



A THOUSAND PEOPLE FACE THE DEATH PENALTY IN IRAQ

**AMNESTY
INTERNATIONAL**



Iraq now has one of the highest rates of execution in the world. At least 1,000 people are believed to be under sentence of death, 150 of whom have exhausted all legal remedies available to them and are therefore at serious risk of being hanged.

Following the US-led invasion in 2003 which overthrew Saddam Hussain, the death penalty was suspended promptly on 10 June 2003 by the Head of the interim Coalition Provisional Authority (CPA), within a month of his taking charge. However, just over a year later, on 8 August 2004, the Iraqi interim government which replaced the CPA restored the death penalty. Since then, the present government has widened both its scope and its application.

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The use of the death penalty in Iraq lacks transparency. The authorities publicly justify the use of the death penalty as a response to the continuing high level of political violence, but they provide very little information on executions and some have been carried out secretly. For example, on 10 June 2009 some 19 people, including one woman, were executed, but this was not officially

announced via the media; the information was leaked. Many of the death sentences were handed down following court proceedings which did not meet international standards for fair trials, as international human rights law requires.

Under the rule of Saddam Hussain, prior to March 2003, the Iraqi authorities used the death penalty on a very large scale. A wide range of activities could incur the death penalty, including some not normally considered crimes, such as expressing political dissent and opposing the policies of Saddam Hussain and his ruling Ba'ath party. Amnesty International was never able to establish precisely how many people were sentenced to death and executed each year. The Iraqi authorities provided no statistics and often did not disclose publicly when executions were carried out. Those executed included many members of banned secular parties and religious organizations and other suspected government opponents, students, journalists, businessmen, and army deserters. Still others were subjected to enforced disappearances and were killed out of hand, without any semblance of legality.

REASONS FOR REINSTATEMENT

The current Iraqi government was elected in December 2005 and took office in May 2006. It argues that the death penalty is needed to reduce the widespread violence in the country, yet such violence has continued unabated since the death penalty was restored. Armed groups have continued to carry out bomb attacks killing large numbers of civilians, including members of ethnic and religious minority groups. These attacks – many of which have been carried out by suicide bombers who, by their very nature, are unlikely to be deterred by the prospect of the death penalty – recently increased in the run-up to and following the 30 June deadline for the pullout of US troops from Iraq's cities and towns.

Despite this, senior Iraqi government officials continue to publicly justify and support the use of the death penalty, although the country's President, Jalal Talabani, is a notable exception. He has long opposed the death penalty, but has delegated his power of ratification of death sentences to his two deputies so that executions continue despite his stated personal commitment to



cover: Hanging rope at an execution gallows, Baghdad, 15 December 2006.
above: Two men, hooded and with their hands tied behind their backs, about to be hanged, 19 December 2006. They were sentenced to death along with 11 other men for murder and kidnapping.

abolition. Once a death sentence is upheld by the Court of Cassation, it is referred to the Presidential Council for ratification and implementation.

Iraqi Prime Minister Nuri Kamil al-Maliki has repeatedly defended the use of the death penalty and he has called for the execution of former senior members of the Ba'ath party who have been sentenced to death for crimes committed under Saddam Hussain. On 31 May 2009, for example, he declared that former officials under Saddam Hussain would be executed if they were found to have ordered the poison gas attacks on Halabja and other villages

in 1988 which killed thousands of members of the Kurdish minority. In a speech to relatives of the victims of Halabja, he stated: "I promise you, we will not keep silent when it comes to applying the death penalty against all the criminals who are condemned [in this case]".

Iraq's Human Rights Minister Dr Wajdan Mikhail Salam was also reported in the Spanish newspaper *El Mundo* on 28 May 2009 to say that "capital punishment is not applied easily [in Iraq], it takes many steps", but that the situation "requires the application of the death penalty... I think at the moment the death penalty is very necessary in Iraq. It is not the time to abolish it. And you can be sure that it is not easy to sentence anybody to death." Previously, she had suggested that the government might abolish the death penalty, telling the UN Human Rights Council in March 2007: "we are working at the present moment in order to

pave the way to eliminate capital punishment in Iraq, after restricting it to the largest possible extent".

Amnesty International is disappointed that a minister whose portfolio is to advance the cause of human rights protection should advocate the death penalty, and urges her and her colleagues instead to prioritize the promotion and protection of human rights and eradicate executions as a matter of urgency.

SCOPE OF THE DEATH PENALTY

The Iraqi Penal Code of 1969, which remains in force, prescribes the death penalty for a wide range of offences. These include premeditated murder, all crimes compromising the internal security of the state, attacks on means of transportation resulting in fatalities,

attempting to overthrow the government by violent means, and damaging public property. Since 2003, additional capital crimes have been created under the Anti-Terrorism law of 2005 and Law 10 of 2005, which established the Statute of the Supreme Iraqi Criminal Tribunal (SICT) which may impose the death penalty for genocide, crimes against humanity, war crimes, and membership of and supporting armed groups.

The Iraqi Internal Security forces' Penal Code, enacted in February 2008, and the Iraqi Military Code, promulgated in April 2007, also prescribe the death penalty for offences committed by members of the military, police and other security forces. These include passing on secrets, plans and instructions to an armed group, passing on state secrets to other countries directly or indirectly, and deliberately sabotaging and damaging means of communication, transportation, weapons and explosives. Decree Number 3 of 2004, issued by the then Iraqi interim government to reinstate the death penalty, prescribes the death penalty even for crimes that do not have lethal consequences, such as carrying out abductions not resulting in death.

International human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq in 1971, stipulate that the death penalty may only be imposed for the most serious crimes. Under international law, "most serious" means that it should be applied as a most exceptional measure, and should not go beyond intentional crimes, with lethal or other extremely grave consequences.

THE COURTS AND UNFAIR TRIALS

The vast majority of death sentences have been passed by the Central Criminal Court of Iraq (CCCI) in Baghdad and in the governorates. The CCCI was established by the Coalition Provisional Authority in June 2003 with jurisdiction over crimes relating to terrorism, sectarian violence, organized crime and government corruption. Trials before the CCCI consistently fall short of international standards for fair trials.

Defendants commonly complain that "confessions" were extracted from them under torture during pre-trial interrogation, often when they were held incommunicado in police

stations or in detention facilities controlled by the Ministry of Interior. These "confessions" are then often used as evidence against them at their trials, and are accepted by the courts without taking any or adequate steps to investigate defendants' allegations of torture. Defendants also complain that they are not able to choose their own defence lawyers; those tried before the CCCI on capital charges have defence lawyers appointed by the court if they are unable to pay for defence counsel, but the quality of such representation is low. Some lawyers refuse to represent defendants accused of "terrorism", mostly Sunni Muslims, fearing reprisals by armed militia groups linked to Shi'a political parties represented in the Iraqi Council of Representatives (parliament).



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above: Guards of former Iraqi President Saddam Hussain preparing his execution on 30 December 2006 in Baghdad. He was sentenced to death by the Supreme Iraqi Criminal Tribunal.

Trials before the SICT also fall short of international standards for fair trials. The SICT was set up to try Saddam Hussain and officials from the former Ba'ath administration accused of war crimes, genocide and crimes against humanity. Proceedings before this tribunal have been marred by political interference, undermining its independence and impartiality. It was reported in September 2008 that the Iraq government had engineered the dismissal of one of the judges who had tried Saddam Hussain shortly before the year-long trial ended in 2006, replacing the judge with one considered more likely to support the imposition of the death penalty. The tribunal has also failed to ensure the safety of defence lawyers, witnesses and others. A number of lawyers, judges and prosecutors have been murdered by armed groups. Since its establishment the SICT has sentenced at least 11 people to death. Four, including Saddam Hussain, have been executed, while at least seven are still on death row.

SAFEGUARDS FOR FAIR TRIALS

International law requires that the death penalty "can only be carried out pursuant to a final judgement rendered by a competent court" (Article 6.2 of the ICCPR). This includes respecting the absolute prohibition of torture and other ill-treatment, which is considered customary in international law and applies to all states. As a consequence of that absolute prohibition, any statement extracted as a result of torture or other ill-treatment should

AMNESTY INTERNATIONAL'S POSITION ON THE DEATH PENALTY

The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state. This cruel, inhuman and degrading punishment is done in the name of justice, but it violates the right to life as proclaimed in the Universal Declaration of Human Rights. Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner.

The death penalty is not an effective deterrent against violence and crime as the continuing crisis in Iraq underlines. Amnesty International has on numerous occasions called on the Iraqi government to establish immediately a moratorium on executions with a view to abolishing the death penalty. On 18 December 2008, 106 states supported a second resolution in favour of a "Moratorium on the use of the death penalty" at the UN. The resolution reaffirmed the UN General Assembly's call for a moratorium on executions made a year earlier. Iraq was one of only 46 countries that voted against the resolution.

never be used as evidence in any proceedings against the detainee.

International law requires a number of other safeguards in order to ensure the right to fair trial. These include the right to a public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proven guilty, the right to have access to a lawyer of one's own choosing, the right to call witnesses for the defence and the highest standards for the gathering and assessment of evidence.

SECRECY SURROUNDING RECENT EXECUTIONS

In the face of criticism from the UN, the European Union and international human rights organizations, in recent months the Iraqi authorities have disclosed little information or statistics about executions.

In July 2009, at least 1,000 prisoners were believed to be on death row, including about 150 prisoners who had exhausted all means of appeal or clemency. According to the Iraqi Human Rights Ministry's report for 2008, some 956 prisoners were under a death sentence at the end of 2008, 751 of whom were held in prisons and detention facilities controlled by the Ministry of Justice, including 12 women. The other 205 prisoners were held in prisons and detention facilities controlled by the Ministry of Interior. At least seven people sentenced to death by the SICT are being held by the US military in Camp Cropper in Baghdad. Between January and early November 2008, 365 people were sentenced to death, according to the Iraqi Supreme Judicial Council. So far this year Amnesty International has recorded at least 60 death sentences issued by Iraqi courts.

Iraq's Presidential Council had ratified the death sentences of 128 prisoners

On 9 March 2009 the Iraqi Supreme Judicial Council informed Amnesty International that Iraq's Presidential Council had ratified the death sentences of 128 prisoners, whose sentences had been confirmed by the Cassation Court. No details were made available by the Iraqi Supreme Judicial Council regarding the individual cases

of the 128 prisoners, such as the crimes of which they had been convicted and whether they had been represented by defence lawyers of their choice. A few weeks later, the Deputy Justice Minister said that 150 prisoners were awaiting execution but provided no further details. At the same time, Amnesty International received information that the authorities planned to carry out executions in batches of up to 20 each week.

On 3 May 2009 the Iraqi authorities were reported to have carried out 12 executions. These were widely

condemned. On 6 May the Office of the UN High Commissioner for Human Rights and the UN Assistance Mission for Iraq issued a joint statement of concern regarding the executions, declaring that "at present the Iraqi justice system does not guarantee sufficient fair trial procedures", and urged the Iraqi authorities to institute a moratorium on executions.

Despite this important intervention, the Iraqi authorities are reported to have carried out 19 more executions – hanging 18 men and one woman –

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Samar Sa'ad 'Abdullah, aged 27, was sentenced to death by the CCCI in al-Karkh in Baghdad on 15 August 2005. She had been found guilty of the murder of her uncle, his wife and one of their children in a district of Baghdad. She reportedly blamed the killings on her fiancé, who, she said, had carried them out in order to rob her uncle. At her trial, she alleged that after her arrest, police in Hay al-Khadhra, Baghdad, had beaten her with a cable, beaten the soles of her feet (falaqa) and subjected her to electric shocks to make her "confess". The judge failed to order an investigation into her allegations, and sentenced her to death. Her father, Sa'ad 'Abdel-Majid 'Abd al-Karim, told Amnesty International the trial was concluded in less than two days, that he was not permitted entry to the court, and that Amal 'Abdel-Amir al-Zubaidi, one of Samar's lawyers, was ordered out of the court by the trial judge. Her death sentence was confirmed by the Court of Cassation on 26 February 2007.

on 10 June 2009. The woman, Qassima Hamid, a mother of three children whose husband lives in Europe, had been sentenced to death about three years earlier after being convicted of kidnapping and murder. The European Union expressed grave concern at her execution and those of the men hanged on the same day, but the Iraqi government remained silent and the Iraqi media did not report the executions.

Earlier in March, Iraq's Minister of Human Rights stated that no prisoners had been executed since the end of 2007. This may be true as far as prisoners held on death row in prisons controlled by the Ministry of Justice are concerned, but the Ministry of Interior also controls some prisons and detentions centres and it appears that some of their inmates were executed, effectively in secret, in 2008.

For example, the Interior Ministry announced on 1 April 2008 that 25 prisoners had just been transferred from Basra to Baghdad to be executed after they had been convicted on various criminal charges by the CCCI in Basra. Seventeen days later a senior Interior Ministry official told the media that 28 prisoners who appear to have been from the same group – though the official did not disclose their names or details of their cases – had been executed in Baghdad. On 7 October 2008, the UK newspaper *The Independent* reported that secret executions had taken place in al-Shu'ba al-Khamisa (Fifth Section) in al-Kadhimiya Prison in Baghdad – the fifth section is controlled by the Ministry of Interior whereas the rest of the prison is controlled by the Ministry of Justice.

THE DEATH PENALTY IN THE KURDISTAN REGION OF IRAQ

The death penalty was rarely used in the Kurdistan Region of Iraq before 2003. However, after its reinstatement by the federal government in Baghdad the Kurdistan Regional Government (KRG) broadened its scope when enacting the Anti-Terrorism law, Law 3 of 2006. This prescribes the death penalty for kidnapping, membership of a terrorist organization, espionage, aiding presumed terrorists to leave or enter the country, and other offences. In June 2008 the Anti-Terrorism law's application was extended for a further two years. At least 84 people are under sentence of death, though the KRG is not known to have carried out any executions since April 2008.

Wasan Talib was sentenced to death on 31 August 2006 by the CCCI in Baghdad for her alleged role in the murder of several members of the Iraqi security forces in 2005 in the Baghdad district of Hay al-Furat. She denied any involvement in the killings but on 26 February 2007 the Court of Cassation confirmed her death sentence.

These two women, with eight other women death row prisoners, were recently transferred from the women's prison in Baghdad's al-Kadhimiya district to al-Shu'ba al-Khamisa (Fifth Section) of al-Kadhimiya Prison, suggesting that their executions may be imminent. Two other women,

Qassima Hamid, cited above, and another, have already been executed.

Ibrahim Karim Mohammed al-Qaragholi was sentenced to death on 28 October 2008 by the CCCI in Baghdad. He was found guilty of kidnapping and killing three US soldiers in June 2006 in Babil province, south of Baghdad. He, his brother and father were arrested on 10 July 2006 by US forces from their home in the village of al-Jumlatiya, south of Baghdad and taken into US military custody near Baghdad airport, possibly at Camp Cropper. The brother and father were later released. Amnesty International has no details regarding the circumstances surrounding the alleged kidnapping and killing of the three soldiers.

After two trial sessions to which three defence witnesses reportedly failed to respond to the court's summons, Ibrahim Karim Mohammed al-Qaragholi was sentenced to death on the basis of evidence given by four prosecution forensic experts. They testified that his fingerprints had been found on a car used by the three US soldiers before they were kidnapped, but Ibrahim Karim Mohammed al-Qaragholi denies all charges against him. He is being detained in al-Kadhimiya prison in Baghdad and has received visits from his family and lawyers, who lodged an appeal before the Cassation Court against the sentence on 19 November 2008. As of 13 July 2009 the Court had not ruled on the appeal.

CONCLUSION

The full gruesome scene of Saddam Hussain's execution on 30 December 2006, which was filmed and widely circulated on the internet, was a graphic reminder of the grotesque brutality – and brutalizing effect – of the death penalty. For decades Saddam Hussain had presided over a government notorious for

its ruthlessness and cruelty, which committed massive human rights violations. With his fall from power, many Iraqis who had been traumatized by his policies hoped, and expected, that a new chapter would be opened, in which human rights would be respected and upheld and that torture, killings and the death penalty would remain only as a bad memory of the past.

Six years on, as an estimated one thousand prisoners face the prospect of execution, that dream has all but faded to nothing – despite overwhelming evidence that the death penalty offers no protection from war, military occupation or sectarian violence. Indeed, capital punishment does not protect the people of Iraq from violence; it only brutalizes and degrades Iraqi society further.

ACT NOW

Write to the Iraqi Presidential Council and the Prime Minister, and to the President of the Kurdistan region, urging them to:

- Immediately halt all executions and establish a moratorium;
- Commute all pending death sentences;
- Publish full names of all those sentenced to death and those recently executed;
- Reduce the crimes punishable by death to the most serious ones and move towards the abolition of the death penalty;
- Ensure that the most rigorous standards for fair trial are respected in all cases including:
 - the right to be tried before an independent and impartial tribunal

- the right to have access to a competent defence counsel of one's choice at all stages of the proceedings

- the right to be presumed innocent until proven guilty according to law

- the right to call witnesses for the defence

- the highest standards for the gathering and assessment of evidence, in particular a prohibition of any statement obtained through torture or other ill-treatment being used as evidence in court.

Send to:

Presidential Council of Iraq
His Excellency Jalal Talabani,
President of Iraq
His Excellency Tariq al-Hashimi,
Vice-President of Iraq

His Excellency 'Adil 'Abdul Mahdi Vice-President of Iraq

Convention Centre (Qasr al-Ma'aridh)
 Baghdad
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His Excellency Nuri Kamil al-Maliki Prime Minister of Iraq

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His Excellency President Masoud Barzani

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Please also send copies to the representatives of the Government of Iraq and Kurdistan Regional Government in your country.

