



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

Concluding observations on the fifth periodic report of Iraq

Addendum

**Information received from Iraq on follow-up to the
concluding observations***

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* The present document is being issued without formal editing.



Measures put in place by Iraq to implement the recommendations contained in paragraphs 20, 26, 28 and 30 of the concluding observations of the Human Rights Committee on the fifth periodic report of Iraq regarding the fulfilment of the country's obligations under the International Covenant on Civil and Political Rights

Paragraph 20 (a)

1. Since 2014, Iraq has been under violent attack from the terrorist groups of the Islamic State in Iraq and the Levant (ISIL), which have committed many atrocities against the people of Iraq in general and, in particular, against a number of ethnic and religious communities.

2. The terrorist groups have been responsible for killings, torture, abductions, rape, sexual slavery, forced religious conversion and the recruitment of child soldiers. All of those acts amount to violations of international human rights law and international humanitarian law, and some of them to crimes against humanity.

3. These criminal bands have committed numerous violations against ethnic communities such as Christians, Turkmens, Sabeen Mandaeans and Yazidis, including the following:

- Crimes against life and bodily integrity (killing and torture);
- Forced displacements;
- Attacks targeted against minorities;
- Destruction of religious heritage and symbols;
- Restriction of public freedoms;
- Economic- and health-related violations.

4. Furthermore, since early June 2014 when it entered the city of Mosul, parts of the governorate of Salah al-Din and a number of villages in the governorates of Kirkuk and Diyala, ISIL has been responsible for many abominable acts of murder and torture. These include the killing of 450 inmates of Badush prison, the execution of hundreds of soldiers in the governorate of Nineveh and of 1,700 more at Camp Speicher in the governorate of Salah al-Din, and the killing of 175 Iraqi Air Force cadets at an airbase in Tikrit. Some of the bodies of the latter were thrown into the Tigris River. ISIL has also committed terrible crimes against members of minorities, particularly Yazidis, Christians and Shabak and sexually enslaved thousands of women from the Yazidi community and other minorities.

5. The courts, under the Supreme Judicial Council, have been conscientiously applying the provisions of law, including article 332 of the Criminal Code (Act No. 111 of 1969), as amended, which states: "Any public official or public servant who uses their position to inflict cruelty against another person, thereby prejudicing that person's self-esteem and honour, or causing bodily suffering, shall be punished by detention and/or a fine, without prejudice to any more severe penalty set forth in the law".

6. According to article 333 of the Criminal Code: "Any public official or public servant who tortures or orders the torture of an accused person, a witness or an expert in order to compel him or her to confess to an offence, make a statement or provide information, or to withhold information or give a particular opinion in respect thereof, shall be liable to imprisonment. The use of force or threats shall be deemed as tantamount to torture."

7. In such cases, the imposition of a criminal sentence leads to the award of civil compensation for the physical and moral damages suffered by the complainant in the criminal case. Conversely, the complainant may reserve the right to bring a civil case to demand compensation for damages resulting from the violation of his or her human rights.

8. One of the most significant steps taken to prevent any violations to the human rights of juvenile detainees has been to equip correctional centres and schools with television cameras. Internal observers and social scientists also play an important role, their activities being regulated by the statutes of the correctional facilities, and if they find that any human rights violation has taken place an investigation is duly launched in accordance with the law.

9. The Supreme Judicial Council has decided to create a special judicial body, with its headquarters in the governorate of Nineveh, to investigate the terrorist attacks against the Yazidis. The step was taken out of a concern on the part of the judiciary to document the offences perpetrated against that community and to ensure that the perpetrators do not go unpunished.

10. The improved security situation in the areas inhabited by minority communities has meant that the organs of the judiciary there have been able to resume their activities. They are conducting investigations into the attacks suffered by those communities with a view to bringing the perpetrators to justice and giving victims appropriate compensation where necessary.

11. It should be pointed out that there is no impunity in Iraq when a crime is found to have taken place, as defined in with domestic law. Moreover, the Government of Iraq protects human rights in accordance with international law.

Paragraph 20 (b) and (c)

12. Human rights frameworks and the rule of law were in the forefront of the programme presented by the Government of Iraq in 2014. The authorities have also made great efforts to impose security and the rule of law throughout Iraqi territory, liberating areas overrun by the terrorist groups of ISIL and protecting citizens. Those efforts include operations to liberate parts of the governorates of Diyala, Salah al-Din, Anbar and Nineveh. The Government has also provided tents and other necessities of life to displaced persons in those areas, without discrimination. Moreover, all Iraqi forces, of whatever appellation, have received advanced training in how to respect human rights standards and international humanitarian law, and they are well prepared to deal with emergency situations while upholding the rights and freedoms enshrined in international human rights treaties.

13. In his briefing on the situation in Iraq before the Security Council on 2 February 2017, the Special Representative of the Secretary-General for Iraq, Mr. Ján Kubiš, praised the courage of Iraqi security forces, including antiterrorism units, the army, the police, the popular mobilization forces, the peshmerga and local volunteers. Mr. Kubiš encouraged the international community, including the regional partners of Iraq, to assist the country following its victory in the military operation against the terrorist groups. The Special Representative also indicated that Iraq had adopted a humanitarian approach to its military operations against ISIL in which priority was given to the protection of civilians.

14. The Government of Iraq allows all Iraqis without discrimination to enrol in the armed forces, internal security forces and national intelligence agencies and, in fact, a number of Christians, Yazidis and Sabeen Mandaean have been appointed to those bodies. The Ministry of the Interior undertakes to protect the places of worship of minority groups, and that protection was intensified following the 2011 attack against the Church of Our Lady of Salvation. Police units have been assigned to protect facilities and public figures.

15. The Council of Ministers issued Decree No. 92 of 2014 in which it designates the suffering inflicted on Iraqi Yazidis, Turkmens, Christians and Shabak, and on other minority groups in Iraq, as genocide.

16. The Council of Representatives issued Decree No. 43 of 2016, which states as follows: “The Government shall take the necessary measures to liberate abducted Yazidi women; to reconstruct the province of Sinjar and restore services and infrastructure; to consider the victims of the acts of terrorism perpetrated by ISIL in Sinjar province as martyrs, who enjoy all the rights and privileges of that category; and to create a committee of competent agencies to look into the genocide suffered by the Yazidis at the hands of the terrorists groups of ISIL in order to submit the case for investigation by the International Criminal Court.”

17. The judiciary is accessible to everyone and the organs of the judiciary are ready to respond immediately to any attack against society. This includes attacks against ethnic-religious minorities, their places of worship or places of business. The judiciary is ready to protect the interests of those groups when necessary and to ensure that criminals receive condign punishment.

Paragraph 20 (d)

18. The Council of Ministers has approved the national policy for displaced persons in Iraq and the Minister of Migration and Displaced Persons has been appointed to head a high-level committee for the provision of aid and shelter to persons displaced as a result of terrorism.

19. The Ministry of Labour and Social Affairs is providing services to women and girls who have been liberated from the clutches of ISIL. It has granted them social security payments and has opened helpdesks for displaced women in all the governorates as well as alternative departments and helpdesks for governorates that were under the control of ISIL and the Kurdistan region. The list below shows the helpdesks that have been opened:

<i>No.</i>	<i>Helpdesk</i>	<i>Governorate</i>
1.	Nineveh department	Kurdistan region/Dohuk
2.	Branch helpdesk of Nineveh department	Kurdistan region/Erbil
3.	Branch helpdesk of Nineveh department	Kirkuk
4.	Branch helpdesk of Tal Afar district	Karbala
5.	Branch helpdesk of Al-Hamdaniyya district	Karbala/Al-Hindiya
6.	Branch helpdesk of Anbar department	Kurdistan region/Erbil
7.	Anbar department	Amiriyah Fallujah

20. Teams from the Ministry of Labour and Social Affairs undertake field visits to camps housing displaced women in Baghdad and Kurdistan region in order to hear about the difficulties they are facing, understand their needs and provide material and moral support.

21. A new helpdesk has been opened in Kurdistan region/Erbil to deal with displaced women from the Christian and Shabak communities in the governorate of Nineveh and facilitate their access to services.

22. Yazidi women survivors have been exempted from providing documentation in order to receive social security payments. Instead, reliance is placed on the backing of the High Commission for Human Rights and the Directorate for Yazidi Endowments in Kurdistan region; 1,529 women have benefited from this provision.

23. Any orphans or children with disabilities who are liberated from the clutches of ISIL will be placed in State institutions and institutes for persons with disabilities in the liberated governorates where they will follow educational programmes designed for them to recover their bodily and mental health and be reintegrated into society.

24. The Ministry of Health provides education to prevent violence of all kinds, including physical and psychological violence, as well as psychological and social support for survivors to help them reintegrate into society. Health care is provided fairly, humanely and without discrimination and in such a way as to protect dignity, confidentiality and privacy.

25. Decree No. 27 of 2016 has been issued, which concerns compensation, definition of benefits and the estimation of damages in the district of Tuz Khurmatu.

26. A reconstruction fund for areas damaged by acts of terrorism was set up under article 28 of the 2015 Federal Budget Act and Act No. 4 of 2015. The new body coordinates between international organizations and Iraqi ministries to ensure prompt reconstruction and to undertake medium- and long-term rebuilding projects in areas

liberated from ISIL. It began operations on 18 February 2015 and was allocated money by the Government from the 2015 budget. The sources of the fund are donations made by friendly States, in addition to what the Government provides from its own general budget. The fund will reconstruct areas damaged by acts of terrorism throughout the country, once they have been liberated. According to article 41 of the 2017 General Federal Budget Act (Act No. 44 of 2017): “A reconstruction fund shall be established for the reconstruction of areas destroyed by terrorism. The fund, which shall have legal personality and be financially and administratively independent, shall be financed by international donations, aid and loans, as well as by allocations from the general; federal budget. Its operations shall be regulated by a statute to be issued by the Council of Ministers.”

27. The Council of Representatives issued Decree No. 33 of 2016, concerning the formation of a commission to address the problems arising from the presence of ISIL in the governorate of Nineveh.

28. The Council of Ministers issued Decree No. 146 of 2017, concerning the national child protection policy. The policy prioritizes the protection and defence of children in zones containing displaced persons and refugees, and in liberated areas.

Paragraph 26 (a)

29. Under Memorandum No. 69 of 2017, issued by the Supreme Judicial Council, cases of domestic violence are examined by courts with special geographical or functional jurisdictions.

30. In line with a recommendation of the Family Protection Committee, which was established by Presidential Order No. 80 of 2009, the Ministry of the Interior has set up a directorate for the protection of families and children from domestic violence. The directorate, which has now become one of the institutions of the Ministry itself, has, in addition to its own headquarters, 16 departments throughout the country: 2 in Baghdad (in Karkh and Rasafah) and 1 in each governorate. It deals with cases of domestic violence; in other words any act of physical, sexual, psychological, ideological or economic aggression that one member of a family commits or threatens to commit against another. Such an act can, according to law, amount to a petty, serious or major offence. The directorate for the protection of families and children from domestic violence also has the following tasks:

1. It receives complaints and reports 24 hours a day through the following channels:
 - (a) Complaints recorded directly by the victim at a department;
 - (b) Cases referred to departments by other investigating bodies;
 - (c) Information relayed by hospitals, schools and other government departments that might learn about cases of domestic violence.
2. It ensures that interviews are carried out by specialized officers, taking account of the gender of the victims: female victims are interviewed by female officers in specially equipped rooms and male victims by male officers.
3. It sends victims for medical examination and treatment. Medical reports corroborating claims of violence are attached to the investigation file.
4. It carries out academic research into domestic violence, analysing data and statistics to produce indicators.
5. It offers training in the form of courses, seminars and conferences, at both local and international level. Male and female officials and staff of the directorate participate in such events, which are held in cooperation with other States and international organizations who offer their expertise in the field.

Types and percentages of domestic violence registered in the departments of the directorate in Baghdad and the governorates in 2014

- Violence by husband against wife, 54 per cent

- Violence by wife against husband, 7 per cent
- Violence between siblings, 5 per cent
- Violence by children against parents, 6 per cent
- Violence by parents against children, 12 per cent
- Other, 16 per cent
- Total, 100 per cent.

Paragraph 26 (b) and (c)

31. The Council of Ministers has approved a domestic violence bill. The bill has been scrutinized by the State Consultative Council and referred to the Council of Representatives where it is still being examined. Article 1 (2) of the bill defines the offence of domestic violence as follows: “Any act of physical, sexual, psychological, ideological or economic aggression that one member of a family commits or threatens to commit against another. Such an act can, according to law, amount to a petty, serious or major offence.” The bill includes provision for the erection of shelters and the creation of mechanisms to protect victims, report crimes of domestic violence and bring legal action irrespective of geographical jurisdiction. As regards punishment, the bill refers to the Criminal Code (Act No. 111 of 1969) and other relevant legislation.

32. The Government has managed to achieve a number of outcomes in its struggle against violence against women. These include the drafting of the domestic violence bill, which was one of its strategic goals. The issue of cases involving women has also been raised by the Supreme Judicial Council where female judges have been assigned to investigate incidents of domestic violence.

33. The domestic violence bill includes provision for the erection of shelters to protect survivors of domestic violence. It should be noted that the Anti-Human Trafficking Act also includes provision for erecting shelters for victims of human trafficking and that steps have already been taken towards opening such a shelter.

34. A number of training workshops have been held, both inside and outside Iraq, for ministerial staff who work with victims of violence. Beneficiaries have included employees from the Ministry of the Interior, of Defence, of Health, and of Labour and Social Affairs. The United Nations Population Fund (UNFPA) plays an important role in developing strategies and provides technical support to implement them. The most important strategic achievement has been to make the problem of violence against women more widely recognized by government departments and certain sectors of society. All sides agree on the need to address the issue, although the biggest challenge remains that of prevalent traditional customs which stand in the way of legislating to protect women.

35. A joint communiqué on the prevention and response to conflict-related sexual violence was signed on 23 September 2016 between the Republic of Iraq and the United Nations. It includes six clauses, which have been agreed with a view to launching a joint plan for their implementation.

Paragraph 28

36. The death penalty is imposed only for the most serious crimes. Its compulsory nature is defined by law and by the circumstances of the offence and the offender, and it cannot be pardoned or commuted except in accordance with the Constitution and the law although a number of legal justifications and mitigating circumstances are set forth in section 5 of the Criminal Code (Act No. 111 of 1969). According to article 28 (1), legal justifications, which can either cancel or reduce a punishment, are only applicable in circumstances defined by law. Apart from such circumstances, committing a crime for reasons of honour and following serious and unjustified provocation on the part of the victim is also considered to be a mitigating justification. According to article 128 (2), the court must, in its reasoning, identify the justification that exempts a person from punishment. Article 129 of the Criminal Code states that a justification exempting a person from punishment precludes the imposition of a primary, incidental or supplementary

punishment. Article 130 of the Code states that, if there exists a mitigating justification for an offence that attracts the death penalty, the penalty shall be reduced to life or fixed-term imprisonment, or to detention for a period of not less than 1 year. If the offence attracts life or fixed-term imprisonment, the penalty shall be reduced to a period of detention of not less than 6 months, unless otherwise stipulated by law.

37. Article 132 of the Criminal Code states: If the court considers that the circumstances of the offence or of the offender call for leniency, it may substitute a lesser penalty for the penalty prescribed for the offence, as follows:

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

38. Circumstances in which punishment is cancelled or reduced for different kinds of offences are also defined elsewhere in the Criminal Code, including articles 59, 199, 218, 229, 273, 258, 303 and 311. Those texts give judges broad powers of discretion when determining the punishment of convicted persons, allowing them to take account of the circumstances of the offence and of the offender. In the event of any violation of fair trial procedures, the sentence or ruling of the court may be challenged in appeal by the representative of the Office of the Public Prosecutor, the accused party or his or her lawyer, or the civil party, in accordance with the Code of Criminal Procedure (Act No. 23 of 1971), as amended. The sentence or ruling may also be challenged in cassation before the Federal Court of Cassation or the criminal court acting as a court of cassation. The cassation judgment may be corrected and a retrial ordered in accordance with articles 249-279 of the Code of Criminal Procedure.

Paragraph 30 (a) and (b)

39. Torture is banned under article 37 (1) (c) of the Constitution of Iraq, according to which: "All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under coercion or torture shall not be admitted, and the victim shall have the right to seek compensation for material and moral damages incurred, in accordance with the law."

40. Iraqi law contains a raft of measures to punish persons involved in violations of human rights — including torture and other cruel, inhuman or degrading treatment or punishment — or of fundamental freedoms. Articles 333 and 421 of the Criminal Code (Act No. 111 of 1969), as amended, clearly define the penalties faced by persons who practise any form of torture, either directly or by incitement. Other relevant provisions are contained in chapter two of the section on liberties in the 2005 Constitution, while further guarantees protecting accused persons are contained in the Code of Criminal Procedure (Act No. 23 of 1971) (articles 92, 123-128 and 156).

41. In no case do officials of the executive have any role or say in investigative procedures. The conduct of investigations remains the prerogative of the judiciary, which is an independent body in which no one may interfere, as explained in the periodic report.

42. Iraqi legislators did not define torture in the Criminal Code (Act No. 111 of 1969). The intention behind that omission was, perhaps, to leave the field open and not to fetter jurisprudence with a fixed definition that might prove insufficiently prohibitive as techniques of investigation and interrogation developed over time. Nonetheless, article 12 (2) (e) of the Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005) does define torture in the following terms: "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; torture shall not include pain or suffering arising from or related to legal punishments". In that context and in the light of the obligations of Iraq under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance, a bill is currently being drafted for the implementation of those instruments. The bill will include a

definition that is consistent with the country's obligations under those two treaties. Moreover, the Iraqi system of criminal justice does not recognize a statute of limitations in such cases.

43. Article 12 (1) (f) of the Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005) lists torture as a crime against humanity, while article 17 states that, in interpreting articles 11, 12, 13 and 14 of the Act, the Tribunal and the appeals chamber may refer to decisions of international criminal tribunals. Offences and punishments under those articles are not subject to any statute of limitations. At the same time, according to article 37 (1) (c) of the Constitution of Iraq, all forms of psychological and physical torture and inhumane treatment are prohibited, and any confession made under coercion or torture shall not be admitted.

44. Iraqi legislators included provision for addressing acts of torture in the Criminal Code (Act No. 111 of 1969). Article 333 of the Code states as follows: "Any public official or public servant who tortures or orders the torture of an accused person, a witness or an expert in order to compel him or her to confess to an offence, make a statement or provide information, or to withhold information or give a particular opinion in respect thereof, shall be liable to imprisonment. The use of force or threats shall be deemed as tantamount to torture." Iraqi legislators also take psychological torture very seriously and consider it to be equal to physical torture. This emerges clearly in article 421 of the Criminal Code, which concerns kidnapping and deprivation of liberty; its subparagraph (b) defines an aggravating circumstance "if the offence is accompanied by the threat of death or of physical or mental torture".

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

46. Iraqi legislators have adopted a wide-ranging approach to dealing with the effects of torture of all kinds. In fact, Coalition Provisional Authority Memorandum No. 3 modified part of article 218 of the Code of Criminal Procedure (Act No. 23 of 1971), which now imposes the condition that confessions must not have been extracted by coercion.

Paragraph 30 (c)

47. Article 37 (1) of the Constitution of Iraq states as follows:

- (a) Human freedom and dignity shall be protected;
- (b) No one may be detained or questioned except under judicial warrant;
- (c) All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under coercion or torture shall not be admitted, and the victim shall have the right to seek compensation for material and moral damages incurred, in accordance with the law.
 - (2) The State shall protect individuals from intellectual, political and religious coercion.
 - (3) Forced labour, slavery, the slave trade, trafficking in women and children and the sex trade are all prohibited.

48. In the modern legal system, confessions are no longer the principal form of evidence and courts have discretionary powers to evaluate their worth. In fact, defendants may make false confessions out of a desire to conceal other offenders for some social, economic or political reason, or they may seek to implicate others in the accusation in order to mislead the judiciary. Confessions may be forced by physical or psychological coercion or they may be the result of some mental, psychological or nervous condition that affects the understanding or desires of an accused person. In such a case the confession is involuntary

and pathological, and it has no legal value. The Supreme Judicial Council has issued a number of relevant circulars and directives to the investigating authorities (i.e., the courts responsible for conducting investigations and the investigators themselves) and to the Ministry of the Interior. Moreover, the Code of Criminal Procedure gives accused persons the right to appoint a lawyer, while courts may appoint a lawyer for defendants who do not have the material means to do so for themselves. Defendants' statements are taken down in the presence of their lawyer and a representative of the Office of the Public Prosecutor, while defendants, their lawyers and others involved in criminal proceedings may appeal any sentences or rulings issued by the investigating courts if there has been any violation of an accused persons' rights or of fair trial procedures. Accused persons have the right to be referred for a medical examination if they claim to have been tortured, in order to determine the truth of their allegations and to discover what effect they may have on the validity of a confession. A competent investigator is the person best suited to obtain a confession from an accused person, in a manner compatible with the evidence in the case and without any need to recur to unlawful methods such as coercion or torture. The Supreme Judicial Council, in a circular to investigating magistrates, has reminded them that, when recording the statement of an accused person, they need to include a paragraph to the effect that the statement was taken down in the presence of the accused, a representative of the Office of the Public Prosecutor and a lawyer, that neither threats nor coercion were used and that the defendant was asked whether he or she had suffered torture. Furthermore, any signs discovered on the defendant's body indicating torture or coercion should be duly recorded.

49. According to article 18 of the Code of Criminal Procedure (Act No. 23 of 1971), as amended: "It is a condition that confessions must not have been extracted by coercion."

Paragraph 30 (d)

50. The Office of the Public Prosecutor has bureaus in prisons and places of detention where an official is responsible for inspecting the facilities and submitting reports and field studies on the incidence of criminal activities. The official also makes observations and practical proposals to prevent crime and curb the problem of juvenile delinquency. If an inmate or detainee dies, a report on the circumstances of the death is prepared and submitted to the Office of the Public Prosecutor, while the body is sent to the institute of forensic medicine for an autopsy to determine the exact cause of death. If it is discovered that the death has criminal implications, being the result of torture, ill-treatment, or deliberate neglect, the Office of the Public Prosecutor launches a criminal action before the competent court. At this point, it should be pointed out that the General Amnesty Act was issued on 25 August 2016. The aim of the Act is to give Iraqis who had committed criminal offences the opportunity to reintegrate into community life, and to propagate a spirit of tolerance and renewal throughout society. The Act applies to all Iraqis who have been sentenced to death or deprivation of liberty — whether or not the sentence was delivered in their presence or in absentia and whether or not it is definitive — with the exception of those who have committed the offences defined under article 4 of the Act. However, those offences are very carefully defined, being only the most serious crimes against the State and individuals. Moreover, the Act also gives inmates and detainees who have received definitive sentences for some of the offences excluded from the amnesty, as well as other offences, and who have served at least one third of their sentence, to request that the remaining part of the sentence be commuted to a fine. Likewise, the Act gives persons convicted for serious or major offences, including offences exempted from the amnesty, the right to apply for a retrial if they claim that their confessions were extracted by coercion or if any of the legal proceedings against them were based on the words of a secret informant or the confession of another defendant. The decisions taken by the commission that examines such applications are open to appeal.