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Human rights situations that require the Council's attention

Joint written statement* submitted by the International Youth and Student Movement for the United Nations, a non-governmental organization in general consultative status, International-Lawyers.Org, the Arab Organization for Human Rights, the International Organization for the Elimination of All Forms of Racial Discrimination, the Organisation Mondiale des associations pour l'éducation prénatale, the Union of Arab Jurists, non-governmental organizations in special consultative status, International Educational Development, Inc., 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.

[30 May 2016]

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

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Extrajudicial, Summary or Arbitrary Executions in Iraq Continue

Introduction

Iraq has witnessed a dramatic increase in extrajudicial, summary or arbitrary executions at the hands of the government and government-backed actors. Hundreds of people, in the past years as well as in more recent months, faced death penalty sentences while many others are sitting on death row right now, hopelessly waiting for their final day to come.

Death penalties are typically carried out in “batches”, the latest two of which were approved by the president on 31st January 2016 and later on 10th May 2016. Sources on the ground have confirmed that there are currently more than 500 cases of death penalties which have been sent to the presidency for approval. Most of these cases concern people who have been classified as terrorists, and therefore have received death sentences, which, according to Iraqi authorities, shall fall under paragraph 1, Article 4 of the 2005 Anti-Terrorism Law No.13, which recites the following:

“Anyone who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles¹ of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator.”²

This law has proved to have given the authorities a pretext to kill hundreds of people in the name of “anti-terrorist” campaigns, whereas, in fact, the evidence has largely suggested that the real motifs behind the executions are often based on political or sectarian ideologies.

Patterns of a dysfunctional judicial system

After the 2003 unauthorised U.S.-led invasion, the Iraqi judiciary underwent drastic structural changes applied by the Coalition Provisional Authorities (CPA): new judges were appointed based on their support for the invasion and national legal officers were replaced with US and British advisors that most of the times had little knowledge about the Iraqi judiciary system but were nevertheless allowed to perform high-responsibility roles. Additionally, a new Constitution was adopted under the pressure and interference of the occupying powers. These changes highly affected the effectiveness of the judicial system in Iraq and compromised its legitimacy.

Today, the Iraqi judiciary is only a façade. The armed forces are headed by militia leaders who arbitrarily arrest people claimed to be alleged terrorists and detain them in prisons or secret detention centres. The detainees are then subjected to heinous practices of torture, ill-treatment and psychological abuse, with the sole purposes of degrading them both morally and physically, and extrapolating false confessions which will then be used to build a case against them, that often, will result in a death sentence. This clearly goes against the legal principle of “innocent until proven guilty” and the jus cogens of Freedom from Torture. The report³ of the Office of the High Commissioner for Human Rights in collaboration with UNAMI Human Rights Office, published in February 2015, well highlights the patterns of such a highly malfunctioning legal system and shows how almost no investigation is launched by the court when the accused admits his/her confession was enforced under torture, despite this goes against Iraq’s own Penal Code no. 111 of 1969 which states that torture is a criminal offence punishable by imprisonment. The victims of such abuse rarely are given

¹ Article 2 of the 2005 Anti-Terrorism Law contains a list of 8 sub-articles listing those acts that shall be classified as terrorist, whereas Article 3 contains a list of 5 sub-articles listing those acts which are considered amongst the crimes against State security;

² http://www.vertic.org/media/National%20Legislation/Iraq/IQ_Anti-Terrorism_Law.pdf

³ *Report on the judicial response to allegations of torture in Iraq*, by United Nations Assistance Mission for Iraq (UNAMI) Human Rights Office and United Nations Office of the High Commissioner for Human Rights (Baghdad February 2015);

the opportunity to undergo a medical visit before the trial and present a medical report to the judge in order to support their cases.

Despite the constitutional guarantee of the right to defence during all stages of investigation and trial, and CPA Memorandum No. 3 (2003) providing any person accused the right to access a lawyer while in detention, persons accused of terrorism charges are generally held incommunicado during the entire investigation process. Detainees are, in most cases, neither informed of or allowed to exercise their basic rights of freely choosing their lawyers and having an effective defense before the court but they are convicted with death sentences instead, even whereas the crime committed (if any) is not worth execution. Such intentional policies worryingly undermine the principle of fair trial, which should be preserved at all circumstances.

The situation is worsened by the high level of corruption of the system as a whole, which once again threatens the correct functioning of the Iraqi judiciary, and, in turns hundreds of lives that are depending on it. The system is highly politicized and lacks independence, thus making it extremely hard to investigate into the crimes committed, as proved in the past.⁴

A further concern arises in regards to the absolute or partial lack of information provided by the Iraqi authorities when releasing their statements on the approval of more “batches” of executions: no exact number of how many persons are on death row is provided, nor their names or any kind of detail as of what their accusations are, therefore making it difficult for the different organizations and bodies to track the identities of the victims and determine the extents to which such illegal procedures are carried out.

Arresting, detaining and sentencing hundreds of individuals while denying the basic rights for a fair trial are a violation of basic human rights laws, which should be instead safeguarded and guaranteed as per articles 9, 10 and 11 of the Universal Declaration of Human Rights. Additionally, the lack of evidence to support the incarceration of those individuals who are detained on the basis of anti-terrorism claims constitutes further proof of the fundamental lack of the legality and adherence to international standards of the 2005 Anti-Terrorism Law.

The role of militias

Within the pattern of such a dysfunctional legal system, militias assume an increasingly concerning role in perpetrating the crime of extrajudicial, summary or arbitrary executions. Mostly wearing official uniforms, they work in collaboration with the armed forces, in most cases assuming absolute control over them. Many are the testimonies and evidence collected by different NGOs⁵ that show the link between the Iraqi government and the militias, and the atrocities committed by those.

The origins of militias must, again, be traced back to 2003 and the dissolution of the Iraqi army by CPA chief executive Paul Bremer. As mentioned above, those relevant figures that were supportive of the U.S. occupation had been assigned with the task of reforming the army, completely free from any obligation of adhering and complying with Iraqi military standards and procedures and meeting the compulsory academic requirements. The power most clearly handed up in the

⁴The international community has been calling on the Iraqi Government to reform the judicial system and raise investigations into the crimes committed for years. In these regards, it is relevant to mention the last Review of Iraq human rights during the 20TH Session of the UPR Working Group, in which many Member States recommended the country to address the issues related to the lack of independence of the judiciary and to reduce the use of the death penalty, such as in recommendation 127.22: “Reform judicial practices under its anti-terrorism law, so that the law cannot be used as a pretext for arrests without warrants and lengthy detentions without trial, in violation of due process rights”. For full report: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/84/PDF/G1424184.pdf?OpenElement>

⁵See for example: *IRAQ: Ethnic and Sectarian Cleansing In Diyala*, Geneva International Centre for Justice, January 2016 (for full report, click: http://www.gicj.org/GICJ_REPORTS/GICJ_Diyala_Report_EN.pdf); *Absolute Impunity, Militia Rule in Iraq*, Amnesty International, October 2014 (for full report, click: https://www.amnesty.org.uk/sites/default/files/absolute_impunity_iraq_report.pdf); *Iraq: Possible War Crimes by Shia Militia*, Human Rights Watch, January 2016 (for full report, click: <https://www.hrw.org/news/2016/01/31/iraq-possible-war-crimes-shia-militia>);

hands of those prominent militia leaders, totally backed and supported by the government, which have then been using it to pursue the government interests and carry out policies of discrimination against specific sects of society.

Encouraged by the increasingly present terrorism threat, militias have been able to carry out attacks on the population, arresting and executing people in batches in a totally arbitrary way, as well as destroying houses, shops, health facilities, mosques, schools etc... on purely sectarian grounds. Extrajudicial executions of well-defined parts of society at the hands of militias have become somewhat regular in Iraq, and seem to be part of a wider policy of ethnic cleansing and demographical change, which both constitute a grave breach of human rights as well as a crime against humanity.

Militias have also been assigned jobs within detention centres, where they are allowed to practice torture and other inhuman treatments against detainees, and, at times execute them prior to any kind of trial or legal investigation into their accusations.

Impunity

For years, pro-government actors have been able to carry out extrajudicial, summary or arbitrary executions facing total impunity, despite them being a grave breach in human rights legislation. Immunity for the perpetrators of violence is systemic: it is intrinsic to the system and it allows its very existence.

The corruption of the legal system, its politicisation, its inadequacy and its failure to meet international standards have resulted in the perpetual state of impunity for those who commits the crime of extrajudicial, summary or arbitrary executions, that Iraq is witnessing today. The lack of independence of the judiciary makes it impossible to raise the necessary investigations into such crimes, which, in turn, means that the perpetrators cannot be stopped. In other words, impunity fosters the dysfunctional judicial system, which, in turn, fosters impunity.

The situation within the country's state and judicial organs is one that has made a mockery of both the ideals of responsible governance and what is expected of a fully functioning and law enforcing judiciary, leaving many people with no choice but to resort to vigilantism in the interest of their own security. This is in response to the government sponsored militias' own defiance of and wrongful enforcement of the law.

The investigations, committees and inquiries led by the Iraqi authorities into crimes against humanity have yielded no tangible results after 13 years since the US led invasion. In this context, executions are only likely to increase in number, since it is reported that Iraqi government's determination is, not only to continue on the same path, but to accelerate and simplify the process of other death sentences.

Conclusion and recommendations

In light of the recent events involving the new waves of executions in Iraq, it is imperative that the international community, and, in particular, the UN Human Rights Council, acknowledges and recognizes through its June 2016 session that the situation ongoing in Iraq is of increasing international concern, as the crimes committed by different actors, predominantly government-backed, are in clear, absolute and undoubted breach of human rights laws.

Despite the numerous appeals made by different non-governmental organizations, as well as those made by a wide range of Member States on the last UPR Review of Iraq of November 2014, the authorities have not taken the necessary measures to end extrajudicial, summary or arbitrary executions in the country and to hold who committed, or perpetrates such crimes, accountable in front of the law.

We, NGOs Signatories to this statement recommend:

- The Iraqi government stops the current "batch" of executions and all future ones.
- Enough pressure is exercised by the international community over the Iraqi government to approve the dispatch of an international mission led by the United Nations to investigate all cases of death sentencing

already carried out and those awaiting implementation in a transparent and just manner in accordance with international standards, in order to stop this carnage and avoid that those who are not found guilty will be made guilty through coercive illegal means.

- The names, details and accusations of all of those executed and those sitting on death row are provided immediately and all their families acknowledged.
- The United Nations and relevant bodies raise an independent enquiry which shall be completely free from the interference of the Iraqi government to investigate on the perpetrators of the above reported crimes and hold those responsible accountable.
- Demanding the member states of the Human Rights Council to take all the necessary steps to appoint a Special Rapporteur for the human rights situation in Iraq.

The Geneva International Centre for Justice (GICJ) The Arab Lawyers Association- UK The Brussels Tribunal The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.
