



KRG Preliminary Comments on UNAMI/ OHCHR report on Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture

Office of the Coordinator for International Advocacy
(OCIA)

Overview:

Kurdistan Regional Government (KRG) has strived to abide by the stipulations of the UN and other international bodies and conventions. This has been a firmly consistent policy.

The Iraqi Constitution, Article 37(1), provides the following foundations on liberty: A) The liberty and dignity of man shall be protected; B) No person may be kept in custody or investigated except according to a judicial decision; C) All forms of psychological and physical torture and inhuman treatment are prohibited. Any confession made under force, threat or torture shall not be relied on and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the Law No. 20. In the Kurdistan Region, the authorities prohibit the use of torture and are committed to investigating allegations of ill-treatment and abuse within all prisons in the Region. The Ministry of Labor and Social Affairs (MOLSA), under Law No 7, Art I, 27 and 28, permits disciplinary punishment only to deter and reform detainees who do not abide by the rules and regulations of the prison.

Torturing detainees and obtaining confessions from them under torture is utterly prohibited. The torture of a detainee or convicted person or any inhumane action against them is a crime under Article 333 of the Iraqi Penal Code No. 111 of 1969 as amended. According to this law, any defendant tortured during interrogation is entitled to complain against the person who tortured him. Accordingly, each detainee can bring any case through the prison administration or the prosecutor and his relatives during their visit or through human rights organizations about torture by the competent authorities. Any confession made under torture is deemed null, and the perpetrators will be punished by law. Any accused person who is tortured throughout investigations, he/she has the right to file a complaint against the person who tortured him/her.

Judicial investigator from the Ministry of Interior accompanied with members from the General Prosecutor's Office, are provided an office in General Asayish building to observe and pursue cases involving torture of detainees. This practice is strictly prohibited, and no torture case has been recorded. Under Art 333 of the amended Iraqi Penal Code No. 111 of 1969 and Art 9 (3) of Iraqi Constitution, every detainee has the right to issue a complaint after which the case ought to undergo investigation. However, no complaint has been issued throughout 2020.

As far as the allegations of torture are concerned-which are mentioned in the UNAMI/OHCHR report, KRG welcomes any enhancement efforts presented by its international counterparts.

Under the custody of the Asayish, a detainee can be held for a duration of 24 hours or until the investigations are finalized and a hearing for the detainee in front of a judge is held in the Asayish's premises. However, in the event that further evidence is needed before the case goes into trial, the investigation period may be extended based on orders from the judge. According to Iraqi Penal Code, No. 111 (1969), after the order of arrest from the court, the accused will be detained by the court and all the legal actions will be taken pursuant to the Iraqi Code of Criminal Procedures No. (23), 1971.

The situation in the detention facilities in the Kurdistan Region is monitored and enhanced by international counterparts, including the International Committee of the Red Cross (ICRC) and United Nations Assistance Mission for Iraq (UNAMI). The latter also represents the Office of the High Commissioner for Human Rights (OHCHR).

If the accused was subjected to torture by police officers, this must be reported at the time of the investigation and the statements must be taken by the judicial investigator and the investigative judge (because the accused, after his confession, will be asked by the judicial investigator, whether he was under pressure or not to confess). Also, the investigative judge will ask the same question.

Detainees can report on cases of torture through the prison administration, the public prosecutor, their family, or through human rights organizations. Legal measures are taken against any police or security element accused of torturing detainees once it is proven that the individual has committed this act and that the detainee was subjected to torture and ill-treatment.

All the reformatory facilities are subject to the censorship of parliamentary committees, the attorney general, the Independent Commission for Human Rights, the Public Right Association in the Ministry of Justice, international and local organizations and special teams in the Ministry of Labor and Social Affairs. Their reports are also taken seriously and we deal with them with great importance. International organizations concerned with human rights are also allowed to visit the reformatory facilities without any restrictions, particularly the International Committee of the Red Cross.

As for the provision of health services, there is a health centre and a medical team in the reformatory facilities working for 24 hours. The laboratory and medicines are also available. Medical examinations are conducted for detainees during their entry to the detention and transfer centres, especially the examination of infectious diseases such as (hepatitis, AIDS and Tuberculosis) and chronic diseases such as (diabetes and blood pressure) and special medical files are made for them.

Every accused person referred to the reformatory facilities, information about his/her health condition are recorded, and the concerned authorities conduct the necessary examinations for him/her before being mixed with the other detainees to ensure that he is not infected with any diseases that may be transmitted to the rest. No cases of death has been recorded as a result of torture or ill-treatment.

In the Kurdistan Region, those who have not reached the age of 18 and are suspected of being involved with terrorists or have ties to terrorist organizations are dealt with as (ISIS victims) and not as ISIS members. The security authorities are obligated to give information to the detainees' families, according to Law No. (14) for the year (2001) issued by the parliament of the region.

Women and children who are arrested on charges of links with terrorist groups are placed in reformatory facilities affiliated to the Ministry of Labor and Social Affairs and are not kept in Asayish detention centres.

Detainees with disabilities

In the reformatory facilities there are a number of detainees with disabilities and special needs. The following services are provided to them:

- 1- Clothing.
- 2- Sanity services.
- 3- Carrying out medical examinations and treating them when necessary.
- 4- Securing a private room for them.
- 5- Laundry.
- 6- Haircuts and shavings.
- 7- Contact with their families.
- 8-Library.
- 9- Securing special toilets.
- 10- Securing what they need when necessary.