which has led to uncovering a certain truth, then the court may accept it.” These terms clearly allowed for the admission of forced confessions in the course of the proceedings.

The State party claims that “[v]erdicts handed down by the Iraqi courts do not rely on confessions alone but on an overarching body evidence, of which confessions are a part. Confessions extracted under torture are not admitted and perpetrators of torture are liable before the law.”⁹⁴

According to a recent UNAMI and OHCHR research, the majority of torture cases take place during the interrogation phase.⁹⁵ Indeed, interrogations by security forces are generally aimed at eliciting confessions, contributing to a coercive environment, while interrogations by investigative judges are reported to focus on confirming statements made before security forces.

Many detainees – particularly those accused of terrorism-related crimes – make their first “confession” while under interrogation at police stations or detention centres controlled by the Ministries of Interior and Defence, not in the presence of either investigating judges or a legal counsel, and many have alleged that they made such confessions under torture.⁹⁶ More information is provided in section 5.4 and 5.5 on torture in the context of counterterrorism and the death penalty.

On 17 November 2020, the UN High Commissioner for Human Rights Michelle Bachelet declared that the administration of justice in Iraq to be characterised by frequent violations of fair trial rights, ineffective legal representation, overreliance on confessions and frequent allegations of torture or ill-treatment.”⁹⁷

⁹⁰ “Second periodic report of the State party”, *op. cit.*, para. 23.

⁹¹ “Report submitted to the Committee against Torture in the context of the review of the initial report of Iraq”, *op. cit.*, p. 9.

⁹² Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014, UN Doc. CAT/C/IRQ/1, para. 100.

⁹³ *Ibidem*, para. 101.

⁹⁴ “Second periodic report of the State party”, *op. cit.*, para. 128.

⁹⁵ “Human Rights in the Administration of Justice in Iraq”, *op. cit.*, p. 20.

⁹⁶ “Iraq: a decade of abuses”, *op. cit.*, p. 36.

⁹⁷ OHCHR, *Deeply troubling reports of 21 executions in Iraq yesterday – Bachelet*, 17 November 2020, <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=26515&LangID=E> (accessed on 10 March 2022).

4.2.6 Access to legal representation

The Iraqi Constitution guarantees the right to a defence in all phases of investigation and the trial and sets out that courts must “appoint a lawyer at the expense of the state for an accused of a felony or misdemeanour who does not have a defence lawyer” (art. 19(4)(11). Moreover, the CCP provides that the investigative judge and the head of the competent criminal court, before proceeding with the interrogation or with the hearings, must inform the accused of their right to be presented by an attorney of their choice or by a court-appointed lawyer (arts 123 and 144).

According to the findings of UNAMI and OHCHR, access to a lawyer is systematically delayed until after suspects have been interrogated by the security forces and, to a large extent, by the investigative judge.⁹⁸ Indeed, Human Rights Watch has reported that the right to counsel is “highly curtailed”.⁹⁹ In particular, with regard to terrorism-related charges, lawyers are not allowed to attend a client’s interrogations with security officers, thus limiting their ability to plead on behalf of their clients, including making allegations of torture.¹⁰⁰

Moreover, a broad pattern of harassment and persecution of lawyers by the governmental authorities persists in the country and hinders the independence of lawyers.¹⁰¹ As a consequence, even when lawyers are appointed – either by the detainee or by the court –, they are frequently impeded from defending their clients.

In September 2018, Human Rights Watch reported that Iraqi security officers were threatening, and in some cases arresting, lawyers seen to be providing legal assistance to ISIL suspects and families perceived to be related to ISIL members, effectively denying them legal services.¹⁰²

4.2.7 Contact with the family

Section 30, paragraph 13, of Coalition Provisional Authority Memorandum No. 2 of 2003 concerning the management of detention and prison facilities lays down the following important rule:

An untried prisoner shall be allowed to immediately inform his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

However, according to UNAMI and OHCHR, detainees’ chance to inform their family of their whereabouts is often significantly delayed, in particular during the investigation phase. Moreover, since the outbreak of the Covid-19 pandemic, family visits in places of detention have largely been suspended as a precautionary measure.¹⁰³

4.2.8 Medical examination

According to the Prisoners and Detainees Reform Act, the admission of individuals to places of detention upon judicial order is allowed only along with “a medical report issued by a medical committee

⁹⁸ “Human Rights in the Administration of Justice in Iraq”, *op. cit.*, p 13.

⁹⁹ Human Rights Watch, *The Quality of Justice – Failings of Iraq’s Central Criminal Court*, December 2008, available at: <https://www.hrw.org/report/2008/12/14/quality-justice/failings-iraqs-central-criminal-court> (accessed on 31 January 2022), p.20.

¹⁰⁰ “Iraq: judges disregard torture allegations”, *op. cit.*

¹⁰¹ “Report submitted to the Committee against Torture in the context of the review of the initial report of Iraq”, *op. cit.*, p. 13.

¹⁰² Human Rights Watch, *Iraq: Officials Threatening, Arresting Lawyers*, 12 September 2018,

<https://www.hrw.org/news/2018/09/12/iraq-officials-threatening-arresting-lawyers> (accessed on 8 March 2022).

¹⁰³ “Human Rights in the Administration of Justice in Iraq”, *op. cit.*, p. 15.

testifying to the person’s state of physical and mental health” (art. 8). Moreover, this law further stipulates that detainees are entitled to free medical treatment as well as periodic visits by medical committees to check up and monitor their health condition (art. 12).

According to UNAMI and OHCHR, initial medical screenings are not standard practice in Iraqi detention facilities, particularly during pre-trial detention. When they are actually carried out, they are often mainly aimed at identifying prior illnesses rather than discovering acts of torture.¹⁰⁴ Indeed, medical examinations are almost never carried out or significantly delayed in cases in which detainees allege abuse during the interrogation phase or during detention.¹⁰⁵

4.3 Accountability

In its reply to the List of Issues in relation to its sixth periodic report to the Human Rights Committee, Iraq stated that “[a]ll allegations of torture and ill-treatment are immediately investigated”,¹⁰⁶ and that “national judiciary is rigorously committed to providing justice to all parties involved in proceedings before all Iraqi criminal courts”.¹⁰⁷

In its second periodic report to the CAT, the State party explains that “the Ministry of the Interior has conducted investigations into various case s in different parts of the country and it has referred case files relating to a group of officers and other ranks to the Internal Security Forces Court for it to look into charges of torture. In some cases, the Court found against them and referred the files to the ordinary courts, including the Mosul Court of Inquiry.”¹⁰⁸

In that regard, we would like to point out that for “investigations to be impartial, they must not be conducted by their own colleagues. It is therefore important to set up independent bodies, separate from law enforcement or other authorities, to carry out those investigations.”¹⁰⁹

The State party also affirms that “Iraqi courts are recognized for their integrity and for their correctness in conducting investigations on all cases that come before them, including cases involving allegations of torture.”¹¹⁰

However, following her country-visit to Iraq in 2017, the former Special Rapporteur on extrajudicial, summary, or arbitrary executions had expressed concerns regarding the serious flaws that had been affecting the administration of justice in Iraq, the independence and competence of the courts in charge, including with regard allegations of torture.¹¹¹

Most notably, the administration of justice in terrorism-related cases in Iraq suffers from systematic violations of fair trial rights, ineffective legal representation, over-reliance on confessions, and frequent allegations of torture or mistreatment.

¹⁰⁴ *Ibidem*.

¹⁰⁵ “Report submitted to the Committee against Torture in the context of the review of the initial report of Iraq”, pp. 8-9.

¹⁰⁶ Human Rights Committee, *Replies of Iraq to the list of issues in relation to its sixth periodic report*, UN Doc. CCPR/C/IRQ/RQ/6, 8 April 2021, para. 60.

¹⁰⁷ *Ibidem*, para. 66.

¹⁰⁸ “Second periodic report of the State party”, *op. cit.*, para. 60.

¹⁰⁹ Manfred Nowak and Elizabeth McArthur, *The United Nations Convention against Torture: A Commentary*, Oxford University Press, 2008, p. 436.

¹¹⁰ “Second periodic report of the State party”, *op. cit.*, para. 61.

¹¹¹ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, 5 June 2018, UN Doc. A/HRC/38/44/Add.1, para. 47.

According to Human Rights Watch, judges routinely fail to investigate security forces credibly alleged to have tortured suspects, in particular those accused of terrorism-related charges, and they also frequently ignore allegations of torture and convict defendants based on self-incriminating confessions.¹¹² The UNAMI and OHCHR have also found that judges regularly fail to take any action when defendants raised torture allegations before the court, including when they stated they had been forced to confess to a crime for which they were standing trial.¹¹³ Judges also rarely order forensic medical examinations to investigate torture, and even when they order a forensic report, they rarely order a retrial.¹¹⁴

Moreover, due to the fact that defendants are frequently brought before the judicial authority months, if not years, after the arrest, forensic medical reports may be, in any case, unable to document the torture suffered.¹¹⁵

A striking example of the climate of impunity is the enquiry opened against Lt. Col. Omar Nizar in early February 2022, which led, on 22 February 2022, to the launch of a criminal proceeding before the Nasiriyah Investigation Court.¹¹⁶ Omar Nazar was a member of Iraqi Ministry of Interior's Emergency Response Division (ERD), which was deployed against ISIL and also in response to widespread protests in 2019 and 2020. He is currently being prosecuted on charges of "suppressing demonstrators".¹¹⁷ However, Omar Nazar has also been accused of committing acts of torture in the context of the war against ISIL.

In 2016 and 2017, Kurdish photojournalist Ali Arkady who became embedded with ERD units, during battles against ISIL in Fallujah and in Mosul, witnessed scenes of torture, rape and targeted killings.¹¹⁸

In May 2017, after fleeing the country, Arkady published photos and videos that apparently showed members of ERD units, including Nazar, committing abuses (more information about the ERD units is provided in section 5.1.2.1).¹¹⁹

In a conference held in September 2019, Arkady explained that the war crimes he witnessed were only a fraction of the acts committed by the Emergency Response Division. ERD soldiers and officers carried out executions, violent crimes and sexual abuse with the approval of the highest ranks of the Emergency Response Division. He also noted that none of the victims, accused of having connections with Da'esh, were ever brought to trial. He explained that although his evidence has been published and the Iraqi Interior Ministry has acknowledged some of the crimes committed by Iraqi forces, none of the soldiers or officers whose acts he documented have been charged or punished in any way. Instead, many of them have been decorated and promoted."¹²⁰

¹¹² "Iraq: judges disregard torture allegations", *op. cit.*

¹¹³ "Report on the Death Penalty in Iraq", *op. cit.*, p. 24.

¹¹⁴ "Iraq: judges disregard torture allegations", *op. cit.*

¹¹⁵ *Ibidem*. See also: Human Rights Watch, *Iraq: French Citizens Allege Torture, Coercion*, 31 May 2019, <https://www.hrw.org/news/2019/05/31/iraq-french-citizens-allege-torture-coercion> (accessed on 24 January 2022).

¹¹⁶ Human Rights Watch, *Senior Military Officer Accused of Crackdown on Protesters in Iraq*, 24 February 2022, available at: <https://www.hrw.org/news/2022/02/24/senior-military-officer-accused-crackdown-protesters-iraq> (accessed on 1 March 2022).

¹¹⁷ *Ibidem*.

¹¹⁸ *Ibidem*.

¹¹⁹ The work of Mr Ali Arkady is available at: Toronto Star, *Bound, Tortured, Killed*, 25 May 2017, <https://projects.thestar.com/iraq-torture-abuse-murder-war-crimes/> (accessed on 9 March 2022).

¹²⁰ Geneva International Centre for Justice, *Enforced Disappearances, Extrajudicial Killings and other War Crimes in Iraq*, 25 September 2019, <https://www.gicj.org/topics/thematic-issues/enforced-disappearances/1743-hrc42-side-event-enforced-disappearances-extrajudicial-killings-and-other-war-crimes-in-iraq> (accessed on 9 March 2022).

4.3.1 Domestic remedies

Under article 1 CCP, criminal proceedings are initiated through a complaint submitted to an investigative judge or judicial investigator, a policeman in charge of a police station, any crime scene officer or the public prosecutor by an injured party or any person who knows that the crime has taken place. It also requires public servants and medical professionals who, in the course of their duties, learn or suspect that an offence has been committed, as well as any person who is present when a felony is committed, to inform the investigative judge, judicial investigator or the public prosecutor under article 48 CCP.

In its second periodic report,¹²¹ the State party explains that:

[i]nmates and detainees may submit requests or lodge complaints regarding ill-treatment or any violation to their rights with the director-general of one of the two Departments of Corrections or with a prison inspector, a guard or any other official delegated to conduct an inspection. The individual concerned is to be interviewed without the prison director, guards or other officials being present. The director-general must resolve the complaint within seven days of receiving it” under article 36 (a) of Prisoners and Detainees Reform law. Article 36 (b) specify that Inmates and detainees may submit requests or lodge complaints in an appropriate and confidential manner to the director-general of the Departments of Corrections or to an oversight body using approved means of communication. Each request or complaint is to be handled promptly and replied to without unjustified delay, unless it is evident that the request or complaint is devoid of substance or lacks all foundation.

In its Human Rights in the Administration of Justice in Iraq report, the UNAMI mentions having interviewed 53 individuals who had made complaints about their ill-treatment, mostly reporting concerns to the investigative or trial judges. In the vast majority of cases, interviewees indicated that their complaints were either ignored or denied, or they did not have any knowledge as to whether their complaints had been followed-up indicated that their complaints were either ignored or denied, or they did not have any knowledge as to whether their complaints had been followed-up.

4.3.2 Iraqi High Commission for Human Rights (IHCHR)

In 2008, the Council of Representatives passed the Law of the High Commission for Human Rights No. 53 (Law No. 53/2008). In April 2012, the Commission was effectively established. Since then, the enabling law was amended three times.

It should also be noted that a national human rights institution has also been established in Kurdistan under Law No. 4/2010.¹²²

In 2015, the Iraqi High Commission for Human Rights (IHCHR) was granted B status to mark its partial compliance with the Paris Principles. The same year, the HR Committee raised concerns over “reported difficulties faced by the High Commission for Human Rights in carrying out its mandate, including a lack of adequate resources and constraints in practice to effectively discharging certain mandated activities, such as visiting and inspecting places of deprivation of liberty”.¹²³

In June 2021, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI), recommended that the IHCHR be re-accredited with A status.

¹²¹ “Second periodic report of the State party”, *op. cit.*, para. 250.

¹²² The website of the Independent Human Rights Commission in Kurdistan Region is available here: <https://ihrcr.org/en/ihrcr/> (accessed on 31 January 2022).

¹²³ Human Rights Committee, *Concluding Observations on the fifth periodic report of Iraq*, 3 December 2015, UN Doc. CCPR/C/IRQ/CO/5, para. 7.

Irrespective of that decision, we believe that IHCHR does not play the role expected of an independent, impartial, and effective national human rights institution.¹²⁴

Since then, the IHCHR experienced hurdles with regard to the nomination of its commissioners. Prior to the legislative elections, the tenures of the IHCHR's commissioners ended in June 2021, causing administrative issues within the IHCHR. On 9 November 2021, the President of Iraq issued a communication reinstating the IHCHR Commissioners whose term had expired.¹²⁵ However, this decision caused some controversy. In fact, though under article 7 of the Law of the IHCHR, the 15 commissioners should be selected by a Committee of Experts appointed by the Council of Representatives, at the time of writing, the said Committee has not been formed, thus delaying the appointment of Commissioners for the 2021-2025 term.

In terms of its mandate, article 5 of the enabling law states that the Commission shall “receive complaints from individuals, groups, and civil society organisations” and be able to conduct preliminary investigations as a result. After verifying the validity of the complaint, the Commission can refer the case to the public prosecution. The complaint mechanism can be accessed on the IHCHR's website.¹²⁶

On the specific issue of enforced disappearance, the IHCHR claims to have received, for the year 2019, 1,129 complaints from families of disappeared and missing persons, 131 of which were referred to the Presidency of the Public Prosecution. According to the Commission, those cases included “allegations that they were arrested by official security agencies.” For the years 2017 and 2018, the IHCHR has officially received 6,752 cases, of which 96 were “resolved” and 780 others were referred to the Public Prosecution.¹²⁷

Regarding the issue of torture *per se*, the State party claims that “the High Commission for Human Rights receives complaints of torture and conducts preliminary investigations in that regard. It then submits the matter to the human rights division in the Office of the Public Prosecution which, in turn, refers the complaint for investigation to the competent investigating judge for due legal measures to be taken against those responsible.”¹²⁸

However, in its report, the State party provide no statistical data on the numbers of complaints that have been handed over to the Office of the Public Prosecution and how many of which have been referred to the investigative judge.

In 2020, the IHCHR reported that it received 960 complaints about torture, out of which 384 were sent to the Office of the Public Prosecutor, 555 remain under their investigation and 21 were rejected for not fulfilling the criteria.¹²⁹

As already noted in the last Concluding Observations,¹³⁰ the State party, once again, provided no information about the sentences and criminal or disciplinary sanctions imposed on offenders, nor has it

¹²⁴ For more information, read MENA Rights Group's evaluation report of the IHCHR available at: <http://www.menarights.org/en/documents/evaluation-report-iraqi-high-commission-human-rights> (accessed on 27 January 2022).

¹²⁵ The President's communication made reference to a similar letter sent on 17 August 2016.

¹²⁶ The complaint mechanism can be accessed in Arabic here: <http://ihchr.iq/index.php?name=sendmail>.

¹²⁷ For statistics of complaints regarding cases of people whose families are unaware of their whereabouts for the years 2017, 2018, 2019, see: IHCHR, *Shadow Report, Evaluation Report on Iraq's Compliance with the International Convention for the Protection of All Persons from Enforced Disappearance*, 2020, available at: https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/IRQ/INT_CED_NHS_IRQ_41963_E.pdf (accessed on 8 March 2022), p. 5.

¹²⁸ “Second periodic report of the State party”, *op. cit.*, para. 62.

¹²⁹ Human Rights in the Administration of Justice in Iraq, *op. cit.*, p. 22; IHCHR 2020 report, available at: https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_Administration_of_Justice_EN.pdf (accessed 15 March 2022), p. 68.

¹³⁰ “Concluding observations on the initial report of Iraq”, *op. cit.*, para. 21

indicated whether or not the alleged perpetrators of these acts were removed from public service pending the outcome of the investigation of the complaint.

It should be noted that the IHCHR has denounced human rights violations committed in the context of the 2019-21 protests. The Commission also kept a record of the number of victims and the number of people injured.¹³¹

MENA Rights Group talked to former victims of enforced disappearance and their families, who informed us that the Commission had failed to take action after their cases were transmitted to the IHCHR. This was notably the case for victim No. 21 who disappeared between X and X. He was abducted in the context of the October 2019 protests. After his release, he informed MENA Rights Group that when his family reported his disappearance, the IHCHR asked them a few questions only, without taking further steps.

X's testimony echoes information we have received from the family of Case No. 9. Her family informed MENA Rights Group that they filed a complaint with the IHCHR. It seems that the only action taken by the IHCHR was to issue a press release X. Besides, her family were disappointed to see that the IHCHR did not get back to them when they were released X to enquire as to whether they had been subjected to torture or ill-treatment during her enforced disappearance.

The case of Sajjad Al Mishrifawi, also known as Sajjad Al Iraqi, is also illustrative of the lack of effective action following the filing of an individual complaint. He is a prominent activist who took part in the 2019-20 protests in the Dhi Qar governorate. On 19 September 2020, he was allegedly abducted by members of a militia affiliated with the PMU. His family reported his disappearance to the IHCHR's regional office in Dhi Qar. The Commission later informed the family that his case had been transmitted to the United Nations Assistance Mission for Iraq. Al Mishrifawi's family is unaware of any other measures taken by the Commission.

Finally, we would like to inform the CAT that on 3 February 2022, a member of IHCHR, Ali Akram Al Bayati, received a document sent by the Al Resafa Investigative Court in Baghdad informing him we was being investigated due to a case filed by Iraq's Council of Ministers Secretariat (COMSEC) under article 434 of the Penal Code, relating to "defamation".¹³²

On 6 February 2022, Dr Al Bayati appeared in court. He was informed that he was being investigated for statements he made on Al Ahad TV channel on 6 December 2020, that is, during his official mandate as a Commissioner, upon a complaint by the Anti-Corruption Committee, formed in 2020 by the Prime Minister Mustafa Al Kadhimi to investigate cases of corruption. The statements concerned IHCHR's work documenting claims of torture by families of those detained under orders of the Anti-Corruption Committee. Dr Al Bayati had also stated that the Committee had denied the IHCHR's request to visit detention centers. The investigation file included no other evidence of alleged defamation. He was released on bail the same day. The date of his next hearing is unknown.¹³³

¹³¹ See France24, *Nearly 550 killed in Iraq protest violence: commission*, 7 February 2020, available at: <https://www.france24.com/en/20200207-nearly-550-killed-in-iraq-protest-violence-commission> (accessed on 8 March 2022).

¹³² Human Rights Watch, *Drop Complaint Against Iraq Human Rights Commission Member*, 10 march 2022, <https://www.hrw.org/news/2022/03/10/drop-complaint-against-iraq-human-rights-commission-member> (accessed 15 March 2022).

¹³³ Email exchange between MENA Rights Group and Ali Akram Al Bayati in February 2022 ; Observatory for the Protection of Human Rights Defenders, *Iraq: Judicial harassment of human rights defender Dr. Ali Akram al-Bayati*, 1 March 2022, <https://www.omct.org/en/resources/urgent-interventions/iraq-judicial-harassment-of-human-rights-defender-dr-ali-akram-al-bayati> (accessed on 9 March 2022).

4.3.3 Interactions between the High Judicial Council and the IHCHR

In January 2014, the High Judicial Council in Baghdad set up specialised human rights investigative courts dealing with complaints about human rights violations received by the Office of the Public Prosecutor through the IHCHR.¹³⁴

Accordingly, the IHCHR conducts a preliminary investigation into alleged human rights violations, which includes visits to alleged torture victims in detention. It then submits the case documents to the Office of the Public Prosecutor to take legal action. They, in turn, refer the case to the human rights courts for judicial investigation. If a perpetrator is identified, the case is transmitted to the trial court for adjudication.

According to UNAMI, the human rights courts mainly deal with torture allegations made by convicted prisoners. During ongoing proceedings, the same investigative judge leading the investigation into an alleged criminal offence remains responsible for investigations into torture claims. This may raise serious concerns about their impartiality.¹³⁵

The High Judicial Council in Federal Iraq reported that in 2020, they had received 1,406 complaints of torture or ill-treatment in places of detention which are being dealt with by courts in 12 different governorates.¹³⁶

While one official of the Ministry of Defence received a sentence of five years and one month imprisonment in Ninewa governorate under article 410 of the Penal Code (assault leading to death), 18 investigations were closed and the remaining were ongoing.¹³⁷

5 Widespread and systematic torture in Iraq

5.1 Overview of the practice of torture

5.1.1 Victims

Political dissidents, human rights activists, and protesters

A significant number of cases documented by MRG involved political dissidents, peaceful protesters, and human rights activists.

Two victims (Cases No. 4 and 5) were targeted due to their perceived or real link to former Vice President Tariq Al Hashimi. As dozens of Al Hashimi's relatives and staff,¹³⁸ the victims were arbitrarily arrested, subjected to severe torture and ill-treatment, and sentenced to life imprisonment based on confessions extracted under duress and fabricated charges, under art. 4 of the 2015 Anti-Terrorism Law.

¹³⁴ High Judicial Council statement No. (5/Q/A) of 11 January 2014, based on the provisions of Article (5) of the Law of the High Commission for Human Rights No. (53) of 2008.

¹³⁵ "Human Rights in the Administration of Justice in Iraq", *op. cit.*, p. 22.

¹³⁶ *Ibidem*.

¹³⁷ *Ibidem*.

¹³⁸ Alkarama, *Iraq: politically-driven mass arrests and arbitrary detention target former vice-president al Hashimi's staff*, 15 April 2015, available at: <https://www.alkarama.org/en/articles/iraq-politically-driven-mass-arrests-and-arbitrary-detention-target-former-vice-president> (accessed on 25 February 2022).

Several arbitrary arrests and acts of torture documented by MRG took place during the 2019-2020 anti-government demonstrations. These cases involved both well-known activists (Cases No. 6, 12 and 21) and ordinary citizens that took part in the protests. Some of them were arrested and tortured in detention, while others were attacked and tortured during the protests by or under the acquiescence of Iraqi security forces. Among them, MRG was also able to document the cases of two women (Cases No. 9 and 10) X.

Victims of enforced disappearance and their families

As it will be also highlighted below (see section 5.2 below), the CAT has frequently pointed out that enforced disappearance not only constitutes torture with regard to the victim, but also with regard to the victim's relatives.

MRG documented the case of a family member of a man arrested in the context of the anti-government demonstrations and subjected to enforced disappearance since (Case No. 16). The disappearance of the relative has not only made the family experience a severe state of depression and a worsening of their physical health but has exacerbated a strong economic distress.

We also wish to highlight that despite the fact that we have not included cases of enforced disappearances in the cases documented as part of this submission, MENA Rights Group has documented numerous such cases, and, as of December 2021, has filed 341 cases before the Committee on Enforced Disappearances.

When responding to urgent actions sent by the CED, the State party often fails to provide any information on action taken to search for disappeared persons or to investigate their alleged enforced disappearance and also fail to clarify the procedures available to victims. The State party additionally often asserts that the alleged victims are affiliated with terrorist groups, without providing any further information about any specific criminal charges brought, proceedings initiated or arrest warrants issued against them.¹³⁹

Civilians suspected and accused of acts of terrorism

MRG documented numerous cases of torture of individuals suspected and/or accused of terrorist acts. The accusations were based on allegedly holding fake ID documents (Case No. 11), self-incriminating confessions extracted under duress (Cases No. 1, 3 and 14), or declarations made by secret informants or other detainees (Cases No. 14 and 17). In three out of the six documented cases, the victims died from the acts of torture inflicted (Cases No. 3, 8 and 11).

Religious minorities

MRG was able to document a case (Case No. 22) of torture related to the religious affiliation of the victim. In this case, the victim was arbitrarily arrested and tortured due to his decision to convert from the Shi'a to the Sunni faith. However, the detention was justified by fabricated terrorism-related charges and the victim sentenced to life imprisonment under art. 4 of the Anti-Terrorism Law.

5.1.2 Forces implicated

In this section we have detailed the structural organisation of the main forces or units that have been accused of committing acts of torture based on the cases documented in the annex attached to this report. In 12 instances, the alleged perpetrators belonged to various components of the Iraqi Security Forces, including the Iraqi army, the Federal Police, SWAT team, the riot police, while in six instances the

¹³⁹ General Assembly, *Report of the Committee on Enforced Disappearances*, 2021, UN Doc. A/76/56, paras. 60-61.

alleged perpetrators belonged to a militia affiliated to the Popular Mobilisation Units such as the Peace Brigades, Hezbollah Brigades, and Brigade 52. For the remaining cases, the acts of torture were either committed by joint forces (ISF in coordination with the PMU), U.S. forces and unknown armed groups.

5.1.2.1 Iraqi Security Forces

The Iraqi Security Forces (ISF) consist of formal military and security forces that report both to the Ministry of Defence and the Ministry of Interior. They are composed of the Iraqi Army, the Iraqi Army Aviation, the Iraqi Air Force, Counter Terrorism Service (CTS), Federal Police, Emergency Response Division (ERD), and the local police including the Special Weapons and Tactics (SWAT) units.¹⁴⁰

Those forces are organised within the framework of Operational Commands that have been in place since the fall of Mosul in 2014.¹⁴¹ The Operational Commands works as Corps-level headquarters for units deployed within the area of operations. The Joint Operations Command has oversight of all Operational Commands and its subordinate units. All Operational Commands report to the Joint Operations Command.

The Joint Operations Command is the highest headquarters of the ISF leadership with oversight over all operations commands and sometimes taking direct command of subordinate units. The Joint Operations Command is mandated to coordinate the Ministry of Defence, Counter Terrorism Service (CTS), Prime Minister's Special Forces Division, Presidential Brigades, the Ministry of Interior, and the Popular Mobilisation Units (see below for more information about the PMU).

The Ministry of Interior is responsible for domestic law enforcement and maintenance of order; it oversees the Federal Police, Provincial Police, Facilities Protection Service, Civil Defense, and Department of Border Enforcement.¹⁴² Under the authority of the Ministry of Interior, the Federal Police is a deployable gendarmerie force whose capabilities fall on the spectrum between an Iraqi army unit and the local police. Members of the federal Police are recruited locally, but can be deployed to other governorates.

Conventional military forces under the Ministry of Defense are responsible for the defense of the country but also carry out counter-terrorism and internal security operations in conjunction with the Ministry of Interior.¹⁴³ The Iraqi Counter Terrorism Service reports directly to the Prime Minister and oversees the Counter Terrorism Command, and three Iraqi Special Operations Forces Brigades.¹⁴⁴ The National Security Service intelligence agency reports directly to the Prime Minister.¹⁴⁵

The anti-riot police also belong to ISF. Although the anti-riot police falls under the authority of the Ministry of Interior, it has been reported that they also report to the Commander in Chief of the Armed

¹⁴⁰ Center for Civilians in Conflict (CIVIC), *Policies and practices to protect civilians*, 1 October 2019, https://civiliansinconflict.org/wp-content/uploads/2020/11/ISF-Report_PRINT_Revise_hires.pdf (accessed on 9 March 2022).

¹⁴¹ See U.S. Department of State, *2020 Country Reports on Human Rights Practices: Iraq*, p 1 and European Asylum Support Office, *EASO Country of Origin Information Report*, March 2019, https://coi.euaa.europa.eu/administration/easo/PLib/Iraq_security_situation.pdf (accessed on 9 March 2022).

¹⁴² *Ibidem*.

¹⁴³ *Ibidem*.

¹⁴⁴ David M. Witty, *The Iraqi Counter Terrorism Service*, 16 March 2015, available at: <https://www.brookings.edu/research/the-iraqi-counter-terrorism-service/> (accessed on 15 February 2022), p. 5.

¹⁴⁵ Human Rights Watch, *Iraq: Intelligence Agency Admits Holding Hundreds Despite Previous Denials*, 22 July 2018, available at: <https://www.hrw.org/news/2018/07/22/iraq-intelligence-agency-admits-holding-hundreds-despite-previous-denials> (accessed on 15 February 2022).

Forces. These forces played a key role in suppressing the 2011, 2016 and 2018 demonstrations and the demonstrations that have continued since October 2019.¹⁴⁶

In late October 2019, the Government established a force called the “Law Enforcement Agency” specifically to respond to the demonstrations, with the intention that the force be developed into an entity specifically trained for, and focused on, crowd control at demonstration sites. According to UNAMI, prior to this, in early October, in Baghdad, a force was reportedly quickly put together to respond to protests, wearing black uniforms.¹⁴⁷

It must also be noted that when the popular demonstrations began in October 2019, it has also been reported that SWAT units had also been involved in suppressing demonstrations.¹⁴⁸

Popular Mobilisation Units

The Popular Mobilisation Units (PMU), known also as Popular Mobilisation Forces (PMF) or *Al Hashd Ash-Sha’abi*, is a state-sponsored umbrella military organisation composed, as of 2021, of approximately 60 militia groups.¹⁴⁹

In February 2016, Prime Minister Al Abadi issued Order No. 91, officially incorporating the PMU as an “independent military formation” within Iraq’s security forces under the Prime Minister’s command. On 26 November 2016, the parliament passed a law formalising Order No. 91, which gave a legal status to the PMU, granting them equivalent ranks and benefits with the ISF and placing them under the same military jurisdiction.¹⁵⁰ In other words, the PMU were then official incorporated into ISF.¹⁵¹ Until then, PMU groups operated extra-legally but with the support and acquiescence of the Iraqi government. On 8 March 2018, another Prime Minister’s decree further confirmed the PMU’s inclusion into the country’s security apparatus.

Such units operate throughout the country, often outside government control and in opposition to government policies, and their leadership and most of their forces tend to be Shi’a.¹⁵² The largest and most influential forces within the PMU include the followings: Badr Organisation (*Munazzama Badr; Al Jinah Al Askari*); Asa’ib Ahl Al Haqq (League of the Righteous, AAH); Hezbollah Brigades (*Kata’ib Hizb Allah*); Imam Ali Brigades (*Kata’ib Al Imam Ali*); Khorasani Brigades (*Saraya Al Khorasani*); Peace Brigades (*Saraya Al Salam*); Abbas Combat Division; Ali Al Akbar Brigade.¹⁵³ The PMU has

¹⁴⁶ Irfaasawtak, 1 February 2020, <https://www.irfaasawtak.com/iraq/2020/02/01/%D9%87%D8%AC%D9%8A%D9%86%D8%A9-%D9%88%D8%A8%D9%80%D9%85%D8%B1%D8%AC%D8%B9%D9%8A%D8%A9-%D8%BA%D8%A7%D9%85%D8%B6%D8%A9-%D8%AA%D8%B9%D8%B1%D9%81-%D9%82%D9%88%D8%A7%D8%AA-%D9%85%D9%83%D8%A7%D9%81%D8%AD%D8%A9-%D8%A7%D9%84%D8%B4%D8%BA%D8%A8%D8%9F> (accessed on 9 March 2022).

¹⁴⁷ UNAMI, *Human Rights Violations and Abuses in the Context of Demonstrations in Iraq October 2019 to April 2020*, August 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/Demonstrations%20in%20Iraq_UNAMI%20OHCHR%20report_08%2027%202020.pdf (accessed on 9 March 2022), p. 17.

¹⁴⁸ Human Rights Watch, *Iraq: Lethal Force Used Against Protesters*, 10 October 2019, <https://reliefweb.int/report/iraq/iraq-lethal-force-used-against-protesters> (accessed on 9 March 2022).

¹⁴⁹ U.S. Department of State, *2020 Country Reports on Human Rights Practices: Iraq*, p 1.

¹⁵⁰ Erica Gaston and András Derzsi-Horváth, *Iraq After ISIL: Sub-State Actors, Local Forces, and the Micro-Politics of Control*, Global Public Policy Institute, March 2018, available at: <https://www.gppi.net/2018/03/21/iraq-after-isil-sub-state-actors-local-forces-and-the-micro-politics-of-control> (accessed on 14 February 2021), pp. 20-21.

¹⁵¹ Human Rights Watch, “*Life Without a Father is Meaningless*”, 27 September 2018, https://www.hrw.org/report/2018/09/27/life-without-father-meaningless/arbitrary-arrests-and-enforced-disappearances#_ftn129 (accessed on 9 March 2022).

¹⁵² *Ibidem*.

¹⁵³ *Ibidem*.

also line of administration and supervision over more small and local forces, such as Sunni Forces, and Shi'a Turkmen Forces (in particular, Brigades 16 and 52).¹⁵⁴

It is worth recalling that article 9 of the Iraqi Constitution states that “the formation of military militias outside the framework of the armed forces is prohibited.” However, the PMUs, as well as the CTS, operate outside the authority of the Ministry of Interior and the Ministry of Defense and report to the Prime Minister.

That being said, Shi'a PMUs forces tend to have a separate chain of command than the ISF. Subsequently, they decide as to whether they will implement orders issued by the prime minister, or ISF, or whether to take a different approach. The Iranian backed forces do not respond to the Prime Minister, but do coordinate many activities with the ISF.¹⁵⁵

In practice, the PMU have remained independent entities, some with varyingly strong ties to Iran, some pursuing their vision of nationalism, and some pursuing criminal motivations aimed at capturing control of money, oil and other resources. It has been reported that the PMU have been able to infiltrate and control parts of the state security structure. The result of this is a state in which some of its own fighting and law enforcement units do not answer to the government nor have an interest in protecting the integrity of its structures.¹⁵⁶

5.1.2.2 *Kurdish Security Forces*

The Kurdish Security Forces, also referred to as Peshmerga, comprise a range of forces, including traditional army units, military, and intelligence units (*Asayish*), and others functioning more like local police. They are the only legally recognised regional force under the Iraqi Constitution (art. 117), which allows regions to establish their own internal security services as the “police, security forces and guards of the region.”

The Peshmerga forces command structure operates at a regional level and has remained completely separated from the national security institutions and the Iraqi Ministry of Defence exercises no control over the Peshmerga's operations.¹⁵⁷

5.1.2.3 *U.S. Coalition Forces*

In late March 2003, in the context of the “war on terror”, U.S. forces invaded Iraq vowing to destroy Iraqi weapons of mass destruction and end the dictatorial rule of Saddam Hussein.¹⁵⁸ In May 2003, following the fall of the Ba'ath Party, an entity known as the Coalition Provisional Authority (CPA) assumed the governance of Iraq.¹⁵⁹ In June 2004, the CPA was dissolved, and political authority passed to an interim government, however still strongly assisted by U.S. coalition forces.¹⁶⁰ U.S. forces formally

¹⁵⁴ *Ibidem*.

¹⁵⁵ EASO Country of Origin Information Report, op. cit.

¹⁵⁶ Belkis Wille, “Is There Rule of Law in Iraq?”, *Foreign Policy in Focus*, <https://www.hrw.org/news/2021/12/02/there-rule-law-iraq> (accessed 15 March 2022).

¹⁵⁷ Fliervoet, F., *Fighting for Kurdistan? The Peshmerga in Iraq*, Clingendael, March 2018, <https://www.clingendael.org/sites/default/files/2018-03/fighting-for-kurdistan.pdf> (accessed on 9 March 2022), p. 15

¹⁵⁸ Council on Foreign Relations, *The Iraq War*, n.d., available at: <https://www.cfr.org/timeline/iraq-war> (accessed on 21 February 2022).

¹⁵⁹ Britannica, *The Iraq War (2003-11) and its aftermath*, n.d., available at: <https://www.britannica.com/place/Iraq/The-UN-embargo-and-oil-for-food-program> (accessed on 21 February 2022).

¹⁶⁰ *Ibidem*.

withdrew at the end of 2011.¹⁶¹ From June 2014 to December 2021, U.S. forces were dispatched in order to carry out a military intervention against the rise of ISIL.¹⁶²

5.1.2.4 *ISIL*

In April 2013, al-Qaeda in Iraq and some radical elements of the Syrian opposition began operating jointly under the name Islamic State in Iraq and the Levant (ISIL). By late 2013, ISIL had begun to pose a serious challenge to the Iraqi government's control in western and northern areas of the country.¹⁶³ In 2014, ISIL took control of the city of Fallujah, parts of Al-Ramadi, the capital of Al-Anbar, the northern city of Mosul, the second largest in Iraq, and Tikrit.¹⁶⁴ In early August of the same year, ISIL forces captured several towns and a major dam on the outskirts of the autonomous zone controlled by the Kurdistan Regional Government.¹⁶⁵ By the end of 2017, and with the support of U.S. forces, Iraqi forces expelled ISIL out of most of the country.

5.1.2.5 *Other actors*

Other actors are involved in attacks and violence through extortions, robbery, racketeering, small arms and explosives, as well as targeted killings. They may not always be identifiable and it can be difficult to be conclusive because of lack of attribution and lack of reporting by victims; often it may involve militias and gangs. It has been reported that violence by unknown perpetrators is often used to intimidate opponents, drive people out, make money, or target people due to their lifestyle.¹⁶⁶

5.1.3 Places of torture

Police stations and ISF offices

MRG has documented several cases in which the victims were subjected to acts of torture upon their arrival at police stations and ISF offices. In particular, the main ones documented are: the first division of Intelligence Department of Federal Police; divisions of the Iraqi Army; local police stations; Anti-Crime Section offices; Intelligence Directorate offices.

Prisons

As reported by OHCHR and UNAMI, allegations of torture and ill-treatment are common in places of detention throughout Iraq.¹⁶⁷ Indeed, the vast majority of the cases documented by MRG concern victims being subjected to torture and ill-treatment in prisons. In particular, the main places of detention documented are:

- **Nasiriyah Central Prison (also known as Al Hoot):** opened in 2008, it is a maximum-security prison near Nasiriyah in the Dhi Qar Governorate of Iraq. It is the largest prison in southern Iraq.

¹⁶¹ *Ibidem*.

¹⁶² Aljazeera, *US-led combat mission in Iraq ends, shifting to advisory role*, 9 December 2021, available at: <https://www.aljazeera.com/news/2021/12/9/iraq-official-says-us-combat-mission-in-the-country-has-ended> (accessed on 21 February 2021).

¹⁶³ Britannica, *U.S. withdrawal and the rise of the Islamic State in Iraq and the Levant (ISIL)*, n.d., available at: <https://www.britannica.com/place/Iraq/U-S-withdrawal-and-the-rise-of-the-Islamic-State-in-Iraq-and-the-Levant-ISIL> (accessed on 21 February 2022).

¹⁶⁴ *Ibidem*.

¹⁶⁵ *Ibidem*.

¹⁶⁶ EASO, *Country of Origin Information Report (Iraq)*, March 2019, https://coi.europa.eu/administration/easo/PLib/Iraq_security_situation.pdf (accessed on 9 March 2022).

¹⁶⁷ "Human Rights in the Administration of Justice in Iraq", *op. cit.*, p. 11.

- **Abu Ghraib prison / Baghdad Central Prison:** opened in the 1950s, it was a detention centre in Abu Ghraib, Iraq. From 2003 to 2006, the prison was controlled by U.S. Coalition Forces, while, from 2006 to 2014, under the new name Baghdad Central Prison, by the Iraqi Ministry of Justice and the Iraqi Army. It was closed in 2014 in the context of ISIL's expansion in 2014. It has been reported that the prison reopened in 2020 following "rehabilitation work".¹⁶⁸
- **Camp Cropper / Al Karkh Central Prison:** Established in 2003, it was a holding facility for security detainees operated by the U.S. Coalition Forces near Baghdad International Airport in Iraq. In 2010, was turned over to the Iraqi government, under the control of the Ministry of Defence, and renamed Al-Karkh Central Prison.
- **Camp Bucca:** established in 2003, it was a forward operating base controlled by US Coalition Forces. It was closed in 2009 and handed over to the Iraqi government in 2010.
- **Camp Taji:** established in 2003, it is a military base used also for detention purpose. It was first under the control of the US Coalition Forces, and in 2011 it was handed over to the Ministry of Defence and operated by Iraqi Army.
- **Tasferat Al Rusafa prison:** it is a detention centre in Baghdad.

Other official detention facilities include **Tal Kayf, Faisaliya, and Tasfirat pre-trial detention facilities** (also known as the Faisaliya compound), where inmates, including minors, suffered from degrading conditions and extreme overcrowding.¹⁶⁹

Squares and streets

MRG documented cases in which acts of torture were perpetrated in public spaces, like squares, streets, and abandoned buildings. This especially happened with regard to the 2019-2020 anti-government demonstrations. In particular, MRG documented several cases in which the acts of torture were perpetrated in Tahrir Square and nearby streets.

Secret detention facilities

As pointed out in the previous chapter (4.2.4), reports of secret detention remain widespread in Iraq. In some of the cases documented by MRG, the victims were detained in places that they could not identify or locate (See cases No. 2, 7, 9, 10, 12, 18, and 21). Based on the testimonies collected, these unknown places were described by the victims as farms, sheep barns, residential buildings, or military bases used as secret detention facilities.

Kurdish Region

Although in recent years, the semi-autonomous Kurdistan Region of Iraq was described as a safe and tolerant place for the persecuted from all over Iraq, since March 2020, journalists, human rights defenders, activists, protesters and other dissenting individuals in the region have increasingly been subjected to intimidations, threats, harassment and arbitrary detention at the hands of the regional authorities.¹⁷⁰ There are also reports of use of torture on detainees, including children, in order to force them to confess involvement with ISIL.¹⁷¹

¹⁶⁸ Khalid al-Taie, "Iraq to reopen expanded, modernised prisons", *Diyaruna*, 27 February 2020, https://diyaruna.com/en_GB/articles/cnmi_di/features/2020/02/07/feature-01 (accessed 15 March 2022).

¹⁶⁹ Human Rights Watch, *Iraq: Thousands Detained, Including Children, in Degrading Conditions*, 4 July 2019, <https://www.hrw.org/news/2019/07/04/iraq-thousands-detained-including-children-degrading-conditions> (accessed on 9 March 2022).

¹⁷⁰ MENA Rights Group, *Increasing repression against activists, journalists and other critics in Iraq's Kurdistan Region*, 9 July 2021, available at <https://menarights.org/en/articles/increasing-repression-against-activists-journalists-and-other-critics-iraqs-kurdistan> (accessed on 17 February 2022).

¹⁷¹ Human Rights Watch, *Kurdistan Region of Iraq: Detained Children Tortured*, 8 January 2019, available at: <https://www.hrw.org/news/2019/01/08/kurdistan-region-iraq-detained-children-tortured> (accessed on 21 February 2022).

5.1.4 Methods

The most commonly reported acts of torture include severe beatings, electric shocks, housing or bathing in cold water, being hung from the ceiling by the arms and legs, death threats and threats to their families, as well as degrading treatment, such as being urinated on or being photographed naked. Women detained – in particular those of Sunni confession – described being beaten and threatened with rape and sexual assault.¹⁷²

Moreover, victims are systematically subjected to prolonged solitary confinement and *incommunicado* detention, which amount to torture.

5.1.5 Objectives

According to the testimonies collected, as well as numerous NGOs reports, acts of torture and ill-treatment have been mainly used as a mean to extract self-incriminating confessions during interrogations. Moreover, torture has been also used to blackmail and persuade protesters, political dissidents and human rights activist not to continue their activities. Finally, it is also implemented as a form of punishment and mere cruelty in particular with regards to those suspected or accused of terrorism acts.

5.2 Enforced disappearances

In its jurisprudence, the CAT found that “enforced disappearance entails multiple human rights violations and a failure by the State party concerned to comply with the obligations contained in the Convention, and that this constitutes in itself, in relation to the disappeared person, or may constitute, in relation to the person’s relatives, a form of torture or inhuman treatment contrary to the Convention.”¹⁷³

Iraq has yet to adopt legislative measures to ensure that the crime of enforced disappearance is incorporated into domestic law as an autonomous offense, in accordance with the definition contained in article 2 of the ICCPED

. Although in August 2017, Iraqi Parliament’s Human Rights Committee began working on a draft Law on the Protection of Persons from Enforced Disappearance,¹⁷⁴ the text, in its current form, fails to comply with the standards set out in the ICCPED.¹⁷⁵

Iraq remains the country with the highest number of enforced disappearances in the world, with estimates ranging from between 250,000 and one million missing persons.¹⁷⁶ The practice dates back to the late 1960s and peaked following the U.S.-led invasion in 2003 and the fight against ISIL. The authorities have failed to resolve most cases of disappearances, provide remedy to the relatives of missing persons and prosecute those responsible. Illustrative of this practice are the UN Working Group

¹⁷² U.S. Department of State, *2020 Country Reports on Human Rights Practices: Iraq*, pp. 6-7.

¹⁷³ Committee against Torture, *Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session) Concerning Communication No. 456/2011*, UN Doc. CAT/C/54/D/456/2011, 15 May 2015, para. 6.4.

¹⁷⁴ MENA Rights Group, *UN Committee issues roadmap to address endemic practice of enforced disappearance in Iraq*, 2 December 2020, available at: <https://menarights.org/en/articles/un-committee-issues-roadmap-address-endemic-practice-enforced-disappearance-iraq> (accessed on 1 March 2022).

¹⁷⁵ English version available at: https://menarights.org/sites/default/files/2019-12/IRQ_Draft_EnforcedDisappearanceLaw_tbc_EN.pdf.

¹⁷⁶ Kilner, J. *Accounting for missing persons is vital for stability in a post-war scenario - ICRC*, 13 November 2009, available at: <https://reliefweb.int/report/serbia/accounting-missing-people-vital-stability-post-war-scenario-icrc> (accessed on 17 February 2022).

on Enforced or Involuntary Disappearances (WGEID) records of 16,427 outstanding cases for Iraq as of 21 May 2021.¹⁷⁷

Similarly, as of 1 April 2021, the Committee on Enforced Disappearances (CED) had registered 492 cases under its urgent action procedure. In its 2021 annual report, the CED raised concerns over the “failure of the State party, despite repeated reminders, to reply to the majority of the registered requests for urgent action concerning cases of disappearance reported in its territory.”¹⁷⁸

The CED also found that “where the State party submitted replies to the Committee, they followed the same trend observed by the Committee in its previous reports, namely that the State party did not provide any information on action taken to search for disappeared persons or to investigate their alleged enforced disappearance. Furthermore, the State party failed to clarify the procedures available to victims.”¹⁷⁹

The issue of enforced disappearances remains prevalent, particularly in the context of counter-terrorism operations.¹⁸⁰ Between 2014 and 2017, the Iraqi forces, including government-affiliated militias from the PMU, disappeared hundreds of individuals perceived to be, or who were actually of the Sunni faith and who were from or lived in areas that were under ISIL control.¹⁸¹ For example, in April 2019, MENA Rights Group and Al Wissam Humanitarian Assembly documented the cases of 192 internally displaced persons who had been arrested by the Hezbollah Brigades at the Al Razaza checkpoint in Iraq’s Al Anbar Province.¹⁸² All 192 individuals – some of whom were minors at the time of their arrest – remain disappeared to date. Hezbollah forces controlled the checkpoint until 2017 when it was dismantled.

Moreover, in the context of the 2019-2020 anti-government demonstrations, MRG noted an increase in the number of abductions of peaceful demonstrators by state security forces and militias – most of which are affiliated with the PMU – acting with the authorisation, support, acquiescence or approval of the Iraqi government.¹⁸³ The IHCHR recorded 72 cases of enforced disappearance as of 7 February 2020.¹⁸⁴ Some of the demonstrators who were released have reported having been tortured during their detention.

The UNAMI also found that “since the beginning of the [2019] demonstrations, Iraqi security forces arrested and detained thousands of demonstrators, typically without warrant and mostly without providing those arrested the means to contact their families or defence lawyers, prompting fears that those arrested were being held incommunicado or had disappeared.”¹⁸⁵

¹⁷⁷ Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, 4 August 2021, UN Doc. A/HRC/48/57, p. 9.

¹⁷⁸ General Assembly, *Report of the Committee on Enforced Disappearances*, 2021, UN Doc. A/76/56, para. 60.

¹⁷⁹ *Ibidem*.

¹⁸⁰ Human Rights Watch, *Iraq: Secret Detention, No Recourse*, 27 September 2018, available at: <https://www.hrw.org/report/2018/09/27/life-without-father-meaningless-arbitrary-arrests-and-enforced-disappearances-iraq> (accessed on 17 February 2022).

¹⁸¹ “Sixth periodic report of the State party”, *op. cit.*, para. 123.

¹⁸² MENA Rights Group, *192 internally displaced persons disappeared from infamous Al Razaza Checkpoint in Iraq in a single day*, 10 May 2019, <https://www.menarights.org/en/articles/192-internally-displaced-persons-disappeared-infamous-al-razaza-checkpoint-iraq-single-day> (accessed on 17 February 2022).

¹⁸³ Al Jazeera, *Iraq protests: Increase in number of disappearances*, 19 December 2019, <https://www.aljazeera.com/news/2019/12/iraq-protests-increase-number-disappearances-191219111900491.html> (accessed 17 February 2022).

¹⁸⁴ France 24, *Nearly 550 killed in Iraq protest violence: commission*, 7 February 2020, <https://www.france24.com/en/20200207-nearly-550-killed-in-iraq-protest-violence-commission> (accessed on 17 February 2022).

¹⁸⁵ United Nations Assistance Mission for Iraq, *Human Rights Special Report, Demonstrations in Iraq - 2nd update*, 5 November 2019, p. 5, https://reliefweb.int/sites/reliefweb.int/files/resources/3rd%20UNAMI%20report_Human%20Rights%20and%20Demonstrations_9%20Dec%202019.pdf (accessed on 17 February 2022).

The CED has registered 28 requests for urgent action with regard to the disappearance of persons who had participated in the protests that had begun in October 2019 in Baghdad, or who had provided some kind of support to demonstrators.¹⁸⁶ Although 12 of these urgent actions have been closed after the persons were located and released, 13 of those requests remained pending before the CED as of 1 April 2021.¹⁸⁷

5.3 Excessive use of force

In the List of Issues in relation to Iraq's sixth periodic report, the Human Rights Committee expressed concerns about the fact that "security forces used excessive force, including lethal force, to disperse demonstrators from the first day of demonstrations, resulting in hundreds of deaths and injured protesters".¹⁸⁸

The 2019-2020 anti-government demonstrations were met with excessive and unnecessary use of lethal force and live ammunition by Iraqi security forces. According to NGOs' reports, the security forces systematically used lethal force against protesters by firing live ammunition, throwing rocks towards the demonstrators, and severely beating them as a form of punishment for their participation in the peaceful protests.¹⁸⁹ As a result, hundreds of protesters were arrested and injured, and several people were killed during the protests.¹⁹⁰

In this regard, on 14 October 2019, several UN experts, including the Special Rapporteur on the promotion and protection of freedom of opinion and expression, expressed concern over "the use of excessive and lethal force by security forces, including live ammunition, against peaceful protestors, reports of deadly targeted sniper fire and targeted killings of protestors, resulting in dozen of death and thousands of injuries, as well as the arbitrary arrests and detention of protestors and civil society activists."¹⁹¹

Since the beginning of nationwide protests in October 2019, Iraqi security forces and armed militias have subjected peaceful demonstrators to extremely violent attacks, resulting in the death of hundreds and injuries to tens of thousands of individuals. In February 2020, Iraq's High Commission for Human Rights estimated that over 500 people were killed since the protests erupted in October 2019, and another 23,500 people injured.¹⁹² Protest organisers have also faced increasing threats and intimidation campaigns, with many activists being arrested and, in some cases, killed with complete impunity.¹⁹³

On 18 October 2020, the Prime Minister's Office formally established a fact-finding committee by Executive Order 293 to "find out about all the violent events that accompanied the demonstrations from

¹⁸⁶ Committee on Enforced Disappearances, *Report of the Committee on Enforced Disappearances*, 19th session (7 September–25 November 2020), 20th session (12 April–7 May 2021), UN doc. A/76/56, para. 62.

¹⁸⁷ *Ibidem*.

¹⁸⁸ Human Rights Committee, *Replies of Iraq to the list of issues in relation to its sixth periodic report*, UN doc. CCPR/C/IRQ/RQ/6, 8 April 2021, para. 23.

¹⁸⁹ Alkarama, *Use of excessive force by security forces in Iraq results in several deaths and hundreds of injuries of peaceful protesters*, 8 August 2018, <https://www.alkarama.org/en/articles/use-excessive-force-security-forces-iraq-results-several-deaths-and-hundreds-injuries> (accessed on 14 May 2020).

¹⁹⁰ *Ibidem*.

¹⁹¹ OHCHR, *UA IRQ 4/2019*, 14 October 2019, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24898> (accessed on 27 January 2022).

¹⁹² Al-Arabiya, *Over 500 people killed since protests erupted in Iraq: Human Rights Commission*, 3 February 2020, <https://english.alarabiya.net/News/middle-east/2020/02/03/Over-500-people-killed-since-protests-erupted-in-Iraq-Iraqi-Human-Rights-Commission-> (accessed on 21 January 2022).

¹⁹³ France24, *Iraqis protest to 'end impunity' as killings of activists go unpunished*, 19 July 2021, <https://www.france24.com/en/middle-east/20210719-iraqis-protest-to-end-impunity-as-killings-of-activists-go-unpunished> (accessed on 21 January 2022).

1 October onwards, highlighting the reasons for it and who was responsible”.¹⁹⁴ According to the text of the order, it should, *inter alia*, “monitor and listen to the victims, witnesses, and their families, and review [...] the documents and data that are related to any case or situation”, with authority to “transfer any case and anyone to the court of law”. In May 2021, UNAMI concluded that it could find “no information indicating that the fact-finding committee established by Executive Order 293 has reached any conclusions or provided any concrete output.”¹⁹⁵

In a May 2021 report, UNAMI declared that as of May 2021, it could not obtain any information on the outcome of the committee’s activities.¹⁹⁶ UNAMI explained that “whilst some judicial officials interviewed by UNAMI stated that they had been contacted by the fact-finding committee, none was aware of the outcome of the committee’s activities. Nearly all professed a lack of faith in the committee’s abilities and perceived the committee as having been created for political ends rather than meaningful accountability.”¹⁹⁷

However, the spokesperson of the fact-finding Committee revealed some preliminary findings in May 2021. He claimed in May 2021 that 112 officers should be summoned and families of victims were referred institutions like the Martyrs and Victims of Terrorism Foundation.¹⁹⁸

UNAMI interviewed 47 families of persons killed at demonstration in March 2021 and only three had received money from the foundation. We are not aware of a final report being presented before the Prime Minister.

In the Kurdistan Region of Iraq, Kurdish security forces have arbitrarily arrested activists and journalists for attending, reporting and calling for peaceful demonstrations, subjecting those arrested to lengthy prison sentences and other human rights violations, including torture and enforced disappearance.¹⁹⁹ During peaceful demonstrations taking place in the region, security forces used unlawful force to beat protesters and disperse demonstrations, while arresting many activists and journalists, who were later charged with inciting violence.²⁰⁰

5.4 Torture in the context of counterterrorism

Iraqi judges routinely prosecuted ISIS suspects with the overbroad charge of ISIL affiliation, based on Iraqi counterterrorism legislation.

¹⁹⁴ UNAMI, *Update on Demonstrations in Iraq: Accountability for Human Rights Violations and Abuses by Unidentified Armed Elements*, May 2021, p. 10 (hereinafter “Accountability for Human Rights Violations and Abuses by Unidentified Armed Elements”).

¹⁹⁵ *Ibidem*.

¹⁹⁶ *Ibidem*.

¹⁹⁷ UNAMI, *Update on Demonstrations in Iraq: Accountability for Human Rights Violations and Abuses by Unidentified Armed Elements*, May 2021, p. 10.

¹⁹⁸ Al Mayadeen, 28 May 2022,

<https://www.almayadeen.net/news/politics/1484676/%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82:-%D8%A7%D8%B3%D8%AA%D8%AF%D8%B9%D8%A7%D8%A1-%D8%B6%D8%A7%D8%A8%D8%B7%D8%A7-%D9%88%D9%85%D9%86%D8%AA%D8%B3%D8%A8%D8%A7-%D9%84%D9%84%D8%AA%D8%AD%D9%82%D9%8A%D9%82-%D8%A8%D8%A3%D8%AD%D8%AF%D8%A7%D8%AB-%D8%AA%D8%B8%D8%A7%D9%87%D8%B1%D8%A7%D8%AA-%D8%AA%D8%B4%D8%B1%D9%8A%D9%86> (accessed on 9 March 2022).

¹⁹⁹ “Increasing repression against activists, journalists and other critics in Iraq’s Kurdistan region”, *op. cit.*

²⁰⁰ Human Rights Watch, *Kurdistan Region of Iraq: Protesters Beaten, Journalists Detained*, 15 April 2018, <https://www.hrw.org/news/2018/04/15/kurdistan-region-iraq-protesters-beaten-journalists-detained> (accessed on 21 January 2022).

Following her country visit of 2018, the former Special Rapporteur on extrajudicial, summary or arbitrary executions found that:

the Criminal Procedure Code appears to be set aside for those charged under the Anti-Terrorism Law, thereby denying defendants their fair trial rights and due process guarantees. This includes the right to be informed upon arrest of the reasons thereof and the charges brought, access to legal representation from the moment of arrest, the right to have arrest and detention status reviewed by an independent and competent judge in a timely manner, and the prohibition of torture to extract a confession.²⁰¹

The trials of those prosecuted on the basis of the Anti-Terrorism Law suffer from grave irregularities. UN human rights experts have regularly and consistently raised concerns about death sentences under the Anti-Terrorism Law being pronounced following trials that did not respect the fundamental principles of due process and fair trial, with confessions extracted under torture admitted as evidence (see section 4.2.5).²⁰²

In June 2019, a member of the Iraqi Parliament's Human Rights Committee, Wahda Al Jumaili, declared that "80 per cent of inmates sentenced to death were convicted on the basis of confessions extracted under torture".²⁰³

In June 2019, MENA Rights Group documented the cases of seven French nationals who have been sentenced to death by the Central Criminal Court of Iraq (CCCI) between 26 May and 3 June 2019.²⁰⁴ They had previously been transferred from northeast Syria to Iraq, where they were reportedly subject to torture or other ill-treatment. They were then prosecuted in Baghdad for ISIL affiliation under article 4 of the Anti-Terrorism Law.

Their trials were marked by the non-observance of fair trial norms: state-appointed lawyers could only access their clients' files a few hours before the trial session began, and torture allegations were systematically ignored. The individuals were all sentenced to death after a few hours of summary hearings with no adversarial proceedings.

During a hearing held on 27 May 2019, one of the defendants told the court that officers tortured him in detention. The presiding judge had the defendant lift his shirt. After seeing marks on his back and shoulder, he ordered a forensic medical exam and for the defendant to reappear in court on 2 June 2019. It has been reported that the judge did not ask for details about where or when the torture occurred, who had tortured him, or in what way.²⁰⁵

²⁰¹ "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq", *op. cit.*, para. 47.

²⁰² See OHCHR, UA IRQ 9/2020, 20 November 2020, and UA IRQ 1/2021, 27 January 2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25736> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25990> (accessed on 25 January 2022).

²⁰³ Assabel, "أبرياء" والمؤبد بالإعدام عليهم المحكوم من 80% عراقية برلمانية , <https://assabeel.net/news/2019/6/28/%D8%A8%D8%B1%D9%84%D9%85%D8%A7%D9%86%D9%8A%D8%A9-%D8%B9%D8%B1%D8%A7%D9%82%D9%8A%D8%A9-80-%D9%85%D9%86-%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%88%D9%85-%D8%B9%D9%84%D9%8A%D9%87%D9%85-%D8%A8%D8%A7%D9%84%D8%A7%D8%B9%D8%AF%D8%A7%D9%85-%D9%88%D8%A7%D9%84%D9%85%D8%A4%D8%A8%D8%AF-%D8%A7%D8%A8%D8%B1%D9%8A%D8%A7%D8%A1> (accessed on 28 January 2022).

²⁰⁴ MENA Rights group, *French nationals accused of terrorism at risk of execution if not repatriated from Iraq*, 10 July 2019, <https://www.menarights.org/en/articles/french-nationals-accused-terrorism-risk-execution-if-not-repatriated-iraq> (accessed on 24 January 2022).

²⁰⁵ Human Rights Watch, *Iraq: French Citizens Allege Torture, Coercion*, 31 May 2019, <https://www.hrw.org/news/2019/05/31/iraq-french-citizens-allege-torture-coercion> (accessed on 24 January 2022).

Another defendant told the judge that officers had forced him under duress to confess and to sign a statement in Arabic that he could not understand.²⁰⁶ The judge also asked him to lift his shirt and seemingly because there were no obvious signs of torture, sentenced him to death without asking any questions regarding the allegation.

In case No. 17, the victim's trial was marked by the non-observance of fair trial norms: state-appointed lawyer was not able either to access the client file or to speak to victim No. 17 before the hearings and the victim was not given the opportunity to raise the issue of the torture and ill-treatment he had suffered.

On X, victim No. 17 was sentenced to death by X, one of Iraq's counterterrorism courts that was mandated to prosecute suspected ISIL members captured in Mosul. In the sentence, the court stated that the defendant had confessed his affiliation to terrorist groups. However, the court based its decision entirely on the statements that the defendant had signed under duress.

Finally, the fourth report of the Secretary-General on children and armed conflict in Iraq, submitted to the Security Council and its Working Group on Children and Armed Conflict, a total of 1,091 children were held in detention by Iraqi security forces on national-security-related charges, including for their alleged association with armed groups, primarily ISIL, compared with 778 children at the end of June 2019. As at June 2021, 35 of those children were of foreign origin. Most of the detained children were boys aged between 15 and 18 years; some children were as young as 9 years old. According to this UN report, children detained on such charges continued to face challenges in gaining access to legal, social and other services, with instances of prolonged pretrial detention and of mistreatment being reported. In some cases, children were held with adult detainees.²⁰⁷

5.5 Death penalty

Iraq has consistently stated that the death penalty is required because of the "extraordinary security situation" and serves as a deterrent to acts of terrorism. In fact, Iraq's sixth periodic report to the Human Rights Committee explains that the death penalty was reinstated to "preserve national peace and security".²⁰⁸

In 2019, Amnesty International observed a 92 % increase in recorded executions due to the continued use of the death penalty against individuals accused of being members of or affiliated to ISIL.²⁰⁹

With regard to the increase in the number of death sentences imposed in 2019, Iraq claimed that "this penalty is handed down only for the most serious crimes and on dangerous criminals who do not respect human life. The death penalty is the legal punishment they deserve for the acts they have committed."²¹⁰

In November 2020, 4,000 prisoners were reportedly on death row, most of them charged with terrorism offences.²¹¹

²⁰⁶ *Ibidem*.

²⁰⁷ Security Council, *Children and armed conflict in Iraq, Report of the Secretary-General*, 26 January 2022, UN. Doc. S/2022/46, para. 27.

²⁰⁸ Human Rights Committee, *Sixth periodic report submitted by Iraq under article 40 of the Covenant, due in 2018, received on 5 August 2019*, UN Doc. CCPR/C/IRQ/6, para. 99.

²⁰⁹ Amnesty International, *Death sentences and executions in 2019*, https://www.amnesty.ch/de/themen/todesstrafe/dok/2020/todesstrafen-bericht-2019-gesunkene-fallzahlen-doch-rekordzahl-in-saudi-arabien/amnesty_death_sentences_and_executions_2019.pdf (accessed on 31 January 2022).

²¹⁰ Human Rights Committee, *Replies of Iraq to the list of issues in relation to its sixth periodic report*, date received: 9 December 2020, UN Doc. CCPR/C/IRQ/RQ/6, para. 55.

²¹¹ OHCHR, *Iraq: Wave of mass executions must stop, trials are unfair - UN experts*, 20 November 2020, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26526&LangID=E> (accessed on 25 January 2022).

Although according to international human rights law, the actual application of the capital punishment is not *per se* considered a violation of the prohibition of torture, in his 2012 Interim Report, the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment urges “serious reconsideration of whether the actual practice of the death penalty amounts to cruel, inhuman and degrading treatment, or even torture.”²¹² In particular, it is recalled that “[t]he United Nations High Commissioner for Human Rights has suggested that hanging, as a matter of law, is contrary to article 7 of the [ICCPR].”²¹³

We would like to recall that article 86 of the Penal Code, “the death penalty is the hanging of the condemned person by the neck until he is dead.”

While the Iraqi Penal Code allows courts to consider mitigating excuses, legally extenuating circumstances, and the general circumstances of the offense and offender in determining whether a sentence lighter than death is appropriate,²¹⁴ according to UNAMI, the Anti-Terrorism Law mandatorily applies the death penalty to those convicted of committing or threatening to commit acts of terrorism, including those who incite, plan, aid or abet (before or after the fact), or finance such acts either as principals or as accomplices.²¹⁵

Despite the mandatory application of the death penalty required by the Anti-Terrorism Law, in practice, Iraqi courts can pronounce alternative sentences, according to the research conducted by the UNAMI.²¹⁶ However, UNAMI also received information that such judgements were frequently overturned by the Court of Cassation, leading to the imposition of harsher punishments, including the death penalty.²¹⁷

It must be recalled that “mandatory death sentences that leave domestic courts with no discretion on whether or not to designate the offence as a crime entailing the death penalty, and on whether or not to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature.”²¹⁸

Finally, under article 73 of the Iraqi Constitution, the President can commute the sentence or grant a special pardon, except for some crimes, including terrorism crimes, for which no pardon can be granted. This last provision is in clear violation of article 6 (4) ICCPR as anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5.6 Violence against women

In its Concluding Observations on the initial report of Iraq, the CAT has raised concerns “about reports of ISIL fighters raping female captives, and about the fact that this extremist group has instituted a pattern of sexual violence, slavery, abduction and human trafficking targeted at women and girls belonging to religious and ethnic minorities”.²¹⁹

²¹² Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UD doc. A/67/279, 9 August 2012, paras. 29-30.

²¹³ *Ibidem*, para. 33.

²¹⁴ See section five of the Penal Code: “Legal excuse and legally extenuating circumstance”.

²¹⁵ “Report on the Death Penalty in Iraq”, *op. cit.*, p. 9.

²¹⁶ “Human Rights in the Administration of Justice in Iraq”, *op. cit.*, p. 16.

²¹⁷ OHCHR/UNAMI, *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, p. 11

²¹⁸ General comment No. 36, *op. cit.*, para. 37.

²¹⁹ UN Committee against Torture, *Concluding observations on the initial report of Iraq*, 7 September 2015, UN Doc. CAT/C/IRQ/CO/1, para. 13.

In addition, the Iraqi forces have resorted to forms of sexual violence against – mostly Sunni Muslim – women in custody, who frequently were accused of “covering up” male family members suspected of being affiliated with ISIL.²²⁰

Indeed, according to NGOs reports, many women illegally detained were “beaten, kicked, slapped, hung upside-down and beaten on their feet (*falaqa*), given electric shocks, and raped or threatened with sexual assault by security forces during their interrogation”.²²¹

However, in almost all the cases in which women told the investigating or trial judge about abuse, the judges did not open an inquiry.²²²

5.7 Conditions of detention

Prison and detention centre conditions are harsh and occasionally life threatening due to food shortages, gross overcrowding, physical abuse, inadequate sanitary conditions and medical care, and the threat of COVID-19 and other communicable illnesses.²²³

Yet, in its second periodic report, the State party claims that:

health-care services are provided by a health centre and a medical team inside the prison, operative 24 hours a day and with access to laboratory facilities and medicines. Detainees are given the requisite medical tests when they enter detention or transfer centres with a particular focus on tests for communicable diseases such as hepatitis, AIDS and tuberculosis, and chronic diseases such as diabetes and high blood pressure. Medical files are opened for each individual.²²⁴

With particular regard to the Nasiriyah Central Prison, on 17 August 2020, Special Procedures mandate holders issued a joint urgent appeal regarding 20 prisoners, alleging that they suffer from inhuman detention conditions and are subject to psychological and physical torture by guards, including humiliating practices and threats.²²⁵ The UN experts also stated that, since the beginning of 2020, dozens of deaths had been reported in the prison. Medical care is reportedly non-existent at Nasiriyah Central Prison, and inmates suffering from serious illnesses are reportedly left untreated.²²⁶ This matter seems to not have been addressed. Tuberculosis is known to be a frequent cause of death among inmates held in the Nasiriyah Central Prison lately. In early 2022, tuberculosis was still known to be a frequent cause of death among inmates held in the Nasiriyah Central Prison.²²⁷

In this regard, the IHCHR documented 355 deaths in custody in facilities under the authority of the Ministry of Justice in Federal Iraq in 2020 alone.²²⁸

²²⁰ *Ibidem*, para. 15.

²²¹ Human Rights Watch, *Iraq: Security Forces Abusing Women in Detention*, 6 February 2014, available at: <https://www.hrw.org/news/2014/02/06/iraq-security-forces-abusing-women-detention> (accessed on 21 February 2022).

²²² *Ibidem*.

²²³ U.S. State Department of State, *Custom Report Excerpts: Iraq*, available at: <https://www.state.gov/report/custom/c7b75f7daf-2/> (accessed on 18 February 2022).

²²⁴ “Second periodic report of the State party”, *op. cit.*, para. 29.

²²⁵ See, OHCHR, *UA IRQ 4/2020*, 17 August 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25494> (accessed on 18 February 2022).

²²⁶ *Ibidem*.

²²⁷ Bas News, *Prisoner Dies in Iraq's Nasiriyah*, 27 February 2022, <https://www.basnews.com/en/babat/742559> (accessed on 10 March 2022).

²²⁸ “Human Rights in the Administration of Justice in Iraq”, *op. cit.*, p. 12.

According to 2019 IHCHR's figures, the prison system had 57,000 prisoners for a capacity of 29,303 available places.²²⁹ In 2020, the prison population may have exceeded 60,000, including 1,000 women.²³⁰

²²⁹ World Prison brief, *Iraq*, available at: <https://www.prisonstudies.org/country/iraq> (accessed on 18 February 2022).

²³⁰ Euro-Med Monitor, *Horrific testimonies, secret prisons portend catastrophe in Iraq*, 13 July 2020, available at: <https://reliefweb.int/report/iraq/horrific-testimonies-secret-prisons-portend-catastrophe-iraq> (accessed on 18 February 2022).

6 Recommendations

6.1 International obligations

- Ratify the Optional Protocol of the Convention against Torture and establish a National Preventive Mechanism (NPM);
- Ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. In the interim, establish a moratorium on executions with a view to abolishing the death penalty;
- Accept individual and inter-state complaint mechanisms under the UNCAT, ICCPR and ICPED.

6.2 Domestic law

- Introduce a modified version of the Anti-Torture Law before the Council of Representatives that contains a definition of torture in line with international standards;
- Amend the draft law on enforced disappearances to bring it in line with international standards and expedite its adoption.

6.3 Fundamental legal safeguards

- Ensure that the detention of suspects is carried out pursuant to article 123 CCP, requiring a court-ordered arrest warrant and bringing detainees before a judge within 24 hours;
- Ensure that families of detainees are informed within a reasonable period of time of the time and place of arrest and the place of detention;
- Ensure timely access to a lawyer from the outset of deprivation of liberty;
- Ensure that a full examination by a medical practitioner is available on arrival at each detention facility as promptly as possible after admission and that results of every examination are duly recorded and made available to the detainee;
- Ensure that all defendants, including those prosecuted under the Anti-Terrorism Law No. 13 of 2005 carrying the death penalty, receive a fair trial with their due process rights met;
- Adopt guidelines on non-coercive interviewing techniques and other measures that limit reliance on confessions.

6.4 Accountability

- Ensure that allegations of torture or ill-treatment are promptly, thoroughly, independently and impartially investigated by judicial and detaining authorities, including *ex officio* on suspicion of such acts;
- Ensure that alleged perpetrators of an enforced disappearance and torture are prosecuted and, if found guilty, punished with appropriate penalties, while avoiding the death penalty.