



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

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Consideration of reports of States parties to the Convention

**Additional information submitted by Iraq under article 29
(4) of the Convention***

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I.

A. Introduction

1. The Committee on Enforced Disappearances considered the report submitted by Iraq under article 29 (1) of the Convention at its 140th and 141st meetings, held on 7 and 8 September 2015, and subsequently produced a set of recommendations.
2. Iraq also submitted a follow-up report to the Committee with information on measures taken in response to the recommendations contained in paragraphs 14, 29 and 34 of the Committee's concluding observations (see document [CED/C/13/4](#)).
3. Parliamentary elections were conducted in Iraq on 12 May 2018, preceded two days earlier by special voting for Iraqi security forces personnel and prison inmates, and by out-of-country voting for the Iraqi expatriate community around the world. The number of eligible voters in Iraq amounted in all to 24,352,253, of whom 9,952,964 participated in the general voting and 709,396 in the special voting. A further 179,329 participated in the out-of-country voting, bringing the total number of voters to 10,840,989, equivalent to a turnout of 44.52 per cent. In the Kurdistan Region, legislative elections took place on 30 September 2018. Voters cast their ballots in 1,200 electoral districts – 5,933 polling stations – located throughout the governorates of the Region. A total of 3,933 polling stations were equipped to receive voters. In these elections, 709 candidates from all governorates contested 111 parliamentary seats, 11 of which were earmarked for national and religious minorities as follows: 5 seats for Turkmens; 5 seats for Christians; and 1 seat for Armenians. The turnout was 57.96 per cent for the general voting and 80 per cent for the special voting.
4. The Republic of Iraq has conscientiously submitted its treaty body reports on time and followed up on all treaty body recommendations. Subsequent to the transfer of the human rights portfolio to the Ministry of Justice, a central standing committee chaired by the Minister of Justice was established pursuant to Ministerial Order No. 11/1/1/496 of 19 June 2016. The Ministries of Justice, Foreign Affairs, the Interior, Education, Health, and Labour and Social Affairs are represented on the committee, together with representatives of the Office of the Prime Minister, the Secretariat of the Cabinet, and the National Security Advisory. The committee is charged with the preparation of human rights treaty body reports and was elevated to the status of a national reporting committee pursuant to Ministerial Order No. *Qanuni/Alif/Mim/Ain/1* of 5 February 2018.
5. Iraq is submitting its report on the Committee's concluding observations under article 29 (4) of the Convention.

B. Report preparation process

6. The report was prepared in a number of stages, as described below:
 - (a) **Preparation:** In this stage the focus was on the establishment of a ministerial subcommittee, pursuant to Ministerial Order No. 11/1/3/*Ta/Shin*/11 of 10 January 2017, headed by the Ministry of Justice and with members drawn from relevant ministries. The Committee's concluding observations were circulated to the concerned authorities and ministries;
 - (b) **Information gathering:** During this stage, information required for the report was provided and the subcommittee held several meetings to review the information made available. The information-gathering process continued for updating purposes until the date of submission of the report;
 - (c) **Drafting:** During this stage, the subcommittee incorporated the available information into the relevant parts of the report, prepared the final draft and submitted it to the national committee;
 - (d) **Review and approval:** During this stage, the national committee met to consider the draft report, which it endorsed and submitted to the Cabinet for approval and transmission to the Committee on Enforced Disappearances.

7. The present report sets forth the measures taken by Iraq to follow up on the Committee's concluding observations.

II. Information concerning follow-up to the concluding observations of the Committee

Recommendation in paragraph 8

8. In accordance with Act No. 17 of 2009, Iraq acceded to the International Convention for the Protection of All Persons from Enforced Disappearance, thereby undertaking pursuant to article 29 thereof to submit a report on the measures taken to give effect to its obligations and likewise undertaking to comply with article 30. The modalities of operation employed by the Ministry of Justice in its capacity as the competent authority are explained below.

9. A section for missing persons and the documentation of violations was created in the Human Rights Department at the Ministry of Justice and works with the relevant ministries to provide replies to questions received under the urgent action procedure.

10. Headed by the Ministry of Justice and with members drawn from the authorities, a special committee has been formed to follow up on and resolve all alleged cases of enforced disappearance.

11. To expedite the completion of its work, the committee has been given an official e-mail address (urgent-action@moj.gov.iq) at the Ministry of Justice for receiving messages and replies from the relevant government bodies in connection with follow-up and resolution of cases of enforced disappearance.

12. The Human Rights Directorate at the Ministry of the Interior has produced an information form that persons who allege that relatives of theirs have been subjected to enforced disappearance must complete as an essential part of the procedures for investigating and establishing the fate of disappeared persons.

Concerning the recommendation in paragraph 10 of the concluding observations

13. Through its judicial and executive systems, Iraq is endeavouring to carry out the tasks associated with the processing of communications that come under the Committee's purview. Notwithstanding the fact that the Committee's competence to receive communications is recognized on a voluntary basis and without prejudice to the commitment of Iraq to implementing the remaining provisions of the Convention, Iraq is continuing to examine the human rights treaties and protocols to which it has not acceded and to work on creating the appropriate legislative and institutional environment.

14. The High Commission for Human Rights Act No. 53 of 2008 gives the Commission a broad mandate and establishes its working methods and objectives, which are to:

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

15. Attention is drawn to articles 45 to 47 of the Prisoner and Detainees Reform Act No. 14 of 2018.

Concerning the recommendation in paragraph 12 of the concluding observations

16. On 15 February 2012, a national campaign was launched to gather information dating as far back as 1968 about missing and forcibly disappeared persons. Covering all governorates throughout the country except in the Kurdistan Region, the campaign was run in association with the National Centre for the Documentation of Baath Crimes, which is part of the Martyrs' Foundation. Coordination was assured in cooperation with the Forensic Medicine Department at the Ministry of Health and the Mass Graves Affairs and Protection Department at the (now-abolished) Ministry of Human Rights. The campaign included the preparation of a special (database) form and the collection of blood samples from relatives of missing persons, which are kept by the Forensic Medicine Department to help identify victims through matching with bone remains from mass graves. There are 13,993 forms on record about missing persons, whose cases have been passed to the Martyrs' Foundation. The Foundation's Mass Graves Affairs and Protection Department is continuing to search for and excavate mass graves and to search for missing persons. Reports are still being received from security forces and military units about new discoveries of mass grave sites, which are dealt with in accordance with the Protection of Mass Graves Act No. 13 of 2015, as amended.

17. At the Martyrs' Foundation, the National Centre for the Documentation of Baath Crimes formed a committee to inquire into 16,000 persons named as having been subjected to enforced disappearance. The committee has established the fate of 7,031 of those persons, with details as follows:

- 4,252 named persons confirmed as victims in the Kurdistan Region;
- 1,071 named persons confirmed as victims whose cases were processed by the Martyrs' Foundation;
- 45 named persons whose cases were presented by relatives for processing and rejected by the Foundation owing to lack of evidence;
- 38 named persons whose cases are still being processed;
- 1,625 named persons concerning whom documentation (extracts from judgements) was located in the Foundation's archives section.

18. The section for missing persons and the documentation of violations mentioned in paragraph 9 is developing an electronic information archive of all urgent action cases and requests that it receives. This section will serve as the mechanism referred to in the above recommendation (a nationwide register of missing persons), as directed by the Secretariat-General of the Cabinet.

Concerning the recommendation in paragraph 14 of the concluding observations

19. The current Penal Code (Act No. 111 of 1969), as amended, contains no clear and explicit definition of the offence of enforced disappearance in accordance with the definition contained in article 2 of the Convention. There are, however, acts committed by public servants or by non-State entities (abduction, detention, arrest without a judicial warrant) that fall within the definition of enforced disappearance. The provisions of articles 322, 324, 421, 422, 423, 424, 425 and 426 of the Iraqi Penal Code apply to these acts.

20. Article 92 of the Code of Criminal Procedure (Act No. 23 of 1971) provides that: "No one may be arrested or apprehended except under a warrant issued by a judge or court or as permitted by law." The text of this article is consistent with that of article 421 of the aforementioned Penal Code, which provides that: "Anyone who arrests, detains or deprives a person of liberty by any means without a warrant from a competent authority and in circumstances other than those explicitly provided for in the applicable laws and regulations shall be liable to imprisonment."

21. Iraqi law deals with offences that fall within the definition of enforced disappearance contained in article 2 of the Convention (arrest, detention, abduction or any

other form of deprivation of liberty), severely punishing those who commit, induce, assist or participate in such offences.

22. Pursuant to Diwani Order No. 475 of 2017, the Advisory Commission of the Office of the Prime Minister established a committee to produce a bill on international crimes. The explanatory note to the resulting bill presented by the Commission states that the bill is intended to “fill the gap in Iraqi criminal law with respect to serious offences and the prosecution and punishment of their perpetrators, wherever found, in keeping with the developments in international criminal law, and to bring Iraqi legislation into line with the obligations of Iraq under the treaties to which it is a party so as to uphold the rights of victims and see justice done.”

23. The Ministry of Justice has prepared a bill on enforced disappearance, taking into account the concluding observations that emanated in 2015 from the Committee’s consideration of the report submitted by Iraq under the Convention. The bill was considered by the competent State Council advisor in mid-2018, in the light of comments from institutions concerned with its subject matter, and the procedures for its discussion by the State Council are under way in preparation for its transmission to the Cabinet and thereafter to the Council of Representatives.

24. Article 2 of the proposed bill defines enforced disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. The following are also considered as cases of enforced disappearance:

- (i) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;
- (ii) The arrest, detention, abduction or any other form of deprivation of liberty by persons or groups acting without the authorization, support or acquiescence of the State.

25. Article 5 of the proposed bill states that:

- “(i) Anyone committing the offence of enforced disappearance shall be liable to 15 years’ imprisonment;
- “(ii) The penalty shall be life imprisonment if the offence is accompanied by an aggravating circumstance;
- “(iii) Without prejudice to any other penalty, all public servants in any capacity who are proved responsible for the offence of enforced disappearance shall be removed from office and their movable and immovable property appropriated.”

26. Article 6 (ii) of the proposed bill states that it is considered an aggravating circumstance where the following constitute part of the offence of enforced disappearance:

1. The death of the person subjected to enforced disappearance;
2. If the offence is committed against a pregnant woman, a minor or a female with disabilities;
3. If the offence is perpetrated in conjunction with:
 - (a) Physical or mental torture or any form of coercion of the person subjected to enforced disappearance;
 - (b) The rape of the person subjected to enforced disappearance or an act that causes such person to have a miscarriage or a permanent disability.

27. Iraq has not yet become a party to the Rome Statute of the International Criminal Court of 1998, which establishes the criteria for crimes against humanity and also classifies those crimes. The Iraqi Supreme Criminal Court Act was nonetheless drafted on the basis

of the Rome Statute in that its content reflects best practice in the field of international criminal law. Article 12 (i) of the Act sets out crimes against humanity, including the enforced disappearance of persons, while paragraph (ii) of the same article defines the terms employed in paragraph (i), including “the enforced disappearance of persons”, which means the arrest, detention or abduction of persons by or with the authorization, support or acquiescence of the State or a political organization, followed by a refusal to acknowledge the deprivation of liberty of those persons or to provide information about their fate or whereabouts with the aim of denying them the protection of the law for a prolonged period of time. Iraqi law thus treats the offence of enforced disappearance as a crime against humanity. This does not, however, preclude the proposal of any legislative amendment that affirms and supports this concept in the related laws.

28. Article 3 of the proposed bill states that the general or systematic practice of enforced disappearance is a crime against humanity as defined in the bill, in the International Convention for the Protection of All Persons against Enforced Disappearance, to which the Republic of Iraq acceded by Act No. 17 of 12 January 2010, and in any other relevant treaty to which Iraq is a party.

Concerning the recommendation in paragraph 16 of the concluding observations

29. The Internal Security Forces Penal Code (Act No. 14 of 2008) states, in section VII, concerning offences involving abuse of authority, that superior officers are liable to punishment in the following instances:

- If they request a subordinate to perform activities for a personal benefit unrelated to the requirements of service;
- If they order a subordinate to commit an offence, in which event they shall be considered as being a principal offender if the offence is committed or attempted.

30. In the military establishment, there is no such thing as the option of “invoking superior orders” when an offence is committed. Article 24 of the Military Penal Code (Act No. 19 of 2007) provides that:

“(i) If an order given to perform a military duty constitutes an offence, the person who gave the order shall be held criminally responsible for the offence;

“(ii) Subordinates shall be considered as accomplices to the commission of an offence in each of the following instances:

“(1) If they overstepped the limits when carrying out orders;

“(2) If they knew that the intention of the order received was the commission of a military or civilian offence.”

Article 52 (i) of the Code furthermore provides that:

“(a) All persons who abuse their office, status or rank by ordering a subordinate to commit an offence shall be liable to imprisonment;

“(b) The person who gave the order shall be considered as a principal offender if the offence is committed or attempted.”

31. Article 9 of the proposed bill on enforced disappearance states that: “For the purposes of this Act, superior officers shall be considered as accomplices to an offence in the following instances:

“(i) If they knew, or disregarded or concealed information clearly indicating that subordinates under their effective authority and control had committed or attempted to commit an offence;

“(ii) If they exercised effective responsibility for and control over activities connected with the offence;

“(iii) If they failed to take all necessary and reasonable measures within their power to prevent or repress the commission of an offence or to submit the matter to the competent authorities for investigation and prosecution.”

32. Article 4 of the proposed bill on enforced disappearance states:

“(i) No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance;

“(ii) No order or instruction from any superior official or public authority, civilian, military or other, may be invoked to justify an offence;

“(iii) It is not an offence for a person to refuse to obey orders or instructions prescribing, authorizing or encouraging enforced disappearance.”

Concerning the recommendation in paragraph 18 of the concluding observations

33. Iraqi law addresses the requirements set forth in both paragraphs of article 9 of the Convention, as is indicated in the provisions of articles 6 to 13 of the Iraqi Penal Code (Act No. 111 of 1969), as amended, and reinforced by those of articles 357 to 368 of the Iraqi Code of Criminal Procedure (Act No. 23 of 1971).

Concerning the recommendation in paragraph 20 of the concluding observations

34. A special commission of the Supreme Judicial Council investigates enforced disappearance offences. Its members received training from international organizations, assisted by experts in matters of international crime.

35. As recommended by the Higher Standing Committee for Coexistence and Social Peace set up in 2017 and pursuant to Diwani Order No. 46 of 2018, a committee – chaired by a judge from the Supreme Judicial Council and with members drawn from representatives of the security agencies and relevant ministries – was formed with a mandate to look into disputes and vexatious legal proceedings concerning detainees, abductees, missing persons and persons held in preventive custody in the liberated governorates and to compile lists of those persons with a view to establishing their fate and resolving their cases within a time limit set in accordance with the law. The Implementation and Follow-up Committee for National Reconciliation monitors the work of this committee and reports periodically on its activities to the Secretary-General of the Cabinet and the chairperson of the Higher Standing Committee for Coexistence and Social Peace. The same committee is still coordinating with councils in the liberated governorates in the light of information provided on forms circulated to obtain details of cases taken up at the formal request of victims’ relatives.

36. Article 8 of the proposed bill states that the investigating judge alone, or the judicial investigator with the consent or knowledge of the investigating judge, may investigate offences and that any statement made by an accused person before any other entity is null and void.

37. The Ministry of the Interior continues to oversee its personnel with a view to preventing cases of enforced disappearance, to prosecute them in the event that such an offence is found to have occurred and to punish them if they are convicted.

38. Under Iraqi penal legislation, no person may be detained or deprived of liberty without an arrest warrant issued by a competent judicial authority. Offenders are furthermore liable to detention or imprisonment as provided in article 421 of the Iraqi Penal Code (Act No. 111 of 1969), which states that: “Anyone who arrests, detains or deprives a person of liberty by any means without a warrant from a competent authority and in circumstances other than those explicitly provided for in the applicable laws and regulations shall be liable to imprisonment.” The penalty is imprisonment for a term of up to 15 years in the following instances:

- If the act is committed by a person who is wearing without entitlement the uniform of a public servant or a distinctive official insignia of a public servant, assumes a false public identity or produces a fake warrant of arrest, detention or imprisonment while claiming it to have been issued by a competent authority;
- If the act is accompanied by a threat of killing or of physical or psychological torture;

- If the period of arrest, detention or deprivation of liberty exceeds 15 days.

39. The directives issued by the Office of the Prime Minister pursuant to Diwani Order No. 57 of 1 December 2014 also contain the following paragraphs:

- No person may be arrested or detained except under a warrant issued by a competent judge or court or as permitted by law, including under articles 102 and 103 of the Code of Criminal Procedure;
- The arresting or detaining authority shall, within 24 hours of the arrest, record the name of the detainee, the place of detention, the grounds for the detention and the legal provision applicable thereto in the manual and electronic versions of a central register created and administered by the Ministry of Justice;
- The Ministries of Defence and the Interior and the National Security Agency shall establish rules and procedures for enabling commanders to enter information about detainees in the central register;
- No person may be arrested or detained by authorities other than those mentioned above;
- A person's arrest in circumstances other than those provided for in this regard shall be deemed to constitute criminal abduction and false imprisonment and the perpetrator shall be brought to justice.

Concerning the recommendation in paragraph 21 of the concluding observations

40. We refer you to paragraph 34 of the present report.

Concerning the recommendation in paragraph 23 of the concluding observations

41. As the Supreme Judicial Council has reopened the courts in the liberated areas, reports and complaints are currently being accepted about offences committed by the terrorist organization Daesh in those areas.

42. In 2014, Iraq came under violent attack from Daesh terrorist groups, which committed wide-ranging atrocities against the Iraqi people in general and against various ethnic and religious communities in particular.

43. These groups also engaged in murder, torture, abduction and rape, sexual slavery, forced religious conversions, recruitment of child soldiers, employment of women and children as suicide bombers and human shields, the deployment of a scorched-earth policy and the holding of public executions. These atrocities are offences punishable by law.

44. These criminal groups committed atrocities against other ethnic groups, such as Christians, Turkmens, Sabeen Mandaeans and Yazidis, including:

- Crimes against life and physical integrity (murder and torture)
- Forced migration and displacement
- Targeting of minorities
- Destruction of antiquities, cultural heritage sites and religious monuments
- Restriction of public freedoms
- Economic- and health-related atrocities
- Sexual slavery
- Enslavement and slave trading (human trafficking)
- Trading and smuggling of natural resources (oil) and antiquities

45. Daesh groups also carried out the most heinous acts of murder and torture after entering the city of Mosul, parts of Salah al-Din governorate and numerous villages in Kirkuk and Diyala governorates in early June 2014. These acts included the killing of 450 inmates of Badush prison, the execution of hundreds of soldiers in Nineveh governorate and a further 1,700 at Camp Speicher in Salah al-Din governorate, and the killing of 175

Iraqi Air Force cadets at an airbase in Tikrit, some of whose bodies were dumped in the Tigris River. Daesh groups committed in addition the most abominable crimes against members of minorities, particularly Yazidis, Christians and Shabak, and sexually enslaved thousands of women from the Yazidi community and other minorities. During the liberation, these groups used civilians as human shields to impede the advance of government troops, who were often forced to fight on foot to safeguard civilian lives.

46. Women in the areas controlled by Daesh terrorist groups were subjected to brutal practices in which they were murdered, abducted, sold as captives and forced to convert their religion. Many of them endured rape and other forms of sexual violence.

47. In the areas under their control, Daesh terrorist groups engaged in the systematic abduction and enslavement of Yazidi, Turkmen, Christian and Shabak women and girls. While a number of Yazidi women managed to escape from captivity, the experiences of rape, sexual abuse and forced marriage and the resulting pregnancies and abortions had a damaging effect on their health and led some of them to commit suicide.

48. Approximately 400 women, among them doctors, teachers, lawyers and journalists, were tortured and executed for refusing to obey Daesh orders to engage in sexual jihad.

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

50. The Iraqi armed forces succeeded in driving the criminal Daesh terrorist groups out of the areas under their control, finally achieving victory over them in Mosul and thus ending the tyranny suffered at their hands by the city's residents during the Daesh terrorist reign over it. This victory was the result of Iraqi unity, the wise leadership of the Government and the efforts of the Iraqi armed forces, who were applauded by the international community for their stated mission of liberating the people before liberating the land.

51. The Standing National Committee on International Humanitarian Law was established pursuant to Diwani Order No. 10 of 2015. Headed by the Secretariat-General of the Cabinet and with members drawn from relevant institutions and ministries, this Committee is charged with:

- Formulating plans and programmes designed to ensure that the principles of international humanitarian law are disseminated and applied at the national level;
- Identifying mechanisms, measures and procedures to ensure that international humanitarian law is implemented and its provisions put into practice;
- Promoting and putting into operation the rules of international humanitarian law in coordination with the competent authorities;
- Promoting cooperation and the exchange of information and experiences with organizations, commissions and associations working in the field of international humanitarian law;
- Strengthening ties with Arab and foreign committees on international humanitarian law;
- Following up the implementation of international conventions relating to international humanitarian law and producing studies on the benefits of acceding to such conventions and of learning from the experiences of States in applying their provisions;
- Providing advice to the Iraqi Government in matters of international humanitarian law.

The Committee is regarded as the chief authority on international humanitarian law.

52. In the Kurdistan Region, the Special Office of the Prime Minister of the Kurdistan Region set up a committee on 25 November 2014 to gather information on abductions, follow up on cases and allocate a budget for freeing abductees.

53. The Region's Ministry of the Interior also set up a commission to gather evidence of crimes committed by terrorists.

54. A committee was established in the Kurdistan Region to document crimes committed against the Yazidi community by Daesh terrorists and has made great progress in recording such crimes, particularly those against women.

55. The committee successfully filed with the courts 4,206 cases of crimes committed against Yazidis, especially women, by the Daesh terrorist organization during its occupation of the Sinjar district and Mosul governorate. In 1,778 of those cases, 1,191 of which involved crimes against Yazidi women, a full investigation report was prepared for submission to the court. In the other 2,428 cases, investigations are still continuing and incomplete. As at 2 February 2019, the total number of Yazidis rescued from the grip of Daesh terrorists amounted to 3,451, including 1,178 women, 337 men, 1,010 girls and 926 boys. There are 2,966 individuals remaining, 1,360 of them female and 1,606 of them male.

Concerning the recommendation in paragraph 24 of the concluding observations

56. Act No. 58 of 2017, concerning the protection of witnesses, experts, informants and victims, was enacted to afford special protection to witnesses, informants, victims and experts in criminal proceedings and in terrorism-related proceedings, as well as to their relatives up to the second degree. The Act states that the criminal proceedings included thereunder were to be determined by an order issued by the Cabinet, at the proposal of the Supreme Judicial Council and the Commission on Integrity, not later than six months from the date of the Act's entry into force. Persons covered by the Act may apply to be placed under the protection for which it provides if their lives, physical integrity or fundamental interests, or those of their family members or relatives, would be at risk as a result of them testifying, giving an expert opinion or making statements in criminal proceedings or terrorism-related proceedings affecting State security and the lives of citizens. The Act provides for the establishment of a section in the Ministry of the Interior for the protection of witnesses, experts, informants and victims that reports to the Facilities and Personnel Protection Service. It also ensures that, together with their personal data, the groups covered by its provisions receive the necessary protection. Acts that it deems criminal are punishable under many of its provisions. Article 2 of the Act provides that: "The provisions of this Act shall apply to witnesses, informants, victims and experts in criminal proceedings and terrorism-related proceedings, as well as to their relatives up to the second degree. The criminal proceedings included under this Act shall be determined by an order to be issued by the Cabinet, at the proposal of the Supreme Judicial Council and the Commission on Integrity, not later than six months from the date when the Act takes effect."

57. Article 3 of the Act provides that: "Persons covered by the Act may apply to be placed under the protection for which it provides if their lives, physical integrity or fundamental interests, or those of their family members or relatives, would be at risk as a result of them testifying, giving an expert opinion or making statements in criminal proceedings or terrorism-related proceedings affecting State security and the lives of citizens."

58. Article 10 of the Act provides that:

"(i) A section for the protection of witnesses, experts, informants and victims shall be established in the Ministry of the Interior and report to the Facilities and Personnel Protection Service.

"(ii) The section shall open branch offices in the Region and in the governorates not incorporated into a region."

59. Article 11 stipulates that: "The section provided for in article 10 of the Act shall ensure the protection of those covered by its terms on the basis of a decision of the investigating judge or the court. Ministries, non-ministerial entities and governorates shall be required to provide all forms of support to the section."

Concerning the recommendation in paragraph 27 of the concluding observations

60. The competent Iraqi courts and the Residency Department of the Directorate-General for Nationality are the authorities responsible for the deportation, expulsion, surrender or extradition of persons who contravene the provisions of the Residency Act No. 76 of 2017.

61. Persons who contravene the provisions of the above Act are expelled or deported after they have served their sentences and been handed over to the Residency Department for due completion of the related procedures, including for securing the issuance of a passport or travel document by the responsible consulate or embassy in Iraq and the payment of airfares. Personnel from the Residency Department then take the persons being expelled or deported to the airport and formally hand them over to the Passport Office to ensure their safe departure from the country.

62. Article 21 of the proposed bill on enforced disappearance states that:

“(i)

“1. No person may be deported, expelled, returned or extradited to his or her country of origin or to another State where there are compelling grounds for believing that he or she would be in danger of being subjected to enforced disappearance;

“2. In determining the danger of being subjected to enforced disappearance, all relevant considerations shall be taken into account, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights;

“(ii) For the purposes of the extradition of offenders, the offences provided for in this Act shall under no circumstances be regarded as political offences, offences connected with a political offence or offences inspired by political motives that are non-extraditable.”

Concerning the recommendation in paragraph 29 of the concluding observations

63. The permanent Iraqi Constitution of 2005, notably in its articles 14, 15 and 19 (a), prohibits the detention of any person without a warrant or a judicial decision, guarantees the freedoms of belief, doctrine and religion, together with the right to life and security, and states that there is no crime or punishment except by law. Article 1 of the Iraqi Penal Code (Act No. 111 of 1969), as amended, establishes that same principle in stipulating that no one may be punished or detained except on the basis of a law that criminalizes or punishes the act concerned. This stems from a belief in the principles of justice and in those set out in international conventions and treaties. The Iraqi judiciary is bound by the law, which requires observance of the rights of complainants and victims.

64. Article 19 (xii) of the permanent Iraqi Constitution provides for the prohibition of secret detention, stating that: “(a) Unlawful detention is prohibited; (b) Imprisonment or detention is prohibited in places other than those designated for such purpose, in accordance with the prison laws covering health and social care, and controlled by the State authorities.” Article 19 (xiii) furthermore provides that: “The preliminary investigative documents shall be submitted to the competent judge within a period of not more than 24 hours from the time of arrest of the accused. This period may be extended once only for the same duration.”

65. The following laws were repealed under article 63 of the Prisoners and Detainees Reform Act No. 14 of 2018: the Prisoners and Detainees Reform Act No. 104 of 1981, with the regulations and directives issued pursuant thereto remaining in force until replaced or revoked; (dissolved) Revolutionary Command Council Decision No. 20 of 25 May 1993; (dissolved) Coalition Provisional Authority Memorandum No. 2 of 2003, concerning the management of detention and prison facilities; and (dissolved) Coalition Provisional Authority Orders No. 10 of 2003, concerning the management and detention of prison facilities, No. 98 of 2004, concerning the Iraqi Ombudsman for Penal and Detention Matters, and No. 99 of 2004, concerning the Joint Detainee Committee.

66. Article 1 (i) states that the Corrections Service and detention centres report administratively and financially to either the Ministry of the Interior or the Ministry of Justice, each of which has a duty of care to prisoners and detainees in accordance with the law. It is prohibited to establish any prisons or detention centres not supervised, managed and controlled by these two ministries.

67. Article 2 provides that: “(i) The Iraqi and Juvenile Corrections Services, together with all their respective units, shall fall under the Ministry of Justice; (ii) (a) The Juvenile Corrections Service shall be detached from the Ministry of Labour and Social Affairs and brought under the Ministry of Justice, as shall all its rights, obligations personnel and assets other than the main premises of the General Department; (b) Rehabilitation facilities for homeless youth shall be exempted from the provisions of paragraph (i) of the present article and fall under the Department for the Care of Persons with Special Needs at the Ministry of Labour and Social Affairs. Homeless adults shall, in the case of males, remain in such facilities until they have completed their university education and, in the case of females, until suitable accommodation or employment has been found for them or until they marry; (c) The ownership of property occupied by the Juvenile Corrections Service and its structures shall be transferred without charge to the Ministry of Justice; (d) The Ministry of Justice shall replace the Ministry of Labour and Social Affairs in performing the functions relating to juvenile reform and welfare.”

68. Article 3 explains the objectives of the Act, stating that: “The present Act is aimed at achieving the following: (i) Reforming prisoners and detainees sentenced to custodial penalties or measures by a competent court of law by assessing and categorizing them and delivering behaviour, vocational and education programmes for their rehabilitation; (ii) Developing religious, social and educational rehabilitation curricula for prisoners; (iii) Managing detention, pretrial detention, prison and juvenile rehabilitation facilities in a manner ensuring that prisoners and detainees are cared for throughout the period of their detention, transported securely, brought before the competent court and guaranteed the enjoyment of their rights in accordance with the requirements pertaining to the execution of sentences of detention, imprisonment and deprivation of liberty; (iv) Eliminating discrimination against detainees and prisoners on any ground; (v) Examining the situation of families of prisoners and detainees and providing assistance, in cooperation with the relevant authorities and civil society organizations, to prevent them from offending; (vi) Supporting aftercare for prisoners and detainees in conjunction with the competent authorities in order to reduce crime and the effects of crime; (vii) Following up on and monitoring the affairs of prisoners and detainees as directed by the competent ministry; (viii) Focusing on the rehabilitation of prisoners and detainees through the establishment of psychosocial rehabilitation units working for the reform, rehabilitation and social reintegration of prisoners and detainees; (ix) The provisions and measures set forth in the present Act comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners and international standards relating to the rights of persons under detention or imprisonment; (xi) It is prohibited to subject prisoners and detainees to torture, to cruel or degrading treatment or to forced or hard labour. The commission of any of these crimes against them shall be deemed an aggravating circumstance.”

69. Article 4 explains the applicability of the Act, stating that: “The provisions of the present Act shall apply, as appropriate, to prisoners and detainees held in facilities operated by the Iraqi Corrections Service and the Juvenile Corrections Service and to persons held in detention and pretrial detention facilities, without discrimination on grounds of the nature or gravity of the offence, type of punishment, ethnicity, language, religious affiliation, political opinion, nationality, social or political status, or religious belief.”

70. Article 45 lists the bodies authorized to carry out inspections and searches, stating that: “(i) The Iraqi and Juvenile Corrections Services shall be subject to inspection by the following bodies: (a) The Council of Representatives; (b) The Public Prosecution Service; (c) The High Commission for Human Rights; (d) The Inspectorate-General of the competent ministry; (e) The Council for the Maintenance of Prisons and Detention Centres; (f) Any entity legally authorized to perform inspections; (ii) The Iraqi and Juvenile Corrections Services shall be required to facilitate the access of inspectors to correctional units and to the information required by the nature of their work; (iii) In all prisons and

correctional units for prisoners and detainees, a committee chaired by the Public Prosecutor and comprising as members the director of the prison and the director of the correctional unit shall be formed to monitor and oversee the lawful execution of sentences and of the procedures for sentence calculation and the classification and separation of prisoners and detainees; (iv) Personnel of the inspection bodies mentioned in article 45 (i) of the present Act may enter prisons and detention centres at times to be agreed with the Corrections Service whenever the committee conducting the inspection so requests. They may likewise scrutinize the health-care procedures in place in prisons and detention centres, check the hygiene and living conditions, and interview prisoners and detainees privately. They may also note down information concerning prisoners or detainees and pass on correspondence from them to their families and vice versa in the presence of the official assigned to receive and accompany the committee.”

71. Article 46 clarifies measures taken by the inspection body, stating that: “The inspection body may take the following measures: (i) Enter and inspect prisons and detention centres operated by the Iraqi and Juvenile Corrections Services and request the provision of any documents, preliminary information or reports pertaining to prisoners and detainees; (ii) Interview any person connected with the subject of a complaint or a breach of the provisions of the law regulating the treatment of prisoners and detainees; (iii) Interviewees and witnesses shall have the right not to reply to questions, furnish documents or other items, disclose information with a bearing on their privacy or reputation, or reveal confidences of prisoners and detainees.”

72. “(iv) The inspection body may accept complaints from prisoners and detainees in person or in writing; (v) The inspection body shall make its recommendations in an investigation report for transmission to the competent authority and the competent minister or close the investigation into a complaint if it is malicious or if the procedure that is the subject of the complaint was completed in accordance with the law and the complainant notifies the inspection body of that fact; (vi) It is prohibited for the inspection body and officials in the Corrections Service to divulge any information obtained about complaints made to them by prisoners or detainees, about any investigation of those complaints, or about information to which they had access either as a result of undertaking activities entrusted to them or in the course of discharging their duties, with the exception of information concerning a breach of law or the commission an offence, which may be reported to the competent authority or entity.”

73. Article 47 covers unannounced inspections, stating that: “The competent Corrections Service may conduct periodic unannounced inspections of correctional institutions and the accommodation of prisoners and detainees in correctional units in order to check that they are free of prohibited substances or items and meet the hygiene and living standards required under this Act.”

74. The Act embodies within its 66 articles all of the international human rights standards for prisoners and detainees, as is elucidated in the explanatory note thereto, which states that: “In consistency with the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1977, and with the aim of standardizing the legal rules governing the operation of the Adult and Juvenile Corrections Services and detention centres, providing further measures for the care and rehabilitation of prisoners and detainees as vital means of promoting the social reintegration of convicted offenders, and creating in conformity with the law, standards and rules the conditions needed to set accused and convicted persons on the right path, develop in them a sense of responsibility towards themselves and the community, and achieve the ultimate goal of reforming and bettering prisoners and detainees and enabling them to live decent lives after having served their sentences, the present Act was passed.”

75. The Human Rights Directorate of the Inspectorate-General of the Ministry of the Interior habitually conducts periodic checks throughout the year on the situation of persons held in the detention centres for which the Ministry is responsible. During these checks, all unsatisfactory situations are identified and addressed, including failures to inform relatives where detainees are being held, meaning in such cases that the relatives can be told of the location and make arrangements to visit detainees at set times.

76. The Ministry of Defence is bound by article 92 of the Code of Criminal Procedure (Act No. 23 of 1971), which provides that: “No one may be arrested or apprehended except under a warrant issued by a judge or court.” Anyone contravening that provision is subject to punishment by law and held accountable under article 52 of the Military Penal Code. The offence is one of abuse of authority to ensure that the law is fairly applied. In discharging their duties in this sphere, the military forces arrest persons suspected of involvement in the commission of terrorism acts pursuant to a judicial arrest warrant issued by the competent court and hand them over without delay to the requesting authority.

77. The Ministry of Defence is also bound by article 19 (xii) (b) of the Iraqi Constitution, which provides that: “Imprisonment or detention is prohibited in places other than those designated for such purpose, in accordance with the prison laws covering health and social care, and controlled by the State authorities.” The fact is that only one declared pretrial detention centre is affiliated with the Ministry of Defence, namely the main prison at Muthana Airport, which is periodically inspected by committees from the Human Rights Directorate and is also subject to frequent checks by visiting national and international committees. Located on the centre’s premises is an investigative commission composed of an investigating judge, a public prosecutor and judicial investigators. The commission considers and resolves cases of detainees held by the Ministry.

78. The detention centres located in the headquarters of military divisions and formations are exclusively for military personnel serving disciplinary sentences. No civilian detainees may be admitted to them and anyone in breach of that rule is held criminally responsible.

Concerning the recommendation in paragraph 30 of the concluding observations

79. The permanent Iraqi Constitution of 2005 prohibits in article 19 (b) the imprisonment or detention of any person in places other than those designated for such purpose. All official detention centres are controlled and supervised by the Ministry of Justice and periodically visited by the Supreme Judicial Council. Prisons are provided with health and social care services.

80. There are no undeclared secret headquarters or secret detention facilities and all prisons operated by the Iraqi Corrections Service are open for visits from international and human rights organizations.

81. There are no secret prisons in the Kurdistan Region and detention is carried out in accordance with the laws and under an official court warrant. The Region’s prisons are open to international organizations and bodies and anyone wishing to see the conditions in which inmates live. The security authorities, however, sometimes refrain from publicizing the places where suspects in terrorism cases are being held, out of fear for the lives of their families, and take specific security measures during their trials. Human rights organizations are also permitted to visit detention centres on the basis of instructions from the relevant authorities. In 2018, 168 organizations accordingly visited such centres to follow up on the situation of detainees and convicted prisoners. The concerned authorities in the Region’s Government cooperated with them fully.

Concerning the recommendation in paragraph 32 of the concluding observations

82. Article 11 of the bill on enforced disappearance stipulates that the State is bound by the provisions of the Civil Code (Act No. 40 of 1951), as amended, and provides as follows:

“1. Reparation shall be awarded for material and moral damages arising out of the offences provided for in this Act;

“2. Health institutions and centres for the physical and psychological rehabilitation of victims and their integration into the community shall be established, with the State bearing the costs of treatment, rehabilitation and integration;

“3. The State may seek restitution of the amount of reparation it is required to pay to victims and the costs it shoulders for their treatment, rehabilitation and integration into the community.

“(ii) In accordance with the provisions of this Act, “victim” means the disappeared person and any natural person who has suffered harm or danger as a result of an enforced disappearance.”

83. Article 12 of the proposed bill states that the amount of material and moral reparation for the period of enforced disappearance will be determined by an expert or experts so as to ensure restoration of the actual material and moral harm suffered by the victim.

84. Article 13 of the proposed bill provides that: “The payment of salary and allowances shall continue throughout the period of absence of officials subjected to enforced disappearance and be reimbursed in the case of persons forced to leave their position for reasons relating to the subject of the present Act.”

85. Article 14 of the proposed bill provides that: “If persons subjected to an enforced disappearance die as a result and are not public servants, their successors shall be entitled to a retirement benefit amounting to not less than the minimum retirement pension, in exception to the Unified Retirement Act No. 9 of 2014.

86. Article 15 of the proposed bill provides that: “If persons other than public servants are reported by a competent medical committed to be fully or partially incapacitated as a result of an enforced disappearance, they shall be entitled to a retirement benefit amounting to not less than the minimum retirement pension, in exception to the Unified Retirement Act No. 9 of 2014.

87. Article 16 of the proposed bill provides that: “Students who have been prevented from pursuing their education for reasons relating to the subject of the present Act shall resume their studies in accordance with a process to be established by the relevant education authorities.”

88. Article 17 of the proposed bill states that:

“(i) Without prejudice to the right of relatives of a missing person to apply for a declaration of death, as provided for in the relevant laws, such relatives may obtain a declaration that the person is missing and presumed alive until proven dead.

“(ii) A declaration that a person is missing shall give rise to the rights referred to in the International Convention for the Protection of All Persons from Enforced Disappearance.”

Concerning the recommendation in paragraph 34 of the concluding observations

89. The Ministry of Justice is coordinating with the International Commission on Missing Persons to create a section for missing persons that will serve as the hub for the National Centre for Missing Persons and to implement at the Centre an information project on missing persons. The project is one that was presented by the Commission during its meeting with the Minister of Justice in March 2018.

90. The International Commission on Missing Persons organized workshops on cases of forcibly disappeared and missing persons in Iraq and special procedures, in cooperation with the Iraqi institutions concerned with the matter, including the Ministry of Defence, the Ministry of the Interior, the Martyrs’ Foundation, the Ministry for Martyrs and Anfal Affairs in the Kurdistan Region, the Forensic Medicine Department, the University of Mesopotamia DNA Testing Centre, civil society organizations, and members of Iraqi parliamentary committees on martyrs and human rights. The workshops were as follows:

(i) On 23 November 2017, a workshop discussed the implementation of article 19 of the Convention, the amendment of the Martyrs’ Foundation Act, and measures needed from the Government to ensure cooperation among the institutions concerned with the subject;

(ii) On 17 April 2018, a workshop discussed the bill amending the Protection of Mass Graves Act, as well as inter-institutional coordination, and made relevant proposals;

(iii) On 2 February 2018, a workshop discussed the issue of the women and children missing as a result of the activities of the terrorist Daesh organization. Participants included representatives of the Secretariat-General of the Cabinet, interested institutions and civil society. Also discussed was the implementation of Security Council resolution 1325 (2000).

91. In 2017, the Umm al-Yateem development organization organized an introductory workshop for personnel of the Martyrs' Foundation working with victims of loss on the International Convention for the Protection of All Persons from Enforced Disappearance and the procedures for reparation thereunder, in particular for relatives of victims missing as a result of terrorism activities. Relatives of victims participated in this workshop in addition to the personnel from the Martyrs' Foundation.

92. The Protection of Mass Graves Act No. 13 of 2015, as amended, applies to all mass graves used before 2003 by the defunct Baathist regime and to those used after 2003 by Al-Qaida, Daesh terrorist groups and armed terrorist organizations. Pursuant to this Act, the Mass Grave Affairs and Protection Department (formerly of the Ministry of Human Rights) is tasked with generating statistical data on mass graves and with searching for and excavating such graves. Now a department of the Martyrs' Foundation, it has statistical data and an integrated database on all the graves found through information received or through investigation and research. The Department has opened 76 graves containing victims of Baath crimes, 2 graves containing victims of terrorism crimes, and 12 graves containing victims of crimes committed by Daesh groups. The remains of numerous victims have been exhumed in collaboration with specialist medical teams from the Forensic Medicine Department and many victims have been returned to their relatives.

93. The aim of the Protection of Mass Graves Act No. 13 of 2015, as amended, is for victims to be identified and returned to their relatives. A further aim is to document the contents of mass graves discovered through tampering and random digging and to generate statistics on their numbers. Concerted efforts from other State institutions are needed to implement this Act. While inter-institutional coordination has in fact been realized, the size and number of mass graves, the number of remains they contain and the geographical nature of some of their sites impose the need for international capacity-building support, advice, and financial and logistical support.

94. The Supreme Judicial Council, represented by the Office of the Chief Public Prosecutor, meticulously deals with all requests submitted by relatives of missing persons whose fate is unknown. These requests are received by the Human Rights Division established in the Office of the Chief Public Prosecutor. All relevant entities are contacted by the Division in its efforts to locate the whereabouts of missing persons and inform relatives of their fate.

95. The Human Rights Directorate at the Ministry of Defence has dedicated telephone lines for receiving complaints and requests from citizens in connection with missing persons. Working in cooperation with military units and in coordination with the security services, it acts swiftly and without delay to search for such persons and investigate their fate in order to end the suffering of victims' relatives. Pursuant to Order No. 40 of the Secretariat-General of the Cabinet, dated 3 January 2016, the files on captives and missing persons were transmitted to the Ministry of Defence, while those on mass graves, the documentation of violations and victims of terrorism were transmitted to the Martyrs' Foundation.

96. The section for missing persons in the Human Rights Directorate of the Ministry of the Interior deals with complaints and requests received from citizens having completed the relevant forms.

97. The first amendment to the Protection of Mass Graves Act No. 13 of 2015 appears in article 2 (b), which provides that: "A mass grave means land where more than one victim was buried or permanently concealed in disregard of the sharia-based rules and humanitarian values to be observed when burying the dead and in a manner intended to cover up the crime of genocide committed by an individual, a group or an organization and constituting a violation of human rights." This provision clearly describes the offence of enforced disappearance and is aimed at its elimination and at acquiring information on

victims and establishing their fate. Article 2 (ii) states that: “The provisions of this Act shall apply to crimes committed in the context of mass graves under the former Baathist dictatorship and crimes committed by terrorist and Baathist groups before and after 2003.” The Protection of Mass Graves Act thus also covers the victims of crimes committed by terrorist groups.

Concerning the recommendation in paragraph 36 of the concluding observations

98. Article 85 of the Welfare of Minors Act No. 78 of 1980, as amended, states that an absent person is one “who has left Iraq or has had no known abode therein for over one year but without there being any disruption of contact that would hamper mediations and third-party interests.”

99. Article 86 of the Act provides that: “A missing person is one who is absent and with whom contact has been disrupted and it is unknown whether he or she is alive or dead.” The Act describes how the fate of missing persons is elucidated, stating in article 93 (ii) that one of the instances in which a court may declare a missing person dead is “if four years have passed since the person was reported missing.” For such declarations to be made, the relatives of the missing person must file an application with the competent court. Following submission of the legal evidence, the court issues a judicial declaration about the missing status, which protects the financial rights of missing persons and their relatives and ensures that their legal situation is not left without remedy for a prolonged period of time contrary to the principles pertaining to the settlement of legal transactions and situations.

100. The procedures established for dealing with cases of missing persons in Iraqi law are derived from the precepts of the Islamic sharia. The aim on that score is to resolve matters relating to missing persons in terms of personal status, inheritance and so forth, without prejudice to the State party’s obligation to search for those persons and establish their fate.

101. The Iraqi legislature has enacted the laws required to guarantee the protection of human rights, especially those of children, including as provided in articles 421 to 425 of the Iraqi Penal Code (Act No. 111 of 1960) with respect to perpetrators of the said offence and in Cabinet Decision No. 3 of 2004.

102. Article 2 (i) of the proposed bill considers as an enforced disappearance “the wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance.”
