



IRAQ

Torture & ill-treatment

Report submitted by

Geneva International Centre for Justice

to the 55th session of the
United Nations Committee Against Torture

Geneva, Palais Wilson 27 July to 14 August 2015

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The Committee Against Torture (CAT)

The Committee Against Torture (CAT) is the body of 10 independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the Committee may also, under certain circumstances, consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated, undertake inquiries, and consider inter-state complaints.

The Optional Protocol to the Convention, which entered into force in June 2006, creates the Subcommittee on Prevention of Torture (SPT). The SPT has a mandate to visit places where persons are deprived of their liberty in the States parties. Under the Optional Protocol, States parties shall establish a independent national preventive mechanisms for the prevention of torture at the domestic level which has also a mandate to inspect places of detention.

The CAT meets in Geneva and normally holds two sessions per year consisting of a four week session in April/May and another four week session in November.

The Committee also publishes its interpretation of the content of the provisions of the Convention, known as general comments on thematic issues.

For more information about the work of the Committee Against Torture, see:
<http://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIntro.aspx>

About

Geneva international Centre *for* Justice

GICJ

GICJ is an independent, non-profit, non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes.

Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.

Mission

GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.

Work on Iraq

GICJ has been tackling issues of justice and accountability pertaining to Iraq since it was established. GICJ maintains a partnership with various NGOs, lawyers and a vast civil society network within Iraq. Through these channels, GICJ is able to receive documentation and evidences of human rights violations and abuses as they occur in Iraq. GICJ continues to bring this information to the attention of relevant UN bodies in order to gain justice for all victims.

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This report is submitted, in the context of the review of the initial report of Iraq, with the cooperation of the following Iraqi and other NGOs:

The Iraqi Commission on Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), Human Rights Division at the Association of Muslims Scholars in Iraq, General Federation of Iraqi Women (GFIW), Association of Iraqi Diplomats (AID), Association of Iraqi Intellectuals and Academics (ALIA), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, and The Arab Lawyers Association- UK

Table of Contents

- Introduction..... 7
- Background 7
- The Five Techniques..... 9
- Baha Mousa 9
- The Convention Against Torture 10
- Abu Ghraib Torture Scandal 11
- Ali Shalal 12
- The Pattern: Disappearance, Torture, Execution 13
- Salah Abdulkarim 16
- Pro-Government Militia Involvement..... 17
- Mohammed Yousef..... 19
- Recommendations and Steps Forward..... 19

Introduction

Faced with the increasing threat of the so-called Islamic State of Iraq and Syria (ISIS), the international community is once again interested in Iraq. With this comes an important refocus of attention on the challenges within Iraq such as the devastated infrastructure, broken social links and systematic violations of human rights. These are important issues and as the attention on Iraq sheds light on them, perhaps steps will be taken to combat these problems. However, a key human rights challenge which exists in Iraq is the continued widespread use of torture within the prison system. This is an issue which GICJ has gathered extensive evidence about and repeatedly brought to the attention of the United Nations Human Rights Council. GICJ therefore welcomes the review of Iraq's record by the Committee against Torture. We hope that the committee is able to take all action within its power to push for an end to the continued pervasive use of torture within Iraq.

Background

Despite the overwhelming international effort to end the use of torture and the ever increasing number of states party to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, which Iraq itself ratified in 2011, torture continues to be used in Iraq. Reports of torture within the Iraqi prison system are prevalent and its use is strengthened under pretence of the war against ISIS. There is a pattern: enforced disappearance or illegal detention under the infamous article 4 of the Anti-Terrorism Law No. 13 of 2005¹, torture to illicit confessions, unfair trials, and finally in many cases, expedited or extrajudicial executions.

The state report submitted by the Iraqi government to the committee was woefully inadequate in its dealings with the situation on the ground. The report highlights the various legal safeguards against torture, but fails to discuss the fact that the Iraqi judicial system does not adhere to this domestic and international laws. This is not the first time that Iraq is trying to play around with words and promises. Our experience shows that the Iraqi authorities repeatedly fail to live up to their commitments as shown in the UPR process in 2010 and 2014, as well as in other treaty body committees. In this respect, article 4 of the Convention Against Torture clearly states that “each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”

In the Iraqi Constitution it also states that “all forms of psychological and physical torture and inhumane treatment are prohibited.” Likewise, under the terms of article 333 of the Iraqi Penal Code (Act No. 111 of 1969), “any public official or agent who tortures or orders the torture of an

¹Article 4 of the Anti-Terrorism Law No. 13 of 2005 allows the Iraqi Security Forces to arrest anyone suspected of terrorism. The bar for the amount of evidence that leads to suspicion is non-existent, so in many cases civilians are detained with no actual reason to suspect them of terrorism.

accused person, a witness or an expert in order to compel him to confess to the commission of an offence, to make a statement or provide information about such offence, or to withhold information or give a particular opinion in respect thereof, shall be liable to a penalty of imprisonment. The use of force or threats shall be deemed tantamount to torture.” However, despite the internationally and nationally agreed obligations to prevent torture in Iraq and bring perpetrators to justice, the Iraqi government has failed to uphold its commitments. What is important therefore is not the existence of laws which prohibit torture, but rather the actions taken to ensure the implementation of the prohibition. As it is in Iraq, such preventative measures are not taken and torture remains rampant.

The current situation we see in Iraq, one where state actors are able to operate with impunity, is the result of years of similar actions by international actors within the country. In particular, the precedence set by American (and their coalition) troops during the 2003 war continues to manifest itself in Iraq today. Torture is widespread in large part because of the prevalence with which it was allowed to be used by U.S. forces.

Furthermore, in the current fight against ISIS, the international community is showing a willingness to turn a blind eye to the Iraqi government’s more questionable actions as long as they operate under the pretext of combating ISIS. This creates a serious problem, because reports and evidence point to large cases of illegal, cruel and inhumane treatment of innocent civilians under the guise of fighting terrorism.

It is crucial to note that torture in Iraq is not only used by one set of state actors. Several sets of authorities carry out campaigns of abduction and detention which usually involve the use of torture. They include the police units, the security forces, the Iraqi intelligence services and units of the Iraqi army, all of whom carry out abductions and torture on a large scale.

When the actions of militias are also considered, it becomes a truly dramatic situation. There are over 50 militias in Iraq with all of them exercising the authority of arrest, detention, torture and in many cases summary executions. The varied number of actors makes it difficult to discern a chain of command and responsibility for acts of torture perpetrated though constitutionally the Ministry of Interior and Ministry of Justice bear the responsibility. Unfortunately, both ministries along with the Ministry of Human Rights are actually encouraging torture by continually expressing that all detainees are terrorists for whom there should be no mercy.

GICJ believes that the ongoing problem of torture within Iraq, and related acts such as illegal detentions, unfair trials and expedited executions, requires a concerted international effort for elimination. Torture is an issue of particular importance, because of its ability to permeate all other aspects of life. A judicial system which is dependent on and supportive of confessions elicited through torture is not one that serves the people. GICJ however believes that in dealing with torture in Iraq, we must examine the origins. It is through this that we can put into context

the situation in Iraq today and formulate a targeted strategy that puts pressure on the Iraqi government to end the use of torture one and for all.

The Five Techniques

The torture practices which continue to be used in Iraq, beginning with the now infamous Abu Ghraib case of 2004, find their origins in the 1971 case where British forces detained 14 men in Northern Ireland and tortured them using what was referred to as deep interrogation techniques.^{2,3} The Irish government later went on to bring a case to the European Commission of Human Rights regarding the incident.

Known as the five techniques, hooding, wall-standing, sleep deprivation, subjection to noise and deprivation of food and water, were developed by British forces in 1971 for use in Northern Ireland. Wall-standing involved forcing detainees to remain in a stress position for hours. An example of this would be standing “spread eagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers.”⁴ Hooding was the use of a dark coloured bag over the detainees’ heads. The hoods were kept on except during interrogation. Noise was used prior to interrogations as a torture mechanism by placing detainees in a room with a loud, hissing noise. Prior to interrogation, detainees were also deprived of sleep, food and water. Their use caused depression, hallucinations, loss of consciousness, and long term physiological trauma among other side effects.

These five techniques would give rise to the prevalence of so-called “enhanced interrogation techniques”.⁵ These methods of torture were seen by the British authorities to be somehow not as cruel or inhumane and therefore not classified as torture. This line of thinking would be taken up by the George W. Bush administration in the ‘torture memos’⁶ and they are the ones who ultimately introduce these practices to Iraq.

Baha Mousa

Meanwhile, the U.K. also put these techniques to use in Iraq. Their use would ultimately be the cause of death for Baha Mousa, an Iraqi man detained by British troops during the 2003 war.^{7,8}

²O'Dwyer, Davin. "Reports Reveal Truly Corrosive Nature of Torture." *The Irish Times*. N.p., 13 Dec. 2014. Web. 17 July 2015. <<http://www.irishtimes.com%2Fnews%2Fsocial-affairs%2Freports-reveal-truly-corrosive-nature-of-torture-1.2036313>>.

³Gallagher, Paul. "How Britain's Treatment of 'The Hooded Men' during the Troubles Became the Benchmark for US 'torture' in the Middle East." *The Independent*. Independent Digital News and Media, 20 Feb. 2015. Web. 17 July 2015. <<http://www.independent.co.uk/news/uk/home-news/how-britains-treatment-of-the-hooded-men-during-the-troubles-became-the-benchmark-for-us-torture-in-the-middle-east-10060242.html>>.

⁴De Londras, Fiona. "Revisiting the Five Techniques in the European Court of Human Rights." *EJIL Talk*. N.p., 12 Dec. 2014. Web. 17 July 2015. <<http://www.ejiltalk.org/revisiting-the-five-techniques-in-the-european-court-of-human-rights/>>.

⁵O'Dwyer, Davin.

⁶The Torture Memos are a series of legal memos drafted by the Deputy Assistant Attorney General of the United States in 2002. They contained legal advice about what techniques of interrogation could be used that would technically not be classified as torture. Such techniques included: stress positions, water boarding and sleep deprivation.

⁷"Baha Mousa Inquiry: 'Serious Discipline Breach' by Army." *BBC News*. N.p., 8 Sept. 2011. Web. 17 July 2015. <<http://www.bbc.com/news/uk-14825889>>.

His death caused by the five techniques stands in opposition to earlier statements by the U.K. government that the techniques do not cause long term damage. His death challenges the notion that the five techniques and other so-called “enhanced interrogation techniques” are somehow less than torture. In fact, Baha Mousa’s death is an excellent example of why such minutia distinctions are so dangerous when it comes to torture.

Baha Mousa, a hotel receptionist in Basra, Iraq, was arrested by British troops on 14 September 2003 and 36 hours later he was dead.⁹When he was taken into custody, along with nine other men from the hotel he worked at, he and the other detainees were hooded, kicked, beaten, and forced to stand in stress positions. Baha Mousa however received the worst of the punishments. He was kept hooded for about 24 of the 36 hours¹⁰ he was in British custody and at about 10 pm on September 15, he was dead.¹¹Mr. Mousa’s death came after he sustained 93 injuries including fractured ribs and a broken nose while in British custody.¹² The use of the five techniques and other so-called enhanced interrogation methods were directly responsible for his injuries and untimely death. His death therefore serves to show that one cannot differentiate these practices from torture. They cause severe pain and suffering, in this case to the extent of death, and that in itself is the definition of torture.

The Convention Against Torture

Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1 defines torture to mean “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹³

The definition of torture as per the convention is therefore clear in that it categorizes all severe physical and mental pain or suffering done with various intents as torture. It does not establish a level or magnitude of pain and suffering that constitutes torture, but rather categorizes all severe forms as torture. The difficulty however is in how severe is defined. It is there that we have seen legal manoeuvring to classify acts in such a way to they are not in breach of this convention

⁸Bingham, John. "Baha Mousa Inquiry: Innocent Father Died Due to Army's Failings." *The Telegraph*. Telegraph Media Group, 8 Sept. 2011. Web. 17 July 2015. <<http://www.telegraph.co.uk/news/uknews/defence/8749250/Baha-Mousa-inquiry-innocent-father-died-due-to-Armys-failings.html>>.

⁹Williams, AT. "The Brutal Death of Baha Mousa." *The Guardian*. N.p., 3 May 2013. Web. 17 July 2015. <<http://www.theguardian.com/books/2013/may/03/investigate-brutal-death-baha-mousa>>.

¹⁰"Baha Mousa Inquiry: 'Serious Discipline Breach' by Army."

¹¹Bingham, John.

¹²Bingham, John.

¹³"Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *Office of the High Commissioner for Human Rights*. N.p., n.d. Web. 17 July 2015. <<http://www.ohchr.org/FEN/ProfessionalInterest/Pages/CAT.aspx>>.

despite what popular wisdom and overall public opinion may think. That was the exact situation which occurred in the 1978 ECHR case and which was taken advantage of by the United States in the aftermath of 9/11.

Another key aspect of the CAT is its prohibiting on torture in all circumstances. In particular, article 2 states “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”¹⁴ This article is especially important, because the documents known as the ‘torture memos’ showed that the United States Department of Justice authorized so-called enhanced interrogation techniques before the Iraq invasion.¹⁵ Furthermore, the memos expressed that international humanitarian laws and the prohibition on torture during a state of war did not apply to interrogations carried out outside American territory.¹⁶ These decisions have since been reversed, but they played a key role in the establishment and entrenchment of torture practices within Iraq’s Security Forces and prison system, especially at the notorious Abu Ghraib prison.

Abu Ghraib Torture Scandal

Baghdad Central Prison, more commonly referred to as Abu Ghraib prison, has been one of the world’s most notorious prisons for several decades. The prison was known for torture, executions and extremely poor living conditions since the 2003 invasion and occupation.

The prison came under the authority and control of the U.S. military. Most prisoners kept there under American supervision were either: common criminals, detainees suspected of actions against the US troops and its coalition and a number of high value detainees (HVD).

In 2004, an extensive investigation into the prison was authorized by Lieutenant General Ricardo S. Sanchez who was a senior commander in Iraq. The 53 page report which was not meant for public release was completed in late February 2004¹⁷. In the report, details of severe institutional failings within Abu Ghraib were brought to light. Between October and December 2003, the investigations found that there had been numerous cases of sadistic criminal abuses at Abu Ghraib.

Some of the abuses perpetrated include “breaking chemical lights and pouring the phosphoric liquid on detainees; pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; sodomizing a detainee with a chemical light and perhaps a broomstick; and using military working dogs to frighten and intimidate detainees with threats of attacks where in one instance

¹⁴“Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”

¹⁵“A Guide to the Memos on Torture.” *The New York Times*. N.p., n.d. Web. 17 July 2015.

<http://www.nytimes.com%2Fref%2Finternational%2F24MEMO-GUIDE.html%3F_r%3D0>.

¹⁶“A Guide to the Memos on Torture.”

¹⁷ Article 15-6 investigation of the 800th military police brigade <https://fas.org/irp/agency/dod/taguba.pdf>

actually biting a detainee”. Detailed witness statements and graphic photographic evidence account the severity of these abuses and their prevalence at Abu Ghraib.

The report also noted that over 60% of the civilian prisoners at Abu Ghraib were deemed not to be a threat to society, yet they were never released. Under the fourth Geneva Convention, occupying powers may detain civilians who pose a security threat, however there must be a procedure to ensure that only those civilians who pose a threat remain imprisoned. The civilian prisoners must also have the right to appeal any decisions regarding their internment. These rights were never afforded to the prisoners at Abu Ghraib.

In the wake of the leaking of the report and the subsequent scandal, American authorities attempted to explain the incidences of torture at Abu Ghraib as isolated occurrences. The soldiers who had perpetrated the abuses were said to have acted independently. However, evidence would come out that showed this to be a lie. On 7 May 2004, the Operations Director for the International Committee of the Red Cross (ICRC) stated that inspections of detention centers by the ICRC showed that prisoner abuse was part of a “pattern and broad system”.¹⁸ Evidence points rather conclusively to the fact that the use of torture was a policy of the United States at the beginning of the occupation.

Ricardo Sanchez, a Lieutenant General and senior military officer in Iraq, authorized the use of dogs, extreme temperatures, and sensory deprivation for interrogation at Abu Ghraib.¹⁹ Documents show that soldiers at Abu Ghraib had followed orders given to them by Sanchez which were in violation of the Geneva Conventions and the Convention Against Torture. There have also been allegations that Donald Rumsfeld, the Defence Secretary at the time, also authorized the use of certain techniques such as stress positions, sleep deprivation and sensory deprivation. While this claim has been disputed by Rumsfeld and the United States Pentagon, it is difficult to visualize a situation in which he was not at least aware of the use of torture techniques at Abu Ghraib, considering the pervasive nature of their use.

Ali Shalal

The famous case of Ali Shalal shows the extent to which prisoners were tortured and deprived of their human dignity. Born Ali Shalal Abbass Al Qaiysi,²⁰ he became a global symbol of the depravity of Abu Ghraib after the release of the famous hooded man photograph. GICJ has been in contact with Mr. Shalal since the early stages of the Abu Ghraib scandal and continues to maintain a relationship with him.

¹⁸"Red Cross Saw 'widespread Abuse'" *BBC News*. N.p., 8 May 2004. Web. 17 July 2015. <<http://www.news.bbc.co.uk/2F2%2Fhi%2Famericas%2F3694521.stm>>.

¹⁹Smith, R. Jeffrey. "General Granted Latitude At Prison." *The Washington Post*. N.p., 12 June 2004. Web. 17 July 2015. <<http://www.washingtonpost.com/2Fwp-dyn%2Farticles%2FA35612-2004Jun11.html>>.

²⁰ GICJ's most recent update from Mr. Ali Shalal came on 16 July 2015. Mr. Shalal corroborated once again the testimony he had provided on previous occasions as to the forms of torture he underwent and those who were responsible for it. We have included that information in this section.

Mr. Ali Shalal was arrested on 13 October 2003 in Al Amraya district of Baghdad, Iraq. He was transferred to Abu Ghraib the following day. He spent 6 months at the prison during which he was brutally tortured and witnessed the torture of other inmates, some of whom died during their detention. He was beaten; hooded; electrocuted on three separate occasions; deprived of sleep, food and water; humiliated; and raped.²¹ Food was routinely withheld as a form of punishment and during Ramadan, a time of fasting, food was purposely provided at times that would force detainees to break their religious duty of fasting.²² Mr. Shalal was raped by various members of the U.S. troops with female troops participating by using an object.

The torture of Mr. Shalal and the other detainees who were at the prison during his stay was carried out by members of the U.S. forces and contracted security forces. At times, even the interpreters took part in torturing detainees. Photographs were also taken at various points. Detainees were forced to sign documents that they would not speak with media or attempt to bring court cases. For many this was never an issue as they did not make it out of Abu Ghraib alive. Fortunately for Mr. Shalal, he was released at the beginning of March 2004, because it was discovered that he had been wrongly arrested. Many others who were tortured never made it out of the prison.

The Pattern: Disappearance, Torture, Execution

Continuing with the practices introduced during the U.S. occupation, the government of Iraq maintains torture as a regular tool of interrogation within the prison system. Firstly, a person is illegally detained or disappeared typically under the now infamous article 4 of the Anti-Terrorism Law No. 13 of 2005. At the point of arresting detainees are typically tortured and subjected to various forms of abuse which continue to during detention and after their likely conviction. Secondly, they are taken to a secret prison where they are kept without access to loved ones and adequate legal counsel. Because due process is not followed, the government can deny having the person in their custody and the family has no record to show otherwise. Lastly, the person is sentenced. In cases where a death sentence is given, there is often a very limited time between the sentencing and the carrying out of the execution. After death, most bodies are buried in mass graves or disposed of in other ways to ensure that loved ones do not find it and notice the telltale signs of torture. Therefore, the use of torture is part of a systematic process in Iraq. To tackle torture, issues of enforced disappearances, the death penalty and the lack of judiciary independence must also be taken into account.

When arrested in Iraq, it is extremely common not to be given charges or any explanation for the arrest. GICJ is certain from the communications received that in many cases those who carry out the arrests are armed, wearing uniforms and driving government vehicles indicating that they are affiliated with government security forces. The United Nations Assistant Mission for Iraq (UNAMI) has also recorded claims by a significant number of detainees that they did not know

²¹ "Torture at Abu Ghraib: The Full Sworn Testimony of Ali Shalal." *Global Research Center for Globalization*. N.p., 19 Feb. 2007. Web. 17 July 2015. <<http://www.globalresearch.ca/%2Ftorture-at-abu-ghraib-the-full-sworn-testimony-of-ali-shalal%2F4865>>.

²² "Torture at Abu Ghraib: The Full Sworn Testimony of Ali Shalal."

the reasons for their arrest or detention, and that they had not been provided with the details of the actual charges being pressed against them, either verbally or in writing. Some detainees also stated that their arrest was due to failure to pay bribes not criminal acts.²³ Furthermore, once arrested, few people are granted bail by the courts. Instead many languish in prison without any indication of what the charges are against them or when they will have a trial.

When families begin to look for their missing loved ones and ask questions about their location, the families often face degradation or other inhumane treatment. Sometimes those who search for missing family members are also arrested and tortured, if not killed. Families can go for months or even years without any information. The whereabouts of detainees are rarely confirmed to their relatives ensuring that they remain isolated and traces of their detention are easily removed in the event of death. Besides the physical torture of detainees, there is also this component of physical and psychological torture to their families.

Those who are formally charged are often held under article 4 of the Anti-Terrorism Law No. 13 of 2005. The law also offers amnesty to secret informers making it susceptible to misuse. The article, as well as other laws, allows the government to impose the death penalty for about 50 various crimes.²⁴

Even at the trial, Iraqis find no justice. A February 2015 report by UNAMI showed that in the majority of trials, even after a defendant claims their confession was coerced or elicited through torture, judges refused to order investigations into the allegations.²⁵ Judges routinely placed the burden of proof as to whether the torture had occurred on the defendant or required medical documentation which was never available as they had not been taken to a doctor after the torture.²⁶

Iraq's prisons are known to be extremely secretive. In fact, the number of secret prisons in the country remains unknown which makes it difficult to track down those who are detained by Iraqi Security Forces or even pro-government militias. The Ministry of Justice claimed in 2013 that there were 30,000 people in Ministry of Justice and Ministry of Interior detention facilities, but other sources have put that number closer to 50,000.²⁷

However, since 2006 government forces have conducted several campaigns to arrest those it calls "suspected terrorists" in the areas surrounding the capital, Baghdad. As a result thousands of civilians were arrested just because they live in an area with a certain sectarian background. Their families routinely call and send messages asking for their release but to no avail. Reports

²³See GICJ statement on rule of law: http://www.gicj.org/NOG_REPORTS_HRC_22/ruleoflaw.pdf

²⁴Jamail, Dahr. "Maliki's Iraq: Rape, Executions and Torture." *Al Jazeera*. N.p., 19 Mar. 2013. Web. 17 July 2015. <<http://www.aljazeera.com%2Fhumanrights%2F2013%2F03%2F201331883513244683.html>>.

²⁵ UNAMI. "Report on the Judicial Response to Allegations of Torture in Iraq , Baghdad February 2015." N.p., Feb. 2015. Web. 21 July 2015.

<http://www.uniraq.org%2Findex.php%3Foption%3Dcom_k2%26view%3Ditem%26task%3Ddownload%26id%3D1093_4ca65caf6366f4f2f16896a9211144eb%26Itemid%3D650%26lang%3Den>.

²⁶ UNAMI.

²⁷Jamail, Dahr.

of torture and ill-treatment were received towards these detainees are rampant as authorities try to force confessions of their relationship with terrorists groups. It is now believed by our sources that there are more than 400.000 persons detained in prisons across Iraq.

With a lack the lack of accountability that comes with holding detainees in secret prisons, torture becomes easier to employ. That is exactly the case in Iraq as accounts of torture continue to come from those who have been held in Iraqi prisons. Reports from various NGOs and GICJ sources indicate that torture and physical abuse is common within the Iraqi prison system. UNAMI has also recorded numerous allegations of mistreatment and torture during arrest, while awaiting trial and after conviction.

Common techniques alleged include being beaten and threatened with death; being handcuffed and suspended from iron bars in painful positions for lengthy time periods; electric shocks to various parts of the body, including the genitals; cigarette burns to the body; being deprived of food, water, and sleep; having plastic bags placed over the head; and being subjected to threats against family members. There are many cases of detainees dying during the process of interrogation or while being held in prison.²⁸ Their cause of death is typically covered up with falsified death reports. In cases where the body is released, families have reported being threatened not to uncover the body so as to prevent them from seeing the evidence of torture.

During the preparation of this report, GICJ received an urgent appeal from a group of Iraqi lawyers with whom we have had a relationship with for a long time. They detailed the torture that their clients had undergone while in detention. They also explained that some of their clients who were lucky enough to have been released from detention have been sick, mentally unstable and physically weak since their release. Several of their clients died within days or weeks of their release. The lawyers indicated that they had uncovered that the cause of death for several of the former detainees came from poison in their food. It appears that they had been gradually poisoned during the course of their detention.

Those detainees who live through the interrogations are tortured until they confess or forced to sign a statement which they are not allowed to read. These statements or confessions later become the cornerstone of the trial and are used to convict with little other evidence.

In 2013, there were 170 executions in Iraq placing the country among the top three executors in the world. In January 2014, 37 people were hanged within a mere 5 days. The number of executions is shocking especially in an age where states are increasingly abolishing the death penalty. The problems within the Iraqi judicial system as have been discussed also create further concern over the use of the death penalty in the country. Former United Nations High Commissioner for Human Rights Ms. Navi Pillay stated that “we do not have a single report of

²⁸For example: the death of Husham Tua'ma Jawad Al-Zoba'al, Ahmed Talib Al-Zoba'ai, Professor Hatem Majid Muhanna Al-Nua'mi, and Sheikh Sabri Salim Al-Marawai

anyone on death row being pardoned, despite the fact there are well documented cases of confessions being extracted under duress.”²⁹

Despite the consistent criticism and calls for an end to the death penalty, the Iraqi government repeatedly declared its determination to continue not only the implementation of the death penalty, but also to accelerate and facilitate other executions. On 16 June 2015, the Iraqi Minister of Justice, Mr. Hayder Al-Zamili, announced that “the Council of Ministers approved an amendment to the Iraqi Criminal Proceedings No.23 of 1971 which will expedite the implementation of the death penalty”.³⁰

Proceeding No.23 ensures that human rights of accused persons are observed throughout the criminal process, but the amendment will change that. It aims to speed up the implementation of executions by only granting 30 days for the president to approve or deny a death sentence. After that, the Minister of Justice can allow the execution to be carried out without the president’s approval, which runs contrary to article 73, para. 81 of the Iraqi Constitution.

As far back as 2005, a UNAMI report linked the practices of illegal detentions and subsequent torture and extra-judicial executions to the Ministry of Interior. The ministry had been reorganized by the United States during the occupation and as such its practices were a manifestation of American policies. Specifically, American military and intelligence officials had recruited, trained, and directed Iraqi forces (Special Police Commandos) under the Ministry of Interior. Ten years later, we cannot expect that the training instilled has been forgotten. The overall pattern we see in Iraq today of illegal detention, enforced disappearances, torture, unfair trials, and extra-judicial executions, therefore has roots in the culture and policies cultivated within the Iraqi forces during the occupation.

Salah Abdulkarim

Mr. Salah Abdulkarim is a 46 year old Iraqi man with a shop in the Al-Mansour area of Baghdad. He was arrested by the Iraqi police on 13 November 2010. His family only became aware of his arrest 4 days later when they received a call from him. During this phone call, he indicated that he was being treated well by the police and asked his family to respond positively to the demands of the police unit in order to facilitate his release.

A day later, the family received a call from a person saying that he is with those who arrested Mr. Abdulkarim. He demanded that the family to pay a ransom of 35,000 USD. After the discussion and the assurances given to the family, the family agreed to pay the amount of 30,000. The person who collected the money from the family waited for them in a car without a license plate at an official check point in Al-Karrada district. The family was told that they would receive another call about where they could pick up Mr. Abdulkarim.

²⁹See GICJ statement on death penalty: http://www.gicj.org/NOG_REPORTS_HRC_22/deathpenalty.pdf

³⁰ Republic of Iraq/Ministry of Justice: <http://www.moj.gov.iq/view.1601/>

Two days after they had paid the ransom, they were advised by others to go to the Baghdad morgue. There they found the body of Mr. Salah Abdulkarim. His body bore signs of torture including in his private areas. However, without proof of him ever being detained by Iraqi police, there are limited options for his family to pursue justice. All the while, article 14 of the Convention Against Torture outlines that as a State Party, Iraq “shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.” Yet again, the reality exposes the failure of the government to address this issue. Mr. Abdulkarim’s family provided these details to GICJ in the hope that it would bring them closer to accountability for his death. Unfortunately, Mr. Abdulkarim is just one example of the pattern undertaken by Iraqi forces to facilitate acts of torture.

Pro-Government Militia Involvement

Iraq’s pro-government militias have especially grown in size and influence since the onset of the fight against ISIS. In many cases, they take charge of military operations and increasingly wield more power than official security forces. However, the documented cases of abuse and torture by militias that GICJ has received from Iraq are a cause for serious alarm. Like government forces, they commit their crimes using the pretext of fighting terrorism. The largest and most brutal ones are Mahdi Army, Badr Brigades, Asa’ib Ahl al-Haq and Kata’ib Hizbullah. There are over 50 other smaller militias throughout the country who also illegally detain and torture Iraqi civilians with impunity.³¹

Abductions are a common tactic of these militias. Many victims are abducted from their homes, workplace or checkpoints. Those abducted by the militias are usually found later to be bound and shot, mostly execution-style and often after the victims’ family paid a hefty ransom. Many pieces of graphic evidence received by GICJ show militia members beating and committing ill treatment towards civilians; bringing civilians from their houses to the streets; torturing to the

³¹The smaller militias are: Al A’mal al Islami militia, under command of religious leader Abd Alkareem Al Madrass; Al Mu’tamar Al Watani Militia, under command of Ahmad Al Chalabi; Hizb Al Dawa militia, under command of Ibraheem Al Ja’fari; Tajamu’ Shaheed Al Mihrab, under command of Ammar Al Hakeem; Yad Allah militia, under the command of Ahmad Al Sa’edi; Thar Allah militia, under command of Waleed Al Hilli; Hizb Al Dawa militia, Iraq branch, under command of Abdelkareem Al Enzi; Kataib Al Qassas militia, under command of Abdullah Al Lami; Tajamu Al Shabiba Al Islamiya, under command of Muntasar Al Mawssawi; Militia linked to the AalAlbays world office, under command of Fadhil Al Kaabi; Jam’yat Aal Albays militia, under command of Mussa Al Hassni; Al Qassas Al’Adel militia, under command of Majed Ali Hussein; Husayniat Al Bratha militia, under command of Jalal Al Din Al Saghir; Hizbullah militia, under command of Kareem Mahood Al Muhamdaw; Harakat Hizbullah militia, under command of Hasssan Al Sary; Ghassl Al ‘Ar militia, under command of Jafar Al Raghif; Kataib Ashbal Al Sadr militia, under command of Mohammed Hussein Al Sadr; Kataib Thar Al Hussein militia, under command of Ali Ghassan Al Shahbandar; Kataib Malek Al Ashtor militia, under command of Jafar ‘Abbas; Kataib Al Dama Al Zakia militia, under command of Muayad Ali Alhakim; Jaysh Al Mukhtar militia, under command of Atta Allah Al Hussein; Hizb Al Amal Al Islami militias, under command of Sadek Ali Hussein; Al Haraka Al Mahdia militia, under the command of Muhammed Ali Al Khurassani ; Al ‘Adala militia, under command of Samir Al Sheykh Ali; Baqiyat Allah militia, under command of Mustafa Al Obadi; Lajnat Al Kawthar Li l’adat’mar Al’otobat Al Iraqya militia, under command of the Iranian citizen Mansoor Haqiat; Al Tali’a militia, under command of Ali Al Yassiri; Al Fath militia, under command of Kadhum Al Sayyid Ali.

point of death; executing in front of families or in the presence of the Iraqi army; and attaching dead bodies to their cars before exposing them in the streets

Others who are abducted remain missing. Families are afraid to ask or look for them out of fear that the rest of the family will be targeted. Many won't even talk to police, because they fear that militias have so much power that they will find out and abduct or kill other family members. These practices remain in absolute violation of Iraq's obligations under the Convention Against Torture. Article 13 states that "each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given." The reality on the ground thus starkly opposes that intended by the ratification of the convention.

Upon abducting civilians, militias routinely use torture and other forms of cruel and inhumane treatment for interrogation. As far back as 2005, allegations of torture have been rampant. The November 2005 raid of a jail in the Jadriya area found that over 100 of the 169 prisoners had been tortured.³²

Reports from those who were lucky enough to be released from imprisonment indicate that detainees were: beaten with metal pipes, verbally and emotionally abused, electrically burned, deprived of heat in the winter, made to stand barefoot on concrete in the winter, denied water, and mutilated.³³ In the case of women who were detained, rape and other forms of sexual violence were often used to torture and humiliate in an attempt to garner confessions. Reports indicate that men were also raped with sticks and bottles in an attempt to emasculate them.

A video posted to YouTube on February 7, 2015³⁴ shows the level of depravity with which militias operate. In the video, Iraqi military officers and militia fighters repeatedly beat and verbally abuse a civilian. The man is blindfolded and his arms are bound. The fighters kick him on the ground until he becomes motionless. Others jump on his head and kick him to the point where he begins to cough up blood. Finally, they shoot and kill him.

On 31 May 2015, another video was released showing a militia group hanging and burning a civilian man. The video, which has since been verified as authentic by different sources, shows the militiamen laughing and taunting as the man is burned alive. The attack on the man indicates the growing brutality of the militias and is consistent with other instances where civilians were targeted in clear violation of international law. What is especially alarming is that the Iraqi government is unwilling, unmotivated and likely unable to control the militias, perhaps in part

³² John Burns, "To Halt Abuses, U.S. Will Inspect Jails Run by Iraq," New York Times, December 14, 2005, Accessed June 15, 2015, <http://www.nytimes.com/2005/12/14/world/middleeast/to-halt-abuses-us-will-inspect-jails-run-by-iraq.html>.

³³ Dahr Jamail.

³⁴ <https://www.youtube.com/watch?v=NgDpJh20Jcs&feature=youtu.be>

because the crimes of the militias are barely different from those committed by Iraqi Security Forces in prisons across the country.

Mohammed Yousef

This case, which was documented by GICJ in a meeting with the victim and his family in 2012, represents a sample of many other cases of innocent Iraqis tortured by the militias. Mohammed Yousef³⁵ was born in Baghdad in 1969. He was abducted by Al-Mahdi Army, a powerful militia led by the Shi'a religious leader Muqtada Al-Sadr, in 2006.

The militiamen who abducted Mr. Yousef were wearing uniforms that are the same as that of the Iraqi Security Forces. They took him to Al-Sadrain mosque in Al-Baladiyat district and it was there that they began to torture him. As they usually did with other detainees, they covered his eyes and asked him to pick a device from a big box in front of him. The box contained several torture devices such as electrical cables, drills, screws and so on. The intent was to make it his torture device his choice to further psychologically torture him. Mr. Yousef picked an electrical cable by which he was tortured.

Mohammed Yousef was lucky enough to later be released but not without enduring severe trauma first. Many others who are abducted by the militias are never seen or heard from again. Their families do not receive closure, because their bodies are rarely found. Fear of disappearance and torture is part of daily life.

Recommendations and Steps Forward

It is clear from the vast evidence that torture is a problem that must be tackled in Iraq. What is also clear however is that much of what we are seeing in Iraq today is a remnant of the war and occupation. As such, there must be a concerted international effort to condemn and put an end to both current actions of the Iraqi government while holding the United States and coalition states responsible for the cases of torture which occurred during the occupation. As such, GICJ recommends:

- The Committee Against Torture undertakes a thorough investigation into allegations of torture by all state actors including pro-government militias
- Relevant UN bodies open an investigation into allegations of torture by coalition troops and contracted military companies during the 2003 war and subsequent occupation with a view to provide answers to families and hold those accountable responsible for their actions
- Iraq establishes an accountability committee to ensure that proper steps are being taken by all relevant national actors to prevent the use of torture and eliminate enforced disappearances

³⁵ Name has been changed to protect the victim and his family. Full details are kept within GICJ's confidential documents.

- Iraq establishes a moratorium on the death penalty as most of such sentences are given based solely or largely on confessions obtained through torture or coercion
- Iraq implements the recommendations given at the second cycle of the UPR without prejudice as most recommendations discussed issues of torture, lack of judicial independence and access to fair trials
- Iraq appoints an independent review board to investigate the judicial system with a view to implement recommendations that will lead to the independence of the judiciary
- Iraq reforms its judicial system to ensure that confessions obtained through torture can no longer be admitted into court and judges are obligated to order investigations into allegations of torture brought forward by defendants
- The international community undertakes all measures to ensure that Iraq abides by its international obligations and ends the use of torture once and for all
- The international community puts pressure on the Iraqi government to repeal the amendment to Proceeding No.23 and establish a moratorium on the death penalty
- All UN bodies should seek and encourage the appointing a Special Rapporteur for the human rights situation in Iraq



Abu Ghraib torture instruments



Torture by Iraqi army



Torture by the militias linked to the government



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