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**Committee on Economic, Social and Cultural Rights****Concluding observations on the fourth periodic report of Iraq\***

1. The Committee on Economic, Social and Cultural Rights considered the fourth periodic report of Iraq on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/IRQ/4) at its 62nd and 63rd meetings (see E/C.12/2015/SR.62 and 63), held on 29 and 30 September 2015, and adopted the following concluding observations at its 78th meeting, held on 9 October 2015.

**A. Introduction**

2. The Committee welcomes the fourth periodic report submitted by the State party, the supplementary information provided in the replies to the list of issues (E/C.12/IRQ/Q/4/Add.1) and the oral replies provided by the delegation.

**B. Positive aspects**

3. The Committee welcomes the State party's ratification of, or accession to, the following international human rights instruments:

- (a) Convention on the Rights of Persons with Disabilities, in 2013;
- (b) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in July 2011;
- (c) International Convention for the Protection of All Persons from Enforced Disappearance, in November 2010;
- (d) Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, in 2008.

4. The Committee notes with appreciation the following legislative and policy measures taken by the State party:

- (a) Act No. 28 (2012) on combating trafficking in persons;
- (b) Act No. 8 (2011) on domestic violence in the Kurdistan Region;

\* Adopted by the Committee at its fifty-sixth session (21 September-9 October 2015).



- (c) Act No. 53 (2008) establishing the Independent High Commission for Human Rights of Iraq, and Act No. 4 (2010) establishing the Independent Board of Human Rights in the Kurdistan Region;
- (d) National development plan (2013-2017);
- (e) Strategy to facilitate access to high quality education in the Kurdistan region (2013-2018);
- (f) National strategy to eradicate illiteracy in Iraq (2011-2015);
- (g) Poverty reduction strategy (2010-2014).

### **C. Introductory comments**

5. The Committee is fully aware of the persistence of the armed conflict in the State party, in particular between the Iraqi armed forces and the terrorist group self-proclaimed as Islamic State in Iraq and the Levant (ISIL). The Committee acknowledges that the armed conflict hinders the State party's effective control over parts of its territory and that it is consequently unable to ensure that the Covenant rights are fully implemented in the entirety of its territory. The Committee nevertheless reminds the State party that human rights obligations are of a continuous nature and that the State party bears the primary responsibility to protect all persons within its territory without discrimination on any ground. To this end, it must strive to the extent possible to meet its obligations under the Covenant by resorting to all measures compatible with international law.

6. The Committee recalls that its previous concluding observations were issued in 1997. While noting that legislative and policy measures were launched during the period covered by the present report, it regrets the lack of information on the effective implementation of, and progress achieved and remaining obstacles in relation to, most of those measures. It also notes the fragmented and scarce statistics provided, which cover only a limited period of time (mostly 2008-2010) and do not allow for an accurate assessment of the fulfilment of economic, social and cultural rights in the State party.

### **D. Principal subjects of concern and recommendations**

#### **Domestic application of the Covenant**

7. The Committee is concerned about the lack of full incorporation of the Covenant rights in the State party's legal order and the limited instances in which the Covenant provisions were invoked before and/or applied by domestic courts.

**8. The Committee recommends that the State party take the steps necessary to incorporate the Covenant rights fully into its domestic legal order. It also recommends that the State party raise awareness of the economic, social and cultural rights contained in the Covenant, and of their justiciability, in particular among the judiciary, lawyers, law enforcement and other public officials, and among rights holders. The Committee draws the State party's attention to its general comment No. 9 (1998) on the domestic application of the Covenant.**

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

9. The Committee is concerned about the absence of institutional guarantees for the independence of the judiciary, which can have a negative impact on its role in safeguarding the enjoyment of human rights.

10. **The Committee recommends that the State party take effective measures to ensure institutional guarantees for the independence of the judiciary as a means of safeguarding the enjoyment of human rights, including economic, social and cultural rights.**

#### **Corruption**

11. The Committee notes the various measures adopted to curb corruption, including the national anti-corruption strategy (2010-2014) and the anti-corruption law, as well as the creation of the Anti-Corruption Committee in 2008. The Committee remains concerned, however, about the prevalence of corruption in the State party, which adversely impacts the effective enjoyment of Covenant rights.

12. **The Committee recommends that the State party, as a matter of priority, address the root causes of corruption and effectively implement all anti-corruption policy and legislative measures in order to (a) effectively combat corruption and put an end to impunity related to corruption and (b) ensure that public affairs are conducted, in law and in practice, in a transparent manner. The State party should also guarantee protection of the human rights of those engaged in anti-corruption activities, in particular victims, whistle-blowers, witnesses and their lawyers, and that victims are duly informed about their right to denounce corruption before the competent anti-corruption bodies.**

#### **Land disputes in the Kurdistan region**

13. The Committee is concerned about the persistence of land disputes between Assyrians and the Kurdistan Regional Government, and that lands belonging to Assyrians were frequently expropriated for investment purposes. The Committee is also concerned that judicial decisions to return such lands to Assyrians were not systematically enforced (art. 1).

14. **The Committee recommends that the State party take measures to resolve land disputes between Assyrians and Kurdistan Regional Government, and put an end to illegal expropriation of Assyrian lands without compensation or the provision of alternative accommodation. It also calls on the State party to ensure that judicial decisions ordering the return of lands to Assyrians are enforced. The Committee draws the State party's attention to its general comment No. 7 (1997) on forced evictions.**

#### **Maximum available resources**

15. The Committee is concerned about the inadequate allocation of resources to key sectors covered by the Covenant, notably social protection, health and education (art. 2 (1)).

16. **The Committee recommends that the State party gradually increase its national spending on social security, health and education, so as to achieve the progressive realization of economic, social and cultural rights in line with article 2 (1) of the Covenant. The Committee also recommends that the State party take measures to ensure that austerity measures already introduced in 2015 and envisaged for the future do not deprive disadvantaged and marginalized individuals and groups of the enjoyment of their economic, social and cultural rights. In this regard, the Committee refers the State party to the letter concerning austerity measures which was sent to all States parties to the Covenant by the Chair of the Committee on 16 May 2012.**

### **National human rights institution**

17. While welcoming the establishment of the Independent High Commission for Human Rights of Iraq by Law No. 53 of 2008, the Committee is concerned about the reasons for the delay in the appointment of a Chair, and the limited financial resources allocated to the Commission, which prevents it from fully discharging its mandate, in particular receiving and processing complaints from victims of alleged human rights violations.

**18. The Committee recommends that the State party take the measures necessary to ensure that the Independent High Commission for Human Rights of Iraq fully complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by appointing a Chair without further delay. It also recommends that the State party increase the human and financial resources allocated to the Commission so as to enable it to discharge all its duties effectively and independently.**

### **Non-discrimination**

19. The Committee, while taking note of the fact that the State party's Constitution prohibits discrimination on certain grounds, expresses its concern about the absence in the State party's legal order of comprehensive anti-discrimination legislation in accordance with article 2 of the Covenant. The Committee is further concerned that lesbian, gay, bisexual, transgender and intersex persons are particularly affected by discriminatory practices (art. 2).

**20. The Committee recommends that the State party consider adopting a comprehensive anti-discrimination law that fully complies with article 2 of the Covenant and that covers not only direct but also indirect discrimination. The Committee also recommends that the State party take all measures necessary to ensure that lesbian, gay, bisexual, transgender and intersex persons fully enjoy their economic, social and cultural rights without discrimination. The Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, including sexual orientation and gender identity.**

### **Refugees and internally displaced persons**

21. The Committee notes with appreciation that the State party hosts over 270,000 refugees and asylum seekers in its territory. It expresses concern, however, at the inadequate legal framework for refugee protection, at the delays in the passing of the new draft refugee law and at reported discriminatory practices in the protection of refugees, notably in areas of social protection, housing, health and education (art. 2 (2)).

**22. The Committee recommends that the State party accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and accelerate the adoption of the draft refugee law, with a view to ensuring that refugees and asylum seekers have access to their rights to social protection, housing, health and education irrespective of their nationality, ethnicity, religion and location of refuge.**

23. The Committee is concerned that, despite the adoption of policies and programmes in support of the almost 3.2 million internally displaced persons living in the State party, many such persons continue to face serious impediments in accessing housing, health services, education and basic social services. The Committee is further concerned that the limited efforts to facilitate the safe and voluntary return of displaced persons to their original place of residence has not yielded meaningful results (art. 2 (2)).

24. **The Committee recommends that the State party increase its efforts to ensure the basic rights of internally displaced persons, including by effectively implementing existing displacement policies and programmes. It should also ensure that government subsidies reach all displaced persons and embark on other assistance programmes aimed at alleviating the precarious situation of such persons. The Committee also calls on the State party to facilitate the safe return and local integration of internally displaced persons in areas liberated by the Iraqi armed forces, and ensure that returnees have access to basic services.**

#### **Discrimination against ethnic and religious minorities**

25. The Committee is concerned about the:

- (a) Persistent discrimination faced by minority groups;
- (b) Emergence of sectarian insurgency in the State party since 2003, leading to increased attacks against minority groups, and the impunity with which such attacks have often been carried out;
- (c) State party's failure to enact a law implementing article 125 of the Constitution, which guarantees administrative, political, cultural and educational rights for various groups, and the delay in adopting the draft law on the protection of religious and ethnic minority group rights;
- (d) Attacks committed by ISIL and affiliated armed groups against minority groups, in particular the risk of genocide faced by the Yazidis (art. 2 (2)).

26. **The Committee recommends that the State party take all measures necessary to promote national reconciliation among all ethnic and religious groups, as a matter of priority. To this end, it should:**

- (a) **Adopt and implement legislative, policy and awareness-raising measures;**
- (b) **Step up its efforts to prevent acts of discrimination against ethnic and religious groups, bring perpetrators to justice and compensate victims;**
- (c) **Expedite the enactment of the law implementing article 125 of its Constitution and the adoption of the draft law on the protection of religious and ethnic minority group rights;**
- (d) **Intensify its efforts to protect groups and individuals that are particularly vulnerable to attacks by ISIL and affiliated armed groups, including by taking effective measures to bring perpetrators to justice and compensating victims.**

#### **Equality between men and women**

27. The Committee is concerned about the slow pace of legal reform with regard to equality between men and women and the persistence of provisions that discriminate on the basis of sex in the State party's Nationality Act and Penal Code, among other legal provisions.

28. **The Committee recommends that the State party expedite its legal reform with a view to repealing all the remaining provisions in its legislation that discriminate on the basis of sex.**

29. The Committee is concerned at the limited representation of women in political affairs and high-level decision-making posts, as well as their very low rate of participation in the labour force. The Committee is also concerned that women's political participation is

further threatened by the increase of targeted assassination of women politicians, journalists and professionals by ISIL and affiliated armed groups (art. 3).

30. **The Committee urges the State party to take effective measures to foster a culture that supports the equal enjoyment of rights by men and women. To this end, it recommends that the State party take effective measures to boost women's representation in political affairs and public administration, as well as high-level decision-making positions, including through the use of temporary special measures, and to increase women's participation in the labour force.**

#### **Right to work**

31. The Committee is concerned about the rising unemployment rate, and the fact that Roma and Black Iraqis are disproportionately represented among the unemployed and that internally displaced persons face serious difficulties in accessing regular work. The Committee is also concerned about the lack of disaggregated statistics on employment, including for persons with disabilities (art. 6).

32. **The Committee recommends that the State party intensify its efforts to implement effectively its employment policy, making available work opportunities, in particular for the most disadvantaged and marginalized individuals and groups. It also calls on the State party to step up its efforts to ensure that employment quotas for persons with disabilities in both the public and the private sector are effectively enforced, in line with Law No. 38 of 2013. Furthermore, the Committee requests that the State party provide disaggregated statistics on the extent of unemployment in its next periodic report.**

#### **Just and favourable conditions of work**

33. While noting that the minimum wage for unskilled workers was raised to 150,000 Iraqi dinars (the equivalent of \$123) in 2013, the Committee regrets the lack of information on whether the updated amount allows for a decent living for workers and their families, and the lack of information on wages for skilled workers. The Committee is also concerned about the persistence of legal provisions entailing an obligation to work as part of imprisonment sentences for particular offences (art. 7).

34. **The Committee recommends that the State party ensure that the minimum wage is progressively indexed to the cost of living in order to allow for a decent living for all workers and their families. The Committee also recommends that the State party repeal any legal provision that entails compulsory labour in any setting.**

#### **Trade union rights**

35. The Committee notes the information provided by the delegation on the inclusion of provisions in the new Labour Act (July 2015) that recognize trade union rights. It remains concerned, however, about the lack of information on whether previous restrictions on trade union rights, in particular for workers in oil companies, were removed (art. 8).

36. **The Committee recommends that the State party provide detailed information in its next periodic report on the extent of enjoyment by all workers of the rights contained in article 8 of the Covenant. The Committee also recommends that the State party consider acceding to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) of the International Labour Organization (ILO).**

**Right to social security**

37. The Committee regrets the absence of information provided by the State party on the implementation of the right to social security. It notes with concern the delays in adopting the draft workers' pensions and social security act, as well as the increase in the number of people dependent on social security benefits as a result of terrorist attacks, and the inadequacy of pension amounts. It is further concerned at the different age of retirement for women and men (art. 9).

**38. The Committee recommends that the State party accelerate the adoption of the draft workers' pensions and social security act, which should ensure that social security benefits, including pensions, allow an adequate standard of living for beneficiaries and their families, and the same retirement age for women and men. The Committee further encourages the State party to consider establishing a social protection floor, as the first step towards a comprehensive social security system, in line with the ILO Social Protection Floors Recommendation No. 202 (2012) and the Committee's statement on social protection floors adopted on 6 March 2015 (E/C.12/2015/1), and to provide updated information in its next report.**

**Gender-based violence**

39. The Committee is concerned about the prevalence of gender-based violence in the State party. While taking note of the existence of a domestic violence act, albeit only in the Kurdistan region, and of the information provided by the delegation on the availability of shelters in central and southern Iraq run by the Organization of Women's Freedom in Iraq, the Committee is concerned that shelters for victims of violence remain insufficient and inadequately resourced, and that women victims of violence are very often unaware of the location of such shelters and the procedures to follow in order to gain access to them. The Committee is further concerned about the maintenance of the provision in the Penal Code that entails exoneration of rapists should they marry the victim, as well as other provisions that allow mitigated sentences for violent acts against girls and women committed under the pretext of family honour. Moreover the Committee is concerned that women and girls freed from the hands of ISIL receive very little support for their treatment and recovery, and may be subject to tribal violence upon release (art. 10).

**40. The Committee recommends that the State party step up its efforts to combat and deter all acts of violence. To this end, the Committee recommends that the State party:**

- (a) Effectively and diligently investigate all such acts, bring perpetrators to justice, punish them if convicted and compensate victims;**
- (b) Step up its efforts to provide support and assistance services to victims of violence, including through the creation of well-resourced shelters in all regions of the State party, and the empowering of civil society to continue providing shelters and other related services, including awareness-raising and information campaigns;**
- (c) Expedite the adoption of the draft law on domestic violence relevant to central and southern Iraq, and effectively implement the national strategy on combating violence against women;**
- (d) Repeal provisions 128, 130, 131, 398 and 409, among others, of the Penal Code, with a view to ensuring zero tolerance of gender-based violence;**
- (e) Redouble its efforts to protect all persons, particularly women and girls, from attacks by ISIL and associated armed groups;**

(f) **Take specific measures to provide psychological and other necessary support services and recovery to women and girls freed from ISIL and ensure that they are not further subject to tribal violence.**

**Harmful practices: early, temporary and forced marriages**

41. The Committee is concerned about the revival of early, temporary and forced marriages in the State party (art. 10).

42. **The Committee urges the State party to take the steps necessary to address the rise of harmful practices against girls and women, including early, temporary and forced marriage. It should, among other things, ensure strict adherence to the legal provision that sets the minimum age for marriage for both sexes at 18, provide for deterrent punishments for forced marriages and conduct widespread educational campaigns on the harmful effects of such practices.**

**Child protection**

43. The Committee expresses its concern about the large number of children who have lost their parents, many of whom live in the street (about 500,000) or in State hostels. The Committee further expresses its concern about the rise in child labour in the State party, including under hazardous conditions, and that sanctions for those violating child labour provisions are not enforced. Moreover, the Committee is concerned about the increased use of children in the armed conflict, notably by ISIL and affiliated armed groups but also by State-backed militias, and the insufficient safeguards to prevent the recruitment of children (art. 10).

44. **The Committee recommends that the State party adopt an overarching child protection policy, paying special attention to:**

(a) **Strengthening its alternative care programme for children without a family environment, with adequate human, technical and financial resources to facilitate their recovery and social reintegration;**

(b) **Addressing more effectively the situation of child labour, including by increasing labour inspections and identifying, as a matter of priority, those groups of children who are more vulnerable to being engaged in labour and assisting them, and introducing harsher sanctions for those exploiting children;**

(c) **Combating the root causes that lead to the increased involvement of children in the armed conflict, adopting legal and other safeguards to prevent child recruitment and bringing to justice all those involved in the recruitment and use of children in the armed conflict;**

(d) **Fulfilling its obligations to provide demobilized boys and girls with appropriate assistance for their physical and psychological recovery and their social reintegration.**

**Poverty**

45. The Committee is concerned about the prevalence of poverty in the State party, which disproportionately affects children, women, minorities, internally displaced persons and people living in rural areas. The Committee notes with concern that previous economic growth in the years 2005-2012 did not yield satisfactory results in reducing poverty (art. 11).

46. **The Committee recommends that the State party step up its efforts to reduce poverty in the State party, including by adopting a human-rights-based poverty**



reduction strategy that addresses the needs of disadvantaged and marginalized individuals and groups, and by allocating sufficient funds for its implementation. In this regard, the State party is referred to the Committee's statement on poverty and the International Covenant on Economic, Social and Cultural Rights of 2001 (E/C.12/2001/10).

#### **Right to housing**

47. The Committee is concerned about the shortage of 1 million housing units in the State party and the increase in the number of homeless persons and of informal settlements. The Committee is also concerned about the substandard housing conditions of internally displaced persons, many of whom live in critically substandard housing arrangements without access to water, sanitation, electricity and waste-disposal services (art. 11).

48. **The Committee takes note of the information provided by the delegation on measures taken to build new housing units and urges the State party to step up its efforts in this regard. It also recommends that the State party provide information in its next periodic report on measures taken to address more effectively the incidence of homelessness and of forced evictions to which persons living in informal settlements are vulnerable. The Committee recommends that the State party increase its efforts to improve the housing conditions of internally displaced persons and ensure that they have access to basic services. Furthermore, it recommends that the State party step up its efforts to achieve long-term housing solutions for all displaced populations, as set out by the national housing policy and national strategy on longer-term shelter solutions.**

#### **Right to food**

49. The Committee is concerned about the prevalence of food insecurity and malnutrition in the State party (art. 11).

50. **The Committee recommends that the State party intensify its efforts, including under the public distribution system project, to realize the right to food for everyone, particularly the disadvantaged and marginalized individuals and groups.**

#### **Water and sanitation**

51. The Committee is concerned about the water crisis in the State party, which has a disproportionate effect on the living conditions of Marsh Arabs in the south, many of whom have become internally displaced after having lost their livestock. It is also concerned that, as a result of the shortage of safe drinking water and sanitation facilities, there has been an increase in the incidence of preventable diseases such as diarrhoea and cholera (art. 11).

52. **The Committee recommends that the State party, in cooperation with neighbouring countries, intensify efforts to conclude agreements concerning the fair and equitable use of the river courses within its territory. The Committee also recommends that the State party develop a human-rights-based strategy on drought preparedness, taking into consideration the national drought management policy guidelines of 2014, and take effective steps, other than compensation for farmers, to assist those most affected by drought. Furthermore, the Committee recommends that the State party take preventive measures to control and stop the spread of diarrhoea and cholera, including by providing vaccinations and information on basic sanitation procedures.**

### **Right to health**

53. The Committee notes the information provided by the delegation that in 2014 the health budget was increased from 5 per cent to 6 per cent of the public budget. However, it is concerned that this allocation remains unsatisfactory. The Committee is also concerned at the limited access to basic health services, in particular in areas hosting large numbers of internally displaced persons, and the shortage of health facilities, medical doctors and other skilled health professionals, as well as of medicines and medical supplies (art. 12).

**54. The Committee recommends that the State party take steps to gradually increase the health budget. It also recommends that the State party prioritize interventions to restore emergency and essential primary and secondary health services, including in newly liberated areas, and ensure the availability of life-saving emergency services for the affected populations. In this regard, the Committee draws the State party's attention to general comment No. 14 (2000) on the right to the highest attainable standard of health. The Committee further recommends that the State party continue to seek technical cooperation, in particular, with the World Health Organization.**

### **Right to education**

55. The Committee is concerned about the decrease in school enrolment and attendance and the increase in school drop-out and illiteracy rates, especially among girls. It is also concerned about the limited availability of schools, and the fact that many of them are in poor physical condition and lack essential facilities. The Committee is further concerned that children with disabilities and internally displaced children face particular barriers in access to education (arts. 13 and 14).

**56. The Committee recommends that the State party effectively implement the national education and higher education strategy for the period 2011-2020. It also recommends that the State party take all measures necessary to reintegrate children affected by the armed conflict into the educational system, including through non-formal educational programmes and by prioritizing the restoration of school buildings and facilities. The Committee further recommends that the State party take specific measures to ensure that internally displaced children and children with disabilities enjoy equal access to education.**

### **Cultural heritage**

57. The Committee commends the State party on measures taken to address the destruction of cultural heritage sites and looting of objects with cultural heritage significance. However, it remains concerned that such acts continue to be carried out by ISIL and affiliated armed groups on a large scale. Furthermore, the Committee expresses its concern that educational textbooks do not reflect the rich composition of Iraqi society in an inclusive and balanced manner (art. 15).

**58. The Committee recommends that the State party further strengthen its measures, including through technical cooperation with and international assistance from the United Nations Educational, Scientific and Cultural Organization and other organizations, to stop destruction and looting of sites and objects with cultural heritage significance, and take steps to bring perpetrators to justice. It also calls on the State party to revise its educational curricula, with a view to reflecting the culture and heritage of all minorities in Iraqi society.**

## E. Other recommendations

59. The Committee encourages the State party to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

60. The Committee recommends that the State party collect data, and encourage the collection of data and the production and use of statistics on human rights indicators, including for economic, social and cultural rights. In this respect, the Committee refers the State party to the conceptual and methodological framework for human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3). The Committee requests that the State party include in its next periodic report statistical data on the enjoyment of each Covenant right, disaggregated by age, sex, ethnicity, urban/rural population and other relevant status, on an annual comparative basis.

61. The Committee invites the State party to continue and strengthen its collaboration on issues relating to economic, social and cultural rights with the Office of the United Nations High Commissioner for Human Rights, the specialized agencies and the relevant United Nations programmes.

62. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, particularly among parliamentarians, public officials and judicial authorities, and to inform the Committee in its next periodic report on the steps taken to implement them. It also encourages the State party to engage non-governmental organizations and other members of civil society in the process of consultation at the national level, prior to the submission of its next periodic report.

63. The Committee requests the State party to submit its fifth periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 October 2020. It also invites the State party to submit its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN/2/Rev.6, chap. I).

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