



General Assembly

Distr.: General
30 May 2017

English only

Human Rights Council

Thirty-fifth session

6-23 June 2017

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

**Joint written statement* submitted by the International
Organization for the Elimination of All Forms of Racial
Discrimination (EAFORD), the Arab Organization for
Human Rights, the Indian Movement “Tupaj Amaru”, the
International-Lawyers.Org, non-governmental organizations
in special consultative status, the International Educational
Development, Inc., the World Peace Council, non-
governmental organizations on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 May 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.17-08647(E)



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Iraq: A Judiciary without Justice*

This statement is intended to bring attention to the broken justice system in Iraq. The abuses in the criminal justice system are a major concern, as Iraq does not adhere to any of the basic international human rights standards which are required for a fair trial. Instead, many civilians find themselves arrested, arbitrarily detained, denied legal representation, and subjected to an unfair trial - if they receive a trial at all.

Iraq's criminal justice system is plagued with opacity and arbitrariness, with fair trials now almost impossible. This "judiciary without justice" is allowing innocent Iraqis to be punished and killed, while protecting guilty government officials, and punishing and destroying anyone who attempts to uphold the law and pursue justice.

Iraq's Corruption

Iraq now ranks as one of the most corrupt countries in the world. This corruption has had a perverse effect on the application of justice in Iraq, and ensured that the rule of law is no longer being upheld. The judicial system, in particular, has become highly vulnerable to political pressure. Many judges are now controlled by the government, either by fear, by threats, or by bribes. This has rendered a true democracy impossible, by fostering a situation where biased judges have allowed government leaders and officials to become above the law. This exploitation of the judiciary has resulted in the right to a fair trial being gravely violated, and created a situation where ordinary Iraqis are forced to live a life of fear and insecurity.

The Right to a Fair Trial

The government of Iraq is failing to respect due process and fair trial standards. In Iraq's Code of Criminal Procedure, it states that police are required to obtain a warrant to arrest a suspect and must bring the suspect before a judge within 24 hours of the arrest. The code also states that officials must ensure that defendants have access to a lawyer, and have adequate time to prepare an effective defense and to challenge the evidence against them. Yet these standards are rarely, if ever, complied with.

Instead, Iraqis are being detained, convicted on inappropriate evidence, and sentenced to death shortly after being arrested. Individuals who are charged with terrorism charges are routinely held in the worst conditions imaginable, and deprived of the right to an effective defence. At trial, judges use evidence that is gained from secret informants to pursue criminal prosecutions, or confessions made by the detainee during torture, when they have been forced to confess to crimes or terrorist acts. This allows detainees to be charged with crimes, often with terrorism, without any actual evidence. Changes are even being made to allow for the death penalty to be applied in a more speedily manner. A 2015 amendment to the Criminal Procedure has meant that the President is no longer required to ratify executions. This has created a weak judicial process, contrary to international law, which requires that due process is respected in relation to arrest, charge, detention, and trial of all individuals.

The Death Penalty

One of the most concerning aspects of the justice system in Iraq, is the frequent use of the death penalty. In 2017, Iraq remains among the top three executioner states in the world. It is also clear that far from distancing itself from the death penalty, it is being increasingly relied upon by the Iraqi authorities as a tool of fear and control.

When applying the death penalty, Iraq does not comply with the fair trial standards required by international human rights law. This includes the rights of the defendant to a proper lawyer, to be presumed innocent until proven guilty, and not to be compelled or forced to confess guilt. Instead, the faulty justice system in Iraq allows the death penalty to apply to a number of crimes which fall well outside the international standard of 'the most serious crimes' interpreted by the UN Human Rights Committee to include only crimes which involve willful killing.

In addition to this, those accused of crimes carrying the death penalty may only have a lawyer when, or if, the Court appoints one to act on their behalf. This is usually on the day of the trial, ensuring there is not enough time to prepare a proper defence. This was confirmed by a 2014 report on the death penalty in Iraq by UNAMI, which noted that “Persons accused of serious crimes carrying the death penalty often only have lawyers representing them when the Court appoints one to act on their behalf, usually on the day of the trial and with no reasonable time granted by the Court to prepare a defense.”¹

Another great concern is the acceptance of coerced confessions as evidence by the Iraqi judiciary, without any investigation. In most cases, these confessions are obtained as a result of serious torture. In a report by UNAMI and the UN Office of the High Commissioner for Human Rights in 2015, grave concerns were expressed about the judicial response to torture allegations. This report found that the Iraqi system expressly permits the torture of detainees to force confessions, which judges then rely upon to charge the accused. The report stated that “in all cases the presiding judge failed to order any investigation into the torture allegations and did not question the defendant further about the matter.”²

Further to this, when Iraqi citizens are executed by the state, the Justice Ministry releases little or no evidence as to their names, their convictions, any information about what they were convicted of, or whether they had a trial at all. In the past year, hundreds of civilians have been subjected to the death penalty in this way. On 13th July 2016, the Iraqi President made an official announcement that he had ratified a number of new death sentences, without providing the names, or number of people concerned, nor any information or evidence regarding the alleged crimes. Just the next month, on 21st August 2016, the state executed 36 persons in one single day for their alleged role in a 2014 terrorist attack. These men, whose “confessions” were extracted under serious allegations of torture, were convicted following a deeply flawed and speedy trial. Less than six months later, another trial on 23 January 2017 saw another 31 men executed for committing the exact same crime.

With so many lives at risk, it is urgent that the international community puts pressure on Iraq to abide by the human rights standards it has pledged to, which must include fair trial standards.

Recommendations:

Unfair trials, torture, and mass executions can never be considered justice.

In 2012, the summary execution of 34 individuals in Iraq led the former UN High Commissioner for Human Rights, Navi Pillay, to make a statement where she said that this number was shocking because of “the lack of transparency in court proceedings, major concerns about due process and fairness of trials, and the very wide range of offences for which the death penalty can be imposed in Iraq.”³ In 2013, Ms Pillay went further, by saying that Iraq’s judicial system was “too seriously flawed to warrant even a limited application of the death penalty, let alone dozens of executions at a time.”⁴

In 2016, this criticism of the Iraqi justice system was reiterated by UNHCHR Zeid Ra’ad al-Hussein, who stated that “Given the weaknesses of the Iraqi justice system...I am gravely concerned that innocent people have been and may continue to be convicted and executed, resulting in gross, irreversible miscarriages of justice.”⁵ Yet in 2017, sufficient steps have still not been taken by Iraq, or the international community, to prevent innocent people from being subjected to arbitrary justice, or from being put to death.

As a result, we, NGOs Signatories to this statement recommend to the UN Human Rights Council and its relevant bodies:

¹ UNAMI and the OHCHR Report on the Death Penalty in Iraq, Baghdad, October 2014

² UNAMI and the OHCHR Report on the judicial response to allegations of torture in Iraq, Baghdad, February 2015

³ UN News Centre, (31 August 2012) <http://www.un.org/apps/news/story.asp?NewsID=42791#.WRMydSN97ow>

⁴ UN News Centre, (19 April 2013) <http://www.un.org/apps/news/story.asp?NewsID=44706#.WRMxpCN97ow>

⁵ UN News Centre, (1 August 2016) <http://www.un.org/apps/news/story.asp?NewsID=54602#.WRMyxSN97ow>

- Take all measures to amend the flawed justice system in Iraq by ending arbitrary arrests, detention, unfair trials and the extrajudicial imposition of the death sentence.
- Appoint a UN Special Rapporteur for the human rights situation in Iraq.
- Establish an independent oversight body to investigate allegations of corruption, abuse of authority, or breach of professional standards by the judiciary.
- Request the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture, the Working Group on Arbitrary Detention, and the Special Rapporteur on extrajudicial, summary or arbitrary executions to give due attention to the situation in Iraq in their future reports.

*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association- UK, Human Rights Defenders (HRD), The Brussels Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), Alliance to Renew Co-operation among Humankind, General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), Women Will Association (WWA), The Iraqi Centre for Human Rights, The Perdana Global Peace Foundation, The International League of Iraqi Academics (ILIA), Organization for Widows and Orphans (OWO), International Anti-Occupation Network (IAON), Kuala Lumpur Foundation to Criminalise War, NGOs without consultative status, also share the views expressed in this statement.