



**The Compliance of Iraq with Convention on the Elimination of All Forms of  
Discrimination against Women  
Alternative Report about the Death Penalty**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

and

**The World Coalition Against the Death Penalty**

for the

**74th Session of the Committee on the Elimination of Discrimination Against Women  
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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.

**The World Coalition Against the Death Penalty**, an alliance of more than 150 NGOs, bar associations, local authorities, and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

## EXECUTIVE SUMMARY

1. This report addresses Iraq's compliance with its human rights obligations under the Convention on the Elimination of All Forms of Discrimination against Women, especially with regard to its use of the death penalty. Iraq is one of the world's leading executioners.<sup>1</sup> Iraq has sentenced thousands to death under its broad Counter-Terrorism Act.<sup>2</sup> Up to 1,000 women are detained and either have been sentenced to death or await trials that could result in death sentences.<sup>3</sup> These women are being tried and convicted in proceedings that last as little as a few minutes, without adequate legal counsel.<sup>4</sup> Moreover, the conditions for detainees have been reported to be filthy and overcrowded.<sup>5</sup> Iraqi authorities should improve access to justice, fair trial rights, and conditions in detention facilities.

### **Iraq fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women**

2. In its Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq, the Committee urged the State party to issue a moratorium on the death penalty and halt the execution of women on death row.<sup>6</sup> It also recommended the State party improve the conditions of women's detention facilities and facilitate women's access to justice and ensure respect for fair trial guarantees.<sup>7</sup>

#### **I. Iraq fails to ensure access to justice and respect for fair trial guarantees for women, especially women accused of violating the Counter-Terrorism Act (List of Issues Paragraph 3).**

3. In Paragraph 3 of the List of Issues, the Committee seeks information regarding "measures taken to guarantee the rights of women and girls to legal aid, thorough and independent investigations and transparent and fair trials, including women and girls of foreign nationality, who face conviction under the State party's Counter-Terrorism Act."<sup>8</sup>

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<sup>1</sup> Amnesty International, *Death Sentences and Executions 2018*, p. 32. Available online at: <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

<sup>2</sup> Amnesty International UK - *Press Release: Iraq: Alarming Reports of 3,000 on Death Row on Terrorism Charges* (March 21, 2018). Available online at <https://www.amnesty.org.uk/press-releases/iraq-alarming-reports-3000-death-row-terrorism-charges>.

<sup>3</sup> Martin Chulov and Nadia al-Faour, "They Deserve No Mercy": Iraq Deals Briskly With Accused "Women of ISIS," *The Guardian*, 22 May 2018. Available online at <https://www.theguardian.com/world/2018/may/22/they-deserve-no-mercy-iraq-deals-briskly-with-accused-women-of-isis>.

<sup>4</sup> Margaret Coker and Falih Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, *New York Times*, 17 Apr. 2018, <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>.

<sup>5</sup> Raya Jalabi, *Forgotten Victims: The Children of Islamic State*, *Reuters*, 21 Mar. 2019. Available online at <https://www.reuters.com/article/us-iraq-islamic-state-children-special-r/special-report-forgotten-victims-the-children-of-islamic-state-idUSKCN1R2134>.

<sup>6</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, CEDAW/C/IRQ/CO/4-6 (10 Mar. 2014), ¶ 49.

<sup>7</sup> *Ibid.*

<sup>8</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, *List of Issues and Questions in Relation to the Seventh Periodic Report of Iraq*, CEDAW/C/IRQ/Q/7 (18 Mar. 2019), ¶ 3.

4. In recent years, thousands of fighters with alleged ties to the Islamic State have been killed or captured and detained in Iraq.<sup>9</sup> Many detained suspects with Islamic State ties face trial, accused of violating Iraq's vague counterterrorism law.<sup>10</sup> Under the law, courts may impose the death penalty "for anyone who committed, incited, planned, financed, or assisted in a terrorist act."<sup>11</sup> Officials have issued statements calling for anyone convicted of a terrorism offense to be sentenced to death, regardless of the gravity of the conduct or any mitigating circumstances.<sup>12</sup>
5. Iraq reports that it has an independent judiciary and that Iraq's Constitution "affirms equality between Iraqis before the law and guarantees the right to a trial conducted in Iraq in accordance with the principles of the Constitution and Code of Criminal Procedure."<sup>13</sup> It asserts that the judicial system guarantees "access to justice for all."<sup>14</sup> It states "the death penalty is imposed only for the most serious crimes."<sup>15</sup>
6. In practice, people are sentenced to death after cursory proceedings that lack fundamental fair trial and due process safeguards. The Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed concern "at the lack of openness from the Federal Government on judicial proceedings" resulting in the death penalty.<sup>16</sup> She noted "a large number of allegations regarding violations of fair trial and due process guarantees in death penalty cases. These include, in particular, sentencing based mainly or solely on confessions obtained under torture or duress, lack of judicial investigation into allegations of torture during the investigation phase and swift trials resulting in mass executions."<sup>17</sup> In one case, over the course of two hours, 14 women were tried, convicted, and sentenced to death for allegedly supporting the Islamic State, with each trial lasting approximately 10 minutes.<sup>18</sup> This "judicial assembly line" is responsible for "churn[ing] out terrorism convictions" since the defeat of ISIL, with a conviction rate of approximately 98%.<sup>19</sup>
7. The swift judicial procedures appear to be sweeping up bystanders and others simply related to persons involved with the Islamic State, including women whose only ties to the Islamic State are through their husbands.<sup>20</sup> Because the definition of terrorism is broad, and because of the Iraqi Government's push for the death penalty, courts do not consider individual circumstances or mitigating factors, but instead mete "out one-size-fits-all

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<sup>9</sup> Sophia Jones and Christina Asquith, *Iraq Is Tempting Fate by Punishing Women*, Foreign Policy, 25 Oct. 2018. Available online at <https://foreignpolicy.com/2018/10/25/iraq-is-tempting-fate-by-punishing-women/>.

<sup>10</sup> David Marshall, *Iraq Brings the Islamic State to Justice*, Foreign Policy 22 May 2019. Available online at <https://foreignpolicy.com/2019/05/22/iraq-brings-the-islamic-state-to-justice/>

<sup>11</sup> Human Rights Watch, *Iraq: Key Courts Improve ISIS Trial Procedures* (13 Mar. 2019). Available online at <https://www.hrw.org/news/2019/03/13/iraq-key-courts-improve-isis-trial-procedures>.

<sup>12</sup> Coker & Hassan, *supra* note 4.

<sup>13</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, *Seventh Periodic Report Submitted by Iraq*, CEDAW/C/IRQ/7 (15 Aug. 2018), ¶ 29.

<sup>14</sup> *Id.* ¶ 32.

<sup>15</sup> *Id.* ¶ 296.

<sup>16</sup> UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, UN Doc. A/HRC/38/44/Add.1 (20 June 2018), ¶ 64.

<sup>17</sup> *Id.* ¶ 67.

<sup>18</sup> Coker & Hassan, *supra* note 4.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

punishment for the perpetrator of crimes against humanity as well as for the wife of an Islamic State fighter who may have had little say in her husband's career."<sup>21</sup>

8. Women accused of terrorism offenses lack adequate legal representation. The Iraqi Constitution guarantees the right to legal representation to all arrested persons during investigation and trial (Article 19(4)). Individuals accused of terrorism, however, lack adequate access to counsel. One state-appointed lawyer who defended several women in an "assembly line" trial confessed that he had not prepared for the trials and had no access to evidence against his clients because the information had been classified.<sup>22</sup> His pay, the equivalent of \$25 per case, was to be paid only after the client's final appeal was exhausted or after the client's execution.<sup>23</sup> He would receive the same compensation regardless of whether the case went to appeal, so he had little financial motivation to prolong the judicial process on behalf of his clients.<sup>24</sup>
9. Defense lawyers report having only five to ten minutes to review a case and discuss it with their clients before trial.<sup>25</sup> In one case, a "lawyer said she had not seen her client's file until the defendant entered the courtroom"; others said they had just five or ten minutes to review the case and discuss it with their clients beforehand.<sup>26</sup>
10. Moreover, lawyers are routinely absent from interrogations, and many suspects are without lawyers during their hearings.<sup>27</sup> Iraq does not have laws or judicial guidelines directing that judges take a particular investigative course of action when defendants allege torture or mistreatment.<sup>28</sup> Iraq's Criminal Procedure Code allows judges full discretion to decide the admissibility of confessions, even if the defendant denies the veracity of the confession during the hearing.<sup>29</sup> There are reports of judges ordering "deeper investigations" of defendants, terminology that authorities understand to mean returning the defendant to incarceration where interrogators will use torture to extract more detailed confessions.<sup>30</sup>
11. Foreign nationals accused of terrorism do not receive a presumption of innocence, because courts presume that any non-Iraqi in territory controlled by ISIS was involved with terrorism.<sup>31</sup> Iraq asserts that in 2018, it convicted over 500 individuals from foreign countries under its counterterrorism law.<sup>32</sup> Many women from foreign countries assert they were either "tricked into joining the Islamic State or that they simply could not leave their husbands," on whom they depended.<sup>33</sup> In one case, a judge gave a 42-year-old homemaker

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Human Rights Watch, *News Release - Iraq: Judges Disregard Torture Allegations* (July 31, 2018). Available online at <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations>.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Coker & Hassan, *supra* note 4.

<sup>32</sup> Marshall, *supra* note 10.

<sup>33</sup> Jones & Asquith, *supra* note 9.

two minutes to present her defense to charges she supported the Islamic State.<sup>34</sup> The defendant claimed she entered Iraq illegally and lived under the Islamic State's rule for over two years, but for had never taken money from the Islamic State, but rather had brought her own money from Turkey.<sup>35</sup> She was sentenced to death by hanging.<sup>36</sup>

12. **Suggested recommendations** relating to access to justice in capital proceedings:

- Impose a moratorium on the death penalty with a view to its abolition, and in the meantime amend the Penal Code to limit the death penalty to offenses entailing an intentional killing committed by the accused person.
- Commute the sentences of all persons sentenced to death to a sentence that is fair, proportionate, and respects international human rights standards.
- Provide enhanced technical support for courts handling terrorism cases to ensure that they provide all defendants with heightened procedural protections and access to well qualified legal counsel.
- Establish and promulgate guidelines for judges handling terrorism-related cases to ensure that any allegations of torture or coerced confessions are thoroughly investigated and to prohibit consideration of any evidence obtained under duress.
- Require courts to hear evidence on and consider all mitigating factors when deciding whether to sentence a person to death, as required under international human rights standards.
- Ensure that any person sentenced to death has access to free and qualified legal counsel for all proceedings, including all appeals and efforts to seek clemency, pardons, or other relief.
- Mandate that a lawyer for the suspect be present at any interrogation if the person being questioned is suspected of committing a crime that is eligible for the death penalty.
- Ensure the full application of the Vienna Convention on Consular Relations in death penalty cases involving foreign nationals, consistent with the recommendation of the Special rapporteur on extrajudicial, summary or arbitrary executions.

13. **Suggested questions** for the Government of Iraq:

- What percentage of women convicted of violating the Counter-Terrorism Act are sentenced to death? On average, how long are their trials?
- What procedural safeguards are in place to ensure that all persons at risk of being sentenced to death receive a fair trial and adequate legal representation?

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<sup>34</sup> Coker & Hassan, *supra* note 4.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

## II. Women in Iraqi prisons and their children face inhumane conditions (List of Issues Paragraph 22).

14. In Paragraph 22 of the List of Issues, the Committee seeks information on women in detention, including women in detention pursuant to the Counter-Terrorism Act.<sup>37</sup>
15. Reports raise significant concerns about inhumane conditions and overcrowding in Iraqi detention facilities.<sup>38</sup> Because young children stay with their mothers in prison,<sup>39</sup> women convicted or accused of crimes, as well as their children, experience these inhumane conditions.
16. The State Party report asserts that female detainees are provided with basic requirements, such as blankets, cleaning materials, and a bed.<sup>40</sup> The State Party claims inmate accommodations provide adequate lighting, ventilation, air-conditioning, and toilet facilities.<sup>41</sup> The report claims special areas are established for female inmates with small children, because children up to the age of three are allowed to stay with their detained mothers.<sup>42</sup> The report goes on to claim inmates receive appropriate medical care, are allowed to have contact with children, and that their human rights are respected while detained.<sup>43</sup>
17. When the Islamic State was driven from power in Mosul in 2017, thousands of women married to or otherwise allegedly associated with Islamic State fighters were left behind.<sup>44</sup> One Associated Press report revealed that Iraqi authorities had detained or imprisoned at least 19,000 suspects and sentenced more than 3,000 of them to death, despite the lack of fair treatment and due process throughout the judicial process.<sup>45</sup> As of May 2018, up to 1,000 women accused of belonging to the Islamic State were awaiting trial.<sup>46</sup> Some were pregnant, and up to 820 infants accompanied the detained women.<sup>47</sup>
18. Contrary to the State party's assertion that that female detainees are not required to spend more than 24 hours in a pre-trial detention center,<sup>48</sup> Human Rights Watch has documented severe overcrowding in pretrial detention facilities in three facilities in Nineveh.<sup>49</sup> In June

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<sup>37</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, *List of Issues and Questions in Relation to the Seventh Periodic Report of Iraq*, CEDAW/C/IRQ/Q/7 (18 Mar. 2019), ¶ 22.

<sup>38</sup> Human Rights Watch, *Iraq: Thousands Detained, Including Children, in Degrading Conditions* (4 July 2019). Available online at <https://www.hrw.org/news/2019/07/04/iraq-thousands-detained-including-children-degrading-conditions>.

<sup>39</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, *Seventh Periodic Report Submitted by Iraq*, CEDAW/C/IRQ/7 (15 Aug. 2018), ¶ 315.

<sup>40</sup> *Id.* ¶ 312.

<sup>41</sup> *Id.* ¶ 318.

<sup>42</sup> *Id.* ¶ 315.

<sup>43</sup> *Id.* ¶¶ 318-333.

<sup>44</sup> Jones & Asquith, *supra* note 9.

<sup>45</sup> Amnesty International UK - *Press Release: Iraq: Alarming Reports of 3,000 on Death Row on Terrorism Charges* (21 Mar. 2018). Available online at <https://www.amnesty.org.uk/press-releases/iraq-alarming-reports-3000-death-row-terrorism-charges>.

<sup>46</sup> Chulov & al-Faour, *supra* note 3.

<sup>47</sup> *Ibid.*

<sup>48</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, *Seventh Periodic Report Submitted by Iraq*, CEDAW/C/IRQ/7 (15 Aug. 2018), ¶ 312.

<sup>49</sup> Human Rights Watch, *supra* note 38.

2019, three facilities there, which have a combined maximum capacity of 2,500 people, were holding approximately 4,500 prisoners and detainees.<sup>50</sup> A total of 1,300 of those held in the Nineveh facilities had already been convicted and should have been transferred to prisons in Baghdad.<sup>51</sup> Photographs from inside the Tal Kayf detention facility show women and children in a crowded cell without adequate space to lie down or even sit comfortably.<sup>52</sup>

19. Following the Human Rights Watch report detailing overcrowding, several officials visited the facilities identified in the report.<sup>53</sup> Members of Iraq’s parliament called the situation a “humanitarian catastrophe.”<sup>54</sup>

20. At another Iraqi women’s prison, Reuters detailed the “squalid conditions” that women inmates and their young children endure.<sup>55</sup> Women on death row and serving life sentences live in a prison “not equipped to handle” the arrival of so many accused members of the Islamic State. The cells are “filthy and cramped,” and the facility is “rife with disease.”<sup>56</sup> At least seven young children have died because of the “squalid conditions.”<sup>57</sup> Although the State Party report accurately states that young children stay with their mothers in prison, it makes no mention of these media reports of dangerous and inhumane conditions.<sup>58</sup>

21. **Suggested recommendations** relating to detention of women.

- Reduce overcrowding by releasing from pre-trial detention any person who has been detained for more than 24 hours.
- Ensure that women in pre-trial detention are segregated from individuals who have been convicted, as required under Rule 11 of the Nelson Mandela Rules.
- Ensure that all detention facilities comply with the Bangkok Rules and the Nelson Mandela Rules, particularly Nelson Mandela Rules 12-22 regarding space, bedding, sanitation, and food; Rules 24-27 regarding health care; and Rules 28-29 regarding pregnant prisoners and children living with a parent in prison.
- Ensure that all women sentenced to death are able to have frequent and regular full-contact visits with their children in the least restrictive setting possible.

22. **Suggested questions** for the Government of Iraq:

- What procedures are in place to ensure humane detention conditions for women accused or convicted of crimes?

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Human Rights Watch, *Iraq Authorities Acknowledge Horrific Prison Overcrowding* (5 Aug. 2019). Available online at <https://www.hrw.org/news/2019/08/05/iraq-authorities-acknowledge-horrific-prison-overcrowding>.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Raya Jalabi, *Forgotten Victims: The Children of Islamic State*, Reuters, 21 Mar. 2019. Available online at <https://www.reuters.com/article/us-iraq-islamic-state-children-special-r/special-report-forgotten-victims-the-children-of-islamic-state-idUSKCN1R2134>.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, *Seventh Periodic Report Submitted by Iraq*, CEDAW/C/IRQ/7 (15 Aug. 2018), ¶ 315.