

PalArch's Journal of Archaeology
of Egypt / Egyptology

THE RIGHT TO A FAIR TRIAL UNDER IRAQI LAW

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Dr. Bassim Jameel Hussain Almusawi , The Right To A Fair Trial Under Iraqi Law , Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(5). ISSN 1567-214x.

Keywords: Fair trial, defendant, criminal proceedings, Iraqi law, international human rights law, criminal justice system.

Abstract:

The article focuses on the Iraqi law that is found in the Iraqi code of criminal procedures and the Iraqi constitution regarding respecting certain rights of persons under suspicion in criminal proceedings. The study discusses that though Iraqi legislator has established wide range of legal texts that protect rights of persons facing criminal proceedings from arrest and interrogation to trial, which are compliance with international human rights standards, assessing the compliance of Iraqi law and its implementing in practice leads us to clear belief that Iraq has the worst record of human rights in the contexts of respecting rights of defendant before criminal courts during trials.

Depending on finding of the present research the suggestion for healing the Iraqi criminal justice system is that the operations of the system should be in accordance with the criteria laid down in the international norm of fair trial. The knowledge of the requirements of international human rights by the system personal and enforcing international rules domestically are fundamental to attain a minimum level of international standards in the area of human rights and healing the system's complying with international human rights obligations. The aims of the study is to highlight shortcomings and it may suggest some recommendations to Iraqi justice system that reflect positively on due rights in criminal trials.

The method used in this article is doctrinal legal research that assessed sources from both primary and secondary data. Comparative methods also are adopted, to take advantages of the experiences of other domestic and international legal rules as the protection of fair trial under Iraqi legislations is compared to the international human rights standards.

1. Introduction:

There are several important legal mechanisms that Iraqi legal system includes to strike a right balance between protection of society against a crime and bringing offenders before justice and fair trial. This paper evaluates the system through examining the extent to which Iraqi law and practice meet fair trial norm for a persons who are facing criminal proceedings. The aim of the study is to highlight shortcomings and it may suggest some recommendations to Iraqi justice system that reflect positively on due rights in the course of criminal trials.

The study discusses that despite the fact that Iraqi legislator has established wide range of legal texts which protect rights of persons facing criminal proceedings from arrest and interrogation to trial and sentencing, which are compliance with international human rights standards, assessing the compliance of Iraqi law and its implementing in practice leads us to clear belief that Iraq has the worst record of human rights in the contexts of respecting rights of defendant before criminal courts during trials. There is no research study which neither confirms such belief nor validates this view and hence the present research is importance to examine whether such belief reflect the reality or not.

The research to achieve its aims adopts rigorous doctrinal legal research. It for the most part relies upon the standard legal and textual analysis such as Iraqi legislations. The publications of scholars that are relevant to the topic also have been evaluated. Comparative methods also are adopted, as the protection of fair trial under Iraqi legislations is compared to the international human rights standards. In addition, there are many cases which have been brought before the international organizations are examined, which potentially affect the right to a fair trial in Iraq.

The cases in this research are scrutinized in the light of international standard of human rights. Cases from Iraqi domestic courts are also observed. For the reason that Iraq is under legal duty to respect its obligations under international law that relate directly to the fair trial such as the International Convention on Civil and Political Rights and the Covenant Against Torture, the international norm has been selected in present study as yardstick to examine the extent to which the Iraqi criminal justice system and criminal justice grant various rights related to fair trial for persons facing criminal proceedings.

2. Background research, reviewing Iraqi Criminal justice system:

Iraq has a written penal code and generally, its criminal justice system unlike other Arabian criminal adjudication systems such Kingdom of Saudi Arabia has long been considered secular-law tradition. More specifically, Iraqi criminal law is secular, and thus it is right to state that the system is not openly or in the main derived from so called Sharia or Islamic law.¹ The judicial system and the penal code in Iraqi criminal justice system, as opposed to the Anglo-American adversarial system operates in accordance with the civil-law inquisitorial system in deciding criminal responsibility, which provides all citizens with a clear, written formulation of what set up a crime.

All steps of the initial investigation are conducted by investigative judges who also are known as examining magistrates who are authorized, after checking the collected

¹Farhang Michael M., "Reconstructing Justice: The Coalition Provisional Authority Took Giant Steps to Guarantee Iraq a Functioning Criminal Justice System" (2004) Los Angeles Lawyer, p45.

information and evidence, to determine whether to refer the case to trial or close it.² If the case is sent to competent courts there are, as under the civil-law system and as opposed to the Anglo-American adversarial system, no jury trials. Then, having been sent to trial the case should be verified by the court in thorough, either a felony court or a misdemeanour court so that the verdict can be reached by a competent court.

During trial, the public prosecutors are not necessarily a force seeking the defendant's conviction but it has to take into account that they are in charge of acting on behalf of society and should seek public interest and justice.³ With such duty, as in a civil system, on the basis of own findings in the case a member of public prosecution can support findings of the court or take opposite position against findings of the judges. They can support an accused person through refusing the accusation and demand from a court releasing of the accused if there are insufficient grounds for the accusation. If the response of the court is negative they by virtue of Iraqi's inquisitorial judiciary tradition may be appealing against the judgment of the court. It has been stated that "Prosecutors under the Iraqi system do not present the case against the defendant. Rather, they direct the court's attention to the facts in each case and advise the court on the law. Depending on the facts of the case, prosecutors may argue for conviction or acquittal."⁴

Witnesses submit their testimony at hearing but in cases non presence of a witness at trial the court can rely on his/her previous testimony that has already been submitted during pre-trial proceedings and summarized in the investigative report, which has been submitted to the court after transferring the defendant to the trial. Even when witnesses are not present to testify their reported testimonies should be read during hearing. By the time the trial stage is complete, the trial chamber court ultimately closes arguments to decide guilt or innocence. In this context, the question needs to be, in subsequent pages, answered is whether under the procedure followed in the Iraqi criminal system, the system provides a defendant with fair trial that are indicated under the international human rights standards.

3. Fair trial under the international treaties:

Historically, the concept of human rights that is universally noticed at present time around the world is rooted in the natural law theory.⁵ The international law lays down obligations and limitation of state powers in observing human rights. There are a list of international human rights treaties and conventions regarding the promotion and encouragement of states to respect human rights for a defendant during criminal trials.⁶ The Universal Declaration of Human Rights in article 10 in regard to the right

² Ibid.

³ Law of Public Prosecutor No. 159 of 1979, published in the Official Gazette, issue 2746 of 17 December 1979.

⁴ Farhang Michael M., "Reconstructing Justice" (supra note 1) p35; Frank Michael J., "Trying Times: The Prosecution of Terrorists in the Central Criminal Court of Iraq" (2006) 18(1) Florida Journal of International Law. p53.

⁵ Jack Donnelly, *Universal Human Rights in Theory and Practice* (2nd edn, Cornell University Press 2003) 18-20.

⁶ Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A(III)); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, (adopted 10 December 1984 by UN General Assembly resolution 39/46, entered into force 26 June 1987); International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010); UN General Assembly Res 43/173 'The Body of Principles for the Protection of All Persons under Any

to a fair trial states that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."⁷ article 11(1) and (2) states that: "(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence: and (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."⁸

In 1966 the United Nations completed the drafting of two covenants that are the international covenant on civil and political rights (the ICCPR) and the international covenant on economic social and cultural rights. The purpose of these conventions is for immediate implementation of the principles of the Universal Declaration of Rights and transforming these principles into obligatory rules of law.⁹ Right to a fair trial is guaranteed in the ICCPR, article 14 that has made clear that right to a fair trial should apply to all sort of legal disputes before the courts in all stages of proceedings.¹⁰ This particular article provides clear understanding relating to the specific human rights protection regime in relevance with the right to a fair trial. It might be true to state that this right has subsequently resulted in the creation of set of guarantees and numerous safeguards in the arena of justice system applies in all stages of proceedings particularly for criminal trials.¹¹ The Human Rights Committee (the HRC) made a general comment on article 14: "The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. Article 14 of the HRC aims at ensuring the proper administration of justice, and to this end guarantees a series of specific rights."¹²

Iraq has ratified the ICCPR in 1970 without any reservations, and hence it is one of about five Arabic countries which have ratified the convention.¹³ However, Iraq is one of the state parties that have not engaged with the First Optional Protocol of the UN ICCPR. As a consequence, having exhausted domestic remedies, a victim whose trial was unfair and biased could neither send his case to the HRC that is an aggregate of expert organization responsible for the interpretation and adoption of provisions

Form of Detention or Imprisonment' (9 December 1988); African Charter on Human and Peoples' Rights (adopted 27 June 1981 entered into force 21 October 1986); American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978); European Convention on Human Rights, (adopted 1950, entered into force on 3 September 1953).

⁷Universal Declaration of Human Rights, art (10); GA res 217A (III), UN Doc A/810(1948) 71.

⁸Ibid

⁹ Salah Eddin A. Hamid, Public international law (Baghdad, 1st edn, 1988) 141.

¹⁰ Curtis F.J. Doebbler. "International Human Rights Law: Cases and Materials", CDP, special printing. United States of America 2003, p 328.

¹¹ For more detail see: Smith R, International Human Rights (5th edn, OUP 2012) 274; Bassim J Husain Almusawi, the truth of legend of successful criminal procedure reform in post-Saddam Iraq: A critical analysis of pre-trial rights in the light of international law of human rights (PhD thesis, UK, University of Bangor 2014) p16; Stefan Trechsel and Sarah Summers. Human Rights in Criminal Proceedings (OUP 2006) 84.

¹² The HRC, General Comments on the Right to a fair trial CCPR/C/GC/32.

¹³ Iraq ratified the ICCPR by Law 193 of 1970, published in the Official Gazette, issue 1926 of 7 October 1970, entered into force on 23 March 1976.

under the ICCPR, nor resort to it in order to sue complaint against state to remedy the abused incurred.¹⁴

Furthermore, the United Nations has paid particular attention to combating the infliction of torture or cruel, inhuman or degrading treatment by adopting the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (UN CAT) in 1984 which it came into force in 1987. Article 15 of the UN CAT to which Iraq is a State party provides that: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

According to the article 17 of the Convention the Committee against Torture (CAT) has been established as a mechanism to monitor the implementation of treaty obligations by the State parties.¹⁵ By the same vein, the Optional Protocol to the Torture Convention has been adopted by the General Assembly of the United Nations adopted, which establish an a system of the international investigation against torture.¹⁶ The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been established for the purpose of receiving complaints and carrying out mentioned investigation through visiting places of detention in the States Parties. 'torture' has been explained in article 1(1) of the convention and throughout other later articles a number of references are made to various obligations relating to the protection of individuals against violence that linked to the rights of the accused in regard to the criminal process.

Regarding Iraq, the government has signed and ratified the Convention in July of 2011. As a result, accomplishment of binding obligations under the Convention is one of the most steps to bring Iraq criminal justice system in accordance with the obligations of international law. This requires adopting effective administrative, judicial, legislative or other measures aimed at eliminating all sorts of violations against fair trial right, along with the criminalisation of various acts prohibited under the Convention;¹⁷ the establishment of appropriate mechanisms of inquiry to investigate any alleged occurrence of ill treatment in the institutions of the criminal

¹⁴The HRC is a monitoring body that is established by the ICCPR. It comprises 18 experts who have the competence to monitor the implementation of the ICCPR by States parties. There are four monitoring functions of the Committee: providing guidance on interpretation of the ICCPR via general comments on Articles; the first Optional Protocol to the ICCPR gives the Committee power to consider complaints of individuals against human rights violations by States parties to the Protocol; examination of States party's reports and the Committee has competence to consider petition that it may be made against one state party by another. For more detail see the official website of United Nations, Office of the High Commissioner for Human Rights at

<<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx>> accessed 28 July 2019

¹⁵ The Committee can undertake its role through a number of duties listed by the Convention that: "(i) To receive, study and comment on periodic reports from the States parties on the measures they have taken to give effect to their undertakings under the Convention (article 19); (ii) To initiate an investigation when there is reliable information which appears to contain well-founded indications that torture is being systematically practised in the territory of a State party (article 20); (iii) To receive and examine complaints by one State party of violations of the Convention by another State party (article 21); and (iv) To receive and examine applications by individuals claiming to be victims of a violation of the Convention by a State party (article 22)."

¹⁶ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199, entered into force on 22 June 2006.

¹⁷UN CAT, Articles 2, 4, 5, and 8.

justice system;¹⁸ the promulgation of the culture of human rights;¹⁹ the improvement of the capacity of members of the public authority to deal properly with criminal proceedings in the light of international norms;²⁰ ensuring that evidence obtained by invalid means should be inadmissible,²¹ and assisting the victim with free and effective remedy against any violation or ill treatment.²²

4. A fair trial under Iraqi Constitution:

Iraqi constitution has several provisions linked to the subject of fair trial and protection of the accused in regard the criminal process. Throughout the text there is clear indication of the fair trial rights, stating that: “First: The judiciary is independent and no power is above the judiciary except the law.

Second: There is no crime or punishment except by law. The punishment shall only be for an act that the law considers a crime when perpetrated. A harsher punishment than the applicable punishment at the time of the offense may not be imposed.

Third: Litigation shall be a protected and guaranteed right for all.

Fourth: The right to a defence shall be sacred and guaranteed in all phases of investigation and the trial.

Fifth: The accused is innocent until proven guilty in a fair legal trial. The accused may not be tried for the same crime for a second time after acquittal unless new evidence is produced.

Sixth: Every person shall have the right to be treated with justice in judicial and administrative proceedings.

Seventh: The proceedings of a trial are public unless the court decides to make it secret.

Eighth: Punishment shall be personal.

Ninth: Laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees.

Tenth: Criminal laws shall not have retroactive effect, unless it is to the benefit of the accused.

Eleventh: The court shall appoint a lawyer at the expense of the state for an accused of a felony or misdemeanour who does not have a defence lawyer.

Twelfth:

A. Unlawful detention shall be prohibited.

B. Imprisonment or detention shall be prohibited in places not designed for these purposes, pursuant to prison laws covering health and social care, and subject to the authorities of the State.

Thirteenth: The preliminary investigative documents shall be submitted to the competent judge in a period not to exceed twenty-four hours from the time of the arrest of the accused, which may be extended only once and for the same period.”²³

¹⁸UN CAT, Articles 12, 13.

¹⁹ UN CAT, Article 10.

²⁰UN CAT, Articles 10, 11.

²¹ UN CAT, Article 15.

²² UN CAT, Article 14.

²³The Iraqi Constitution 2005, published in the Official Gazette, issue 4012 of 28 May 2005, Article 19

By virtue of such provisions there is a direct link made to right of fair trial, more importantly the judiciary must be a self-governing and impartial authority, and that there should be no power over judges in the context of their judicial operations, other than the law. Another consideration concerning that the exceptional courts have been prohibited under the provisions of the constitution.²⁴As can be seen from the mentioned text the states shall protect human rights in accordance with these provisions of the constitution. Therefore, with a number of rights having been guaranteed in the context of constitution it can be said that it lays the foundation for the establishment of legal mechanism for protecting accused persons in the criminal justice system. It also contains a variety of provisions to protect the independence of judiciary.²⁵However, it would be naïve to think that right to a fair trial is secured by these constitutional provisions in themselves unless these rights are fully observed in practice. It may be rightly stated by some that the words in the Constitution can only make a difference when the constitutional rights in both law and practice are in line with the international due process.²⁶Hence, analysis of the Constitution's provisions arouses wondering about the actual practice and as is subsequently seen that further examination of specific reports about law in practice is necessary before a final assessment can be made about whether these constitutional rights have been actually protected in practice or not.

5. A fair trial under Iraqi Code of criminal procedure:

A number of rights are afforded to a person facing criminal proceedings through various articles by the Iraqi code of criminal procedure. These guarantees are consistent with the standards set out in international law in order to protect persons during criminal proceedings. More importantly, a defendant must be promptly brought before the judiciary.²⁷ Any person facing criminal trial has right to seek a legal representative free of charge and to be informed of this right at outset of proceedings and then during trial the court must appoint a lawyer assigned to him without charging the attorney's fees.²⁸The Code states: "if he or she is not able to afford representation, the court will provide an attorney at no expense to the accused"²⁹

Similarly, article 126, paragraph (b), of the Code of Criminal Procedure states that "the accused shall not be compelled to answer the questions addressed to him."

Similarly, the same article states: "The accused shall not swear oath unless he is in the place of testimony against other defendant". Therefore, the defendant is not sworn in, and an exception may be made if the defendant is in the place of the certificate

²⁴Ibid, Articles 87,88.

²⁵ Ibid, Article 19, paras. 1 and 4.

²⁶Bassim Almusawi, (supra note 11), 27.

²⁷Articles 9(3) of the ICCPR; Articles (9) of the ICCPR and Article 5(3) of the ECHR expressly guarantee the right of any person who is arrested or detained to be brought 'promptly' before a judge or other officer authorized by law to exercise judicial power.

²⁸Article 14(3)(d), ICCPR providing the accused with the right "to defend himself in person or through legal assistance of his own choosing"

²⁹ Article 123 of the Iraqi Code of Criminal Procedure (ICCP) in the official English translation that is available online at the homepage of the Global Justice Project: Iraq (GJPI) <<<http://gjpi.org/central-activities/judicial-independence/>>> accessed 28 January 2014.

against other defendants. If it turns out that the defendant has a testimony against another defendant, they will testify and separate each other's case.³⁰

When the right to remain silent is used, drawing of inferences from such accused's silence is inadmissible throughout stages of criminal proceedings. The consequences of such legislative provision in Iraq is that such right is absolute and should be decided to be applied in absolute manner to all criminal proceedings from the most simple to the most difficult or serious crimes in every cases.

It has been further suggested that judges' personal knowledge not matters contained in the trial record, cannot be the basis for reaching verdict of a conviction or acquittal. The code provides that "The judge cannot give a ruling on the basis of his personal knowledge."³¹Enforcing an accused to confess against his will is strictly prohibited and invalid under any circumstance. Thereafter, if a confession is voluntarily submitted such the confession may be considered as crucial evidence to the court in reaching the truth.³²The code also provides absolute right for the defendants to decline to testify, not constrained by an oath to tell the truth, not to face hostile cross examination, not to be tortured, and not to suffer cruel treatment.³³Otherwise, without providing these safeguard that have been afforded under Iraqi law a confession should be excluded on the ground of privilege against self-incrimination.

In the broader sense, the Iraqi legal framework offer various safeguards in criminal proceedings which meet procedural guarantees laid out in the standards of international human rights law such as: right to any criminal case should be conducted by a competent, independent and impartial court of law and based on this right, establishment of special courts is rigorously prohibited by the law; equality of means between the defense and the prosecution; a trial shall be made public except only in truly necessary instances; right to a lawyer and providing a defendant with adequate time and facilities for the preparation of a defence; if a defendant lack the financial means he has a right to a lawyer free of charge; the right to have free assistance of an interpreter if he cannot understand or speak the language used in court; The right to a public pronouncement of judgments and the right to a reasoned judgment.

6. Fair trial in practice:

On the basis of the above mentioned provisions, the Iraqi criminal justice system seems to provide in theory right standards for accused persons accordance with international law of human rights. However, the local and international human rights organizations those monitor the reality of right to fair trial in daily practice, have

³⁰Articles 125 and 126 of Iraqi Code of Criminal Procedure.

³¹Id, Article 212

³² Ali Nawar Delf, *the Legal Value of Confiscated Confession*, Sinhoury Library, Beirut, 2016, p. 89. Article 127 of the Code of Criminal Procedure also affirmed that unlawful means may not be used to influence the accused in order to obtain recognition as abuse, threat of abuse, inducement, promise, intimidation, psychological influence, use of drugs, alcohol or drugs. Article 93 of the Iraqi code of criminal procedure states that it is not permissible to use force against the accused upon his arrest unless he refuses to obey the order of arrest voluntarily and that the use of force is appropriate to the execution of the arrest warrant.

³³"The accused was subjected to coercion and torture under the medical report in support of that makes his statements questionable and cannot be trusted to establish a proper judicial ruling." Federal Court of Cassation Decision / Public Authority No. 96 / Public Authority 2007 on 31/10/2007.

shown that Iraqi legal system had a tradition of repression.³⁴ Over the last years, there has been, as reports mentioned that a disconnection between law and practice.³⁵ Safeguards against violation against an accused person have been overlooked in practice for the purpose of extracting confessions against his will.³⁶ It has been observed that “the Iraqi experience to date amply illustrates the potential gulf between laws on paper and actual practice.”³⁷ The situation in daily practice has been exacerbated by the fact that confessions for the convictions are still in daily practice commonly reliant on. These allegations can also be corroborated from the United Nations Assistance Mission for Iraq (UNAMI). It reports that “Criminal trials falling short of international standards ... trials were often brief, and consisted of the judge merely certifying confessions which often were obtained before the accused was brought to court and often under duress ... and the reliance of the courts on confessions obtained under duress and with unreliable forensic evidence.”³⁸ Amnesty International in the same vein reported that “[it] has examined numerous verdicts by Iraqi criminal courts where a withdrawn confession constituted a/or the crucial piece of evidence for a conviction”³⁹

The jurisprudence of the Court of Cassation upheld the view that even if the confession involuntarily can be relied upon as the basis of deciding conviction against a defendant, as long as it includes sufficient details.⁴⁰

It also has been remarked that “courts frequently rely solely on confessions to found convictions – often without any corroborating evidence. These factors contribute to an environment where violations, including abuse, torture and corruption can, and do, take place.”⁴¹ It has been further added that “UNAMI continues to have serious reservations about the integrity of the criminal justice system in Iraq, including with regard to abuses of due process, convictions based on forced confessions, a weak judiciary, corruption, and trial proceedings that fall short of international standards. No legal system can be guaranteed to be free of error, and in Iraq few convictions for serious offenses can be considered safe.”⁴²

³⁴See Coalition Provisional Authority Order (CPA) No. 7, Penal Code (CPA/ORD/9 June 2003/07) (2003), available at <http://www.iraqcoalition.org/regulations/> accessed 1/2/2020; Frank Michael J., “Trying Times” (supra note 4), p3.

³⁵ The Reports of Iraqi High Commission of Human Rights (Iraq, Bagdad 2014-2019); The Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), Human Rights Report (Baghdad, 2011-2018); The Annual Reports of the Iraqi Ministry of Human Rights, the Conditions of Prisons and Detention Centres, Human rights report (Bagdad, 2007- 2012).

³⁶Amnesty International, New Order Same Abuses Unlawful Detentions and Torture in Iraq (September 2010) Index: MDE 14/006/2010; The Annual Reports of the Iraqi Ministry of Human Rights, the Conditions of Prisons and Detention Centres, Human Right Report (Baghdad, 2008) 72.

³⁷ Joseph T. Thai, “Constitution Excluded Confessions: Applying America’s Lessons to a Democratic Iraq” (2005) Oklahoma Law Review 39.

³⁸The Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), Human Rights Report (Baghdad, January 2012) 12, 13.

³⁹ Amnesty International, (supra note 36) 42.

⁴⁰ See for example, Court of Cassation (Mahkamat Al-Tamyeez AlAthadia), Case number 505, General Commission on 24/5/2010.

⁴¹The Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), Human Rights Report (Baghdad, June 2013) 12.

⁴² Ibid, 17; similarly, The Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), Human Rights Report (Baghdad, May 2012) 13 states that “trials were often brief, and consisted of the judge merely certifying confessions which often were obtained before the accused was brought to court and often under duress.”

In the light of aforesaid the conclusion is that right to a fair trial under international standards, is one of the most expansive human rights that should be respected at all stages of criminal proceedings and the basic principles of this right is to be free from involuntary confession. Accordingly, reliance of courts upon confessions that are improperly obtained in practice to deciding convictions have resulted illicit violence against right of defendant to have fair trial in Iraqi criminal justice system.

7. Conclusion:

The competence of the criminal trial is related to the fundamental procedural rights which should be guaranteed for a defendant during trial so that the trial is to be fair. The present article has examined several issues in the Iraqi justice system linked to fair trial, with special reference to the international human rights standard. This paper points out that despite Iraqi legislator has established wide range of legal texts which protect rights of persons facing criminal proceedings from arrest and interrogation to trial and sentencing, which are compliance with the application of the notion of fairness and international human rights standards, the inquisitorial nature of the criminal trial, and courts' reliance on confessions improperly obtained in investigation stages for convictions has adversely impacted a defendant's right to have fair trial.

To sum up, in view of the extent to which criminal justice system in Iraq has been enhanced by internationally accepted human rights norms, the present research asserted that Iraq has the worst record of human rights in the contexts of respecting a right of defendant to have fair trial. As a result of failure of Iraqi criminal justice system in daily practice, this paper proposes that the proper legal policy in complying with international human rights obligations and confrontation miscarriage of justice, the system must expressly provide the proper legal policy by which the system can ensure full compliance between the greater protection under legal framework and daily practice.

References:

Books & Articles:

- Ali Nawar Delf, *the Legal Value of Confiscated Confession*, Sinhoury Library, Beirut, 2016.
- Bassim J Husain Almusawi, *the truth of legend of successful criminal procedure reform in post-Saddam Iraq: A critical analysis of pre-trial rights in the light of international law of human rights* (PhD thesis, UK, University of Bangor 2014).
- Curtis F.J. Doebbler. "International Human Rights Law: Cases and Materials", CDP, special printing. United States of America 2003.
- Farhang Michael M., "Reconstructing Justice: The Coalition Provisional Authority Took Giant Steps to Guarantee Iraq a Functioning Criminal Justice System" (2004) Los Angeles Lawyer.
- Frank Michael J., "Trying Times: The Prosecution of Terrorists in the Central Criminal Court of Iraq" (2006) 18(1) Florida Journal of International Law.
- Jack Donnelly, *Universal Human Rights in Theory and Practice* (2nd edn, Cornell University Press 2003).
- Joseph T. Thai, "Constitution Excluded Confessions: Applying America's Lessons to a Democratic Iraq" (2005) Oklahoma Law Review.
- Salah Eddin A. Hamid, *Public international law* (Baghdad, 1st edn, 1988).
- Smith R, *International Human Rights* (5th edn, OUP 2012).

- Stefan Trechsel and Sarah Summers. Human Rights in Criminal Proceedings (OUP 2006).

Reports:

- The Reports of Iraqi High Commission of Human Rights (Iraq, Bagdad 2014-2019); The Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), Human Rights Report (Baghdad, 2011-2018).
- The Annual Reports of the Iraqi Ministry of Human Rights, the Conditions of Prisons and Detention Centres, Human rights report (Bagdad, 2007- 2012).
- Amnesty International, New Order Same Abuses Unlawful Detentions and Torture in Iraq (September 2010) Index: MDE 14/006/2010.
- The Annual Reports of the Iraqi Ministry of Human Rights, the Conditions of Prisons and Detention Centres, Human Right Report (Baghdad, 2008).
- The Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), Human Rights Report (Baghdad, January 2012).
- The Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), Human Rights Report (Baghdad, June 2013).
- The Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), Human Rights Report (Baghdad, May 2012).

Legislations :

- Law of Public Prosecutor No. 159 of 1979, published in the Official Gazette, issue 2746 of 17 December 1979.
- Coalition Provisional Authority Order (CPA) No. 7, Penal Code (CPA/ORD/9 June 2003/07) (2003), available at <http://www.iraqcoalition.org/regulations/> accessed 1/2/2020.
- Law of ratifying the International Covenant on Civil and Political Rights 193 of 1970, published in the Official Gazette, issue 1926 of 7 October 1970, entered into force on 23 March 1976.
- The Iraqi Code of Criminal Procedure (ICCP) in the official English translation that is available online at the homepage of the Global Justice Project: Iraq (GJPI) <<<http://gjpi.org/central-activities/judicial-independence/>>> accessed 28 January 2014.
- The Iraqi Constitution 2005, published in the Official Gazette, issue 4012 of 28 May 2005.

International resources:

- Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A(III) UN Doc A/810(1948) 71.
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, (adopted 10 December 1984 by UN General Assembly resolution 39/46, entered into force 26 June 1987).
- International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010).
- UN General Assembly Res 43/173 'The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment' (9 December 1988).

- African Charter on Human and Peoples' Rights (adopted 27 June 1981 entered into force 21 October 1986).
- American Convention on Human Right (adopted 22 November 1969, entered into force 18 July 1978); European Convention on Human Rights, (adopted 1950, entered into force on 3 September 1953).
- The Human Rights Commission, General Comments on the Right to a fair trial CCPR/C/GC/32.
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199, entered into force on 22 June 2006.

Cases:

- Federal Court of Cassation Decision / Public Authority No. 96 / Public Authority 2007 on 31/10/2007.
- Court of Cassation (Mahkamat Al-TamyeezAlAthadia), Case number 505, General Commission on 24/5/2010.

Websites:

- The official website of United Nations, Office of the High Commissioner for Human Rights at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx> accessed 28 July 2019