



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Fifth periodic reports of States parties due in 2000**

**Iraq\***

[16 October 2013]

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## I. Introduction

1. The Republic of Iraq, while emphasizing its commitment to implement the international human rights covenants and treaties, as well as its belief in the importance of the realization of rights and, in particular, civil and political rights in view of their direct impact on the lives of individuals and societies, also reaffirms its belief in the effectiveness and usefulness of the human rights treaty mechanisms which are highly instrumental in furthering the international human rights protection system. In this context, as an expression of our confidence in international law and our firm determination to support the work of those mechanisms and of the Human Rights Council, we are submitting this report to your distinguished Committee, pursuant to article 40 of the International Covenant on Civil and Political Rights, after the far-reaching changes that have taken place in our country in all political and economic fields since 2003. The report covers the latest developments in the field of civil and political rights as enunciated in the International Covenant on Civil and Political Rights which was published in the Official Gazette and has become part of Iraqi law.

2. This report has been prepared jointly with other State institutions included on a multisectoral committee consisting of representatives of the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Defence, the Ministry of Justice, the Ministry of Human Rights, the Ministry of Labour and Social Affairs, the Ministry of Planning and Development Cooperation and the Ministry of Displacement and Migration. The preparation of the report coincided with another national endeavour, namely the formulation of a national plan for human rights in which civil and political rights featured prominently.

3. The Government of the Republic of Iraq studied with interest the Committee's concluding observations, particularly concerning the factors and difficulties affecting the implementation of the Covenant (illustrated by the dictatorial regime's failure to inform the Iraqi people of those observations as requested by the Committee), and concurs with the concluding observations adopted by the Committee following its consideration of Iraq's fourth periodic report at its 1626th and 1627th meetings on 27 October 1997. In this regard, we wish to comment as follows on the principal subjects of concern to your distinguished Committee and the recommendations that it kindly made.

4. We agree with the Committee's assessment that "eight years of war with the Islamic Republic of Iran and the conflict following Iraq's invasion of Kuwait caused the destruction of part of the country's infrastructure and considerable human suffering, and produced a very difficult economic and social situation in Iraq". We also agree with the Committee's observation that "the effect of the sanctions and blockade has been to cause suffering and death in Iraq, especially to children" (CCPR/C/79/Add.84).

5. We concur with the Committee's views on the principal subjects of concern mentioned in document CCPR/C/79/Add.84, to some of which reference must be made.

6. With regard to section B of the observations (Factors and difficulties affecting the implementation of the Covenant), we wish to remind the distinguished Committee that, during the last few decades, Iraq was the theatre of large-scale military operations some of which (the three Gulf wars in the 1980s, 1990s and the early part of the present century) continued for many years and led to the militarization of society, thereby directly affecting the exercise of human rights. Iraq's subjection to economic sanctions and blockade throughout the 1990s, pursuant to Security Council resolution 661 of 6 August 1990 adopted under the terms of Chapter VII, Article 41, of the Charter of the United Nations and which remained in force until the adoption of Security Council resolution 1483 of 22

May 2003, had a direct adverse impact on the living conditions of the Iraqi people and its repercussions are still weighing heavily on the Government's endeavours to rebuild the infrastructure, which has continued to be targeted by acts of violence since the change of regime in the spring of 2003.

7. Terrorism has posed a serious challenge to the application of the Government's policy in the field of human rights since it not only constitutes, per se, a violation of many of those rights but is also highly instrumental in creating conditions and environments conducive to infringements and violations thereof. The years immediately following the overthrow of the dictatorial regime in the spring of 2003 were among the most violent and were marked by gross and systematic violations of international human rights law, including violations of the right to life of large numbers of civilians, including women, children and elderly and disabled persons, the destruction of places of worship and attacks on persons holding different religious beliefs. The terrorist operations (bombings, assassinations, abductions and forcible displacements) carried out by outlawed groups assumed alarming proportions and posed a significant challenge not only to respect for the law but also to the very survival of the people. During the period 2003–2011, about 70,000 persons were killed and 250,000 injured as a result of these terrorist operations to which further reference will be made in this report.

8. Under the terms of Revolutionary Command Council Decree No. 111 of 1990, exemption from prosecution was granted to perpetrators of "crimes of honour" involving the killing of female relatives with a view to purging dishonour. Although that decree was repealed, in order to tighten its grip on Iraqi society the dictatorial regime launched the so-called "faith campaign" during which many women were beheaded by the swords of Saddam's Fedayeen (paramilitary militia), without resort to the courts, on the pretext of combating prostitution in accordance with Revolutionary Command Council Decree No. 234 of 2001 which stipulated that: "Anyone who commits the crime of sodomy against a male or female, engages in an incestuous act with a person within the proscribed degrees of consanguinity, or is found to be practising prostitution, pandering or managing premises in which prostitution is practised shall be liable to the death penalty."

9. With regard to the recommendation made in paragraph 7 of the concluding observations, after 2003 the centralized totalitarian system was changed into a federal parliamentary system in which power is divided between three (executive, judicial and legislative) independent authorities. The Iraqi Constitution of 2005 defines the powers of those bodies in the manner described in paragraphs 36–43 of this report.

10. With regard to the recommendation made in paragraph 8 of the concluding observations, extrajudicial executions continued until 2003 under the rule of the dictatorial regime which used summary executions, arbitrary arrests and detention, torture and ill-treatment at the hands of members of security and military forces, as well as disappearances of thousands of persons in northern Iraq and in the southern Marshes and forced relocations, as a means to liquidate its political opponents, religious personalities and national symbols and to conduct an ethnic cleansing of Feyli Kurds and Shabak. Mass graves also became a widespread phenomenon in most parts of Iraq where thousands of citizens (men, women and children) were buried in such graves during the dictatorial regime's fierce repression of the popular uprising that began in March 1991. Many members of the repressive security agencies, as well as the head of the regime, who bore responsibility for the commission of those crimes were tried in public and convicted, in accordance with the judicial procedures in force in Iraq, by the Iraqi Supreme Criminal Tribunal that was established under the terms of Act No. 10 of 2005 for the purpose of hearing the crimes committed by the former dictatorial regime.

11. As far as the recommendation made in paragraph 9 of the concluding observations is concerned, the provisional decrees enacted by the Revolutionary Command Council which

had the force of law and adversely affected the implementation of certain rights enunciated in the Covenant, such as the right to life, the prohibition of torture and the principle of non-retroactivity of criminal laws, were promulgated to further the aims of the dictatorial regime without regard for those rights, which are non-derogable except as stipulated in article 4 of the Covenant.

12. With regard to the recommendation made in paragraph 10 of the concluding observations concerning Revolutionary Command Council Decrees No. 13 of 1992, No. 9 of 1993, Nos. 86, 95, 179 and 188 of 1994 and No. 16 of 1995 which prescribed the death penalty for new categories of crimes, including non-violent and economic infringements, other than those defined in the Iraqi Penal Code (promulgated under Act No. 111 of 1969), the said decrees ceased to have effect after 2003.

13. With regard to the recommendation made in paragraph 11 of the concluding observations concerning Revolutionary Command Council Decree No. 115 of 25 August 1994 which violated the provisions of article 6, paragraph 2, of the Covenant, under which the application of the death penalty is restricted to the “most serious crimes”, by stipulating that the death penalty would be imposed on persons who had evaded military service several times and by containing retroactive provisions contrary to article 15 of the Covenant, the said decree was revoked after 2003.

14. With regard to the recommendation made in paragraph 12 of the concluding observations concerning cessation of the imposition of cruel, inhuman and degrading punishments incompatible with article 7 of the Covenant, such as amputation of an ear, amputation of a right hand below the wrist and branding, as illustrated by Revolutionary Command Council Decree No. 109 of 18 August 1994 which stipulated that any person whose hand had been amputated for a crime thus punishable by law should be branded between the eyebrows with an “X” symbol and that this provision would apply retrospectively to persons whose hands had already been amputated, after 2003 these punishments were classed among the crimes against humanity for which provision was made in chapter II, section 2, article 12, paragraph 1 (j), of Act No. 10 of 2005 promulgating the Statute of the Iraqi Supreme Criminal Tribunal (see the annex concerning this Statute). Such decrees promulgated by the (dissolved) Revolutionary Command Council were revoked by Act No. 5 of 2009 which made provision for payment of compensation to victims who had suffered amputation or disfigurement as a result of the practices of the dictatorial regime. According to data compiled by the Ministry of Human Rights, 200 victims had been subjected to amputation of hands or feet and 102 had been branded on their foreheads.

15. With regard to the recommendation made in paragraph 13 of the concluding observations concerning steps to be taken to promote and ensure full equality between men and women in the political, economic, social and cultural life of the country and to eliminate all forms of legal and de facto discrimination against women, the response will be found in paragraphs 62–69, 213, 218 and 222–223 of this report.

16. With regard to the recommendation made in paragraph 14 of the concluding observations concerning arbitrary restrictions imposed on the right to freedom of movement and travel, the response will be found in paragraphs 130–132 of this report.

17. With regard to the recommendation made in paragraph 15 of the concluding observations concerning special courts which may impose the death penalty and do not provide for all the procedural guarantees required by article 14 of the Covenant, and in particular the right of appeal, as well as the Committee’s observation that, in addition to the list of offences which were under the jurisdiction of the special courts, the Minister of the Interior and the Office of the President of the Republic had discretionary authority to refer any other cases to the said courts (which was contrary to the principle of the independence

of the judiciary and the right of appeal), article 95 of the Iraqi Constitution of 2005 prohibits the establishment of special or exceptional courts.

18. With regard to the recommendation made in paragraph 16 of the concluding observations concerning the severe restrictions imposed on the right to freedom of expression, the response will be found in paragraphs 160–161 of this report.

19. With regard to the recommendation made in paragraph 17 of the concluding observations, the response will be found in paragraphs 160–161 of this report.

20. With regard to the recommendation made in paragraph 18 of the concluding observations concerning the right of citizens to take part in the conduct of public affairs in accordance with article 25, paragraphs (a) and (b), of the Covenant, the response will be found in paragraphs 197–206 of this report.

21. With regard to the recommendation made in paragraph 19 of the concluding observations concerning effective means of redress for individuals whose rights might have been violated by such laws, decrees or decisions, the Iraqi Constitution of 2005 does not empower any specific organ or institution to promulgate laws and legislation in place of the dissolved Revolutionary Command Council, which arrogated all the three powers to itself, since the new Constitution distributes authority in conformity with the principle of the separation of powers in order to ensure means of redress and provide constitutional protection for the rights of citizens.

22. With regard to the recommendation made in paragraph 20 of the concluding observations concerning religious and ethnic minorities as well as other groups which were the subject of discrimination in Iraq, and particularly the Shia in the southern Marshes and the Kurds in the north, and the lack of information on the situation of other minorities, such as the Turkmen, Assyrian, Chaldean and Christian minorities, as noted in the Committee's General Comment No. 23 (50) of 1994 on article 27 of the Covenant, the response will be found in paragraphs 207–216 and 238–243 of this report.

23. With regard to the recommendation made in paragraph 21 of the concluding observations, the response will be found in paragraphs 180–183 of this report.

24. With regard to the recommendation made in paragraph 22 of the concluding observations concerning the periodic report due to be submitted on 4 April 2000 and the Committee's request that its concluding observations be widely disseminated among the public at large in all parts of Iraq, the former dictatorial regime pursued a policy of misleading and deceiving the Iraqi people and imposing an information blackout by failing to inform them of the Committee's observations. The political transformation in Iraq did not take place in a peaceful and proper manner; on the contrary, it was effected through the use of force and military intervention and the extraordinary circumstances attendant thereon prevented Iraq from fulfilling its international obligations, including its contractual commitment to submit its national reports on the implementation of treaties such as the International Covenant on Civil and Political Rights.

## **II. Information on articles 1–27**

### **Article 1**

25. Within the framework of its international relations, the Republic of Iraq has consistently supported the right of peoples to self-determination and Iraq's voting record and various activities at the United Nations clearly illustrate its position in this regard. This is most cogently evidenced by Iraq's support for the realization by the Palestinian people of

their legitimate rights, and particularly their right to exercise self-determination and establish their independent State on their national territory.

26. The system of governance in the Republic of Iraq is republican, representative, parliamentary and democratic. It is a single federal and fully sovereign State. The Iraqi State, established in 1921 as a monarchy, was turned into a republic on 14 July 1958 but the system of governance in the subsequent years from 1958 to 1979, far from being democratic, ranged from liberal to dictatorial and, during the period from 1979 to 2003, the country was subjected to an arbitrary, totalitarian and dictatorial regime. In 2003, there was a radical change from a highly centralized, autocratic and dictatorial system to a democratic system of governance.

### **The Iraqi Governments during the period subsequent to 9 April 2003**

27. In 2003, a body known as the Office for Reconstruction and Humanitarian Assistance was formed, under the direction of the retired United States military officer Jay Garner, to manage Iraq's affairs. United States Ambassador Paul Bremer was subsequently appointed on 19 May 2003 to administer the Coalition's civil authority and, on 13 July 2003, an Iraqi Governing Council was formed as an advisory body consisting of 25 members from the various constituent elements of the Iraqi people.

28. The Coalition Provisional Authority (CPA) in Iraq was the first statutory legal authority formed to administer the country's affairs, in accordance with Security Council resolution 1483 (2003), after the overthrow of the dictatorial regime on 9 April 2003. The CPA exercised the powers vested in it under the terms of that resolution in tandem with the Iraqi Governing Council, the official establishment of which was announced on 15 July 2003 and the main achievements of which included the promulgation of the Transitional Administrative Law in March 2004 and the annex thereto in May 2004, as well as the formation of an executive government consisting of 25 ministries.

29. The first Interim Government was formed on 30 June 2004 and assumed sovereign executive and legislative authority to administer the State under the terms of Security Council resolution 1546 (2004). A Transitional National Council, was formed for the basic purpose of, *inter alia*, preparing elections to a National Assembly which would draft a new Iraqi constitution.

30. Elections were held on 30 January 2005 to choose the 100 members of the National Assembly the basic task of which was to draft a permanent constitution for the country and make preparations for the parliamentary general elections which were subsequently held on 15 December 2005. The country's permanent Constitution was adopted on 15 October 2005 by a majority of 79.14 per cent of the total number of voters.

31. Since Iraq is a federal State, when the Constitution entered into force the Kurdistan Region began to exercise its powers thereunder as part of a united Iraq. The powers of regions are defined in part five, chapter I, of the Constitution, article 116 of which stipulates that: "The federal system in the Republic of Iraq shall consist of a capital and decentralized regions and governorates, as well as local administrations." Article 117, paragraph 1, of the same chapter further stipulates that: "On the entry into force of this Constitution, the Kurdistan Region, with its existing authorities, shall be recognized as a federal region."

### **Form and system of governance of the State**

32. Article 1 of the Constitution specifies the form and system of governance of the Iraqi State as follows: "The Republic of Iraq shall be a single federal, independent and fully sovereign State in which the system of governance shall be republican, representative, parliamentary and democratic. This Constitution shall be a guarantor of the unity of Iraq."

33. Article 2 defines the State's legal system in the following manner:
1. Islam shall be the official religion of the State and a fundamental source of legislation.
    - (a) No law shall be enacted that conflicts with the established precepts of Islam;
    - (b) No law shall be enacted that conflicts with the principles of democracy;
    - (c) No law shall be enacted that conflicts with the fundamental rights and freedoms provided for in this Constitution.
  2. This Constitution shall safeguard the Islamic identity of the majority of the Iraqi people and shall guarantee the full religious rights of all individuals, whether Christian, Yazidi or Sabian-Mandaean, to freedom of religious belief and practice.
34. Article 3 stipulates that: "Iraq is a multi-ethnic, multireligious and multiconfessional country. It is a founding and active member of the League of Arab States, to the Charter of which it is committed, and forms part of the Islamic world."
35. The mechanism for the establishment of a democratic system in Iraq is defined in article 5 of the Constitution, which stipulates that: "The law shall be sovereign and the people shall be the source of legitimate authority, which they shall exercise by direct, universal suffrage and secret ballot and through their constitutional institutions." The mechanism for transfer of authority is defined in article 6 ("Transfer of authority shall be effected peacefully through the democratic means stipulated in this Constitution").

#### **Distribution of powers in Iraq**

36. In accordance with article 47 of the Constitution, the federal authorities consist of legislative, executive and judicial authorities which exercise their jurisdiction and functions on the basis of the principle of the separation of powers.

##### **1. The legislative authority**

37. Under the terms of article 48 of the Permanent Constitution, the federal legislative authority in Iraq consists of the Council of Representatives and the Federation Council. In accordance with article 49, the Council of Representatives comprises a number of members, at a ratio of one seat per 100,000 of the population, representing the entire Iraqi people. They are elected by direct, universal suffrage and secret ballot and care is taken to ensure that all the constituent elements of the people are represented in the Council. In the current legislative session, candidates for membership of the Council of Representatives are required to be fully eligible Iraqi nationals. The eligibility of candidates and voters, as well as all the electoral procedures, are regulated by the Electoral Act, which also stipulates that the proportional representation of women must amount to a minimum of one quarter of the total membership of the Council of Representatives. The functions and powers of the Council of Representatives are specified in article 61 of the Constitution.

##### **2. The executive authority**

38. Article 66 of the Constitution stipulates that the federal executive authority, consisting of the President of the Republic and the Council of Ministers, shall exercise its powers in accordance with the Constitution and the law in the following manner:



*The President of the Republic*

39. Under the terms of article 67 of the Constitution, the President of the Republic is the Head of State, as well as a symbol of the country's unity, who embodies its sovereignty. He is responsible for ensuring compliance with the Constitution and safeguarding Iraq's independence, sovereignty, unity and territorial integrity. Under article 73 of the Constitution, the President of the Republic exercises numerous powers including, in particular, the granting of special pardons except in cases involving private rights or persons convicted of committing international crimes, terrorism or acts of financial or administrative corruption. He ratifies and promulgates laws enacted by the Council of Representatives, issues presidential decrees and ratifies death sentences handed down by the courts.

40. Due to the nature of the transitional phase in Iraq and the consequent legal and constitutional circumstances, article 138 of the Constitution made provision for the formation of a "Presidency Council" to replace the expression "President of the Republic" wherever it appeared in the Constitution, while further stipulating that the provisions concerning the President of the Republic would once again take effect after a single parliamentary session following the entry into force of the Constitution during which the Council of Representatives would elect, from a single list and by a two-thirds majority, the Head of State and two Vice-Presidents who would form a council known as the "Presidency Council". The Presidency Council, exercising the powers vested in the President of the Republic under the Constitution, would take its decisions by consensus and any member would have the right to delegate either of the other two members to replace him.

*The Council of Ministers*

41. Article 76 of the Constitution stipulates that: "The President of the Republic shall designate the nominee of the largest parliamentary bloc to form the Council of Ministers within 15 days from the date of the election of the President of the Republic. The Prime Minister designate shall name the members of his Council of Ministers within a period not exceeding 30 days from the date of his designation. The Prime Minister designate shall present the names of the members of his Council of Ministers and the ministerial programme to the Council of Representatives and shall be deemed to have gained the latter's confidence upon its approval, by an absolute majority, of the individual ministers and the ministerial programme." Article 77 specifies the conditions to be met by the Prime Minister. Article 78 stipulates that: "The Prime Minister shall be the executive authority directly responsible for the State's general policy and shall be the commander-in-chief of the armed forces; he shall direct the Council of Ministers and preside over its meetings and shall have the right to dismiss ministers with the consent of the Council of Representatives." Article 80 specifies the powers exercised by the Council of Ministers in Iraq.

**3. The judicial authority**

42. Prior to 2003, the administration of the judiciary and the Department of Public Prosecutions was assigned to the Council of Justice under the terms of Ministry of Justice Act No. 101 of 1977, which constituted an abrupt and dangerous about-turn in the history of the Iraqi judiciary and a departure from the principle of the independence of the judiciary. Following the abolition of the former Judicial Council in 1977, the performance of judicial functions was greatly hampered by the fact that judges were liable to be transferred without justification, reassigned to a civil post, dismissed, prohibited from practising law or even imprisoned. Qualified jurists were also denied access to judicial posts if they failed to subscribe to the regime's political dogma and ideology.

43. After the overthrow of the dictatorial regime in 2003, the judicial authority in Iraq formed the third wing of the Iraqi constitutional institutions and was recognized as an independent organ in the Iraqi Constitution of 2005, article 87 of which stipulates that: “The judicial authority shall be independent. The various types and levels of courts shall exercise this authority and shall adjudicate in accordance with the law.” Article 88 further stipulates that: “Judges shall be independent and, in their administration of justice, shall be subject to no authority other than the law. No other authority shall have the right to interfere in the administration of justice or in judicial affairs.” On 18 September 2003, the Higher Judicial Council was re-established as an independent body at the apex of the judicial hierarchy. Under article 89 of the Constitution, the federal judicial authority consists of the Higher Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Department of Public Prosecutions, the Judicial Oversight Commission and the other federal courts which are regulated by law. Articles 90 and 91 of the Iraqi Constitution stipulate that the Higher Judicial Council shall administer the affairs of judicial bodies by exercising the following functions:

- (a) Administration of judicial affairs and supervision of the federal judiciary;
- (b) Nomination of the Chief Justice and members of the Federal Court of Cassation, as well as the Director of Public Prosecutions and the President of the Judicial Oversight Commission, and submission of their nominations to the Council of Representatives for approval of their appointment;
- (c) Proposal of the draft annual budget of the federal judicial authority and its submission to the Council of Representatives for approval.

Article 92 of the Constitution specifies the composition of the Federal Supreme Court as follows: (a) The Federal Supreme Court shall be a financially and administratively independent judicial body; (b) The Federal Supreme Court shall be composed of judges, experts in Islamic jurisprudence and jurists; their number, the manner of their selection and the court procedures shall be regulated by a legislative enactment adopted by a two-thirds majority of the members of the Council of Representatives. Article 93 defines the jurisdiction and functions of the Federal Supreme Court. Article 94 stipulates that rulings of the Federal Supreme Court shall be final and binding on all authorities. Article 95 prohibits the establishment of special or exceptional courts. Article 97 stipulates that judges shall not be removed except in the circumstances provided for by law, and the rules applicable to them, as well as their disciplinary accountability, shall also be regulated by law. In order to consolidate the principle of the independence of the judiciary, article 98 prohibits a judge or public prosecutor from combining a judicial with a legislative or executive post or any other form of employment and also from belonging to any political party or organization or engaging in any political activity. Article 99, concerning the military judiciary, stipulates that the jurisdiction of the military courts shall be confined to offences of a military nature committed by members of the armed and security forces, within the limits prescribed by law. Article 100 stipulates that no administrative act or decision shall be legally immune from appeal and article 101 of the Constitution permits the establishment of a Council of State to regulate the functions of the administrative courts, formulate and deliver legal opinions and represent the State and other public institutions before judicial bodies except as otherwise provided by law.

#### **4. Independent commissions**

44. The radical and substantial post-2003 transformation of the political system constituted the demarcation line between two phases in Iraq’s contemporary history. The Law of Administration for the State of Iraq for the Transitional Period, which was promulgated in 2004, introduced the concept of “national commissions” and many of these were established. Article 27, paragraph (d), made provision for the establishment of the

Iraqi Intelligence Service; chapter VI, article 44, of the Law established the Federal Supreme Court; article 45 established the Higher Judicial Council; and an entire chapter was devoted to national commissions, such as the Iraqi Special Tribunal, the National Commission on Public Integrity, the Iraqi Property Claims Commission, the Higher National De-Baathification Commission and the National Commission for Human Rights, and the rules of membership thereof. Article 108 of the Permanent Iraqi Constitution of 2005 authorized the establishment of independent commissions not linked to any of the three above-mentioned authorities in order to exclude any possibility of their decisions being influenced. The presidents and members of the governing boards of the independent commissions are selected from among highly competent and professionally qualified experts of attested impartiality without any political or factional bias so that they can exercise their functions without being subject to influence or pressure from other authorities and bodies. These independent commissions are exemplified by the following:

**(a) The Independent Commission for Human Rights**

45. The Independent Commission for Human Rights, established under the terms of Act No. 53 of 2008, was vested with a broad mandate and the members of its Board of Commissioners were selected in 2012. The Commission's mandate covers the following principal functions:

- (i) Receipt of complaints from individuals, groups and civil society organizations concerning violations prior and subsequent to the entry into force of the Act;
- (ii) Conduct of preliminary investigations of human rights violations in the light of the information received;
- (iii) Verification of the complaints received, and the conduct of preliminary investigations if the circumstances so require;
- (iv) Taking action on human rights violations by referring them to the Department of Public Prosecutions so that it can institute legal proceedings and notify the Commission of the outcome;
- (v) Visiting prisons, social reform centres and all other detention facilities, without the need for prior permission from the authorities concerned, in order to meet convicted prisoners and detainees, confirm any cases of infringement of human rights and bring them to the attention of the competent authorities so that appropriate legal action can be taken.

**(b) The Commission on Integrity**

46. The Commission on Integrity, for which provision was made in article 102 of the Constitution, was formed in accordance with Coalition Provisional Authority Order No. 55 of 2004 as a specialized body qualified to receive, investigate and adjudicate complaints from individuals concerning violation of any of their rights. Its basic function is to help to combat corruption and its operational mechanisms include the investigation of cases of corruption, the proposal of legislation, obliging senior officials to declare their financial interests, and the promulgation of a code of official conduct. It also formulates educational programmes to be taught in schools and is endeavouring to develop a culture of integrity, transparency and accountability through the organization of studies and symposiums and the formulation of training and public communication programmes. The Commission established offices of inspectors general in all Iraqi ministries in 2004.

(c) **The Independent High Electoral Commission**

47. The Independent High Electoral Commission is an independent and impartial governmental professional body operating under the control of the Council of Representatives and with exclusive responsibility for the organization, holding and supervision of all types of elections and referendums. The Commission is a constitutional institution in accordance with article 102 of the Iraqi Constitution and was formed under the terms of Act No. 11 of 2007 to replace the transitional Independent Electoral Commission of Iraq that was responsible for the holding of elections and the referendum on the Constitution in 2005.

(d) **Civil society institutions**

48. After April 2003, there was a declared political will to rectify the relationship between the State/authority and society by, *inter alia*, recognizing the right to establish and join associations. This was embodied in Order No. 45 of 2003 regulating the activities of the non-governmental organizations which had mushroomed in Iraq and, by the end of October 2007, totalled about 5,669 organizations operating throughout the country in a variety of specialized fields ranging from defence of human rights in general and promotion of a culture of human rights to advocacy of the rights of specific categories such as women, children and disabled persons, etc. Iraqi civil society institutions constituted an important national mechanism for the promotion and protection of human rights through defence, support and educational operations in that field and they played a major educative role in promoting the principles of democracy and participation not only in the development and reconstruction process but even in the various elections that were held in the country. A bill of law (Act No. 12 of 2010) regulating the activities of those organizations was adopted by the Council of Representatives on the last day of its first parliamentary session, was subsequently approved by the Presidency Council on 2 March 2010 and entered into force on 7 April 2010 following its publication in the Official Gazette.

## Article 2

49. The Constitution of the Republic of Iraq of 2005, which is in conformity with the provisions of this article insofar as it respects and ensures to all individuals the rights recognized in the Covenant, without distinction of any kind, is the principal instrument that guarantees respect for and protection of those rights in Iraq through the emphasis that it places on the Covenant-based fundamental norms and principles of human rights, particularly in part two, articles 14–46, concerning rights and freedoms, including:

- The principle of equality and non-discrimination (art. 14);
- The right to life, security and liberty (art. 15);
- The right to equality of opportunity (art. 16);
- The right to personal privacy and inviolability of homes (art. 17);
- The right to acquire a nationality (art. 18);
- The principles of the independence of the judiciary and fair trial (art. 19);
- The right of men and women to take part in the conduct of public affairs and enjoy political rights, including the right to vote, stand as a candidate and be elected (art. 20);
- The right of political asylum (art. 21);

- Articles 37–46 define a number of fundamental rights and freedoms, including the prohibition of torture, forced labour and slavery; the right to freedom of expression and peaceful assembly and demonstration; the right to form associations and political parties; the right to liberty of movement and freedom of thought, conscience and belief; the right to freedom of worship; the State’s commitment to support and strengthen the role of civil society institutions; and the stipulation that no restrictions may be imposed on these rights except as provided by law.

50. Confidence-building measures have been taken, such as a general amnesty programme consistent with the principles of transitional justice, and persons detained unlawfully have been released. The legacy of the former dictatorial regime is being addressed on the basis of the sovereignty of the law and respect for human rights, as is clearly evident from the General Amnesty Act No. 17 promulgated in February 2008 and a number of other enactments such as the Accountability and Justice Act No. 10 of 2008 and the Protection of Mass Graves Act No. 5 of 2006.

51. The Martyrs’ Foundation was established under the terms of Act No. 3 of 2006 and the Political Prisoners’ Foundation under Act No. 4 of 2006. Act No. 24 of 2005 made provision for the reinstatement of persons dismissed from office for political reasons. The Property Claims Commission was established under the terms of Act No. 13 of 2010 and the Iraqi Supreme Criminal Tribunal was constituted pursuant to Act No. 10 of 2005 in order to investigate violations of human rights in Iraq under the dictatorial regime during the period 1968–2003. The Ministry of Human Rights was established in September 2003 as the main government agency responsible for the promotion and protection of human rights through its monitoring and control systems. It embodies the Iraqi people’s aspirations to settle the legacy of human rights violations committed against them over a period of many decades and to ensure the ongoing promotion and protection of human rights and the dissemination of a new culture of human rights and human rights education through the control, monitoring and evaluation of governmental performance. This Ministry’s strategic goal, as defined in its Statute, is to create an environment conducive to the exercise of human rights and, to that end, it is structured around a basic triad of monitoring and control mechanisms, mechanisms to settle the deplorable human rights legacy and mechanisms to disseminate a culture of human rights and human rights education.

52. The national courts in Iraq apply the Penal Code and the Code of Criminal Procedure in accordance with general constitutional principles the tenor of which is consistent with the means of redress provided for in Iraqi laws and the implementation of which provides a real guarantee of the protection of human rights and the sovereignty of the law. The main principles can be summarized as follows:

- The principle that there is no crime or punishment except as provided by law (art. 19, para. 2, of the Iraqi Constitution currently in force);
- The right to seek legal remedy is guaranteed to all (art. 19, para. 3, of the Constitution);
- The right to a defence is sacrosanct and guaranteed at all stages of investigation and trial (art. 19, para. 4, of the Constitution);
- The principle of presumption of innocence (art. 19, para. 5, of the Constitution);
- The right to be treated fairly in judicial and administrative proceedings (art. 19, para. 6, of the Constitution);
- The principle that punishment must be personal (art. 19, para. 8, of the Constitution);

- The principle of the non-retroactivity of criminal laws unless they are more favourable to the accused (art. 19, para. 10, of the Constitution);
- The principle of the public nature of trial proceedings (art. 19, para. 7, of the Constitution);
- The principle of the prohibition of administrative detention (art. 19, para. 12 (a), of the Constitution);
- The principle of the prohibition of detention except in facilities designated for that purpose (art. 19, para. 12 (b), of the Constitution);
- The principle of the independence of the judiciary (art. 19, para. 1, of the Constitution).

53. The category of juveniles is endowed with a special status in Iraqi national laws insofar as a juvenile delinquent is subject to special legal procedures from the time of detention to the time of placement and enforcement of sentence. The Juvenile Police Directorate, the juvenile courts and the Ministry of Labour's Juvenile Reform Department have a responsibility to comply with these procedures. It is noteworthy that, under Iraqi national law, convicted juveniles cannot be sentenced to capital punishment and can be placed only in juvenile observation centres.

54. Iraq has not escaped from human trafficking, which made headway as a result of the wars, internal conflicts and unstable conditions that afflicted the country and gave rise to trafficking problems. Displaced persons, women, widows and others prone to enticement, as well as children separated from their families and orphans dependent on humanitarian aid in order to survive, often fall victim to sexual or economic exploitation in the wake of armed conflicts. The State's role in tackling this phenomenon is illustrated by article 37, paragraph 3, of the Iraqi Constitution which stipulates that: "Forced labour, slavery, the slave trade, trafficking in women and children and the sex trade shall be prohibited." Article 29, paragraph 3, further stipulates that: "All forms of economic exploitation of children shall be prohibited and the requisite measures shall be taken to protect children therefrom." The original legislative principle in addressing crimes of this type was to highlight the fact that prostitution and pandering constituted criminal offences and carried the same penalty. In general, little reference was made to crimes of trafficking in persons. The Repression of Prostitution Act No. 8 of 1988 was followed by the Reform of Female Detainees Statute No. 4 of 1991 which, pursuant to the Act, defined the rights of female detainees convicted of prostitution. The Statute regulated the management of correctional facilities for such women, permitted the detainees to work in return for wages specified in its articles and made provision for their enjoyment of health and other basic services while in detention and for ongoing rehabilitation on completion of their sentences.

55. Iraq ratified the Convention for the Suppression of the Traffic in Persons on 28 May 1955 and its decision to ratify that Convention signified its acceptance of all the international instruments concerning suppression of the traffic in women and children. The State has also promulgated Act No. 28 of 2012 which designates trafficking in persons as a punishable offence and covers all aspects thereof, listing the various forms of trafficking, defining the concept of perpetrators of acts of trafficking and specifying the penalties therefor and the manner in which its victims should be treated, etc. Article 1 of the Act defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons with a view to selling or exploiting them in terrorist operations, armed conflicts, acts of prostitution or sexual exploitation, forced labour or services, slavery, begging, trafficking in their human organs or for purposes of medical experimentation.

### Article 3

56. The Iraqi Constitution of 2005 contains provisions that confirm the State's adoption of the principles of equality and participation. The preamble to the Constitution stipulates that: "We, the people of Iraq, both men and women, have resolved with determination to respect the rule of law and ensure justice and equality for all Iraqis." Provision is made for all economic, political, social and cultural rights in various articles of the Constitution of 2005 (such as art. 14, art. 22, para. 1, arts. 31, 32, 33 and 34 and art. 49, para. 4).

57. Iraqi legislation enshrines the principle of the promotion of gender equality. The Electoral Act No. 16 of 2005 stipulated that the proportion of female candidates on electoral lists must amount to not less than 25 per cent and, on 5 December 2009, the Council of Representatives adopted an amendment to article 3, paragraph 3, of this Act under which a quota system was introduced.

58. The Provincial, District and Sub-District Councils Electoral Act No. 36 promulgated in September 2008 was put into practice during the elections held on 31 January 2009 when women's electoral rights, as stipulated in article 13, paragraph 2, of the Act were respected.

59. The Ministry of Labour and Social Affairs is in the process of drafting a bill of law superseding the Social Welfare Act No. 126 of 1980 in order to regulate the activities of the social protection network set up in accordance with a directive issued in 2006.

60. The Personal Status Act No. 188 of 1959, as amended by decrees of the (dissolved) Revolutionary Command Council, defines marriage as "a contract between a man and a woman, who thereby becomes lawful to him for purposes of the formation of a family and procreation". This signifies that the two (male and female) parties to the contract enjoy the same right to freely choose their spouse and the contract cannot be concluded without their free and full consent. Article 5 of the Personal Status Act stipulates that: "The prospective bride and bridegroom must be in full possession of their mental faculties and both must have attained the age of 18 years, although the judge may permit the marriage of a person below that age provided that the said person has attained the age of 15 years and that the marriage is in the said person's interests as determined in the light of directives issued by the Chief Justice to that end." Under the Act, both the man and the woman have an equal right to refuse the marriage or to add conditions to the contract before its conclusion. The woman also has the right to include in the marriage contract a stipulation to the effect that the man shall allow her to divorce if she so wishes; if the man fails to comply with this stipulation, the contract can be annulled at her request and, in such an eventuality, she is entitled to claim from him any deferred balance of her dower (art. 19 of the Act). She likewise has the right to petition for separation on grounds of discord, dispute, prolonged absence or non-payment of maintenance or if she agrees to pay compensation to the man in return for a voluntary separation by mutual accord. The promulgation of Act No. 15 of 13 November 2008 in the Kurdistan Region brought the legal provisions of the Personal Status Act No. 188 of 1959 into closer conformity with international humanitarian trends by repealing or amending a number of its articles. However, this gave rise to judicial diversity and inequality between the Region and the central Government in regard to application of the law due to the legal ambiguity arising from amendment of a national law without consensus or agreement with the Federal Government.

61. Labour Law No. 71 of 1987, as amended, devotes an entire chapter to protection of the rights of female workers and it should be borne in mind that a draft amendment to that Law is currently being considered by the Council of Representatives. The Welfare of Minors Act No. 78 of 1980, as amended, also makes provision for the promotion of equality and partnership between men and women.

62. Unfortunately, the legislative guarantees enshrined in the Constitution and the laws in force have proved insufficient to enable women to effectively enjoy equality since their rights are conditional on numerous factors that sometimes hamper the ability of laws to improve the status of women in society. This is attributable to the flawed implementation of laws for reasons closely linked to the nature of the transition through which Iraq has been passing since 2003. The Iraqi Government has therefore adopted ambitious strategies to ensure enforcement of the law by taking positive and effective steps to rescind the provisions of enactments that permit discrimination against women. This is being done by providing the competent authorities with legal studies in which they are urged to rescind or amend those provisions. However, these endeavours have come up against the hurdle of customary practices which cannot be simply abolished by legislation since changes therein require considerable time, effort, planning and budgetary resources. It is noteworthy that, although proposals were made to rescind or amend articles 41, 377, 380, 398, 409 and 427 of the Penal Code promulgated under Act No. 111 of 1969, as amended, by 2008 no decisions or bills of law had been adopted to rescind or amend those articles of the Penal Code permitting discrimination against women.

63. Iraq's reservation in respect of article 9 of the Convention on the Elimination of All Forms of Discrimination against Women was withdrawn in accordance with Act No. 33 of 2011, adopted by the Council of Representatives at its meeting held on 8 October 2011, on the ground that the legal effect of the said reservation was negated by article 18, paragraph 2, of the Constitution currently in force and also by the Iraqi Nationality Act No. 26 of 2006 under which men and women enjoy equal rights in regard to the transmission of nationality to their children in accordance with article 3, paragraph (a), which stipulates that: "Any person born to an Iraqi father or an Iraqi mother shall be deemed to be an Iraqi national." Hence, even the children of an Iraqi mother married to a foreigner are entitled to Iraqi nationality on the basis of their mother's nationality.

64. On 16 June 2009, Iraq officially joined the Arab Women's Organization comprising 16 Arab member States which was founded to achieve three principal objectives, namely the empowerment of Arab women, the furtherance of their capabilities in all fields in their capacity as a linchpin for Arab social progress, and raising awareness of the crucial need for Arab women to play a role as equal partners in the development process. The Organization is also seeking to ensure that these awareness-raising endeavours extend to women themselves and to Arab societies as a whole through close coordination and cooperation among the Arab States with a view to achieving the objectives of empowerment and awareness-raising. On 25 May 2011, the Minister of State for Women's Affairs was nominated as Iraq's representative on the Organization's Executive Council.

65. Since 2003, the Federal Government has taken a number of measures to improve the situation of women in Iraq, including exceptional endeavours to put an end to acts of violence, such as terrorism. In the light of General Recommendation No. 19 made by the Committee on the Elimination of Violence against Women which designated gender-based violence as a form of discrimination against women, and in accordance with article 29, paragraph 4, of the Iraqi Constitution which prohibits all forms of violence and abuse in the family, school and society, the Iraqi Government has adopted numerous measures and policies at various levels to mitigate the impact of violence on women by ensuring that the law-enforcement agencies play a more effective role in this regard. The principal measures that the Government has taken to reduce the phenomenon of violence against women include:

**(a) The Family Protection Committee**

66. This Committee, established under the terms of Presidential Order No. 80 of 2008 promulgated by the secretariat of the Council of Ministers, is chaired by the Minister of



State for Women's Affairs and includes representatives from the Ministry of the Interior, the Ministry of Human Rights, the Ministry of Labour and Social Affairs and the Ministry of State for Civil Society Affairs. The Committee's mandate is to review the legislative system with a view to eliminating discrimination against women and ensuring that the provisions of the Personal Status Act guaranteeing women's rights are applied. The Committee is seeking to establish family reconciliation offices as well as women's sections in police stations where female police officers will be trained for this purpose and it has made recommendations to protect women against domestic violence and guarantee their enjoyment of their human rights. One of the Committee's main recommendations was the establishment of a Family Protection Directorate at the Ministry of the Interior to protect families from violence and provide the maximum protection for individual victims of violence. This Directorate began its work in the governorate of Baghdad where it opened a centre in the Karkh district on 28 February 2010 and another in the Rusafa district on 20 July 2010 as a pilot project which, if successful, will be extended to 14 other Iraqi governorates, with the exception of those in the Kurdistan Region, in which similar centres constituting safe places of refuge for female victims of violence will be established. A multisectoral committee chaired by the Minister of State for Women's Affairs and including legal experts from various ministries concerned with women's rights was formed in 2010 to draft a bill of law on the prevention of domestic violence and, in the Kurdistan Region, a bill of law on domestic violence has also been drafted and submitted to the regional parliament for consideration and adoption.

**(b) The Women's Welfare Department attached to the Council of Ministers**

67. This Department, which was established on 22 July 2008 and became operational on 10 January 2009, is responsible for the welfare of widows, divorcees, unmarried women and women who have lost their spouses. It runs a social protection network that pays benefits to women who are without providers, disabled or unemployed and also caters for their educational and vocational training needs with a view to building their capacities and furthering their empowerment. The Department also endeavours to find employment opportunities consistent with the academic and vocational capacities of women and to ensure that they are assigned a quota of posts in government departments as well as a quota of housing units and microcredit.

**(c) The National Poverty Reduction Strategy**

68. Iraq launched the country's first national poverty reduction strategy for the period 2010–2014 through an agreement between the Ministry of Planning and the Central Bank of Iraq. The six primary objectives of this strategy were to: ensure a higher income for the poor; enhance their standard of health; expand and improve education; provide better housing conditions; reduce disparities between men and women; and ensure effective social protection for the poor.

69. The following data on the status of women in Iraq, as compared with previous years, are worthy of note:

- The proportion of parliamentary seats held by women rose from 7 per cent in 1997 to 27 per cent in 2006;
- In 2008, the number of Iraqi women studying abroad amounted to 751;
- The following statistics provide an indicator of the progress achieved in regard to women's participation in public life.

(a) Membership of the Council of Representatives, by gender, in the period 2004–2009:

<i>Year</i>	<i>Men</i>	<i>Women</i>	<i>Total</i>
2004	75	25	<b>100</b>
2005	187	88	<b>275</b>
2006	200	75	<b>275</b>
2007	242	83	<b>325</b>

(b) There are five female ministers (Minister of Human Rights, Minister of State for Women's Affairs, Minister of Housing, Minister of State for Provincial Affairs and Minister of the Environment).

(c) Number of women in decision-making posts in government institutions in 2005:

<i>Directors General</i>	<i>Experts &amp; Assistant Directors General</i>	<i>Advisers</i>	<i>Under-Secretaries</i>	<i>Total</i>
86	215	33	8	<b>342</b>

(d) Number of women in the judicial authority:

The total number of male and female judges and members of the Department of Public Prosecutions in Iraq amounts to 1,327. Seventy-six of these are female judges (twelve in grade I, one in grade II, thirty-two in grade III and thirty-one in grade IV).

#### **Article 4**

70. Following the liberation of Iraq in 2003 after the country had suffered from autocratic and despotic rule for decades, the Iraqi legislature hastened to exclude any possibility of a return to dictatorial rule by assigning decision-making responsibility for the future of the country and its people to a group of representatives, chosen by the people, who would vest decisions and policies with legitimacy and exercise control over legislation. Article 61, paragraph 9, of the Iraqi Constitution that entered into force in 2005 stipulates as follows:

(a) Proclamation of a state of war or emergency, on the basis of a joint request from the President of the Republic and the Prime Minister, shall require approval by a two-thirds majority in the Council of Representatives;

(b) A state of emergency may be proclaimed for a period of 30 days which may be extended subject to approval of each extension;

(c) The Prime Minister shall be vested with the powers needed to enable him to manage the country's affairs during the proclaimed state of war or emergency. The said powers shall be regulated by law in a manner consistent with the Constitution;

(d) The Prime Minister shall inform the Council of Representatives of the measures taken during the proclaimed state of war or emergency, as well as the results of the said measures, within 15 days from the date of termination of the state of war or emergency.

71. Due to the acts of violence and terrorism to which Iraq was subjected after 2003 by external actors sponsored by some neighbouring States, and in view of the urgent need arising from the unstable security situation, the Defence of National Security Order No. 1

of 2004 (known as the Emergency Act) was promulgated by the Coalition Provisional Authority. This Act contained the following provisions:

(a) The Prime Minister, acting with the unanimous approval of the Presidency Council, may proclaim a state of emergency in any part of Iraq if the Iraqi people are faced with a grave and imminent danger that threatens the lives of individuals as a result of an ongoing campaign of violence by any number of persons seeking to prevent the formation of a broadly representative government in Iraq, to obstruct peaceful political participation by all Iraqis, or to achieve any other purpose.

(b) The state of emergency shall be proclaimed in an order explaining the situation that necessitated its proclamation, defining the area to which the state of emergency applies and specifying its time of entry into force and its duration, which shall not go beyond 60 days or the cessation of the danger or situation that necessitated its proclamation, whichever is shorter. The state of emergency may be extended, if necessary, for consecutive periods of 30 days on the basis of written justification from the Prime Minister and the Presidency Council and shall terminate automatically, unless extended in writing, on the expiration of any period of extension.

(c) In conformity with General Comment No. 29, within the area in which a state of emergency is proclaimed, the Prime Minister is vested with temporary exceptional powers under which he is permitted to restrict any of the rights recognized in the Covenant for the period of time specified in the preceding paragraph. In large-scale operations carried out in extensive areas to counter threats posed by large armed groups, assistance may be sought from the multinational force in accordance with Security Council resolution 1546 (2004) and the Iraqi military forces may be assigned clearly defined tasks consistent with their status and capabilities subject to unanimous approval by the Presidency Council. In the Kurdistan Region, such exceptional measures may be taken only in coordination with its Government.

## **Article 5**

72. The Republic of Iraq regards the rights recognized in the Covenant as a set of rights that must be enjoyed without any restriction thereon or derogation therefrom for any reason whatsoever except in accordance with the provisions of the Covenant and the public interest.

## **Article 6**

73. Democracy, human rights and the principle of sovereignty of the law have become a systematic practice in the Republic of Iraq, which is witnessing constant development in the legislative and legal safeguards regulating the imposition of the death penalty by the judiciary. All trial proceedings are conducted in accordance with the provisions of the Constitution, article 15 of which stipulates that: "Every individual has the right to life, security and liberty and these rights shall not be withdrawn or restricted except as provided by law and on the basis of a ruling handed down by a competent judicial body."

74. The judiciary applies the principle stipulated in article 19, paragraph 5, of the Constitution ("The accused shall be presumed innocent until proved guilty at a fair legal trial. The accused shall not be tried again on the same charge after being acquitted thereof unless new evidence is produced"). A penalty may be imposed only on the basis of cogent and irrefutable evidence.

75. Juvenile law (the Juvenile Welfare Act No. 76 of 1983, as amended) does not permit imposition of the death penalty on a juvenile, regardless of the category of offence that he has committed. Article 77, paragraph 2, of the said Act stipulates that: "If an adolescent commits a felony punishable by the death penalty, the juvenile court shall sentence him to placement in a rehabilitation school for adolescents, instead of the legally prescribed penalty, for a period of not less than five and not more than fifteen years."

76. Under Iraqi law, the death penalty is restricted to the most serious crimes, which is a fairly ambiguous term. The legal framework for imposition of the death penalty consists in:

- (a) The Iraqi Penal Code (Act No. 111 of 1969);
- (b) The Counter-Terrorism Act, which has the same legal force as the above-mentioned Penal Code;
- (c) The Commercial Code (Act No. 30 of 1984) promulgated under the dictatorial regime;
- (d) Decrees of the (dissolved) Revolutionary Command Council promulgated under the dictatorial regime.

77. In order to address the issue of the death penalty from the standpoints of legislation, legal safeguards (to prevent the imposition of this penalty in error or to reduce the likelihood of error), the social and religious motivations for the enforcement of this penalty and the current status of its application in Iraq, we need to divide its history into three phases:

#### **The first phase**

78. This phase covers the period from 1996 to 2003, the year in which the application of the penalty of capital punishment was suspended by Paul Bremer, Administrator of the Coalition Provisional Authority. It was a period characterized by the large number of crimes carrying the death penalty, such as evasion of military service (Revolutionary Command Council Decree No. 877 of 7 July 1982), possession and transportation of narcotic drugs, falsification of a military service record or a foreign passport (Decree No. 120 of 29 January 1986), etc. The dictatorial regime pursued a policy of purging political parties through imposition of the death penalty on various pretexts such as breach of State security or espionage without any evidence or fair investigation procedures. The following observations can be made on this period:

(a) It is noteworthy that there were no safeguards to prevent the penalty from being imposed in error since many of the death sentences, having been handed down by special (summary) courts, were not subject to appeal or cassation and the courts were prohibited by law from hearing objections filed against the enforcement of those sentences.

(b) Some decrees, such as Decree No. 100 promulgated by the (dissolved) Revolutionary Command Council, empowered government ministers and persons of equivalent standing to impose prison sentences and bail bonds in respect of alleged "sabotage of the country's economy" etc., without the courts having jurisdiction to hear objections filed against the application of those decrees. Some sentences were enforced, without due process of law, for alleged engagement in prostitution and many women were beheaded on this pretext.

(c) Prior to 2003, the dictatorial regime used mass extrajudicial executions in an extremely barbarous manner as a means to suppress popular uprisings, such as that which occurred in central and southern Iraq in 1991, and similar methods were employed against the Feyli Kurds, some of whom were executed while others were subjected to forced displacement and confiscation of their property. According to figures certified by the

special committees of the Martyrs' Foundation, the number of persons killed by the dictatorial regime amounted to 40,000, of whom 432 were children under 12 years of age and 2,511 were buried in mass graves (the annex to this report contains statistics on the mass graves that have so far been found and some of which have been opened, bearing in mind that many others have yet to be discovered).

### **The second phase**

79. This phase covers the period from 2003, when the political system was changed and Paul Bremer, Administrator of the Coalition Provisional Authority, issued Order No. 7 of 10 June 2003 suspending the application of the penalty of capital punishment, to 2005 when its application was resumed.

### **The third phase**

80. During this phase, extending from 2005 to the present day, application of the death penalty was resumed under the terms of Order No. 3 of 8 August 2004 promulgated by the Council of Ministers. However, this penalty is imposed only in respect of the most serious crimes such as felonious homicide and some crimes of a grievous terrorist nature. It is a lawful and constitutional, albeit harsh, penalty that is imposed in judgements handed down by the competent courts and it is noteworthy that every death sentence is subject to mandatory review by the Federal Court of Cassation and, if upheld by the latter, must be referred to the Presidency Council for ratification before being enforced by the Iraqi Department of Correction, which is attached to the Ministry of Justice. The Iraqi legal system provides numerous safeguards to guarantee effective control of the application of the death penalty and the government agencies and competent authorities have an obligation to ensure that these safeguards are properly applied to prevent the imposition of arbitrary death sentences that are not proportionate to the gravity of the crime committed. Some of these safeguards are enshrined in the current Iraqi Constitution (arts. 15 and 19) and others can be found in the legal provisions of the Penal Code promulgated under Act No. 111 of 1969 and, in particular, articles 1, 2, 22, 25, 39, 41, 42, 128 and 132 thereof.

### **Procedural safeguards pertaining to the death penalty**

81. These safeguards are provided for in the Code of Criminal Procedure and the Public Prosecutions Act No. 159 of 1979. The procedures can be summarized as follows:

(a) A suspect can be arrested only on the basis of a judicial order or warrant and must be referred to an examining judge and, subsequently, to a competent court, consisting of a bench of three criminal court judges, a public prosecutor and defence counsel, in which the accused has the right to defend himself;

(b) Every court judgement comprising a death sentence is subject to mandatory review by a plenary session of the Court of Cassation, consisting of up to 27 competent grade-I judges, which hears the appeal, examines the evidence and the relevant laws and subsequently upholds or quashes the judgement and refers it to the competent departments for enforcement, commutation, acquittal or ratification;

(c) The judgements are then referred to the Office of the Prime Minister for issuance of the enforcement orders, which require ratification by the President of the Republic.

82. With regard to safeguards concerning enforcement, death sentences are carried out within the correctional facility and in the presence of a criminal court judge, a representative of the Ministry of the Interior, the director of the Department of Correction, a physician from the Ministry of Health, the defence attorney, if he wishes to attend, and, in accordance with article 24 of the Public Prosecutions Act No. 159 of 1979, the Deputy

Public Prosecutor. The relatives of the condemned person have the right to visit him before the day of his execution and his body is delivered to them, failing which it is buried by the State. Reference should also be made to the fact that it is prohibited to carry out the death penalty on a pregnant woman until four months after she has given birth.

83. It is noteworthy that Act No. 19 of 2005 repealed the legal provisions prohibiting courts from hearing certain cases. It also abolished the special courts and repealed the decrees promulgated by the (dissolved) Revolutionary Command Council which prevented courts from hearing objections filed against the application of those decrees.

84. Most of the death sentences were handed down, in accordance with article 4 of the Counter-Terrorism Act No. 13 of 2005, against persons linked to the Al-Qaida terrorist organization and outlawed armed criminal groups associated with the defunct political regime.

#### **Number of prisoners subjected to the death penalty up to 27 December 2011**

<i>Year</i>	<i>Males</i>	<i>Females</i>	<i>Total</i>
2005	11	-	<b>11</b>
2006	52	2	<b>54</b>
2007	44	-	<b>44</b>
2008	-	-	-
2009	120	4	<b>124</b>
2010	18	-	<b>18</b>
2011	64	3	<b>67</b>
<b>Total</b>	<b>309</b>	<b>9</b>	<b>318</b>

*Source:* Annual status report on prisons, Ministry of Human Rights, 2011.

85. A number of legislative measures were taken, pursuant to Coalition Provisional Authority Order No. 7 of 2003, to put an end to the application of the death penalty. This penalty was reinstated solely for crimes against the internal security of the State, crimes constituting a public danger or involving the use of biological weapons, crimes prejudicial to the safety of transport and communications, crimes of murder with aggravating circumstances and crimes of drug trafficking with a view to minimizing the number of death sentences imposed in criminal judgements handed down by the Iraqi courts.

86. Under the present circumstances, abolition of the death penalty in our country would constitute a flaw in our criminal justice policy since we are facing not only the most ruthless and odious acts of organized and unorganized terrorism and organized crime designed to undermine democratic institutions, but also acts of violence motivated by racial, ethnic or religious affiliation in an unstable security situation. Consequently, at the present time, there is a need to retain this penalty which applies only to the above-mentioned crimes. However, the judiciary is making every endeavour to avoid imposing the death penalty for the commission of a crime punishable thereby unless it is convinced that the convicted perpetrator poses a serious danger to the public and there is no possibility of his reform and integration in society. Moreover, article 73, paragraph 1, of the Permanent Constitution of 2005 empowers the President of the Republic to commute the penalty by granting a special pardon except in specified cases in which such would be contrary to the public interest.

87. In the Republic of Iraq, the only reported cases of extrajudicial executions consist in the indiscriminate homicidal acts committed by criminal and terrorist groups against all sections of Iraqi society.

## Article 7

88. Torture and cruel or inhuman treatment are prohibited in article 37, paragraph 1 (c), of chapter II (Freedoms) of the Constitution of the Republic of Iraq which stipulates that: "All forms of psychological and physical torture and inhuman treatment shall be prohibited. No account shall be taken of any confession extracted under duress, threat or torture and the victim shall have the right to claim compensation, in accordance with the law, in respect of the physical and mental harm suffered." Iraq is a party to the Convention against Torture and, pursuant to letter No. Q/2/4/10/3679 dated 30 January 2012 from the legal department of the secretariat of the Council of Ministers, a ministerial committee, chaired by the Minister of Human Rights and including representatives of several ministries concerned, was formed under the terms of Ministerial Order No. 256 of 1 October 2012 to draft the country's first report on the said Convention.

89. The practice of all forms of torture by law-enforcement and investigating officers is prohibited under the provisions of the Iraqi Penal Code (Act No. 111 of 1969, as amended) and also under the Management of Detention and Prison Facilities Act No 3 of 2003 (memorandum from the Coalition Provisional Authority, which has since been dissolved).

90. Complaints concerning acts of torture can be channelled through the following supervisory bodies:

- Ministry of Human Rights (inspection teams/Office for Citizens' Complaints);
- Ministry of Justice (Directorate of Human Rights attached to the Department of the Inspector General);
- Ministry of the Interior (Directorate of Human Rights attached to the Department of the Inspector General);
- Ministry of Defence (Directorate of Human Rights attached to the Department of the Inspector General);
- Ministry of Labour and Social Affairs (Directorate of Human Rights attached to the Department of the Inspector General);
- Commission on Integrity;
- Department of Public Prosecutions, through the permanent offices that it has established in the detention facilities;
- Civil society organizations.

91. The international community is well aware of the repressive policies pursued by the dictatorial regime in its treatment of prisoners and detainees, who were subjected to the widespread practice of various forms of torture in all detention facilities. Although there are no precise statistics due to the fact that many of the State facilities were burned during the regime's fall in 2003, the few videotapes and documents that have been discovered clearly illustrate the investigation techniques that were employed by law-enforcement officers.

92. After the fall of the dictatorial regime and the promulgation of Order No. 60 establishing the Ministry of Human Rights and Acts Nos. 55 and 57 establishing the Commission on Integrity and offices of inspectors general, these bodies assumed their supervisory functions as part of the national mechanism to combat crimes of torture and

began to implement a plan to put an end to the commission of such crimes. The investigation teams working for the Ministry of Human Rights visited detention facilities run by the Ministry of Justice, the Ministry of Defence, the Ministry of the Interior and the Ministry of Labour and Social Affairs in which they monitored and recorded alleged acts of torture of prisoners, in addition to the complaints that they received from the families of detainees. The Ministry of Human Rights was thereby able to compile a comprehensive database to document these cases and follow up on the outcome of judicial investigations in order to ensure that the perpetrators of crimes of torture were duly convicted.

93. These are individual and not systematic cases of torture and some of them occurred in the aftermath of the fall of the regime in 2003 when law-enforcement officers were not fully aware of the prohibition of torture and were still largely influenced by the methods of treatment that prevailed under the former regime, especially in detention facilities run by the Ministries of Defence and the Interior. Most of the cases occurred at the brigade and battalion levels, i.e. during arrest operations, and the only reported case of torture of detainees involved a number of investigating officers and officials responsible for the administration of the C4 detention facility against whom firm measures were taken. The Ministry of the Interior has referred 57 of its personnel to the courts on charges relating to torture and ill-treatment, as shown in the following table.

**Complaints of alleged torture and ill-treatment documented and referred to the judicial authorities**

<i>Number of complaints</i>	<i>Year</i>
109	2006
122	2007
307	2008
574	2009
297	2010

94. Under the terms of Act No. 30 of 2008, the Republic of Iraq announced its accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without making any reservation to the competence of the Committee against Torture as provided for in article 20 of the Convention, with a view to ensuring Iraq's participation in the international community's endeavours to prevent torture and practices similar thereto.

95. The Special Rapporteur on Torture was invited to visit Iraq and, under the terms of Presidential Order No. 32 of 2007, a high-level committee was established to make the requisite arrangements and preparations to receive the Special Rapporteur during his visit so that he could acquaint himself with conditions in the country's prison and detention facilities. The Special Rapporteur contacted Iraq's Mission in Geneva and welcomed the receipt of the invitation from the Government of Iraq.

96. Section I of the Management of Detention and Prison Facilities Act stipulated that such facilities would be managed exclusively by the Ministry of Justice and the Iraqi Government has therefore made every endeavour to comply with this stipulation notwithstanding the limited absorption capacity of the Ministry's facilities. However, the comprehensive plan that the Ministry is implementing to upgrade the existing infrastructure and construct new detention facilities throughout the country has had an evident and tangible effect in improving the situation of prisoners.

97. The following table shows the number of activities (field visits and training courses) undertaken by the Ministry of Human Rights during the period 2006–2010.



<i>Type of activity</i>	<i>Years</i>				
	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
1. Visits to detention facilities run by the Ministry of the Interior	83	74	53	34	
2. Visits to prison facilities run by the Ministry of Justice	41	74	82	61	
3. Visits to detention facilities run by the Ministry of Defence	23	25	12	21	
4. Visits to juvenile observation centres	15	9	22	17	
5. Visits by fact-finding committees	5	6	26	82	
6. Visits to provincial prisons	118	211	392	335	222
7. Visits to prisons in the Kurdistan Region					18
<b>Total</b>	<b>285</b>	<b>398</b>	<b>587</b>	<b>550</b>	<b>240</b>

98. During the period 2006–2010, there were 83 reported cases of enforced or involuntary disappearance classified as follows:

1. One case officially classified as abduction.
2. One case officially classified as murder.
3. One case file closed for lack of evidence.
4. Nine cases classified as prison escapes.

5. The other cases are under joint investigation by the competent ministries, the Judicial Council, the Commission on Integrity and the Ministry of Human Rights. It is noteworthy that 98 per cent of the cases were reported during the period 2004–2008, with only one case being recorded in 2009. Iraq is a party to the International Convention for the Protection of All Persons from Enforced Disappearance and, pursuant to letter No. Sh. L/S/4/2/20200 dated 13 June 2012 from the department of committee affairs of the secretariat of the Council of Ministers, a ministerial committee, chaired by the Minister of Human Rights and including representatives of several ministries concerned, was formed under the terms of Ministerial Order No. 305 of 4 November 2012 to draft the country's first report on the said Convention.

99. With regard to training and rehabilitation activities, the Ministry of Human Rights, with direct assistance and coordination from the German Government, is implementing a programme to train specialists in human rights and law enforcement. During the last four years, the Humanitarian Department's trainers have given the following courses:

- 4 training courses for officials of the Ministry of Human Rights responsible for control and monitoring activities (officials from Baghdad and the provinces);
- 2 training courses for human rights offices run by the Department of the Inspector General in the Ministry of the Interior;
- 3 training courses for members of the Justice Network for Prisoners, which is an alliance of civil society organizations (NGOs) concerned with prison and detention facilities;
- 7 training courses, organized in collaboration with the United Nations and a number of civil society organizations, within the framework of the project to protect the rights of detainees and victims of torture;

- 3 training courses, organized in collaboration with Ministry of Justice, for intermediate-level staff of branches of the Iraqi Department of Correction in the southern provinces within the framework of the strategic rehabilitation training activities which are still being implemented;
- 23 training workshops, organized in collaboration with the ministries responsible for the management of detention and prison facilities, to familiarize their personnel with the role of the Special Rapporteur on Torture.

### **Overall evaluation and transparency procedures**

100. The activities in connection with overall evaluation and transparency procedures are illustrated by the following:

- Since its establishment, the control system has compiled five annual reports, three of which (for the years 2007, 2008 and 2009) have been published;
- The system contributed to the preparation of the section on the status of detention and prison facilities in the national UPR report of the Republic of Iraq in 2010;
- The system provides agencies of the judicial and executive authorities, as well as the United Nations Assistance Mission for Iraq (UNAMI), with periodic and monthly statistical data on the numbers and locations of inmates of detention and prison facilities;
- Its administration has participated in meetings of the Working Group on Enforced or Involuntary Disappearances in Geneva, with which it periodically exchanges information;
- The system has undertaken a number of specialized studies on various aspects of the criminal justice environment in which it has recorded its overall field observations, made recommendations and proposed solutions to problems. These studies include, in particular:
  1. The role of the judiciary in the promotion and protection of human rights, 2006;
  2. Torture in Iraq, 2006;
  3. Enforced or involuntary disappearance, 2007;
  4. A legal and field study of the death penalty, 2008;
  5. The problematic nature of criminal registration in Iraq, 2009.

101. On the basis of the above-mentioned studies, many anomalies have been corrected and Iraq's accession to the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance has been ratified.

### **Committee activities**

102. The administration participates in the activities of bilateral and multilateral committees such as the following:

- The Joint Committee, established by Presidential Order No. 83 of 2006;
- The Committee on the Sovereignty of the Law, established by Presidential Order No. 165/S of 2007;
- The Committee on Detainees' Affairs, established by Presidential Order No. 3/S of 2008;

- The Committee on the Assessment of the Legal Situation, established by Presidential Order No. 93/S of 2008;
- The Committee on the Detachment and Attachment of detention facilities, established by Presidential Order No. 62 of 2009;
- The Committee on the Reception of the Special Rapporteur on Torture, established by Presidential Order No. 32 of 2009;
- The Committee on the Review and Standardization of Prison Laws, established by Presidential Order No. 51 of 2009;
- The Committee on the Standardization of Databases (criminal justice database project), established in 2009;
- Numerous other ad hoc committees on topics relating to criminal justice.

103. The crimes against humanity committed by the dictatorial regime included the importation and use of drugs carrying the human immunodeficiency (AIDS/HIV) virus. These were used for purposes of medical experimentation on a number of patients in Diwaniyah who were injected with contaminated blood imported from the French Institut Mérieux prior to 2003, as a result of which 258 Iraqis contracted AIDS and most of them died. The current Iraqi Government is compensating the victims who suffered detriment as a consequence of this malpractice on the part of the above-mentioned institute. The legislature promulgated Act No. 36 of 2011, article 4 of which stipulated that the monthly benefit of US\$ 200, or its equivalent in Iraqi dinars if previously unpaid, for which provision was made in Order No. 33 of 2005 would continue to be paid to each victim or to the victim's heirs in proportion to their legal share under the law of inheritance.

## Article 8

104. Forced labour is forbidden under the Permanent Iraqi Constitution, article 37, paragraph 3, of which stipulates that: "Forced labour, slavery, the slave trade, trafficking in women or children, and the sex trade shall be prohibited."

105. The (dissolved) Revolutionary Command Council promulgated Decree No. 234 of 20 October 2001 which stipulated that: "Anyone who commits the crime of sodomy against a male or a female, engages in an incestuous act with a person within the prohibited degrees of consanguinity, or is found to be practising prostitution, pandering or managing premises in which prostitution is practised, shall be liable to the death penalty." In 2001, dozens of women were beheaded by swords wielded by groups of Saddam's Fedayeen (paramilitary militia run by the ruling authority at that time) on the ground that they were engaged in prostitution, pandering or the white slave trade. They were not brought to trial since the regime in power at that time regarded such executions as an extrajudicial means to combat prostitution.

106. Iraq confirms its commitment to the relevant international covenants, treaties and instruments. Under the terms of Act No. 23 of 2007, which was published in the Official Gazette on 19 January 2009, Iraq announced its ratification, without reservation, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

107. On 8 October 2007, Iraq acceded to the United Nations Convention against Transnational Organized Crime and the two Protocols thereto (one of which was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000, with the provisions of which Iraq has complied). With regard to national legislation and laws prohibiting trafficking in persons, Iraq has incorporated the purport of

the relevant international instruments in its national legislation which prescribes severe penalties for the perpetrators of crimes involving the transportation, abduction or sale of, or trafficking in, women and children. The measures taken by Iraq's official institutions to prevent and punish such crimes are in accordance with the following enactments:

(a) The Penal Code (promulgated under Act No. 111 of 1969, as amended). Part two, chapter IX, section 3, of the Code contains articles 400–404 (on indecent and shameful acts) which prescribe penalties for anyone who commits an indecent act with another person with or without the latter's consent. Child abduction is covered in part three, chapter II, section 1, of the Code, article 422 of which prescribes a penalty of up to 15 years' imprisonment for anyone who abducts a child.

(b) The Repression of Prostitution Act No 8 of 1988, article 3 of which prescribes a penalty of up to seven years' imprisonment for:

- (i) Pandering or aiding and abetting therein;
- (ii) Exploiting or managing a public place or any other premises open to the public in which persons engaged in prostitution are employed for the purpose of attracting customers;
- (iii) Owning or leasing a house, rooms or a hotel in which third parties are permitted to engage in prostitution or aided and abetted therein;

(c) The Trafficking in Persons Act No. 28 of 2012.

108. In its circular letter No. 3299 dated 10 June 2009, the Directorate-General of Nationality in the Ministry of the Interior emphasized the need to closely examine the passports of travellers and, in particular, those accompanied by minor children with a view to ascertaining the latter's true legal status and links of kinship with the traveller by verifying all the details concerning under-age children and those accompanying their guardians in order to prevent the exploitation of children by ill-intentioned persons. The Ministry of the Interior has also established a community police force to facilitate the enjoyment by citizens of all types of services, to assist in community activities and to help to settle family disputes. Family protection units were opened in Baghdad in 2009 and 14 others were opened in the provinces, with the exception of the Kurdistan Region, in 2010. The task of these units staffed by female police officers and investigators is to settle family disputes amicably without the need for judicial proceedings and to provide legal assistance and counselling for victims of domestic violence. Two hotlines have also been set up to help children.

#### **Legal measures to protect foreign domestic workers**

109. Iraq does not have any shelters for foreign domestic workers claiming to have been subjected to acts of violence. The requisite measures are simply taken to repatriate those who entered the country illegally. However, some civil society organizations are working in coordination with State institutions to help such victims of violence who seek refuge with them.

110. The Ministry of Labour is diligent in its handling of complaints received from foreign workers against companies which recruited and employed them. The Ministry of Human Rights also monitors complaints by workers of various nationalities and has documented the following five cases.

<i>Nationality</i>	<i>Number</i>	<i>Province</i>	<i>Employer</i>	<i>Description of problem</i>
1. Thailand	52 workers	Baghdad	Middle East Canning Company	Company's non-compliance with Ministry of Labour regulations concerning leave entitlement.
2. Bangladesh	Unspecified	Maysan	Ministry projects for the revival of the Marshes	The manager of the Lebanese contracting company absconded without paying his workers' entitlements.
3. Sri Lanka	Unspecified	Maysan	Talaat Hussam Company	Delay in payment of guards' entitlements, for which the Company was sued.
4. Ukraine	Unspecified	Baghdad	Turkish Salar Company	Violations of the human rights of workers on the building renovation project in preparation for the Arab Summit Conference.
5. Uganda	1	Diwaniyah	Domestic worker	Sexual harassment

111. The Ministry of Labour and Social Affairs has established a new system for the issue of work permits to foreign female domestic workers. No householder is now permitted to engage any female foreign domestic worker without first obtaining a work permit for her from the Department of Labour and Vocational Training/Arab and Foreigners Employment Section in accordance with the conditions and procedures laid down in Directive No. 18 of 1987, concerning the employment of foreigners in Iraq, which was issued by the Ministry of Labour and Social Affairs pursuant to article 23 of the Labour Law (Act No. 71 of 1987). Article 3 of the Directive stipulates as follows:

**A. In the case of a foreign worker already in Iraq**

1. She must first of all present proof of the legality of her entry into, and residence in, Iraq.

2. A written application must be submitted to the Department of Labour and Vocational Training/Arab and Foreigners Employment Section in Baghdad or to one of its branches in the provinces either directly or through the householder wishing to employ her. Full information concerning the worker (family name, passport number and date of issue and her address abroad), together with details of the householder (name, occupation, home address, telephone number and the urgent reasons necessitating the worker's employment), must be entered on the application form to be completed for this purpose.

3. The Department of Labour and Vocational Training/Arab and Foreigners Employment Section must contact the Directorate of Residence and provide it with two copies of the application form containing the above details in order to obtain its approval in accordance with the Residence of Aliens Act No. 118 of 1978.

4. After approval of residence is obtained, the householder is requested to present himself, accompanied by the foreign worker, at the Department of Labour and Vocational Training to complete the procedures for the issuance of a work permit valid for a renewable period of one year (art. 5 of the Directive). If the householder wishes to renew the permit for a further year, he must submit an application to the Department of Labour

and Vocational Training not less than one month before the date of its expiration (art. 5 of the Directive) and, in such a case, the above procedures for issuance of the original permit once again apply.

5. The householder must notify the Department of Labour and Vocational Training or one of its branches in the provinces if the foreign worker leaves his employment for any reason and, on its expiration, her permit must be returned to the Department or one of its branches (art. 8 of the Directive).

**B. In the case of recruitment of a foreign worker from abroad**

1. The foreign worker must submit a written application to the Department of Labour and Vocational Training/Arab and Foreigners Employment Section or any of its branches in the provinces either through an Iraqi diplomatic mission abroad or through her official representative in Iraq or the householder wishing to employ her and acting on her behalf.

2. The application must contain all the information concerning the foreign worker and the householder, as specified in section A above.

3. The procedures for the issuance of a work permit to the foreign worker are the same as those specified in section A above, the sole difference being that, after receiving notification of approval, the householder must coordinate the procedures for her travel to Iraq with the Directorate of Residence and, within one week from the date of her entry into Iraq, must contact the Department of Labour and Vocational Training or one of its branches in the provinces in order to register her and complete the procedures for the issuance of a work permit (art. 6, para. (c), of the Directive).

## **Article 9**

112. Articles 15, 17 and 39 of the Iraqi Constitution currently in force refer to the need to respect the human right to life, security and liberty, which may be restricted only in accordance with the provisions of the law and decisions issued by a competent judicial authority; individuals must be treated fairly in all administrative and judicial proceedings; an accused person is presumed innocent until proved guilty; trials must be fair and the accused must be brought promptly before a judge; and human dignity must be safeguarded. The same principles are laid down in numerous provisions of the current Penal Code and Code of Criminal Procedure, which also stipulate that no one may be detained except in accordance with orders issued in due and proper form by a competent judge. These legal provisions are consistent with the international norms and principles set forth in the International Bill of Human Rights.

113. It should be noted that numerous presidential orders have been issued in conformity with the above-mentioned principles. By way of example, paragraph 3 of Presidential Order No. 207/S stipulates that: "The Ministry of the Interior shall establish a special force headed by a competent officer to implement judicial orders and decisions." Paragraph 4 stipulates that: "The Ministry of the Interior shall designate a number of investigating officers, proportionate to the number of arrested persons held in custody, to conduct the investigation procedures under the supervision of the judiciary and in accordance with the law and to present the completed investigation files to the competent courts so that persons against whom, in the opinion of the investigating judge, sufficient evidence has been found can be referred to the competent criminal courts and persons against whom such evidence has not been found can be released immediately by court order. This process shall be monitored by the Department of Public Prosecutions, administrative inspectors and officials of the Ministry of Human Rights." Under the terms of paragraph 7: "The bodies responsible

for the management of detention facilities shall implement judicial orders for the release of arrested persons or detainees, with or without bail, immediately on receipt of such orders unless the persons concerned are wanted in connection with another case, which must be verified within 24 hours through the Criminal Registration Office of the Ministry of the Interior and other sources. Such persons shall not be held for longer than the said period without a new detention order issued by a judge.” Paragraph 10 of the Presidential Order further stipulates that: “No one shall be arrested without a prior judicial warrant except in cases of *flagrante delicto* or confrontations with the security forces and on condition that the arrested person be brought before a competent judge within 24 hours.” Under the terms of paragraph 12: “Anyone who infringes the principles of human rights shall be held accountable. The Ministry of Human Rights shall monitor the situation of arrested and detained persons and shall submit reports thereon to the competent bodies.”

114. Other presidential orders issued in this connection include Orders Nos. 35/S, 173, 92/S and 105.

115. All these presidential orders are in conformity with the international norms for the protection of human rights under which prompt appearance before a competent judicial authority constitutes a basic guarantee of a fair trial in accordance with the following three principles:

(a) Every person charged with a criminal offence has the right to be brought promptly before a judicial authority competent to decide on the lawfulness of his detention and determine whether there is a need for his remand in custody pending trial;

(b) Every accused person is entitled to meet with his attorney and defence counsel with a view to securing his release from custody, with or without bail, pending trial;

(c) Effective judicial control and supervision must be ensured to prevent the detention of persons in premises not designated for that purpose.

116. The legislative basis for the above-mentioned principles is provided by article 19 of the current Constitution of the Republic of Iraq (“The accused shall be presumed innocent until proved guilty at a fair legal trial”). It is noteworthy that the Ministry of Human Rights maintains a comprehensive database which is updated every 24 hours from lists compiled by inspection teams during their regular visits to detention facilities. This database is easily accessible to the families of detainees and prisoners who can obtain full information, including details of transfers, therefrom. The provisions of the current Iraqi Constitution also enable everyone to seek legal remedy.

117. Article 109 of the Code of Criminal Procedure (promulgated under Act No. 23 of 1971) stipulates as follows:

A. If the person arrested is accused of an offence punishable by a period of detention not exceeding three years or by a longer prison term or life imprisonment, the judge may order his remand in custody for renewable periods of not more than fifteen days or his release subject to a pledge, with or without bail, from a guarantor that he shall present himself whenever so required if the judge has reason to believe that release of the accused would neither lead to his abscondment nor prejudice the course of the investigation.

B. If the person arrested is accused of an offence punishable by the death penalty, his periods of remand in custody as specified in paragraph A above may be extended for as long as necessary for the investigation to proceed until the examining judge or criminal court issues a decision on the case on completion of the preliminary or judicial investigation or the trial.

C. The total period of remand in custody should not exceed one quarter of the maximum permissible sentence for the offence with which the arrested person is charged and should under no circumstances exceed six months. If it proves necessary to extend the period of detention beyond the maximum of six months, the judge must bring the matter before the criminal court to seek permission for an appropriate extension, which must not exceed one quarter of the maximum permissible sentence, or he should order his release, with or without bail, under the terms of paragraph B above.

This signifies that the specified period of time needed for the adjudication of cases is consistent with the principle of prompt appearance before a judge and that the principle of “no crime or punishment except as provided by law” sets out a clear road map for law-enforcement and investigating authorities.

118. It should be noted that the General Amnesty Act No. 19 of 2008 constituted a positive step towards the consolidation of national unity and provided an opportunity for many Iraqis who had committed crimes against others or who were under suspicion or being called to account without yet being charged. Notwithstanding the far-reaching implications of the said Act under the circumstances through which the country was passing, it was nevertheless implemented. According to the statistics compiled by the Ministry of Human Rights in collaboration with the directorates of human rights in the Ministries of Defence and the Interior and the departments of correction in the Ministries of Justice and Labour, during the period from 27 February 2008 to 14 February 2009, the total number of accused persons released under the terms of the Act amounted to 153,291 and 38,269 other accused persons were not covered thereby. The legal and procedural observations that the Administration presented concerning the text of the draft Act led to the rectification of numerous procedural loopholes therein. The implementation of the Act was monitored by the ministries and periodic reports and observations thereon were submitted to the Office of the Prime Minister and the judiciary. Statistics on the number of persons covered/uncovered by the Act were also submitted and published in the annual report for 2009.

119. Many of the decrees, orders and directives under which some executive officials, such as the mayor of Baghdad, ministers, the Prime Minister, provincial governors and heads of administrative units, were empowered to arrest and detain persons without resorting to the judiciary were repealed in accordance with article 19, paragraph 12 (a), of the Constitution (“Administrative detention shall be prohibited”).

120. Although the control mechanisms in the Ministry of Human Rights and other institutions have recorded some infringements, these are isolated cases attributable to personal misconduct or ignorance of the laws, regulations and directives. The prescribed legal measures are being taken against all those found to be at fault in this regard and an awareness-raising policy has been adopted under which rules concerning conduct and the rights of detainees are posted in all detention facilities and read out to their inmates.

## **Article 10**

121. The Permanent Constitution of 2005 enshrines a number of rights and safeguards, particularly for accused and convicted persons, which illustrate the general rules governing criminal justice in Iraq. The basic constitutional principles of justice, equality and respect for human dignity and human rights can be summarized as follows:

- The principle that there is no crime or punishment except as provided by law; a penalty may be imposed only for an act which, at the time of its commission, was legally designated as a criminal offence; and the penalty imposed must not be



heavier than the penalty that was applicable at the time of commission of the offence;

- The principle of the personal nature of punishment;
- The principle of the independent and sovereign nature of the judiciary, which is subject to no authority other than the law; the right to seek legal remedy shall be safeguarded and guaranteed to all; court hearings shall be public unless the court decides to hold them in camera; no one shall be arrested or questioned except in accordance with a judicial warrant; the investigation file shall be submitted first of all to the competent judge within 24 hours from the time of the suspect's arrest; and everyone has the right to be treated fairly in judicial and administrative proceedings;
- The principle that the accused is presumed innocent until proved guilty at a fair legal trial (art. 19, para. 5, of the Constitution);
- The principle that the right to a defence is sacrosanct (art. 19, para. 4, of the Constitution);
- The principle of the non-retroactivity of criminal laws unless they are more favourable to the accused (art. 19, para. 10, of the Constitution);
- The principle that no one may be held in administrative detention or custody in non-governmental prison facilities;
- The principle of respect for human dignity and the prohibition of torture;
- The principle that no one may be held in custody except under the terms of a detention order issued by a duly authorized judicial authority.

122. The Management of Detention and Prison Facilities Act No 2 of 2003, which was published in the Iraqi Official Gazette No. 3978, vol. 44, on 8 June 2003, referred to the legal norms regulating conditions in detention and prison facilities in Iraq, including the Prisons Administration Act No. 151 of 1969. The provisions of the Act of 2003 are consistent and in harmony with the Standard Minimum Rules for the Treatment of Prisoners, adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and also with other relevant principles constituting legal safeguards of basic human rights and respect for human dignity. These principles can be summarized as follows:

Every prison facility must maintain a bound register with numbered pages in which the following details of each prisoner admitted to the facility by the persons in charge thereof must be recorded:

- (a) Details of the prisoner's identity;
- (b) The reasons for his detention in the facility and the authority by which it was ordered;
- (c) The date and hour of his admission to and release from the facility;
- (d) No official in charge of any prison facility may admit thereto any person sent to him without a detention order in due and proper form, the details of which must be entered in the register.

123. The Prisons Administration Act recognizes numerous rights of prisoners, including:

- (a) The right to health, security and placement in an appropriately structured and serviced detention facility (section 5 of the Act);
- (b) The right to apply the rules of personal hygiene (sect. 6);

- (c) The right to food and physical exercise (sect. 8);
- (d) The right to engage in religious practices (sect. 2);
- (e) The right to medical care (sect. 10);
- (f) The right to family visits and contact with the outside world (sect. 14);
- (g) The right to submit complaints and grievances to the administrative, supervisory and judicial authorities (sect. 13);
- (h) The principle of the classification of prisoners by gender, age and criminal category (sect. 4);
- (i) The principle of respect for human dignity in the treatment of prisoners (sect. 23);
- (j) The right to benefit from prisoners' educational and work programmes (sect. 26);
- (k) The principle that the necessary arrangements must be made to teach all prisoners capable of benefiting from education, including the provision of religious instruction (sect. 27);
- (l) The principle that prison facilities must be subject to control and inspection (sect. 21).

124. The Juvenile Welfare Act No. 76 of 1983 defined the national legal norms for the welfare of juvenile delinquents, including a set of legal and procedural norms and mechanisms for the protection of juveniles at risk of detention. Article 1 of the Act indicated that the primary objective was to ensure the welfare of juveniles and put an end to delinquency. Articles 6, 7 and 8 made provision for the establishment of a Juvenile Welfare Board, chaired by the Minister of Labour and comprising representatives of the Department of Correction, the judiciary, the Ministry of the Interior and the Department of Minors, with the principal task of discussing and adopting an annual policy to remedy juvenile delinquency. Articles 12–15 made provision for the establishment in every juvenile court of an office for juvenile personality studies, consisting of psychosociologists and a physician specialized in psychoneurological disorders, to undertake medical and psychosocial examinations and draw up detailed reports thereon. Article 48 of the Act stipulated that every arrested juvenile should be immediately handed over to the juvenile police who would bring him before an investigating judge or a juvenile court.

125. The Act further stipulated that juveniles should not be detained for minor offences; they should be placed in the facilities provided for in article 10 of the Act (juvenile observation centres/rehabilitation schools for adolescents/rehabilitation schools for young persons/schools for young adults/juvenile rehabilitation centres). Article 99 of the Act made provision for the establishment of a Follow-Up Care Section to cater for the welfare of juveniles following their release on completion of their period of placement by providing them with material and moral support to facilitate their socio-occupational integration and prevent their future relapse into delinquency.

126. In accordance with the provisions of Order No. 60 promulgated by the (dissolved) Coalition Provisional Authority under which it was established, the Ministry of Human Rights controls the application of the above-mentioned principles and precepts through teams of specialists trained in and outside Iraq which use modern scientific methods and techniques to monitor and document any shortcomings so that they can be referred to the bodies concerned and to higher authorities for rectification. It is noteworthy that the violations of the above-mentioned principles and precepts that have been detected and

documented in reports are of an isolated and non-systematic nature and many of them have been rectified through implementation of the recommendations of the monitoring teams.

## Article 11

127. Under the terms of articles 40, 41 and 42 of the Enforcement of Claims Act No. 45 of 1980, persons unable to fulfil a contractual obligation are liable to imprisonment. However, a debtor can be imprisoned only on the basis of a claim submitted by the creditor and a decision issued by the enforcement officer (official receiver), provided that the latter is a judge. Moreover, a debtor may be imprisoned only once for the same debt. The Act permits the imprisonment, for a maximum term of four months, of a debtor who, although able to fulfil his obligation, refuses the settlement proposed to him by the enforcement officer. Due to the policy of amalgamation that is being pursued by many administrations of prison and pretrial detention facilities, debtors imprisoned for inability to fulfil a financial obligation are still being sent to prisons in which persons convicted of criminal offences are being held. This remains a source of concern to the Ministry of Human Rights, which is calling upon the Council of Representatives to pass a bill of law remedying this situation in a manner conducive to the fulfilment of the country's international obligations in conformity with article 8 of the current Iraqi Constitution which stipulates, *inter alia*, that "Iraq shall respect its international obligations".

128. There should be no legal impediment to the imprisonment of a debtor at the time of imposition or enforcement of the sentence. The following circumstances should be considered impediments to imprisonment or its term or manner of enforcement:

- (a) Debtors who are insolvent and unable to pay or honour their debt;
- (b) Debtors under 18 or over 60 years of age;
- (c) Debtors receiving a salary or wage from the State;
- (e) Debts that have been extinguished by the statute of limitations or in any other manner.

129. Article 13 of the Government Debt Recovery Act No. 56 of 1977 empowers the Chief Enforcement Officer to imprison a defaulting debtor. However, in view of the significant psychosocial impact of imprisonment on the debtor's reputation, the Iraqi legislature has laid down rules and conditions to regulate the enforcement of penalties of imprisonment for debt: the creditor must have filed an explicit claim, without which the Enforcement Department cannot sentence a debtor to imprisonment, even if he meets the other conditions therefor; and the imprisonment order must be issued by the enforcement officer, provided that he is a judge, failing which the matter is referred to the judge of a court of first instance to decide whether to impose a prison sentence.

## Article 12

130. Under the previous dictatorial regime prior to 2003, the Iraqi Government imposed numerous restrictions, without legal justification, on the freedom of travel of Iraqis. Those wishing to leave the country were required to pay a travel tax of 400,000 Iraqi dinars, which placed a heavy burden on Iraqis hoping to travel abroad in search of employment in view of the poverty and unemployment from which Iraqi society was suffering. Other arbitrary measures were also imposed, including a ban on travel by civil servants working in certain sectors, such as the military industries and the security agencies, on the pretext of preventing the leakage of information abroad. Under the tight security measures in force, citizens wishing to travel abroad needed to obtain security clearance and, to this end, were

subjected to interrogation by the passport officer attached to the security branch of the Passport Department.

131. After 2003, the Coalition Provisional Authority repealed a number of decrees promulgated by the (dissolved) Revolutionary Command Council, including the decree imposing a tax on travel outside Iraq. Other arbitrary measures and restrictions that were previously imposed were remedied by the Iraqi legislature in the country's current Constitution of 2005, article 44, paragraph 1, of which stipulates that: "Iraqis shall enjoy freedom of movement, travel and residence inside and outside Iraq."

132. However, freedom of movement is not absolute since it is subject to a number of restrictions designed to maintain a balance between the public and private interests, precedence being accorded to the former in the event of conflict between the two in accordance with the custom prevailing in Iraqi society. Moreover, due to the open and poorly controlled border crossing points, there had been an increase in criminal activity such as the illicit smuggling of, and trafficking in, young women who were allured by prospects of employment in neighbouring States. This prompted the Ministry of the Interior to issue directives restricting the right of women in the 18–42 age group to travel except in the company of a close male relative, which led to embarrassing and complex situations. Many appeals were made by civil society organizations and government institutions to modify those directives, since they were incompatible with the principle of gender equality. Once the border crossing points had been brought under control and security had been restored through the increased ability of the security forces to ensure public order and law enforcement, the Council of Ministers issued Decision No. 88 of 2011 promulgating the Passport Statute No. 2 of 2011, article 8 of which stipulated that only Iraqis under the legal age of majority (18 years) required the approval of their natural or testamentary guardian to apply for a passport. This falls within the domain of necessity and the public interest for the above-mentioned reasons. However, minors under 18 years of age who have married with a court's permission are entitled to obtain a passport on the ground that this was implicit in the permission granted by the court at the time of their marriage. The (dissolved) Revolutionary Command Council decree prohibiting the acquisition of property or residence in Baghdad or certain specified areas, unless the person wishing to reside therein was registered in the 1957 population census lists for the same area, was repealed.

### **Article 13**

133. Although foreign labour was a widespread phenomenon in Iraq in the late 1970s and early 1980s, it gradually dwindled after the outbreak of the Iraq-Iran war of 1980–1988 and totally disappeared after the imposition of the economic embargo on Iraq in the aftermath of its invasion of the State of Kuwait in 1990. The residence of foreigners in Iraq was regulated by the Residence of Aliens Act of 1961, which stipulated that aliens were prohibited from residing or travelling in or transiting through certain areas. For example, they were not permitted to reside in the governorates of Mosul, Arbil, Sulaymaniyah and Kirkuk outside the municipal borders of the governorate's administrative centre and travel by aliens from the capital to the above-mentioned prohibited areas was subject to approval by the Ministry of the Interior and the Directorate of Public Security. With these exceptions, aliens were allowed to reside and move freely in Iraq provided that they had duly obtained a residence permit.

134. Iraq's Transitional Administrative Law (TAL) repealed the Residence of Aliens Act in 2004 on the ground that the foreign labour force in Iraq had expanded since 2003 through the recruitment of many aliens to work in the international zone for the multinational forces who had entered Iraq. When those forces left Iraq on the completion of their combat missions, many of their foreign workers, having remained in the country,

surreptitiously entered the various labour sectors and many national businesses and companies were found to be illegally employing foreign workers for whom official permits had not been obtained. This was an ominous development insofar as the majority of these foreign workers were Asian nationals concentrated in unskilled occupations in the services sector, which is contrary to the provisions of article 23 of the Labour Law promulgated in Act No. 71 of 1987. The Ministry of Labour and Social Affairs has not authorized the importation of any foreign workers into Iraq with the exception of a very limited number of permits granted for nursemaids and has clearly stated in its directives that certain conditions must be met, including the stipulation that the housewife must have an urgent need for the worker due to illness or other reasons.

135. There are no statistics on the number of foreign workers in Iraq since many of them enter the country clandestinely and some groups which enter for purposes of tourism remain to work in the informal labour sector. The Iraqi Government has not yet regulated the recruitment of foreign labour through the promulgation of legislative enactments since this matter is still governed by the old Iraqi Labour Law under which the importation of foreign labour is prohibited unless the skills required are not available in Iraq. A new labour law drafted by the Ministry of Labour and Social Affairs has been endorsed by the State Advisory Council and the Council of Ministers and is currently awaiting approval by the Council of Representatives.

136. The situation of aliens unlawfully residing in Iraqi territory is illustrated by Ashraf camp in which about 3,000 persons belonging to the Iranian Mujahedin-e Khalq organization opposed to the political regime in the Islamic Republic of Iran had been living since the 1980s with the approval of the dictatorial regime in Iraq. The Iraqi Government set the end of December 2011 as a final deadline for the evacuation of that camp and the United Nations Assistance Mission for Iraq (UNAMI) worked closely with the Government, the diplomatic corps, the Office of the United Nations High Commissioner for Refugees and representatives of the camp's population to find permanent solutions for its residents. In 2011, under domestic pressure resulting from the unlawful conduct and provocative acts of the camp's residents, dozens of whom were wanted by the Iraqi judicial authorities in the light of many indications of that organization's interference in the internal affairs of Iraq and a neighbouring State, which is prohibited under the Constitution, the Iraqi Government took a sovereign decision to terminate their presence in that camp by the end of 2011.

137. Being eager to ensure that its actions were in conformity with the rules of international law, the Iraqi Government agreed to mediation by UNAMI in an endeavour to solve this problem and subsequently signed a memorandum of understanding for the relocation of some of the camp's residents to Camp Liberty, subject to control and inspection by UNAMI, prior to the final evacuation which it believed to be in conformity with international norms. The memorandum of understanding was signed on 25 December 2011 and was put into effect in 2012 when the camp's residents began to be relocated in batches of about 400 persons. Five batches have so far been relocated under the supervision of UNAMI and the Office of the United Nations High Commissioner for Refugees which monitored all aspects of the relocation process. The process is still ongoing and Iraq is diligently treating the camp's residents in accordance with the principles of human rights and Iraqi law. In spite of the residents' persistent procrastination and attempts to obstruct the relocation process by creating problems with Iraqi governmental officials, our officials and security forces are exercising the highest degree of self-control so that the process can be completed peacefully under the supervision of our ministerial team which is monitoring all its aspects from the point of departure to the destination in conformity with the provisions of the memorandum of understanding.

## Article 14

138. Article 19 of the Permanent Iraqi Constitution of 2005 embodies a number of legal guarantees in regard to criminal justice which the competent authorities have an obligation to respect and apply when dealing with any case brought before them. These guarantees can be summarized as follows:

1. The judiciary is independent and subject to no authority other than the law.
2. There is no crime or punishment except as provided by law and a penalty may be imposed only for an act which, at the time of its commission, was legally designated as a criminal offence.
3. The penalty imposed must not be heavier than the penalty that was applicable at the time of commission of the offence.
4. The right to seek legal remedy is guaranteed to all.
5. The right to a defence is sacrosanct and guaranteed at all stages of investigation and trial.
6. The accused is presumed innocent until proved guilty at a fair legal trial and, if acquitted, cannot be tried again on the same charge unless new evidence is produced.
7. Everyone has the right to be treated fairly in administrative and judicial proceedings.
8. Court hearings must be public unless the court decides to hold them in camera.
9. Punishment is personal.
10. Laws have no retroactive effect except as otherwise provided, and this exception does not apply to laws regulating taxes and fees.
11. Criminal laws are non-retroactive unless they are more favourable to the accused.
12. The courts assign a defence counsel, at State expense, for persons accused of felonies or misdemeanours who do not have an attorney to defend them.
13. Administrative detention is prohibited.
14. Imprisonment and detention are permitted only in facilities which are designated for that purpose in the prison legislation making provision for health and social care and which are under the control of the State authorities.
15. The preliminary investigation file must be presented to the competent judge within 24 hours from the time of the suspect's arrest and this deadline may be extended only once and for the same period of time.

139. Article 35 of the Constitution supplements the above with other principles embodying additional guarantees of the fair administration of criminal justice by ensuring a balance between, on the one hand, the rights of the bodies responsible for conducting the investigation and gathering information and evidence to substantiate the commission by the suspect of the criminal act attributed to him and, on the other hand, the right of the suspect to defend himself and present legal arguments to refute the charges brought against him. These principles include:

- Human liberty and dignity must be safeguarded;

- No one may be taken into custody or investigated except in accordance with a judicial order;
- All forms of psychological and physical torture and inhuman treatment are prohibited; no account may be taken of any confession extracted under duress, threat or torture; and the victim has the right to claim compensation, in accordance with the law, in respect of the physical and mental harm suffered.

140. The Iraqi Penal Code promulgated under Act No. 111 of 1969 contains the following principles that are consistent and in harmony with the provisions of article 14 of the Covenant:

- There is no crime or punishment except as provided by law (art. 1);
- The law most favourable to the accused must be applied (art. 2);
- The guarantee that no one may be detained except by a person legally empowered to do so (art. 421);
- The guarantee that no public official may exceed the limits of his functions (arts. 322 and 324);
- The guarantee that no one may be subjected to torture, which is designated as a criminal offence in art. 333.

141. The Code of Criminal Procedure promulgated under Act No. 23 of 1971 contains similar legal safeguards such as:

- (a) The guarantee of liberty (art. 92);
- (b) The guarantee that persons and premises may not be searched except as provided by law (art. 72);
- (c) The guarantee that the case against the accused must be adjudicated in the shortest possible time (art. 109, paras. (a), (b) and (c));
- (d) The guarantee that accused persons may not be detained for minor offences (art. 110, para. (b));
- (e) The guarantee of lawful interrogation (art. 123);
- (f) The right to remain silent (art. 126, para. (b));
- (g) Prohibition of the use of unlawful means to obtain a confession (art. 127);
- (h) Confessions must not have been made as a result of physical or psychological duress, promise or threat (art. 218).

142. The value of a man's testimony, as compared with that of a woman, differs depending on the type of court. In the personal status and civil courts, the purpose of a testimony is to substantiate a fact on the basis of intuition and memory and, to that end, credence is given to the testimony of two men or, if this is unfeasible, the testimony of one man and two women in accordance with the principles of the Islamic sharia which justifies this procedure on the ground that women are more liable to forget or to lack intuition. In the criminal courts, on the other hand, the testimonies of men and women are of equal value insofar as they are eye-witness accounts based on the sense of vision and observation of the offence at the time of its commission and, consequently, the judgement passed on the perpetrator of the offence, ranging from deprivation or restriction of liberty to the death penalty, depends on the statements of the witnesses, regardless of their gender.

143. In the case of juveniles, the Iraqi Juvenile Welfare Act No. 76 of 1983 provides numerous safeguards for the category of minors, including the following:

(a) Criminal proceedings cannot be instituted against a person who was under 9 years of age at the time of commission of the offence (art. 47).

(b) The investigation of juvenile cases must be assigned to a juvenile examining judge (art. 49).

(c) The juvenile must be referred to the office for personality studies, consisting of a physician or practitioner or, if necessary, a paediatrician specialized in psychoneurological disorders and a specialist in psychoanalysis or psychology, together with a number of sociologists and, if required, specialists in criminology or other disciplines relating to juvenile matters. The task of the office is to conduct physical, mental and psychiatric examinations to diagnose disorders from which juveniles might be suffering, to determine their level of intellectual and emotional maturity and the degree of their awareness of the nature of their unlawful act, to prescribe the appropriate treatment, to study their social background and the environment in which they are living, and to establish the extent of their involvement in the offence committed.

(d) The said office draws up a detailed report on the juvenile's physical, intellectual and psychosocial condition, his motives for committing the offence and the measures proposed for his treatment.

(e) The juvenile continues to undergo periodic examinations every three months, or whenever necessary, until the date set for completion of the measures taken, at which time the court is informed of any change in his condition.

(f) The Ministry of Health is in the process of establishing a school psychosocial services office in the administrative centre of each governorate as part of the school health infrastructure in order to study and treat badly-behaved and delinquency-prone juveniles who are referred to the office by school administrations or other bodies.

(g) Juveniles accused of committing offences or misdemeanours are placed in observation centres, in the absence of which measures are taken to ensure that they are segregated from adult detainees.

(h) If a juvenile and an adult are charged together, separate proceedings are instituted against them and their respective cases are referred to the competent courts.

(i) Juveniles are prosecuted in closed hearings attended only by their guardian or one of their relatives and any persons concerned with juvenile affairs whose presence the court might deem appropriate.

(j) It is not permitted to publish the juvenile's name, address or photograph, the name of his school or anything that might reveal his identity.

144. The following table shows the absorption capacity of the juvenile reform facilities and schools.

<i>Facility</i>	<i>Absorption capacity</i>
1. Male observation centre/Baghdad	204
2. Male observation centre/Ninawa	120
3. Rehabilitation school for adolescents	200
4. Rehabilitation school for young persons	200
5. Juvenile rehabilitation centre for female vagrants	50



<i>Facility</i>	<i>Absorption capacity</i>
6. Juvenile rehabilitation centre for male vagrants	50
7. Juvenile rehabilitation school for female detainees and convicts	30
8. Rehabilitation school for convicted young offenders	50

*Source:* Ministry of Human Rights, status report on prisons, 2011.

145. The following table contains statistics on the number of juvenile convicts and detainees, by gender and category of offence.

<i>Category of offence</i>	<i>2010</i>				<i>2011</i>				<i>Up to end of February 2012</i>			
	<i>Convicts</i>		<i>Detainees</i>		<i>Convicts</i>		<i>Detainees</i>		<i>Convicts</i>		<i>Detainees</i>	
	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>
	14				18							
4 Terrorism		5	223	5		11	78	3	17	11	105	2
	8				5							
393 Penal Code	65	-	6	-	71	-	4	-	75	-	2	-
394 Penal Code	6	-	-	-	5	-	-	-	2	-	-	-
396 Penal Code	16	-	-	-	13	-	1	-	11	-	1	-
Prostitution	-	2	-	14	-	19	-	8	-	20	-	2

*Source:* Ministry of Human Rights, status report on prisons, 2011.

## Article 15

146. Article 19, paragraph 2, of the current Iraqi Constitution of 2005 stipulates that: "There is no crime or punishment except as provided by law. A penalty may be imposed only for an act which, at the time of its commission, was legally designated as a criminal offence. The penalty imposed shall not be heavier than the one that was applicable at the time of commission of the offence." This article is in conformity with the provisions of article 15 of the International Covenant on Civil and Political Rights.

147. Article 19, paragraph 10, of the Constitution further stipulates that: "Criminal laws shall not have retroactive effect unless they are more favourable to the accused."

148. The Penal Code promulgated under Act No. 111 of 1969 stipulates that there is no crime or punishment except as provided by law and any enactment which imposes heavier penalties shall not apply to offences committed prior to its entry into force. However, if a new enactment decriminalizes an offence or imposes a lighter penalty therefor, the new enactment more favourable to the accused shall apply to offences committed prior to its entry into force (art. 3). Any enactment amending the provisions of criminal law to the benefit of the accused shall apply to acts committed prior to its entry into force unless a final judgement has been handed down in respect of such acts (art. 4).

## Article 16

149. Every natural person has the right to recognition of his legal personality, which begins with the legally established fact of being born live, legal personality not being recognized in the event of stillbirths. The newborn baby must have fully emerged and been

separated from the mother's womb and the judge may verify this by any means of proof. The question of legal personality is addressed in article 34, paragraph 1, of the Iraqi Civil Code (Act No. 40 of 1951) which stipulates that legal personality begins on the person's being born live and ends on his death.

150. Contractual capacity is addressed in the following articles of the Civil Code (Act No. 40 of 1951):

Article 93: "Every person is vested with contractual capacity unless such capacity is extinguished or restricted by law." Article 98, paragraph 1: "The guardian may, if so authorized by the court, hand over to a rational minor, on the latter's attainment of the age of 15 years, part of the minor's property and permit the minor to trade therein as a test of his competence. Such permission may be absolute or limited."

151. One of the priorities of the democratic regime in Iraq is to respect the legal personality of all the country's citizens and foreign residents. Under the terms of article 18, paragraphs 1, 2 and 3 (a), and other articles of the Constitution, every Iraqi has the right to Iraqi nationality, on which citizenship is based, and an Iraqi is deemed to be any person born to an Iraqi father or an Iraqi mother. This basic guarantee of the individual's legal personality is also provided for in the Civil Status Act No. 65 of 1971. This constitutional commitment is an indication of the Iraqi Government's resolve to prevent the recurrence of the tragedies from which the Iraqis suffered as a result of the policies and practices of the former Baathist regime which refused to recognize the legal personality of individuals and even of large population groups, as illustrated by the deplorable situation of the Feyli Kurds whose nationality was withdrawn and whose basic human rights as Iraqi citizens, and even as human beings residing in the territory of the Iraqi State, were disregarded notwithstanding the fact that they formed part of the country's indigenous population.

152. Iraq applies the principle of reciprocity. However, Palestinians were exempted in accordance with Decree No. 220 of 2002 promulgated by the (dissolved) Revolutionary Command Council which permitted them to acquire ownership of real estate in Iraq.

### **Article 17**

153. This matter is addressed in article 17 of the Iraqi Constitution which stipulates that: "Every individual shall have the right to enjoy personal privacy in a manner compatible with the rights of others and public morals. The inviolability of homes shall be safeguarded; they shall not be entered, searched or intruded upon except by a judicial order and in accordance with the law." This principle is being put into practice through the contracts that the Iraqi Government has concluded with the telephone and communications companies currently operating in the country and which have an obligation to respect the privacy of individuals and the confidentiality of their communications. The professional code of honour to which Iraqi journalists and media representatives are bound includes a number of articles that prohibit intrusion on personal privacy or the launching of campaigns that might be detrimental to the reputation of any individual. It is also prohibited to wiretap mobile or landline telephone or Internet communications without obtaining a judicial order to that effect.

### **Article 18**

154. Like other eastern Arab States, Iraq is characterized by its ethnic and religious diversity. Although Arabs form the vast majority, its population also includes Kurds, followed by Turkmen and smaller ethnoreligious groups such as Chaldeans, Syriac-speakers and Assyrians.

155. The Iraqi Constitution guarantees the exercise of freedoms by all, without discrimination. It provides ample safeguards of freedom of thought, conscience, religion and belief by, *inter alia*, guaranteeing effective means of redress in the event of any violation of these freedoms or of the right to engage in religious observances without hindrance, including the right to change one's religion, but only to Islam. Under article 10 of the Constitution, the holy shrines and religious sites in Iraq are designated as religious and cultural entities the inviolability of which the State has an obligation to safeguard and in which freedom of religious observance is guaranteed.

156. The laws of the Republic of Iraq prohibit advocacy of religious hatred constituting incitement to discrimination, hostility or violence. Every effort is being made to ensure full respect for and protection of religious sites, premises, shrines and symbols and additional measures are taken wherever holy places are at risk of desecration or damage. Iraqi laws also guarantee the right of all persons to worship or congregate in accordance with a religion or belief, to establish and manage the premises needed for such purposes and to write, issue and distribute publications relevant thereto. In conformity with international human rights law, full respect and protection are guaranteed for the freedom of all persons and members of communities to establish and manage religious, charitable and humanitarian institutions. An Endowment Councils for the Christian and other religions has been established as an institution to cater for the welfare of members of non-Islamic faiths.

157. Iraqi law guarantees that no one under the jurisdiction of the Iraqi Government may be deprived of his right to life, liberty or security of person, subjected to torture or arbitrary arrest or detention or denied the right to work, education or adequate housing for having or openly manifesting his religion or belief. Any violation of these rights can be prosecuted under article 372 of the Iraqi Penal Code (Act No. 111 of 1969) which stipulates that: "A penalty not exceeding three years' imprisonment, or a fine not exceeding three hundred dinars, shall be imposed on anyone who:

- (a) Openly attacks the beliefs or denigrates the observances of a religious community;
- (b) Wilfully disrupts, prevents or hinders an observance, a celebration or a meeting of a religious community;
- (c) Damages, destroys, defaces or desecrates a building intended for the observances of a religious community or any religious symbol or sacrosanct object;
- (d) Prints and publishes a book, held sacred by a religious community, in which he deliberately distorts the text in such a way as to alter its meaning or deride its tenets or teachings;
- (e) Publicly insults a symbol or person held in veneration, reverence or respect by a religious community;
- (f) Publicly mimics a religious ceremony or celebration with a view to holding it up to ridicule."

158. The Iraqi Government is well aware of the need to avoid stigmatizing any religion by associating it with terrorism, since this could have detrimental consequences. All members of religious communities enjoy the right to freedom of religion or belief and their freedom to manifest their religion or beliefs is subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others without derogating from the right to freedom of thought, conscience and religion. These principles are reflected in the national laws and regulations and also in governmental policy and are guaranteed by article 43 of the Iraqi Constitution which stipulates that: "1. The followers of all religions and creeds shall be free to practise their religious rites and manage their religious endowments, affairs and

institutions. 2. The State guarantees freedom of worship and the protection of places of worship.” Similar guarantees are found in article 1 of the Welfare of Religious Communities Statute No. 32 of 1981 and article 2, paragraph 1, of Act No. 44 of 2008 amending the Provincial, District and Sub-District Councils Electoral Act No. 36 of 2008.

159. The present political climate is characterized by open-mindedness and belief in pluralism, equality, acceptance of others and the right of all to study the tenets of their religions at schools following special educational curricula. The Directorate-General of Curricula has a specialized unit that issues Christian textbooks for the primary, intermediate and preparatory academic levels. Christian curricula are taught in 75 primary schools and 48 secondary schools in the governorates of Baghdad (two schools in Rusafa and two in Karkh), Mosul, Kirkuk and Basra. The schools in which the Yazidi faith is taught outside the Kurdistan Region follow the Yazidi religious curriculum that is taught in schools within that Region. There are no special curricula for the Sabian-Mandaean faith since there are no schools in which this faith is taught due to the unwillingness of its religious authorities to provide the requisite number of students in view of the unstable security conditions in the governorate of Kirkuk where the majority of the Sabian-Mandaeans are living. With regard to other ethnic groups, the Ministry of Education’s Directorate-General of Kurdish Studies has expanded considerably since the overthrow of the dictatorial regime in 2003 and the scope of its responsibilities has been extended to include supervision of the teaching of other Iraqi ethnic languages. It is now known as the Directorate-General of Kurdish and Other Ethnic Studies, comprising three academic departments (Kurdish, Syriac and Armenian) and with responsibility for supervising the teaching of the other Iraqi religions. It monitors the systematic teaching of the Kurdish language at the preparatory level, as well as the inclusion in the curricula of the concepts of national brotherhood and the principles of human rights and social equality in Iraq. A unit has been established to supervise studies in ethnic languages and 20 supervisors of such studies and Christian religious education have been selected, tested, interviewed and appointed by the Directorate-General of Kurdish and Other Ethnic Studies. A Feyli (Shiite) Kurdish school has been opened in Baghdad within the territorial jurisdiction of the Rusafa (2nd Precinct) Directorate-General of Education. With regard to education for minorities in the Kurdistan Region, there are directorates-general of education for the Turkmen, Syriac and other minorities which enjoy their legitimate right to education. These minorities have their own schools providing tuition in their mother tongues but following the Region’s standardized curricula.

## **Article 19**

160. Freedom of all means of expression of opinion is guaranteed in paragraphs 1 and 2 of article 38 of the Iraqi Constitution of 2005 which stipulate that the State shall guarantee freedom of all means of expression of opinion, as well as freedom of the press, printing, advertising, information and publication, in a way that does not violate public order or morals. The State has faithfully implemented the provisions of that article of the Constitution in a manner consistent with Iraq’s obligations under article 19 of the International Covenant on Civil and Political Rights since exercise of the right to freedom of opinion and expression is a prerequisite for the democratization of Iraq which began after 2003. All decrees of the (dissolved) Revolutionary Command Council prohibiting or criminalizing the exercise of freedom of expression of opinion, including Decree No. 840 promulgated on 4 November 1986, were repealed. No restrictions are now placed on the use of satellite receivers and mobile telephones, Internet communications, the establishment of broadcasting stations, the publication of local newspapers and magazines or the importation of foreign newspapers and magazines. Freedom of expression has become a fundamental component of the country’s prevailing political culture after a long period of isolation from the outside world and this large expansion in the field of information and

freedom of opinion and expression reflects the healthy state of the country's democratic structure and the enjoyment of human rights by its people, as illustrated by the following statistics:

- (a) The number of Internet subscribers increased from 4,500 in 2003 to more than 261,000 in April 2007;
- (b) Within a few months after April 2003, more than 180 daily and weekly newspapers appeared, in addition to more than 40 periodical magazines and bulletins published by governmental institutions;
- (c) Fifty-eight terrestrial and satellite television broadcasting stations were operating on 31 October 2010;
- (d) The number of radio stations operating in the country amounts to 111;
- (e) Sixteen independent news agencies are active in the country;
- (f) There are more than 1,100 Iraqi websites on the Internet.

161. The media and publishing sector has been seriously affected by the overall situation in the country where persons working in the fields of journalism, literature and the arts have been abducted, killed, targeted in assassination operations, threatened, detained and sometimes prosecuted as a result of their professional activities, quite apart from the well-known dangers to which media representatives and correspondents are exposed during their coverage of armed confrontations and acts of violence which may also lead to the imposition of restrictions on their journalistic and media activities, including closure of the offices of some satellite channels. The Council of Representatives therefore promulgated Act No. 21 of 2011 on the protection of journalists and is currently considering the promulgation of another enactment on the free flow of information.

## Article 20

162. The laws of the Republic of Iraq prohibit advocacy of religious hatred constituting incitement to discrimination, hostility or violence. Every effort is being made to ensure full respect for and protection of religious sites, premises, shrines and symbols and, in conformity with international human rights law, full respect and protection is guaranteed for the freedom of all persons and members of communities to establish and manage religious, charitable and humanitarian institutions. An Endowment Councils for the Christian and other religions has also been established as an institution to cater for the welfare of members of non-Islamic faiths in accordance with article 40 of the Constitution under which every individual is entitled to freedom of thought, conscience and religion.

163. Additional measures are taken wherever holy places are at risk of desecration or damage. Iraqi laws guarantee the right of all persons to worship or congregate in accordance with a religion or belief, to establish and manage the premises needed for such purposes and to write, issue and distribute publications relevant thereto.

164. Reference can also be made to articles 200, 201, 202, 203 and 204 of the Penal Code under which it is a punishable criminal offence to be associated with any organization that advocates racism, incites the overthrow of, or hatred or contempt for, the established system of governance in Iraq or acclaims or promotes anything likely to stir up confessional or sectarian bigotry, provoke intercommunal or inter-ethnic conflict or kindle feelings of antipathy and hatred among the population of Iraq.

165. In keeping with the worldwide campaign to preserve international peace and security by combating violence, terrorism and organized crime, the Iraqi Council of

Representatives promulgated the Counter-Terrorism Act No. 13 of 2005 which criminalized acts of terrorism that provoke fear, alarm and panic among the population and lead to forced migration and displacement for confessional, sectarian or ethnic reasons.

## **Article 21**

166. The Government of Iraq believes in the need to respect the right of peaceful assembly as an integral component and natural extension of the right to freedom of opinion and expression and as a legitimate means to express public opinion. The Government has an obligation to communicate frankly with the people and inform them of the true nature of the problems being faced so that it can engage in a positive dialogue with them and ensure adequate information and awareness on both sides. Accordingly, all the governmental institutions are required to respect the exercise of this right and to regulate and protect peaceful assemblies in the interests of public order in the country, especially in the circumstances that Iraq is experiencing as a result of armed attacks launched by outlawed terrorist groups which frequently target peaceful public gatherings.

167. The right of peaceful demonstration is protected through the following legislative and executive measures and procedures:

### **A. Legislative measures**

#### **The Iraqi Constitution of 2005**

168. The right of peaceful demonstration and expression of opinion is guaranteed in article 38 of the Constitution which stipulates as follows:

“The State shall guarantee, in a way that does not violate public order or morals:

- (a) Freedom of all means of expression of opinion;
- (b) Freedom of the press, printing, advertising, information and publication;
- (c) Freedom of peaceful assembly and demonstration, which shall be regulated by law.”

169. The Iraqi Penal Code (Act No. 111 of 1969) regulates the exercise of this right through the following provisions:

- Article 220: If five or more persons gathered in a public place prejudice public safety and the public authorities order them to disperse, anyone who is given that order and refuses to comply therewith shall be liable to a term of imprisonment not exceeding one year and/or a fine not exceeding one hundred dinars.
- Article 221: Anyone who calls for, organizes or participates in a gathering in a public place while being aware of a ban by the public authorities on such gatherings shall be liable to a term of imprisonment not exceeding one year and/or a fine not exceeding one hundred dinars. The same penalty shall apply to anyone who publicly incites such a gathering even if his incitement has no effect.
- Article 222: (a) If the purpose of the gathering is to commit a felony or misdemeanor, to prevent the implementation of laws, regulations or decisions, to influence acts of the public authorities or to deprive a person of his freedom of action by the use of force or threat, anyone who calls for, organizes or participates in such a gathering while being aware of its purpose, or fails to leave it after becoming aware of the said purpose, shall be liable to a term of imprisonment not exceeding

two years and/or a fine not exceeding two hundred dinars; (b) If any of the participants in a gathering use force or threats or overtly carry a weapon the use of which could result in fatalities, the person who called for or organized that gathering and anyone who participated therein while being aware of its intended purpose shall be liable to a term of imprisonment and/or a fine not exceeding three hundred dinars; (c) If any of the participants in the gathering commit an offence in pursuit of its intended purpose, all the persons participating in the gathering at the time of commission of the offence shall be liable to the penalty prescribed by law if they were aware of the purpose of the gathering. The person who called for or organized the gathering shall be liable to the penalty prescribed by law for that offence even if he was not present at the gathering at the time of its commission; (d) Nothing in this article shall prejudice the imposition of any heavier penalty prescribed by law.

170. Coalition Provisional Authority Order No. 19 of 2003 regulated the right of peaceful assembly and demonstration in a manner consistent with the phase during which it was promulgated. The provisions of articles 220, 221 and 222 of the Penal Code were suspended on the ground that they imposed an unreasonable restriction on the people's right to freedom of expression and peaceful assembly.

#### **B. Executive measures**

171. The Ministry of the Interior issued a statement in which it acknowledged that freedom to express opinions and claim rights by any legitimate peaceful means not involving the use of violence was a constitutional right guaranteed to all Iraqis. The statement laid down the following rules and conditions for the holding of peaceful demonstrations: their organizing body must submit an application to the Ministry of the Interior, accompanied by approval from H.E. the Minister of the Interior and the opinion of the provincial governor, at least 72 hours before the beginning of the demonstration; the demonstration must be peaceful and devoid of acts of violence and its slogans must not incite intercommunal violence; its organizers must identify themselves and specify the approximate number of demonstrators as well as the time and itinerary of the demonstration; it is prohibited to carry any type of weapon, including licensed weapons, during demonstrations, which must be escorted, throughout their duration, solely by forces attached to the Ministry of the Interior; if a demonstration turns violent, the customary means will be used to disperse the demonstrators.

172. In accordance with the provisions of article 122, paragraph 3, of the Constitution and article 24 of the Provincial Powers Act No 21 of 2008 (concerning governorates not incorporated into a region), the provincial governors are the highest executive officers within their governorates and, as such, are empowered to authorize peaceful assemblies and demonstrations since this matter falls within the scope of their jurisdiction and responsibilities in keeping with the new federal and decentralized structure of the State. However, the military security forces within the governorate must be given sufficient advance notice so that they can take the security measures needed to protect the participants in the assembly or demonstration and prevent such events from being exploited for purposes detrimental to the political process and the public interest.

#### **C. Measures taken to control restrictions imposed on the right to demonstrate**

173. The Ministry of Human Rights, being one of the institutions concerned with the right of peaceful demonstration, has sent fact-finding committees to observe the democratic process, and also monitor the methods used by law-enforcement authorities, with a view to ensuring compliance with the following procedural practices:

- Provision of security protection;

- Permission for media coverage of demonstrations;
- Attendance by government officials to take note of the demonstrators' demands;
- Immunity from arrest of demonstrators making demands at variance with the tenor of the laws and regulations in force, since this falls within the scope of freedom to express opinions.

174. Through its internal regulatory mechanisms, the Council of Representatives could help to promote human rights in Iraq since, in accordance with its rules of procedure, it has parliamentary committees and, in particular, a human rights committee for which this issue is a matter of concern.

175. The measures taken to promote and disseminate a culture of human rights among law-enforcement officers are exemplified by the numerous courses that the Ministry of Human Rights has organized to train all ranks of the armed forces and the police in the concept of the protection of human rights in accordance with the international instruments pertaining thereto. There is also a Police Academy with a highly trained staff to teach cadets the principles of human rights and the application of national and international standards.

176. The Government is diligently promoting and protecting human rights in Iraq through its fulfilment of the following commitments which it deems essential in order to ensure realization of the rights and obligations guaranteed in the Constitution:

(a) Formulation of a national five-year plan for the promotion and protection of human rights;

(b) Completion of the establishment of the Independent Commission for Human Rights, the Statute of which has already been approved;

(c) Completion of the legislative framework through promulgation of the laws provided for in the Constitution in a manner consistent with international treaties, including laws regulating the activities of political parties, the operations of non-governmental organizations, the holding of elections and measures to combat trafficking in persons and ensure enjoyment of the right to freedom of opinion and expression through, *inter alia*, the protection of journalists and of the right to receive information;

(d) The executive authorities have tabled a bill under which the right to freely express opinions and the right of peaceful assembly and demonstration would be endowed with the force of law, since the absence of such legal recognition would negate any feeling of responsibility arising from respect for the sovereignty of the law and might lead to abuse of those freedoms and the commission of grave violations of human rights.

177. Given the limited cultural awareness of the manner in which this right should be exercised, it is open to abuse by bodies whose objectives are contrary to the public interest and demonstrations could be exploited by groups seeking to settle accounts with other groups. Many breaches of the law have been committed in this way by demonstrators. Although the Ministry of the Interior has taken measures to maintain security during demonstrations, these measures are internal directives that do not have the binding force of a law imposing obligations and penalties on citizens, officials and executive bodies in the event of violation of its provisions. The above-mentioned rules and conditions are merely procedural regulations for the holding of peaceful demonstrations and could give the Ministry of the Interior's security forces license to take repressive action against offenders without due process of law and to control demonstrations in an arbitrary manner that might restrict the people's freedom to protest in favour of better infrastructural services, improved living conditions or the release of detainees. Various groups, such as women, the families of detainees and religious minorities, held peaceful demonstrations in 2011, but such



activities by homosexuals are prohibited since their sexual practices, being contrary to the teachings of the Islamic sharia, constitute a punishable offence under Iraqi law.

## Article 22

178. Unrestricted and unconditional freedom to form and join political parties is guaranteed in article 39 of the Permanent Constitution of 2005. Notwithstanding the absence of legislation regulating their activities in the country, 160 political parties have been established since April 2003 after many decades during which the Iraqi people were deprived of political freedoms as a result of the ban on political parties, the establishment of which was designated as a criminal offence at the end of the 1970s. Coalition Provisional Authority Order No. 97 of 7 June 2004 defined a political entity as an entity that intended to participate in elections and had presented its statute.

179. Freedom to form political parties constitutes a basic guarantee of political pluralism. In keeping with the requirements of political life and democratic transition and in order to regulate the legal framework for the establishment of political parties on a national and democratic basis that will ensure political pluralism and broader participation in the conduct of the country's affairs, a bill of law on political parties has been drawn up and submitted to the legislature (the Council of Representatives) with a view to the repeal of the Political Parties Act No. 30 of 1991.

180. With regard to participation by civil society organizations, prior to the overthrow of the dictatorial regime the activities of such organizations were regulated by the Associations Act No. 13 of 2000. However, the new freedom of civil society action and the increasing number of national and foreign non-governmental organizations after the change of regime prompted the Administrator of the Coalition Provisional Authority to issue Order No. 45 of November 2003 concerning the registration of non-governmental organizations with a view to regulating their activities and preventing their exploitation for unlawful or fraudulent purposes. Article 45 of the Iraqi Constitution stipulates that: "The State shall seek to support, develop and strengthen the role of civil society institutions and preserve their independence."

181. Iraq has a department, attached to the secretariat of the Council of Ministers, which is responsible for the registration of civil society and non-governmental organizations. This department, which was established in 2003 at the Ministry of Planning and Development Cooperation/Centre for the Registration of NGOs, was subsequently separated therefrom as the NGO Assistance Office under the terms of Order No. 16 of 2005 and ultimately renamed the NGO Department in accordance with Order No. 122 of 2008. The Council of Representatives promulgated the Non-Governmental Organizations Act No. 12 of 2010 with a view to regulating the establishment and membership of NGOs and the registration of Iraqi NGOs and the branches of foreign NGOs. The Act was designed to:

- (a) Support, develop and strengthen the role of civil society organizations and preserve their independence in accordance with the law;
- (b) Promote the freedom of citizens to form and join non-governmental organizations;
- (c) Establish a central mechanism to regulate the registration of Iraqi and foreign non-governmental organizations.

182. Article 4, paragraph 1, of the Act stipulates that: "Every Iraqi natural or legal person has the right to form, join and withdraw from a non-governmental organization." Article 34 thereof further stipulates that: "The following are hereby rescinded: (a) The Foreign-Linked Associations Act No. 34 of 1962; (b) The Associations Act No. 13 of 2000; (c) Coalition

Provisional Authority Order No. 45 of 2003; (d) Order No. 16 of 2005 detaching the NGO Assistance Office.”

183. The NGO department of the secretariat of the Council of Ministers has issued more than 400 certificates of registration for civil society organizations meeting the conditions laid down in the Non-Governmental Organizations Act No. 12 of 2010, which is currently in force, and the directives promulgated pursuant thereto. The department has also revoked the registration of 1,681 organizations which did not possess legal personality or were not legal entities registered before 9 March 2010.

### **Article 23**

184. The State’s obligation to ensure the protection and welfare of the Iraqi family, which forms the nucleus of society, is affirmed in the following provisions of article 29 of the Constitution:

1. (a) The family is the fundamental unit of society; the State shall preserve its integrity and its religious, moral and national values;  
(b) The State guarantees the protection of mothers, children and aged persons; it shall care for the young generation and youth and shall provide them with appropriate conditions for the development of their aptitudes and capacities;
2. Children have a right over their parents in regard to upbringing, care and education and parents have a right over their children in regard to respect and care, especially in times of need, disability and old age;
3. All forms of economic exploitation of children shall be prohibited and the State shall take the measures needed to protect them;
4. All forms of violence and abuse in the family, school and society shall be prohibited.

185. The Personal Status Act No. 188 of 1959, as amended, regulates all aspects of marriage, including registration, legal guardianship, dower, maintenance, divorce and separation. Article 3, paragraph 1, of the Act defines marriage as “a contract between a man and a woman who is lawfully permissible to him for the purpose of establishing a bond for conjugal life and the procreation of children”. The provisions of the said Act are derived from all the schools of Islamic law.

186. The Iraqi legislature has laid down a number of conditions that must be observed in the case of underage marriage, which can be defined as “a contract between a man and a woman under the age of majority who is lawfully permissible to him for the purpose of establishing a bond for conjugal life and the procreation of children”. It therefore involves the marriage of a minor under 18 years of age. The conditions for marriage are: an offer of marriage by the prospective bridegroom, approval by the bride’s legal guardian, establishment of legal eligibility (the man and the woman must be over 18 years of age) and certification, after examination by a competent medical authority, of the attainment of puberty by both parties to the contract.

187. Article 7, paragraph 1, of the Personal Status Act defines the marriageable age as follows: “In order for the marriage to be valid, the two parties to the contract must be in full possession of their mental faculties and must have reached the age of 18 years.” Although this is the general rule, article 8, paragraph 1, makes the following exception: “If a person over 15 years of age wishes to marry, the judge may authorize the marriage subject to approval by the legal guardian and provided that the said person’s legal and physical capacity is established. Should the guardian fail to respond, the judge shall set a deadline

for him to decide whether to grant his approval. In the absence of objection by the guardian, or if his objection does not merit consideration, the judge shall authorize the marriage.”

188. In the case of a minor whose marriage at 15 years of age has been authorized by the personal status judge, her legal capacity to dispose of an inheritance or obtain guardianship of her children on the death of, or divorce from, her husband should be the same as that of a wife enjoying full legal capacity to dispose of property. This was the customary practice until the State Advisory Council promulgated Decision No. 24/2005/646 of 8 June 2005 stipulating that: “Anyone who, being over 15 years of age, has married with authorization from a court shall be deemed to possess full legal capacity in regard to matters of personal status. However, such capacity shall not imply a full right to dispose of property and engage in commercial transactions.” Although that stipulation is in keeping with the provisions of civil law regulating this matter, it entails the granting of tutelage over widowed and divorced women and their children to another person, such as an uncle or a grandfather, who would thereby be enabled to dissipate their fortune and determine their future. This could constitute an impediment to the enjoyment by women and children of their rights if such other person decided to take undue advantage of them.

189. The question of forced marriage could arise in cases of underage marriage in which the young woman might lack the willpower and awareness needed to determine her future and, even if she were to refuse her consent, her refusal might go unheeded and she could be subject to many forms of persuasion, inducement or threats by her family. Accordingly, the legislature addressed the question of forced marriage in article 9 of the Personal Status Act which stipulates as follows:

1. No relative or third party shall have the right to force marriage on any person, whether male or female, without the said person’s consent and any contract of marriage concluded under duress shall be deemed null and void if the marriage has not been unconsummated. Likewise, no relative or third party shall have the right to prevent the marriage of a person eligible therefor under the provisions of this Act.

2. Any first-degree relative who breaches the provisions of paragraph 1 of this article shall be liable to a penalty not exceeding three years’ imprisonment and/or a fine. If the person breaching the said provisions is not a first-degree relative, he shall be liable to a minimum of three and a maximum of ten years’ imprisonment.

190. Notwithstanding the legal loophole offered for underage marriage, we find that the phenomenon of extrajudicial marriages, particularly between young persons, has assumed alarming proportions in the country due to the failure to apply the law in this regard since the events of 2003. Such marriages can give rise to prosecution under the terms of article 10, paragraph 5, of the Personal Status Act which stipulates that: “Any man who concludes an extrajudicial marriage contract shall be liable to a term of not less than six months’ and not more than one year’s imprisonment or a fine of not less than three hundred and not more than one thousand dinars. The conclusion of an extrajudicial marriage contract by a man who is already married shall render him liable to a term of not less than three and not more than five years’ imprisonment.” The perpetrators of such offences are referred to the criminal investigators by the personal status judge. The following statistics compiled by the Higher Judicial Council show the number of marriage contracts and petitions for divorce during the period 1996–2011.

<i>Year</i>	<i>Marriage contracts</i>	<i>Petitions for divorce</i>
1996	32 192	127 302
1997	28 800	127 901
1998	25 652	126 149
1999	26 457	148 963
2000	26 110	171 134
2001	29 093	155 391
2001	27 601	161 095
2003	20 649	175 579
2004	262 554	28 690
2005	258 259	33 348
2006	234 852	35 627
2007	217 221	41 536
2008	243 056	44 116
2009	267 289	61 466
2010	56	-
2011	85 627	59 515

191. The question of polygamy is addressed in paragraphs 4 and 6 of article 3 of the Personal Status Act which stipulate as follows:

4. Marriage to more than one woman shall not be permitted without authorization from a judge and such authorization shall be conditional on fulfilment of the following conditions: (a) The husband must have the financial capacity to support more than one wife; (b) There must be a legitimate benefit.

6. Anyone who concludes a marriage contract with more than one woman in breach of the stipulations of paragraphs 4 and 5 above shall be liable to a term of not more than one year's imprisonment and/or a fine not exceeding one hundred dinars.

## **Article 24**

192. In view of the need to ensure the requisite protection for Iraq's children and guarantee their rights, the Government of the Republic of Iraq, represented by the Ministry of Labour and Social Affairs/Child Welfare Commission, has undertaken the task of formulating a comprehensive national policy for the protection of children and, to this end, has identified the following phenomena as the principal challenges facing the country's children: child labour, child marriage, child trafficking, children in conflict with the law, children lacking parental care, female genital mutilation, sexual exploitation of children, child victims of armed conflicts, child abuse, children with special needs and the dangers that landmines pose to children.

193. The Government of Iraq has taken every possible measure at the legislative, executive and judicial levels to ensure the welfare and protection of children, to strengthen family cohesion and stability, to help to resolve family problems and disputes that might prevent children from enjoying their rights recognized in the Convention on the Rights of the Child, and to ensure a stable life, a safe family environment and a proper education under parental care in a manner consistent with the high status that should be accorded to mothers and children.

194. The country's national legislation defines the duties of parents and legal guardians towards children. Enactments such as the Welfare of Minors Act and the Juvenile Welfare Act emphasize the need to protect the best interests of the child and articles 55 and 57 of the Personal Status Act No. 188 of 1959 also make provision for care in regard to breastfeeding and custody.

195. Every natural person has the right to recognition of his legal personality, which begins with the legally established fact of being born live, legal personality not being recognized in the event of stillbirths. The question of legal personality is addressed in articles 34, 35 and 40 of the Iraqi Civil Code (Act No. 40 of 1951).

196. The right to acquire a nationality forms the basis for the enjoyment of all citizenship rights in the State, such as the right of residence, the right of access to public service and the right to participate in political life by standing as a candidate for membership of the various representative councils and by voting in general elections and thereby contributing to the legitimate authority of the State which is derived from the people, consisting in a group of citizens. In keeping with the principle that "the people are the source of authority", every citizen should play an active and fundamental role in the assignment of that authority. An individual holding proof of his nationality is also entitled to enjoy all the other (non-political) rights such as the right to education, the right to social security, including health insurance, and the right to work. Article 18, paragraph 1, of the Permanent Iraqi Constitution of 2005 stipulates that: "Every Iraqi has the right to Iraqi nationality, which forms the basis of his citizenship." Outside the borders of any State, possession of its nationality affords protection against other States. In this connection, it is noteworthy that the dictatorial regime committed the crime of genocide against the Feyli Kurds in Iraq during the 1980s.

## Article 25

197. Under the terms of article 20 of the Permanent Constitution of 2005, all male and female citizens have the right to take part in the conduct of public affairs and to exercise political rights, including the right to vote and to be elected. Democracy is the ultimate guarantor of the protection of human rights, and free and democratic elections constitute the fundamental process through which citizens are effectively enabled to play a role in determining the form and composition of their political institutions.

198. In 2005, the Iraqi people were able to take part in three rounds of national elections which constituted the most extensive exercise of democracy that the country had witnessed. National Assembly elections were held in January 2005, followed by a referendum in October on the Constitution drawn up by the National Assembly and then legislative elections in December of the same year. At the latter elections, 12,191,133 out of a total of 15,568,702 registered voters, i.e. 78 per cent of the electorate, went to the polling booths to cast their votes in 31,348 polling stations manned by about 200,000 officials in all the country's governorates. This process, which was monitored by 126,125 Iraqi and 949 international observers in addition to 272,295 representatives of political entities, involved the election of 275 out of a total of 7,655 parliamentary candidates on 307 lists of registered political entities, including 19 blocs. About 300,000 Iraqis living abroad in 15 countries also voted in 95 polling centres. The elections led to the establishment of a permanent Council of Representatives consisting of 275 members, of whom 75 (27.3 per cent) were women. This was the highest percentage of seats held by women in national parliaments in 2006.

199. Decentralized governance is a method under which the Iraqi State is administered through a system of elected provincial (governorate) councils in a manner proportionate to

the size of the population of each governorate. Provincial council elections have been held on two occasions, the first being in December 2005 and the second in January 2009.

200. During the last provincial council elections held on 31 January 2009, a total of 14,431 candidates competed for 440 seats on the councils which appoint the provincial governors who supervise the local administrative management of their governorates, including the funding and implementation of reconstruction projects. The number of persons who cast their ballots amounted to about 7.5 million, which represents a turnout of about 51 per cent of the total number of 14.9 million eligible voters in the 14 Iraqi governorates concerned, not including the three governorates of the Kurdistan Region (Arbil, Dahuk and Sulaymaniyah) and Kirkuk where it was decided to postpone the elections until further notice. These elections were supervised by the Independent High Electoral Commission, with support from the Office of the United Nations Assistance Mission for Iraq (UNAMI), and attended by about 800 international and thousands of local observers. They resulted in the election of 440 members of provincial councils and it is noteworthy that 25 per cent of these members were women.

201. The second round of general elections to the Council of Representatives was held on 7 March 2010 notwithstanding the wave of violence in most parts of Iraq during the preceding period and even on the day of the elections. This did not deter the Iraqi people from taking part in the elections and exercising their right to freely choose their representatives. The turnout amounted to 62.4 per cent of the total electorate of 18.9 million voters, the highest rate being in the city of Dahuk (80 per cent) and the lowest in the city of Amarah (50 per cent). The highest turnout during previous special elections had been 55 per cent. A total of 167 political entities and 12 large blocs put forward 6,281 candidates (4,468 men and 1,813 women) for 310 seats distributed among 18 governorates, including eight minority seats (five for Christians and one each for Sabian-Mandaeans, Yazidis and Shabak) and seven compensatory seats for the lists obtaining the largest number of votes.

202. A total of 8,312 polling centres and 49,088 polling stations were established throughout Iraq's 18 governorates and 37 polling stations were opened in the international zone. It is noteworthy that 109 polling centres were also opened for Iraqis living abroad, 272,016 of whom cast their ballots.

203. The Iraqi Electoral Commission designated 16 countries throughout the world where Iraqis living abroad could vote at more than one centre, and sometimes in more than one city, in each country. These countries were selected on the basis of the number of Iraqis living therein or in nearby countries.

204. None of the 183 registered official complaints, and none of the 381 private complaints reported by the independent observers monitoring the electoral process, involved electoral fraud.

205. The Iraqi elections were monitored by 1,447 international observers headed by Ad Melkert, the Special Representative of the Secretary-General of the United Nations, who was present during the elections in the city of Kirkuk and supervised the final sorting operations. A French mission including the Deputy Speaker of the French National Assembly and a former French Minister of Justice visited several Iraqi cities and a mission from the Arab League was present in six cities. The elections were also monitored by members of the European Parliament and independent observers from Germany and Japan.

206. From the security standpoint, the election day was marked by various incidents in the capital, Baghdad, where the casualty figures amounted to 38 killed and over 100 injured and more than 20 persons were arrested for planning or carrying out terrorist attacks against voters.

## Article 26

207. The Republic of Iraq emphasizes its commitment to implement the international human rights covenants and treaties, as well as its belief in the importance of giving effect to the rights recognized therein and, in particular, those enunciated in the International Convention on the Elimination of All Forms of Racial Discrimination. In accordance with article 9 of the said Convention, we will be reviewing Iraq's endeavours and achievements in this field, including the steps that it has taken to promote a culture of rejection of all forms of racial discrimination. The Republic of Iraq wishes to express its deep attachment to human values and its commitment to collaborate with the United Nations bodies concerned with human rights.

208. The Permanent Iraqi Constitution of 2005 contains the following stipulation in article 2, paragraph 2, of the section on fundamental principles: "This Constitution shall safeguard the Islamic identity of the majority of the Iraqi people and shall guarantee the full religious rights of all individuals, whether Christian, Yazidi or Sabian-Mandaean, to freedom of religious belief and practice." Article 3 stipulates that: "Iraq is a multi-ethnic, multi-faith and multiconfessional country ..." Article 4, paragraph 1, further stipulates that: "The Arabic language and the Kurdish language shall be the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkmen, Syriac and Armenian, in government educational institutions in accordance with the educational regulations, or in any other language in private educational institutions, shall be guaranteed." Articles 5, 6, 7, 8 and 9 recognize the cultural, educational and political rights of minorities, as well as their right of access to public service. Other constitutional provisions guaranteeing the rights of minorities are referred to in the sections of the report concerning the application of the relevant articles of the Convention.

209. New laws are being promulgated and existing laws are being amended to guarantee the rights of minorities in accordance with the Constitution in force. It should also be noted that the successive Iraqi Governments formed since 2003 have taken a series of measures designed to eliminate racial discrimination and protect the rights of minorities in a manner consistent with the requirements of the Convention.

210. The Republic of Iraq believes in the universally recognized principles of human rights, to which it is constitutionally committed, and has diligently endeavoured to take all the legal and institutional measures needed to promote a culture of human rights and rejection of all forms of racial discrimination. One of the most outstanding achievements of the post-2003 era consisted in the Republic's establishment of a Ministry of Human Rights to examine and analyse the situation in regard to the exercise of all such rights, identify shortcomings and determine the policies that should be pursued to rectify them.

211. Within this context, the Republic of Iraq has undertaken to examine the past history of gross violations of human rights and, to this end, has established the Martyrs' Foundation, the Political Prisoners' Foundation, the Property Claims Commission, the Central Commission set up under the terms of Act No. 5 of 2009 (compensation of victims who suffered amputation or disfigurement as a result of the practices of the dictatorial regime) and the Compensation Commission set up under the terms of Act No. 20 of 2009 (compensation of victims of military operations, military errors and acts of terrorism). Having received and investigated claims from victims, and having organized public hearings during which victims were given an opportunity to reveal the violations to which they were subjected in the past as examples of errors that should not be repeated in the future, these institutions have been able to record the history of gross violations of human rights, identify the victims and assess the compensation due to them.

212. The Republic of Iraq reaffirms its ongoing belief in the principles of the dignity and equality of all human beings, its commitment to the universally recognized principles of human rights, its strong condemnation of all forms of discrimination and its prohibition of any type of inequality within its territory.

213. In keeping with the provisions of the Constitution, and particularly article 14 of section two (rights and freedoms) which stipulates that Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, colour, religion, confession, belief or opinion, the differing origins of the Iraqi population, comprising Arabs, Kurds, Turkmen, Assyrians, Muslims, Christians, Sabian-Mandaeans, Yazidis and others, has constituted and continues to constitute a rich source of diversity conducive to unity insofar as one of the distinctive characteristics of the Iraqi people lies in the fact that they have lived side by side for centuries.

214. The Iraqi Government is endeavouring to provide the propitious political, social and economic environment, characterized by peace and stability, that is a basic prerequisite for the accordance of sufficient priority to human rights in general and also to human development, including issues relating to food security and the eradication of poverty. The "International Compact with Iraq" initiative, which was designed to establish a new partnership with the international community and achieve a national vision of Iraq that would further the cause of peace and socioeconomic and political development within a five-year period, constitutes a commitment for the fulfilment of which a clearly defined governmental policy is required.

215. The country's governmental policies are based on the principle of the sovereign concept of social justice and its implementation in economic and production relations with a view to the achievement of social complementarity and integration. The measures that the Government is taking are designed to abolish all practices conducive to racial segregation by ensuring that the laws and judicial and administrative regulations that are applied by all governmental institutions prohibit engagement in activities that might promote confessional, tribal or factional divisions.

216. The Government has affirmed its commitment to the pursuit of a policy of eliminating all forms of racial discrimination in the civil, political, economic, social and cultural fields, as well as supporting institutions for the protection of human rights and providing an appropriate legislative framework for the elimination of all forms of discrimination within the compass of a comprehensive vision of the development of social partnership.

217. Iraq's commitment to eliminate discrimination within its territory and to promote the principle of the equality of all before the law is highlighted by the legislature's promulgation of enactments to ensure that the conditions in which prisoners and detainees are held in correctional facilities meet the international standards for the humane and non-discriminatory treatment of prisoners. Section II of the Prisons Administration Act stipulates that the legally established norms must be applied impartially and without discrimination, which is in conformity with the provisions of section two, article 14, of the current Iraqi Constitution ("Iraqis are equal before the law without discrimination ...").

218. With regard to the status of women in general, considerable endeavours have been made to combat discrimination through the promulgation of a series of legislative enactments and amendments emphasizing the principle of the equality of all and prohibiting any form of gender-based discrimination. These enactments are exemplified by the Nationality Act No. 26 of 2006 which places men and women on an equal footing from the standpoint of the granting of Iraqi nationality to children born to an Iraqi father or mother.

219. Iraq's integration into the international human rights system is illustrated by: its signature and ratification of a number of human rights instruments; its withdrawal of



several reservations made thereto; its submission of periodic reports to the relevant United Nations treaty bodies the observations of which are taken into consideration; its response to reports received from States and international organizations concerned with human rights; and its submission of its national UPR report which constituted an important step towards Iraq's fulfilment of its international obligations insofar as that report offered an opportunity for Iraq to provide an insight into its overall human rights policy, the commitments that it has made and the measures that it has taken to strengthen the legal and institutional framework in this field.

220. Iraq is participating actively in the international endeavours to promote the principles of human rights through the establishment of national mechanisms to protect and safeguard those rights. The governmental sectors responsible for the promotion and protection of human rights include, in particular, a Ministry of Human Rights which has been assigned the task of safeguarding, defending and promoting the principles of human rights and ensuring that fundamental rights and freedoms are enjoyed by all individuals without discrimination. In conformity with the Paris Principles, Act No. 53 of 2008 made provision for the establishment of a Commission for Human Rights which is in the final stages of formation as an independent national institution with a broad mandate.

221. The Parliament is exercising its legislative authority and constitutional powers which enable it to play a fundamental role in the protection of human rights through its various mechanisms and means of intervention. It is able to contribute to the promotion of human rights in Iraq through its internal and regulatory mechanisms since, in accordance with its rules of procedure, it has parliamentary committees such as a human rights committee and a committee on women and children which are closely concerned with the protection of human rights.

222. From the standpoint of non-discrimination, the human rights of women and children are guaranteed by the Constitution and by Iraq's commitments under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, which constitute the normative framework for the promotion and protection of the human rights of women and children who represent a large proportion (more than 50 per cent) of the total population. These two categories were among those most affected by the volatile human rights situation, including the repercussions of the forced displacement operations, the demographic changes, the successive wars and the subsequent acts of violence and terrorism after the change of regime in 2003. Factors relating to the lack of welfare services and mechanisms and the prevailing social culture and practices also had an adverse impact on their enjoyment of human rights in general. The acts of terrorism with which the country was afflicted left tens of thousands of widows and orphans, thereby imposing an increasing burden on women among whom the social phenomenon of women as the primary family providers became entrenched. In spite of this situation, however, the positive aspects in regard to women's enjoyment of their rights are illustrated by the following:

(a) The establishment of an institutional structure for women's and family affairs comprising the Ministry of State for Women's Affairs, the Committee on Women, the Family and Children in the Council of Representatives, the Women's Social Welfare Department attached to the Office of the Prime Minister, the Directorate of Family Protection responsible for the prevention of domestic violence against women, the Community Police Force and the Child Welfare Commission attached to the Ministry of Labour and Social Affairs.

(b) The development of a legal framework emphasizing the constitutional principles of equality, exemplified by enactments such as the Nationality Act promulgated in 2006, which abolished discrimination between men and women in regard to their children's acquisition of nationality, and the special concern shown to ensure women's

participation in national decision making through the allocation of a quota of 25 per cent of the seats in the Parliament and the provincial councils to women.

(c) The adoption of a governmental policy of promoting the advancement of women in all spheres of life through the establishment of a Community Police Department to protect them against violence and ensure the care and rehabilitation of victims of such violence. A ministerial committee on the prevention of violence against women was formed under the terms of Presidential Order No. 80 and a policy of extending the coverage of the social protection network to include social security benefits for other female categories was pursued (86,095 widows, 2,939 divorcees and 1,114 abandoned women were included in the social protection network in Baghdad alone by the end of 2008). A new bill of law has also been tabled under which the Social Protection Network Department would extend social insurance coverage to poor families.

(d) The Ministry of Education's regulations do not permit gender discrimination at any stage of education from kindergarten to university level since the principle of gender equality in enrolment for general, technical and vocational education and all forms of vocational training is guaranteed. This guarantee includes equality in regard to academic curricula, examinations, level of teaching qualifications and standard of academic facilities and equipment; the encouragement of co-education as a distinctive form of education conducive to that end, particularly through the revision of school textbooks and programmes and the adaptation of teaching methods; equality of opportunity in regard to the receipt of education grants and other allowances; equality of opportunity to benefit from further education programmes, including adult education and functional literacy programmes and especially those designed to narrow any gender gap in education as rapidly as possible; and equality of opportunity to participate in activities (sports and physical education).

223. Iraqi women are playing a role in all walks of life and, since 2003, have been appointed to numerous posts that were previously reserved for men. In keeping with the principle of equal access to public service, women occupy 25 per cent of the seats in the current Iraqi Parliament and also hold ministerial portfolios and senior posts such as those of director general, expert, assistant director general, counsellor and undersecretary.

224. Iraq has shown special concern for the situation of children and has taken a series of measures to protect this social category by, in particular, giving effect to the international instruments on children's rights and acceding to the two Optional Protocols to the Convention on the Rights of the Child. A Child Welfare Commission chaired by the Minister of Labour and Social Affairs and comprising representatives of a number of ministries concerned, including the Ministry of Human Rights, has been established to improve the situation of Iraqi children and ensure the protection and human dignity of the most vulnerable (street children). The significant endeavours that Iraq is making in this regard include the establishment by the Ministry of the Interior of a directorate to tackle the problem of vagrancy, in addition to the hostels that the Ministry of Labour has opened for vagrant children in conflict with the law. An enactment has also been promulgated under which it is prohibited to import games or toys that encourage violence among children, endanger their health or have detrimental effects on their behaviour.

## **Article 27**

225. The Republic of Iraq wishes to emphasize that its people are a single people with a single identity enriched by its numerous cultural sources and components. It is a country experiencing unity in diversity.

226. The sociocultural identity of Iraq's religious and ethnic minorities is protected and preserved by the legislative instruments that show due regard for their particularity, and primarily by the Iraqi Constitution which guarantees the full rights of all individuals to freedom of religious belief and practice. Their political, cultural and educational rights are also guaranteed by the numerous articles of the Constitution expounding the sound basis of democratic governance and human rights, including the rights of all the minorities who, for the first time, have been equitably recognized as an integral constituent component of the Iraqi people. In this respect, the present Constitution is clearly distinct from its predecessors insofar as it acknowledges that all Iraqis have equal rights and obligations. Article 2, paragraph 2, of section one (fundamental principles) stipulates that: "This Constitution shall safeguard the Islamic identity of the majority of the Iraqi people and shall guarantee the full religious rights of all individuals, whether Christian, Yazidi or Sabian-Mandaean, to freedom of religious belief and practice." Article 14 of section two (rights and freedoms) stipulates that: "Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, colour, religion, confession, belief, opinion or economic or social status." Under the terms of article 41 of the same section: "Iraqis shall be free to regulate matters of personal status in accordance with their religions, confessions, beliefs, or choices." Article 43 further stipulates that: "1. The followers of all religions and creeds shall be free to practise their religious rites and manage their religious endowments, affairs and institutions. 2. The State guarantees freedom of worship and the protection of places of worship." Similar provisions are also found in other articles.

227. Iraq's minorities consist of the following:

**(a) Christians**

228. There are 14 Christian denominations in Iraq: Chaldean – Assyrian (Church of the East) – Assyrian Catholic (Ancient Church of the East) – Syriac Orthodox – Syriac Catholic – Armenian Orthodox – Armenian Catholic – Greek Orthodox – Greek Catholic – Latin – National Evangelical Protestant – Assyrian Evangelical Presbyterian – Seventh-Day Adventist – Coptic Orthodox. The number of Christians living in Iraq has declined from 1,200,000 to about 500,000. According to the statistics compiled by departments of the Ministry of Displacement and Migration and the Christian Church Endowment Council, about 8,000 families were displaced, mostly in the Kurdistan Region, during the period from 2003 to the end of 2011 and the number of persons killed amounted to 454. There are 276 Christian churches, 113 of which are in Baghdad, and 42 of them have been targeted in terrorist attacks.

**(b) Sabian-Mandaeans**

229. The Sabians are indigenous inhabitants of Iraq where they live on the banks of the Tigris and Euphrates rivers in view of the important role that water and purification play in their religious and spiritual life. They have seven places of worship (*mandis*) in Iraq, one being in the city of Baghdad (where the community's headquarters was established in 1985) and the others in the governorates of Basra, Maysan, Dhi Qar, Arbil, Kirkuk and Diwaniyah. Although there are no precise statistics on the Sabian-Mandaean population, they probably number about 10,000–12,000 in Iraq and some live in other countries. Sabian-Mandaeans are not permitted to marry outside their community and marriage is legally valid and acceptable to them only after the performance of specific religious rites. Since 2003, a total of 156 have been killed and 353 families have been displaced.

**(c) Yazidis**

230. The Yazidis follow a very ancient religion which first appeared more than 3,000 years ago. Their community is concentrated in northern Iraq and particularly in the

Shaikhan area (the headquarters of the Yazidi Emirate), the sub-districts of Bashiqa and Bahazane, the district of Sinjar and some villages and districts such as Semel and Zakho in the governorates of Dahuk and Arbil. The Yazidis are divided into four endogamous religious castes and are forbidden to marry outside their religion. Although polygamy is permitted by their religion, the Yazidis are allowed to marry only within their own clan.

**(d) Turkmen**

231. The Turkmen are an indigenous component of Iraqi society and form the third largest ethnic group after the Arabs and the Kurds. Although concentrated in Kirkuk, they are found from the north-western to the south-eastern parts of Iraq and in all the major cities. They have engaged actively in political campaigning and have formed political parties and more than 15 sociocultural associations. In a short period of time, they have chosen leaders for the Turkmen political movement which is characterized by its cultural and linguistic demands for the preservation of Turkmen identity and particularity and its rejection of governmental Arabization campaigns in their areas. The Turkmen Front was formed in Arbil in 1997 from four ethnic parties and organizations (the National Turkmen Party, the Turkmeneli Party, the Turkmen Brotherhood Club and the Independent Turkmen Movement. At the elections held on 30 January 2005, they obtained 13 seats in the National Assembly.

**(e) Shabak**

232. Opinions differ among researchers and writers concerning the origin of the Shabak. The most prevalent opinion is that the Shabak are of heterogeneous origin since, in Arabic, their name signifies "mixture", thereby implying that they are descended from or have merged with more than one of the numerous ethnic groups in the region. Their religious beliefs are Islamic and they have a venerated scripture known as the *Buyuruq* (Book of Virtues), written in their indigenous ancient Turkmen language, which they pass from hand to hand during ritual ceremonies. Their language or dialect can be traced back to the Proto-Indo-Iranian (Aryan) language permeated with extraneous influences attributable to the geographical movements of ethnocultural groups (Persian, Turkish, Arab and Kurdish). Most of the Shabak live in the Ninawa plains.

**(f) Feyli Kurds**

233. The Feyli Kurds suffered greatly from forced displacement and deportation on the basis of the allegation that they were Iranian nationals. After 2003, however, they were given hope that, in the new political environment, they would recover their usurped rights, particularly after the orders issued by Paul Bremer, the Civil Administrator, revoking the Nationality Decree No. 666 of 1980 and establishing the Property Claims Commission. They are now participating in political life and hold seats in the Council of Representatives and posts in the Iraqi Government. It is noteworthy that the dictatorial regime withdrew Iraqi nationality from hundreds of thousands of Feyli Kurds under the terms of (dissolved) Revolutionary Command Council Decree No. 666 of 7 May 1980, forcibly expelled them from Iraq and dumped thousands of families on the Iraqi-Iranian border. After the fall of the regime in 2003 and the establishment of the Iraqi Supreme Criminal Tribunal, the issue of the withdrawal of Iraqi nationality from the Feyli Kurds, their forcible expulsion and the confiscation of their movable and immovable property was among the cases heard by the Tribunal which, on 29 November 2010, ruled that these acts constituted crimes of genocide. This ruling was endorsed by the Council of Ministers which, in its Decision No. 426 taken at the Council's 48th session on 8 December, adopted the proposal to establish an independent national commission to remedy the unjust treatment of the Feyli Kurds. The commission was to be established after a series of meetings and would consist of judges and politicians assigned with the task of addressing matters relating to martyrs, care of their

families, recovery of nationality and property stolen from them, return of displaced persons and migrants, award of damages in respect of material and moral detriment, and enactment of the legislation required to enforce their legal, financial and other entitlements.

234. The representation of minorities in provincial councils, through the allocation of a quota of seats, was guaranteed following parliamentary ratification of Act No. 44 of 2008 amending article 2, paragraph 1, and article 50 of the Provincial, District and Sub-District Councils Electoral Act No. 36 of 2008. Their representation in the new Council of Representatives was also guaranteed through the allocation of eight seats therein (five for Christians and one each for the Sabian, Yazidi and Shabak communities) on the basis of the proportionate presence of these minorities in the governorates. Several of their members have held high-level governmental posts such as ministers, undersecretaries, ambassadors and directors general, etc. An Endowment Council comprising Christian, Yazidi and Sabian endowment directorates has been set up to manage the affairs of these Iraqi religious minorities in the same way as the Sunni and Shiite Endowment Councils and a Council of Heads of Christian Communities has also been established in Iraq.

235. The principal violations committed against members of minorities since the fall of the dictatorial regime in 2003 were as follows:

**(a) Acts of homicide**

236. Many members of minorities, including ministers of religion, were killed or abducted by reason of their religious affiliation or their practice of a specific occupation (as in the case of the Sabian-Mandaeen goldsmiths) or in the course of terrorist and other acts of violence. The following table shows the number of persons killed during the period 2003–2010 according to the statistics compiled by the Endowment Council for the Christian and other religions and by the Ministry of the Interior and the heads of the religious communities.

<i>Minority</i>	<i>Total number</i>	<i>Number of victims</i>
Christians	<b>1 200 000</b>	439
Sabians	<b>12 000</b>	156
Yazidis	<b>500 000</b>	490
Shabak	<b>200 000</b>	529

**(b) Forced displacement and migration**

237. Numerous families belonging to minorities were subjected to forced displacement and migration as a result of the unstable security situation in hot spots such as the governorates of Baghdad and Mosul. Some of them found temporary refuge outside Iraq in neighbouring countries such as Syria and Jordan and others went to the Kurdistan Region of Iraq and other safe areas. The following table shows the number of families subjected to forced displacement or migration according to the statistics compiled by the Ministry of Displacement and Migration and the Endowment Council for the Christian and other religions.

	<i>Christians</i>	<i>Sabian-Mandaeans</i>	<i>Yazidis</i>	<i>Shabak</i>	<i>Turkmen</i>	<i>Feyli Kurds</i>
Number of displaced families	6 231	353	289	378	2 349	14

**Governmental endeavours to protect the rights of members of Iraqi minorities**

238. Article 117, paragraph 1, of the current Iraqi Constitution stipulates that: “On the entry into force of this Constitution, the Kurdistan Region, with its existing authorities,

shall be recognized as a federal region.” Article 4 of the Iraqi Constitution further stipulates as follows:

1. The Arabic language and the Kurdish language shall be the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkmen, Syriac and Armenian, in government educational institutions in accordance with the educational regulations, or in any other language in private educational institutions, shall be guaranteed.
2. The scope of the term “official language” and the manner of application of the stipulations of this article shall be defined by law, which shall cover:
  - (a) Publication of the Official Gazette in the two languages;
  - (b) Speech, dialogue and expression in official settings, such as the Council of Representatives, the Council of Ministers, courts, and official conferences, in either of the two languages;
  - (c) Recognition and publication of official documents and correspondence in the two languages;
  - (d) Opening of schools that teach the two languages in accordance with the educational regulations;
  - (e) Use of both languages in any other contexts, such as banknotes, passports and stamps, as required by the principle of equality.
3. The federal institutions and official agencies in the Kurdistan Region shall use both languages.

239. On 21 April 2008, the Federal Government promulgated Decision No. 15/Federal/2008 authorizing the inscription in Arabic, Kurdish, Turkmen and Syriac of signboards of departments belonging to the governorate of Kirkuk in conformity with the provisions of article 4, paragraph 4, of the Constitution. With regard to cultural rights, the members of ethnic and religious minorities now have Kurdish, Turkmen, Assyrian and Syriac-speaking judicial bodies, in addition to magazines and books published in those languages.

240. Article 4, paragraph 4, of the Iraqi Constitution stipulates that: “The Turkmen and Syriac languages shall be two other official languages in the administrative units that are heavily populated by speakers thereof.” Moreover, in keeping with the provisions of paragraph 1 and paragraph 2 (a), (b) and (c) of article 2 of the Covenant, legislative amendments have been made to the Penal Code (Act No. 111 of 1969) to ensure that all citizens are treated on an equal footing.

241. Minorities enjoy security protection for their places of worship and a number of their members have been enrolled in the police and armed forces. Incidents in which their members have been killed, abducted or forcibly displaced are investigated in order to determine the security precautions that need to be put into place to ensure the safe return of displaced families to all the governorates. Exceptional measures have been taken to provide the requisite protection for Mosul University’s Christian students, numbering around 1,300, who have been escorted to and from their homes in the Ninawa plains following the repeated terrorist acts in which they were targeted. Patrol vehicles and traffic police officers are dispatched to facilitate the movements of ministers of religion who, in this respect, receive the same special treatment as other senior officials.

242. The Ministry of Municipalities and Public Works is making concerted endeavours to protect land belonging of minorities by issuing instructions to its departments in the governorates of Mosul, Kirkuk, Basra, Maysan, Diwaniyah and Diyala to remedy previous encroachments on minority-owned property, such as places of worship and cemeteries, in those governorates by providing new plots of land on which they can establish other places of worship and cemeteries.

243. The Ministry of Human Rights is implementing a project under which teaching staff are receiving training in the principles of social tolerance and coexistence so that they can instil these principles into their pupils in selected areas of the Karkh and Rusafa districts of Baghdad where the schools are attended by children from minorities and this project is being extended to schools in other governorates.

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