

**Iraq's Universal Periodic Review
Mid-term Report**

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LONDON LEGAL GROUP

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Introduction

This submission outlines the London Legal Group's concerns in relation to the following human rights and related issues in the Republic of Iraq:

- (a) Discrimination against women and girls;
- (b) Death Penalty and Administration of Justice;

(c) Torture and ill-treatment of those detained by agents of the state; T

- (d) Freedom of expression

The London Legal Group's concerns are based upon Iraq's obligations contained in a number of international treaties and conventions signed and ratified by the Republic of Iraq, and in domestic legislation, all of which are identified during the course of this submission.

Areas of concern	Action taken by Iraq
<p>Discrimination against women and girls</p>	<p>The Convention on the Elimination of All Forms of Discrimination Against Women 1979 was ratified by Iraq in June 1986. However, Iraq has made a number of reservations upon their ratification of the CEDAW.¹ Firstly, women have few legal provisions and protection mechanisms to shield them from domestic violence. Iraq's Penal Code includes provisions on physical assault, but it lacks any explicit mention of domestic violence. While sexual assault is criminalized, article 398 provides that such charges will be dropped if the assailant marries the victim.² Moreover, marital rape is not criminalized in Iraq.³ Official statistics show that there was an increase in the rates of violence against women, female suicide and femicide in Iraq's Kurdish region between 2014 and 2015, with the number of domestic violence complaints rising by nearly 800 and cases of suicide by self-immolation increasing by more than two dozen. Accordingly, in February 2015, it was reported that figures from the Kurdistan Health Ministry show that in the last five years over 3,000 women have been killed as a result of domestic violence in the Kurdistan Region. It is likely that the real number is higher.</p> <p>Honour remains as a mitigating defence to a charge of murder under the Iraqi Criminal Code, which has resulted in the condoning of domestic violence incidents amongst many Iraqis.⁴ It remains a serious physical threat to females in Kurdistan region of Iraq as well as Iraq. A survey of hospitals in Kurdistan's three main provinces in 2015 shows that 386 women were admitted to local clinics for burn injuries in just</p>

¹ They have reserved the right not to be bound by article 2, subparagraphs (f) and (g), of article 9, paragraphs 1 and 2, or of article 16 of the Convention.

² Human Rights Watch (31 May 2016), Iraq – events of 2016, available at: <https://www.hrw.org/world-report/2017/country-chapters/iraq> (Accessed on 17 March 2017)

³ <http://www.law.cuny.edu/academics/clinics/hrgj/publications/ICCPR-Iraq-Shadow-Report-GBV-ENG-PDF.pdf>

⁴ Office of the High Commissioner for Human Rights/UNAMI, Report on Human Rights in Iraq, December 2011 http://www.ohchr.org/Documents/Countries/IQ/IraqUNAMI-OHCHR_HR_Report2011_en.pdf pg.25 Accessed 22 January 2014

	<p>the first quarter of that year. As a result, a total of 57 women have died due to the severity of the burns during the same period.⁵</p> <p>Another major concern in Northern Iraq, in particular, is the process of Female Genital Mutilation 'FGM'. The Family Violence Bill of 2011 banned FGM in the Kurdistan Region of Iraq (KRI); however, there is still a lack of successful prosecutions under this law. There is no law specifically against FGM outside of the KRI because the Iraqi government denies that it occurs outside the KRI. Consequently, article 412 of the Iraqi Penal Code, which penalises any person who 'mutilates human organs for the purpose of inducing damage and distortion', has never been applied against any person who has practised FGM.</p> <p>The expansion of the control of the armed group calling itself Islamic State (IS) in regions of Iraq and Syria has led to an extreme deterioration of the situation in general, and in the rights of women in particular. Women adherents of the Yazidi/Ezidi religion have been particularly targeted and have been abducted from their communities and placed in conditions of sexual slavery.⁶ An estimated 3,500 Yazidis captured in Iraq remained in IS captivity in Iraq and Syria and were subjected to rape and other kinds of torture, such as assault and enslavement. Those who managed to escape or were freed after their relatives paid ransoms received inadequate psychological and material support. Several committed or attempted suicide.</p> <p>On a positive side, women workers have seen some improvement at the workplace. The law clearly defines sexual harassment and specifies</p>
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⁵ Ekurd Daily (3 May 2015), For Kurdish women, self-immolation still major challenge in Iraqi Kurdistan, available at: <http://ekurd.net/for-kurdish-women-self-immolation-still-major-challenge-in-iraqi-kurdistan> (Accessed on 17 March 2017)

⁶ The Assembly of Delegates of PEN International (13-6 October 2015), *Meeting at its 81st World Congress in Quebec City*, available at: <http://www.pen-international.org/wp-content/uploads/2014/10/26.RESOLUTION-Kurdish-Women.pdf> (Accessed on 17 March 2017)

	<p>penalties for perpetrators. Women union activists led their unions in fighting for this protection.⁷ (In effect from 1 February 2016).</p>
<p>Death penalty and administration of justice</p>	<p>The death penalty is a violation of the right to life as enshrined in the Universal Declaration of Human Rights and other international human rights treaties, to which Iraq is a State party, and is considered to be the ultimate cruel, inhuman and degrading punishment. Thus, during 2010 UPR, Iraq authorities have been asked to consider a moratorium on the death penalty with the view of abolishing it. Human Rights Committee recommended safeguards for those facing the death penalty.</p> <p>In response, Iraq maintains that the executed individuals committed terrorist acts and have been convicted under the Anti-Terrorism Law No. 13 of 2005. Nonetheless, The High Commissioner was concerned at the broad scope and wide application of article 4 of the Anti-Terrorism Law, which envisaged the death penalty for a wide range of terrorism-related acts, without meeting the threshold of “most serious crimes”.</p> <p>Furthermore, Iraq’s constitution also prohibits clemency or a pardon in terrorism cases, in violation of international human rights norms that grant a person sentenced to death the right to seek clemency, pardon, or commutation of sentence at any time.⁸</p> <p>According to Amnesty International Report in 2016/2017, courts sentenced dozens to death by hanging because of the increased public and political pressure on the authorities to execute “terrorists”, which mounted following a suicide bombing in the Karrada neighbourhood of Baghdad on 2 July 2016 that killed nearly 300 people, mostly civilians. As a result, President Masum ratified a law amending the Code of Criminal Procedures to limit the possibility of retrials; aimed at</p>

⁷ T. Connell (23 March 2016), *Women make historic gains in new Iraq Labor law*, available at: <https://www.solidaritycenter.org/women-make-historic-gains-in-new-iraq-labor-law/> (Accessed on 17 March 2017)

⁸ Human Rights Watch (22 June 2015), *Iraq: Don’t ease death penalty process*, available at: <https://www.hrw.org/news/2015/06/22/iraq-dont-ease-death-penalty-process> (Accessed on 17 March 2017)

	<p>speeding up the execution process. This resulted in the sentencing to death by the Iraqi courts of 92 offenders in just six weeks in 2016.⁹</p> <p>On the other hand, the death penalty in the name of state security was used on 20 January 2017 when 31 men were executed. All were convicted of taking part in the attack at Speicher military camp near Tikrit in June of 2014 that left 1,700 military cadets dead. The Islamic State claimed responsibility for the attack. Allegedly, the men executed confessed to participating after being tortured. Amnesty International claims that the trials for the men were speedy and deeply flawed.¹⁰</p> <p>It is possible to state that detainees under Anti-Terrorism Law lack procedural guarantees, including a right to a fair trial. The defendants are routinely denied the rights to adequate defence to not incriminate oneself or confess guilt and to cross-examine prosecution witnesses. Courts continued to admit into evidence torture-tainted “confessions” without ordering investigations into defendants’ claims or referring them for forensic examination.</p>
<p>Torture and ill-treatment of those detained by agents of the state</p>	<p>Iraq ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 7 July 2011. However it has yet to sign and ratify the Optional Protocol to the UN Convention against Torture (OPCAT).¹¹</p> <p>Following the UPR’s 20th session, a number of states recommended Iraq to conform to international standards in terms of torture and ill-treatment of those who are in detention centres. In particular, no response was given to Argentina’s recommendation to accede to the OPCAT.</p>

⁹Cornell Law School (26 Nov 2013), *Death penalty Iraq*, available at: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=iraq> (Accessed on 17 March 2017)

¹⁰ Amnesty International (24 January 2017), *Iraq: Execution of 31 piles injustice on top of bloodshed*, available at: <https://www.amnesty.org/en/latest/news/2017/01/iraq-execution-of-31-piles-injustice-on-top-of-bloodshed/> (Accessed on 17 March 2017)

¹¹ OPCAT would provide for the establishment of an effective and independent regime for the inspection of places of detention with a view to more effectively ensuring the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

	<p>The Iraqi authorities have been heavily criticised by Amnesty in its reporting throughout 2016. In its annual review, the human rights organisation said that torture and other ill-treatment in Iraqi prisons and detention facilities controlled by the interior and defence ministries “remained rife”.¹²</p> <p>The most frequently reported methods of torture used against detainees were beatings on the head and body with metal rods and cables, suspension in stress positions by the arms or legs, electric shocks and threats of rape of female relatives. Torture appeared to be carried out to extract “confessions”, obtain information and punish detainees. As a result, several detainees died in custody as a result of torture.</p> <p>In February UNAMI reported results of its study of government responses to torture allegations. In 17 trials UNAMI monitored from January to June 2014, 28 defendants alleged that police tortured them, and in each case the judge failed to order an investigation.¹³</p> <p>On 29 January 2017, Human Rights Watch stated that 17 children detained since July 2016 by the Kurdistan Regional Government on suspicion of involvement with the IS. Human Rights Watch claims that government security tortured or abused them in detention. The children, with ages between 11 and 17, alleged that Asayish, the KRG’s security forces, held them in stress positions, burned them with cigarettes, punched and kicked them, beat them with plastic pipes and cables, and shocked them with electricity. Moreover, none of the children had access to a lawyer during interrogation, and most had not been permitted to contact family members since their detention, in some cases for months.¹⁴</p>
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¹² Amnesty, <http://www.globalgeopolitics.net/2017/02/24/iraq-government-shia-militias-daesh-all-committed-war-crimes-in-2016-amnesty/>

¹³ State Gov (2015), *Iraq 2015 Human Rights Report*, available at: <https://www.state.gov/documents/organization/253137.pdf> (Accessed on 14 March 2017)

¹⁴ Human Rights Watch (29 January 2017), *KRG: Children allege torture by security forces*, available at: <https://www.hrw.org/news/2017/01/29/krg-children-allege-torture-security-forces> (Accessed on 14 March 2017)

	<p>Human Rights Watch interviewed dozens of women who said they were raped, forced to sign confessions and had family members threatened whilst in detention.¹⁵</p> <p>Many of the detainees are held in prolonged incommunicado detention, in some cases in conditions amounting to enforced disappearance, in facilities controlled by the Ministries of the Interior and Defence or secret detention centres, where they were interrogated by security officers without the presence of any lawyer.</p> <p>Amnesty International claims that more than 1000 detained at Anbar counter-terrorism centres are held without charge in inhuman conditions.¹⁶</p> <p>There are allegations that flagrant violations are being committed against detainees in prisons south of Nasiriyah and Hit in the Taji district north of Baghdad and the Baqubah prison in the Diyala province. The sources pointed out that “the common factor between the four prisons is food deprivation, where many prisoners have lost weight and their eyes seemed sunken due to severe weakness. Many of them suffer from chronic illnesses, as well as psychological fatigue.”¹⁷</p>
<p>Freedom of expression</p>	<p>During the UN UPR talks, international authorities were concerned by the extent to which the legislative framework in the ‘KRG’ of Northern Iraq allows for violations of freedom of expression, although Article 38 of the Constitution of the Republic of Iraq enshrines this important right.¹⁸ Article 46 allows restrictions to the right of freedom of</p>

¹⁵ Sky News (6 February 2014), *Iraqi women tortured and raped in detention*, available at: <http://news.sky.com/story/iraqi-women-tortured-and-raped-in-detention-10418405> (Accessed on 14 March 2017)

¹⁶ Amnesty International (3 May 2016), *Iraq: more than 1000 detained in shocking conditions at Anbar counter-terrorism centres*, available at <https://www.amnesty.org/en/latest/news/2016/05/iraq-more-than-1000-detained-in-shocking-conditions-at-counter-terrorism-centres-in-anbar/> (Accessed on 14 March 2017)

¹⁷ Memo Middle East Monitor (13 March 2017), *Iraqi detainees tortured in prison*, available at: <https://www.middleeastmonitor.com/20170313-iraqi-detainees-tortured-in-prison/> (Accessed on 14 March 2017)

¹⁸ Article 38 states “The State shall guarantee in a way that does not violate public order and morality: Freedom of expression using all means. Freedom of press, printing, advertisement, media and publication.

	<p>expression to be imposed “by law or on the basis of it, and insofar as that limitation (...) does not violate the essence of the right or freedom”; hence creating a significant leeway for restrictions to be imposed which are not permitted by international law¹⁹.</p> <p>Although the Iraqi constitution explicitly protects freedom of speech and expression, the national law governing the media is vague and redundant.</p> <p>Iraq is a signatory to the International Covenant on Civil and Political Rights of 1966 (ICCPR). Article 19(2) of the ICCPR entitles “everyone the freedom of expression” including “the freedom to seek, receive and impart information and ideas of all kinds.” However, the Iraqi Criminal Code No. 111 of 1969 not only makes it illegal, but also criminalizes and unduly punishes, varieties of expression valid under the Iraqi Constitution and the ICCPR. Promoting, publicizing or commenting on certain subjects may lead to punishments up to life imprisonment.²⁰</p> <p>There are continuing concerns about journalists being targeted for prosecution, violence and in some instances arbitrary arrest on account of their reporting.²¹ The Committee to Protect Journalists found that Iraq had one of the world’s highest murder rates for journalists in 2015, with at least five being killed during a year in connection with their work, and many others are receiving threats. Bloggers and other information disseminators are also at risk.</p>
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Freedom of assembly and peaceful demonstration, and this shall be regulated by law”.

¹⁹ Under Article 19 of the ICCPR, freedom of expression may be restricted only under three cumulative conditions:

The limitation must be provided by law;

The limitation must pursue a legitimate aim; and

The limitation must be strictly “necessary”.

This ‘three-part test’ is an essential safeguard to abuse of state power; any public authority or official seeking to restrict the right of freedom of expression should ensure that all three conditions are met.

²⁰ NGO Coordination Committee for Iraq (16 September 2012), *Mechanisms of Deteriorating Civil Liberties in Iraq*, available at: <http://www.ncciraq.org/en/publications/studies/item/965-mechanisms-of-deteriorating-civil-liberties-in-iraq> (Accessed on 21 January 2014)

²¹ Office of the High Commissioner for Human Rights/UNAMI (May 2012), *Report on Human Rights in Iraq:2011*, p.8, available at http://www.ohchr.org/Documents/Countries/IQ/IraqUNAMI-OHCHR_HR_Report2011_en.pdf (Accessed 14 March 2017)

	<p>After the government declared a state of emergency amid the Islamic State (IS) offensive in 2014, the Communications and Media Commission issued “mandatory” guidelines for media “during the war on terror”—a series of vague stipulations that placed arbitrary restrictions on coverage. One provision required the media to “hold on to the patriotic sense” and to “be careful when broadcasting material that ... may express insulting sentiments” or does “not accord with the moral and patriotic order required for the war on terror.”²²</p> <p>TV channels have been closed without court orders, for example, in April 2016, the Iraqi Communications and Media Commission shut down Al-Jazeera’s Baghdad bureau, accusing the channel of “incit[ing] sectarianism and violence”. In March 2016, the authorities closed the Baghdadia TV Channel’s offices in Iraq purportedly for operating illegally without a licence. The channel had published articles on government corruption and pro-reform protests, and had been subjected to several closures in recent years.</p> <p>Media workers Saif Talal and Hassan al-Anbaki from the al-Sharkia TV channel were shot dead on 12 January 2016 in northwestern Diyala while returning from covering a suicide bombing in Muqdadia and revenge attacks by militias targeting Sunni Arabs. The channel accused unidentified militiamen, but the authorities failed to adequately investigate the killing of the media workers.</p>
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Conclusion

The human rights situation in Iraq remains a matter of serious concern despite earlier recommendations from the UPR and opportunities for improvement. It is clear that there is still a very long way to go before it can be claimed that Iraq meets the human rights standards set out in the international human rights instruments of which it is party to. To

²² Freedom House (2016), *Iraq*, available at: <https://freedomhouse.org/report/freedom-press/2016/iraq> (Accessed on 14 March 2017)

begin with, constitutional reforms are necessary to bring its national legislation in line with its obligations under international law.

Iraq, due to its recurrent application of the death penalty and due to its mass extrajudicial executions of prisoners, is amongst the world's worst violators of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment, both recognised in numerous international human rights treaties, namely the Universal Declaration of Human Rights.

Investigations must be made particularly with regard to allegations of torture and ill treatment against those who are detained as well as gender based violence perpetrated against females. Those who commit crimes should be held accountable and victims should be entitled to effective remedies. Moreover, protection for journalists should be provided as well as for the general public in terms of exercising their freedom of speech.

The London Legal Group recommends that the Iraq improves its stance in regards to freedom of expression, consider a moratorium on the death penalty with the view of abolishing it and its treatment of those who are detained, as well as its treatment towards women.