

Universal Periodic Review of Human Rights For United Nations Iraq 2010

Transitional justice and the reality of prisons and prisoners

Prepared by:



Justice Network for Prisoners

This report talks about a show of rights of detainees in Iraqi prisons and suspension centers, it sheds light on a number of cases, most important ones are: continuation of torturing those detained, and tyrannical arresting procedures out of law or far from laws and legislations going with principles of human rights, hanging with the limits of law and outside the limits of law. It also talks about the reality of prisoners in Iraqi prisoners and rights which are still violated, and we end the report with suggestions about rights of rights of prisoners, and lessening the imposing of death penalty and guaranteeing protecting rights of prisoners in the prisons.

1- Torturing in the suspension and prison centers: The issue of physical and psychological torturing is still one of the hottest issues in Iraq, though the temporal Iraqi constitutions stated the physical safety of prisoners and not exposing anyone to torturing for any reason, torturing and scaring remained as they were most prominent features of security, intelligence and military intelligence agencies and party's headquarters. There are still thousand of people who suffered different kinds of severe treatment, and both kinds of torturing, the signs of these torturing on their body and clear in their behavior whether this was during before the fall of Saddam regime or after it. Burning by ironed, electric shocks, hanging on a door by the two hands tied in the back, taking out finger nails, cutting ears, and beating by wire cables were among the popular ways of torturing the prisoners, especially political prisoners.

The situation is getting worse day after day, the reason is absence of consolidation, and not having campaigns for advocating them, and Iraq did not approve the treaty of Fighting Torture, beating, severe, inhumane or insulting punishment until August 17, 2008 which was applied in 1987, till now there are acts of mental and physical tortures against prisoners.

The state of emergency helps occurrence of torture and working according to this statement led to neglecting many points about guarantees relating to arresting and suspending, most important of them are not need for judicial decision for arresting the suspect and keeping him for long times until presenting him to the court and having final decision in the file, the prisoner remains in legal custody how long the period was and this by depending on the law of National safety No:4 in 1965 published in Iraqi Newspaper of Waqae' number 1071 in June 2, 1965 and it is a law applied in Iraq, in which the third article says "confidential in the area or areas which include the announcement of emergency state the rules stated in the article...) In many cases the period of staying in custody took the period of the punishment keeping the person arrested, aside form those released because of having no evidence or proving innocence. The visit of Iraqi deputy Republic president to a number of prisons in 208 can be considered a clear proof for having many innocent persons in the prisons. The case of not having a law for compensating is the biggest guarantee for not moving the Iraqi parliament to accomplish it to prevent torture.

The information mentioned in our report comes from the following sources:

- 1- The reports of the organizations who are members in Justice Network of Prisoners during their visits to the prisons and places for keeping prisoners which they could reach to or interviewing those released from these places after being innocent or putting them in prisons after issuing their sentence, or interviewing the prisoners families.
- 2- Databases for non-members of the network such as the torture victims of the occupation and the Hard Land Aliens (HLA) and reports of the Human Rights Watch (HRW) and Amnesty International reports.
- 3- Reports of the members of the public prosecution (for the region) refers in its entirety to the poor conditions suffered by detainees and convicts, so the implications of the continuation of these violations.
- 4 - Press and what is published by the deterioration of conditions in prisons and jails.
- 5 - Some governmental decisions which they can stand on the size of the seriousness of the situation, as for example the decision of the Ministerial Council of the Region (Government of the Kurdistan

Region of Iraq) to close the prison (Akre) it was not fit for the filing of the convicts and the decree which governed the distribution of the prisoners on the other prisons in the region.

With regard to the government side, we did not note any actions that would end this human tragedy, but many promises to prosecute those involved in the torture and bring them to justice to get the penalty and just so far remained just promises, as we pointed out that the Iraqi government has ratified the Convention against Torture without causing these authentication any legislative amendments in their domestic laws in force, either to compensate, there is no basis in law for compensation in such cases can be built upon in the courts.

2. Arrests without warrants: Under the previous regime, officials did not need to resolutions prior to the arrest of any person, and it was enough to say that this person is a suspect in a case involving state security or the opposition or anti-Baath, or even rejecting the policy of the commander to be highest law authority in terms of power to arrest any people and even execution to the public, and it did not differ very much after the fall of the regime, but only the names had been held by a slight difference, it was sufficient to say that this person is a terrorist or from the ousted regime or opposition to the current situation or a threat to the multinational forces to deliver in prison, that no one even has the right to ask about it, and many are living examples who were thrown in jail and kept for years, and were fortunate and released without facing a clear charge.

Although the international conventions forbid that any person arrested without a warrant in advance, except in a limited number of exceptional cases, if the crime was witnessed or the fear of the spectacular escape of the person, we list them as stated in Article IX of the Universal Declaration of Human Rights, which states (it is not allowed to arrest or arbitrary detention or exile any person), it has been reiterated in the International Covenant on Civil and Political Rights and article 9, paragraph 1, where the text (everyone has the right to liberty and security of his personality. It is not allowed to be arrested or detained arbitrarily. No one shall be deprived of his liberty except on grounds provided by law and according to the procedure to be in it) and even in the Iraqi Constitution in 2005 which enshrined in Article 15 (Everyone has the right to life and security and freedom, it can not be deprived of such rights or have them restricted except in accordance with the law, at the a decision issued by a competent judicial authority)), as well as provided for in Penal Procedural Law No. 23 of 1971, as amended, and article 92, stating (not allowed to arrest any person or arrested except under an order issued by a judge or court or in the circumstances permitted by the law), but declaring a state of emergency and anti-terrorism law (for Iraq, the Federal Anti-Terrorism Act No. 13 of 2005 and

published in Iraqi Newspaper of Alwaqae' Issue / 4009 issued on 11/9/2009), and anti-terrorism law in Kurdistan Region of Iraq carries No. 3 for the year 2005 has been published in the newspaper Waqae' al Kurdistan, in the number 61 in 16/7/2006), became fully operative by more than the other laws which extinguished all the guarantees of the articles mentioned above, and the exception became the rule and rule became exception to that, according to this law and what is empowered from the authorities that the security agencies can arrest any person or group of persons at any moment when there are doubts about their actions (although the law explains that the uncertainty is in the interest of the accused) and this law enable them to enter any place and at any time and in the manner they decide during raid, without referring to the general rules for the implementation of the arrest or the arrest of any suspect, and that, against the Constitution with regard to the inviolability of homes and religious sites , as well as stated in the Code of Criminal Procedure what concerns inspection and entry into homes, as stated in Articles 72 to Article 91 of the law, even if the law prevent the implementation of arrest warrants, at times only in exceptional circumstances, for example, prevent the implementation in the period between the eighth in the evening to six in the morning and also during holidays and special occasions and religious rites in the obituary, but a state of emergency and the Law the fight against terrorism does not pay any importance to these materials.

2- Death Penalty in accordance with the law and outside the scope of the law : Iraq is in the past and even now at the forefront of sentencing and carrying out the death penalty, the penal laws in force in Iraq full of materials that imposes the death penalty, despite a halt to some of the old paragraphs and make adjustments, but that the Iraqi government added many of the paragraphs, which impose the death penalty, especially emergency law, although the text of the Constitution stipulates that the right to life is one of sacred rights.

Here we mean, executions within the framework of a purely legal and not executions taking place outside the framework of the law, we do not see them, but dead bodies left lying in the river and remote locations and without the government's move to nothing to prevent these crimes.

And Iraq has no intention to suspend the death penalty in the short term or long term, despite numerous claims to stop work even on until the level of governmental bodies, including attempts of the Ministry of Human Rights to reduce the cases which are punishable by death.

In Iraq before 2003, the declared figures were not actual figures for cases of imposing and carrying out

the death penalty, in addition to what executions carried out in the security and intelligence services and in the battlefields of deserters from the service.

Even after the fall of the former regime, the published figures are not real numbers of cases of imposition of the death penalty, so depending on the figures published in the pages of the Internet and especially on the Amnesty and thrown bodies in the rivers and dams, it can be said that the executions of up to hundreds per month between (execution under a court order in addition to the executions carried out outside the scope of the law) on the grounds that this does not absolve the government of the responsibility to provide security for citizens.

4. The rights of detainees in prisons

Lack of prisons and detention centers to the lowest levels of service agreed by the international community at the announcement of the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on Crime Prevention and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council resolution 663 C (D-24) of July 31, 1957 and 2076 (d -62) 9 of 13 May 1977 and it was contrary even to the materials of national laws and regulations governing the prison file, so the buildings are still used as places for the filing of convicts and detainees and mostly unsuitable for the filing the human being for many reasons, including: -

1 - in terms of block distribution.

2 - in terms of the qualifying program.

3 - in terms of seriousness of crime.

And the biggest problem is that these prisons are still not valid in terms of buildings, and suffer from significant overcrowding of the detainees, and the lack of rehabilitation programs, and the absence of ratings class (unless they relate them to sex and age), and there are problems of disease outbreaks in prisons and in particular skin diseases, prisons are still not able to provide the opportunity to exercise other rights of the applicant, such as the right to study (except for the primary stages), and there is a problem meeting the family (legal privacy) there is a problem about home leave, there are problems of religious practice for non-Muslim (Christians and Yezidi and Saebean and) where there is no prevention, but the non-virtual aims to gain the proper ground for them to prevent the exercise of their rites of their religion.

With regard to private prisons (prisons of intelligence services - intelligence organizations- the party - the prisons of the security services) it is noted that there are agencies not much different than before, The prison of Ministry of Interior and what revealed of crimes of torture were not less than what took place during the former regime, and the report published on prisons of Kurdish security by (Human Rights Watch) was indeed a black spot on the services mentioned in the report, especially with regard to cases of torture and not to allow the relatives and lawyers of detainees to visit the prisoners and the practice of physical and psychological torture them to extract confessions.

After the fall of the former regime other private prisons emerged, including:

- 1 - The jails of the multinational forces and what revealed of crimes does not need a comment. In the use of electric shocks and eroding the bodies by dogs, beatings and sexual abuse of males and females and jailing in detention for years, even without a specific charge.
- 2 - Prisoners of the parties; practices were not much different from what they were conducted under the former regime of torture, murder, assault and a ransom demand.
- 3 - The detention of the terrorist forces. With the exit of a few but what is told about what was going on there, where the least that can be described by the brutality in dealing with the human beings who Allah respected and preferred above all His the creatures.

5. The conditions of prisons and prisoners in the Kurdistan Region of Iraq:

- 1 - There are prisons called public Reforming and belongs to the Ministry of Labor and Social Affairs of KRG, there is a central prison in Erbil, and there is a reforming one for women, juveniles, and the same applies to the province of Dohuk and Sulaymaniyah, in addition to the prison of Sousse which is located in the province of Sulaymaniyah.
- 2 - There are legal problems with regard to juvenile justice, as the case in Iraqi law is that everyone not completing the fifteenth years of age, but the problem so far stuck between the courts in the province of Sulaymaniyah and Erbil to determine the age of criminal responsibility, in Sulaimaniyah the old article is applied, it has been identified by the age of criminal responsibility to be in nine years, and in Arbil the amended is applied, which was conducted on the article and the age of criminal responsibility has become one eleven years, in the sense if it is committed (a child) crimes of murder one in Erbil and one in Sulaymaniyah, this event will be punished by law in Sulaymaniyah not by the law of Arbil.

3 - Prisons of the Interior Ministry and the ambiguity surrounding these prisons, and organizations are not allowed to visit them and procedures are the strictest of confidence and most of the prisoners and the detainees are those who are suspected of involvement in terrorist acts and actions that harm the higher interests of the Region and there are notes about the quality of dealing with the detainees, Human Rights Watch published a report about the quality of the treatment behind the walls of these prisons.

4 - There are detentions centers in all police stations.

5 – The prisons lack in its entirety to harmonize with the laws of international standards for the treatment of prisoners.

6 - Prisons lack the most the existence of training programs for rehabilitation and reintegration of the sentenced to society.

7 - Prisons lack places to ensure health and safety of the applicant.

8 – There are reported cases of sexual harassment in some prisons and there are cases of beatings in other prisons and exercise so far solitary confinement to punish prisoners in many prisons.

9 – There are no class categories, so the thief is filed with the murderer and drug dealer with a bribe, and prisons are, as were, a school of crime rather than repair and rehabilitation, evaluation, and the reintegration center of the person to the community

Recommendations:

1 - We recommend that the Iraqi government to ratify the international conventions and protocols on the field of penal justice and ensure respect for the content of treaties by including the rights in these treaties in the Iraqi national legislation and in particular about (Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111 on 14 December 1990) and (United Nations Basic Principles on the Independence of the judiciary and were approved by the Seventh United Nations Congress on Crime Prevention and Treatment of Offenders held at Milan from 26 August to 6 September 1985, and adopted and published to the public under General Assembly resolutions 40/32 of the United Nations of November 29, 1985 and 40/146 of 13 December 1985), and (the Optional Protocol to the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A United Nations (d -21) of 16 December 1966 and which entered into force on 23 March 1976), and (Standard Minimum Rules for the Treatment of Prisoners, which adopted the first United Nations Conference on the Prevention of

Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council resolution 663 C (-24) of July 31, 1957 and 2076 (d -62) 9 of 13 May 1977), as well (United Nations Rules for the Protection of Juveniles Deprived of their Liberty recommended adopting it by the Eighth United Nations Congress on Crime Prevention and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, as Adopted and Proclaimed by General Assembly resolution 45/113 of the United Nations on 14 December 1990), and also (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power , Adopted and Proclaimed by General Assembly resolution of the United Nations 40 / 34 of November 29, 1985 (f) Declaration on the Protection of All Persons from Enforced Disappearance, adopted and proclaimed by General Assembly resolution 47/133 of the United Nations of 18 December 1992), and (Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to work on abolition of the death penalty, which was adopted and opened for signature, ratification and accession by General Assembly resolution 44/128 of the United Nations on 15 December 1989 and which entered into force on July 11, 1991 (f) safeguards to ensure the protection of the rights of those facing the death penalty adopted by the Economic and Social Council resolution 1984/50 of 25 May 1984) and also required Iraq to take serious steps to respect the content of the Convention against Torture completely, not just in form. And also to compel Iraq to enter into any other agreement not mentioned here and that would provide the desired justice for prisoners in terms of independent and impartial judiciary is competent in terms of modern laws which reflect the principles of respect for human rights as the purpose of the whole existence of the rights and also respect for human rights held in the prison, according to international standards as agreed by the minimum rights that can not get out of this level or reduce in any form.

2 - We recommend the return of the constitutional provision which was removed from the draft of Iraqi constitution in 2005 where there was an article 44 which had provided for Iraq's commitment to international treaties and conventions.

3 - To harmonize national legislation with international standards from the Constitution down to the subsidiary legislation and the laws of the prison administration and the instructions issued in this regard and the completion of what is found from a lack of legislative protection of detainees in the prisons.

4 – A constitutional legislation to freeze and then abolish the death penalty in the penal laws in Iraq and replace a life sentence not covered by a pardon or reduction or conditional release.

5 - Forming a committee to research and investigate the perpetrators of torture in Iraqi prisons and those involved in executions, extrajudicial and prosecute all those involved in this matter, both issued

an order or hide the facts or to participate in all forms of torture.

6 - Work to find or build suitable premises for the filing of the convicts and the inmates, taking into account where as stated in the Standard Minimum Rules for the Treatment of Prisoners and international standards on prison conditions and prisoners.

7 - Working on the development of training programs and a calendar to work on convicts to return them to the community as good members not as graduates from a school crime so as not to make prisons as only penal institutions, but institutions are realized by the spirit and purpose of punishment.

8 – Working quickly to form a law for compensating those whose liberty was taken away from them unjustly, the compensation to include, financial compensation suitable with the liberty deprivation, a psychological compensation too in a way to publicize their innocence of the charge and in guaranteed means.

9 - Ensure access to Iraqi human rights organizations to impose control over prisons by allowing them to sudden visits to detention centers and prisons, and listen freely to detainees, and allow those who have been subjected to torture or violation of their rights to submit complaints.

Justice Network for Prisoners: Is a voluntary association of Iraqi non-governmental organizations, independent, non-profit organization working in the field of human rights and the monitoring and control of the rights of prisoners and detainees, in accordance with the internal and international standards about rights of prisoners and detainees have been formally announced in April 10, 2007 in Amman / Jordan after the ratification of its rules of procedure on the same day. The network consists of non-governmental organizations required to be officially registered organization according to the laws regulating the affairs of Iraqi non-governmental organizations and the Organization agrees in writing to the rules of procedure of the network and the activity of the Organization in line with the goals and objectives of the network in accordance with its internal organization and the enjoyment of neutrality and independence. The number is of 29 Organizations of continuous distributed in seven groups, Report on the Situation (15) on they are:

1	First	Public Aid Organization	Erbil
2	First	Hareekar NGO	Duhok
3	First	Center for Democratic Development and Human Rights	Sulaimania
4	Second	Mautini Org for Culture of Human Rights	Saladdin
5	Third	Hammurabi Organization for Monitoring Human Rights and Democracy	Saladdin
6	Third	Center for the revival of Iraqi individual	Thiqar
7	Fourth	Women's Rights Center	Muthana
8	Fourth	Islamic Association of Iraqi Human Rights	Qadisiya

9	Fourth	Human Rights Watch Society	Kut
10	Fifth	The Iraqi Organization for Human Rights Coordination	Baghdad
11	Fifth	Nour al Rahma Association for human rights	Baghdad
12	Fifth	Rafidaen Women Alliance	Baghdad
13	Sixth	Control Association of Iraqi Human Rights	Karbala
14	Sixth	Rasid center for Human Rights	Najaf
15	Sixth	Humanitarian Organization for the Defense of Democracy and women's rights	Babil

The objectives of the network are spreading a culture of rights of prisoners and detainees, monitoring and documenting violations in places of detention and prisons. And seek to provide legal assistance to detainees and prisoners. And seek to improve the conditions of detainees and prisoners and gaining justice imprisonment. And seek to rehabilitate and educate the bodies supervising the administration of prisons and prisoners. And make proposals to amend the Iraqi legislation in conformity with international standards for the treatment of prisoners. And monitor the implementation of national and international standards in the treatment of women and juveniles in detention and prisons.

In organizational terms, the network consists of seven coordinating groups distributed over the eighteen provinces of Iraq and all the coordinating groups comprises a number of non-governmental organizations and the total currently operating in the network are 29 organizations (and there are more than 15 organizations interviewed and initially accepted and are awaiting approval of the Assembly, and brings the total of Total to 44 organizations.

The most important activities carried out by: --

A - Visits to prisons and detention centers and places of detention (except prisons under the authority of the multinational forces).

B - The publication of numerous reports on the conditions of prisons and prisoners in Iraq.

C- Giving advice and legal assistance to many of the prisoners.

D - Organizing of many seminars talking with prison officials.

E - A number of internal meetings to discuss the situation of prisons in Iraq.

F - Field visits to prisons in other countries to acquire skills in writing reports, monitoring and documentation.

G - The publication of several posters and brochures that would raise awareness of the rights of prisoners.

H - The opening of a website entitled www.jnpiraq.net

I - Opening phones and advertising in most provinces (hotline) to receive calls requesting free legal consultations