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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022

Opinion No. 5/2022 concerning Abdullah Ahmed Faleh Ahmed al-Taei (Iraq)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 9 December 2021 the Working Group transmitted to the Government of Iraq a communication concerning Abdullah Ahmed Faleh Ahmed al-Taei. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Abdullah Ahmed Faleh Ahmed al-Taei, born in 1997, is an Iraqi citizen. At the time of his arrest, he was a middle school student. He usually resides in east Mosul, Niniveh.

a. Context

5. The source reports that in the past, prisoners sentenced to death on the basis of terrorism charges who were held at Al-Nasiriyah prison (also called Al-Hoot prison) had been subjected to rushed mass executions following terrorism attacks in Iraq.² These mass executions have allegedly been considered as political tools used by the Iraqi authorities and can be qualified as a form of reprisal.

b. Arrest and pretrial detention

6. On 1 September 2017, Mr. Al-Taei was reportedly arrested by members of the forces of the Anti-Crime Office within the Anti-Crime Directorate of the Ministry of Interior. He was arrested while he was in a coffee shop in the Aden neighbourhood in east Mosul, Niniveh. The source adds that the forces were wearing black uniforms, and that they did not present him with an arrest warrant.

7. Forces of the Anti-Crime Office in Mosul reportedly called one of Mr. Al-Taei's relatives five days after his arrest to inform them that he was being held at the Anti-Crime Office, which is located at the same place as the Al-Karama police station, and that the relative needed to bring him clothes and money. The relative then went to the police station but was not allowed to speak with him freely as the security guards were present during the visit. In addition, the source reports that Mr. Al-Taei's clothes had blood stains allegedly caused by torture.

8. On 14 September 2017, Mr. Al-Taei was reportedly presented before the investigative judge for the first time. The judge insulted Mr. Al-Taei and allegedly beat him with an ashtray. Mr. Al-Taei was reportedly presented before the judge four times in total, whenever he was moved from one prison to another. He did not have access to a lawyer during any of these four investigative hearings.

9. As a result of being moved to various prisons, Mr. Al-Taei's family were uncertain of the location of his detention. When they eventually discovered his whereabouts on 13 August 2018, they learned that he had initially been detained at the Anti-Crime Office in Mosul for 17 days. He was then transferred to Telkif prison and subsequently to Al-Faisaliah prison for seven months. Thereafter, he was transferred to Al-Qayyarah prison for an unknown period of time. He was subsequently placed in detention at the Al-Muthanna airport prison, again for an unknown period of time. Finally, he was transferred to Al-Nasiriyah prison, where he has been held for more than two and a half years.

10. During the first 17 days of his detention and during his subsequent detention in Telkif, Al-Faisaliah and Al-Qayyarah prisons, Mr. Al-Taei was reportedly not provided with an adequate amount of food and water. For the first year, from the day his relative visited him at the Anti-Crime Office in Mosul until his sentencing on 13 August 2018, he was allegedly prevented from contacting the outside world and held incommunicado.

11. In this respect, Mr. Al-Taei's family reportedly learned of his whereabouts only after his transfer to Al-Nasiriyah prison and after his sentencing on 13 August 2018. Acquaintances of the family had been visiting their own son at the prison and subsequently informed Mr. Al-Taei's family that he too was being held at the facility. His family went to the prison and found his name in the facility's database. Since then, his family has been allowed to visit him every three and a half months.

² The source refers, inter alia, to Office of the United Nations High Commissioner for Human Rights (OHCHR), "Deeply troubling reports of 21 executions in Iraq yesterday – Bachelet", 17 November 2020.

12. The source alleges that Mr. Al-Taei has been detained due to information provided by a secret informant to the Iraqi authorities indicating that he was involved in terrorism-related activities. He was more specifically accused of having pledged allegiance to Da'esh after they entered the city of Mosul and having done online research for them in 2016 in order to obtain information on persons in his neighbourhood and add it to the terrorist group's online registry. His family rejects such claims and reports that he, in fact, had voiced opinions against Da'esh and had engaged in activities against the group. Mr. Al-Taei himself also stated that he had denied the allegations, including when he was subjected to torture.

13. The source adds that the secret informant who had made the allegations against Mr. Al-Taei is the brother of a judicial assistant at the Ministry of Justice. The judicial assistant is known to the victim's family as he and his family have been co-owners of the apartment in which Mr. Al-Taei's family used to live. The source notes that he and Mr. Al-Taei's family had a property dispute. Mr. Al-Taei's family further believes that Mr. Al-Taei's arrest was arranged by the judicial assistant in collaboration with the director of the Anti-Crime Office. According to Mr. Al-Taei's family, relatives of the victim's father had allegedly stolen money from the Anti-Crime Office's head and then fled. The source adds that the Office's director and the above-mentioned judicial assistant of the Ministry of Justice are neighbours and are acquainted with Mr. Al-Taei and his family.

c. Torture allegations

14. The source alleges that while Mr. Al-Taei was held at the Anti-Crime Office in Mosul for 17 days, he was interrogated and tortured by a member of the Office, in the presence of its director. Afterward, the director also interrogated Mr. Al-Taei.

15. Mr. Al-Taei was allegedly subjected to torture throughout the first two weeks of his detention. Most notably, he was severely beaten, including in his face, and hung from the ceiling of the room for several hours. Mr. Al-Taei reportedly weighed nearly 100 kg at the time, which further aggravated the joint pain he experienced. The perpetrators further threatened to bring his relatives to the detention facility to subject them to ill-treatment. While he was being tortured, he was blindfolded. It is believed that he was also tortured upon every transfer to a different detention facility.

16. The source submits that the perpetrators used torture to obtain information from Mr. Al-Taei in relation to the terrorism accusations that were made against him. Mr. Al-Taei later stated in court that he did not confess to having pledged allegiance to Da'esh, nor to having supported the group through online research in 2016. While he was being tortured, however, he was reportedly forced to sign six blank sheets of paper. After he had done so, the perpetrators allegedly noted statements on those pages, which were later used against him in the judicial proceedings.

17. On 13 September 2019, one of Mr. Al-Taei's relatives submitted a complaint against the director of the Anti-Crime Office in relation to the torture suffered by Mr. Al-Taei to the Iraqi High Commission for Human Rights. The complaint was then transferred by the Commission to the Niniveh Criminal Court. While Mr. Al-Taei was blindfolded during the interrogations, he was able to hear the name of the director. On 15 March 2020, however, Mr. Al-Taei's relative withdrew the complaint before the Niniveh Criminal Court as another relative disagreed with the step taken and out of fear of reprisals.

Trial proceedings

18. On 13 August 2018, Mr. Al-Taei was reportedly sentenced to death on the basis of articles 2 (1), (3) and (5) and 4 (1) of the Anti-Terrorism Law in case No. 850/2018 by the first chamber of the Niniveh Criminal Court. The court is one of the country's counter-terrorism courts and was mandated to prosecute suspected Da'esh members captured in Mosul.

19. Mr. Al-Taei was reportedly provided with a court-appointed lawyer during the trial. He had thus not been able to see and speak to him prior to the hearing, nor did the lawyer have access to his case file. When Mr. Al-Taei and his lawyer asked to speak to each other during the hearing, the judge rejected the request. The only time Mr. Al-Taei was permitted to speak was when the judge listed the accusations made against him at the beginning of the

hearing, whereby he denied the allegations. He was not given the opportunity to raise the issue of the torture and ill-treatment he had suffered.

20. In the sentence rendered on 13 August 2018, the court stated that Mr. Al-Taei had confessed that his father belonged to Da'esh and that he had pledged allegiance to the terrorist group, that he had worked on their online registry and collected information on persons living in his neighbourhood to add it to the registry, that he had presented Da'esh material to students and that he had participated in the Al-Abour battle. It further stated that others had been accused in case No. 850/2018 as well, but that they had escaped. The sentence also mentioned that a defendant could be sentenced to death despite not having reached 20 years of age at the time of the commission of the crime if the crime committed by the defendant was heinous in nature. Finally, the sentence mentions that Mr. Al-Taei admitted to collaborating with Da'esh under pressure from his father while claiming to have left the organization in 2017.

21. The court reportedly based its decision entirely on the statements that Mr. Al-Taei had signed under duress as well as the information it had received from the secret informant. No further proof of the allegations had been presented. The judicial assistant of the Ministry of Justice, whose brother had been the secret informant, was reportedly listed as a complainant in the sentence. The Anti-Crime Office's director was reportedly not mentioned therein.

22. On 13 September 2018, Mr. Al-Taei's family appealed the decision at the Federal Court of Cassation. The court reportedly has four to five years to render the decision after the appeal was lodged – thus until 2022 or 2023 – but there has been no development since. On 1 December 2021, Mr. Al-Taei's lawyer submitted an "intervention request" under article 264 of the Criminal Procedure Code to the Federal Court of Cassation.

23. In the intervention request, the lawyer reportedly appealed the sentence on the ground that the court, *inter alia*, had not taken into account the fact that Mr. Al-Taei had retracted the written statements (confessions) before the investigating officer and the investigative judge. He retracted the statements when he was granted some form of procedural safeguards (e.g. access to a lawyer when he was brought to court), citing the fact that the confessions had been extracted under duress, in violation of article 37 (c) of the Constitution of Iraq and article 127 of the Criminal Procedure Code.

d. Analysis of violations

i. Category I

Alleged arbitrary arrest

24. The source submits that Mr. Al-Taei was not presented with an arrest warrant upon his arrest, nor was he arrested in *flagrante delicto*, which might have obviated the need for a warrant. Additionally, he did not have immediate access to a legal counsel, nor was he permitted to promptly inform his family of the arrest and detention.

25. As a result, the source submits that his deprivation of liberty was not grounded in law, in breach of articles 3 and 9 of the Universal Declaration of Human Rights; article 9 of the Covenant; article 14 of the Arab Charter on Human Rights; and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Lack of prompt access to an independent, objective and impartial authority to review the pretrial detention

26. The source notes that persons held on a criminal accusation in pretrial detention must be brought "promptly" before a judge or another officer authorized by law to exercise judicial power for a judicial control of the pretrial detention. "Promptly" needs to be understood as not to exceed a few days, with 48 hours normally considered to be ideal.³ The source adds that the Criminal Procedure Code refers the primary responsibility for the interrogation of

³ Human Rights Committee, general comment No. 35 (2014), para. 33.

suspects to the investigating judge or the judicial investigator under the former's supervision, whereby the interrogation must happen within 24 hours.

27. The source submits that Mr. Al-Taei was presented before the investigative judge for the first time only 14 days after his arrest, and he did not have access to legal counsel during any of the four hearings that preceded his trial. Furthermore, instead of serving as a safeguard against torture and other ill-treatment, the hearing was reportedly used by the judge to abuse Mr. Al-Taei.

28. The source refers to the Human Rights Committee, which noted in its general comment No. 35 that the authority that is to review the detention is required to be independent, objective and impartial in relation to the issues dealt with⁴ and will need to decide whether the individual in question should be released or remanded in custody to await their trial or to be further investigated.⁵ The source also refers to the United Nations Assistance Mission for Iraq (UNAMI), which considers that the right of the detainee to have access to an authority that is independent, objective and impartial cannot effectively be guaranteed if the reviewing authority is the investigative judge, given the latter's role in Iraq as the investigating authority with control over the defendant similar to that of a prosecutor.⁶ The source adds that the violent treatment of Mr. Al-Taei by the judge reinforces this assessment.

29. The source argues that the Iraqi authorities violated Mr. Al-Taei's right to promptly access an independent, objective and impartial authority to review his pretrial detention, in violation of articles 51 and 123 of the country's Criminal Procedure Code; article 9 (3) of the Covenant; article 14 (5) of the Arab Charter on Human Rights; and principles 11 (1) and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Incommunicado detention

30. According to the source, persons deprived of their liberty have a right to communicate with and be visited by their family, friends, medical staff and lawyer on the basis of the conditions established by law.⁷

31. The source recalls that for the first year, from the day his relative visited him at the Anti-Crime Office in Mosul until his sentencing on 13 August 2018, Mr. Al-Taei was held incommunicado. His situation was further exacerbated by alleged torture and ill-treatment. The source adds that the incommunicado detention of Mr. Al-Taei impeded his ability to challenge the legality of his detention, in violation of his right to habeas corpus, by not allowing him to access legal counsel. The source also notes that unlawful restrictions on the right of contact with the outside world, in particular over a prolonged period, may further constitute ill-treatment or even torture.

32. The source argues that the incommunicado detention of Mr. Al-Taei, which lasted almost one year, violated the prohibition of ill-treatment under article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and possibly also the prohibition of torture under article 2 of the same Convention. In addition, the source notes violations of Mr. Al-Taei's right to contact the outside world and, in consequence, his right to challenge the legality of his detention, as contained in article 9 (4) of the Covenant; article 14 (6) of the Arab Charter on Human Rights; and principles 11 (1) and 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

⁴ Ibid., para. 32.

⁵ Ibid., para. 36.

⁶ UNAMI and OHCHR, "Human rights in the administration of justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment", August 2021, p. 17.

⁷ See principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and rules 41 (5), 54, 58, 61 and 119 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

Violation of the *lex certa* principle

33. The source submits that the Anti-Terrorism Law upon which Mr. Al-Taei's sentencing is based relies on a broad, overly vague definition of terrorism. Although article 1 of the Law is not mentioned in the ruling on his sentence, the provision is the normative reference for the other provisions set forth in the law.

34. The source refers to the 2017 country visit report of the former Special Rapporteur on extrajudicial, summary or arbitrary executions, in which the Special Rapporteur noted that the above definition was not in line with the International Convention for the Suppression of the Financing of Terrorism, which Iraq ratified in 2012.⁸ As a result of that definition, the Anti-Terrorism Law encompasses serious and petty crimes, ranging from mass killings to vandalism. In addition, the source notes that in 2015, the Human Rights Committee expressed concern about the broad definition of terrorism in the Law and about the mandatory use of the death penalty for a wide range of activities defined as terrorist acts.⁹

35. The source also submits that Mr. Al-Taei was sentenced to death on the basis of an accusation of having committed offences that do not meet the threshold of the "most serious crimes" – as required by article 6 (2) of the Covenant – and lack legal clarity. According to the Human Rights Committee, the term "most serious crimes" must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing.¹⁰

36. The source recalls that Mr. Al-Taei was sentenced on the basis of article 2 (1), (3) and (5) of the Anti-Terrorism Law. According to the source, article 2 (1) of the Law appears to cover all violence or threats, to persons or property, committed during the execution of a terrorist act. However, the section also states that this applies regardless of motive.

37. With reference to article 2 (3) and (5) of the Anti-Terrorism Law, the source affirms that the criminalization of organizing, chairing or participating in an armed terrorist gang could potentially sweep within its broad ambit legitimate activities or activities conducted without criminal intent due to the vague definition of terrorism. Similarly, the reference to acts committed with "terrorist motives" in article 2 (5) is ambiguous because there is no clear definition of "terrorism" in the law. In the absence of a clear definition of "terrorism" and "terrorist motives", the source thus submits that the distinction between acts proscribed by this law from less serious crimes cannot be established.

38. To conclude, the source argues that article 2 (1), (3) and (5) of the Anti-Terrorism Law violates the principle of the legality of offences and penalties, as provided for in article 11 (2) of the Universal Declaration of Human Rights, article 15 of the Covenant and article 15 of the Arab Charter on Human Rights, and that it includes acts whose gravity fall below the threshold of the "most serious crimes", in violation of article 6 of the Covenant.

ii. Category III

Torture and other cruel, inhuman or degrading treatment or punishment

39. During the first two weeks of his detention, Mr. Al-Taei was allegedly subjected to severe forms of torture and ill-treatment. Statements he had signed under duress were reportedly used against him in court in violation of the exclusionary rule. It is believed that he was also tortured upon every transfer to a different prison. Finally, Mr. Al-Taei was reportedly held in prolonged incommunicado detention, in relation to which the source recalls that unlawful restrictions on the right of contact with the outside world, particularly when prolonged, may constitute ill-treatment or even torture.

40. The source submits that this treatment of Mr. Al-Taei contravenes the absolute prohibition of torture and the prohibition to take undue advantage of the situation of a detained person for the purpose of compelling them to confess. Such treatment therefore violates article 5 of the Universal Declaration of Human Rights; articles 2, 15 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

⁸ A/HRC/38/44/Add.1, para. 47.

⁹ CCPR/C/IRQ/CO/5, para. 9.

¹⁰ Human Rights Committee, general comment No. 36 (2018), para. 35.

Punishment; article 8 of the Arab Charter on Human Rights; and principles 6 and 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Undue delay of trial and the death row phenomenon

41. The source notes that a person accused of a criminal offence has the right to be tried without undue delay. As noted by the Human Rights Committee in its general comment No. 32 (2007), this guarantee does not only relate to the time between the formal charging of the accused and the time by which a trial should start, but also to the time until the final judgment on appeal is rendered, in order to avoid keeping individuals in a state of uncertainty about their fate for too long. What amounts to trial within a reasonable time depends on the circumstances of the case, whereby the complexity of the case, the conduct of the defendant and the manner in which the issue was dealt with by the judicial and administrative authorities must be taken into account.¹¹

42. The source adds that in the case of defendants sentenced to death for murder, a period of four years and ten months between the conviction and the dismissal of the appeal in the absence of any explanation from the State party justifying the delay was considered to constitute an undue delay by the Human Rights Committee, in violation of article 14 (3) (c) of the Covenant.¹²

43. The source asserts that, while Mr. Al-Taei was brought to trial about a year after his arrest, another four or five years will have passed by the time the decision of the Federal Court of Cassation has been rendered. In addition, according to article 286 of the Criminal Procedure Code, the death sentence, if confirmed by the Court of Cassation, would yet need to be signed off on by the President of Iraq, which would take even more time. The source thus believes that the prolonged procedure to which Mr. Al-Taei is being subjected is in violation of his right to be tried without undue delay, as enshrined in articles 9 (4) and 14 (3) (c) of the Covenant; article 14 (6) of the Arab Charter on Human Rights; and principles 32 (1) and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

44. The source contends that trials involving the death penalty, in particular, must scrupulously observe the right to a trial without undue delay.¹³

45. According to the source, the prolonged stay on death row may under certain circumstances constitute cruel, inhuman or degrading treatment.¹⁴ The source adds that this “death row phenomenon”, which consists of the combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death, has been confirmed for situations in which prisoners are exposed to: a lengthy and anxiety-ridden wait for uncertain outcomes; inadequate nutrition and sanitation conditions; limited or non-existent contact with family members and/or lawyers; physical or verbal abuse; or lack of adequate health care.¹⁵

46. The source submits that the harsh and stressful detention conditions to which inmates at Al-Nasiriyah central prison are exposed correspond to the circumstances described above that constitute torture and/or ill-treatment. The source adds that detainees on death row at that prison are exposed to physical and psychological torture and ill-treatment, including sporadic threats made by the guards that they would be executed imminently, which inflicts a state of constant terror and stress among them.¹⁶ Furthermore, the decree signed by the President does not contain specific information regarding the identity of the individuals whose execution orders have been authorized, although it is indicated that the execution orders may be carried

¹¹ Human Rights Committee, general comment No. 32 (2007), para. 35.

¹² *Siewpersaud et al. v. Trinidad and Tobago* (CCPR/C/81/D/938/2000), para. 6.2; and *Wanza v. Trinidad and Tobago* (CCPR/C/74/D/683/1996), para. 9.4.

¹³ Human Rights Committee, general comment No. 36, para. 41.

¹⁴ *Ibid.*, para. 40.

¹⁵ A/67/279, para. 42.

¹⁶ See communication IRQ 4/2020, p. 2. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

out at anytime.¹⁷ Accordingly, the detainees on death row are reportedly placed under an anxiety-ridden wait for uncertain outcomes.

47. Finally, the source submits that certain methods to implement the death sentence have also been considered to violate the prohibition of torture and ill-treatment *per se*.¹⁸ The source notes that according to article 288 of the Criminal Procedure Code, the sentence of death in Iraq is carried out by hanging.

48. The source therefore argues that the prolonged judicial proceedings, given Mr. Al-Taei's exposure to harsh and stressful detention conditions, subject him to the "death row phenomenon" and violate article 5 of the Universal Declaration of Human Rights; article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and article 8 of the Arab Charter on Human Rights.

Lack of independence of the judiciary

49. The source notes that, following the country visit to Iraq by the former Special Rapporteur on extrajudicial, summary or arbitrary executions in 2017, the former Special Rapporteur had expressed concerns regarding the serious flaws that had reportedly been affecting the administration of justice in Iraq, including in regard to the independence and competence of the courts in charge.¹⁹ The source adds that numerous detained Da'esh suspects or their families have alleged that their neighbours or other individuals had suggested the adding of the suspects to a "wanted list" due to familial, tribal, land or personal disputes.

50. According to the source, Mr. Al-Taei's family themselves strongly believe that he had become the victim of such a suggestion made by the brother of a judicial assistant from the Ministry of Justice and that the latter, in collaboration with the director of the Anti-Crime Office, had arranged for Mr. Al-Taei's arrest due to a property dispute. The source adds that the sole "evidence" the Niniveh Criminal Court looked into consisted of the information provided by the judicial assistant's brother, who was the secret informant, and the statements signed by Mr. Al-Taei under duress. He has reportedly never been presented with credible evidence in relation to the accusations brought against him.

51. The source therefore argues that the independence of the judiciary is not provided for and that Mr. Al-Taei was not tried before a competent, independent and impartial tribunal, in violation of article 10 of the Universal Declaration of Human Rights, article 14 of the Covenant and article 13 of the Arab Charter on Human Rights.

Violation of the right to legal counsel and the principle of equality of arms

52. The source refers to a report by UNAMI, in which it is noted that access to a lawyer in Iraq is systematically delayed until after the interrogations. It was also reported that detainees had no contact with court-appointed lawyers prior to or during their trial, and that the court-appointed lawyers regularly showed no noticeable substantive involvement, which leaves the defendants *de facto* without any legal defence. According to the report, it was further observed that some detainees believed that requests for a lawyer might negatively impact their case during the investigation,²⁰ which, according to the source, indicates a climate of intimidation. The source argues that, consistent with the findings of UNAMI, the defendant Mr. Al-Taei was not given prompt access to a legal counsel of his choice, nor was he able to have confidential communications with the court-appointed lawyer before and during his trial to prepare for his defence.

53. The source thus submits that the deprivation of Mr. Al-Taei's right to legal assistance by a counsel of his choice at any time during his detention and without delay violates article 14 (3) of the Covenant; article 16 (2) of the Arab Charter on Human Rights; and principles

¹⁷ See communication IRQ 1/2021, p. 2.

¹⁸ The source refers to [A/67/279](#), para. 33, and notes in particular that OHCHR has suggested that hanging amounts in itself to cruel, inhuman and degrading treatment.

¹⁹ See communication IRQ 9/2020, p. 2.

²⁰ UNAMI and OHCHR, "Human rights in the administration of justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment", pp. 13–14.

15, 17, 18 and 19 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²¹

54. In addition, the source argues that Mr. Al-Taei's right to equality of arms was strongly limited by further circumstances. His legal counsel did not have access to his case file or to the alleged crucial evidence provided by a secret informant. Mr. Al-Taei or his counsel were unable to adduce and challenge evidence and to cross-examine witnesses. The source adds that the precarious detention conditions to which Mr. Al-Taei was subjected are likely to have negatively affected and weakened the defendant before the trial, which makes it impossible to ensure a fair trial.²²

55. The source adds that article 4 (1) of the Anti-Terrorism Law mandates the application of the death penalty to those convicted of committing or threatening to commit acts of terrorism, including those who incite, plan, aid or abet (before or after the fact), or finance such acts, either as principals or as accomplices. It fails to make a distinction between different levels of participation, involvement and responsibility, and leaves no space for any assessment based on the severity of the act at hand when the punishment is rendered, including the death penalty.

56. The source refers to the Human Rights Committee, which notes that mandatory death sentences that leave domestic courts with no discretion as to whether to designate the offence as a crime warranting the death penalty, and whether to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature.²³ For the above reason, the Committee, in its 2015 concluding observations, expressed concern that under Iraqi law, the death penalty was mandatory for certain crimes and that certain crimes punishable with the death penalty were explicitly excluded from being granted special pardon.²⁴

57. The source submits that the mandatory application of the death penalty constitutes a breach of article 6 (4) of the Covenant, and violates the principle of the individualization of sentences. The source notes that despite the mandatory application of the death penalty required by the Anti-Terrorism Law, in practice, Iraqi courts can pronounce alternative sentences according to research conducted by UNAMI. However, UNAMI also received information that such judgments were frequently overturned by the Court of Cassation, leading to the imposition of harsher punishments, including the death penalty.²⁵

58. For the above reason, the source notes with concern that it is highly probable that the Court of Cassation will uphold the first instance judgment against Mr. Al-Taei.

Response from the Government

59. On 9 December 2021, the Working Group transmitted the allegations to the Government of Iraq under its regular communication procedure. The Working Group requested the Government to provide detailed information by 7 February 2022 about the current situation of Mr. Al-Taei and clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Iraq under international human rights law, and in particular with regard to the treaties ratified by the State. The Working Group also called upon the Government to ensure his physical and mental integrity.

60. The Working Group regrets that it did not receive a response from the Government to this communication. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work.

²¹ The source also refers to principles 1, 7, 21 and 22 of the Basic Principles on the Role of Lawyers.

²² The source refers to [A/HRC/4/40](#), para. 66.

²³ Human Rights Committee, general comment No. 36, para. 37.

²⁴ [CCPR/C/IRQ/CO/5](#), para. 27.

²⁵ UNAMI and OHCHR, "Human rights in the administration of justice in Iraq: trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL", January 2020.

Discussion

61. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

62. In determining whether the deprivation of liberty of Mr. Al-Taei is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

Category I

63. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis.

64. In the absence of any response from the Government, the Working Group finds credible the source's allegations that Mr. Al-Taei was not presented with an arrest warrant upon his arrest, and that he was not arrested in *flagrante delicto*, which might have obviated the need for a warrant. Additionally, he did not have immediate access to a legal counsel, nor was he permitted to promptly inform his family of the arrest and detention.

65. The Working Group underlines that any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial judicial authority is arbitrary and lacks legal basis.²⁶ It is not sufficient that there is a law that authorizes the arrest. The authorities must invoke that legal basis and apply it through an arrest warrant,²⁷ which was not implemented in the present case.

66. Indeed, the international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9, respectively, of the Universal Declaration of Human Rights; article 9 of the Covenant; and principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²⁸ Any form of detention or imprisonment should be ordered by, or be subject to the effective control of, a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²⁹

67. In order to invoke a legal basis for deprivation of liberty, the authorities should have informed Mr. Al-Taei of the reasons for his arrest at the time of the arrest and of the charges against him promptly.³⁰ The Working Group finds no valid grounds, such as arrest in *flagrante delicto*, to justify an exception to this principle in the present case. As a result, Mr. Al-Taei's detention is in violation of article 9 (1) and (2) of the Covenant.

68. The Working Group also finds credible the source's submission that Mr. Al-Taei was presented before the investigative judge for the first time only 14 days after his arrest. In these circumstances, the Working Group considers that, in violation of article 9 (3) of the Covenant, Mr. Al-Taei was not brought promptly before a judge during his pretrial detention, that is, within 48 hours of his arrest barring absolutely exceptional circumstances, as per the international standard set out in the Working Group's jurisprudence.³¹ Thus, he was not afforded the right to take proceedings before a court so that it could decide without delay on

²⁶ Opinion No. 93/2017, para. 44.

²⁷ See, for example, opinions No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

²⁸ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

²⁹ See, for example, opinions No. 51/2018, para. 80; No. 68/2018, para. 39; and No. 82/2018, para. 29.

³⁰ See, for example, opinion No. 10/2015, para. 34. See also opinions No. 45/2019, para. 51; and No. 46/2019, para. 51.

³¹ Opinions No. 56/2019, para. 80; No. 76/2019, para. 38; No. 82/2019, para. 76; and No. 78/2020, para. 49.

the lawfulness of his detention in accordance with articles 8 and 9 of the Universal Declaration of Human Rights; articles 2 (3) and 9 (4) of the Covenant; and principles 11, 32, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court affirms that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and that it is essential to preserve legality in a democratic society.³² This right, which is in fact a peremptory norm of international law, applies to all forms and situations of deprivation of liberty.³³

69. Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.³⁴ Given that Mr. Al-Taei was unable to challenge his detention before a court, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant has been violated. He was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

70. The source submits that Mr. Al-Taei was subjected to enforced disappearance and detained incommunicado for almost a year. His incommunicado detention and enforced disappearance reportedly commenced five days after his arrest on 1 September 2017, when his relative visited him, until his sentencing on 13 August 2018.

71. In relation to his enforced disappearance, his family learned about his whereabouts only through acquaintances who had been visiting their own son at Al-Nasiriyah prison where Mr. Al-Taei had been transferred to serve his sentence. The Working Group notes that enforced disappearance constitutes a particularly aggravated form of arbitrary detention, in violation of article 9 (1) of the Covenant and article 6 of the Universal Declaration of Human Rights.³⁵ The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

72. With regard to Mr. Al-Taei's incommunicado detention, as the Working Group and other human rights mechanisms have stated, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court under article 9 (3)³⁶ and (4) of the Covenant.³⁷ The Working Group also finds that Mr. Al-Taei's right to have contact with the outside world under rules 43 (3) and 58 (1) of the Nelson Mandela Rules, and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment has been violated. The Working Group notes that prompt and regular access to family members, independent medical personnel and lawyers is an essential and necessary safeguard for the prevention of torture as well as for protection against arbitrary detention and infringement of personal liberty.³⁸

73. Incommunicado detention, especially during the early stage of the investigation, is an environment that is conducive to torture, cruel and inhuman treatment, as it may be used to coerce the individual to confess to the commission of the alleged crimes and admit guilt. The Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged incommunicado detention in a secret place may amount to torture under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, noting that torture is most

³² A/HRC/30/37, paras. 2–3.

³³ *Ibid.*, para. 11, and annex, para. 47 (a). See also opinion No. 39/2018, para. 35.

³⁴ Opinions No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

³⁵ See opinions No. 5/2020, No. 6/2020, No. 11/2020 and 13/2020. See also Human Rights Committee, general comment No. 35, para. 17.

³⁶ Human Rights Committee, general comment No. 35, para. 35.

³⁷ Opinions No. 9/2019, No. 44/2019, No. 45/2019, No. 25/2021 and No. 30/2021.

³⁸ Opinion No. 34/2021, para. 77.

frequently practised during incommunicado detention.³⁹ In the present case, the source has raised allegations of torture and ill-treatment, which will be discussed below.

74. For these reasons, the Working Group finds that the Government failed to establish a legal basis for Mr. Al-Taei's arrest and detention. His detention is thus arbitrary under category I.

Principle of legality

75. The source raises several ways in which the Anti-Terrorism Law violates the principle of legality. The source submits that article 2 (1), (3) and (5) of the Law, on which Mr. Al-Taei's sentence is based, relies on a broad, overly vague definition of terrorism. Second, the source argues that he was sentenced to death on the basis of the accusation of having committed offences that do not meet the threshold of the "most serious crimes" – as required by article 6 (2) of the Covenant – and lack legal clarity. The Human Rights Committee has stated that the term "most serious crimes" must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing.⁴⁰

76. According to the former Special Rapporteur on extrajudicial, summary or arbitrary executions, the Anti-Terrorism Law itself is both vague and overly broad. It encompasses serious and petty crimes, ranging from killings to vandalism. The list of crimes for which the death penalty is not only applicable but mandatory is extensive and includes acts whose gravity fall below the threshold of "most serious crimes" necessary to impose such a sentence under international norms. Its definition of terrorism is not in line with the International Convention for the Suppression of the Financing of Terrorism that Iraq ratified in 2012.⁴¹ The Working Group notes these arguments and refers the case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

Category III

77. The Working Group will now consider the allegations put forward by the source in relation to violations of Mr. Al-Taei's due process and fair trial rights.

Torture and ill-treatment

78. The source alleges that in the first two weeks of his detention, Mr. Al-Taei was subjected to severe forms of torture and ill-treatment. He was severely beaten, including in his face, and hung from the ceiling of the room for several hours. The source adds that Mr. Al-Taei weighed nearly 100 kg at the time, which further aggravated the joint pain he experienced. The perpetrators further threatened to bring his relatives to the detention facility to subject them to ill-treatment. It is believed that he was also tortured upon every transfer to a different detention facility. Mr. Al-Taei was also deprived of sufficient food and water.

79. The Working Group has consistently concluded in its opinions that when it is not possible for a person who is subjected to torture or other forms of ill-treatment or punishment to prepare an adequate defence for a trial that respects the equality of both parties before the judicial proceedings, this amounts to a fair trial violation.⁴² The Working Group notes the submission by the source that statements signed by Mr. Al-Taei under duress were reportedly used against him in court. He was reportedly forced to sign six blank sheets of paper. After he had done so, the perpetrators allegedly noted statements on those pages, which were later used against him in the judicial proceedings.

80. The extraction of forced confessions violates rule 1 of the Nelson Mandela Rules, principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 5 of the Universal Declaration and the jus cogens norm that it enshrines. In the Working Group's view, torture or ill-treatment of detainees is not

³⁹ A/56/156, paras. 14 and 39 (f); and Human Rights Committee, general comment No. 35, paras. 35 and 56. See also General Assembly resolution 68/156.

⁴⁰ Human Rights Committee, general comment No. 36, para. 35.

⁴¹ A/HRC/38/44/Add.1, para. 47.

⁴² Opinions No. 32/2019, para. 42; and No. 34/2021, para. 87.

only a grave violation of human rights, but it also seriously undermines the fundamental principles of a fair trial as it can compromise the ability to defend oneself, especially in light of the right not to be compelled to testify against oneself or to confess guilt.⁴³ The Working Group considers that confessions made in the absence of legal counsel, as was reportedly the case here, are inadmissible as evidence in criminal proceedings.⁴⁴

81. As a result, the Working Group finds that Mr. Al-Taei's right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights was violated. The use of a confession extracted through ill-treatment also constitutes a violation of principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁴⁵ The Working Group recalls that according to article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.⁴⁶

82. The Working Group expresses its gravest concern at the allegations of torture and ill-treatment,⁴⁷ which constitute a *prima facie* breach of the absolute prohibition of torture, a peremptory norm of international law. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

Access to counsel

83. The source submits that the defendant Mr. Al-Taei was not given prompt access to a legal counsel of his choice, nor was he able to have confidential communications with the court-appointed lawyer before and during his trial to prepare his defence. In the absence of submissions by the Government, the Working Group finds credible these submissions of the source. In this regard, the Working Group notes with concern the report of UNAMI, referred to by the source, that sets out systematic violations of the right to access counsel, indicating a climate of intimidation (see para. 52 above).⁴⁸

84. In the Working Group's view, the Government failed to respect Mr. Al-Taei's right to legal assistance at all times, which is inherent in the right to liberty and security of person, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights; article 14 (1) of the Covenant; and principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

85. The Working Group recalls that persons deprived of their liberty should have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons should be promptly informed of this right. This right entitles persons deprived of liberty to be accorded adequate time and facilities to prepare their defence, including through the disclosure of information. Authorities should respect the privacy and confidentiality of communications between the legal counsel and the detainee.⁴⁹ The right to communicate with counsel as encapsulated in article 14 (3) (b) of the Covenant entails the requirement that counsel should be able to meet their clients in private and to communicate with the accused in conditions

⁴³ Opinions No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 56/2019, para. 88.

⁴⁴ A/HRC/45/16, para. 53.

⁴⁵ Opinions No. 6/2017, para. 43; No. 29/2017, para. 64; and No. 39/2018, para. 42.

⁴⁶ See also the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles), para. 220.

⁴⁷ Opinion No. 39/2018, para. 42.

⁴⁸ UNAMI and OHCHR, "Human rights in the administration of justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment", pp. 13–14.

⁴⁹ Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 (A/HRC/30/37, annex, paras. 12 and 14–15).

that fully respect the confidentiality of their communications.⁵⁰ As this was not observed in the present case, the Working Group finds a violation of article 14 (3) (b) of the Covenant.

86. Moreover, as Mr. Al-Taei is facing the death penalty, these violations are exacerbated, as cases involving the death penalty require that the accused be assisted effectively by counsel at all stages of the trial. The Working Group recalls the Human Rights Committee's guidance that it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of proceedings in cases involving capital punishment.⁵¹

Equality of arms

87. The source submits that Mr. Al-Taei's right to equality of arms was strongly limited by further circumstances (see para. 54 above).

88. According to the source, the court based its decision entirely on the statements that Mr. Al-Taei had signed under duress and the information it had received from the secret informant. The Working Group finds credible the source's allegation that Mr. Al-Taei's legal counsel did not have access to his case file or to the alleged crucial evidence provided by a secret informant, and that they were unable to adduce and challenge evidence and to cross-examine witnesses. It notes that reliance on information provided by a secret informant, without allowing the defence the opportunity to challenge the evidence, is in violation of the principle of the equality of arms under article 14 (1) and (3) (e) of the Covenant.⁵²

89. The Working Group recalls that, in principle, access to the case file must be provided from the outset.⁵³ Every individual deprived of liberty has the right to access material related to their detention.⁵⁴ However, that right is not absolute and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.⁵⁵ Noting this and in the absence of a rebuttal from the Government, the Working Group finds that Mr. Al-Taei's rights under 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (e) of the Covenant to a fair hearing and to adequate time and facilities for the preparation of a defence were violated.⁵⁶ While the right to access evidence is not absolute, in this case, the use of evidence from the secret informant that was not disclosed to Mr. Al-Taei also violates the "adequate facilities" requirement in article 14 (3) (d).⁵⁷

90. The source also submits that Mr. Al-Taei was denied the possibility to present any witnesses or evidence in his defence during the trial. As the Human Rights Committee states, in accordance with the right to equality before courts and tribunals and to a fair trial, there is a strict obligation to respect the right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.⁵⁸ In the present case, that right was denied to Mr. Al-Taei, and such a blanket refusal to allow any witnesses on behalf of the defence bears the hallmarks of serious denial of equality of arms in the proceedings and is in fact a violation of article 14 (3) (e) of the Covenant.

⁵⁰ Human Rights Committee, general comment No. 32, para. 34. See also *Khomidova v. Tajikistan* (CCPR/C/81/D/1117/2002), para. 6.4; *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.3; *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), para. 8.5; and opinions No. 42/2018, No. 83/2018 and No. 67/2020.

⁵¹ Human Rights Committee, general comment No. 32, para. 38.

⁵² Opinion No. 71/2021, para. 87.

⁵³ See opinions No. 78/2019, No. 29/2020, No. 67/2020 and No. 77/2020.

⁵⁴ Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, principle 12 and guidelines 11 and 13.

⁵⁵ *Ibid.*, guideline 13 (A/HRC/30/37, annex, paras. 80–81).

⁵⁶ Opinions No. 18/2018, para. 53; No. 78/2018, paras. 78–79; and No. 71/2021, para. 86.

⁵⁷ Opinions No. 23/2001 and No. 58/2012.

⁵⁸ Human Rights Committee, general comment No. 32, para. 39.

91. The Working Group considers that these violations substantially undermined Mr. Al-Taei's capacity to defend himself in any subsequent judicial proceedings.⁵⁹

Lack of independence of the judiciary

92. The Working Group notes with grave concern the source's submission that when Mr. Al-Taei was presented before the investigative judge for the first time on 14 September 2017, the judge insulted Mr. Al-Taei and allegedly beat him with an ashtray. In the absence of rebuttal from the Government, the Working Group considers that the source's submission is credible and that the alleged assault is an egregious violation of Mr. Al-Taei's right to a fair hearing before an independent and impartial tribunal under article 14 (1) of the Covenant.

93. This lack of independence is compounded by the relationship between the secret informant who had made the allegations against Mr. Al-Taei and the judicial assistant of the Ministry of Justice, who was not only known to Mr. Al-Taei's family, but also had a property dispute with them. These circumstances suggest due process violations relating to the initiation and conduct of Mr. Al-Taei's case, which appears to have been motivated by a disagreement between the families.

94. Taking these factors into account, the Working Group finds that Mr. Al-Taei was not tried before a competent, independent and impartial tribunal, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.⁶⁰ The Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

Right to be tried without undue delay

95. In relation to Mr. Al-Taei's appeal lodged on 13 September 2018 before the Federal Court of Cassation, the source submits that the court has four to five years to render the decision after the appeal was lodged – thus until 2022 or 2023 – and that there has been no development since.

96. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the authorities.⁶¹ This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal. All stages, whether in first instance or on appeal, must take place without undue delay.⁶²

97. The source asserts that the prolonged legal proceedings that Mr. Al-Taei faces is a violation of his right to be tried without undue delay. Moreover, according to the source, the prolonged stay on death row may constitute cruel, inhuman or degrading treatment when there are extreme delays in the implementation of a death penalty sentence that exceed any reasonable period of time necessary to exhaust all legal remedies, and when the long time on death row exposes the sentenced person to harsh or stressful conditions, subjecting him to the "death row phenomenon".⁶³

98. The Working Group emphasizes that trials involving the death penalty, in particular, must scrupulously observe the right to a trial without undue delay.⁶⁴ In the circumstances of the present case, the Working Group finds violations of articles 9 (4) and 14 (3) (c) of the Covenant; article 5 of the Universal Declaration of Human Rights; and principles 32 (1) and

⁵⁹ Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8 (A/HRC/30/37, annex, paras. 12, 15, 67 and 71).

⁶⁰ See e.g. opinion No. 59/2016, paras. 62–63.

⁶¹ Human Rights Committee, general comment No. 35, para. 37; and Human Rights Committee, general comment No. 32, para. 35.

⁶² Human Rights Committee, general comment No. 32, para. 35.

⁶³ Human Rights Committee, general comment No. 36, para. 40. See also A/67/279, para. 42.

⁶⁴ *Ibid.*, para. 41.

38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

99. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Al-Taei's deprivation of liberty an arbitrary character that falls within category III.

Application of the death penalty

100. The Working Group recalls that the Human Rights Committee, in its general comment No. 36, stated that violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the Covenant. The Working Group observes that many of the violations stipulated by the Committee in its general comment No. 36 have affected Mr. Al-Taei, namely the use of his forced confessions; his inability to question relevant witnesses; the lack of effective representation involving confidential attorney-client meetings during all stages of the criminal proceedings; the lack of adequate time and facilities for the preparation of the defence; the general lack of fairness of the criminal process; and lack of independence or impartiality of the trial or appeal court.⁶⁵

101. The Working Group notes that the mandatory death sentence is contrary to the principle of judicial independence under article 14 (1) as it limits judicial independence by preventing the exercise of discretion to find a lower sentence. The Working Group recalls that the Human Rights Committee, in its 2015 concluding observations, expressed concern that under Iraqi law the death penalty was mandatory for certain crimes and that certain crimes punishable with the death penalty were explicitly excluded from being granted special pardon.⁶⁶ The Working Group notes that the death sentence passed against an individual based on a confession allegedly extracted under torture, as was the case with Mr. Al-Taei, is a particularly grave miscarriage of justice and it would appear to constitute a prima facie violation of article 6 (2) of the Covenant. The Working Group refers this case to the Special Rapporteur on extrajudicial, summary or arbitrary executions, for appropriate action.

Concluding remarks

102. The Working Group notes with grave concern that Mr. Al-Taei was reportedly subjected to physical violence in a court room by a judge, who allegedly assaulted him with an ashtray.

103. In addition, the Working Group is concerned about Mr. Al-Taei's physical condition as a result of his treatment in detention. According to the source, during the first 17 days of his detention and during subsequent detention in other prisons, Mr. Al-Taei was not provided with an adequate amount of food and water. His family's financial resources being insufficient, he does not have the necessary money to purchase adequate nutrition inside the prison. In addition, Mr. Al-Taei reportedly still suffers from physical and psychological difficulties due to the torture to which he was subjected.

104. In this regard, the Working Group recalls article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, whereby all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of health care that are available in the community. The Working Group calls upon the Government to immediately and unconditionally release Mr. Al-Taei and to ensure that he receives the required medical treatment as soon as possible.

Disposition

105. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Abdullah Ahmed Faleh Ahmed al-Taei, being in contravention of articles 2, 3 6, 7, 8, 9, 10 and 11 of the Universal Declaration of Human

⁶⁵ Ibid.

⁶⁶ CCPR/C/IRQ/CO/5, para. 27.

Rights and articles 2, 9, 10, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

106. The Working Group requests the Government of Iraq to take the steps necessary to remedy the situation of Mr. Al-Taei without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

107. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Taei immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Al-Taei.

108. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Al-Taei and to take appropriate measures against those responsible for the violation of his rights.

109. The Working Group requests the Government to bring its laws into conformity with the recommendations made in the present opinion and with the commitments made by Iraq under international human rights law.

110. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on extrajudicial, summary or arbitrary executions, for appropriate action.

111. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

112. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Al-Taei has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Al-Taei;
- (c) Whether an investigation has been conducted into the violation of Mr. Al-Taei's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Iraq with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

113. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

114. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

115. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁶⁷

[Adopted on 30 March 2022]

⁶⁷ Human Rights Council resolution 42/22, paras. 3 and 7.