



Iraq

Universal Periodic Review

Report submitted to the United Nations Human Rights Council in the context of the third periodic review of Iraq

March 2019

Table of Contents

1	Background.....	3
2	Scope of international obligations	4
2.1	Cooperation with international human rights mechanisms and bodies.....	4
3	National human rights framework	5
4	Implementation of international human rights obligations.....	6
4.1	Human rights and counterterrorism.....	6
4.2	Right to life, liberty and security of person.....	7
4.2.1	The death penalty and summary executions	7
4.2.2	Enforced disappearances.....	7
4.2.3	Arbitrary deprivation of liberty.....	9
4.2.4	Torture and ill-treatment.....	10
4.3	Administration of justice, including impunity and the rule of law	11
4.3.1	Independence of the judiciary	11
4.3.2	Impunity	12
4.4	Fundamental freedoms	13
4.4.1	Right to peaceful assembly and association	13
4.4.2	Right to freedom of expression.....	13
4.4.3	Right to participate in public life	14

1 Background

The period since Iraq's second UPR in 2014 saw the defeat of the so-called Islamic State of Iraq and the Levant (ISIL). The fight against the group was marked by grave violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) committed by all parties to the conflict, including the indiscriminate and disproportionate targeting of civilians, and widespread extrajudicial killings, enforced disappearances and arbitrary detention. The Iraqi authorities' efforts to hold perpetrators to account and to reintegrate and rehabilitate victims have been severely flawed.

In addition, recent protests calling for reforms across Iraq, including in Kurdistan, were met with a disproportionate use of force, resulting in severe violations of the rights to freedom of expression and peaceful assembly and, at times, the right to life.

Iraq's legal system remains largely dysfunctional, and judicial decisions are unduly influenced by political pressure and public opinion. Torture is used systematically in detention facilities, and confessions extracted under duress are routinely admitted into evidence against defendants. Arbitrary detention is widespread, with detainees typically held in custody for extended periods of time and denied access to legal counsel.

Moreover, Iraq remains the country with the highest number of enforced disappearances in the world – a practice that dates back to the late 1960s and which peaked in the context of the US-led invasion in 2003 and the fight against ISIL – with estimates ranging from between 250,000 and one million missing persons.¹

Iraq is among the most prolific executioners in the world, with at least 300 individuals executed between 2014 and 2017.² In addition, the anti-terrorism laws of both the Iraqi government and the Kurdish Regional Government (KRG) impose mandatory death sentences for crimes that do not meet the standard of the most serious crimes.

¹ 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 20 February 2019).

² This figure is an accumulation of the number of executions cited by Amnesty International in its 2014-2017 annual reports on death sentences and executions. For more, see: Amnesty International, Results for 'death sentences and executions'. Available at: <https://www.amnesty.org/en/search/?q=death+sentences+and+executions> (accessed 20 March 2019).

2 Scope of international obligations

Iraq has not acceded to the Rome Statute of the International Criminal Court (ICC), nor has it ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2) or the Optional Protocol to the Convention against Torture (OPCAT).³

In addition, the state has not accepted the individual or inter-state complaint mechanisms under the Convention against Torture (UNCAT), the International Covenant on Civil and Political Rights (ICCPR) or the Convention on the protection of all Persons from Enforced Disappearances (ICPPED).

Recommendations

- Ratify the Rome Statute of the ICC, ICCPR-OP2 and the OPCAT;⁴
- Accept individual and inter-state complaint mechanisms under the UNCAT, ICCPR and ICPPED.

2.1 Cooperation with international human rights mechanisms and bodies

The Iraqi authorities did not respond to nine of the 15 communications they received from the UN Special Procedures in the period since the state's last review.⁵ In addition, the government has failed to implement any of the seven opinions issued by the UN Working Group on Arbitrary Detention (WGAD) since 2014.⁶

Moreover, the government has not submitted its sixth periodic report to the Human Rights Committee due in November 2018, nor its second periodic report to the Committee on

³ Iraq received 32 recommendations on ratifying and lifting reservations to international convention during the second cycle of the UPR. It supported just only one of these recommendations. See: 127.1 (Djibouti). The Iraqi authorities noted the following recommendations: 127.2 (Uzbekistan), 127.3 (Chile), 127.4 and 127.15 (Paraguay), 127.5 and 127.11 (Portugal), 127.6, 127.20 and 127.21 (Sierra Leone), 127.23 (Czech Republic), 127.7 (Spain), 127.8 (Australia), 127.9 (Austria), 127.10 (Uruguay), 127.12 (Chile), 127.13 (Portugal), 127.14 (Greece), 127.16 (Germany), 127.17 (Portugal), 127.19 (Paraguay), 127.24 (Bulgaria), 127.25 (Romania), 127.26 (Tunisia), 127.30 (Estonia), 127.27 (Serbia) (Slovenia) (Germany) (Poland) (Hungary), 127.28 (Slovakia), 127.29 (Belgium), 127.31 (Netherlands), 127.32 (Uruguay), 127.33 (Switzerland), 127.34 (France) and 127.35 (Guatemala).

⁴ Similar recommendations were made to Iraq by the Committee on the Rights of the Child, the Committee against Torture, the Human Rights Committee. For more see: CRC/C/IRQ/CO/2-4, para.89; CAT/C/IRQ/CO/1, para.18; CCPR/C/IRQ/CO/5, para.6.

⁵ This is despite the fact that Iraq supported all seven recommendations it received on cooperation with UN Human Rights Mechanisms during the second cycle of the UPR. See: 127.74 (Azerbaijan), 127.75 (United Arab Emirates), 127.78 (Greece), 127.79 (Netherlands), 127.80 (Spain), 127.81 (Belgium) and 127.121 (Norway). The Iraqi authorities replied to IRQ 4/2018, IRQ 1/2018, IRQ 4/2017, IRQ 1/2017, IRQ 2/2016, IRQ 5/2015. They did not reply to IRQ 3/2018, IRQ 2/2018, IRQ 3/2017, 2/2017, 1/2016, 3/2015, IRQ 2/2015, IRQ 1/2015 and IRQ 6/2014.

⁶ See the following opinions: No.38/2018, No.32/2017, No.33/2017, No.36/2017, No.29/2016, No.20/2016 and No.4/2014.

Enforced Disappearances (CED) due in September 2018. In addition, Iraq has failed to submit its follow-up report to the Committee against Torture (CAT), due in August 2016.⁷

Recommendations

- Fully cooperate with the UN human rights mechanisms, particularly by responding to all UN Special Procedures' communications and effectively implementing WGAD Opinions;
- Fully cooperate with UN Treaty Bodies, including by submitting outstanding periodic reports to the Human Rights Committee and CED, as well as the outstanding follow-up report to the CAT.

3 National human rights framework

The Iraqi High Commission for Human Rights (HCHR) – established in 2008 through law No.53⁸ and awarded B status by the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation⁹ – is not in compliance with the Paris Principles on National Human Rights Institutions and remains largely non-operational.¹⁰

The first set of commissioners appointed to the HCHR in 2014 were selected on the basis of their political associations, rather than merit or experience.¹¹ This resulted in a three-year deadlock, with members unable to elect a president.¹²

In 2017, 13 new commissioners were selected, with seats distributed across the main political blocs.¹³ The Committee of Experts that made the selection consisted of ten individuals from political parties represented in government.¹⁴ Given the HCHR's strong links

⁷ OHCHR, "Follow up letter sent to the state party", [Letter to state of Iraq by Special Rapporteur on follow-up Abdelwahab Hani], 7 December 2016, UN Doc. Follow/Up-CAT. Available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRQ/INT_CAT_FUL_IRQ_26004_E.pdf (accessed 11 March 2019).

⁸ Available at: http://www.iilhr.org/ihchr_exsum_AR.html (accessed on 19 February 2019).

⁹ Global Alliance of National Human Rights Institutes, *Chart of the Status of National Institutions*, 21 February 2018. Available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/Status%20Accreditation%20Chart.pdf> (accessed 19 February 2019).

¹⁰ Iraq supported seven recommendations on ensuring the independence of HCHR during its second UPR. See: 127.41 (Malaysia), 127.42 (Pakistan), 127.44 (Philippines), 127.45 (India), 127.46 (Afghanistan), 127.47 (Denmark), 127.48 (Indonesia) and 127.50 (Sweden).

¹¹ This is despite the fact that article 7 of Law No.53 of 2008 stipulates that members of the HCHR should be selected by a Committee of Experts and article 8 provides that members should not be affiliated with political parties and have human rights experience. For more see: Iraqi Civil Society Solidarity Initiative, *The New Iraqi High Commission for Human Rights Faces Serious Objections from Civil Society*, 29 July 2017. Available at: <https://www.iraqicivilsociety.org/archives/7502> (accessed on 19 February 2019).

¹² *Ibidem*.

¹³ Three seats were also awarded to members of the United Nations Assistance Mission in Iraq (UNAMI), a member of the federal court and an individual named by the Prime Minister. *Ibidem*.

¹⁴ *Ibidem*.

with the Iraqi government and the lack of civil society representation, it cannot be considered independent or to comprise a pluralist representation of the social forces in accordance with the Paris Principles.

Recommendations:

- Bring the HCHR into line with the Paris Principles.

4 Implementation of international human rights obligations

4.1 Human rights and counter-terrorism

Both the Iraqi authorities' Law No.13 of 2005 and the KRG's Law No.3 of 2006 on counter-terrorism contain overly broad and vague provisions, which fail to meet the standard of legal certainty.¹⁵ In addition, they impose mandatory death sentences for crimes that do not meet the standard of the most serious crimes.¹⁶

The Criminal Procedure Code does not apply in cases where individuals are tried under the Iraqi Anti-Terrorism Law.¹⁷ As a result, defendants are denied fair trial rights and due process guarantees.¹⁸ In addition, while the KRG's Anti-Terrorism Law expired in 2016, it continues to be applied to crimes that occurred before this date, including the majority of ISIL crimes.¹⁹

Furthermore, domestic courts do not have jurisdiction over war crimes, crimes against humanity and genocide.²⁰ As such, they cannot adequately account for crimes committed in the context of the fight against ISIL.²¹

Recommendations:

- Repeal Anti-Terrorism Law No.13 of 2005 and ensure that the KRG immediately halts the use of expired Law No.3 of 2006;²²

¹⁵ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, 20 June 2018. UN Doc. A/HRC/38/44/Add.1, paras.46-49, 62.

¹⁶ *Ibid*, paras.47 and 62.

¹⁷ *Ibid*, para.47.

¹⁸ *Ibidem*.

¹⁹ *Ibid*, para.49.

²⁰ *Ibid*, para.77.

²¹ *Ibidem*.

- Ensure that due process guarantees and fair trial rights are upheld in all cases;
- Introduce amendments to relevant laws to grant domestic courts jurisdiction over international crimes committed in Iraq.

4.2 Right to life, liberty and security of person

4.2.1 The death penalty and summary executions

Iraq continues to hand out death sentences, and at least 125 executions were carried out in 2017.²³ While the KRG imposed a *de facto* moratorium in 2008, this was breached in 2015 and 2016 when three executions were carried out.²⁴

Furthermore, there have been a number of mass executions of individuals associated with ISIL since 2016.²⁵ Individuals in such cases have been sentenced to death on the sole basis of confessions obtained under duress and without judicial investigations into allegations of torture during interrogations, resulting in systematic violations of the right to life.²⁶

Recommendations:

- The Baghdad and Kurdistan authorities should adopt a formal moratorium on the death penalty with a view towards its eventual abolition.²⁷

4.2.2 Enforced disappearances

Since Iraq's previous UPR, the NGO Al Wissam Humanitarian Assembly has submitted over 150 cases of enforced disappearances to the UN Committee on Enforced Disappearances (CED) under its Urgent Action procedure. While the Iraqi government was responsive to the CED in 2014 and 2015, often asking for clarification on cases submitted, from 2016 the

²² Iraq supported the four recommendations it received on bringing its counter-terrorism laws into line with international standards: 127.220 (Latvia), 127.221 (Norway), 127.222 (United States of America) and 127.223 (Austria).

²³ Amnesty International, *Global Report Death Sentences and Executions 2017*. Available at: <https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF> (accessed 20 February 2019), p.6.

²⁴ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, 20 June 2018. UN Doc. A/HRC/38/44/Add.1, para.59.

²⁵ Amnesty International, *Retaliatory executions do not amount to justice for victims of 'Islamic State'*, 29 June 2018. Available at: <https://www.amnesty.org/en/latest/news/2018/06/iraq-vengeful-executions-will-not-bring-justice-to-victims-of-is/> (accessed on 18 March 2019).

²⁶ *Ibid*, para.67.

²⁷ Iraq noted the following recommendations on halting the use of the death penalty: 127.2 (Uzbekistan), 127.3 (Chile), 127.5 (Paraguay), 127.6 (Sierra Leone), 127.7 (Spain), 127.8 (Australia), 127.9 (Austria), 127.107 (Italy), 127.108 (Namibia), 127.109 (Latvia) (Mexico) (Turkey) (Germany) (Greece) (France) (United Kingdom) (Montenegro), 127.110 (Norway), 127.111 (Costa Rica), 127.112 (Algeria)(Austria), 127.113 (Portugal), 127.114 (Belgium), 127.115 (Slovenia) and 127.116 (Israel). Iraq supported the following two recommendations on reducing the number of crimes for which the death penalty may be applied: 127.117 (Montenegro) and 127.118 (Switzerland).

number of government responses saw a sharp decrease.²⁸ In the vast majority of instances, the Iraqi authorities failed to provide any information on the fate and whereabouts of victims.

The problem of enforced disappearances remains prevalent, particularly in the context of counter-terrorism operations.²⁹ Between 2014 and 2017, the Iraqi forces, including militias from the Popular Mobilisation Forces (PMF),³⁰ 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.³¹

Furthermore, both the UN Secretary General³² and a group of UN Special Procedure mandates³³ have repeatedly expressed their concern about reprisals against human rights defenders documenting cases of enforced disappearances in Iraq. In particular, activists have been arbitrarily detained, tortured, threatened and harassed by the Iraqi authorities, including the PMF, with many being forced to flee the country as a result. In January 2019, MENA Rights Group requested the urgent intervention of the CED in the case of Riyadh Al Karawi, a volunteer with Al Wissam Humanitarian Assembly, who received death threats due to his work with the organisation.³⁴

Recommendations:

- Urgently clarify the fate and whereabouts of disappeared individuals, including by responding to all urgent actions sent by the CED;

²⁸ In 2014 and 2015, the Iraqi government responded to all, but one, of the cases submitted to the CED. However, between 2016 and 2019, Iraq only responded to 24% of cases submitted. In their responses, the Iraqi authorities typically stated that they have searched for the missing person within their databases to no avail. In other instances, they advised victims' families to file domestic complaints, despite the fact that often relatives have already taken several internal steps unsuccessfully.

²⁹ 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 20 February 2019).

³⁰ The PMF is the umbrella term given to Shi'a paramilitary groups that united in 2014 to fight against ISIL. In March 2018, the office of the prime minister issued a decree formally including the PMF in Iraq's security forces. For more see: 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 20 March 2019).

³¹ 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 20 February 2019).

³² UN Human Rights Council, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights - Report of the Secretary-General*, 13 August 2018. UN Doc. A/HRC/39/41; UN Human Rights Council, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights - Report of the Secretary-General*, 16 August 2018. UN Doc. A/HRC/33/19.

³³ UN Working Group on Arbitrary Detention et al., IRQ 3/2018, 2 October 2018. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24111> (accessed 21 March 2019); UN Committee on Enforced Disappearances et al., IRQ 2/2018, 10 April 2018. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23745> (accessed 21 March 2019); Mandate of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression et al., IRQ 1/2016, 15 April 2016. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=19461>, (accessed 21 March 2019).

³⁴ MENA Rights Group, *Iraqi human rights defender Riyadh Al Karawi*, 25 January 2019. Available at: <https://menarights.org/en/casestory/iraqi-human-rights-defender-riyad-al-karawi-subjected-reprisals> (accessed 21 March 2019).

- Establish an independent commission of inquiry to investigate all cases of enforced disappearances;
- Immediately suspend, pending a full and impartial investigation, any member of the Iraqi authorities alleged to have committed an act of enforced disappearance;
- Create an enabling environment for human rights defenders to carry out their work, including by ceasing all acts of reprisals, and launching impartial and thorough investigations into all allegations of reprisals.

4.2.3 Arbitrary deprivation of liberty

As of 2018, there are at least 19,000 individuals being held in Iraqi prisons on suspicion of connections with ISIL.³⁵ Individuals are routinely arrested without a warrant and without being given any reason for their arrest.³⁶ Detainees are sentenced to death or life imprisonment during their first hearing, which can last for as little as five minutes, and do not have access to legal counsel until the beginning of this hearing.³⁷

The terrorist database on which the Iraqi authorities rely to identify ISIL fighters is highly inaccurate.³⁸ The prevalence of common names leaves anyone vulnerable to arbitrary arrest, and the various security forces' failure to cross-check their wanted lists means that individuals already cleared by a certain group may be re-arrested.³⁹

Stigma due to perceived affiliation with ISIL, as well as widespread destruction of areas previously under the group's control, has led many families to flee to Internally Displaced Person's (IDP) camps.⁴⁰ Typically, security forces confiscate their identity documents upon arrival.⁴¹ In order to obtain new documents, they must pass a security clearance check, which many of them fail due to relatives' names being in the terrorist database.⁴² Without such documents, they are more susceptible to arrests at checkpoints, cannot get jobs, and cannot obtain death certificates in order to inherit or dissolve a marriage, making it virtually impossible for them to leave the camps.⁴³

Recommendations:

³⁵ Abdul-Zahra, Q. and George, S., 'Iraq holding more than 19,000 because of IS, Militant ties', *AP News*, 22 March 2018. Available at: <https://www.apnews.com/aece6571de54f5dba3543d91deed381> (accessed 21 February 2019).

³⁶ During its previous UPR Iraq supported two recommendations on the right to a fair trial and on eliminating arbitrary detention – 127.144 (Norway) and 127.148 (Czech Republic). It noted one recommendation on the same topic: 127.119 (France).

³⁷ Taub, B., 'Iraq's Post-ISIS Campaign of Revenge', *The New Yorker*, 24 and 31 December 2019. Available at: <https://www.newyorker.com/magazine/2018/12/24/iraqs-post-isis-campaign-of-revenge>, (accessed 21 February 2019).

³⁸ Many of the names given by informants are actually those of individuals with whom they have unrelated disputes. Others end up on the database because they cannot afford to pay the bribes requested by the PMF in order to keep their names off. For more, see: Wille, B., 'Iraq's so-called "ISIS families": Rounded Up, Vilified, Forgotten', *Just Security*, 14 November 2018. Available at: <https://www.justsecurity.org/61437/iraqs-so-called-isis-families-rounded-up-vilified-forgotten/>, (accessed 21 February 2019).

³⁹ *Ibidem*.

⁴⁰ *Ibidem*.

⁴¹ *Ibidem*.

⁴² *Ibidem*.

⁴³ *Ibidem*.

- Immediately charge or release anyone currently arbitrarily detained in Iraqi prisons on ISIL or terrorism-related charges, ensuring their right to a fair trial and due process guarantees;
- Ensure that security forces cross-check their wanted lists and establish a mechanism for verifying the identities of individuals on the terrorism database;
- Immediately halt the practice of confiscating the identity documents of individuals in IDP camps and suspend, pending full investigation, any official alleged to have perpetrated the practice;
- Establish mechanisms for the effective and full reintegration of individuals with perceived ISIL affiliations back into their communities.

4.2.4 Torture and ill-treatment

Torture is practised systematically in Iraq.⁴⁴ The definition of torture in domestic Iraqi legislation is not in conformity with the UNCAT.⁴⁵ Confessions extracted under duress are routinely admitted into evidence⁴⁶ and the penalties for perpetrators of torture remain unclear.⁴⁷ Investigations into allegations of torture are virtually never carried out, creating a climate of impunity.⁴⁸ Iraqi authorities routinely place detainees in terrorism-related cases outside the protection of the law, through holding them *incommunicado*, in solitary confinement and in secret detention facilities for months if not years, creating an enabling environment for torture.⁴⁹

Recommendations:

⁴⁴ During its second UPR, Iraq noted three recommendations on bringing the practice of torture to a halt: 127.119 (France), 127.120 (Costa Rica) and 127.124 (Uruguay). The authorities supported the following recommendations on investigating allegations of torture and the exclusionary rule: 127.121 (Norway), 127.122 (Austria) and 127.124 (Uruguay). It is also worth noting that in its Concluding Observations on the initial report of Iraq, the Committee Against Torture (CAT) noted that it “remains deeply concerned by reports of routine and widespread use of torture and ill-treatment of suspects in police custody, as well as in pre-trial detention centres run by the Ministry of Interior and the Ministry of Defence, primarily to extract confessions or information to be used in criminal proceedings. The Committee is also concerned about allegations of torture and ill-treatment, including rape and other forms of sexual abuse, against women in custody – mostly Sunni Muslims - who are frequently detained for allegedly ‘covering up’ for their husbands or other male family members”. For more see: UN Committee Against Torture, *Concluding Observations on the initial report of Iraq*, 7 September 2015, UN Doc.CAT/C/IRQ/CO/1, para.15.

⁴⁵ *Ibid*, para.27.

⁴⁶ This includes reports that in 2017 and 2018, the KRG tortured children into confessing to having ISIL affiliations. At least five of the minors informed the investigative or trial judge that their confession was obtained under torture, but they failed to investigate and dismissed their claims. Some were held *incommunicado* for a period of up to two years. For more, see: 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 25 February 2019).

⁴⁷ It is also noteworthy that torture is not including among the list of offences for which courts can exercise universal jurisdiction. UN Committee Against Torture, *Concluding Observations on the initial report of Iraq*, 7 September 2015, UN Doc.CAT/C/IRQ/CO/1, paras.27 and 28.

⁴⁸ *Ibid*, para.21.

⁴⁹ In its Concluding Observations on the initial report of Iraq, the CAT raised concern “at information pointing to a consistent pattern whereby alleged terrorists and other high-security suspects, including minors, are arrested without any warrant, detained *incommunicado* or held in secret detention centres for extended periods of time, during which they are severely tortured in order to extract confessions. According to allegations received by the Committee, the detention facility at its former Al-Muthanna military airport in West Baghdad, which was uncovered in 2011, is still open and continues to operate secretly under the control of the 54th and 56th Brigades of the army”. For more see: UN Committee Against Torture, *Concluding Observations on the initial report of Iraq*, 7 September 2015, UN Doc.CAT/C/IRQ/CO/1, para.16.

- Bring the definition of torture into line with international standards;
- Respect the exclusionary rule, conduct impartial and thorough investigations into allegations of torture and clarify the penalties for perpetrators of torture.

4.3 Administration of justice, including impunity and the rule of law

4.3.1 Independence of the judiciary

While the independence of the judiciary is enshrined in chapter three of Iraq's constitution, decisions issued by courts – particularly in ISIL cases – are unduly influenced by the executive, as well as public opinion.⁵⁰ Judges continue to sentence ISIL fighters to death *en masse*, and fail to differentiate in their sentencing between those who supported the group in combative and non-combative roles, as well as between those who volunteered and those who were coerced into joining the group.⁵¹ This approach is largely the result of social⁵² and political pressure on the judiciary to hand out harsh punishments to anyone who had any involvement with the group, regardless of the nature of their affiliation.⁵³

Moreover, defence lawyers – particularly those working on ISIL cases – face intimidation and harassment,⁵⁴ with at least 15 warrants for their arrest issued in 2017 and charges brought against them for supposed affiliation with the group.⁵⁵

Recommendations:

⁵⁰ Iraq supported four recommendations on ensuring the independence of the judiciary during its second UPR cycle: 127.142 (Austria), 127.143 (France), 127.145 (Botswana) and 127.146 (Germany).

⁵¹ For more, see: Revkin, M.R. The Limits of Punishment, May 2018, Available at: <https://i.unu.edu/media/cpr.unu.edu/attachment/3127/2-LoP-Iraq-final.pdf> (accessed 19 March 2019), pp.9-10.

⁵² In relation to this it is also worth taking note of the popular Iraqi television programme “In the Grip of the Law”, in which defendants accused of terrorism explain on camera how they plotted and executed their crimes, renounced terrorism and admit that they deserve to die. This constitutes a clear violation of defendants’ right to be presumed innocent until proved guilty. What is more, the presenter of the programme has been quoted as stating “It’s the only program in this country that increases public trust and confidence in the security forces and judicial offices [...] It passes the message to the whole world that the fate of these terrorists is in the grip of the law!”. For more, see: Taub, B., ‘Iraq’s Post-ISIS Campaign of Revenge’, *The New Yorker*, 24 and 31 December 2019. Available at: <https://www.newyorker.com/magazine/2018/12/24/iraqs-post-isis-campaign-of-revenge>, (accessed 21 February 2019).

⁵³ One Iraqi judge admitted while being interviewed for Revkin’s abovementioned paper that “judges can be very harsh, sometimes as harsh as Daesh [IS]’ because of social and political pressure to show no mercy to IS and because the Counter-Terrorism Law does not allow them sufficient flexibility in sentencing.” For more, see: Revkin, M.R. The Limits of Punishment, May 2018, Available at: <https://i.unu.edu/media/cpr.unu.edu/attachment/3127/2-LoP-Iraq-final.pdf> (accessed 19 March 2019), p.18.

⁵⁴ A group of UN Special Rapporteurs sent a communication to the Iraqi authorities on the arrest and detention of three lawyers and the extrajudicial execution of another lawyer for discharging their professional duties. For more, see: Mandates of the UN Special Rapporteur on the Independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary execution, IRQ 3/2015, 30 July 2015. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=15952> (accessed 21 March 2019).

⁵⁵ Taub, B., ‘Iraq’s Post-ISIS Campaign of Revenge’, *The New Yorker*, 24 and 31 December 2019. Available at: <https://www.newyorker.com/magazine/2018/12/24/iraqs-post-isis-campaign-of-revenge>, (accessed 21 February 2019).

- Reform the judicial system to guarantee its neutrality and independence;
- Launch impartial and thorough investigations into all allegations of harassment and intimidation of lawyers, including those involved in ISIL cases, in order to hold perpetrators to account.

4.3.2 Impunity

The fight against ISIL saw serious violations of IHRL and IHL committed by the Iraqi forces, the PMF and coalition forces.⁵⁶ This encompassed acts of revenge against civilians, including the extrajudicial execution of Sunni civilians, and the killing of wounded ISIL fighters.⁵⁷ In addition, during this period, an estimated 3,200 civilians were killed by coalition airstrikes.⁵⁸ However, the Iraqi authorities continue to focus their efforts solely on prosecuting ISIL fighters and their associates.⁵⁹

In September 2017, the UN Security Council passed resolution 2379, establishing an investigative team tasked with supporting domestic efforts to collect, preserve and store evidence of international crimes committed by ISIL in Iraq.⁶⁰ However, the resolution did not include any provisions to ensure accountability for crimes committed by other parties to the conflict.

Recommendations:

- Investigate and prosecute government forces who perpetrated revenge attacks on civilians fleeing ISIL, including Sunnis, as well as those who executed ISIL fighters *hors de combat*;
- Ensure that all parties to the conflict are held to account for violations of IHL and IHRL.

⁵⁶ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, 20 June 2018. UN Doc. A/HRC/38/44/Add.1, paras.30-32.

⁵⁷ *Ibid*, para.30.

⁵⁸ *Ibid*, para.34.

⁵⁹ This is despite the fact that Iraq supported seven recommendations on ending impunity during its previous UPR: 127.123 (Spain), 127.145 (Botswana), 127.147 (Republic of Korea), 127.148 (Czech Republic), 127.149 (Australia), 127.156 (Italy) and 127.157 (Argentina). However, it also rejected on recommendation on the topic: 127.34 (France). In addition, Iraq supported three recommendations on upholding humanitarian law: 127.100 (Spain), 127.210 (Uruguay) and 127.206 (Chile). It rejected another recommendation on the same topic: 127.32 (Uruguay). For more see: *Ibid*, para.34.

⁶⁰ UN Meetings Coverage, Security Council Requests Creation of Independent Team to Help to Hold ISIL (Da'esh) Accountable for its Actions in Iraq, 21 September 2017. Available at: <https://www.un.org/press/en/2017/sc12998.doc.htm>, (accessed 18 March 2019).

4.4 Fundamental freedoms

4.4.1 Right to peaceful assembly and association

In 2018, the Iraqi authorities used excessive force against demonstrators taking part in protests against corruption and the lack of basic services.⁶¹ In Basra, the Iraqi authorities killed dozens of protestors and wounded hundreds when they used live ammunition to disperse demonstrations.⁶² Protestors and journalists in Baghdad and Basra were arbitrarily detained, subjected to torture and ill-treatment and forced to sign papers without being allowed to read them.⁶³

In Kurdistan, protestors demonstrating against austerity measures and the non-payment of salaries were also arbitrarily detained, tortured and forced to sign pledges stating that they would not participate in any future protests.⁶⁴

Recommendation:

- Uphold the right to freedom of peaceful assembly and association, and suspend all officials, pending full and impartial investigations, alleged to have violated the rights of peaceful protestors.⁶⁵

4.4.2 Right to freedom of expression

As anti-corruption demonstrations spread, Iraqi authorities severely restricted access to the internet as a means of preventing journalists and media outlets from covering the protests.⁶⁶

In addition, the draft Cybercrime Law,⁶⁷ which is currently pending before the Iraqi Council of Representatives, punishes vague and imprecise acts that fall within the right to freedom of

⁶¹ Iraq accepted one recommendation on upholding the right to freedom of assembly during its previous UPR: Estonia (127.165).

⁶² Human Rights Watch, Iraq: Security Forces Fire on Protestors, 24 July 2018. Available at: <https://www.hrw.org/news/2018/07/24/iraq-security-forces-fire-protesters>, (accessed 18 March 2019).

⁶³ Amnesty International, Iraq: Security forces deliberately attack peaceful protestors while internet is disabled, 19 July 2018. Available at: <https://www.amnesty.org/en/latest/news/2018/07/iraq-security-forces-deliberately-attack-peaceful-protesters-while-internet-is-disabled/> (accessed 19 March 2019).

⁶⁴ Human Rights Watch, Kurdistan Region of Iraq: Protestors Beaten, Journalists Detained, 15 April 2018. Available at: <https://www.hrw.org/news/2018/04/15/kurdistan-region-iraq-protesters-beaten-journalists-detained>, (accessed 19 March 2019).

⁶⁵ Iraq supported the one recommendation it received on upholding the right to peaceful assembly, see: 127.165 (Estonia).

⁶⁶ During the second cycle of the UPR, Iraq supported one recommendation on freedom of expression – 127.166 (France) - and rejected the other – 127.169 (Israel). It also supported three recommendations on the protection of journalists – 127.168 (Denmark), 127.70 (Austria) and 127.171 (Tunisia) - while rejecting on the same topic 127.169 (Israel). For more on restrictions to freedom of expression during the Iraq protests, see: Amnesty International, Iraq: Security forces deliberately attack peaceful protestors while internet is disabled, 19 July 2018. Available at: <https://www.amnesty.org/en/latest/news/2018/07/iraq-security-forces-deliberately-attack-peaceful-protesters-while-internet-is-disabled/> (accessed 19 March 2019).

⁶⁷ Available at: <https://bit.ly/2GLE1ec>, (accessed 26 February 2019).

expression with heavy fines and life imprisonment.⁶⁸ The draft Law on Freedom of Expression is equally ambiguous and its definition of the right is not into line with article 9 of the ICCPR.⁶⁹ If adopted, these laws will represent a substantial setback for freedom of expression in Iraq, create a climate of self-censorship and severely restrict the right to freedom of information.

Recommendations:

- Uphold the right to freedom of expression, ensuring that any restrictions are provided by law and are necessary, in accordance with article 21(3) of the ICCPR;
- Repeal the draft Cybercrime Law and Law on Freedom of Expression.

4.4.3 Right to participate in public life

Ethnic and ethno-religious minorities are inadequately represented in elected bodies, with the Iraqi national parliament reserving just eight of 328 seats for minorities.⁷⁰

A quota system has been in place since 2005, reserving 25% of seats in the Iraqi parliament for women.⁷¹ The KRG increased the quota for women to 30% in 2009.⁷² However, women remain without any real power in decision-making processes either at the local or national level.⁷³

Recommendations:

- Ensure that ethnic and ethno-religious minorities are adequately represented in all elected bodies and public offices, including by amending electoral laws and ensuring the representation of minorities that do not benefit from the existing quota system;⁷⁴
- Take all measures necessary to ensure women's full and equal participation in decision-making in all areas of public and political life at all levels, including through implementing activities to raise awareness of the importance of women's

⁶⁸ On 1 March 2019, ten human rights organisations published an open letter calling on the Iraqi authorities to withdraw the draft Cybercrime Law. For more see: MENA Rights Group, Concern over restrictions to freedom of expression, 10 civil society organisations call on Iraq to withdraw draft Cybercrime Law, 1 March 2019. Available at: <http://menarights.org/en/articles/concerned-over-restrictions-freedom-expression-10-civil-society-organisations-call-iraq> (accessed 19 March 2019).

⁶⁹ Available at: <http://www.law-democracy.org/wp-content/uploads/2012/01/Iraq.FOE-FOA.IREX-translation.pdf> (accessed 21 March 2019).

⁷⁰ UN Committee on the Elimination of Racial Discrimination, *Concluding Observations on the combined twenty-second to twenty-fifth periodic reports of Iraq*, 11 January 2019. UN Doc. CERD/C/IRQ/CO/22-25, para.25.

⁷¹ Finnish Immigration Service, *Overview of the Status of Women Living without a Safety Net in Iraq*, 22 May 2018. Available at: https://migri.fi/documents/5202425/5914056/Report_Women_Iraq_Migri_CIS.pdf/ab7712ba-bad7-4a1f-8c1f-f3f4013428a7/Report_Women_Iraq_Migri_CIS.pdf.pdf (accessed 6 March 2019), para.9.

⁷² *Ibidem*.

⁷³ *Ibidem*.

⁷⁴ Iraq supported the three recommendations it received on ensuring the adequate representation of minority groups: 127.199 (Norway), 127.203 (Ireland) and 127.205 (Turkey).

participation in decision-making and aimed at eliminating patriarchal attitudes and gender stereotypes.⁷⁵



⁷⁵ Iraq supported one recommendation on women's participation in decision making, see: 127.96 (Chile).

MENA Rights Group is a Geneva-based legal advocacy NGO, focusing on the protection and promotion of fundamental rights and freedoms in the Middle East and North Africa. Adopting a holistic approach, we work at both the individual and structural level. We provide legal counselling to victims of human rights violations through recourse to international law mechanisms. In addition, we assess the human rights situation on the ground and bring key issues to the attention of relevant stakeholders to call for legal and policy reform.