

**International Organization for the Elimination of All Forms of Racial Discrimination
(EAFORD)**



Information meeting on the UPR process in

Iraq & Iran

United Nations Room: XXV

Thursday 07 Nov 2019

Speakers

Mr. Tahar Boumedra, Former Chief of the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI)

Mr. Christopher Gawronski, Representative of the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD) and Senior Human Rights Officer at Geneva International Centre for Justice (GICJ)

Moderator

Ms. Isabela Zaleski Mori, Human Rights Researcher at Geneva International Centre for Justice (GICJ)

Organizers

International-Lawyers.Org, International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), and Geneva International Centre for Justice



34th session of the Universal Periodic Review of the Human Rights Council

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Tahar Boumedra

Former UN Human Rights Chief
of the UN mission in Baghdad



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The 34th Session of the Universal Periodic Review of the Human Rights Council

Information Meeting on the Universal Periodic Review Process in Iraq and Iran

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Introduction

Ms. Isabela Zaleski Mori, the moderator, opened the side event by noting that in both Iraq and Iran, gross human rights violations are rife and that minorities, migrants, women, girls, children and persons with disabilities are particularly vulnerable to these violations.

In Iran, ethnic and religious minorities make up over 40 percent of the population but face systematic discrimination in accessing senior public office positions. Moreover, the associations formed by minorities are denied freedom of expression and of association; they face unfair trials; torture and other ill-treatment are widespread and go unpunished. In addition, women and persons with disabilities face discrimination in both law and practice.

In Iraq, the atrocities perpetrated by ISIS (or Da'esh) have been reported since 2014, including kidnapping, torturing and executing countless people. Unfortunately, Ms. Zaleski Mori stated that those crimes have not been limited to Da'esh fighters but that militias, as well as, official military and law enforcement personnel, have perpetrated similar atrocities. Families with alleged affiliation to ISIS are subjected to collective punishment, their freedom of movement is restricted, access to humanitarian aid is denied, and authorities refuse to issue them crucial documents. Women and girls are particularly affected and subjected to high levels of gender-based violence, including kidnapping, rape and sexual slavery.

Then, Ms. Mori introduced the first speaker, Mr. Christopher Gawronski, who is a lawyer from the United States, focusing on international law. He has been working at the Geneva International Centre for Justice as a Senior Human Rights Officer on several human rights issues, including the situation in Iraq. Before coming to Geneva, he lived and worked in the Middle East for six years.

Presentation on Iraq: Mr. Christopher Gawronski



Mr. Gawronski highlighted the difficulty in putting a positive spin on Iraq, even for the Universal Periodic Review (UPR). He mentioned that in the last UPR in 2014, many recommendations were made on ensuring equal treatment for all. The national report for the 2019 UPR showcases new laws, policies, and institutional changes to address the recommendations. Despite a few positive steps, Iraq is still driven by sectarian strife, which is reinforced and supported by government policies. These policies result in negative consequences for disfavored groups, extending from torture to mass execution and destruction of entire communities.

Mr. Gawronski then tackled a number of important topics: arbitrary detention and enforced disappearance, torture and ill-treatment, death penalty, corruption, the failure to maintain critical infrastructures and the current protests.

On enforced disappearances and arbitrary detention, he stated that the issues have grown dramatically in recent years, mostly as a result of the government support of militias. The government and militias disregard the guarantees contained in a number of constitutions and laws or use the excuse of fighting terrorism. The government claims in its national report (note: the “national report” refers to the report submitted by the State of Iraq to the UPR Working Group for the 34th session, in November 2019) that the anti-terrorism act is not used as a pretext for arbitrary arrests or detentions, but evidence on the ground shows otherwise.

Mr. Gawronski raised the example of the enforced disappearance of over 1000 people from Saqlawiya and Fallujah in June 2016, allegedly because of ties to ISIL or other terrorist groups. Other cases have been documented, such as the 2200 people who went missing at Al Razzaza checkpoint in 2015, and more than 300 persons who disappeared from al-Dour city in 2015 as well. The scale of these events is worrying, with thousands of people disappearing. He outlined the discriminatory approach in these events as, by checking the family names of the missing people from Saqlawiya and Fallujah, it appears that certain families and groups are targeted. Moreover, the government has not formally recognized these enforced disappearances.

In August 2019, it came to light that the government had approved the mass burial of hundreds of people. The process of disposing bodies is part of the efforts to distort facts about victims of enforced disappearances, who were tortured and died as a result, or were later killed, and whose bodies the government or militias want to hide. In this case, the burials were illegally conducted by a so-called NGO that was actually operated by one of the Iran-Backed militias in Iraq.

On ill-treatment and torture, Mr. Gawronski said that many recommendations had been made during the last UPR cycle to prevent and investigate all cases of alleged violations. The national report states that torture is a crime under Iraqi law. Nevertheless, torture by state actors is still prevalent, often in the context of obtaining a confession under anti-terrorism law.

He pointed out that torture has also been used in a sectarian fashion against minority groups under the pretext of fighting terrorism. Minority groups fleeing persecution are easy prey, and under the pretext of targeting ISIL fighters, defenseless civilians are targeted. Mr. Gawronski raised the example of a video published in June 2017, showing Iraqi officers beating, torturing and arbitrarily killing alleged ISIL fighters in Mosul without a trial. Prisoners and alleged terrorists are very vulnerable to torture, often do not receive fair trials and are denied legal assistance. Although the national report stresses that confessions extracted by torture are inadmissible in trial, a 2017 UNAMI/OHCHR human rights report expressed concern about the lack of investigation.

Mr. Gawronski referred to another side event held by EAFORD and GICJ during the 42nd Human Rights Council session, where Mr. Ali Arkady, a photojournalist who was embedded with a special forces team of the Iraqi military, witnessed and documented many cases of torture. Mr. Arkady reported that not only are the soldiers not held to account, but also that some are even promoted and decorated by the government, which is inconsistent with the government's claim that torture is a crime prohibited under Iraqi law.



Torture and ill-treatments lead to death, but **the death penalty** is the only official means to legally take someone's life. Mr. Gawronski commented that the international community is putting pressure on Iraq to place an official moratorium on the use of death penalty, but that Iraq actually increased the use of such punishment, becoming one of the top three executioner States in 2016.

This increase has been observed while the national report states that the death penalty is only used for the most serious crimes and certain terrorism offenses. Concerns have been raised by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, who expressed in her 2018 report her dismay regarding the lack of transparency in the application of the death penalty, and the use of mass executions since 2016 to address terrorism cases.

Mr. Gawronski continued his presentation by tackling the issue of **corruption**. He outlined that while everyday people struggle to make ends meet, government officials are living luxurious lives. Since the US-led invasion in 2003, corruption settled at the highest levels of the government, which is one of the major issues that has prevented Iraq from having a normal economy. Public services are non-functional in many parts of the country, resulting in lack of access to water, sanitation services, medicine and healthcare facilities, and schools without supplies. This occurs despite massive government spending on public services and infrastructure, because much of the spending ends up in the pockets of corrupt politicians.

He raised the example of a tourist ferry in Mosul, which was overcrowded, and sank in March 2019, resulting in the deaths of nearly a hundred persons. The government sacked local officials for the poor operation of the ferry, but local corruption is only a small part of the widespread corruption that exists at all levels.

Mr. Gawronski continued by stating that the national report says all cases of corruption are investigated by the Commission on Integrity. However, efforts towards fighting corruption lack credibility since the highest government officials are known to have participated in corrupt activities. This is recognized even by government officials, for example by Mr. Misha'an al-Juburi, an Iraqi politician and senior member of a parliamentary committee investigating official corruption, who said on television that they are all corrupt. This lack of credibility and widespread corruption are among the reasons for the ongoing protests of the Iraqi people and their demands for reform. Recently, thousands of civil servants were fired because of corruption. Mr. Gawronski acknowledged this step forward but asked why it takes a month-long protest to have this small result, adding that the persons fired were mostly in low positions.



He then described several issues that perpetuate the **failure to maintain critical infrastructures** across the country, including the lack of water and electrical systems, education, healthcare facilities, etc. Such failure is inherent even though the country gains billions from oil.

Mr. Gawronski evoked two cases: the one of Basra (southern of Iraq) and the one of Mosul. Poor water and sanitation quality led to hundreds of people being hospitalized in August 2018 in Basra. The clearly evident health crisis was denied even though local authorities issued a public advisory for people to boil their water before drinking it. A year later, over 100,000 people have been hospitalized and the water crisis remains. This situation belies numerous statements in the national report claiming the Ministry of Health and Environment has health-service strategies to contain infectious diseases and improve nutrition and food safety.

In Mosul, Mr. Gawronski explained that two years after the final offense against ISIL, critical infrastructure is still missing, such as hospitals, schools, electricity and water system; and that most of private housing and business buildings have been damaged or destroyed and not rebuilt. This situation led to hundreds of displaced and vulnerable people. The government claims they protect civilians, but many displaced people from Mosul have been victims of harassment and discriminatory treatment by militias and other armed groups associated with the Iraqi military and government.

Finally, Mr. Gawronski tackled the issue of the recent **protests** targeting corruption existing in the government for years. Initially, in 2018, the government seemed to take note of the protests without properly addressing the concerns and, instead, met the protests with violence. In 2019, and especially in October, the protests continued with stronger resistance and increasing demands. Once again, the government met protests with violence, using rubber bullets, tear gas (even aiming tear gas cans at the people and killing them in the process - using a non-lethal weapon as a lethal one). This led the protesters to ask for the government to step down and for the constitution to be re-written to eliminate the sectarian-based system of allocating power, which was put in place after the 2003 US invasion.

Moderator – Ms. Zaleski Mori

Ms. Zaleski Mori raised the importance of highlighting the government's position of denying cases of enforced disappearances, which is a major issue in Iraq as people continue to be missing. She thanked Mr. Gawronski for emphasizing the issue of the lack of water and sanitation, especially with regard to the situation in Basra, where thousands of people were hospitalized last year.

She introduced the second speaker, Mr. Tahar Boumedra, who served first as Chief of the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI) from 2009 to 2012. Then, he was appointed Advisor to the Secretary-General's Special Representative for Iraq. He has a deep knowledge of the involvement of non-state actors in Iraq and other Arab countries.

Presentation on Iran: Mr. Tahar Boumedra



Mr. Boumedra started his presentation on the human rights situation in Iran by stating it poses a challenge to international law.

First, he made general comments about the UN Human Rights Council, which operates under an environment of power politics. He explained that its rules and all the hard work they are doing is regulated afterwards, not by the fundamentals of human rights but by politics and at times the need for appeasement.

Mentioning that he lived in Iraq, Yemen, and the Middle East, what is seen on the ground is often completely different from what is discussed in the Human Rights Council and from the texts on human rights, as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. He underlined that it is very challenging to try to understand those texts in light of what goes on on the ground.

He said that the United Nations High Commissioner for Human Rights considers civil society and nongovernmental organizations to be their eyes and ears and explained that, being the eyes and ears of the High Commissioner, and indeed of the whole human rights system, civil society should be bold in addressing questions about human rights, whether outside or inside the UN. NGOs are especially trusted with the necessity of calling things by their name. In the UN, the use of diplomatic language is required and is important, but this should not take civil society away from calling things by their names. He stated that human rights defenders should adopt this rule of being bold, objective and professional.

Then, turning to the human rights situation in Iran, he said that this is a very challenging one for the Human Rights Council. The Islamic republic of Iran, since the beginning of the 1980s, was monitored by a special representative of the UN, meaning the UN has been concerned by the issue of Iran for decades. However, the UN does not seem to be aware of what is going on on the ground and does not address the root causes of the deteriorating human rights situation in Iran.

On the relationship between Iran and human rights, he explained that because of the basis the Islamic Republic of Iran has been built on, clashes exist between the fundamentals of human rights and international law, and the fundamentals of the Iranian constitution. Mr. Boumedra outlined that the constitution opens the way for serious human rights violations, and that it was inspired by the Shi'a Islam of the Ja'fari doctrine – as set in Article 4 of the constitution. The constitution stipulates that you cannot have access to or reach power in Iran unless you believe in the Shi'a Islam of the doctrine of the Ja'fari, and that the implementation of the Ja'fari doctrine rule, cannot be amended, as stipulated in Article 7. These provisions cause a challenge under international law as they are the root causes of discrimination. Mr. Boumedra portrayed the Iranian society as a highly civilized one, with a civilized history, which suddenly invented a State built on discrimination against women and racial discrimination. Those forms of discrimination led to the violations depicted in the reports of many NGOs and UN Special Rapporteurs.



Coming back to the work of the UN, Mr. Boumedra explained that UN Special Rapporteurs prefer to keep the door half open, instead of being too bold and risking the closing of the door. By doing so, Special Rapporteurs express their hope of educating the Iranian authorities on human rights by continuously addressing them, even though they know they are addressing a “deaf person”. He said that it always comes to the issue of which must prevail: does international law prevail over national legislation or the opposite? This point is constantly at the core of the discussion between the Iranian authorities and the UN since the 1980s, and no progress has been achieved yet.

To outline that lack of progress, Mr. Boumedra said that on one hand government's reports tend to put some emphasis on recent legislation on the protection of children, juveniles, women's rights, the respect of freedom of movement and of expression. And, on the other hand, the Special Rapporteur on Iran raises what has been reported to him concerning violations. In these dialogues, the Rapporteur hopes that there would be some progress; the Iranian authorities hope that the UN will be educated on Sharia law. Both stand firm on their positions. As Sharia law is a law that does not recognize the universality and indivisibility of human rights, the challenge between Sharia law and international human rights law remains intact.

After explaining this existing situation, Mr. Boumedra asked, what is the way out and how can we make the situation move from this decades-long challenge if no one wants to accept the other.

To put these questions in the framework of the UN, he recalled several articles of the UN Charter. Article 4 sets the conditions of membership of the UN, namely adhering to the principles of the UN, and being willing and able to implement them and incorporate them into the national legislation.

Articles 5 and Article 6 provide for possibilities of suspension of a member, or for the UN to take other measures against the State that does not accept these principles.

Which raised another question: why is the UN human rights system, which is aware of all the violations taking place in the Islamic Republic of Iran, not taking any action?

He recalled that the purpose of the Human Rights Council is not to force States to do things but to help the State and to encourage it; and that other institutions within the UN system can address the situation, if the State is proven to be violating the Charter. He regretted that no country has been addressed in application of the Charter. Nevertheless, Mr. Boumedra claimed that there is some progress, though slow, including the use of norms of *ius cogens* by Special Rapporteurs and the Security Council.

In the case of Iran, the policy of keeping the door ajar has not allowed any improvement. Under pressure of the international community, the Iranian authorities sometimes do open the door widely but always put a stopper, which Mr. Boumedra referred to as the “claw back clauses”. This means they give things with one hand and take back with another hand, for example by adopting legislation to protect human rights but then subjecting it to Sharia law.

He presented the case of the ratification of the Convention on the Elimination of All Forms of Discrimination against Women: the Iranian parliament discussed it and decided to ratify it, but the council of the experts blocked the ratification because the Convention is not compatible with Sharia law. This method is used against improving the applicable law. He further raised the cases of the penal code, amended in 2013, and the code of penal procedure, adopted in 2015, which show improvements but then have to be compatible with Sharia law.



Moreover, Mr. Boumedra pointed out that Sharia law is not entirely codified and is sometimes created by individuals from remote villages, based on what they believe is Sharia law, which poses serious challenges. He stated that as long as this sort of duality of the system exists, and as long as Sharia law prevails, we cannot expect miracles. Special Rapporteurs and other Mandate-Holders have had such academic discussions with the Iranian authorities, which claimed that the law applied is a question of sovereignty, making, in the words of Mr. Boumedra, “the question of due process of law a joke”. Indeed, a judge who has a very limited education will have

the authority, without any training on human rights or international law in general, to make rules. This needs to be addressed and cannot be ignored. As an example of human rights norms that are overstepped in Iran, Mr. Boumedra asked if, when the law provides for execution of minors under the age of 18, we can call this due process just because a national law says so.

To end his presentation, Mr. Boumedra stated that it is time for the Human Rights Council to raise these issues and address them. Some of the crimes committed, including torture and other cruel, inhuman or degrading treatment or punishment, amount to crimes against humanity, and thus accountability is needed. He regretted that despite reports from the Human Rights Council on violations in Iran, no mention is made of making people

accountable for torture. He asked why the Human Rights Council does these elaborative studies if then nothing changes on the ground. Therefore, to conclude, it is time to address the root causes of the issues at stake in Iran.

Questions and answers



One Iranian woman reacted to Mr. Boumedra's presentation by saying that the constitution of Iran disregards the obligations of the State under the International Covenant on Civil and Political Rights even though the convention has been adopted after the ratification of this Covenant.

She stated that Iran is currently working towards changing the constitution, but that the people of Iran have decided to aim for a peaceful transition, to not follow the path Iraq, Afghanistan, and Syria have followed. Coming back to the example of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), she mentioned that Iran is one of the six countries that have not ratified this Convention and that even the media is opposing the ratification of the Convention. She claimed that there is no will to change the system. She asked the panelists whether they have an idea of the budget for war given from Iran to Iraq and/or Iraq to Iran.

Another person asked about who is really in control in Iraq because the US helped set up the government, raising the issue of the control of the oil by the United States and the fact that the US is supposed to be a major contributor to the Office of the High Commissioner for Human Rights (OHCHR).

Where is the self-determination of the people as stated in article 1.2, he asked, when in fact the State is in control and not the people, and how to deal with that? What follow-up was provided after the invasion to create order..., obviously there was none! How do you work to get more accountability and more courage from the almost deaf UN Mandate-Holders?

He stipulated, questioning and answering, to draw the attention of the panelists to several points and to some of the open-ended questions he posed. Then he concluded his remarks by saying “you can see the writing on the wall... if United States owes a billion dollars to the UN, they do not want to say anything against the United States until they get the funding so that they can run the United Nations... and who else is going to pay for it?!” So according to him, it literally becomes a catch 22 situation for the UN and the OHCHR.

A third person asked what can be done by the international community for Iran to accept international law and the UN system of human rights?

The fourth person raised the recent protests happening in Iraq and asked what can be done by the UN and NGOs to put pressure on the Iraqi government to answer the demands of the people.



Mr. Boumedra said that, regarding the question about the war budget of Iran, no figures exist, as the government itself does not know. He mentioned that a chapter of the constitution covers the idea of an ideological army and refers to a verse of Quran saying that people should be prepared to face their enemies with all means necessary. Meaning having an open budget to spend whatever is necessary. The same constitution provides for the exportation of the Iranian revolution, the ideological army protecting and exporting the revolution.

On the second intervention regarding who was in charge of Iraq after the US invasion, Mr. Boumedra stated that when he was assigned in Iraq (from late 2008 to 2012) all services, goods, weapons, towers, etc.... every little thing (come what may into Iraq) was provided by Halliburton KBR, Inc., only. Halliburton KBR provided everything, including collecting bodies in the streets by contractors of Halliburton KBR. Even operations of the oil industry were by Halliburton KBR, as well as, money distribution to buy the tribes that expressed discontent; Halliburton KBR helicopters full of

dollars delivered the cash bribes.

Regarding how to make UN Mandate-Holders have the courage to go a bit further in implementing fundamental norms and principles, Mr. Boumedra explained that all UN staff receive special training on how to soften their language in a center in Italy where the training is done. The purpose is to teach the language of diplomacy in order to make sure the NGO language of advocacy is not imported to the UN system. That’s why the language used by activists outside the UN changes the minute they come into the UN! Sometimes, he contended, even their aspirations change!

In his view, there are plenty of things that need to be revised, and he referred to the UN Secretary-General’s programme to reform the UN, which was really ambitious, but then faced the reality and the bureaucracy. He reminded the audience that the UN is the biggest bureaucracy on earth, and that in addition it is plagued with power politics.

As often argued, Mr. Boumedra reiterated that States have no friends or enemies, but they have economic interests, therefore, the whole world can see how European States queue in in Tehran for getting their share of the cake. He concluded that this is why their representatives here at the UN talk about human rights but are a bit shy because their eyes are on their economic interests, and this is how it goes, the prevalence of interests over human rights.

Regarding the second intervention and the questions raised about accountability in Iraq after the US invasion, Mr. Gawronski mentioned that one of the things, which must be understood about the current situation in Iraq, is that from the time of the invasion, the US and the UK, which were the two main parties involved, completely reconstructed the State. What exists today has no relation to what Iraq was before: a stable country, with high level public services.

By completely restructuring the State, they essentially demolished its primary institutions, either by creating new ones or removing preexisting ones. The chaos [organized disorganization] encouraged corruption and encouraged the State to be the way it is today, divided on sectarian basis [divide to conquer]. He said that, while it is very interesting to hear the US and the UK speaking out on the corruption, they do not help to solve the problem.

Mr. Gawronski continued stressing that the suffering of the Iraqi people is the result of their interference, not just by invading the country, but also by creating the vacuum of what is now the sectarian basis upon which the government operates. By essentially deconstructing the primary institutions of the State, the invasion left a vacuum that has allowed the type of corruption and violence to occur and perpetuate on an ongoing basis. The way Iraq is today is a direct result of what the US and the UK did and have done since the invasion.



In response to the third question concerning what can be done by the international community for Iran to accept international law and the UN system of human rights, Mr. Gawronski explained the ongoing tension in the human rights movement, as a people versus State issue. With the Universal Declaration of Human Rights, the world began to identify people as individual holders of rights, who are the focus of concern and the ones holding States to account. State's power derives from, and should be directed towards, the benefit and service of its citizens, and that is how positive change usually happens. However, remaining tensions exist between power politics versus the rules and treaties that provide certain rights. The old system of States controlling everything is not how governing works anymore. Civil society should continue to find ways to encourage States to understand the importance of human rights and to remind them of the collective responsibility to safeguard the marriage between states and citizens.

On the last question regarding the recent protests happening in Iraq and what the UN and NGOs can do to put pressure on the Iraqi government to answer the demands of the people, Mr. Gawronski explained that now the protesters are putting pressure on the government and that they gathered much support. He stated that it is now up to the people in power.

To close this event, Mr. Boumedra added that unfortunately the Arab Spring led to more dictatorship and asked whether this "second round of the Arab Spring" will bring democracy. He urged everyone in the meeting that the role of NGOs and civil society is not to give up on this goal.

