Human Rights Committee
115th session

Summary record of the 3214th meeting
Held at the Palais Wilson, Geneva, on Monday, 26 October 2015, at 3 p.m.

Chairperson: Mr. Salvioli

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Fifth periodic report of Iraq
The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Fifth periodic report of Iraq (CCPR/C/IRQ/5; CCPR/C/IRQ/Q/5 and Add.1)

1. At the invitation of the Chairperson, the delegation of Iraq took places at the Committee table.

2. Mr. Ismail (Iraq), introducing the fifth periodic report of Iraq (CCPR/C/IRQ/5), said that, despite the challenging circumstances facing the country, Iraq remained committed to fulfilling the obligations that it had assumed under the Covenant and the other international human rights instruments to which it was a party. The country’s fifth periodic report had been drafted by an interdepartmental committee comprising representatives of a number of government ministries. A human rights programme with a focus on civil and political rights was also being developed.

3. In the 1980s and 1990s, Iraq had become a theatre for large-scale military operations, leading to the militarization of Iraqi society and the curtailment of a number of human rights. The economic sanctions imposed on Iraq from 1991 to 2003 had impaired the Government’s ability to discharge its duties in a number of areas. A series of human rights violations had been committed during the dictatorship era, including the conscription of men and boys into the army to fight in conflicts at home and abroad; the use of mass graves; the forced relocation of numerous national groups; ethnic cleansing; and the use of chemical and other prohibited weapons in Kurdistan. Under the dictatorship, Iraq had become a country afflicted by poverty, hunger, internal displacement and emigration. The toppling of the dictatorship in 2003 had constituted a turning point in the country’s history, paving the way for a transition to democracy and the adoption of the Constitution in 2005. As part of the ensuing legal reform, many laws had been amended or completely recast, and a number of new laws intended to protect the rights enshrined in the Covenant had been adopted. Key provisions of the Constitution included article 1, which provided that the Republic of Iraq was a single federal, independent and fully sovereign State in which the system of government was republican, representative, parliamentary, and democratic, and that the Constitution was a guarantor of the unity of Iraq; and article 117, which provided that the Constitution, upon coming into force, would recognize the region of Kurdistan, along with its existing authorities, as a federal region. The Constitution protected the human rights and fundamental freedoms of the Iraqi people. Institutional safeguards for those rights and freedoms included the separation of powers between the legislature, the executive and the judiciary, and the latter’s independence.

4. Despite the threat posed by Islamic State in Iraq and the Levant (ISIL), the Government had continued to draft and adopt laws intended to protect human rights and fundamental freedoms, including a law on human trafficking, a law on social protection, a law on persons with disabilities and a new Labour Code. Moreover, human rights directorates had been set up in a number of government ministries. A bill on family protection had been drafted and was currently under review. A number of human rights committees had been set up to deal with issues relating to social protection, persons with disabilities and gender. The status of civil society organizations had been elevated by a law adopted in 2010. The Constitution provided for the establishment of the High Commission for Human Rights, in line with the Paris Principles.

5. A number of initiatives had been undertaken to raise awareness of human rights at all levels of the education system and in all government ministries. The Government encouraged NGOs to promote a culture of human rights and to expose and report
human rights violations. The Constitution provided that all Iraqis had the right to equality before the law without discrimination; to enjoy life, security and liberty; to equal opportunities; to personal privacy; to protection against the violation of the sanctity of their home; and to Iraqi citizenship. While Iraq had not signed the Convention relating to the Status of Refugees (1951) or the Protocol relating to the Status of Refugees (1967), it had granted Iraqi citizenship to many stateless persons who had settled in the country. The Constitution also guaranteed the right to a fair trial; to participate in public affairs and to enjoy political rights, including the right to vote and run for office; to freedom of expression; to peaceful assembly and demonstration; to form an association or political party; to freedom of movement; to freedom of thought, conscience and belief; and to freedom of worship; it prohibited torture, forced labour and slavery. No restrictions could be placed on those rights and freedoms, except for those provided for by law.

6. The Government had taken a number of steps to give effect to the recommendations of the Committee on the Elimination of Discrimination against Women, including the creation of gender units within various government ministries. A national plan to assist women survivors of violence and internally displaced persons had been launched and there were also plans to open shelters for female victims of violence. From 2003 onwards, a number of laws had been adopted to promote gender equality in Iraqi society. The Electoral Act of 2005 had introduced a gender quota system whereby women had to account for at least 25 per cent of candidates on electoral lists. Furthermore, by virtue of a law adopted by the Council of Representatives in 2011, Iraq had withdrawn its reservation to article 9 of the Convention on the Elimination of All Forms of Discrimination against Women. The reason had been that the legal effect of the reservation was negated by article 18, paragraph 2, of the Constitution and by article 3 (a), of the Nationality Act of 2006, under which men and women enjoyed equal rights in the transmission of nationality to their children. Under article 3, even a child born of an Iraqi mother and a foreign father was entitled to Iraqi nationality. However, despite the aforementioned legislative advances and constitutional guarantees, there were still a number of factors impeding the achievement of gender equality and the full realization of women’s rights in Iraq, including the persistence of certain social customs and the difficulties associated with implementing the laws adopted to promote gender equality.

7. The magnitude of the challenges posed by terrorism had severely undermined the Government’s efforts to achieve the full realization of human rights in Iraq. The crimes committed by ISIL included the execution of members of certain tribes, prisoners, students, soldiers, clergy members, journalists and professors and their burial in mass graves; the forced displacement and near eradication of certain minority groups, such as the Yazidis in the province of Nineveh; the rape, torture, trafficking and sale of women and girls; the gender-motivated assassination of female human rights activists, doctors, lawyers and politicians; and the desecration of places of worship, cemeteries and historical sites and artefacts. The Government had taken measures to protect places of worship, cemeteries and historical sites. In accordance with international human rights law, persons wishing to set up a religious charity or a humanitarian foundation were afforded special protection. Iraqi law provided that no person under the jurisdiction of the Government could be deprived of his or her right to life, liberty or security of person, subjected to torture or arbitrary arrest or detention or denied the right to work or to an education for openly manifesting his or her religion or belief. Any violation of those rights could be prosecuted under article 372 of the Criminal Code.

8. The incursion of ISIL and other terrorist groups into the region had severely hampered the country’s progress in terms of human development, destroyed its infrastructure and caused the massive displacement of its population. The greatest
challenge facing the Government of Iraq was that of defending the Iraqi people against ISIL. The Government was grateful to the international community for its support in that endeavour and would continue its efforts to meet the basic needs of refugees and internally displaced persons in cooperation with a number of United Nations agencies, despite the threat to the country’s already fragile economy posed by falling oil prices. Mechanisms had been put in place to protect the victims of the terrorist onslaught of ISIL and to oversee the reconstruction of areas liberated from its control. In order to deal with the dire humanitarian situation in the country, it was first necessary to address its root cause, namely terrorism. The Government of Iraq trusted that the Committee would take the challenging circumstances facing the country into account when considering its periodic report.

9. Mr. Iwasawa said that the country’s fifth periodic report, which had been due in 2000, was the first report submitted by the Government of Iraq since the toppling of the dictatorship and the inauguration of democracy in 2003, and had provided the Committee with a valuable insight into the current situation with respect to human rights. It was regrettable that Iraq, which was part of the ancient region of Mesopotamia, known as the “Cradle of Civilization”, had been plagued with political turmoil and armed conflicts for years. The human rights violations committed by the parties to the armed conflicts were a major cause of concern to the Committee. He reminded the Government of its obligation to ensure justice for the victims and accountability for the perpetrators of such violations.

10. While welcoming the fact that the Constitution of 2005 recognized and protected many of the civil and political rights enshrined in the Covenant, the Committee would appreciate more information on how those rights were enforced in practice. Referring to the information contained in paragraph 1 of the State party’s replies to the list of issues (CCPR/C/IRQ/5/Add.1), he requested the delegation to provide examples of cases in which the provisions of the Covenant had been invoked by prosecutors and lawyers before and/or directly applied by the courts. He asked what measures the State party had taken to raise the awareness of the Covenant on the part of judges, lawyers and prosecutors, and whether Iraq intended to ratify the Optional Protocol to the International Covenant on Civil and Political Rights to allow the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights enshrined therein.

11. He solicited comments on the difficulties faced by the High Commission for Human Rights in carrying out its work, more specific information on its financial and human resources and examples of its consideration of complaints. There had been reports of external political interference preventing the election of a Commission President, and he asked whether that position was currently filled and, if so, when and how the selection had been made. He asked whether the Commission was going to assume a wider range of functions, as recommended by the Subcommittee on Accreditation, and what measures had been adopted to raise awareness of its existence and mandate.

12. What activities were undertaken by the Family Protection Committee? The representation of women in political and public life was far from satisfactory — what measures had been adopted in that regard, including temporary special measures? He requested information on the prevention of early and forced marriages, including in areas controlled by ISIL. He asked why the adoption of the draft bill on the protection of religious and ethnic minority rights had been delayed and requested an approximate time frame for its adoption. He wished to know how measures instituted by the State party, such as quotas, had affected the participation of minorities in the public sector. The State party’s failure to conduct a national census because of financial and security reasons, while understandable, was regrettable. He asked what proportion of violent
attacks against persons from ethnic, religious and linguistic minorities occurred in Government-controlled areas, who had been responsible for them and how the perpetrators were prosecuted. Reports indicated that members of ISIL may have committed genocide against the Yazidi community: he wished to know what measures the Government had adopted or planned in order to prevent such acts and whether the Yazidi community had received any support. He invited the delegation to comment on reports that Shia militia had abducted and killed Sunni civilians. The militias were often backed by the Government and it had been claimed that those acts could be considered acts of the State. What had been done to address that issue?

13. He wished to hear the delegation’s evaluation of efforts to provide assistance to persons in areas under ISIL control. He asked why the Ministry of Human Rights had been abolished, what its powers and functions had been, which department had taken on its work and whether that work was being carried out effectively, and he sought reassurances that the implementation of the Covenant would not be negatively affected. Similarly, he asked why the Iraqi Supreme Criminal Tribunal had been abolished and how justice and accountability was guaranteed for all Iraqis in its absence.

14. **Mr. Bouzid** said that during his visit to Iraq in May 2015, the Special Rapporteur on the human rights of internally displaced persons had observed the State party’s failure to meet the needs of internally displaced persons and had noted that many thousands of internally displaced persons were living in poor conditions, at risk of violence and further displacement. Their movements were restricted, and while such restrictions were necessary given the security conditions in the country, they should not be arbitrary or discriminatory. He asked whether the authorities assisted internally displaced persons in their new places of residence. There were reports that the authorities did not ensure that property was returned to them; that many children suffered poor living conditions, including ill-treatment; and that children detained after having been forced to join terrorist groups did not receive psychological support. He asked why the Government’s 2006 plan to address the problem of internally displaced persons had not been implemented, how discrimination on grounds of religion and ethnicity was handled when dealing with internally displaced persons, what measures were planned to facilitate their freedom of movement and provide them with education and how they were to be helped to return to their places of origin once security conditions had improved.

15. The State party’s law on refugees predated its Constitution and was not fully aligned with international law. The bill on refugees had been before Parliament for many years, and he asked about its status and when it was to be adopted. He solicited comments on reports that refoulement was common, particularly of Syrian refugees and persons whose identity documents had expired, and that Palestinian refugees suffered arbitrary detention, abduction and attacks, the majority of which went unreported because of victims’ fear of the reaction of the security forces. There were also reports that most attacks were carried out by groups affiliated with Government forces; clarification of that situation would be welcome, as would information on measures to protect refugees in general, and Palestinian refugees in particular. He also requested comments on reports that many Syrian refugees were deported for reasons of national security, without prior warning, the right to appeal or legal representation, and that Syrian asylum seekers, including children seeking their families, were not permitted to enter Kurdistan.

16. He asked whether legislation covering states of emergency was to be introduced, following the adoption of the 2005 Constitution. Why had a state of emergency not been declared in view of the country’s current situation?
17. He asked whether investigations of human rights violations committed prior to 2003 were still ongoing and what remedies had been provided to victims of such violations. He wished to know whether the transitional justice institutions remained in place, whether all confiscated property had been returned to its owners or their families and whether political prisoners had received reparations.

18. He requested statistics on the prosecution of perpetrators of human rights violations since 2003, with particular reference to attacks carried out by ISIL and the actions of forces from the United States of America, coalition and State party forces and groups affiliated with the Government. He asked what steps had been taken by the Compensation Commission and what reparations had been granted to victims. He invited the delegation to comment on reports from the Office of the United Nations High Commissioner for Human Rights that the violent attacks carried out by ISIL against civilians because of their ethnicity or religion were tantamount to genocide, crimes against humanity and war crimes, and reports that State party forces and affiliated groups had committed human rights violations when fighting ISIL, including extrajudicial killings, abduction, torture and forced displacement, particularly against Sunni Muslims.

19. Ms. Cleveland said that the Committee had received reports of widespread discrimination, sometimes verging on sectarian violence, on religious and racial grounds. She therefore wished to reiterate the Committee’s request for information on what steps, if any, the State party had taken to address discrimination on such grounds as age, religious background, ethnicity, health status, sexual orientation and gender identity. Paragraph 177 of the State party’s report, which stated that the sexual practices of homosexuals were a punishable offence under Iraqi law, had struck the Committee as somewhat surprising, as it was unaware of any section of the Iraqi Criminal Code under which homosexual acts involving consenting adults constituted an offence. She would therefore appreciate information on whether homosexual relations between consenting adults were in fact criminalized. She would also welcome information on any related prosecutions, including any sentences handed down, and on whether the right to peaceful demonstration was denied to homosexuals. If so, under what law?

20. The Committee would welcome receiving the data regarding attacks on lesbian, gay, bisexual, transgender and intersex (LGBTI) persons that had apparently been collected by the State party. It would also welcome information on the number of investigations and prosecutions connected with such attacks, including those perpetrated by militias allied with the Government and members of State security forces. She would like to know what the outcome of those prosecutions had been, what remedies had been provided to victims and what other steps Iraq was taking to prohibit, prevent and punish discrimination and violence against the LGBTI community. What were the functions of the interministerial committee that had been formed to ensure that LGBTI persons enjoyed greater protection from violence and discrimination?

21. Turning to the topic of violence against women, she asked whether the bill on protection against domestic violence had been adopted and said she would welcome information on its main provisions. Information on the steps that the State party had taken to ensure that such acts as spousal rape were criminalized would also be welcome. Specifically, what had Iraq done to implement the recommendations made by the Committee on the Elimination of Discrimination against Women in paragraphs 28 and 29 of its concluding observations on the combined fourth to sixth periodic reports of Iraq (CEDAW/C/IRQ/CO/4-6)?

22. She wondered whether reports that local NGOs were prohibited by law from operating shelters for victims of domestic violence were accurate and, if so, what the
reason for the prohibition was and whether there were any plans to lift it. She also asked whether the law prohibiting female genital mutilation in Kurdistan was enforced and what steps had been taken to build upon the commendable efforts that Kurdistan had made to combat the practice.

23. In its replies to the list of issues, the State party had noted that cases of domestic violence in the first four months of 2015 had totalled 1,675. She wished to know how and by whom that information had been collected and how many complaints there had been regarding all forms of violence against women. What percentage of such complaints had led to investigations or prosecutions, and had victims had access to appropriate remedies? What steps had been taken to encourage women to report gender-based violence?

24. She requested information on the measures that the State party had taken to repeal or amend the discriminatory provisions of the Criminal Code that allowed perpetrators of violence against women to invoke honour as a mitigating circumstance. Information on any efforts to repeal provisions under which rapists who married their victims could be exonerated would also be welcome. She wondered what general efforts had been made to raise awareness of the unacceptability of violence against women and requested further information on the activities and budget of the Family Protection Committee.

25. To all appearances, trafficking in persons was still a significant problem. The Committee was well aware that the conflict with ISIL had increased women’s vulnerability to sex trafficking, but it appeared that Iraqi officials ignored the phenomenon and even profited from it. She suggested that the figures in the table in paragraph 48 of the replies to the list of issues underrepresented the current magnitude of the phenomenon in the State party, including in ISIL-controlled territory. Did the figures under the heading “Number of offences” represent reported incidents or convictions?

26. In the same connection, she asked what measures the State party had taken to implement the Trafficking in Persons Act No. 28 of 2012, whether it intended to establish a national trafficking database and step up efforts to identify victims, whether the police and security forces had received relevant training and what had been done to identify at-risk persons. What monies had been allocated to efforts to comply with the State party’s international obligations to combat human trafficking within its borders, including Kurdistan and territory controlled by ISIL? If she understood it correctly, Kurdistan had no legislation designed to combat and punish trafficking in persons. Had any steps had been taken to investigate allegations that persons associated with the Government of Kurdistan had been complicit in sex trafficking? She wished to know whether NGOs had been encouraged to provide services, including shelters, to trafficking victims. Forced labour which, like trafficking, was often the fate of refugees, was similarly problematic. She asked what steps had been taken to combat it.

27. Regarding the independence of the judiciary, she requested comments on reports that judges were routinely subjected to intimidation and threats. Information on the institution of any policies to protect their independence would be welcome, as would information on any programmes to train court protection officers and on the current activities of the country’s travelling judges. She requested an explanation of the rationale for allowing the same individual to head the Supreme Court and the Supreme Judicial Council. Lastly, she wondered whether the State party intended to accept the request of the Special Rapporteur on the independence of judges and lawyers for an official invitation to visit the country.
28. **Mr. de Frouville** said that although he was pleased by the presence of the delegation of Iraq, he would have preferred to enter into a dialogue with a larger delegation. He was nonetheless certain that the delegation members present could provide more information on the status and contents of the bill to amend the Counter-Terrorism Act No. 13 of 2005, which had been heavily criticized for the extreme ambiguity of its provisions and for its imposition of the death penalty for a number of terrorism-related offences. Referring to the table in paragraph 60 of the replies to the list of issues, he asked why there were so many more male detainees for terrorist offences than for civil offences and said he would appreciate information on the number of minors detained or convicted for offences covered by the Counter-Terrorism Act. In view of the State party’s assertion that female relatives of persons suspected of terrorism were not detained by reasons of their kinship, he said he would welcome comment on reports that the Act had been invoked to detain at least 100 women for having covered up their husbands’ alleged terrorist activities.

29. It was doubtful that all the capital offences listed in paragraph 43 of the replies to the list of issues constituted “the most serious crimes” within the meaning of article 6 of the Covenant. He wondered how the promotion or acclamation of Zionist principles, including freemasonry, which was evidently punishable by death under article 201 of the Criminal Code, could be considered an offence falling under the category of “the most serious crimes”. He took it that special pardons could not be granted for capital crimes involving terrorism. Were there similar restrictions on pardons for other kinds of capital offences?

30. He wished to know why the number of executions carried out in the State party had risen so sharply from 2005 to 2011 and said he would welcome information on the number carried out in the years since 2011. He requested confirmation of reports that some 200 people were being held on death row in Kurdistan and some 700 in the rest of the country. It would be interesting to know why Kurdistan had ended the de facto moratorium on the death penalty that it had had in place since 2008. He also wished to know why the Iraqi legislature had attempted to reduce the President’s power in respect of executive approval of death sentences. Could the delegation comment on reports that death sentences had been handed down on the basis of unverified evidence provided by secret informants and/or confessions obtained under duress? He would appreciate a report on the status of the investigation into the April 2013 shootings of demonstrators in Hawija.

31. He requested an update on the status of a bill to incorporate into Iraqi law a definition of torture in line with that of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Did Iraqi law provide for an enforceable right to compensation for torture? It would be interesting to know how many rehabilitation centres for torture victims there were, where they were located and whether they were run by the State or by NGOs. He wondered why the great number of complaints concerning torture and ill-treatment had led to so few actual investigations was so extraordinarily low, judging from paragraph 47 of the replies to the list of issues. Were investigations automatically initiated whenever there was reason to suspect torture or was it necessary for a complaint to be filed first?

32. He wished to know how many accused persons made complaints of torture when brought before a judge. According to reports, it was rare for judges to consider such statements. He asked whether the State authorities had investigated the case of Mr. Udai Taha Kurdi, who had died in police custody in 2014, supposedly of kidney failure, but whose body had shown signs of torture, according to Amnesty International.

33. He wished to know what measures were being taken to implement the recommendations made by the Committee against Torture in its concluding
observations of August 2015. According to information before the Human Rights Committee, there were numerous legal obstacles hindering follow-up on complaints of torture, which could lead to impunity for torture perpetrated by Iraqi security forces or by American forces. The delegation’s comments on that situation would be welcome.

34. The Committee had received reports indicating that there was often doubt about whether police officers who made arrests actually held an arrest warrant. Reports also claimed that individuals arrested in flagrante delicto were often kept in detention for long periods of time before being brought before a judge. Similarly, individuals were reportedly often kept in pretrial detention for periods ranging from 2 to 4 years. He asked if it was true that pretrial detention could be extended indefinitely for persons accused of offences that carried the death penalty. He requested comments on reports that secret detention centres were operating in the country and were connected with cases of enforced disappearance. The delegation should address in particular the reports of a secret detention centre near the Al Muthana airport and the case of Mohammed Abbas Kadhim Al Sudani, who had allegedly been detained and tortured there. He asked whether enforced disappearance would be incorporated into the Criminal Code as a separate offence. He wished to know what was being done to shed light on the thousands of cases of enforced disappearance in Iraq both during and after the period of dictatorship, to ensure that persons unlawfully detained were cleared of all charges against them and that persons who had already served their sentences were freed.

35. He wished to know more about the measures taken by the National Centre for Human Rights to disseminate information on the Covenant and on human rights in general. He requested further information about how civil society had participated in the preparation of the report, and in particular about the participation of independent civil society organizations that were critical of the Government. Lastly, he wished to know the current status of the Ministry of Human Rights, which appeared to have been dissolved.

36. Mr. Ben Achour requested information on the capacity of detention facilities compared with the number of persons actually detained there. He asked what was done to follow up on cases of alleged torture that had resulted in the death of the victim. If it was true that the Ministry of Human Rights had been dissolved, the delegation should explain why that measure had been taken and which institution was to take on the functions previously performed by the Ministry. The delegation should also respond to reports that many children were detained under harsh conditions pursuant to article 4 of the Anti-Terrorism Act.

37. With regard to freedom of religion, the Constitution and other pieces of legislation contained clearly discriminatory provisions: they allowed for conversion to Islam but prohibited conversion from Islam to another religion. He wondered how the State party could reconcile that prohibition with article 18 of the Covenant, the Committee’s general comment No. 22 and the principles of democracy. He asked what the practical consequences were for a Muslim who converted to another religion. He requested information on the application by the courts of article 372 of the Criminal Code. How could the State party reconcile its claim that Baha’is were entitled to the same rights as other Iraqis with the legal discrimination against them set out in Act No. 105 of 1970? Did the delegation believe that Act to be consistent with article 18 of the Covenant? He wished to know the meaning of the phrase “established provisions of Islam” as used in article 2 of the Constitution, especially given that different denominations of Islam were present in the country. The exploitation of religion for political reasons lay at the heart of the tragedy currently engulfing Iraq. In his view, the country would be better served by a secular State that observed a clear separation
between religion and law, which would help protect the country from religious conflict.

38. He wished to know the Government’s position on the attacks against journalists detailed in paragraph 68 of the State party’s written replies, described as having been carried out by “governmental and other unknown bodies”; which government bodies were designated in that phrase?

39. The Committee was concerned by reports of excessive use of force to disperse demonstrations, not only in Hawijah in April 2013 but also at other demonstrations. He wished to know about any prosecutions of such cases and any reparation awarded to victims. While there was a strong legal framework in place to protect freedom of expression and peaceful assembly, he wished to know what practical measures, such as training for law enforcement officials, were being taken to give effect to that legal framework.

40. The Committee had received worrying reports about the recruitment of children to engage in armed conflict and about the situation of children in prison. He wished to know what measures were being taken to protect children from such threats.

41. The Chairperson, noting that the Government had developed an action plan to implement the recommendations made by the Committee on the Elimination of Discrimination against Women, asked whether a similar plan would be developed to implement the Committee’s recommendations.

*The meeting rose at 6 p.m.*