



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

Distr.: General  
20 November 2019  
English  
Original: Arabic  
Arabic, English, French and  
Spanish only

**Committee against Torture**

**Second periodic report submitted by Iraq under  
article 19 of the Convention, due in 2019\***

[Date received: 20 August 2019]

\* The present document is being issued without formal editing.



## Contents

	<i>Page</i>
I. Introduction .....	3
II. Report preparation process .....	3
III. Legislative developments relevant to the Convention.....	3
IV. Application of the Convention and implementation of recommendations .....	5

## I. Introduction

1. The Republic of Iraq is pleased to present the Committee against Torture with a document containing its second periodic report under article 19 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Iraq acceded in 2008. Iraq had previously submitted its initial report (CAT/C/IRQ/1), which was discussed before the Committee at its 1332nd and 1335th meetings, held on 29 and 30 July 2015. The Committee then adopted its concluding observations at its 1349th and 1350th meetings, held on 11 and 12 August 2015.

2. In accordance with paragraph 32 of the concluding observations, Iraq submitted its follow-up report on 2 March 2017.

3. The Republic of Iraq has conscientiously fulfilled its treaty reporting obligations on time and has followed up on treaty body recommendations. On 19 June 2016, subsequent to the transfer of the human rights portfolio to the Ministry of Justice, a central standing committee was established chaired by the Minister of Justice and with a membership made up of representatives of other ministries, the Office of the Prime Minister, the Secretariat of the Council of Ministers and the National Security Advisory. The committee, which has the task of drafting reports under human rights treaties, was reformed on 5 February 2018, renamed the national report-writing committee and given higher level representation and a broader mandate.

## II. Mechanism and methodology for preparing the report

4. The report was prepared via a multi-stage process, as follows:

(a) *Preparation.* A ministerial subcommittee was formed on 10 January 2017 headed by the Ministry of Justice and with members from other competent ministries. The Committee's concluding observations were explained and circulated to the relevant bodies and ministries;

(b) *Information gathering.* The information required for the report was obtained and the subcommittee held a number of meetings to review that information and update it to the time of publication of the report;

(c) *Drafting.* Available information on the relevant subjects was incorporated into the text and the report was drafted. The outcome of this stage was a draft report, which the subcommittee then submitted to the national committee;

(d) *Review and ratification.* The national committee held a meeting to review and endorse the report, which was then submitted to the Council of Ministers for ratification before being transmitted to the Committee.

## III. Legislative developments relevant to the Convention

5. *Anti-torture bill.* Acting on instructions issued by the Prime Minister on 28 June 2015 and on instructions of the Secretariat of the Council of Ministers regarding the implementation of the Committee's 2015 concluding observations, the Ministry of Justice has drafted an anti-torture bill that includes provisions for the implementation of the Convention and the modification of existing domestic legislation in line therewith. The bill contains a definition of torture and cruel or degrading treatment that is in line with the Convention and the Committee's own jurisprudence. It also envisages a reporting and complaints mechanism for offences of torture as a way of preventing impunity and of ensuring justice for victims and their families, procedures for conducting medical checks and penalties for perpetrators of such crimes as well as mitigating and aggravating circumstances. The bill prohibits any claim that extraordinary circumstances might justify torture, it includes provisions regarding the responsibility of commanding officers and it specifies that no one accused of such an offence may participate in the investigations. In fact, inquiries into all offences are conducted only by investigating judges and judicial investigators. The bill also makes reference to the principle of non-refoulement and states that courts marital and the courts of the internal security forces may not examine cases

involving torture or ill-treatment. Likewise, it mentions the application of universal jurisdiction as a way of preventing impunity, a statute of limitations, compensation, training and fair trial guarantees, in accordance with the Convention. The bill was submitted to the competent bodies who made their own comments on the text and it is currently before the Council of State as a further part of the legislative process.

6. *Bill on combatting enforced disappearance.* For the same reasons as those stated above for the anti-torture bill, the Ministry of Justice has drafted a bill on combatting enforced disappearance in which it has taken account of the concluding observations issued by the Committee on Enforced Disappearances following its consideration of the report submitted by Iraq in 2015, and the experience of implementing the International Convention for the Protection of All Persons from Enforced Disappearance. The bill was considered by the competent State Council advisor in mid-2018, in the light of comments from competent institutions, and the procedures for its discussion by the State Council are under way in preparation for its transmission to the Council of Ministers.

7. *Prisoners and Detainees Reform Act.* The Prisoners and Detainees Reform Act was issued as Act No. 14 of 2018 and its article 63 abrogates the following laws: Prisoners and Detainees Reform Act No. 104 of 1981 (regulations and directives issued pursuant thereto remain in force until replaced or revoked); Decree No. 20 of the (dissolved) Revolutionary Command Council dated 25 May 1993; Coalition Provisional Authority Memorandum No. 2 regarding management of detention and prison facilities; Coalition Provisional Authority Order No. 10 of 2003 regarding management of detention and prison facilities; Coalition Provisional Authority Order No. 98 of 2004 regarding the Iraqi ombudsman for penal and detention matters; and Coalition Provisional Authority Order No. 99 of 2004 regarding joint detainee committees.

8. *Forensic Medicine Act No. 37 of 2013 as amended by Act No. 56 of 2015.* Article 1 of the Act envisages the establishment of the Department of Forensic Medicine headquartered in Baghdad. The Department comes under the Ministry of Health and enjoys legal personality. In addition, forensic medicine units are to be established in the governorates, administratively reliant on the provincial health division (the office of the director-general) and technically reliant on the Department of Forensic Medicine in Baghdad. For its part, the Ministry of Defence can also open its own forensic medicine centres headed by a forensic medical examiner. The purpose of the Department of Forensic Medicine is to regulate forensic medical activity in Iraq and to enhance the skills and level of professional competence of practitioners in order to serve the interests of justice (article 2). Article 3 of the Act identifies the Department's operational mechanisms: unifying goals and practices and overseeing the conduct of forensic medical work in Iraq; providing scientific and technical expertise to the courts and the investigating authorities; training medical and health-care personnel; undertaking forensic medical research; conducting statistical analyses of forensic medical evidence; contributing to the search for missing persons and the excavation of mass graves; and carrying out supplementary tests.

9. The Department of Forensic Medicine writes a confidential forensic medical report on all the tasks it undertakes at the request of the judiciary or other official body. If forensic medical examiners call upon the assistance of experts or competent authorities they must state as much in the report. The courts, the Office of the Public Prosecution or any other party concerned may file an objection to a forensic medical report before a complaints commission, in accordance with the Act. A medical report drawn up at the request of the judiciary by persons other than forensic medical examiners may also be appealed – by the court, the Office of the Public Prosecution or any other party concerned – before the health institutions to which the physicians who drew up the report are attached.

10. Under article 16 of the Forensic Medicine Act, the analysis of forensic medical evidence referred by the courts or by the judicial investigating authorities is the exclusive prerogative of the Department of Forensic Medicine. This follows an administrative and technical chain whereby the Director-General of the Department of Forensic Medicine or the provincial forensic medical examiner refers evidence concerning a death to the relevant division or section, or to a commission made up of three forensic medical examiners established in case of need by decision of the Director-General of the Department of Forensic Medicine or the director-general of the provincial health division. Evidence related to biological testing is submitted to the aforementioned commission. Forensic medical departments belonging to the armed forces conduct tests on forensic medical

evidence related to members of the armed forces, which is then examined by military investigative commissions or by courts martial, in accordance with the rules of the Department of Forensic Medicine. According to article 17 of the Act, the forensic medical examiner, the relevant division or the commission (who conduct the tests) produce a forensic medical report on the outcome of those tests. The report is then ratified by the Director-General of the Department of Forensic Medicine or the head of the provincial forensic medical division. Evidence connected with the estimation of age, evidence affecting public morals and stress tests are submitted to a forensic medical commission made up of three doctors headed by a forensic medical examiner. Under article 18 of the Act, an autopsy can be conducted or a corpse released without an autopsy only under a reasoned decision issued by an investigating judge. If an autopsy is not conducted, a certificate of death is to be filled in by the nearest health-care institution. A forensic medical examiner may not conduct an autopsy on the corpse of person under his care or treatment if that person then dies. The forensic medical examiner may suspend an autopsy once he has determined the cause of death and found replies to the questions raised by investigators, to which end he may make use of modern technologies. The examiner is under an obligation to report any discoveries he may make.

11. *Act No. 58 of 2017, concerning the protection of witnesses, experts, informants and victims.* The Act was promulgated to afford special protection to witnesses, informants, victims and experts in criminal proceedings and in terrorism-related proceedings, as well as to their relatives up to the second degree. The Act states that the criminal proceedings included thereunder are to be determined by an order issued by the Council of Ministers, at the proposal of the Supreme Judicial Council and the Commission on Integrity, not later than six months from the date of the Act's entry into force. Persons covered by the Act may apply to be placed under the protection for which it provides if their lives, physical integrity or fundamental interests, or those of their family members or relatives, would be at risk as a result of them testifying, giving an expert opinion or making statements in criminal proceedings or terrorism-related proceedings that affect State security and the lives of citizens. The Act provides for the establishment of a section within the Ministry of the Interior for the protection of witnesses, experts, informants and victims, which reports to the directorate for protecting facilities and public figures. In sum, the Act ensures that the relevant groups (and their personal data) receive the necessary protection, and it envisages penalties for a large number of criminal offences. The Supreme Judicial Council has issued the implementing guidelines for the Act.

#### **IV. Application of the Convention and implementation of recommendations**

12. Article 37 (1) (c) of the Constitution states: "All forms of psychological and physical torture and inhuman treatment are prohibited. Any confession made under duress, threat or torture shall not be admitted, and the victim shall have the right to seek compensation for material and moral damages incurred, in accordance with the law." This is confirmed by article 218 of the Code of Criminal Procedure, which stipulates that confessions extracted under torture shall be disregarded. The circumstances for reporting an offence involving the extraction of confessions by torture or duress are set forth in article 1 of the Code of Criminal Procedure. Furthermore, torture is contemplated as an offence under Iraqi criminal law. In fact, acts of torture are explicitly criminalized under article 333 of the 1969 Criminal Code, which states that the extraction of confessions by torture is a criminal offence. In addition, articles 323 and 324 of the Code include provision for mechanisms to monitor and protect persons held in detention.

13. Iraqi law includes provisions to protect persons affected by human rights abuses, including torture and other cruel, inhuman or degrading treatment, or abuses of fundamental freedoms. Articles 333 and 421 of the Criminal Code (Act No. 111 of 1969), as amended, clearly define the penalties faced by persons who perpetrate any form of torture, either directly or by incitement. Other relevant provisions are contained in the Constitution and in the guarantees to protect accused persons set forth in articles 92, 123–128 and 156 of the Code of Criminal Procedure (Act No. 23 of 1971). In no case does any member of the executive have any role or say in investigative procedures, which remain the

exclusive prerogative of the judiciary, an independent body which admits no interference from any quarter.

14. Iraqi legislators did not define torture in the Criminal Code. The intention behind that omission was, perhaps, to leave the field open and not to fetter jurisprudence with a fixed definition that might prove insufficiently prohibitive as techniques of investigation and interrogation developed over time. Nonetheless, article 12 (2) (e) of the Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005) does define torture in the following terms: “The intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; torture shall not include pain or suffering arising from or related to legal punishments.” Moreover, the Iraqi system of criminal justice does not recognize a statute of limitations in such cases.

15. Article 12 (f) of the Iraqi Supreme Criminal Tribunal Act No. 10 of 2005 lists torture as a crime against humanity, while article 17 (2) states that, in interpreting articles 11, 12, 13 and 14 of the Act in matters relating to the statute of limitations on criminal cases and penalties, the Tribunal and its appeals chamber may refer to decisions of international criminal tribunals.

16. Legislators have addressed acts of torture in article 333 of the Criminal Code, which states: “Any public official or public servant who tortures or orders the torture of an accused person, a witness or an expert in order to compel him or her to confess to an offence, make a statement or provide information, or to withhold information or give a particular opinion in respect thereof, shall be liable to imprisonment. The use of force or threats shall be deemed as tantamount to torture.” The text shows that Iraqi legislators have also adopted the idea of psychological torture, which they consider as equivalent to physical torture. This also emerges clearly in article 421 (b) of the Criminal Code, which concerns unlawful arrest and deprivation of liberty and recognizes an aggravating circumstance “if the offence is accompanied by the threat of death or of physical or mental torture”.

17. Coalition Provisional Authority Order No. 7 of 2003 – in its section 3 on “Penalties”, paragraph 2 – states as follows: “Torture and cruel, degrading or inhuman treatment or punishment is prohibited.” Torture is also an offence contemplated by Iraqi legislators under article 332 of the Criminal Code, which reads: “Any public official or public servant who uses their position to inflict cruelty against another person, thereby prejudicing that person’s self-esteem and honour, or causing bodily suffering, shall be punished by detention of up to 1 year and/or a fine of up to 100 Iraqi dinars (ID), without prejudice to any more severe penalty set forth in the law.”

18. Legislators have adopted a wide-ranging approach to deal with the effects of torture of all kinds, in accordance with Coalition Provisional Authority Memorandum No. 3 of 2003 on criminal procedures, which modified part of article 218 of the Code of Criminal Procedure imposing the condition that confessions must not have been extracted by coercion.

19. Trafficking in Persons Act No. 28 of 2012 criminalizes acts associated with human trafficking that also fall within the scope of the Convention against Torture. Article 1 of the Act contains the following definition:

(a) For the purposes of the present Act, human trafficking means the recruitment, transportation, accommodation or reception of persons by means of threats, force or other forms of coercion, abduction, fraud, deception or abuse of power, or by giving or receiving money or benefits to obtain the consent of a person who has authority or jurisdiction over another person, for the purpose of sale, exploitation in prostitution, sexual exploitation, bonded or forced labour, slavery, begging, trafficking in human organs or medical experimentation;

(b) Victim means any natural person who has suffered physical or mental harm as a result of an offence stipulated under the present Act.

20. The Trafficking in Persons Act envisages severe penalties including life imprisonment if there are aggravating circumstances as contemplated in articles 5 and 6.

21. The Office of the Public Prosecution has bureaus inside prisons and detention centres where deputy prosecutors undertake prison inspections, draft reports and conduct

field studies into the phenomenon of crime. They also submit comments and make proposals on how to combat crime and curb the problem of juvenile delinquency. If an inmate or detainee dies, a report on the decease is to be drafted within the day and submitted to the Office of the Public Prosecution while the body is sent to the Institute of Forensic Medicine for an autopsy to determine the cause of death. If death is shown to have been the result of a criminal act of torture, ill-treatment or deliberate negligence, a criminal complaint is to be filed before the courts of investigation by a member of the Office of the Public Prosecution against the party responsible. The Amnesty Act was issued on 25 August 2016, in order to give Iraqis who have committed crimes an opportunity of reintegration into normal life and to disseminate a spirit of tolerance and reformation through society. Under the Act, a general amnesty was extended to Iraqis who had been condemned to death or some other penalty or to measures restrictive of their liberty, irrespective of whether or not the sentence had been passed in absentia or whether or not it was definitive. The Act is applicable to all accused persons with the exception of those who have committed offences listed under article 4 of the Act, and even those offences are very narrowly defined, being only the most serious crimes against the State or individuals.

### **Absolute prohibition of torture**

#### **Article 2 and paragraph 10 of the concluding observations**

22. Under article 123 of the Code of Criminal Procedure, the investigating judge or the investigator must question suspects within 24 hours, after having first established their identity and made them aware of the charges against them. The suspects' statements are to be recorded and they may present any exculpatory evidence. Investigators may re-question a suspect as they consider necessary in order to uncover the truth.

23. In addition, the absolute prohibition of torture and inhuman treatment is clearly stated in articles 15 and 37 of the Constitution. No weight is given to confessions extracted by coercion, threats or torture and persons have the legal right to demand compensation for any physical or mental harm they may have suffered. For its part, article 127 of the Code of Criminal Procedure explicitly prohibits the use of any unlawful means to influence accused persons in order to obtain a confession. Unlawful means are understood to include ill-treatment, threats of abuse, enticement, promises, menaces, psychological pressure or the use of drugs or alcohol.

24. As regards the prohibition of torture during investigations, the Criminal Code envisages penalties for persons who commit such acts, which are criminalized under the section on "Public officials who overstep the bounds of their office". In article 333 of the Code, Iraqi legislators have ensured that no one is exempted from accountability if they commit such a crime, under any circumstances. Quite the contrary, they have provided extra guarantees for accused persons who are subjected to torture, as explained earlier. In fact, no use is made of accused persons' statements if they were made as a result of material or administrative coercion or menaces, as per article 218 of the Code of Criminal Procedure. These provisions are an embodiment of the principles contained in the Constitution and, in particular, the absolute ban on torture enshrined in article 37.

25. Article 3 (10) of Prisoners and Detainees Reform Act No. 14 of 2018<sup>1</sup> states: "It is prohibited to subject prisoners and detainees to torture, to cruel or degrading treatment or to forced or hard labour. The commission of any of these offences shall be deemed an aggravating circumstance."

26. No person may be arrested except under a warrant issued by a competent judge in accordance with the law and such persons must be dealt with in a lawful manner. The torture of detained persons is prohibited and is considered to amount to a criminal offence. No statement or confession may be taken from an accused person under torture, and any accused person who claims to have suffered torture during questioning has the right to submit a complaint against the person responsible.

<sup>1</sup> The Act was issued on 28 June 2018 and published in the Official Gazette No. 4499 on 16 July 2018.

27. The investigating judge and the judicial investigator ask accused persons if they have suffered torture at the hands of the police and whether or not their confessions were made under pressure.

28. Article 8 (2) of Prisoners and Detainees Reform Act No. 14 of 2018 states: “No inmate or detainee shall be admitted to the centre for reception, testing and classification except by a court order or an arrest warrant, in accordance with the law, and with a medical report issued by a medical committee testifying to the person’s state of physical and mental health.”

29. All detainees and inmates have the possibility to lodge a grievance via the prison administration, public prosecutors, one of their own relatives during the course of a visit or a human rights organization. Health-care services are provided by a health centre and a medical team inside the prison, operative 24 hours a day and with access to laboratory facilities and medicines. Detainees are given the requisite medical tests when they enter detention or transfer centres with a particular focus on tests for communicable diseases such as hepatitis, AIDS and tuberculosis, and chronic diseases such as diabetes and high blood pressure. Medical files are opened for each individual.

30. Legal measures are taken against any police or security official accused of torturing detainees if it is proven that the official in question did effectively subject a detainee to torture or ill-treatment. In that connection, the Ministry of the Interior has established a number of committees to act on allegations of torture against inmates and detainees. Following questioning in accordance with established rules, defendants are referred to the ordinary criminal courts.

### **Non-refoulement**

#### **Article 3 and paragraph 26 of the concluding observations**

31. Foreigners Residency Act No. 76 of 2017 provides the legal framework that regulates the presence of foreign nationals on Iraqi territory and the eventual removal or expulsion of a foreign national from Iraq. The Act makes mention of the mechanisms whereby decrees are issued and the periods in which they can be enforced. If a decree cannot be enforced, the Act states where foreigners may reside for a period to be determined by the competent minister until they can be removed or expelled from Iraqi territory.

32. With a view to the resettlement of residents of the Camp Hurriya temporary transit location, the competent committees coordinated with the United Nations to complete procedures for their transfer to a third country, in accordance with human rights standards and the principle of non-refoulement. In letters exchanged with the Iraqi officials involved in the case, both the United Nations and the Office of the United Nations High Commissioner for Refugees expressed their praise for the measures taken.

33. The anti-torture bill makes reference to the principle of non-refoulement. Iraq applies the same principle to the situation of Iraqis seeking asylum in European countries. Thanks to coordination between the Ministry of Foreign Affairs and the Ministry of the Interior, the State facilitates matters and issues transit permits to Iraqis who wish to return to Iraq voluntarily.

34. Under Decree No. 304 of 2017, the Council of Ministers approved the bill concerning refugees and referred it to the Council of State for review. It was then returned to the General Secretariat of the Council of Ministers for direct referral to the Council of Representatives, in accordance with articles 61 (1) and 80 (2) of the Constitution. The Decree was adopted with a view to establishing rules and provisions governing asylum in the Republic of Iraq that are applicable to all cases of humanitarian and political asylum as well as other forms of asylum on grounds of race, religion, nationality or social affiliation, and cases in which a refugee has been subjected to threats and persecution, in accordance with the provisions of the Constitution, international treaties and domestic law. The bill is not applicable to Palestinians. A standing committee on refugee affairs was set up under Political Refugees Act No. 51 of 1971.

35. As regards accession to the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees, the Convention relating to the Status of

Stateless Persons and the Convention on the Reduction of Statelessness, Iraq constantly examines international human rights treaties and is working to create the conditions and legal requirements necessary to ensure that accession proves effective and productive. Current Iraqi legislation is keeping pace with developments regarding the status of refugees and the prevention of statelessness, and accession will come about in due course.

### **Universal jurisdiction and extradition**

#### **Articles 5, 6, 8 and 9 and paragraph 28 of the concluding observations**

36. Many of the Committee's concerns regarding universal jurisdiction over crimes of torture and the prevention of impunity are already covered by Iraqi legislation, including the Criminal Code. Moreover, rules on extradition are in line with the country's obligations. Iraq is careful to apply the Convention to the full and has included provisions in its draft laws that address all of the Committee's concerns and ensure the full implementation of the Convention in matters relating to these articles and this recommendation. This includes adopting the principle of universal jurisdiction over crimes of torture in order to prevent impunity and extradition rules that are fully and clearly compliant with the provisions of the Convention.

37. Iraq is a party to various bilateral and multilateral agreements with Arab, regional and foreign States in the fields of judicial cooperation, extradition and prisoner exchange, and these could provide a legal framework that might cover the Committee's concerns.

38. No person may be detained or deprived of liberty without an arrest warrant issued by a competent judicial authority. Persons who violate that requirement are subject to the provisions of article 421 of the Criminal Code (Act No. 111 of 1969), which states: "Anyone who arrests, detains or deprives a person of liberty by any means without a warrant from a competent authority and in circumstances other than those explicitly provided for in the applicable laws and regulations shall be liable to a term of imprisonment of up to 15 years, in the following circumstances:

- If the action is committed by a person who is wearing, without entitlement, the uniform or distinctive official insignia of a public servant, assumes a false public identity or produces a fake warrant of arrest, detention or imprisonment while claiming that it was issued by a competent authority;
- If the action is accompanied by the threat of death or of physical or mental torture;
- If the period of arrest, detention or deprivation of liberty exceeds 15 days.

39. Directives issued by the Office of the Prime Minister pursuant to Administrative Order No. 57 of 1 December 2014 include the following provisions:

- No person may be arrested or detained except under a warrant issued by a competent judge or a competent court, or in circumstances envisaged by the law, including articles 102 and 103 of the Code of Criminal Procedure;
- The authority that carries out the arrest or detention shall, within 24 hours, record the name of the detainee, the place of detention, the grounds for the detention and the legal provision applicable thereto in the manual and electronic versions of a central register created and administered by the Ministry of Justice;
- The Ministry of Defence, the Ministry of the Interior and the National Security Agency shall establish rules and procedures whereby officials enter information about detainees into the central register;
- No person may be arrested or detained by authorities other than those mentioned above;
- A person's arrest in circumstances other than those provided for in the present Order shall be deemed to constitute criminal abduction and false imprisonment, and perpetrators shall be liable before the law.

40. Article 29 of Prisoners and Detainees Reform Act No. 14 of 2018 states: "Staff of diplomatic missions and embassies may, if the competent minister approves a reasoned request submitted in accordance with the norms of diplomatic protocol, visit their citizens who are being held as inmates or detainees in correctional institutions or correctional

institutions for juveniles in Iraq, on condition that members of Iraqi diplomatic missions may similarly visit Iraqi citizens held in prisons or detention centres in the country of the inmate or detainee in question. Prisoners who are citizens of States that do not have diplomatic or consular representation in Iraq may be visited by diplomats from the State that looks after their country's interests in Iraq. Likewise, prisoners who are refugees or stateless may be visited by diplomats from the State that looks after their interests in Iraq, in accordance with the provisions of this article."

### **Fundamental legal safeguards**

#### **Article 7 and paragraph 14 of the concluding observations**

41. Article 19 of the Constitution underscores the right of accused persons to a defence, their right to remain silent and their right to engage the services of a lawyer or to have one appointed on their behalf if they are unable to do so themselves. In addition, articles 123 and 126 of the Code of Criminal Procedure provide safeguards for accused persons during questioning: a lawyer must be present while an accused person's statement is being taken down and the accused person has the right not to respond. The importance of a lawyer's presence during the trial is further emphasized in article 144 of the Code of Criminal Procedure according to which no proceedings can take place without the accused person's lawyer being present.

42. Article 19 of the Constitution reads: "(i) The judiciary is independent and subject to no authority other than the law; (ii) There can be no crime and no penalty in the absence of a law, there can be no penalty except for an action that constituted a criminal offence at the time of its commission, and no heavier penalty may be applied than that applicable at the time of the commission of the offence; (iii) The right to legal redress is protected and guaranteed for all; (iv) The right to a defence is sacrosanct and guaranteed at all stages of investigation and trial; (v) Accused persons are innocent until proven guilty in a fair trial and they may not be tried again for an offence of which they have been acquitted, unless new evidence emerges; (vi) All individuals have the right to due process in judicial and administrative proceedings; (vii) Trials are public unless the court decides to hold them in camera; (viii) Punishment is personal; (ix) Laws are not retroactive unless otherwise stipulated, with the exception of laws relating to taxation and duties; (x) Criminal law has no retroactive effect except in favour of the accused; (xi) The court appoints counsel at State expense to defend persons accused of a serious offence or a misdemeanour who are without counsel; (xii) (a) Unlawful detention is prohibited; (b) Imprisonment and detention are prohibited in places other than those designated under laws governing health and social care, and they are controlled by the State authorities; (xiii) The preliminary investigation file is submitted to the competent judge within a period of not more than 24 hours from the time of the accused person's arrest, which may be extended once only for the same period."

43. Article 11 (a) of the Prisoners and Detainees Reform Act refers to health care for persons deprived of liberty. It states: "The Ministry of Health shall cooperate with the Iraqi Department of Corrections and the Department of Juvenile Corrections to provide medical services for inmates by establishing hospitals or health centres, allocating a wing in public hospitals for imprisoned inpatients and assigning an appropriate number of doctors and health-care personnel.

- Article 12 (a): The Iraqi Department of Corrections is under an obligation to ensure appropriate health conditions in correctional facilities and to provide treatment, beds and visits by medical committees.
- Article 13 guarantees the right of detainees to be exposed to fresh air and sunlight for not less than one hour a day and to practise sporting activities.

44. The Iraqi Department of Corrections has circulated a letter to all its prisons regarding facilitations for the entry of lawyers. The Department also conducts a medical examination when it takes in detainees or inmates, and the latter have the right to communicate by telephone with their families to inform them of their whereabouts. This takes place through the prison social research division. Inmates and detainees are taken to court as often as is required in order to conclude the cases in which they are involved.

## **Allegations of torture and ill-treatment**

### **Articles 11 and 12 and paragraphs 18 and 19 of the concluding observations**

45. Article 45 of the Prisoners and Detainees Reform Act reads: “(a) The Iraqi Department of Corrections and the Department of Juvenile Corrections shall be subject to inspection by the following bodies:

- (i) The Council of Representatives;
- (ii) The Office of the Public Prosecution;
- (iii) The High Commission for Human Rights;
- (iv) The inspectorate of the competent ministry;
- (v) The Council for the Maintenance of Prisons and Detention Centres;
- (vi) Any entity legally authorized to perform inspections;

(b) The Iraqi Department of Corrections and the Department of Juvenile Corrections shall be required to facilitate the access of inspectors to correctional units and shall provide them with any information they require;

(c) In all prisons and correctional units operated by the Iraqi Department of Corrections and the Department of Juvenile Corrections, a committee for the enforcement of sentences shall be established, chaired by the Public Prosecutor and comprising as members the director of the prison and the director of the correctional unit. The committee is to monitor and oversee the lawful enforcement of sentences and of procedures for sentence calculation, as well as the classification and separation of prisoners and detainees;

(d) Personnel of the inspection bodies mentioned in article 45 (a) of the present Act may enter prisons and detention centres at times to be agreed with the Department of Corrections, whenever the committee conducting the inspection so requests. They may likewise scrutinize the health-care procedures in place in prisons and detention centres, check the hygiene and living conditions, and hold private interviews with prisoners and detainees. They may also make note of information concerning prisoners or detainees and pass on correspondence from them to their families or vice versa, in the presence of the official assigned to receive and accompany the committee.”

46. In the event that a person dies while in custody, an investigation is conducted and legal action taken against anyone shown to be responsible for the death, whatever their grade or rank.

47. According to the High Commission for Human Rights Act, it is the responsibility of the Commission to:

- (a) Receive complaints from individuals, groups and civil society organizations about human rights violations committed before and after the entry into force of the Act;
- (b) Conduct initial investigations into human rights violations on the basis of the information available;
- (c) Ascertain the veracity of complaints received by the Commission and conduct initial investigations as necessary;
- (d) Institute legal proceedings in cases involving human rights violations and refer them to the Public Prosecution Service for the requisite legal formalities and a report back on the outcomes;
- (e) Visit prisons, social reform centres, detention facilities and all other such places, without the need to obtain prior permission from the relevant authorities, interview convicted prisoners and detainees, document human rights abuses, and notify the competent authorities of the legal measures to be taken.

48. Under article 46 of the Prisoners and Detainees Reform Act, inspection bodies may take the following measures:

- (a) Enter and inspect prisons and detention centres operated by the Iraqi Department of Corrections and the Department of Juvenile Corrections and request any documents, preliminary information or reports pertaining to prisoners and detainees;

(b) Interview any person connected with the subject of a complaint or with a breach of the laws regulating the treatment of prisoners and detainees;

(c) Interviewees and witnesses shall have the right not to reply to questions, furnish documents or other items or disclose information with a bearing on the privacy, reputation or secrets of prisoners and detainees;

(d) The inspection body may accept complaints from prisoners and detainees in person or in writing;

(e) The inspection body shall make its recommendations in a report submitted to the competent authority or minister, or it shall close the investigation if the complaint turns out to have been malicious or if the procedure that was the subject of the complaint turns out to have been lawful;

(f) It is prohibited for the inspection body and officials in the Department of Corrections to divulge any information regarding complaints made to them by prisoners or detainees or any investigation of those complaints, or regarding information to which they had access either as a result of undertaking activities entrusted to them or in the course of discharging their duties, with the exception of information concerning a breach of law or the commission an offence, which may be reported to the competent authority.

49. According to article 47 of the Prisoners and Detainees Reform Act, the competent Department of Corrections may conduct periodic unannounced inspections of correctional institutions and the accommodation of prisoners and detainees in correctional units in order to check that they are free of prohibited substances or items and that they meet the hygiene and living standards required under the Act.

50. As for deaths in custody, article 57 in section XV of the Prisoners and Detainees Reform Act states as follows: "The Department shall inform the relatives of the inmate or detainee if the latter is transferred, dies, contracts a serious illness, suffers a serious injury or is transferred to a psychiatric hospital. In all cases, the Department is also under an obligation to inform any person indicated by the inmate or detainee."

51. The Iraqi Department of Corrections conducts an administrative investigation into the cause of death of a detainee or inmate and submits the matter to the competent court of investigation for it to look into the matter. The court issues its decision on the basis of a forensic medical report issued by the Ministry of Health and, if the death is found not to be the result of natural causes, persons implicated, either by act or by dereliction of duty, are sent for trial.

### **Armed conflicts and acts of terrorism**

#### **Articles 14 and 16 and paragraphs 12 and 21 of the concluding observations**

52. In 2014, Iraq suffered a violent attack by bands belonging to the Islamic State in Iraq and the Levant (ISIL), which perpetrated widespread violations against the Iraqi people in general and against certain ethnic and religious groups in particular. The Supreme Judicial Council has opened and reactivated courts in liberated areas, and reports and complaints of offences committed by ISIL in those areas are currently being collected. In fact, the group was responsible for murder, torture, abduction, rape, sexual enslavement, forced religious conversion, the recruitment of child soldiers and of children and women as suicide bombers, the use of human shields, the pursuit of a scorched earth policy and publicly declaring their desire to commit murder, all of which constitute offences punishable by law.

53. These criminal groups have committed numerous violations against ethnic communities, such as Christians, Turkmens, Sabaeen Mandaean and Yazidis, including the following:

- Crimes against life and physical integrity (killing and torture);
- Forced migration and displacement;
- Targeting of minorities;
- Destruction of antiquities, cultural heritage sites and religious monuments;
- Restriction of public freedoms;

- Economic- and health-related violations;
- Sexual enslavement;
- Enslavement and slave trading (human trafficking);
- Trading and smuggling of natural resources (oil) and antiquities;
- Murder of 450 inmates of Badush Prison;
- Execution of hundreds of soldiers in the governorate of Nineveh;
- Execution of 1,700 soldiers at Camp Speicher in the governorate of Salah al-Din;
- Execution of 175 Iraqi Air Force cadets at an airbase in Tikrit some of whose bodies were thrown into the Tigris River;
- Committing terrible crimes against members of minorities, particularly Yazidis, Christians and Shabak and the sexual enslavement of thousands of women from the Yazidi community and other minorities;
- Using civilians as human shields to hinder the advance of government forces, which were often compelled to enter into running combat in order to preserve civilian lives;
- Women in the areas overrun by ISIL terror groups were victims of barbaric practices including murder, abduction, sale as captives and forced religious conversion, many of them also suffered rape and other forms of sexual violence;
- Abduction and imprisonment of Yazidi women and girls as well as of women from the Turkmen, Christian and Shabak communities. An estimated 950 Yazidi women and girls who managed to flee their captivity are facing great mental suffering and a number have committed suicide in the wake of the torments they endured, including rape, sexual aggression, forced marriage and the resulting pregnancies and abortions, all of which has taken a great toll on their health;
- Approximately 400 women, among them doctors, teachers, lawyers and journalists, were tortured and executed for refusing to obey ISIL orders to engage in sexual jihad.

54. The ISIL terrorist organization was barbaric in its treatment of civilians. It made no distinction between men and women or between children and older persons, using all of them as human shields. It also used snipers to kill men, women and children attempting to reach safe government-controlled areas and targeted liberated civilian areas with mortar fire.

55. All units of the Iraqi armed forces have succeeded in driving the criminal ISIL terrorist groups out of the areas they had overrun, finally achieving victory over the organization in Mosul and thus ending the tyranny suffered by the residents of that city. This victory was the result of Iraqi unity, the wise leadership of the Government and the efforts of the Iraqi armed forces, who were applauded by the international community for their stated mission of liberating the people before liberating the land.

56. A standing national committee on international humanitarian law was established pursuant to Administrative Order No. 10 of 2015. Headed by the Secretariat of the Council of Ministers and with members drawn from relevant institutions and ministries, this committee is charged with:

- Formulating plans and programmes designed to ensure that the principles of international humanitarian law are disseminated and applied at the national level;
- Identifying mechanisms, measures and procedures to ensure that international humanitarian law is implemented and its provisions put into practice;
- Promoting and putting into operation the rules of international humanitarian law in coordination with the competent authorities;
- Promoting cooperation and the exchange of information and experiences with organizations, commissions and associations working in the field of international humanitarian law;
- Strengthening ties with Arab and foreign commissions that deal with international humanitarian law;

- Following up on the implementation of global conventions relating to international humanitarian law, examining the benefits of acceding to such conventions and learning from the experiences of other States in that connection;
- Providing advice to the Iraqi Government in matters of international humanitarian law. The Committee is regarded as the chief authority on international humanitarian law.

57. The Iraqi judiciary investigates any complaint submitted by persons who allege that they have suffered torture or other forms of ill-treatment. A number of complaints submitted to the courts in that way have been verified and the persons responsible sent for trial in accordance with articles 332 and 333 of the Criminal Code. Appropriate penalties have been handed down against persons convicted of torture.

58. The Ministry of Defence applies article 333 of the Criminal Code (Act No. 111 of 1969), as amended, to persons accused of committing crimes of torture. Such persons are referred before the ordinary criminal courts because the offences in question involved a member of the military acting against a civilian. The Human Rights Directorate of the Ministry of Defence has not received any complaints regarding civilians who suffered abuse or violations in operational areas. The Human Rights Directorate is also represented on the Administrative Order No. 193 Committee, which was formed by order of the Commander-in-Chief of the Armed Forces to investigate claims of human rights abuses by security agencies.

59. The Minister of Defence has issued instructions to the Office of the Army Chief-of-Staff to transmit to all its formations, to be followed during the course of liberation operations:

- Commanding officers must make their combatants aware of the obligation to abide by human rights principles during battle;
- Civilians in combat areas must be treated well and humanely irrespective of their religion, religious community or nationality;
- The lives of civilians must be preserved, security corridors opened to allow them to leave areas where battles are in progress and rules of engagement observed to protect infrastructure and private and public property;
- Looting and any form of individual action (retaliation) against enemy corpses or prisoners is forbidden as is posting any such actions on social media; persons negligent in that regard are responsible before the law;
- Excessive firepower may not be used against targets;
- Civilian detainees are to be transferred to the competent authority within 24 hours, in accordance with the Code of Criminal Procedure (Act No. 23 of 1971), as amended, and arbitrary detention is forbidden;
- The use of unlawful methods (forced interrogation) to extract confessions is absolutely prohibited;
- Medical services and treatment must continue to be made available to injured and ill civilians in combat areas;
- Respect must be shown and assistance offered to all persons and sites displaying international humanitarian symbols, such as the Red Cross, the Red Crescent and national and international humanitarian organizations;
- Human rights officers in military units and formations are to continue to carry out their duties fully, to submit reports to their superiors and to train combatants in international humanitarian law;
- Persons who violate these norms will face due legal proceedings.

60. The Ministry of the Interior has conducted investigations into various cases in different parts of the country and it has referred case files relating to a group of officers and other ranks to the Internal Security Forces Court for it to look into charges of torture. In some cases, the Court found against them and referred the files to the ordinary courts, including the Mosul Court of Inquiry.

61. The Iraqi courts are recognized for their integrity and for their correctness in conducting investigations on all cases that come before them, including cases involving allegations of torture. All court rulings are made in accordance with due legal process.

62. The High Commission for Human Rights receives complaints of torture and conducts preliminary investigations in that regard. It then submits the matter to the human rights division in the Office of the Public Prosecution which, in turn, refers the complaint for investigation to the competent investigating judge for due legal measures to be taken against those responsible. If the claims are substantiated, the persons concerned are referred to the competent courts which hand down just penalties.

63. The Iraqi Department of Corrections has organized training courses in various areas related to its activities including how to deal with different categories of detainees, respect for human rights, riot control, first aid, infectious diseases, model rules for the treatment of inmates, prison administration and other related subjects. As of September 2018, a total of 6,253 courses had been held in which several thousand departmental employees of different categories and ranks had participated.

64. Under Act No. 20 of 2009 as amended by Act No. 57 of 2015, compensation is provided in cases of martyrdom. Subcommittees established in the governorates decide on compensation claims in such cases. They also have the authority to issue rulings on claims submitted by a representative of the Minister of Finance. In cases where a claim is turned down, the parties concerned have the right to file an appeal before the central committee. The subcommittees also issue recommendations concerning compensation claims for the property of natural and legal persons. These are not effective until they have been endorsed by the central committee, which has authority to cancel or modify the recommendations. The committee's decisions relate to compensation for cases of martyrdom, injury, disappearance or abduction and become effective if no appeal is lodged against them with the administrative courts. The outcome of any appeal before the administrative courts may in turn be appealed before the Supreme Administrative Court in the Council of State. The Act does not contemplate compensation for damages arising from causes other than those mentioned, as well as for disappearance, abduction and damage to property arising from one of the causes set forth in the Act, which are military operations, military errors and terrorist activities, according to instructions issued by the Ministry of Finance.

65. If torture is shown to have taken place against inmates or detainees in prison facilities run by the Iraqi Department of Corrections, an administrative investigation is launched and the persons involved are referred to the courts. It is up to the minister or head of department to suspend the official concerned for up to 60 days if he believes that, by remaining in his post, the official could influence the course of the investigation. This takes place under article 17 (1) of the State and Public Sector Employees Disciplinary Act No. 14 of 1991. In addition, the Iraqi Department of Corrections and the Department of Juvenile Corrections make use of closed-circuit surveillance cameras at the headquarters of the Ministry of Justice and in correctional facilities.

### **Conflict-related sexual violence**

#### **Paragraph 13 of the concluding observations**

66. The Iraqi authorities, including the Supreme Judicial Council, have taken steps to pursue and bring to justice the perpetrators of the sexual violence that accompanied the terrorist crimes committed by ISIL, and appropriate sentences have been handed down against them. Iraqi courts of the highest levels have been involved in implementing Security Council resolution 1325 (2000) on violence against women.

67. The Ministry of Defence has provided protection for displaced families via the Iraqi Army. Protection has been given to 228,793 displaced persons in Anbar, 36,495 in Diyala, 120,480 in Salah al-Din and 577,785 in Nineveh. Protection has also been given to 15,192 families in Najaf, Karbala and Diwaniya who were displaced from Anbar, Nineveh, Diyala and Kirkuk.

68. The Ministry of the Interior has taken vigorous action to protect displaced persons. Special units of the Directorate for Family and Child Protection have been tasked with visiting displaced persons' camps in Nineveh and Salah al-Din and camps in Najaf, Diyala and Kirkuk. Services were provided to women from 2014 to 2017. The units visited the

displaced persons' camps to combat violence against women and children and prevent impunity for perpetrators, to inform the displaced persons of the Directorate's hotline to report cases of violence, to provide food and in-kind support, such as refrigerants, heating devices, bedding, pillows and blankets, and to present and distribute financial contributions made by international organizations. In addition, the Directorate for Family and Child Protection has provided psychological support to families in the camps and helped to resolve family problems.

69. The Ministry of the Interior has trained officials from the Directorate for Family and Child Protection and the Community Police Directorate in methods of investigation and collecting evidence. It also cooperated with the Directorate for Family and Child Protection and the Community Police Directorate in setting up mobile units within and outside displaced persons' camps. In addition, the Ministry has taken action, in coordination with other ministries, to oversee the legal and administrative procedures undertaken in response to the above-mentioned complaints. Special teams and mobile units established in the Civil Status and Passports Directorate have conducted field visits to displaced persons' camps in order to issue civil status identity documents, certificates of Iraqi citizenship and passports.

70. The Ministry of the Interior has played an active and prominent role in pressurizing institutions to take action to trace abducted and missing women and determine their fate. Coordinated steps have been taken with governmental and non-governmental bodies to monitor human trafficking cases in the camps. Awareness-raising activities have been conducted in some camps (Virgin Mary Camp and Kastanzaniyah Peace Camp) with the participation of the Masir organization. The Ministry has also undertaken oversight activities with the subcommittees to combat human trafficking in the liberated governorates, and monitored the situation and number of displaced persons. Twenty-two female victims of human trafficking sex crimes were recorded under the Human Trafficking Act No. 28 of 2012.

71. The Community Police Directorate has carried out activities such as workshops and seminars with a bearing on community violence. It also organized a community policing forum entitled "Against Domestic Violence" with the participation of the Baghdad Women's Association, tribal leaders and religious figures, and a special booklet has been distributed as a way of throwing light on the issue of domestic violence. The Ministry has also organized awareness-raising poster campaigns to advertise the perils of underage marriage and child labour. Campaigns and lectures have also been organized in cooperation with the Ministry of Youth and Sports. In addition, the Directorate's online monitoring division has been scrutinizing violations against children on social media sites and has pressured the competent authorities to enforce the relevant laws, such as the Family and Child Protection Act.

72. The Ministry of the Interior in Kurdistan has increased the number of bureaus for violence against women, which now number 28 across the districts and subdistricts of the Region. In 2017, 4,851 cases were handled by 14 mobile teams and the family counselling centre in camps for displaced persons and refugees. In addition, 7,854 complaints submitted to directorates and bureaus for violence against women were considered, as well as 114 cases of sexual violence. By the end of October 2017, the Ministry had referred 62 women to shelters. In all, 431 women have left the shelters and 266 remain there.

73. On 20 July 2016, the Minister of the Interior and the Minister of Labour and Social Affairs of the Kurdistan Regional Government, the Secretary-General of the Supreme Council for Women and the Director of the bureau of UN-Women in Iraq launched the women's peace and security programme as part of the implementation of a national action plan on Security Council resolution 1325 (2000) on women and peace and security. The resolution was signed in response to the urgent need to protect women and girls exposed to the serious impact of displacement and of sexual and gender-based violence.

74. Forces of the National Security Agency have provided protection for displaced families.

75. Efforts are currently being made to form a committee with representatives from the National Security Advisory, the Ministry of the Interior, the Ministry of Justice and the Ministry of Labour and Social Affairs. The committee, which is to be headed by the National Security Agency, will monitor cases involving female inmates in prison, in the light of legal procedures regarding the release of women prisoners who were convicted in

cases of prostitution and who fall under the provisions of the General Amnesty Act. The aim is to address the possibility that such women, for fear of being killed, could be exploited to work within terrorist groups or prostitution networks once released.

76. The National Security Agency has also referred complaints to the competent authorities and has followed up on the measures taken to protect women who have experienced sexual violence. The Agency has cooperated with all other security bodies to secure and clear liberated areas from the remnants of military operations.

77. The Ministry of Migration and Migrants has registered a large proportion of complaints of domestic violence with the courts of investigation and judicial investigative offices. It has also coordinated with international organizations to provide support for displaced Yazidis, distribute in-kind assistance and provide financial assistance to launch projects.

78. The Ministry of Migration and Migrants has organized psychological support programmes for women involving seminars and awareness-raising sessions. It has also provided buses to transport returnees, especially women and children, to areas of return and set up shelters for displaced persons. The Ministry has provided humanitarian support for the construction of tents and caravans and for meeting emergency food and non-food requirements. It has also provided shelters and distributed equipment and tools for small income-generating projects for both men and women.

79. The Ministry of Planning has set up a database of women who use the specialized centres in the camps for victims and survivors of violence.

80. It had been hoped to carry out a survey of displaced persons in order to extract indicators regarding the situation of women and, in particular, to determine their needs and possibilities. This, however, did not take place due to the lack of necessary resources, which are a result of the financial restrictions government institutions are suffering.

81. The Ministry of Planning has implemented a programme – conducted in coordination with the Ministry of Labour and Social Affairs – to provide occupational training and psychological support for displaced women and to reintegrate them into their communities. It should be noted that the Ministry of Planning has integrated this activity into the executive plan of action for human development in liberated areas, which forms part of the human and social development component of the national document on reconstruction.

82. Following the displacement of large numbers of women from the governorates that fell under the control of ISIL terror groups, the Women's Social Protection Department formed a task force to visit displaced families and ensure that women who had lost their breadwinners would receive social benefits. The Department has opened helpdesks close to displaced persons' camps to provide material and in-kind assistance. It also works to raise women's morale through logistical support as well as seminars, lectures and psychological assistance for liberated families in the governorates. Female sociologists deliver lectures to educate women and foster their psychological reintegration into the community. Following the liberation operations, the Women's Social Protection Department immediately opened helpdesks in liberated governorates then reviewed and updated its data in order to provide women with the assistance they required.

83. The Foreign Ministry has directed Iraqi missions abroad to search for Yazidi women and discover their fate. A number of Yazidi women have been recovered and liberated areas have been prepared for the return of displaced persons and their families, especially women. Thanks to negotiations and coordination with members of the United Nations Security Council, resolution 2379 (2017) was issued, which criminalized the ISIL terror group. In addition, a joint communiqué was signed between the Foreign Minister on behalf of the Iraqi Government and the Special Representative of the Secretary-General on Sexual Violence in Conflict. Three focal points have been designated – by the Government, the Kurdistan Region and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict – with a view to developing a national action plan.

84. The Committee for National Reconciliation has considered cases submitted by women seeking to obtain alimony from their husbands in cases of arbitrary divorce and it has issued decrees obliging the husbands to pay maintenance to their wives. The number of registered cases stood at 10,643 in 2014, 10,771 in 2015 and 11,690 in 2016. Furthermore,

43 women from the camps have received leadership training to enable them to participate in running their camps. Seventy-five microloans were disbursed to women in leadership roles for them to use to set up income-generating projects. In addition, the Committee has concerned itself with ensuring safe and hygienic childbirth services through 10 mobile delivery clinics, and with the urgent need to upgrade maternity wards. Moreover, 1,000 Yazidi and Turkmen women and 17 children rescued from ISIL have been taken in and legal procedures regarding them have been completed.

85. The Supreme Judicial Council receives complaints, launches investigations and collects evidence in all areas that were occupied by ISIL terror groups. Complaints referred to the special courts of investigation numbered 2,334 in 2014, 6,472 in 2015 and 4,753 in 2016. The perpetrators of terrorist offences have been granted due process and fair trials. In 2014, 85 per cent of cases were resolved, 97 per cent in 2015 and 96 per cent in 2016. A judicial investigative body has been created to look into the crimes committed against the Yazidi community.

86. The Supreme Judicial Council has examined cases brought by women wishing to establish that their children were conceived in the marital bed, to validate and ratify contracts of marriage or divorce concluded outside the courts and to receive their economic dues or marital goods – i.e., the deferred dowry – from the divorced spouse.

87. A training course was held for 10 members of the Office of the Public Prosecution on how to monitor the course of legal proceedings, and responses were given to requests made by displaced and migrant women and by relatives of victims of terror offences to issue decrees regarding the legal division of the inheritance of victims of terror offences as well as decrees relating to testamentary dispositions, death and power of attorney.

88. The Supreme Judicial Council has issued a circular regarding cases of domestic violence. A large proportion of complaints of domestic violence have been registered with courts of investigation and judicial investigative offices, and legal measures have been taken against the persons who were the subject of the complaints.

89. Female victims of violence filed a total of 341 complaints in 2015 and 277 in 2016. Statistics for 2017 are not yet available. The Council also considers cases that involve requests from women seeking ongoing alimony payments, back payments, alimony arising from cases of arbitrary divorce, alimony for *idda* or child maintenance from their husbands or ex-husbands.

90. In 2016, the Kurdistan Regional Government, through the Ministry of the Interior's Public Directorate to Combat Violence Against Women, assigned 10 roving teams to monitor the status of women and their rights. Court records of complaints show that 312 different cases were considered during the last four months of 2016. In 2017, the number of teams was increased to 14. If a complaint is filed or information exists pointing to a case of this nature, an investigation is launched and action taken against those responsible. The Ministry of the Interior of the Regional Government has closed down a number of organizations and institutions and placed them on a black list after they had violated existing regulations and laws.

91. A family counselling centre has been set up in the Public Directorate to Combat Violence Against Women in Dahuk governorate where legal specialists, psychologists and sociologists are on hand to provide services to Yazidi women rescued from ISIL. Assistance has been given to more than 2,000 women, over 1,000 of them above the age of 18, who were taken to hospital where they received treatment and psychological assistance from specialists. In addition, the Directorate has run training courses and workshops to support them and help them reintegrate into society.

92. A number of different health services have been provided to displaced persons and refugees in camps. One of these is the provision of mobile and fixed medical centres, with a health team that includes an assistant doctor to carry out tests and administer first aid. If patients cannot be treated inside the camp, they are taken to the nearest hospital, if necessary. Child vaccination campaigns also take place, according to age, and health-care services are provided to pregnant women and newborn infants.

93. As regards raising awareness about health, a number of campaigns have been run to protect women from breast cancer, with the assistance of medical specialists. Apart from physical health, the Kurdistan Regional Government is also concerned about the

psychological and social aspects of health care. To that end, on 22 August 2017 an orphanage was established in the Hasan Sham Camp to care for children who had lost their parents in the war against ISIL. The orphanage runs various activities for children, such as music and games. In addition, there are 12 health centres for women who have suffered violence.

94. On 25 November 2014, the Office of the Prime Minister of the Kurdistan Regional Government formed a committee to collect information and follow up on the question of abducted persons and a special budget was allocated with a view to rescuing them. This operation is still ongoing. Thanks, in fact, to the continuous efforts of the Regional Government, 3,322 Yazidis were rescued on 5 September 2018: 1,156 women, 337 men, 956 girls and 873 boys. The women had been subjected to various forms of abhorrent behaviour that are alien to all human norms and traditions, such as being bought and sold, physically and mentally tortured, forced to change their religion and subjected to sexual harassment.

95. Women who have been rescued are in a very poor state of mental and physical health and are in need of treatment. This is provided, to the extent possible, by the health-care authorities in Dahuk governorate. A number of the liberated women had had their children with them but lost them during the course of their ordeal and this is one of the reasons for the deterioration in their mental health. Thirty-three of the women rescued from the clutches of ISIL lost all members of their close family and are currently living with relatives. An agreement has been concluded between the Kurdistan Regional Government and the Government of Germany under which 100 rescued women with mental health issues are being sent to Germany to receive psychological treatment there.

96. At United Nations Headquarters on 23 September 2016, a joint communiqué was signed between the Foreign Minister on behalf of the Iraqi Government and the Special Representative of the Secretary-General on Sexual Violence in Conflict, Ms. Zainab Bangura. The communiqué marked the beginning of joint efforts between Iraq and the United Nations to respond to the dangers of sexual violence against women and to address a number of challenges that Iraq faces in holding perpetrators of such offences to account and delivering them to justice in accordance with Iraqi law. Under the agreement, Iraq will receive international support in the collection and documentation of evidence on these crimes and in strengthening its legal framework so as to enable the courts to combat sexual violence in the most effective manner, find ways to compensate victims, provide them with the services they need and empower survivors. The communiqué identifies the following six priority areas:

- Supporting legislative and policy reform to strengthen protection from and service response to sexual violence;
- Ensuring accountability for sexual violence through strengthening the capacity of national and regional authorities;
- Ensuring the provision of services, livelihood support and reparations for survivors and children born of rape;
- Engaging tribal and religious leaders, civil society as well as women human rights defenders in the prevention of sexual violence crimes and facilitating the return and reintegration of survivors;
- Ensuring that considerations related to sexual violence are adequately reflected in the work of the Iraqi Counter-Terrorism Commission;
- Raising awareness and deepening knowledge related to conflict-related sexual violence.

97. The Public Directorate to Combat Violence Against Women conducts the following activities:

- It treats women who have suffered violence as victims who need psychological, social and legal assistance;
- It deals with the mental, physical and sexual impact of violence;
- It receives complaints and reports of violence from persons who have suffered harm or their legal representatives;

- It holds meetings with victims to provide services according to need, in the presence of psychologists, sociologists and lawyers;
- It sends victims to hospital for medical tests, either according to need or at the victim's own request;
- It sends victims to shelters if there is a threat to their lives;
- It has a dedicated hotline to receive calls from women suffering problems or who are at risk of their lives;
- It monitors cases of trafficking in women;
- It regulates the activities of the reconciliation committees in the Directorates to Combat Violence Against Women in Erbil, Sulaymaniyah, Dahuk, Karmiyan, Raparin and Soran.

98. In cooperation with the United Nations and civil society, the Directorate to Combat Violence Against Women has formed 23 roving teams to improve functionality, deliver assistance and provide face-to-face information about services to displaced persons and refugees from cities and governorates in Kurdistan Region. More than 1,500 cases are registered each year, some of which are handled directly while others are referred to the courts for legal measures to be taken.

99. As part of the joint operating framework (i.e., the roving teams) between the Directorate to Combat Violence Against Women, the United Nations and civil society, awareness-raising workshops and courses have been run inside the camps, attended by more than 12,000 people. Relevant legislation includes the Kurdistan Region Domestic Violence Act and the Kurdistan Region Act on the Misuse of Communications Media (Act No. 6 of 2008). The teams also focus on how domestic violence arises, give psychological advice to solve domestic problems and mitigate their impact on families and children, and provide legal and psychological services.

100. In 2016, a committee of experienced and competent judges was established to examine existing laws and make relevant proposals, in line with the current situation in Iraq. One of the priorities the committee set itself was to propose an amendment to the current Anti-Terrorism Act No. 13 of 2005 so as to enable all perpetrators of terror offences to be held to account, including offences of abduction and sexual violence against women, girls and children.

101. In coordination with local and international organizations and with donors, income support is provided to families. Female beneficiaries are offered skills training and provided with the materials they need to complete such training.

102. A pilot programme is being implemented under which conditional assistance is provided to 2,000 women. The Ministry has provided shelter for 79 displaced women and has set up seven psychological support centres where women are taken in and provided with the help they need. Psychological assistance is also made available via the social research division with a view to restoring their mental balance and relieving psychological stress. Support continues to be provided to shelters in Erbil, Sulaymaniyah and Dahuk by building the capacity of staff and providing services to female victims of violence.

103. The Ministry of Health has handed out free coupons to all displaced persons in Iraq allowing them to be examined in primary health-care centres and hospitals, where they receive free integrated health services. Eight training courses have been run on reproductive health services, health response services, caring for pregnant women and monitoring maternal mortality. Each course was attended by 20–30 participants for an overall number of 240 health-service providers. A further 16 courses have been run on mental health services and psychosocial support for female victims of violence, while seven workshops have focused on a programme of clinical measures for survivors of sexual violence. In addition, more than 20 displaced persons' camps have been provided with medical convoys and mobile medical detachments. More than 500 such detachments have been deployed across all liberated areas.

104. The Ministry of Health in Kurdistan Region has handed out free coupons to all displaced persons and provided them with free integrated health services. It has also

organized 20 training courses on psychological health and psychosocial support for displaced persons in general, and women and child victims of violence in particular.

105. Fifteen workshops have been held on a programme of clinical measures for survivors of sexual violence as well as five train-the-trainer courses on bridging psychological distance. In addition, guides on the following subjects have been developed and printed:

- A guide on psychological first aid;
- A mental health handbook;
- A guide on bridging psychological distance;
- A guide for providers of health and medical services in cases of domestic violence;
- A guide on caring for pregnant women and a breastfeeding guide.

106. Fifty pamphlets and guides have been produced covering 12 health-related subjects aimed at raising awareness among mothers regarding different aspects of maternity and childhood.

107. The Ministry of Health in Kurdistan has also focused attention on awareness-raising. An educational project on the subject of circumcision has been run in 10 health centres, as well as a campaign on early marriage. Courses have been run for health-education workers in health centres and for midwives, particularly in remote areas. The aim is to help them educate families, to which end educational materials have been produced and a television campaign has taken place.

108. A special reception centre for victims of violence and two reproductive health clinics have been set up in Dahuk. In addition a programme for the care of newborn children is being run in the camps.

109. A protocol of clinical measures for survivors of sexual violence has been developed, and a strategy has been put in place to provide preventive health services and treatment to displaced persons.

110. A forensic medicine programme has been launched for midwives regarding the collection of forensic evidence in cases of violence and genocide. Five courses have been held in that connection.

111. The Ministry of Defence has been cooperating with its partners to secure liberated areas and clear away remnants of war and military operations. The following devices have been dealt with: 195,836 explosive devices, 2,457 car bombs, 24,378 booby-trapped homes and 2,828 explosive belts. In addition, 19,575,394 pieces of ordnance of various kinds and 1,228 missile bases have been removed.

112. Regarding appointment to vacant teaching positions from the 2016 appointment roster of the Ministry of Education, the Ministry of Finance has given priority to female heads of household in possession of a diploma or a first-level university degree, in accordance with the federal budget enactment guidelines, section III / 1 – Appointments / I / D / 4).

113. The Ministry for Martyrs' and Anfal Affairs in Kurdistan Region has collected and documented evidence, which it has made known at the local and the international level and which throws light on the scale and horror of crimes that have been committed. It has produced documentary films, undertaken statistical research and collected, documented and conserved criminal evidence. It has also launched inquiries into the fate of missing persons, uncovered mass graves and sought to return victims' remains to their places of origin, in coordination with the Federal Government and other competent authorities and it has provided facilities for detecting and opening mass graves and identifying bodies.

114. The Ministry for Martyrs' and Anfal Affairs has sought to draw the attention of the world to the crimes committed and to bring perpetrators to justice before the competent courts, using the provisions of international treaties and protocols and drawing on the experience and expertise of States and of international and regional organizations. It has also sought to secure the backing of the international community in recognizing crimes of genocide and it has worked to garner local and international support – both governmental and non-governmental – in defining genocide, revealing the true impact of the crimes

committed and seeking legal support and advice from competent bodies. The Ministry has also acted to develop a legislative and legal environment for its activities, particularly as concerns criminal and civil aspects, and to review and examine laws, decrees and instructions with a view to developing and amending them and to make proposals for new legislation in line with international law. A monthly allowance has been granted to the families of martyrs and of victims of genocide.

115. Outcome of protection activities:

- Reduction of violence directed against women and children, provision of legal protection and improvement of security and stability indicators;
- During the period of attacks by the ISIL terror group and the subsequent liberation operations, the Ministry of Defence protected more than 1 million persons, most of them women and children, displaced from the governorates of Nineveh, Salah al-Din, Kirkuk, Diyala and Anbar;
- The Ministry of the Interior has participated in humanitarian response efforts with the provision of around 50,000 food aid baskets by the Directorate for Family and Child Protection, in coordination and cooperation with the Ministry of Migration and Migrants;
- Efforts have been made to promote the reintegration into society of survivors of violence and to protect the rights and dignity of women and improve their psychosocial and economic stability;
- Formations within the Ministry of the Interior provide protection for displaced women, work to curb violence against them and provide psychosocial services and security, with the help of female police officers;
- Displaced families are afforded protection by forces of the National Security Agency, complaints are referred to the competent authorities and the measures taken by the Agency to protect women who have suffered sexual violence are duly followed up;
- More than 1,000 Yazidi and Turkmen women and children rescued from ISIL have been taken in by the Committee for National Reconciliation and, thanks to efforts by the Ministry of Foreign Affairs, a number of Yazidi women have been brought back to national territory;
- The Supreme Judicial Council has received 13,559 complaints from female victims of violence and has conducted investigations and taken legal action against the persons who were the subject of the complaints;
- Legal services offered to women have been improved thanks to action on the part of the Supreme Judicial Council, which has examined more than 300,000 cases brought by women from various governorates in Iraq regarding matters such as the validation and ratification of divorces concluded outside the courts, establishing the legitimacy of their children and receiving their economic dues from the divorced spouse;
- The issuance of more than 200,000 decrees by the personal status courts has helped to secure the rights of many women, including decrees regarding the legal division of inheritance and decrees relating to testamentary dispositions, death, power of attorney and other matters;
- The living conditions of 1,779 Yazidi, Shabak and Arab women rescued from the clutches of ISIL have been improved through education, which was made available thanks to grants from the Ministry of Labour and Social Affairs;
- Better social care is being offered to women now that the Ministry of Labour and Social Affairs distributes its aid to beneficiaries regularly every two months, rather than every three months.

116. Act No. 81 of 2017 was promulgated to help ensure an adequate standard of living for the families of persons who laid down their lives in anti-terror operations conducted by various branches of the armed forces, and to protect the rights of their relatives and of injured persons. Under the Act, which commemorates the sacrifice made by those killed in the war against ISIL, the relevant procedures are streamlined and high-quality care is

provided for the injured. The Act envisages pensions, treatment for injured persons, the cancellation of debts accumulated by the fallen and injured, monuments to immortalize their sacrifice and educational opportunities and decent housing for their families.

117. Despite the difficulties the country is facing, the Government has launched activities aimed at creating the appropriate conditions and atmosphere for female displaced persons and rescued women. This is in addition to efforts being made by civil society and international organizations.

118. A number of measures have been taken to stabilize the security situation in order to facilitate the return of displaced persons.

119. Action has been taken to remove landmines, to destroy explosives and to remove the debris of war from towns and cities in order to secure liberated areas in preparation for the return of displaced persons; to reopen police stations in liberated areas; to secure liberated areas and guarantee security for citizens through the deployment of forces in surrounding areas and areas of access; and to cooperate with citizens in detecting infiltrators and terrorist cells and providing intelligence.

120. The Ministry of Migration and Migrants, in coordination with the Ministry of Labour and Social Affairs, the Ministry of Health, the Department for the Empowerment of Iraqi Women and civil society organizations, has taken steps to improve the situation of female heads of household and to ensure that they are covered by humanitarian, security and stability programmes. The Ministry has adopted programmes to launch income-generating projects and ensure that female heads of household are able benefit from the grants allocated to returning families.

121. The Ministry of Health has intensified its field visits to camps. The visits are conducted throughout the week, including holidays and feast days, by working groups that seek to ensure the sustainability of the health-care services provided to displaced persons. Working alongside local teams in the governorates where displaced persons are located, the groups oversee the delivery of medications and medical supplies to internally displaced persons in camps and at other locations. The Ministry of Health is also working to strengthen joint working mechanisms with the Ministry of Health in Kurdistan Region and to provide logistical support, in accordance with the numbers of displaced persons and their governorates of origin.

122. The Ministry of Health provides care services for mothers and children, undertakes nutritional assessments, works on the early detection of chronic disease and the provision of medication to sufferers and records and follows up on cancer cases. The Ministry also provides centralized ambulance services for displaced persons in camps and at other locations. Ambulances are also provided by health-care departments in the governorates, the World Health Organization (WHO) and international organizations. In addition, the camps are provided with mobile clinics in partnership with WHO and other agencies.

123. In the course of 18 vaccination campaigns conducted by the Ministry of Health, a total of 925,755 children under the age of 5 have been vaccinated, in camps and other areas where displaced persons have congregated. In addition, 205,389 children under the age of 1 have been vaccinated thanks to ordinary vaccination coverage. The annual number of births stands at 214,121 and 4,588,740 persons per year receive treatment and prevention services through health centres, mobile clinics, ambulances and mobile health teams. At the same time, 2,041,184 persons annually receive treatment or emergency care at hospitals.

124. With the approval of the Minister of Labour and Social Affairs, 1,529 Yazidi women who were subjected to violence by ISIL terror groups have been provided with social assistance without having to fulfil the normal prerequisites. The same applies to 88 Shabak women who were also rescued from the hands of ISIL. The Ministry of Labour and Social Affairs has adapted the human trafficking shelter in Baghdad to take in children who had been subjected to abuse and who escaped from the crimes perpetrated by ISIL terror groups. The shelter accommodates all children in need of assistance, without discrimination or exception. A number of displaced families have been recovered in shelters belonging to the Ministry's Department for the Welfare of Persons with Special Needs in Al-Wazireya. The group is made up of 148 individuals including 79 women displaced from the governorates of Nineveh and Anbar and they and their families are provided with all the services they require. In addition, sewing machines, gas-fired bread ovens, wheelchairs for persons with

disabilities and various household necessities have all been distributed. A project has been launched to document the violations suffered by female victims of terrorism and war and to provide aid to beneficiaries regularly every two months, rather than every three months, with a focus on poor families.

125. The Ministry of Higher Education and Scientific Research has set up an operations room to address the situation of students who were displaced after ISIL overran certain parts of Iraq in 2014. In fact, eight State-run universities in Nineveh, Salah al-Din and Anbar fell under the control of ISIL, in addition to a number of technical institutes and private universities. Solutions were found whereby the students were able to pursue their education in other areas. The Ministry has also guaranteed centralized admission quotas, in line with plans that were put in place after exams were delayed in the affected areas, and it has allowed students to retain their rights by deferring their studies or enrolling in alternative sites. Subsequently, the Ministry has also worked to refurbish those universities after the areas in which they were located were liberated.

126. The Ministry of Education has taken the following measures to deal with the issue of displaced persons and help them overcome the obstacles they face:

- The Ministry has opened three representative offices in Kurdistan Region;
- An emergency plan has been developed focusing on the educational situation of students during military operations and an emergency curriculum has been prepared for teaching, in cooperation with the High Committee for the Relief of Displaced Persons;
- A total of 473 schools have been set up across all the governorates, for a total of 224,457 displaced students;
- A total of 61 buildings have been rented in Kurdistan Region, 14 “trailer schools” have been set up, trailers have been supplied to other schools in order to address the problem of overcrowding and students have been given essential supplies;
- An examination centre has been set up outside Iraq;
- A high-level ministerial committee has been formed to develop policies, plans and programmes to address the educational, psychological, and social situation of students, pupils and teachers in liberated areas and to eliminate the negative consequences of acts of terrorism;
- Action has been taken to contrast terrorist ideas, preaching and ideologies;
- In cooperation with the United Nations Children’s Fund (UNICEF), an online teaching project has been created for displaced students and students who have dropped out of school;
- A special project has been adopted that aims to foster a spirit of peace, cooperation, cohesion and citizenship and to contrast the extremism and violence that result from conflicts and wars.

#### **Transportation of internally displaced persons**

127. The concern raised about constraints on the freedom of movement of internally displaced persons is not, in fact, consistent with the reality on the ground. The truth is that Iraq had to face an extraordinary set of circumstances when ISIL overrun parts of the country, which in turn caused a widespread displacement towards more secure areas. This was followed by broad scale military operations conducted by security forces and the Iraqi army to reclaim territory and drive out hundreds of ISIL combatants. However, those combatants then infiltrated the ranks of the displaced persons with a view to carrying out further terror attacks, attacks which did effectively take place. Therefore, the efforts made by the Iraqi authorities to analyse information about displaced persons are intended to protect national security, public order, public health, public morals and the rights and freedoms of others.

## Non-reliance on confessions extracted using torture

### Article 15 and paragraph 22 of the concluding observations

128. Verdicts handed down by the Iraqi courts do not rely on confessions alone but on an overarching body evidence, of which confessions are a part. Confessions extracted under torture are not admitted and perpetrators of torture are liable before the law.

129. Article 127 of the Code of Criminal Procedure (Act No. 23 of 1971), as amended, states: "It is forbidden to use any unlawful method to influence an accused person in order to extract a confession. The following are considered to constitute unlawful methods: ill-treatment, threats, infliction of injury, enticement, promises, psychological pressure or the use of drugs or intoxicants."

130. Legal guarantees are enshrined in the Constitution of Iraq and domestic criminal law; i.e., the Criminal Code (Act No. 111 of 1969), the Code of Criminal Procedure (Act No. 23 of 1971), the Internal Security Forces Criminal Code (Act No. 14 of 2008), the Internal Security Forces Code of Criminal Procedure and the Internal Security Forces Act No. 17 of 2208.

131. The burden of proof lies with the claimant through appeals and the submission of medical reports and other evidence, and by calling witnesses.

132. The Human Rights Directorate of the Ministry of the Interior undertakes to make human rights standards more widely known by participating in relevant courses, workshops and other activities. The complaints section and the hotline receive complaints of torture allegedly committed by members of the military. These are investigated and, if sufficient evidence exists, the persons concerned are referred to the courts.

133. A series of measures have been put in place by the office of the public law advisor of the Human Rights Directorate of the Ministry of the Interior to reduce the incidence of torture in provisional detention centres:

- Regular inspections of detention centres are conducted by committees from the Human Rights Directorate;
- Detained persons are given one-on-one counselling;
- Physical medical examinations are carried out on a random sample of detainees;
- It is forbidden for military personnel to question accused persons save for preliminary questioning, which covers personal information only;
- Detainees are referred to the competent authorities within 24 hours, and they may not be held inside military barracks;
- The Human Rights Directorate runs training courses and awareness-raising campaigns for administrators of provisional detention centres belonging to the Ministry of Defence;
- The Human Rights Directorate runs hotlines (landline, mobile and email), which are advertised in the media and serve to receive any complaints of torture or ill-treatment;
- Fact-finding commissions are created to look into allegations of torture or ill-treatment.

134. The armed forces are bound by orders and directives emanating from the authorities, according to which no detained person may be subjected to physical or mental torture or coercion in order to extract information. In fact, such persons remain under the authority of the State and not of individuals, and respecting and protecting their human dignity is an inherent part of military duty.

135. Legal advisors in military commands and teams act – in addition to their other duties – as human rights officers. They supervise the provisional detention centres run by their commands, in accordance with the Prison and Detention Centre Administration Act, in which regard they apply the orders and directives of the Minister of Defence which, in turn, are consistent with international humanitarian standards regarding the treatment of detainees.

## Violence against women

### Paragraph 24 of the concluding observations

136. In April 2014, the Council of Ministers approved a national strategy for the advancement of Iraqi women. The strategy incorporates the national plan relating to Security Council resolution 1325 (2000), making Iraq the first country in the Middle East and north Africa to draw up a plan in that regard as was noted by the then Special Representative of the Secretary-General for Iraq. The plan has six areas of focus – participation, protection, prevention, promotion of the resolution, resource mobilization and monitoring and evaluation – and it was drafted with the help of a number of civil society organizations, most notably the Alliance for the Implementation of Security Council resolution 1325.

137. The plan was adopted during a period in which Iraq was in a stable security and economic situation. However, two months after its adoption, the ISIL terror organization entered Iraq, overran a number of areas of the country and perpetrated numberless crimes. In addition, oil prices fell and the State found itself facing multiple economic and security challenges. In response to these developments, the then Ministry of Women's Affairs consulted with civil society organizations to draw up an emergency plan, which was ratified by the Council of Ministers in May 2015. The plan has three areas of focus – participation, protection and prevention – but its overarching goal is to meet the fundamental requirements of displaced women and to follow up on the issue of female abductees and of women who suffered violence at the hands of the ISIL terror groups.

138. The emergency plan includes provision for the creation of an operations room to monitor the enactment of the plan. However, around two months after the plan was approved, the Ministry of Women's Affairs, which had been the body responsible for its implementation, was suppressed and the plan faced a temporary delay. Then, in January 2016, the Office of the Prime Minister ordered that the operations room be reactivated in order to monitor the implementation of the plan along with the relevant ministries. Following an intense round of meetings and consultations, in which civil society organizations were also involved, operational strategies were devised for all the bodies directly involved in the implementation of the plan on the ground. The operations room in the Secretariat of the Council of Ministers announced that it was organizing a conference in Erbil on the launch of nationwide operational strategies regarding resolution 1325 for ministries and other official agencies of the Federal Government and the Kurdistan Regional Government. The conference also covered the launch of an institutional evaluation project for sectoral teams and the creation of teams for the purpose of assessment and follow-up inside ministries. Another initiative was a train-the-trainer course for sectoral teams on the Security Council resolution and subsequent related resolutions.

139. There has been follow-up on the implementation of the plan regarding resolution 1325, the sectoral teams in the institutions involved in its enactment have been re-evaluated and work has taken place to consolidate efforts and draw on the help of experts in developing and applying the plan envisaged in the joint communiqué on sexual violence.

140. The national action plan 2014–2018 for the implementation of resolution 1325 included three main area of focus: participation, protection and prevention.

141. The overall objective of the focus on participation is to increase the impact women have and to introduce a women's rights-based approach in the conduct of negotiations, the building of civil peace and the making of political decisions. To that end, the national plan includes goals that envisage the involvement of Iraqi women in positions of leadership in ministries and government departments as well as support for the participation of women in the security sector. However, despite all the efforts that have been made in this regard, attempts to ensure that Iraqi women are represented in positions of leadership still face considerable challenges.

142. In line with the national plan and subsequent plans, ministries and other national institutions in Iraq have also been working on activities related to protection. These involve ensuring that women are not subjected to violence and creating an environment conducive to their participation in post-conflict security, peacemaking and stability.

143. The Supreme Judicial Council has appointed a female judge from the Office of the Public Prosecution to the women's prison for the purpose of supervising and monitoring the conditions of female inmates, overseeing their legal affairs, recording any complaints of abuse they might make and submitting them to the competent courts.

144. The President of the Judicial Council appointed a Council member of the rank of director-general to serve as his personal liaison with the Higher Committee for the Advancement of Iraqi Women, which was headed at the time by the then Minister for Women's Affairs. Her job was to coordinate the implementation of the strategy for the advancement of women and the strategy for combating violence against women, particularly in the field of legislation.

145. The Ministry of Planning has organized seminars to raise awareness about resolution 1325 and to integrate the principle of gender into planning and development. In addition, through the National Centre for Administrative Development, the Ministry has organized capacity-building courses for senior and middle-level staff to increase their know-how and abilities. In that connection, 240 female officials in senior and middle-level posts – of a total of 944 officials of equal rank – underwent the capacity-building training in 2016. In 2017, 189 female officials in senior and middle-level posts underwent the training, of a total of 357 officials of equal rank.

146. When the national development plan 2018–2022 was being drawn up, a focus on the empowerment of women was integrated into the national human development plan. This includes provisions regarding the education, health and economic activity of women and their involvement in society.

147. The focus on participation covers two strategic goals. The first involves establishing mechanisms to ensure the fair and proportional participation of women in all State institutions and decision-making roles in the executive, the legislature and the judiciary, at both the local and the national level. The second goal involves ensuring the fair and proportional participation of women on all reconciliation commissions, in peacebuilding and conflict-resolution negotiations and on councils for civil peace. These strategic goals are to be fulfilled by involving women in the formulation and administration of humanitarian activities during the context of war and armed conflict and during the post-conflict stage, in decision-making processes relative to conflict-resolution negotiations and in peace-keeping agreements and initiatives. In addition, women in communities affected by armed conflict are to be duly represented in the conflict-resolution process and female returnees are to be involved in the reconstruction of their places of origin. At the same time, displaced women are to be supported and encouraged to participate in the administration of camps. Matters that affect women are receiving attention and programmes for the economic and social empowerment of women are being rolled out. Measures are being taken to ensure the fair and proportional participation of women on all reconciliation commissions and in peace-building negotiations. The Ministry of Planning has also been involved in actions to foster the participation of women: it has commissioned studies into the role women have played in decision-making mechanisms in Iraq, during times of peace and conflict, which have revealed just how many women hold senior and high-ranking positions disaggregated by their qualifications, years of experience and the training courses they have attended. The Central Bureau of Statistics has run 10 training courses for State institutions on the subject of gender. In addition, in coordination with the Ministry of Labour and Social Affairs, funds have been allocated for microloans to the poor, including poor female heads of household.

148. The Ministry of Planning regularly conducts surveys providing general indicators on women vulnerable to domestic violence, such as the Iraq Women Integrated Social and Health Survey (I-WISH), the Multiple Indicator Cluster Survey (MICS) detailing the status of women and children in Iraq and in-depth analytical reports on violence against women. All indicators are integrated into the national plans and strategies. Furthermore, national development plans (2018–2022) gave a particular focus to gender, as is also true of the gender-related strategies, including the national strategy to combat violence against women in Iraq (2013–2017), the national strategy for the advancement of women in Iraq (2014–2018) and the national emergency plan relating to Security Council resolution 1325 (2000) on women and peace and security.

149. Sitting on 13 January 2015, the Council of Ministers issued Decree No. 27 of 2015 by which it approved the bill on domestic violence which, following scrutiny by the

Council of State, was referred to the Council of Representatives for the completion of its legislative itinerary. The bill received its first reading on 12 March 2015. On 23 May 2015, for the purposes of redrafting the bill for a second reading and in order to gain a deeper understanding of its shortcomings, the Committee on Women, the Family and Children held a joint meeting with the Committee on Human Rights to devise a strategy for proceeding with the process of enactment. The strategy included hearings with the Ministry of Women's Affairs, the Ministry of the Interior, the Ministry of Labour and Social Affairs, judges, legal experts, academics and civil society organizations.

150. On 2 April 2015, the Committee held its regular meeting with civil society organizations, at which it discussed the bill and the proposed amendments in the light of Security Council resolution 1325 (2000). On 15 April 2015, the Committee invited the Minister for Women's Affairs to discuss the observations made on the law and to put forward the Government's position.

151. On 14 and 15 March, the Committee on Women, the Family and Children held meetings with the Westminster Foundation for Democracy, which ran training workshops with female members of the Committee to discuss the bill on domestic violence.

152. On 16 August 2015, in cooperation with UN-Women, the Committee arranged a regular legislative meeting attended by civil society organizations in order to delineate a national vision on the bill.

153. On 9 September 2015, the Committee invited the head of the family protection directorate in the Ministry of the Interior to explain his group's position on the relationship between the work it did and the provisions of the law, and the challenges it faced in the absence of appropriate legislation.

154. The bill underwent a second reading on 17 January 2017. During the current session of the Council of Representatives (2018–2022) the bill was referred back to the Government along with a body of other bills in order for it to identify legislative priorities. The Government then resubmitted its proposals to the Council of Representatives where they are currently being examined with a view to being read before the Council.

155. Article 1 (2) of the bill defines the offence of domestic violence as follows: "Any act of physical, sexual, psychological, ideological or economic aggression that one member of a family commits or threatens to commit against another. Such an act can, according to law, amount to a petty, serious or major offence." The bill includes provision for the erection of shelters and the creation of mechanisms to protect victims, report crimes of domestic violence and bring legal action irrespective of geographical jurisdiction.

156. Social Welfare Act No. 126 of 1980 was amended by Act No. 28 of 2013, which includes a reference to domestic violence. Article 29 (1) of the Act states: "Care homes are mandated to provide care for children, minors, juveniles and adults who encounter family problems, who have lost one or both parents, or who are victims of domestic violence. The homes offer a healthy environment that aims to compensate for the loss of family care and affection and to overcome any feelings of solitude. The Ministry of Labour and Social Affairs has issued directives regarding shelters for female victims of violence.

157. Passport Act No. 32 of 2015 does not include any discriminatory provisions relative to the issuance of passports, nor does it place any restrictions of movement on women. In addition, it stipulates that any restriction on the freedom of movement may be imposed only by court order.

158. A special court has been set up to combat violence against women in three governorates of Kurdistan Region, a reconciliation committee has been established in the domestic violence courts and a high-level committee has been set up to combat violence against women in Erbil, Sulaymaniyah and Dahuk.

159. Under article 2 (1) of Anti-Domestic Violence Act No. 8 of 2011 of Kurdistan Region, the following actions are considered to constitute domestic violence: "coercion to marry; marriage as an exchange or trade-off and the marrying off of minors; marriage as an alternative for blood money; coercion to divorce; breaking the spouse's ties with their family of origin; a husband forcing his wife into prostitution; forcing family members to abandon their employment or profession against their will; forcing children to work or beg and abandon their schooling; suicide as a consequence of domestic violence; abortion as a

consequence of domestic violence; beating family members and children for whatever cause”.

160. As a way of protecting the dignity and well-being of women, penalties against perpetrators envisaged under the bill on domestic violence include fines of between ID 500,000 and ID 1 million, or a term of imprisonment of 6 months in the case of non-payment. In the case of repeat offences, the fine is increased to between ID 3 million and ID 5 million, or a term of imprisonment of 1 year.

161. Greater numbers of women have been appointed to roles within the State security apparatus such as the community police, the family protection police and the women’s training institute in the Ministry of the Interior. In addition, a women’s security section exists within the National Security Agency and gender units have been set up inside ministries with security-related portfolios. All these bodies seek to integrate gender into matters related to security.

162. A police directorate for family and child protection has been created.

163. Principles relating to protection from domestic violence have been included as a module in family education lessons for pupils in fifth grade.

164. There are now more female members of the army and police, and the first course on protection for female public figures graduated in 2013.

- Training courses are organized for members of the family protection police, including women in the ranks and female officers.

165. Modules on human rights and domestic violence have been incorporated into the Police Academy curriculum.

166. The bill on domestic violence includes provision for shelters for the protection of female survivors of domestic violence, which will be made available once the law has been approved. In addition, the Human Trafficking Act envisages the creation of a home for trafficking victims and steps to open such a structure have already been taken.

167. The Ministry of Labour and Social Affairs is currently studying the possibility of opening shelters for women who have suffered violence, before the enactment of the law.

168. Training courses on the treatment of female victims of violence have been held, both inside and outside Iraq, for staff of relevant ministries including the Ministry of the Interior, the Ministry of Defence, the Ministry of Health and the Ministry of Labour and Social Affairs.

169. Laws relating to women passed by the Parliament of the Kurdistan Region:

170. Act No. 7 of 2001, exempting the wife from the provisions of article 41 (1) of the amended Criminal Code.

171. Act No. 8 of 2001 regarding alimony for wives in cases of arbitrary divorce.

172. Under Act No. 14 of 2002, in the case of offences committed against women, grounds of honour are not considered to constitute mitigating circumstances before the law for the purposes of applying articles 128, 130 and 132 of the Criminal Code.

### **Shelters**

173. Under Act No. 8 of 2011, the Ministry of Labour and Social Affairs in Kurdistan Region must set up shelters for victims of domestic violence and ensure that the assistance provided via the social welfare network is also extended to victims of domestic violence.

174. Specialized centres, known as shelters, have been set up in the three governorates of the Region as safe spaces for women facing social difficulties. The shelters serve to protect the women, address their problems and nurture their capacities. Cases are taken in by order of the competent domestic violence court while responsibility for the protection of the women lies with the Ministry of the Interior. In this connection, four shelters for women have been opened by the Ministry of Labour and Social Affairs in Erbil, Sulaymaniyah and Dahuk and Kalar.

175. With assistance from the United Nations Population Fund, the 119 hotline was activated on 3 March 2016 to help curb and reduce violence against women, and 36 persons received training on how to operate it.

### **Sexual orientation**

#### **Paragraph 25 of the concluding observations**

176. Iraqi law has no provisions that discriminate against persons of any specific category on the basis of sexual orientation or gender, and it does not sanction or approve the use of violence of any kind against them. Domestic law protects the rights and freedoms of all persons, including the right to life and to physical integrity.

177. In order to guard against impunity, the Iraqi courts investigate all violations committed against any category of persons. The case of the actor and model Karar Nushi is still under investigation and is being treated like any other case of murder. In fact, great efforts are being made to discover the perpetrators and send them for trial before the competent courts. The use of social media such as Facebook and Twitter to direct threats and hate speech against persons on account of their gender orientation falls under the legal regime governing individual behaviour. The courts do not tolerate any threats in any form and deal with them severely, although such violations are extremely rare.

178. Positive laws in Iraq and the way they are applied by the national courts have meant that perpetrators have been unable to enjoy impunity, particularly in crimes involving sexual orientation and gender identity. This matter is also extensively and effectively covered in the Anti-Terrorism Act.

### **Redress and rehabilitation**

#### **Paragraph 31 of the concluding observations**

179. Iraqi law includes clear provisions relating to compensation for crimes of torture and ill-treatment. These are contained in the Criminal Code, the Code of Criminal Procedure and the Prisoner and Detainees Reform Act. Under the provisions, victims or their representatives can file a complaint before the competent body or notify the regulatory authorities mentioned in the Prisoner and Detainees Reform Act No. 14 of 2018, the High Commission for Human Rights Act and the Public Prosecution Act. Complainants can demand compensation in separate cases or in the same case. Taking account of its obligations under the Convention and the concluding observations of the Committee against Torture regarding its initial report, Iraq has sought to introduce provisions regarding redress and rehabilitation and thereby ensure greater consistency between domestic legislation and international human rights standards.

180. Measures taken to ensure the identification of victims of torture and ill-treatment are conducted by the Department of Forensic Medicine in the following manner:

- It carries out a minute examination in cases of alleged torture once the person concerned has been duly referred with an official letter from the investigating authorities. Photographs are taken as evidence of the presence or absence of signs of torture. The examination is conducted by a forensic medical committee made up of three doctors;
- Certain humanitarian cases that come before the Department of Forensic Medicine have not followed the correct procedures and these have to be sent back to the investigating authorities for them to complete those procedures properly. Sometimes, for technical reasons, a plaintiff has to be examined in order to avoid the loss of evidence or because the person concerned is unlikely to be able to return to the Department of Forensic Medicine;
- It is the duty of the forensic medical committee in the Department of Forensic Medicine to find evidence of any physical injury on the plaintiff and it is incumbent upon the investigating authorities to annex details about the incident to the forensic medical report.

**Paragraph 15, 16 and 17 of the concluding observations**

181. According to article 1 of part I of Prisoners and Detainees Reform Act No. 14 of 2018, the Iraqi Department of Corrections is an independent entity with legal personality where inmates are placed with a view to enforcing the sentences passed against them and to treating and rehabilitating them behaviourally, vocationally and educationally. The Department is not an investigating body and, under article 3 (10) of part I of the same Act, no inmate may be subjected to any investigative procedures. Article 8 (2) of part IV of the Act states that no inmate or detainee can be admitted to the centre for reception, testing and classification except by a court order or an arrest warrant, in accordance with the law, and with a medical report issued by a medical committee and testifying to the person's state of physical and mental health. All procedures fully guarantee inmates' human rights.

182. The Iraqi Department of Corrections cannot take in any detainee in the absence of an arrest warrant. Moreover, the Department does not have any secret prisons and all its establishments are publicly known and listed in the Department's own internal rules of procedure. Inmates and detainees cannot be questioned inside the Department because it exists only as a detention facility, while investigations are the responsibility of the competent judicial bodies. In addition, rooms, corridors and doors inside prisons are fitted with surveillance cameras. The rules governing solitary confinement are set forth in article 38 (1) (d) of Prisoners and Detainees Reform Act No. 14 of 2018.

**Women deprived of liberty**

183. The Iraqi Department of Corrections has correctional facilities for female inmates of different age groups. Thanks to coordination with the Supreme Judicial Council, paperwork relating to the investigation of the cases in which they were implicated is completed while the women are in detention, and they are allowed to appoint a lawyer to follow their case through to trial. Female inmates are accommodated according to a systematic classification of the offences in which they were involved and the length of their sentence, and they are directed towards rehabilitative training courses, which they can choose themselves depending upon their mental and physical capacities, with workshops on subjects such as dressmaking, weaving, hairdressing, etc. In addition, they are allowed use the skills they learn on those courses to generate an income and meet their material needs. They are able to follow other cultural, educational and religious courses, learn literacy skills and are given the opportunity to complete their schooling, in addition to which they also receive religious guidance and counselling.

184. The Department of Corrections takes in female detainees from police stations round the clock, in order to ensure that they do not remain in detention centres for more than 24 hours. At the moment of the handover – which takes place by decree of the competent investigating judge and is recorded in an official letter – the detainee's file is examined to verify its contents (the detention order, civil status card or identity card, tests by the Institute of Forensic Medicine confirming that there are no external signs of injury or torture and an ultrasound scan in the case of pregnant women). The detainee then acknowledges the information by signing and placing her thumbprint. If external signs of injury or torture are present, the Office of the Public Prosecution is duly informed. The inmate is accommodated as per regulations and provided with bedding, toiletry items and a bunk while any precious items she may possess, such as gold jewellery or other valuables, are placed in safekeeping against an official receipt. Detainees are brought before the courts pursuant to an official judicial letter and are accompanied by a detachment from the Transfers and Courts Department. A female prison guard is also present who stays with the detainees until the court issues its decision, either to release them or to return them to custody until their case is resolved.

185. The Iraqi Department of Corrections takes in convicted female prisoners under the same rules as those applied to female detainees. A file on each inmate is opened and a special card is issued. The inmates are then accommodated according to a systematic classification of the cases in which they are involved and the length of their sentence. Other public authorities involved in the arrest and registration of the offender are contacted to confirm information regarding the length of their sentence and the date of release. Training and rehabilitation programmes are provided and support is made available through legal offices in women's sections with a view to facilitating their detention and their eventual release. The release, when it comes, takes place immediately on the day established by the

courts. Unless a stay of release is requested, they are released directly without reference to the sentencing body. Visits with lawyers take place regularly, every day except for holidays.

186. Appropriate conditions are provided for female inmates from the moment they enter prison. They receive psychological and social care, and psychological support is offered as part of the admission process. By law, female inmates are allowed to look after children under the age of 3. A special area is set aside for pregnant and nursing mothers while provision is made to meet the needs of the children in terms of accommodation, nourishment and medical care.

187. To the extent possible, women inmates are held in or close to the areas where they live in order to facilitate contact with their families. Personal and family information on inmates and their children is held on file in order to facilitate the provision of proper support; this information remains confidential. Inmate accommodation areas are provided with adequate lighting, ventilation, air-conditioning and toilet facilities to ensure a healthy environment for inmates and their children.

188. Inmates receive health care, including thorough check-ups, in prison medical centres supervised by specialist staff. A comprehensive health file is opened for each inmate, to ensure they receive the proper treatment. Families are notified if inmates have an accident or contract a chronic disease. Inmates are provided with proper meals three times a day, with due regard for persons suffering from chronic illnesses and inmates with children.

189. Inmates are allowed to have contact with the outside world in the form of official visits at least twice a month. To safeguard their health, inmates receive counselling and instruction on avoiding the dangers of prohibited substances, particularly narcotics. To maintain family ties, official visits are organized between inmates and their young children.

190. If diagnosed as medically necessary, inmates are taken to hospital for surgery. Inmates are also taken to hospital to give birth. Place of birth is not recorded on the birth certificate.

191. Communal areas, living quarters and personal effects are inspected in a manner that safeguards inmates' dignity and rights.

192. Inmates are enrolled in training courses appropriate to their mental and physical abilities in order to occupy their free time and teach them professions and trades they can use after release.

193. Inmates who break the rules are treated in accordance with human rights principles and punished in accordance with regulations. Punishment is approved by a special investigation committee, taking account of the inmate's psychological and social condition.

194. Complaints boxes are situated inside women's prisons, ensuring that inmates can exercise their right to lodge grievances if they have been subjected to ill-treatment by prison authorities. There are also boxes in visiting areas, where inmates' families can lodge complaints.

195. To ensure their well-being, physical restraints are not used on inmates during labour or immediately after delivery.

196. Female inmates with special needs are provided with means to facilitate their lives during incarceration; these include wheelchairs, crutches, western-style toilet facilities and appropriate treatment.

197. In coordination with the competent bodies and institutions, efforts are made to find suitable accommodation for female inmates who have served their sentences and been released, particularly inmates who have no provider or family or whom it is feared might be killed or return to a life of crime.

198. The Ministry of Education supplies female inmates with the prerequisites for study and education – basic literacy or other levels of schooling – during their incarceration.

199. As regards the delivery of health care, especially for pregnant inmates, each facility of the Department of Corrections that houses female inmates has a health centre staffed with female doctors and nurses employed by the Ministry of Health, as well as guard-nurses. In emergency cases, inmates are sent to external hospitals and tests such as ultrasound are available. Inmates with mental disorders undergo periodic examination by psychiatrists,

dermatologists and others. Examinations are conducted in coordination with the Ministry of Health.

200. The criminal procedures department of the Counter-Terrorism Service is visited by teams from various monitoring agencies and the Service also facilitates visits by monitoring teams from the Independent High Commission for Human Rights. In addition, the Counter-Terrorism Service supplies appropriate information in response to requests from international mechanisms on enforced disappearances. Committees envisaged under the Amnesty Act undertake visits and monitor the work of the investigating judge of the central court, who examines cases involving the Counter-Terrorism Service. At the same time, detention facilities run by the Counter-Terrorism Service are visited by the relevant international organizations.

201. The Counter-Terrorism Service runs specialized training courses in how to administer prisons and detention centres in a manner consistent with human rights principles, the protection of detainees and the prevention of torture. It also organizes courses on international humanitarian law.

202. Article 49 (1) of the Prisoners and Detainees Reform Act requires the competent ministry and the governorates “to allocate part of their budget for the establishment, construction and development of prisons and detention centres with a view to rendering them suitable for the enforcement of penalties, in accordance with the present Act. They are also to set up workshops and other spaces inside prisons and detention centres, following scientific methodology and specifications, as places where inmates and detainees can undergo rehabilitation and evaluation.” In fact, the Corrections Department is in the process of completing a number of new units, which are now in their final stages, and it has expanded a number of other prisons with a view to reducing overcrowding.

203. There are a number of prisons in Kurdistan Region, including detention and pretrial detention facilities and correctional institutes including establishments for juveniles and for women. Persons may be arrested only under an arrest warrant issued by a competent judge in accordance with the law. Suspects or wanted persons who have been arrested can be held in detention for 24 hours during which time their treatment follows rules set down in the Code of Criminal Procedure: their identity is ascertained, questioning begins and the charges against them are formulated. Once the case against them has been substantiated, accused persons may appoint a lawyer to defend them. If they are unable to do so, it is incumbent upon the State to appoint a lawyer on their behalf. Accused persons also have the right to inform their family of their arrest. The case is then referred before the courts to be judged in accordance with the law.

204. In the case of persons arrested on terrorism charges, the security services first gather information about the suspects then pass that information, along with any other evidence, to the competent judge who, in turn, issues an arrest warrant against the persons concerned. The suspects are then arrested and can be held for 24 hours while initial questioning takes place. Following their arrest, a special case file is opened and they are referred to the courts for further questioning for a period of 72 hours. If the evidence against them points to their guilt, further legal steps are taken and their case file is referred to the competent court. If the evidence points to their innocence, they are released. During this period, detainees enjoy full legal guarantees including access to a defence lawyer.

205. The prison in Al-Muthanna Airport is a provisional detention centre, the security and protection of which is overseen by the Directorate of Military Intelligence while its day-to-day running is the responsibility of the Supreme Judicial Council. Detainees are held in the prison at the disposal of the Ministry of Defence although the facility also holds persons detained by the intelligence services and the National Security Agency. Questioning of the detainees is conducted by an investigative unit appointed by the central court of investigation and made up of an investigating judge, a prosecutor and a number of judicial investigators. The prison is a public facility that lies under the authority of State institutions and it is administered in full respect of international humanitarian standards concerning the treatment of prisoners. Persons who have been sentenced by the courts are immediately transferred to the Iraqi Department of Corrections for the enforcement of their sentences in accordance with the law.

206. The judicial planning office in the Ministry of Justice is the body responsible for expanding existing prisons and for building new ones, in order accommodate the regulation

number of inmates. A number of prison expansion and construction projects are in hand, all of which respect international standards.

207. Under article 2 (b) of the Prisoners and Detainees Reform Act, rehabilitation facilities for homeless youth are not included in the provision whereby the Department of Juvenile Corrections is detached and brought under the Ministry of Justice. Such facilities thus remain under the aegis of the Department for the Care of Persons with Special Needs at the Ministry of Labour and Social Affairs. Homeless women remain in the facilities until suitable accommodation or employment has been found for them or until they marry.

### **Inspection by an independent body**

#### **Independence of the judiciary**

##### **Paragraph 23 of the concluding observations**

208. The principle of an independent judiciary is affirmed in article 19 (1) of the Constitution of Iraq, which reads as follows: “The courts are independent and are subject to no power other than that of the law.” The Supreme Judicial Council and other authorities in Iraq are run according to that constitutional principle. In order to uphold the principle, judges receive appropriate economic recompense as well as the security measures necessary for their protection including court guards and personal bodyguards from the Ministry of the Interior’s directorate for protecting public figures. Judges are also issued with weapons for personal protection. These measures can be kept up after judges go into retirement if necessary to protect their security. The procedures whereby judges are appointed are set forth in the Judicial Institute Act, which envisages a competitive process involving written and oral exams in order to enter the Institute. Cases of corruption or abuse of office by judges or members of the Office of the Public Prosecution are examined by a special disciplinary committee. If that committee finds that a judge has committed an offence, he or she is referred to the courts for a fair trial according to law.

209. Supreme Judicial Council Act No. 45 of 2017 regulates the judicial appointments mechanism so as to ensure that only qualified persons can be candidates to become court presidents, judges or prosecutors. The purpose of the Act is to regulate the formation, prerogatives and work of the Supreme Judicial Council in a manner consistent with recent constitutional, legal and judicial developments in Iraq, thereby enabling the Council to carry out the functions assigned to it under the Constitution.

210. Article 1 of Public Prosecution Act No. 49 of 2017 states as follows:

(a) A public prosecution service shall be established, which shall be considered to be a component part of the federal judiciary. It shall be financially and administratively independent and shall have its headquarters in Baghdad;

(b) The public prosecution service shall have legal personality, which shall be embodied in the person of the Public Prosecutor or his deputy.

211. Council of State Act No. 71 of 2017 was promulgated in order to ensure that the administrative judiciary remains independent from the executive. Under the Act, the Council is an independent body with legal personality; it includes the administrative courts, the civil service courts and the Supreme Administrative Court, and it fulfils the functions of an administrative judiciary, issuing legal opinions, drafting texts and ruling impartially and independently on the cases submitted to it.

212. Under Act No. 70 of 2017, the Judicial Institute was separated from the Ministry of Justice and affiliated with the Supreme Judicial Council, which is the body responsible for forming and appointing judge and prosecutors, thereby eliminating the problem of dual administration. In addition, directives were issued that incorporated the Judicial Institute and the Judicial Development Institute into a single institution under the Supreme Judicial Council.

213. Investigating judges conduct investigations into serious offences by themselves and record an accused person’s statement if it is an admission that he or she did commit the offence in question. In accordance with articles 123–128 of the Code of Criminal Procedure, this takes place in the presence of the defence lawyer and of a member of the Office of the Public Prosecution. Article 127 of the Code of Criminal Procedure makes it clear that under

no circumstances is it permissible to use unlawful methods to influence an accused person in order to obtain a confession. Moreover, under article 249 of the Code, rulings issued by an investigating judge are subject to appeal before the Court of Cassation by the parties involved in a case and by the Office of the Public Prosecution. Thus, an array of legal guarantees is available to accused persons and they can appeal against the rulings of an investigating judge if the latter fails to respond to a request – from the accused or his or her lawyer – to be examined by a medical committee to verify whether signs of torture are present. In addition, the court must disregard confessions if it is not convinced that they satisfy the requirements set forth in article 37 (1) (c) of the Iraqi Constitution and article 218 of the Code of Criminal Procedure. Furthermore, courts of investigation are under an obligation to conduct inquiries into all reports they may receive concerning torture. The investigation takes place under the supervision of the Office of the Public Prosecution, in accordance with the Criminal Code and article 1 of the Code of Criminal Procedure. All this goes to show that the national judiciary is rigorously committed to providing justice to all parties involved in proceedings before all Iraqi criminal courts, under the supervision of the Office of the Public Prosecution. Investigations and trials are closely monitored and visits take place to all prisons and places of detention.

214. The judiciary takes effective action to address issues of impunity and reparations for victims, and to reform the judicial system in order to guarantee impartiality and independence and ensure that all persons, including those who are most in need of care, have access to justice. It also takes the necessary steps to conduct confidential and comprehensive investigations into human rights violations and other forms of abuse. The judicial system is independent and autonomous, and Iraqi laws guarantee the access of all persons to justice without any impediments. The investigations conducted by the judiciary into offences involving human rights violations and abuse are exemplary, and that quality is reflected in the rulings handed down by the Iraqi courts.

215. The Parliament of the Kurdistan Region passed Act No. 23 of 2007 regarding the judiciary in Kurdistan Region.

216. The courts are the buttress of all rights and freedoms as well as the place to resolve all problems and disputes, to implement the law and to uphold justice. For that reason, persons who work in the justice system enjoy the general respect of society. Given the responsibility that lies on the shoulders of judges and prosecutors, they stand out for their exemplary conduct and high moral standards, which enable them to carry out their duties with a high degree of impartiality and professionalism. Judges must undertake the studies necessary to gain promotion, while the Judicial Oversight Commission oversees the actions of judges and ensures that they abide by human rights treaties.

217. The conduct of judges is contemplated in various pieces of domestic legislation, first among them the Constitution but also other relevant laws. The current 2005 Constitution of Iraq has three separate provisions on the subject: article 19 states: “Judges are independent and are subject to no power other than that of the law”. Article 87 reads: “The judiciary is independent and exercises its authority through courts of various types and levels, which issue decisions in accordance with the law.” According to article 88 of the Constitution, “Judges are independent and subject to no authority save that of the law. No one has the right to interfere in the judiciary or the administration of justice.” Other relevant provisions include articles 7, 55, 56, 57, 58, 60, 61 and 62 of Judicial Organization Act No. 160 of 1979; articles 91, 92, 93, 94 and 286 of the Code of Civil Procedure (Act No. 83 of 1969); and article 3 of Judicial Oversight Commission Act No. 29 of 2016.

218. All the aforementioned laws are derived from international principles, including the International Covenant on Civil and Political Rights, the United Nations 1985 Basic Principles on the Independence of the Judiciary and the 2002 Bangalore Principles of Judicial Conduct. Members of the judiciary, like all other citizens, enjoy freedom of expression, freedom of association and freedom of assembly; in exercising those rights, judges are to act in a manner that upholds the dignity of their office and the integrity and independence of the judiciary. Furthermore, judges are free to form judicial associations to represent their interests and protect their independence. To that end, the Iraqi Judiciary Association was established in which it is judges and prosecutors themselves who, by direct ballot, vote candidates from among their own ranks to become president and members of the Association’s governing board. Moreover, there are no legal impediments to prevent

judges and prosecutors from exercising their rights and fulfilling their obligations through the use of digital technologies.

219. Any recorded violation on the part of any member of the judiciary in respect of the duties stipulated under article 7 of Judicial Organization Act No. 160 of 1979 or in respect of personal or official conduct constitutes cause to bring the person concerned before a judges' personnel committee, constituted in accordance with the law. Once the Judicial Oversight Commission has investigated the alleged violation by the member of the judiciary, it is up to the judges' personnel committee to hand down a disciplinary penalty commensurate with the act committed. A disciplinary case against a judge or a prosecutor is by decision of the head of the Supreme Judicial Council acting under article 60 of the Judicial Organization Act.

## **Human trafficking**

### **Paragraph 29 of the concluding observations**

220. Iraq ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others on 28 May 1955 and, as part of the decree of ratification, it approved other international instruments aimed at suppressing the sale of women and children. In addition, Iraq has acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol). The Government also promulgated Trafficking in Persons Act No. 28 of 2012, which covers all aspects of the phenomenon including punishment of perpetrators of trafficking, defining acts that constitute trafficking and caring for victims. Article 1 of the Act gives the following definition of human trafficking: "Recruiting, transporting, sheltering or taking in persons for the purpose of selling or exploiting them for terrorist acts or armed conflicts, prostitution, sexual exploitation, forced or compulsory labour, servitude, begging, organ trafficking or medical experimentation." The Iraqi courts have handed down numerous guilty verdicts under the Act, against persons responsible for perpetrating that offence.

221. All authorities involved in the fight against human trafficking have been instructed to activate counter-trafficking mechanisms in accordance with Anti-Prostitution Act No. 8 of 1988 and Decree No. 234 of 30 October 2001 of the dissolved Revolutionary Command Council. The offence of begging is envisaged in articles 390 and 392 of the Criminal Code, pursuant to which begging is treated as an offence of human trafficking when it assumes the form of organized crime. A study entitled "A national policy to address the phenomenon of begging and vagrancy" was conducted by the National Security Advisory's centre for joint planning, with input from stakeholders. The draft implementing guidelines for Act No. 28 of 2012 are currently being finalized by the Ministry of the Interior, before being submitted for approval to the Central Committee to Combat Human Trafficking.

222. Committees responsible for investigating human trafficking have been established in Baghdad (Karkh and Rusafah) and 13 branches have been set up in the governorates. These have the task of investigating crimes of human trafficking and deploying teams within their area of responsibility to collect information and data.

223. Investigations carried out under Trafficking in Persons Act No. 28 of 2012 in 2016 revealed the following: a total of 314 cases were recorded and 347 persons charged of whom 83 were sent for trial and 17 were convicted; 73 persons were released, 95 referred to other bodies, 19 held pending further investigation and 60 released on bail. Under the Act, sentences vary – in accordance with the type of act committed and how it is criminalized in law – from a term of imprisonment and a fine of between ID 5 million and 25 million to life imprisonment and even the death penalty, if the act committed leads to the victim's death.

224. Cases of human trafficking are heard before competent judges in special courts created under the law.

225. Social workers are employed to work in shelters for the rehabilitation of victims of human trafficking. Fifteen social workers from the Ministry of the Interior have been assigned to the shelter in Baghdad to study specific cases involving human trafficking. The Ministry of Labour and Social Affairs has completed work on a shelter, which is now ready to admit victims of human trafficking.

226. A human trafficking database has been established.
227. The Ministry of the Interior's Anti-Human Trafficking Department has developed a goals-oriented annual action plan.
228. Legal teams have been assigned by the Ministry of the Interior, acting in coordination with the Ministry of Health, to specialist centres that carry out tissue typing tests for human organ transplant operations. The teams are tasked with checking that the forms and documentation of donors and recipients comply with the law.
229. Cases involving foreign workers are monitored in collaboration with the Department of Residence Affairs and the International Organization for Migration (IOM), and legal support is provided for Arab and foreign victims.
230. Act No. 58 of 2017 has been promulgated concerning the protection of witnesses, experts and victims, as well as Act No. 11 of 2016 which concerns the transplantation of human organs and prohibits the trade therein.
231. Following scrutiny by the Council of State, the Council of Ministers adopted Regulation No. 7 of 2017 regarding shelters for victims of human trafficking, pursuant to article 80 (3) of the Constitution and article 11 (8) of Trafficking in Persons Act No. 28 of 2012.
232. The Ministry of the Interior runs campaigns to raise awareness about the Trafficking in Persons Act and to warn against the dangers of human trafficking. To that end, it organizes conferences, seminars and lectures in universities, colleges and schools, in cooperation with civil society organizations. In addition, it organizes radio and television programmes, puts up posters in public places including airports and other points of entry to warn about the dangers of human trafficking, and runs training courses for staff.
233. A joint programme has been organized by the Ministry of the Interior, in collaboration with IOM, to train staff who work to combat human trafficking. Under this programme, more than 25 workshops and courses have been held inside and outside Iraq, helping to train staff to deal with human trafficking issues and building their capacities in line with international standards through the exchange of information and experience.
234. In order to ensure that victims do not suffer a legal injustice, the Trafficking in Persons Act distinguishes clearly between crimes of human trafficking and other crimes. Victims are considered as persons in need of assistance, first and foremost legal assistance in the form of an investigation. Other services are provided under the law by the Ministry of Labour and Social Affairs and Ministry of Health.
235. Under Trafficking in Persons Act No. 28 of 2012, if exploitation for the purposes of prostitution, vice or the sex trade has connotations whereby it amounts to an act of human trafficking, the victims shall be considered as victims of human trafficking and, therefore, not prosecuted for associated crimes such as coercion into vice and prostitution.
236. The Anti-Human Trafficking Department works to enforce the Human Trafficking Act and the Human Organ Transplantation Act and to combat human trafficking. This includes the enforcement of punitive and deterrent measures against human traffickers by the competent investigating judges and other judges, and the application of paragraphs 5 and 7 under which cases involving human trafficking victims are accepted on the basis of a decree of referral. Assistance is also offered to victims of human trafficking by international and civil society organizations, and legal aid is available to victims under article 11 of the Human Trafficking Act. Other support is also offered to victims, who are taken into the human trafficking shelter where they are rehabilitated and reintegrated into society.
237. Cases of international human trafficking are monitored in coordination with the International Criminal Police Organization-INTERPOL and information is exchanged on persons wanted internationally for human trafficking offences, on offences committed in other countries and on relevant global developments.
238. The free 533 hotline has been established to receive reports, complaints and information concerning human trafficking.
239. Statistics are compiled and a human trafficking database is being established.

## Training

### Article 10 and paragraph 30 of the concluding observations

240. The Supreme Judicial Council requires its staff to undergo training courses in the field of human rights and anti-torture procedures. This is in addition to the courses organized by the Council itself at the Judicial Institute and the Judicial Development Institute.

241. The law and the courts in Iraq grant persons who have suffered torture the right to take civil action against the perpetrators of the torture in order to demand compensation. The courts examine such cases fairly and impartially with a view to bringing redress to persons who have suffered harm.

242. Article 6 of Prisoners and Detainees Reform Act stipulates the following conditions for persons appointed as prison guards in the Iraqi Department of Corrections and the Department of Juvenile Corrections, in addition to the general requirements set forth in Civil Service Act No. 24 of 1960, as amended:

- (a) They must be not less than 25 and not more than 35 years of age;
- (b) They must have, at the least, an intermediate school certificate;
- (c) They must be persons of good conduct and with a clean criminal record;
- (d) They must be married, although candidates can be exempted from this requirement by decision of the Minister;
- (e) They must have successfully taken the basic course for reformatory institution guards (minimum three months) run by the competent Department of Corrections before entering upon their duties;
- (f) They must make a cautionary deposit for the value of the equipment in their possession;
- (g) They must have passed a personal interview before a panel in the competent Department of Corrections;
- (h) They must be physically and mentally able to undertake guard duties and free from chronic diseases, as certified by an official medical committee.

243. The training focuses on a human rights-based approach to treatment, which has been systematically developed by the Iraqi Department of Corrections. It is supported by the Department's "correctional development section" and regular ongoing training in this area is made available, in line with a plan drawn up to that end. Documenting bodily signs of torture is a matter of the utmost importance, and it takes place according to specific legal guidelines and in coordination with the competent authorities.

244. Article 7 of Prisoners and Detainees Reform Act reads as follows:

- (a) The successful candidate shall be appointed from the date he enrolled in the course, with the rank of "prison guard" and with a salary one level higher than the salary entitlement on the basis of his school certificate. For the purposes of salary increments, promotions and pension, the period of service is to be calculated on that basis;
- (b) Women are admitted to the training course in order to be appointed as guards in correctional institutions for women;
- (c) The training courses are run by specialized teachers and trainers.

245. The office of the legal counsel of the Ministry of Defence has the task of training Ministry staff in general human rights principles with a view to sensitizing them to that issue as they carry out their duties to provide security and restore normal life in populated areas of the country. In addition, training in the principles of international humanitarian law, in both peace and war, is provided to members of the Iraqi Army through lectures in the field, training courses, meetings and conferences. Training courses are also run on the use of firepower and rules of engagement in accordance with international human rights standards, with a view to limiting civilian casualties while inflicting losses on the enemy.

246. The office of the legal counsel and the Human Rights Directorate of the Ministry of Defence ran 12 training courses between 2016 and 2018, an average of 4 courses a year with some 15 or 20 officers attending each course. The total number of beneficiaries was 180 officers of different military ranks working in intelligence and in prison administration. The training covered such subjects as international law and the law governing the administration of prisons and detention centres. The office of the legal counsel of the Ministry of Defence also issued a training manual entitled Human Rights in the Army.

247. The Counter-Terrorism Service is required to implement and respect the Convention against Torture. To that end, lectures on the Convention have been organized with a view to making it abundantly clear that the Service will deal severely with any violations, which it will first verify then take action against those responsible. The aim is to put a stop to torture and ill-treatment and to ensure that perpetrators are brought to trial. The provisions of the Convention have been introduced into courses on international humanitarian law and the course on the administration of prisons and detention centres as well as into a national workshop which was attended by law enforcement officials, military officers and enlisted men working in detention centres and members of the Counter-Terrorism Service.

248. The Counter-Terrorism Service cooperates fully with international organizations and it engages with the delegation of the International Committee of the Red Cross (ICRC) regarding humanitarian issues related to persons being held in detention. ICRC regularly visits the provisional detention centre run by the Counter-Terrorism Service, making a total of three visits in the months of April, August and November 2017 in addition to visits in March and August 2018. Embassy staff and diplomats also have the opportunity to make regular visits to their citizens being held in detention by the Counter-Terrorism Service and to handle their affairs. The authorities cooperated in the visit of the Special Representative of the Secretary-General on Sexual Violence in Conflict and engaged with the guidelines that emerged from that visit, in which regard a workshop was held in Baghdad and the National Security Advisory issued letter No. 5/4/2304 dated 28 August 2017. There is also cooperation with UNICEF and with the Office of the High Commissioner for Human Rights, as well as with the Ministry of Justice in cases of enforced disappearance.

249. Between 2016 and 2018, the Ministry of the Interior ran more than 645 training courses in which more than 19,000 persons (officers, commissioners, associates, civilian employees) from the Ministry of the Interior took part. The Ministry also participated in a number of international conferences and external training programmes.

### **Lodging complaints**

#### **Article 13**

250. Article 36 of Prisoners and Detainees Reform Act reads as follows:

(a) Inmates and detainees may submit requests or lodge complaints regarding ill-treatment or any violation to their rights with the director-general of one of the two Departments of Corrections or with a prison inspector, a guard or any other official delegated to conduct an inspection. The individual concerned is to be interviewed without the prison director, guards or other officials being present. The director-general must resolve the complaint within seven days of receiving it;

(b) Inmates and detainees may submit requests or lodge complaints in an appropriate and confidential manner to the director-general of the Departments of Corrections or to an oversight body using approved means of communication. Each request or complaint is to be handled promptly and replied to without unjustified delay, unless it is evident that the request or complaint is devoid of substance or lacks all foundation.

251. Article 45 lists the bodies competent to conduct inspections and related procedures while article 46 sets forth the measures inspecting bodies can take.

252. On the subject of unannounced inspections article 47 states: The Department of Corrections shall conduct periodic unannounced inspections of correctional institutions to check how prisoners and detainees are being accommodated, to verify that they do not possess any prohibited substances or items and to ensure that the hygiene and living standards required under the present Act are duly fulfilled.

253. According to article 5 of High Commission for Human Rights Act No. 53 of 2008, it is the task of the Commission to receive complaints regarding allegations of torture, conduct preliminary investigations into those complaints then refer them to the human rights division in the Office of the Public Prosecution. In its turn, the division sends the complaint and the investigation file to the competent investigating judge for the appropriate legal action to be taken against the person responsible for the torture. If the charges are substantiated, that person can be referred to the competent court for it to hand down an appropriate penalty.

254. Article 3 of Act No. 58 of 2017, concerning the protection of witnesses, experts, informants and victims, reads as follows: “Persons covered by the present Act may apply to be placed under the protection envisaged therein if their lives, physical integrity or fundamental interests, or those of their family members or relatives, would be at risk as a result of them testifying, giving an expert opinion or making statements in criminal proceedings or terrorism-related proceedings affecting State security and the lives of citizens.” A request for protection is to be submitted to the investigating judge who is conducting the inquiries into the related case, as set forth in article 4 of the Act concerning the protection of witnesses, experts, informants and victims. Article 6 of the same Act states: “The investigating judge or the court, on the basis of a request made in accordance with article 4 of the present Act, may apply any of the following protection measures:

- (a) Alter personal data while upholding due procedure;
- (b) Order telephone monitoring;
- (c) Have testimony or statements presented via electronic or other means, modify voices and conceal facial or other features;
- (d) Provide guards for the person requiring protection or his or her place of residence;
- (e) Change workplace temporarily or permanently in coordination with the employer, if the latter is not involved in the case or is not the Ministry of Finance;
- (f) Provide the protected person with a number for the police or other security services to call in case of need;
- (g) Provide a temporary place of residence;
- (h) Conceal or alter the identity in the case files;
- (i) Provide protection while travelling to and from court.

255. Article 10 (1) of Act No. 58 of 2017, concerning the protection of witnesses, experts, informants and victims, reads as follows: “A section is to be established within the Ministry of the Interior for the protection of witnesses, experts, informants and victims, which reports to the directorate for protecting facilities and public figures.” Article 10 (2) states: “The section may open divisional offices in regions and in governorates not organized as a region.”

256. Article 11 of Act No. 58 of 2017, concerning the protection of witnesses, experts, informants and victims, reads as follows: “The section envisaged in article 10 of the present Act shall provide protection to persons under its remit, on the basis of a decision of the investigating judge or the court. Ministries, non-ministerial entities and governorates shall be required to provide all forms of support to the section.”

257. Article 12 of Act No. 58 of 2017, concerning the protection of witnesses, experts, informants and victims, states:

- “(a) Data covered by the protection measures shall remain confidential and may be disclosed only according to law;
- (b) Anyone who discloses data they know to be confidential shall be liable to a term of imprisonment.”

## Death penalty

### Paragraph 20 of the concluding observations

258. The Iraqi Constitution and relevant domestic laws envisage the death penalty for perpetrators of the most serious crimes in society. In the light of its gravity and the fact that the lives of the accused persons are at stake, the penalty is clearly and precisely defined and the procedures for passing and carrying out the sentence are extremely lengthy as a way of ensuring the fairness of court verdicts. In their application of the law, Iraqi courts remain fully committed to principles of justice and they hand down fair sentences against wrongdoers, commensurate with the crimes they have committed.

259. The Coalition Provisional Authority suspended the application of the death penalty under its Order No. 7 of 2003. However, in the face of numerous grave offences committed by terror groups, which threaten the safety of society, the death penalty was reinstated as a way to preserve national peace and security. Nonetheless, the penalty is now applied on a smaller scale and only for specific offences, including crimes of terrorism, as defined in Order No. 3 of 2004 of the Council of Ministers. Subsequently, the Council of Representatives also issued the Anti-Terrorism Act. Sentences of death handed down against convicted persons under that Act and under other pieces of criminal law are only preliminary sentences and are automatically subject to review before the courts of appeal. Before that, they are reviewed by the head of the Office of the Public Prosecution after which, if upheld, they can be appealed before the court of appeal. Moreover, the convicted party can ask for a retrial if the necessary conditions subsist, as per article 270 of the Code of Criminal Procedure.

260. Criminal acts perpetrated by persons under the age of 18 are judged under the provisions of the Juvenile Welfare Act and the death penalty is never applied to that category of persons.

261. The situation of pregnant women is contemplated under article 287 (a) of the Code of Criminal Procedure, which envisages either the delay or the mitigation of the death penalty.

262. Article 85 (1) of the Iraqi Criminal Code envisages the death penalty as a primary form of punishment. The penalty is imposed against some of the most serious crimes that threaten the security and safety of society, including terrorist offences, which Iraq is obliged to combat under international treaties and its own Constitution. In fact, article 7 (2) of the Constitution reads: "The State shall undertake to combat terrorism in all its forms, and shall work to protect its territories from being a base, corridor, or field for terrorist activities."

263. Under the law, the death penalty is imposed only for the most serious crimes. Its compulsory nature or admissibility is defined by law and by the circumstances of the offence and the offender, and it cannot be pardoned or commuted except in accordance with the Constitution and the law, although a number of legal justifications and mitigating circumstances are set forth in section 5 of the Criminal Code (Act No. 111 of 1969). Article 130 of the Code states that, if there exists a mitigating justification for an offence that attracts the death penalty, the penalty shall be reduced to life or fixed-term imprisonment, or to detention for a period of not less than 1 year. If the offence attracts life or fixed-term imprisonment, the penalty shall be reduced to a period of detention of not less than 6 months, unless otherwise stipulated by law.

264. According to article 132 of the Criminal Code, if the court considers that the circumstances of the offence or of the offender call for leniency, it may substitute a lesser penalty for the penalty prescribed for the offence, as follows:

- (a) The death penalty may be substituted by life imprisonment or imprisonment for not less than 15 years;
- (b) Life imprisonment may be substituted by fixed-term imprisonment;
- (c) Fixed-term imprisonment may be substituted by a period of detention of not less than 6 months.

265. Circumstances in which punishment for different kinds of offences can be cancelled or reduced are also defined elsewhere in the Criminal Code, including articles 59, 199, 218,

229, 273, 258, 303 and 311. Those texts give judges broad powers of discretion when determining the punishment of convicted persons, allowing them to take account of the circumstances of the offence and of the offender. In the event of any violation of fair trial procedures, the sentence or ruling of the court may be challenged in appeal by the representative of the Office of the Public Prosecution, the accused party or his or her lawyer, or the civil party, in accordance with the Code of Criminal Procedure (Act No. 23 of 1971), as amended. The sentence or ruling may also be challenged before the Federal Court of Cassation or the criminal court acting as a court of cassation. The cassation judgment may be corrected and a retrial ordered in accordance with articles 249–279 of the Code of Criminal Procedure.

266. Act No. 62 of 2017 abrogated Decree No. 1631 of 1980 of the dissolved Revolutionary Command Council as the death penalty envisaged in that Decree is no longer consistent with the penalties envisaged for offences of robbery, as set forth in the Criminal Code (Act No. 111 of 1969).

267. The following procedures are followed before a sentence of death is carried out:

(a) Death sentences are not carried out until they become definitive by being upheld by the Federal Court of Cassation;

(b) Death sentences handed down by any Iraqi court are not carried out until a presidential decree to that effect has been issued, duly signed by the President of the Republic;

(c) The condemned person is held in prison or at a location designated for holding persons under sentence of death;

(d) The relatives of the condemned person may visit him or her in prison on the day before the day the sentence is due to be carried out. It is the responsibility of the prison administration to inform the relatives in that regard.

268. The manner in which the sentence of death is to be carried out is set forth in articles 285 to 293, contained in chapter II of book V of the Code of Criminal Procedure (Act No. 23 of 1971), as amended. According to articles 288 and 289:

(a) The condemned person is taken to the execution chamber within the prison where the prison director reads out the presidential decree authorizing the execution so that all persons present can hear. If the condemned person wishes to make a statement, the judge shall note down his or her words and those present shall sign the record;

(b) The sentence of death shall be carried out by hanging by the neck until dead, either inside the prison or at another place according to law;

(c) The execution is witnessed by a group comprising a misdemeanour court judge, a member of the Office of the Public Prosecution, a representative of the Ministry of the Interior, the prison director and the prison doctor or any other doctor delegated by the Ministry of Health. The legal representative of the condemned person may also attend if they so request;

(d) Once the sentence has been carried out, the prison director signs the relevant record, in which the doctor also confirms the death and the time it took place; other parties present then also sign the record;

(e) The corpse is handed over to the relatives if they so request. Otherwise the prison authorities will carry out the burial at State expense and without any funeral ceremony. This is the manner in which all sentences of death are carried out, for whatever offence they have been imposed.

#### **Restrictions regarding the imposition of the death penalty**

269. The death penalty may not be carried out on official holidays or festivals connected with the religion of the condemned person. The logic behind the provision is to respect days that are national or religious holidays. In that regard, article 290 of the Code of Criminal Procedure (Act No. 23 of 1971) is in line with article 91 of the Military Code of Criminal Procedure (Act No. 30 of 2007).

270. Article 2 (1) of the Constitution states that “Islam is the main source of legislation” and article 2 (1) (a) makes it clear that no law may be enacted that is inconsistent with the tenets of Islam. In fact, Islamic sharia arises from the principle of truth, which is the real deterrent against crime. And, although Islam always tends towards mercy – “to forego it is nearer to righteousness” – the death penalty is nonetheless necessary to preserve the safety and security of the community.

271. According to article 150 of the Criminal Code, one of the factors that can cause an offence to lapse is a general amnesty. Amnesties can be general or special. A general amnesty is enacted by means of a law as a result of which cases are dropped, guilty verdicts issued in their regard are overturned and any primary, incidental or supplementary penalty or precautionary measures are rescinded. The general amnesty has no effect on penalties that have already been dispensed, unless the law enacting the amnesty states otherwise. A special amnesty is enacted by means of a presidential decree as a result of which a sentence is definitively overturned, in whole or in part, or mitigated with the application of a lesser penalty envisaged by law. The special amnesty does not rescind any incidental or supplementary penalty or precautionary measures, nor does it have any effect on penalties that have already been dispensed, unless the decree enacting the amnesty states otherwise.

272. Among the prerogatives accorded to the President of the Republic under article 73 (1) of the Constitution is that of granting a special amnesty on the recommendation of the Prime Minister, save in private cases and cases involving persons convicted for international crimes, terror offences, or financial or administrative corruption.

273. Under article 287 (a) of the Code of Criminal Procedure, if a person condemned to death is pregnant when the execution order arrives, it is the responsibility of the prison administration to inform the head of the Office of the Public Prosecution who presents a submission to the Minister of Justice for a delay or mitigation of the penalty. The Minister of Justice then refers the submission to the President of the Republic, and enforcement of the sentence is delayed until another order is issued by the Minister of Justice in accordance with the decision of the President of the Republic. If the renewed order requires the enforcement of the sentence of death, it shall not be carried out until four months after the date of delivery of the child, whether the delivery was before or after the arrival of the order. According to article 287 (b) of the Code, the provisions of subparagraph (a) are applicable to a condemned person who gives birth before the arrival of the execution order if the period of four months from the date of childbirth has not expired. The sentence is not carried out until four months have elapsed from the date of childbirth, even if the renewed execution order arrives.

274. The former central report-writing committee did not support the idea that, at the present time, Iraq should accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Regarding the death penalty, Iraq already applies all the safeguards envisaged under international human rights law and domestic legislation.