



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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18 April 2018

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 20, 26, 28 and 30 of the concluding observations on the report submitted by Iraq ([CCPR/C/IRQ/CO/5](#)), adopted by the Committee at its 115th session in October-November 2015.

On 19 July 2017, the Committee received the reply of the State party. At its 122nd session (12 March-6 April 2018), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see [CCPR/C/122/3](#)). I hereby attach a copy of the relevant section of the said report (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. The Committee requests the State party to provide this information in the context of its next periodic report due on 6 November 2018.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

His Excellency Mr. Mouayed Saleh
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Report on follow-up to concluding observations of the Human Rights Committee, CCPR/C/122/3:

Assessment of replies¹

- A Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
- B Reply/action partially satisfactory:** The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.
- C Reply/action not satisfactory:** A response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation.
- D No cooperation with the Committee:** No follow-up report has been received after the reminder(s).
- E Information or measures taken are contrary to or reflect rejection of the recommendation**

Iraq

Concluding observations:	CCPR/C/IRQ/CO/5 , 4 November 2015
Follow-up paragraphs:	20, 26, 28 and 30
Follow-up reply:	CCPR/C/IRQ/CO/5/Add.1 , 19 July 2017
Committee's evaluation:	Additional information required on paragraphs 20[C][B], 26[C][C], 28[C] and 30[B][C][B]
Non-governmental organizations:	Alkarama Foundation, 6 October 2017 ²

Paragraph 20: Allegations of human rights violations in the context of the ongoing armed conflict

The State party should make more vigorous efforts to ensure that:

- (a) **All serious human rights violations are independently, promptly and thoroughly investigated, that perpetrators are brought to justice and adequately sanctioned as soon as feasible, and that victims receive full reparation;**
- (b) **Its forces, groups under its control and forces collaborating with it do not perpetrate human rights violations, and that they take all necessary precautionary measures to avoid civilian casualties;**
- (c) **All persons under its jurisdiction, in particular those who are most vulnerable owing to their ethnicity or religion, are afforded the necessary protection from violent attacks and gross human rights violations;**
- (d) **Victims, particularly women and girls released from ISIL, receive adequate support, and that children who have been used in or recruited into armed**

¹ The full assessment criteria are available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf.

² See http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRQ/INT_CCPR_NGS_IRQ_29127_E.pdf.

conflict receive adequate assistance for their physical and psychological recovery and reintegration.

Summary of State party's reply

(a) The State party provides information about violations of international human rights law and international humanitarian law by Islamic State in Iraq and the Levant (ISIL).

Courts have been applying the law. A criminal sentence leads to civil compensation for physical and moral damages suffered by the complainant who, conversely, has the right to bring a civil case for compensation.

The Supreme Judicial Council decided to create a special judicial body to investigate the terrorist attacks against Yazidis, in order to document the offences and punish the perpetrators.

The judiciary has been able to resume its activities and investigate attacks on minority communities, owing to the improved security situation. There is no impunity when a crime is found to have taken place.

(b) and (c) Great efforts were made to impose security and the rule of law throughout Iraq — including operations to liberate parts of the governorates of Diyala, Salah al-Din, Anbar and Nineveh, and the provision of tents and other necessities to displaced persons, without discrimination.

All Iraqi forces received advanced training on respecting human rights and international humanitarian law standards. The humanitarian approach to military operations against ISIL and the focus on protection of civilians has been noted by the Special Representative of the Secretary-General for Iraq.

The Ministry of the Interior undertakes to protect places of worship of minority groups. Police units have been assigned to protect facilities and public figures.

Council of Representatives Decree No. 43 (2016) calls on the Government to take the necessary measures to: (a) liberate abducted Yazidi women; (b) reconstruct the Province of Sinjar; (c) consider the victims of terrorist acts in the Province of Sinjar as martyrs; and (d) create a committee to look into the Yazidi genocide so that the case can be submitted to the International Criminal Court.

The judiciary is accessible to everyone and is ready to respond immediately to any attack against society.

(d) The Council of Ministers approved the national policy for displaced persons. The Minister of Migration and Displaced Persons will head a high-level committee for the provision of aid and shelter to persons displaced as a result of terrorism. The Ministry of Labour and Social Affairs is providing services, including social security payments as well as help desks in all the governorates, to women and girls who have been liberated from ISIL. Teams from the Ministry are conducting visits to camps housing displaced women in the Baghdad and Kurdistan regions to learn about their difficulties and needs and provide support.

Yazidi women survivors have been exempted from providing documentation in order to receive social security payments.

The Ministry of Health provides education to prevent violence, and psychological and social support for survivors. Health care is provided without discrimination. Orphans and children with disabilities who are liberated from ISIL will be placed in State institutions and institutes for persons with disabilities with educational programmes to help them recover and reintegrate into society.

A reconstruction fund for areas damaged by acts of terrorism was set up in 2015.

Decree No. 33 of 2016 issued by the Council of Representatives concerns the formation of a commission to address the problems arising from the ISIL presence in Nineveh. Council of Ministers Decree No. 146 concerns the national child protection policy.



Information from non-governmental organizations

Alkarama Foundation

(a) The State party's report does not mention any investigation into the allegations of abuse in the Fallujah operations, or those made in connection with the offensive to retake Mosul from ISIL. The investigation into allegations of abuse in the Fallujah operations announced by the Prime Minister on 4 June 2016 has been criticized for its lack of transparency.

(b) State authorities are operating outside any legal framework by invoking the fight against terrorism and the war against ISIL as justification for mass arrests followed by incommunicado detentions. Alkarama has documented numerous cases of enforced disappearance in the context of the ongoing armed conflict since the Committee's concluding observations.

Operations to recapture areas from ISIL are preceded by indiscriminate and disproportionate bombing, resulting in numerous civilian casualties and the destruction of civilian objects, in violation of international humanitarian law.

(c) Alkarama received numerous testimonies of executions of Sunni civilians fleeing Fallujah, and of detention and torture of hundreds of local residents under the pretext that they had supported ISIL.

Committee's evaluation

[C] (a) and (b): The Committee notes the information provided, but regrets the lack of concrete information on prompt, independent, impartial and thorough investigations into serious human rights violations, prosecution and punishment of perpetrators, and full reparation provided to victims. The Committee requires such information, as well as information on: (a) the progress made by the designated special judicial body in documenting and investigating terrorist attacks against Yazidis and in prosecuting and punishing perpetrators; and (b) effective measures to protect civilians in combat zones, and steps taken with regard to allegations of indiscriminate and disproportionate bombing, mass arrests, incommunicado detention, torture and enforced disappearance, including in the course of the Fallujah operations and the offensive against ISIL in Mosul. The Committee reiterates its recommendations.

[B] (c) and (d): The Committee notes the information provided by the State party, but requires more specific information on the effective protection of ethnic and religious communities against violent attacks and gross human rights violations, including on any measures taken to investigate the allegations of executions of Sunni civilians fleeing Fallujah, and of detention and torture of residents because of alleged support for ISIL.

It also requires information on: (a) the progress made in providing aid and shelter to displaced persons by the committee mandated to do so; and (b) any rehabilitation programmes aimed at the physical and psychological recovery of children who have been used in or recruited into armed conflict.

Paragraph 26: Violence against women

The State party should redouble its efforts to prevent and combat all forms of violence against women and, in particular, should:

(a) **Facilitate the reporting of cases of violence against women and ensure that all such cases are promptly and thoroughly investigated, that perpetrators are brought to justice and that victims have access to full reparation and means of protection, including access to State- and NGO-run shelters or centres throughout the State party's territory;**

(b) **Swiftly amend its legislation to guarantee adequate protection of women against violence, including by repealing the Criminal Code provisions establishing "honourable motives" as a mitigating circumstance for murder and allowing for the**



exoneration of rapists who marry their victims, and by ensuring that all forms of violence against women, such as domestic violence and marital rape, are criminalized with appropriate penalties in all its territory. In this respect, the State party should speed up the adoption of the draft law on domestic violence at the national level and ensure that the final text is fully compliant with the Covenant;

(c) Increase its awareness-raising activities on the unacceptability and negative effects of violence against women and on the resources and protections available to victims, initiate programmes for perpetrators of domestic violence to change their violent behaviour, and reinforce its training activities for State officials so that they can respond effectively to all forms of violence against women.

Summary of State party's reply

(a) The State party reiterates information (see [CCPR/C/IRQ/Q/5/Add.1](#), para. 26) on the establishment of a directorate for the protection of families and children from domestic violence, adding that it has 16 departments throughout the country, and, inter alia, receives complaints from victims or cases referred by other entities, conducts academic research on domestic violence, and offers training. It also provides statistics regarding domestic violence registered by the directorate in 2014.

(b) The State party reiterates (see [CCPR/C/IRQ/Q/5/Add.1](#), para. 31) that a domestic violence bill is under examination by the Council of Representatives. The bill defines domestic violence and includes provisions on shelters and the creation of mechanisms to protect victims, on reporting crimes and on legal recourse. As regards punishment, the bill refers to the Criminal Code and other relevant legislation.

(c) Training workshops have been held for ministerial staff who work with victims of domestic violence, and have helped raise awareness of the issue in the Government and in society. The prevalence of traditional customs remains the biggest challenge in adopting legislation protecting women.

Committee's evaluation

[C] (a) and (b): The Committee notes that the directorate for the protection of families and children from domestic violence was established before the adoption of its concluding observations. It regrets that no information was provided on facilitating the reporting of cases of violence against women, on investigations and prosecutions of perpetrators, and on access for victims to reparation and protection, including State- and NGO-run shelters, since the adoption of its concluding observations.

The Committee regrets that no measures appear to have been taken to repeal the Criminal Code provisions establishing "honourable motives" as a mitigating circumstance for murder and allowing for the exoneration of rapists who marry their victims, and to criminalize domestic violence and marital rape. Although a bill on domestic violence is pending before the Council of Representatives, the Committee notes that the legislative process was initiated before the adoption of its concluding observations and regrets the delay in adopting a law on the matter. It requires additional information on the content of the bill pending before the Council of Representatives, the progress in regard to its adoption, and its compliance with the Covenant.

[C] (c): While noting the general information regarding training workshops for State officials, the Committee regrets the lack of information on awareness-raising activities throughout society on the unacceptability of violence against women and on protection measures available to victims, and on any behaviour-change programmes for perpetrators of domestic violence. It requires such information, as well as specific information on: (a) the extent, frequency and content of training for working-level State officials dealing with violence against women; and (b) any measures to change traditional perceptions and attitudes toward women.

Paragraph 28: Death penalty

The State party should give due consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, the State party should take all measures necessary, including legislative action, to ensure that: (a) the death penalty is provided only for the most serious crimes; (b) it is never mandatory; and (c) pardon or commutation of the sentence is available in all cases, regardless of the crime committed. The State party should also ensure that, if imposed at all, the death penalty is never imposed in violation of the Covenant, including in violation of fair trial procedures.

Summary of State party's reply

The death penalty is imposed only for the most serious crimes, and is mandatory as defined by law and by the circumstances of the offence and the offender. It can only be pardoned or commuted in accordance with the Constitution or as defined by law. Mitigating circumstances are set forth in section 5 of the Criminal Code. Committing a crime for reasons of honour or following serious and unjustified provocation by the victim is also considered a mitigating justification. In the case of mitigating justification, the penalty shall be reduced to life imprisonment, fixed-term imprisonment, or detention for a period of not less than one year (art. 130 of the Criminal Code). The court may substitute a lesser penalty if it considers that the circumstances of the offence or the offender call for leniency (art. 132 of the Criminal Code). There are also provisions in the Criminal Code that give judges broad powers of discretion in determining the punishment, based on the circumstances of the case.

If there is a violation of fair trial procedures, the court's ruling can be appealed, or may be challenged under the cassation procedure.

Information from non-governmental organizations

Alkarama Foundation

The State party justifies the use of the death penalty rather than addressing its abolition. The death penalty applies to several offences that do not meet the threshold of "the most serious crimes" — including compromising the internal security of the State, crimes constituting a public danger, and crimes relating to attacks on transport and telecommunication systems. Furthermore, the Anti-Terrorism Law (No. 13 of 2005) applies the death penalty mandatorily to those convicted of committing or threatening to commit acts of terrorism, thus the death penalty can also be imposed on individuals who have not been convicted of an intentional crime with lethal or extremely grave consequences.

Investigations and judicial proceedings in death penalty cases systematically fail to respect due process and fair trial standards. The Central Criminal Court of Iraq, which imposes death sentences, lacks any guarantee of independence and systematically considers confessions extracted under torture as evidence.

No information is provided in the State party's reply about any draft law aimed at granting the President or any other authority the power to commute the sentence or grant a special pardon, including for terrorism-related crimes for which no pardon can be granted under existing legislation.

Committee's evaluation

[C]: The Committee regrets that the State party has not reported giving consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The Committee also regrets that no legislative action has been taken to ensure that: (a) the death penalty is imposed only for the most serious crimes, that is, crimes of extreme gravity involving intentional killing; (b) the death penalty is never mandatory;

and (c) pardon or commutation is available in all cases. The Committee reiterates its recommendation.

Paragraph 30: Prohibition of torture and ill-treatment

The State party should:

(a) **Adopt the legislative measures necessary to ensure that the Criminal Code includes a definition of torture that is fully in line with article 7 of the Covenant and other internationally established norms, preferably by codifying it as an independent crime which stipulates sanctions that are commensurate with the gravity of the act;**

(b) **Take more vigorous steps to prevent torture and ill-treatment and to ensure that all such cases are promptly, independently and thoroughly investigated, that perpetrators are brought to justice and that victims receive full reparation;**

(c) **Ensure that confessions obtained in violation of article 7 of the Covenant are not accepted by courts under any circumstances, that allegations made by defendants that a statement was made under torture or ill-treatment are promptly and adequately investigated, and that the burden of proving that the confession was made voluntarily falls on the prosecution;**

(d) **Ensure that all cases of death in custody are promptly, independently and thoroughly investigated and, if it is determined that they were the result of torture, ill-treatment or wilful negligence, that the perpetrators are brought to justice.**

Summary of State party's reply

(a) Torture is banned under article 37 (1) (c) of the Constitution, and so are confessions made under coercion or torture. Articles 333 and 421 of the Criminal Code define the penalties for torture, and investigative procedures are handled solely by the judiciary.

Although torture is not defined in the Criminal Code, a definition of it is provided in article 12 (2) (e) of the Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005). A bill is being drafted and will include a definition of torture consistent with the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance.

(b) Concerning penalties, it is stated in article 333 of the Criminal Code that public officials or public servants who torture or order torture in order to compel an individual to confess, withhold information, or give a particular opinion, shall be liable to imprisonment. According to article 332, a public official or public servant who uses their position to inflict cruelty against another shall be punished by detention of up to one year and/or a fine of up to 100 dinars. Psychological torture is considered by Iraqi legislators as being equal to physical torture.

(c) According to article 37 (1) of the Constitution, confessions made under coercion or torture shall not be admitted. Courts have discretionary powers to evaluate the worth of a confession. The Supreme Judicial Council issued a number of relevant circulars and directives to the investigating authorities and to the Ministry of the Interior. The Code of Criminal Procedure gives accused persons the right to appoint a lawyer or have one assigned ex officio by the court. Defendants' statements must be taken in the presence of their lawyer, and any rulings issued by the investigating courts may be appealed if there has been any violation of rights or of fair trial procedures. Accused persons have the right to a medical examination if they claim to have been tortured. Any physical signs indicating torture or coercion should be duly recorded.

(d) The Office of the Public Prosecutor has bureaux in prisons and places of detention where an official is responsible for inspecting the facilities and reporting any violations. In cases of death in custody, a report on the circumstances of the death is submitted to the Office of the Public Prosecutor, and an autopsy is performed to determine the cause of

death. If the death is the result of torture, ill-treatment or deliberate neglect, the Office of the Public Prosecutor launches a criminal action.

The State party provides information about the General Amnesty Act of 25 August 2016. Among other things, the Act gives persons convicted of 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.

Information from non-governmental organizations

Alkarama Foundation

(a) Torture is yet to be criminalized under the Criminal Code, and the only definition of torture contained in article 12 (2) (e) of the Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005) falls short of international standards.

(b) and (d) There is no reference in the State party's report to its obligation to carry out prompt, thorough and impartial investigations into all allegations of torture, ill-treatment, and death in custody. According to testimonies received by Alkarama, complaints lodged with the relevant authorities never led to investigations and remain systematically unanswered.

(c) Domestic courts give undue weight to confessions when evaluating evidence — a practice enshrined in article 217 of the Code of Criminal Procedure (absolute authority of the trial court to decide whether a confession is admitted as incriminating evidence).

Committee's evaluation

[B] (a): The Committee notes that a bill that will include a definition of torture consistent with the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance is being drafted. The Committee requires information on any relevant developments concerning the bill, the progress in regard to its adoption, and its compliance with article 7 of the Covenant and other internationally established norms, including with regard to the definition of torture and sanctions commensurate with the gravity of the crime.

The Committee also requires clarification as to whether persons convicted of torture are excluded from the amnesty under the General Amnesty Act of 25 August 2016.

[C] (b) and (d): The Committee regrets that no information was provided on prevention of torture and ill-treatment, nor on prompt, independent, impartial and thorough investigations into such acts, including deaths in custody as a result of torture and ill-treatment, nor on prosecution and punishment of perpetrators and the provision of full reparation to victims. The Committee reiterates its recommendations.

[B] (c): The Committee notes the information provided by the State party, but requires additional information on how the prohibition of coerced confessions is enforced by judges in practice, including statistics on allegations of confessions extracted under torture or ill-treatment made by defendants, investigations into such allegations, and any retrial for those convicted on the basis of forced confession (as provided for under the General Amnesty Act of 25 August 2016).

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 6 November 2018