



I.O.H.R.C

*Iraqi Organization for
Human Rights Coordination*
المنظمة العراقية لتنسيق حقوق

*How the Current Iraqi Valid Penal Code
No. 111 for 1969
Is Conforming To
Human Rights International Standards*

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Introduction

Iraq passed through very hard times of dictatorial and individual reign where Iraqis suffers dangerous and serious violations in lives, properties, freedoms and dignity. After the ex-regime fall in April 9, 2003, there was a hope of a modern state that care and respect human basic rights guaranteed by international charters and agreements.

Achieving this is not hard to attain, there are great efforts should be exerted to make the needed changes toward State of Law.

Surely, that achieving this aim stays restricted and inefficient unless national law are conforming to international standards; this represents a guarantee against violations on these freedoms and rights; so, this study needs specifying human rights international standards and their sources then examining Iraqi penal code to see how identical with all these standards.

Study Aim

The purpose behind this study is to know how the current Iraqi valid penal code #111 of 1969, the amended is conforming to human rights international standards, and to provide legislator with recommendations that researcher sees to be very necessary to protect human rights in the penal code.

It is clear that there is an increasing concern on international level about the importance that national laws should consider human rights international standards and prevent serious violation upon these standards.

The reality is, the importance of considering human rights international standards comes from its basic aim which is to restrain states from passing on these rights more than caring about the violations themselves because the state, in principle, is an institutional organization authorized with legal powers, specializations and validities to organize life, property and freedom in the society. The state also is the basic concern of the international law; therefore, many of human rights rules, especially civil and political rights, are directed to the state, as it is a legal authority that enacts legislations and applies them.

Study Divisions

this study will be divided into three sections as follows:

Section one: human rights international standards concerning penal code

Section two: how the current valid Iraqi penal code (# 111 , 1969) is conforming to human rights international standards; Points of similarity and difference

Section three: conclusion and recommendations

Section One Human Rights International Standards Concerning Penal Code

Human rights international law obliges individuals and states with rights and commitments; these rights and commitments seeks to protect supreme human values through protecting the man itself regardless the unjust distinction because of race, color, gender or belief or any other distinctions; most important values are:

1. Forbidding torture,
2. Offensive punishment that degrades human dignity,
3. Respect family rights.
4. Belief freedom,
5. In kind rights
6. Not to question a man for an action he did not commit,
7. Forbid revenge and mass punishment, taking hostages
8. Each man has the right to benefit from legal; guarantees adopted by the progressed peoples.

It is known that these rights and commitments are taken from international charters such as United nation Charter, Universal Declaration for human rights, universal charter for civil and political rights, international agreement for economical, social and cultural rights, European Agreement for human rights, American Agreement for human rights, African treaty for human rights and peoples, in addition to many agreements of the Labor international organization to promote human rights and protect them in specific and important issues.

To ensure legal guarantees for these rights, human rights international law prohibits committing genocide, racism, torture, enslavement, forced unpaid labor,

racial discrimination, on the other side, states and individual become obliged to respect international criminal law that represents a way used to achieve a high level of accordance and harmony with international community aims in preventing crimes, preserving community, rehabilitating criminals to reserve it and attain the higher interests of the international community. The international criminal law is considered a fruit of international sides' convergence in the national criminal law and criminal sides in the international law.

On the third side, individuals and states are obliged to respect (human international law) rules being a result for ethical principles and values call, in its general frame, for discard wars among countries and peoples, and resort to peaceful solution for problems among countries. If war breaks in, there are humanitarian considerations should be respected. Basing on these three sources (human rights international law, criminal international law and humanitarian international law), it needs specifying the international criteria of Right to be protected through illustrating the concept of each criterion and limit its range to reach to the limit where we could say whether this right or that has been violated, or not; this we will explain in the following three points:

First: criminal responsibility in human rights international law

Second: criminal responsibility in criminal international law

Third: criminal responsibility in humanitarian international law

First: criminal responsibility in human rights international law

We mentioned that human rights international law oblige individuals and states with specific obligations to protect man himself from the authorities oppression; therefore, we find international law for human rights criminalizes acts such as committing genocide, racial discrimination, torture, enslavement, racism and similar acts. We will talk about some how briefly:

⇒ Committing genocide criminalization:

Before approving anti genocide treaty 1948, international law was not criminalizing this crime in peace times, whereas genocides during wars, they were covered by general rules of war crimes and crimes against humanity.

The purpose behind genocide prevention treaty was to stop catastrophes that led to putting end to huge number of human beings as happened during the second world war when Nazi government. The first article of the treaty assured that genocide is a crime whether in peace or war times according to international law. States joined this treaty, commit that preventing this crime and deciding the appropriate punishment.

The second article of this treaty defined the meaning of genocide that it includes any of the following acts in order to terminate fully or partially a national, racial, religious or ethnic group such as:

- killing the group members
- causing corporal or mental damages for the groups members
- Intending to affect, negatively, the group life in a way causes corporal destruction to the whole group or part of it.
- Imposing procedures to prevent new born babies in the group
- Convey or move the group's children to another group

It is noticed that this drafting concentrate on the actual destruction or trying to corporal destruction of the group or its individuals more than procedures that aim to affect its cultural, economical matters that is called destroying the group's identity and culture.

Main hardships began when trying to identify the elements of racism, ethnics or religion that characterized that group. These elements are hard to be explained in the international law because it is hard sometimes to affiliate individuals to a specific racist or ethnic group; therefore, specification in this case eventual more than being actual.

Article \4 of the treaty states that those who commit genocides or any other acts stated in the third article will be subjected to punishment whether they were officials, constitutionally responsible, or common individuals.

Article \5 states that the parties joined this treaty would commit to enact the required legislations necessary make this treaty text in force, especially stating punishments of those committed genocides or any other act stated in the third article.

⇒ *Torture:*

Torture is considered an old phenomenon and still practiced on a very large scale. Torture was permitted by most government until the nineteenth century being an official way for questioning and getting information and confessions. Information was gotten by torture had not led to result can be depended. Since that torture is a violative of basic human rights, it is an offence to the human dignity, physically and spiritually; therefore, countries began to abolish it gradually. Still, torture remains an issue that stressed on human rights now; on the other side, it is noticed that many UN and NGOs documents, especially Labor international organization , decided that although some government negate that it practices torture, but it is practiced actually repeatedly.

When the universal declaration of human rights was announced by UN general assembly 1948, article \5 stated preventing torture, cruel treatment and offence. Article \7 of the international charter for civil and political rights 1966, stated that no one is to be subjected to medical or scientific experiment unless he willingly

agree. The joint article three in Geneva treaties 1949 forbids aggression on life, physical safety especially murder in all its forms, distortion, cruelty, torture and personal dignity offence.

On the same trend, American announcement for human rights (article\5), African charter for human rights (article \5) , European treaty for human rights(article \ 3) and the European treaty against torture, cruelty and inhumane treatment 1987.

It is noteworthy to mention that UN general assembly announced in 1970 a statement about protecting all people from being subjected to torture, cruelty or personal offence. In July 23, 1985, UN human rights committee assigned a special rapporteur to follow up torture cases; it authorized him to search in special agencies, NGOs and governmental one, and to respond actively to torture cases. In December 10, 1984, UN general assembly agreed on an agreement against torture after seven years of negotiations; it entered force in June 26, 1987.

⇒ ***Racial discrimination:***

Racial discrimination crime is considered one of the crimes that are against human rights. Human rights international law has come to support efforts exerted in human rights respect field and work on criminalizing violations on these rights.

If we examine these efforts, we will find that traditional international law considered human rights subject as an interior affair that should not be aroused on the international level, but this stand is not a natural one since that human being is the end of each regulation, natural development require that the international legal system concerns to include individual with care and protection. The beginning of this movement was before the First World War when Europe western states ratified a number of treaties to protect ethnic, racial, lingual and religious minorities who lived in some countries especially in the Ottoman State. Concerns in this topic increased after the Second World War. UN Charter came adopting the call, on international level, to support human rights in a way makes these rights an end within targeted ends UN aspired to attain.

It is worth mentioning that there are many international agreements and treaties fought this crime; they are twelve documents most important of which the international treaty to put an end to all racial discrimination forms ratified in 1960 and the international treaty to repress racial discrimination crime and its punishment 1973. International agreement to remove all discrimination forms included many texts that forbid individual take part in discrimination. It directly obliged states ratified the agreement the responsibility more than responsibility it obliged the individuals as individuals.

Article \4 of the treaty criminalizes all propaganda forms, spreading racial hatred and encouraging on racism.

Item-2, article \5 states that state parties should commit to prevent and remove all racial discrimination forms, guarantee each individual rights without

discrimination in color, gender or origin; all are equal before law, have the right to enjoy personal safety and security, be protected from violence, physical harm whether by governmental officials, an individual, a group or institution...

⇒ ***Prevention all forms of discrimination against woman***

International charters and declarations concerning woman emphasized on women rights and the importance of gender equality. This principles were emphasized in UN charter preamble that stated that *Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women; articles 1 and 2 of the charter assured this.*

Universal declaration of human rights clearly stated on all basic rights of gender equality: *Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world .* Article 2 stated that each human being has the right to enjoy rights and freedoms stated in this declaration without discrimination of any kind.

On the same direction, United Nations General Assembly announced a declaration in November 7, 1967 to put an end to all forms of discriminations against women considering this declaration an international official statement to put an end to gender discrimination.

In addition to all above, there are many conference had been held in this concern such as Mexico's 1975, Copenhagen's 1980, Nairobi's 1985 and Beijing international conference 1995.

Going back to the Convention to End Discrimination against Women (CEDAW), it stated in its first article on definition of discrimination against women, and stated, in its second article, on pattern between man and woman, i.e. cultural and traditions influence on restricting women enjoy their rights. It also stated on putting an end to the pattern roles of both genders, discard the concept of women inferiority and the other sex superiority. The convention also addressed the states to fight all forms of women illegal trafficking and abusing them in prostitution. CEDAW emphasized on women rights in equal opportunities in political and public life, in addition to women and children right to be naturalized because women and children should not remain without naturalization.

Moreover, there are international treaties concerning women in order to protect her, promote her situation and grant her gender equality such as women political rights 1952, putting an end to all forms of discrimination against women 1981.

Second: criminal responsibility in criminal international law

Criminal international law aims to protect human being personality from crimes of international features; therefore, this protection finds its sources in custom rules and treaties rules.

Criminal international law had been established under war law where it began to put rules, monitor war and organize armed conflicts. Therefore, criminalization sources in this law are directly taken from international treaties where the first indications for criminal international law were with the beginning of the community conception to criminalize images of serious violations for war customs and laws in spite of that criminalization range was getting wider on the international level to include other crimes such as international terrorism, torture, drug trafficking, white slaver...etc.

The reality is that the criminal international law is considered, comparatively, recent in comparison with interior criminal law . After the Second World War end, the Allies established two international courts (Nuremberg and Tokyo courts) to sue war criminals from the enemy states. These courts used, for the first time, vocabularies such as war crimes, crimes against humanity and aggression crimes (against peace crimes).

After the Yugoslavian war at end of past century 90's, Security Council in UN had established the provisional International Criminal Court in order to sue Yugoslav war criminals. This also happened when Rwanda court was established to sue leaders who caused Rwandan citizens mass slaughters.

The interior criminal law has reached its highest stage of development and crystallization when Rome basic rule had emerged that established International Criminal Court 1998. This court is considered the most recent judicial institution on the international level to punish for most serious crimes such as genocides (article 6), crimes against humanity (article 7), war crimes (article 8) and aggression crime.

Third: criminal responsibility in humanitarian international law

International human law is defined as a group of international law rules that target, in armed conflicts cases, to protect people who suffer these conflicts catastrophes, and on larger scale, protect those who have no direct relationship with aggressive operations.

The noblest aim of international human law is to protect man from war evils and catastrophes.

This law is originated to philosophers' opinions, religions, and humanitarian activists such as the Swiss Henry Donan who was terrified with what he had seen in 1859 of thousands killed and injured people in Solverino; he called for founding

a relief committee to help armed conflicts victims. After that, he has established International Committee of the Red Cross in 1863. A year after, called by Swiss federation council, a diplomatic conference was held and ratified 1864 convention which was the first international convention to improve states of injured and wounded military troops. After that, international conventions followed; they were considered the corner stone for the international human law until they were united in Geneva four conventions 1949 and the two complementary protocols 1977.

It is noticed that international human law content differs from human rights international law in that the first is, basically, concerned with protecting individual and civil notables from aggressive military operations whereas human rights international law is, basically, concerned, in general, with individual whom basic rights are in danger in confrontation with authority. Therefore, human rights guarantees according to human rights international law principally focus on protecting individual from his own State authority, i.e. it is the connection between the State and citizens in peace times. International human law is a relationship between citizens of a state part of an armed conflict and military troops of the state that is second part in the conflict.

According to the above, mechanisms of implementing both laws differ from each other. international human law implementation mechanisms concentration is on the International Committee of the Red Cross whose delegate has the right to go to all places where there are prisoners of war and citizens included in protection plan; the states apply international human law rules in case its rules are violated; the state has the right to decide the punishment according to its national legislation. Concerning human rights international law, it is subjected to international monitoring represented in the United Nations and its specialized institutions.

Moreover, there is a political orientation to classify states to states respecting human rights and states do not; this might lead to (international interference) in the latter affairs in name of (humanitarian reasons). This is not restricted on United Nations only, there are regional organizations especially the European Council for Human Rights and American Convention for Human Rights where an individual can directly sue violation any of his basic rights.

Section Two

The Current Iraqi Penal Code(#111 – 1969) And how Conforming it is To Human Rights International Standards (Similarities And Differences)

Reading Iraqi valid penal code # 111 - 1969 carefully uncovers for us many points of similarity and differences in how these legislations are conforming to international standards we previously spoke about. In order to talk about this, in simple and easy way, we will divide the topic into two sides; first side is about similarity and conforming to international standards; the second is about differences.

First: Similarity And Conforming Of Iraqi Valid Penal Code # 111 - 1969 To International Standards:

We can say that there are many points where Iraqi penal legislator try to conform to international standards when putting penal texts whether in Penal Code or other penal laws, or through ratifying many treaties and convention concerning this topic:

1. CONCERNING PENAL CODE

- A.* Iraqi penal legislator has adopted (*legality of crimes and punishment*) principle or (*no crime and no punishment only in text*); this was confirmed in article (1) of the current valid (111 \ 1969) and its amendments. This article stated that (no punishment on an act only according to a law states that this act is considered a crime at time it has been committed). No punishments or precautionary procedures not stated by law should be taken. It noteworthy that this principle is considered of a constitutional value occurred in the Iraqi current constitution (article 19\ second), before being considered of a legal value that is included in the mentioned before. Legislator should change this text drafting to be (only by a law) instead of (according to a law...) because there is a clear difference between the two drafts.
- B.* Article (2) of the current Iraqi Penal Code states that (law is valid upon crimes when they have been committed; crime time is specified to be time of committing its acts regardless to its results time); this principle is considered important in penal legislation because it is unacceptable to question a person on an act that has not been considered a crime before committing it. Item (2)

of the same article, stressed on (the best law for the accused) idea stating that (if a law or more have been enacted after committing the crime, and before uttering the final judgment, the best law is considered for the accused) this is stated in article (15\1) of the international Covenant for Civil And Political Rights.

- C.* Iraqi Penal legislator did not make juveniles responsibility subjected to the same terms applied on adults. He set apart articles including special terms that consider differences between juveniles and adults and how influential this difference is on penal responsibility; this has been mentioned in articles (64-79) of the current Iraqi penal code, in addition to important terms that included in the Iraqi juvenile law (76) 1983 considering that its texts represent special texts restrict general text occurred in penal code. This is stated in article of the childhood convention issued in November 1989.
- D.* Current Iraqi penal Legislator abrogated cruel and offensive punishments such as cutting apart of ear, stigmatizing face, cutting hands or legs. It abrogated also texts adopted execution in many crimes that never deserve this capital punishment such as insulting or attacking, by words, the president, his vice, Council of Revolution, Baath party, Cabinet or government according to article (225) of valid Penal Code that was suspended after April 9, 2003.
- E.* Although that execution (capital punishment) is still valid in the Iraq penal legislation, and in spite of continuous disputes to leave it valid or suspend it, Iraqi penal legislator has adopted other kinds of punishments conforming to punishments decided and approved in international treaties and conventions. There are genuine punishment (life sentence, temporary imprisonment, severe imprisonment, simple imprisonment, fines, detention in delinquent youth schools and detention in correctional schools). There are also consequences, complementary punishments and precautionary procedures. Iraqi penal legislator adopted punishment intensified conditions system, legal excuses, mitigating judicial conditions and suspending executing punishment.

2. TREATIES AND CONVENTION IRAQ RATIFIED

There are many treaties and conventions Iraqi ratified; these include humane values important for the completely international community described as high values cannot be ignored or violated such as:

- ⇒ United Nation Charter 1945
- ⇒ The Universal Declaration Of Human Rights 1948
- ⇒ International Covenant On Civil And Political Rights 1966
- ⇒ International Covenant On Economical, Social And Cultural Rights

In addition to many conventions Iraq ratified that cannot be mentioned in this study

Second: Differences And Dissimilarities

1. Iraq did not ratify Convention against Torture and Other Cruel acts 1984 and has not yet, knowing that there are crimes against Iraqi people committed by the ex-regime who ruled 1968 – 2003; this is in spite of clear texts criminalizing this crime in the Iraqi Penal Code(111 \1969) until now after amending some of its articles.

In fact, this is considered illogical description especially after Iraqi constitution stated forbidding torture. Iraqi legislator should work to put an end to this peculiar and unacceptable situation; it is not agreeable that constitution states on a principle whereas the legislator refuse to ratify a convention or a treaty that goes along in the same direction and objective.

2. although that Iraq has joined The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979and which entered force in September 3, 1981, Iraqi valid Penal Code is criticized; some of these criticisms are:

- Adultery, murder for honor and unequal legal protection between men and women (article 409, Iraqi penal code). It is clear that there is an evident discrepancy in legal protection between man and woman concerning this crime. Commenting on this, Dr. Munthir Al-Fadhil said that Iraqi Penal Code has put very severe punishments on woman reach to killing her without punishing the doer or he might be punished with a slight punishment not appropriate with the committed crime in excuse that murder was to regain his honor; law grant man this protection in time it deprived woman from. on the other hand, if a woman killed her husband after she discovered that he is betraying her in their own house, she would be accused of premeditated murder and the murder will not be considered as regaining honor, but if man (woman's husband or a relative) committed this murder, he will be punished only with six months imprisonment; moreover, this sentence is suspended.
- Man disciplines his wife : article (41) of Iraqi Penal Code states (no crime is committed if act was committed in use of right 1-a man disciplines his wife)

This article has aroused disputes in legal and cultural mediums especially those concerned in women issues and rights, on basis that discipline is a right legally guaranteed for a man; he has the right to kick and abandon her; this contradicts with human rights, humanity and humane values. Kicking is maltreatment; this should not be used by any party for any reason because it is a crime in itself where doer deserved to be punished. Reality uncovers, on large and dangerous scale, that there are innumerable violations and

abusiveness committed against women; this needs legislator to interfere to confront it.

3. Still, there are reservations Iraq showed on CEDAW especially against articles (2 and 5 -e) concerning elimination of all discriminations against women in practical and political , and article (16) concerning marriage and family relationships in addition to reservations Iraq showed to the article (9) that guarantee her equal right to be naturalized and convey her naturalization to her children.

Section Three

How Iraqi Penal Legislations Are Conforming To Human Rights Standards Concerning Penal Issues

This study comes to a conclusion that international law in its various branches such as criminal international law, interior criminal law and international human law, included many international standards should be considered when organizing one of human rights as they are standards aim to protect and develop humane high values important to man living on this earth regardless of any other considerations.

Concerning penal legislations and how conforming to international standards, it is found that there are many points of similarity and difference with these standards.

In fact, Iraqi penal legislator meeting with international standards concerning this right or that expresses realization, sense of the importance and responsibility in the same time to respect this right or that related to Man being a supreme value that international law aims to protect and guarantee respecting it. Whenever interior penal legislation meets and conforms to international standards for human rights, it is very important to enhance legal rules protect rights and interests deserve to be protected, whereas differences between penal legislations and human rights international standards (unjustified deviation) led an leads to wasting Man's rights and interests deserved to be protected. Here, the penal legislator deviates from the circle, he is supposed to issue legislations depending on it (I mean organization circle), i.e. organizing the right or freedom to unjustified restriction circle; we found this in some penal texts in the Iraqi penal code.

Legislator's deviation from organization circle to unjustified restriction circle in dealing with right or freedom led, consequently, to waste international guarantee point of research. There is no better example than enormous violations Iraqi people suffered in then past era especially the period 1968 – 2003. Although the

dictatorial ex-regime fall opened a new page to legislate important laws protecting Man and his dignity, still, there is slackening in legislating these laws...

Section Four

Conclusion and Recommendations

>>> CONCLUSIONS

After the brief presentation about Iraqi penal legislations and how accordant with human rights international standards, we can conclude that Iraqi penal legislator had not considered some points functioning these standards require and respect on the national legislations level. There are many points of similarities between internal penal legislation and human rights international standards vis-à-vis stating law some basic principles such as legality, penal personality, system of genuine, subordinate and complementary penal and precautionary procedures; in spite of that, this effort is not enough to say that Iraq has been fully a state of law. There are many defects in some laws; this requires legislative interference that puts needed legal text or abrogates a text that contradicts with human rights international standards or amends disagreeing texts.

In this frame, we could reach some suggestions and conclusions; we hope that Iraqi legislator would insert them in Iraqi Penal Code and other related laws. Some of these conclusions are:

1. We see that it is very important that Iraq ratifies Convention against Torture and Other Cruel acts 1984. constitutional text that prohibits torture in the current Iraqi constitution 2005, obliges the Iraqi legislator to take legal procedures required to activate this text; some of these procedures: Iraq assures its respect to the anti torture convention mentioned above, amends any legal text permits torture or, at least, let it happen or non punishing who commit torture crime; this will, consequently, lead to a gap in the feeling of justice and applying it.
2. This research includes a serious call for the Iraqi legislator to reconsider (reservations) Iraq shows concerning CEDAW 1979. Concerning criminal and penal side, it is obvious that there is inequality in legal protection between man and woman concerning adultery and killing to restore honor crimes. This inequality in legal protection led to innumerable crimes against innocent women and girls just because they were accused of a dishonorable; doubt, suspicion and dressing way might be reasons that bullets settled in innocent



girls and women bodies and end their lives without a real reason. This, if the case reach to be in court, but what about murder crimes that were covered with high secrecy. If the crime is discovered, those (cowards) turn to base murder action to a relative that was shocked when bullets went out of his gun unknowingly when he was cleaning or plying with it in order to escape from the responsibility. We do not have accurate statistics of murdered women numbers, but our colleagues in judicial and attorney institutions provides us of such stories.

This oppression must end. An innocent student had been killed by her relative because he only heard that she is in love with a colleague, no more than that; it is more painful to know that her murder crime was judged to be accidental homicide because of a bullet wrongly went pout his gun !!!

Concerning man disciplining his wife that is stated in article (41) of Iraqi Penal Code, we see that this right has been misused most the time. If law allows kicking by hand on not dangerous places from women body and not degrading her dignity, practical situation says to the opposite of this, severe kicking is used and on dangerous and sensitive places of women bodies degrading her dignity and femininity .

I do not claim that I am sure, but if a survey is conducted on married women, whether her husband kicks her or not, results will be so serious. Therefore, the researcher call Iraqi legislator to conduct such a survey to make sure how serious and dangerous (man disciplining his wife) text is.

3. It is important that Iraq ratified Rome convention 1998 establishing International Criminal Court because it represent the most important and recent mechanism adopted by the international system for criminalizing and punishing for crimes that are very dangerous and concern of the whole international community, these crimes are crimes against humanity, genocide, war and aggression crimes. All this is to an end to criminals at large.
4. Stating plainly in the current Iraqi penal code on adopting the seven basic principles extracted by international law committee in 1950 of laws issued by Nuremburg according United Nations General Assembly resolution (# 1/177-1947). According to this resolution, United Nations General Assembly demanded the international committee to codify these principles and prepare a special project about crimes against peace and humanity security. These seven principles are:

-  Admitting the individual responsibility criminally on the international level.
-  Criminal international base Supremacy on the national law.

- ✍ State president and high rank officials responsibility on international crimes
- ✍ Conscious supremacy on presidents orders obedience
- ✍ Fair trial principle
- ✍ Specifying international crimes
- ✍ Criminalizing participation in committing international crimes

It is noteworthy that Rome convention of International Criminal Court had considered and stated on these principles in 1998; therefore, Iraq ratifying this convention in future, means recognizing these basic principles.

5. related to the previous point, it is important that Iraqi current penal code include a text states that there is no legal nor judicial immunity for individuals if they committed crimes according to the international law whether through amnesty, Executive interference, limitations law , or restricting judicial authority.
6. execution penalty: Iraqi penal code (#111- 1969) included many texts that that state on execution penalty; the latter was suspended according to Provisional according to Coalition Authority # 7, article 3\1, June 2003, but after restoring sovereignty in June 2004, some officials called for reactivating this penalty; it was, virtually, applied to many cases submitted to Iraqi judiciary.

It is noteworthy to mention that Amnesty International expressed its objection for reapplying execution penalty that it considers a violation of right to live and the cruelest penalty. It urged Iraqi government not to reapply this penalty and to consider abrogating it completely.

We think that execution penalty should stay applied, but on serious crimes that aim to violate human right in life, trespassing his honor, kidnapping and other crimes of similar nature.

7. stating on criminalizing and punishing all kinds of acts that cause hurt to special life because of adopting specific ideas, convictions or ideologies that abolish others' right in life, freedom of opinion and expression, religion, belief, conscious ...etc. they are constitutional explicitly stated in Iraqi constitution 2005 . It is the Iraqi penal legislator responsibility to legislate the appropriate to face these serious violations.

>>> RECOMMENDATIONS

1. amending article (1) of the valid Iraqi penal code to be (no penalty on a deed or abstaining only by law stating its criminalizing)
2. re-consider article (41) of Iraqi valid penal code and abrogate man right to kick his wife
3. amend article (64) of Iraqi valid penal code to be (no criminal sue on who, at time of the committed crime was less than 9 years old) and to state that (he is consider a juvenile who was at time of committed crime was more that 9 years old and less than 18 years old)
4. re-consider execution penalty to restricted on capital crime ; these crimes are to be specified by specialized committees, and to abrogate some texts that state execution as penalty in specific cases because there is no need for them any more.
5. amend article (333) text to be (he is punished with imprisonment each employee orders to torture an accused or a witness to force him confess a crime or testify with information or testimony or to keep something for any reason and under any circumstance)
6. Amend article (409) text by either abrogating the mitigating excuse or keeping the text to include the other party.
7. it is very important that Iraq ratifies to Rome convention establishing International Criminal Court.
8. it is important that Iraq ratifies the convention against torture for 1984 because it represents an important international standard to ensure human rights.
9. According to the international standard and constitutional text (37\3) of the Iraqi valid constitution, this study recommends amending article (325) text of the Iraqi penal code to be (he would be imprisoned employee or any one which is entitled to public service who uses individuals in unpaid work.
10. stating in the Iraqi valid penal code adopting the seven principles the international Law committee derived in 1950 from rules of Nuremburg court according to United nation general assembly # 177\1 – 1947 according to which, it demanded international law committee attached

to it to codify these principles and prepare draft resolution about crimes against peace and humanity; these articles are:

- a. Admitting the individual responsibility criminally on the international level.
- b. Criminal international base Supremacy on the national law.
- c. State president and high rank officials responsibility on international crimes
- d. Conscious supremacy on presidents orders obedience
- e. Fair trial principle
- f. Specifying international crimes
- g. Criminalizing participation in committing international crimes

It is worth to mention that these principles were considered in Rome Convention for Criminal Court 1998.

- II.*** it is very important that Iraqi valid penal codes includes the text (There is no judicial or legal inviolability for those who commit crimes according to the international law whether through issuing general pardoning, Executive interference, limitations or restricting judicial authority)