



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

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Committee on Enforced Disappearances

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Item 8 of the provisional agenda

Consideration of reports of States parties to the Convention

**List of issues in relation to the report submitted by Iraq under
article 29, paragraph 1, of the Convention**

Addendum

Replies of Iraq to the list of issues*

[Date received: 2 June 2015]

* The present document is being issued without formal editing.



I. General information

Reply to paragraph 1 of the list of issues

1. With regard to the reception of individual communications, Iraq has a mechanism in place for the reception of complaints through departments in all ministries and other State institutions and for their referral to the Citizens' Affairs Office in the General Secretariat of the Council of Ministers for the appropriate action. A separate national mechanism exists for the reception of complaints through the Office of the High Commissioner for Human Rights (OHCHR), which is sufficient for purpose.

Reply to paragraph 2 of the list of issues

2. In the event that the Ministry of Human Rights receives a report that a person has gone missing, it takes the following steps through a missing persons department in its Prisons Division. The department has introduced a mechanism to search for missing persons whereby it interviews their relatives and uses a specially prepared questionnaire to collect information about the person concerned and the circumstances of their disappearance. It verifies that information against its own database and then conducts a rapid search, as follows:

(a) It arranges for relatives of a missing person to view identified and unidentified bodies held by the Forensic Medicine Department to see if the person concerned is among them;

(b) It approaches the ministries responsible for security (the Ministry of the Interior and the Ministry of Defence) and the Ministry of Justice to see whether the missing person is detained in one of their facilities;

(c) If the relatives of a missing person have information leading them to suspect that he or she is being held in a specific detention centre, any available witnesses are interviewed and the Prisons Division establishes a special inspection team to make an unannounced visit to the detention facility in question and undertake an impromptu search.

The Ministry of Human Rights is the authority responsible for establishing to the judicial authorities that a person is missing so that the relatives of the person concerned can claim their legal rights to compensation and redress.

Reply to paragraph 3 of the list of issues

3. Under Iraqi law, international treaties which have been ratified and published in the Official Gazette have the status of binding legislation and judges, public prosecutors and lawyers can use and invoke them as necessary. The Government of Iraq is fully aware of the philosophy underpinning the Convention and is committed to its implementation at the national level. The accession of Iraq to the Convention by Act No. 7 of 2010 arose from its desire to build a State founded on the rule of law, to prevent the occurrence of enforced disappearance and to mitigate its effects. In as much as this depends upon the Supreme Judicial Council, the judiciary in Iraq has sought tirelessly to promote the principle that all citizens without exception are subject to the law. Cases are examined by the ordinary or constitutional courts; favourable judgements are handed down in all cases where the available evidence supports the defendant's claims and unfavourable judgements in all cases where such evidence is lacking, without exception and in accordance with the law.

4. The term "enforced disappearance" covers many cases of abduction of innocent citizens after 2003, by criminal gangs or by certain members of the executive working

for security agencies. That period was characterized by the collapse of the security situation and an increase in the number of people killed and displaced, with the result that the fate of many is unknown. All this took place outside the framework of the law and the courts. Article 12, paragraph 2 (g), of the Iraqi High Criminal Court Act (Act No. 10 of 2005) as amended, reads: “‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of the State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information as to the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

5. Legal measures are taken in the light of complaints submitted to the investigative authorities of the executive and the judiciary. Abuses by the executive in applying the law, imprisoning or detaining persons without trial, or keeping detainees including juveniles in detention centres and prisons for long periods, as monitored by NGOs, are all against the law. The Criminal Code (Act No. 111 of 1969) contains clear provisions (mostly in articles 322 and 324) concerning offences committed by public officials or public servants that could be categorized as enforced disappearance and the penalties prescribed for abduction are increased in section 2 of Coalition Provisional Authority Order No. 31 of 13 September 2003. Since the Criminal Code lacks a clear definition of the offence of enforced disappearance, the provisions apply to acts that can be described as enforced disappearance, namely, abduction, detention and arrest without judicial warrant.

6. By way of confirmation of the above, article 92 of the Code of Criminal Procedure provides that no one may be arrested except further to a judicial warrant. Article 109 provides that no one may be kept in detention except further to a warrant issued by an investigating judge, while article 123 provides that the investigating judge must question a suspect within 24 hours of arrest or detention. If any of these provisions is violated, the person ordering the detention or anyone who arrests a person without a judicial warrant is liable to legal action under articles 322 and 323 of the Criminal Code. Similarly, anyone who fails to release a detainee for whom a judicial release warrant has been issued, who has been judged innocent or who has served his or her sentence is also liable to legal action. The Iraqi judiciary has handed down penalties against parties who have failed to release persons for whom judicial release warrants had been issued. The penalties consisted of financial compensation to the affected individuals for additional time spent in custody after their release, as for example in Federal Supreme Court ruling (164/expanded Civil Chamber/2009) of 16 March 2010.

7. The Supreme Judicial Council has, in accordance with the law, sent out circulars emphasizing the importance of article 123 of the Code of Criminal Procedure under which investigating judges or criminal courts must appoint a defence lawyer for accused persons who are unable to do so for themselves in order to protect their rights at all stages of the investigation and trial — Coalition Provisional Authority Memorandum No. 3 of 2003.

Reply to paragraph 4 of the list of issues

8. One of the tasks of the High Commission for Human Rights is to receive complaints; it received 14 reports of enforced disappearance in 2014 and 29 reports in 2015. A department has been created within the Office of the Public Prosecutor, directly linked to the Chief Prosecutor, to receive complaints from the Commission; numerous complaints have been referred to the Office of the Public Prosecutor for investigation and are being followed up by the Commission.

II. Definition and criminalization of enforced disappearance (arts. 1-7)

Reply to paragraph 5 of the list of issues

9. The Ministry of Human Rights has a database which it uses to help elucidate 16,400 cases of enforced disappearance, most of them dating from the time of the dictatorship. A committee — headed by the Ministry of Human Rights and with members drawn from the Martyrs Foundation, the Political Prisoners Foundation, representatives of the Kurdistan region in Baghdad, the Ministry of the Interior and the central committee for the implementation of Act No. 20 of 2009 — has been established to carry out investigations on the basis of information received by the Ministry of Foreign Affairs from the Working Group on Enforced or Involuntary Disappearances, and has determined the fate of 2,735 missing persons. The names of 2,170 of those persons were on the database of the Martyrs Foundation and those of 565 others on the database of the Political Prisoners Foundation; however, it is possible that there is some overlap and repetition in the names, especially because the details on the cases of enforced disappearance indicated in the lists received are scant and limited. The Prisons Division of the Ministry of Human Rights has gathered documents pertaining to cases of enforced disappearance and transmitted them to the Commission on Integrity, the Supreme Judicial Council and the Office of the Chief Public Prosecutor with a view to expediting the resolution of those cases, calling the persons at fault to account and ensuring that they are subject to the legally prescribed penalties.

Reply to paragraph 6 of the list of issues

10. Despite the current extraordinary circumstances in Iraq, the Government has not declared a state of emergency. Existing laws have not been suspended and remain in force. In the event that a state of emergency were to be declared in certain areas of the country, the relevant legislation is the Defence of National Security Act No. 1 of 2004. Under article 3 of that Act, suspects may be detained pursuant to orders issued by the Prime Minister or his appointed deputy after procuring a judicial warrant. Exceptions to that rule are limited to cases involving the national interest and the security of citizens and society.

11. Article 3 of the Act provides that: “During a state of emergency, in areas where a state of emergency has been declared the Prime Minister shall have the following extraordinary temporary powers: (1) Having procured a judicial arrest or search warrant, except in exceptionally urgent cases, the Prime Minister may place restrictions on the freedom of citizens or foreigners in Iraq in the event that they have committed a witnessed offence or that sufficiently substantiated accusations are made against them. Those restrictions concern freedom of movement, circulation, assembly, passage and travel to and from Iraq, and the right to bear and use arms, ammunition or dangerous materials. People whose behaviour is suspicious may be detained and they, their homes and workplaces may be searched. The Prime Minister may delegate these powers to military or civilian leaders of his choosing.” This provision is accompanied by certain safeguards, being subject to supervision by the judiciary and the legislature, as set forth in articles 4 and 9 of the Act, under which these orders may be overturned if they prove illegal and the competent authorities required to bring all detainees and arrested persons before the competent investigating court within 24 hours in order to ascertain their fate. Article 4 of the Act provides that: “Decisions and orders handed down pursuant to the provisions of this Act to arrest or detain a person or to seize

property shall be presented to an investigating judge, before whom the suspect shall appear within 24 hours of taking them.” Article 9 provides as follows:

“1. The Presidency shall ratify exceptional decisions and measures by consensus, and the interim national consultative assembly shall have the right to oversee the implementation of those measures.

“2. Decisions and measures issued by the Prime Minister shall be subject to the scrutiny of the Supreme Court, the Supreme Court in the Kurdistan region with regard to emergency measures affecting that region, and the Federal Supreme Court. These courts may overturn those decisions and measures as being unlawful or endorse them, taking into account the exceptional circumstances that required them to be issued.”

Furthermore, article 12 of the proposed draft bill to combat enforced disappearance provides that no exceptional circumstances may be invoked as a justification for enforced disappearance, as follows:

“Any act subjecting any person to the offences set forth in this act is strictly forbidden.

“1. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for the offences set forth in this Act.”

Reply to paragraph 7 of the list of issues

12. The Ministry of Human Rights has drafted a bill to combat enforced disappearance and torture. The bill is currently before the General Secretariat of the Council of Ministers for comments before duly passing into law. Article 7 of the bill includes a definition of enforced disappearance consistent with that contained in the Convention. Article 8 describes enforced disappearance as a crime against humanity, while article 10 prescribes a penalty of imprisonment for perpetrators. The penalty is increased to life imprisonment if the victim of the offence is a child or a woman, if the offence leads to the death of the victim or if the offence is perpetrated by an organized group. Article 7 provides that: “Enforced disappearance’ is the arrest, detention, abduction or any other form of deprivation of liberty by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” Article 8 provides that: “the widespread or systematic practice of enforced disappearance constitutes a crime against humanity”, while article 10 provides that:

“1. Anyone who commits any of the offences detailed under article 7 shall be liable to a penalty of imprisonment.

“2. The penalty shall be life imprisonment if the victim of the offence is a child or a woman or if the offence leads to the death of the victim or is perpetrated by an organized group.

“3. The court may reduce the penalty of defendant who, although implicated in the offence, gives information which contributes to explaining the circumstance of the incident, finding the missing person alive, clarifying other cases of enforced disappearance or identifying those responsible for the offence.”

A number of civil society organizations participated in the discussions and meetings which preceded the drafting of the bill.

Reply to paragraph 8 of the list of issues

13. No precise statistics are available regarding enforced disappearances and other brutal offences being committed by the so-called Islamic State in Iraq and the Levant in the areas under its control.

Reply to paragraph 9 of the list of issues

14. Article 22 of the Internal Security Forces Criminal Code (Act No. 14 of 2008), which applies to all police officers contains the following provision:

“A higher ranking officer shall receive a jail sentence in either of the following situations:

“1. If he asks a subordinate to perform work for private advantage unrelated to the requirements of service;

“2. If he orders a subordinate to commit an offence. He shall be considered as a principal offender if the offence is committed or attempted.

“3. For the purposes of this law, the term subordinate means a person lower in rank, seniority, or position.”

The provision clearly indicates that criminal responsibility lies with the higher ranking officer who ordered the offence to be committed. Furthermore, article 12 (2) of the proposed bill to combat the offence of enforced disappearance provides that orders from a higher authority may not be invoked as a justification for enforced disappearance, as follows: “Orders from a superior officer or instruction from any public, civilian, military or other authority may not be invoked to justify an offence of enforced disappearance.” Article 12 (3) provides that: “A refusal to carry out orders or instructions which inflict, permit or encourage torture or enforced disappearance does not constitute an offence.” Article 15 of the bill sets out more clearly that a superior officer is considered a participant in an offence in the event that he:

1. Was aware of, consciously disregarded or concealed information which clearly indicated that subordinates under his effective authority and supervision had committed or were about to commit the offence of enforced disappearance;

2. Held effective responsibility for and supervised activities linked with that offence;

3. Failed to take necessary and appropriate measures within the scope of his authority to prevent an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)**Reply to paragraph 10 of the list of issues**

15. Under article 10 of the Criminal Code, the jurisdiction of Iraqi courts in their application of the law to cases brought before them, involving Iraqi citizens who perpetrate or contribute to the perpetration of an offence abroad, is limited to the borders of Iraq. Jurisdiction is thus confined to the country’s spatial borders and does not cover anyone who commits an offence outside them. However, article 12 does provide that the law applies to any public official or public servant working for the State, as follows:

“1. This Code is applicable to any public official or public servant of Iraq who, while abroad, commits an offence or serious offence stipulated by this Code in the course of his or her duty or as a consequence thereof.

2. It is also applicable to Iraqi diplomats who, while abroad, commit an offence or serious offence stipulated by this Code while enjoying the immunity conferred upon them by international law.”

This means that the Criminal Code may be applied to anyone who commits the offence of enforced disappearance, even outside Iraq. Article 19 of the bill to combat enforced disappearance expands the scope of its applicability to any Iraqi national who commits the offence in the event that:

1. He is a perpetrator, participant or instigator of the incident, in Iraq or abroad;
2. The victim is an Iraqi national;
3. The offence is committed in Iraq in any situation under the jurisdiction of the Iraqi judiciary;
4. The accused person, having committed the offence abroad as a perpetrator, participant or instigator, is on Iraqi territory, even if the law of the country where the offence was committed does not criminalize torture or enforced disappearance, unless Iraq agrees to extradite the accused person to another State on the basis of an official extradition request.

Under article 11 of the Criminal Code, only persons with diplomatic immunity are exempt from the provisions of the Code. This is not incompatible with article 9 of the Convention. Moreover, the bill to combat enforced disappearance is a special law that must be applied notwithstanding the provisions of ordinary law — the Criminal Code — and the jurisdiction of the criminal courts extends to all natural and legal persons who commit any offence, with the exception of a very limited category of people. This is a very narrow exception and does not include any cases involving the infringement of rights or freedoms.

Reply to paragraph 11 of the list of issues

16. No cases of enforced disappearances committed by the Iraqi Army against other military personnel or civilians have been recorded, either inside or outside the areas of their responsibility. As part of their service to the nation, the military provides help and support to the civilian authorities, which investigate any criminal offences which may take place in military barracks. Such support includes securing the crime scene, protecting evidence, preparing witnesses and bringing them to the competent court, as well as any other action that could help to discover the perpetrators and ensure justice.

Reply to paragraph 12 of the list of issues

17. (a) The official bodies which deal with cases of disappeared persons are the Supreme Judicial Council, the Office of the Chief Public Prosecutor, public prosecution offices and other public bodies, investigating courts, the Ministry of Human Rights, the High Commission for Human Rights, the Ministry of Justice and the Iraqi Department of Corrections.

Iraqi law, by recognizing no statute of limitations on the right to launch criminal proceedings, provides greater protection for victims' rights than that stipulated in the Convention.

Investigations have been carried out into a number of cases of enforced disappearance, for example criminal case No. 298/C/2005 which came before the

criminal court of Al-Diwaniyah. The sentence imposed by that court was appealed before the Federal Supreme Court, which issued the following ruling:

“Ruling

“The expanded civil chamber of the Federal Supreme Court, having scrutinized and deliberated the appeal, found that the appeal had been submitted within the legal deadline and ruled it formally admissible. The contested sentence delivered by the court of appeal was found to be correct and in accordance with the law, as the facts of the case and the attached official documentation showed that the criminal court of Al-Diwaniyah had sentenced the defendant/appellant to prison under article 405 of the Criminal Code. That judgment and sentence had been overturned by the Federal Supreme Court in its ruling No. 3890/Criminal Chamber/2005 of 18 October 2005, which had declared the defendant/appellant not responsible and ordered his immediate release if he was not wanted for other offences. On 20 October 2005, the Federal Supreme Court had sent a letter to the prison concerned communicating its ruling No. 3890/Criminal Chamber/2005, attaching a copy thereof. However, that ruling was not implemented and the person concerned was released only after the promulgation of the Amnesty Act (Act No. 19 of 2008). It appears that the Department of Corrections kept the convicted man in custody although the Federal Supreme Court had declared him not responsible and had ordered his immediate release, and despite the fact that there was no other case pending against him which would justify his continued detention. The actions of the Department of Corrections constituted a breach of the law, a failure to implement the law and the rulings of the courts and a violation of human rights. Article 37 of the Iraqi Constitution establishes that the freedom and dignity of persons shall be protected and that no person may be detained except pursuant to a judicial decision, while article 322 of the Criminal Code prescribes penalties for any public official or public servant working for the State who arrests, imprisons or detains a person in circumstances other than those stipulated by law. Similarly, article 329 (1) of the Criminal Code prescribes penalties for any public official or public servant working for the State who prevents or hinders the implementation of a final decision of a court. It is clear from the above that the Department of Corrections is liable in tort. Under article 204 of the Civil Code, any violation which causes moral or material harm must be compensated. The Court called on the services of five experts, who submitted a duly and correctly compiled report containing an adequate and equitable estimation of the material and moral compensation. The Court was able to cite that report as a ground for its ruling under article 140 (1) of the Evidence Act. The appellant — the Minister of Justice — is also liable for compensation under article 219 of the Civil Code because he is responsible for the mistakes of his subordinates. The Court therefore rules by a majority to uphold the contested judgement, to reject the appeal and to hold the appellant liable for the costs.

“Issued on 16 March 2010.”

(b) Under Act No. 20 of 2009, injured parties receive compensation in the form of a pension. These pensions are calculated retroactively from 1 January 2010 to ensure that injured parties suffer no ill effects due to processing delays on the part of the National Public Pensions Authority. Moreover, under an agreement between that body and the central committee for the implementation of Act No. 20 of 2009, pension subcommittees in the governorates can process pension files directly, without having to send them to the Pensions Authority in Baghdad. This agreement came in the wake of a considerable increase in the number of files sent by the subcommittees from all governorates to the Pensions Authority, which reached 16,533 files in 2014. The table below shows the number of pension files of persons who have sustained injury as a

result of terrorism sent by the subcommittees in the governorates to the Pensions Authority during the period from 1 January to 31 December 2014. The figures are provided by the central committee.

<i>Governorate</i>		<i>Files sent to the Pensions Authority</i>
1	Babylon	458
2	Karbala	165
3	Najaf	113
4	Al-Diwaniyah	289
5	Wasit	87
6	Maysan	44
7	Al-Basrah	485
8	Nineveh	394
9	Al-Muthanna	26
10	Diyala	2 554
11	Salah al-Din	564
12	Al-Anbar	--
13	Kirkuk	282
14	Dhi Qar	144
15	Baghdad	10 901
Total		16 533

18. During 2014, the achievements of the subcommittees included the processing of 18,594 files in all. A total of 5,291 files regarding compensation for martyrs were processed, with the greatest number in the governorate of Baghdad (2,765 files). A total of 2,968 files regarding compensation for injury were processed with the greatest number in the governorate of Baghdad (946 files). A total of 110 files regarding compensation for missing persons were processed, with the greatest number in the governorate of Babylon (36 files). A total of 10,225 files regarding compensation for damage to property were processed, with the greatest number in the governorate of Baghdad (3,904 files). In 2014, the total amount disbursed in compensation was 50,908,448,570 Iraqi dinars (ID), the greatest amount — ID 19,242,946,629 — being disbursed by the governorate of Baghdad. The table below shows the compensation claims approved by subcommittees in the governorates during the period from 1 January to 31 December 2014, with the corresponding amounts paid out. The figures are provided by the central committee.

<i>Governorate</i>	<i>No. of subcommittees</i>	<i>Files processed</i>	<i>Total</i>	<i>Amounts (ID)</i>	
1 Baghdad	4	Martyrs	2 756	7 615	19 242 946 629
		Injured persons	946		
		Disappeared persons	-		
		Property	3 904		
2 Wasit	1	Martyrs	71	390	1 384 924 500
		Injured persons	108		
		Disappeared persons	2		
		Property	209		

<i>Governorate</i>	<i>No. of subcommittees</i>	<i>Files processed</i>	<i>Total</i>	<i>Amounts (ID)</i>	
3 Al-Muthanna	1	Martyrs	17	75	382 097 264
		Injured persons	17		
		Disappeared persons	-		
		Property	41		
4 Nineveh	3	Martyrs	166	1 649	4 025 746 750
		Injured persons	491		
		Disappeared persons	3		
		Property	989		
5 Al-Basrah	1	Martyrs	168	362	978 324 750
		Injured persons	108		
		Disappeared persons	8		
		Property	78		
6 Salah al-Din	3	Martyrs	167	474	2 649 914 750
		Injured persons	87		
		Disappeared persons	-		
		Property	230		

Reply to paragraph 13

19. The Iraqi High Criminal Court has tried 12 cases involving former senior regime officials charged with offences against the Iraqi people. It has convicted perpetrators of enforced disappearance as a crime against humanity in five of those cases, pursuant to article 12 (1) (i) of Act No. 10 of 2005. In addition, a department in the Ministry of Human Rights responsible for dealing with mass graves conducts DNA testing on any human remains that are discovered and seeks to match them with samples taken from relatives of persons who disappeared during that period.

Reply to paragraph 14 of the list of issues

20. Cases of enforced disappearance are first reported at a police station and then referred to an investigating judge at the Supreme Judicial Council. In this regard, see also the reply to paragraph 2 of the list of issues. Officers responsible for investigating cases of enforced disappearance receive training; some have already received training, while others are currently being trained.

Reply to paragraph 15 of the list of issues

21. The Criminal Code and the Code of Criminal Procedure provide legal cover for complainants and witnesses as well as protection for victims of all kinds of crime, including enforced disappearance. Nonetheless, the Ministry of Human Rights has drafted and presented a witness protection bill which has been scrutinized by the Consultative State Council and sent to the General Secretariat of the Council of Ministers for submission to the Council of Representatives to be passed into law. The new legislation aims to ensure that complainants, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation into an enforced disappearance, are effectively protected against all ill-treatment or intimidation.

Reply to paragraph 16 of the list of issues

22. The State Officials Discipline Act applies to all civilian State officials while Act No. 17 of 2008 (Internal Security Forces Code of Criminal Procedure) applies to the police. Under article 15, paragraph 2, of that Code, an agency investigating one of its own officers accused of an offence attracting a prison sentence, including forced disappearance, must suspend the officer for the entire duration of their detention. This is an obligatory requirement and admits no interpretation on the part of the investigating agency. Article 15 makes the following provisions:

“1. An accused person must be detained in any of the following cases:

“(a) If the investigations concern an offence which attracts a prison sentence;

“(b) If reasons exist to suggest that the accused person will flee, alter or destroy evidence, confabulate with participants in the offence or influence witnesses;

“(c) If the offence is against public morals;

“2. The detained officer shall be suspended for the entire period of detention, during which time he shall receive all wages and allowances.”

23. The membership of the investigating commission, which consists of three officers, is decided by the Minister or his authorized representative pursuant to article 6 of the Code. Article 6 provides that: “The Minister of the Interior may appoint an investigating commission in the Office of the Minister, consisting of three officers the most senior of whom shall act as commission president. One member must be a jurist, with a minimum qualification of a university degree in law. The commission shall investigate cases referred to it by the Minister or his authorized representative. Once the investigation is concluded, the relevant documentation shall be sent to the legal adviser who will examine it and either forward it to the Internal Security Forces tribunal or return it to the investigating commission for further investigation and remedy any flaws, should any exist.” There is no legal provision that would dispense any civilian or military investigating authority from implementing the law, or sanction their committing or being involved in the offence of enforced disappearance.

24. The State Officials Discipline Act is not applicable to members of the Iraqi Army, who are subject to the following special legislation concerning their military service: the Military Criminal Code (Act No. 19 of 2007) and the Military Code of Criminal Procedure (Act No. 30 of 2007). Their legal provisions serve the same purpose. Thus, article 10, paragraph 5, of section II (Board of Inquiry) of the Military Code of Criminal Procedure stipulates: “The investigator or the board of inquiry shall order the detention of the accused where such action is deemed to be necessary. The grounds for detention shall be recorded in the report and the legal period provided for in this Code shall be complied with.” Article 9, paragraph 7, of the same Code stipulates: “The commander of the unit, the investigating officer and the board of inquiry shall exercise the same powers as are accorded to investigators in the provisions concerning detention and precautionary measures of the Code of Criminal Procedure No. 23 of 1971, as amended.” It goes without saying that the accused remains suspended from duty during the period of detention.

IV. Measures to prevent enforced disappearances (arts. 16-23)**Reply to paragraph 17 of the list of issues**

25. We wish to provide the following information in response to paragraph 17:

1. The competent civilian courts and the Residency Department of the General Directorate of Nationality are the authorities responsible for the expulsion, deportation, return or extradition of persons who breach the provisions of the Foreigners' Residency Act (Act No. 118 of 1978), as amended.

2. The procedure for deportation or expulsion is implemented when the judicial proceedings against persons who have breached the provisions of the above-mentioned Act have been completed. The persons concerned are handed over to the Residency Department with a view to completing the expulsion procedures, including measures to obtain passports or other travel documents from the responsible consulate or embassy in Iraq and to obtain fares for air transport. The responsible authority in the Residency Department then conveys the expelled persons to the airport and hands them over to the passport office in accordance with an official document so that they may leave the country safely.

Reply to paragraph 18 of the list of issues

26. There are no secret detention facilities. With regard to the allegation concerning Camp Justice in north-west Baghdad, it is not in fact a camp but a Justice Prison. Judgements have been handed down against the inmates in accordance with the legislation in force. The prison has three wings and all the facilities are subject to the oversight of human rights inspection and monitoring committees, parliamentary committees and competent international organizations. With regard to the allegation concerning Camp Honour in the Green Zone, the camp was closed down in 2011.

Reply to paragraph 19 of the list of issues

27. Administrative Order No. 57 of 1 December 2014 stipulates that:

1. A person may be arrested or detained only if a warrant has been issued by a competent judge or court or if such action is permitted by the circumstances described in articles 102 or 103 of the Code of Criminal Procedure.

2. The party who undertook the arrest or detention shall record within 24 hours the name of the arrested person, the location of the place of detention, and the grounds and legal provision that led to the arrest in an electronic and manual register that is established and administered by the Ministry of Justice.

3. The Ministry of Defence, the Ministry of the Interior and the national security system shall establish the rules and procedures applicable to the recording of details of detainees in the central register.

4. None of the aforementioned parties shall be entitled to issue an arrest or detention order.

5. Any arrest conducted outside the circumstances prescribed in this regard shall be deemed to constitute criminal abduction and confinement and the perpetrator shall be brought to justice.

6. Detainees in respect of whom a judicial order has been issued for release within a period of not more than one month with a view to ascertaining that they are not wanted on other grounds shall be speedily released. The Minister of Justice shall implement the order and submit a monthly report.

7. Without prejudice to the legal provisions in force, the total period of remand in custody should not exceed the maximum permissible sentence for the offence with which the arrested person is charged and should under no circumstances exceed 6 months. Any extension of the period of detention beyond 6 months shall require the permission of a criminal court. The extension shall not

exceed one quarter of the maximum permissible sentence. Alternatively, the court shall order the detainee's release, with or without bail, in accordance with the terms of paragraphs B and C of article 109 of the Code of Criminal Procedure (Act No. 23 of 1971).

28. The Department of Corrections and its sections also maintain records and files containing all legal and social data concerning juveniles (detained, convicted or homeless), who were arrested on the basis of a warrant or placed in rehabilitative facilities and schools run by the Department of Corrections on the basis of a judicial ruling and in accordance with the legislation, regulations and directives in force. All the records and files are regularly updated to include any new information concerning the aforementioned groups of juveniles. The updating process is coordinated with the Department's general database centre.

Reply to paragraph 20 of the list of issues

29. We wish to point out that the restrictions referred to in paragraph 20 are not applicable to untried prisoners, who are entitled to inform their family of their detention. The aim of the legislators was to address organizational and administrative aspects of prison facilities in terms of visiting hours and security conditions with a view to maintaining order in the prison. Hence the restriction did not constitute a denial of the right but an organizational measure. The same applies to section 18, paragraph 3, of the Coalition Provisional Authority Memorandum, which stipulates that every prisoner shall have the right immediately to inform his family of his imprisonment or his transfer to another institution. It is thus an absolute and unrestricted right. However, provision must be made for the organizational aspect of prison work in connection with a prisoner's right to inform his family of his imprisonment or his transfer to another institution. With regard to the allegations that the right of prisoners to inform their family of their imprisonment is not always guaranteed in practice, the law establishes a procedure for addressing such allegations in section 13, paragraphs 1 to 6, of (dissolved) Coalition Provisional Authority Memorandum No. 2 of 2003, which provides for the submission of complaints by prisoners and offers them the opportunity to meet inspection officers and to submit requests, without censorship, to the central prison administration or the judicial authority, which are to be promptly dealt with and replied to without undue delay.

30. According to sections 14, 18 and 19 of the Management of Detention and Prison Facilities Act, prisoners and detainees have the right to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. Official delegates of the International Committee of the Red Cross (ICRC) are given access, at the request of the ICRC, to prisons or detention centres at mutually arranged times. In addition, every prisoner has the right immediately to inform his family of his imprisonment or his transfer to another institution.

31. In addition to the foregoing, the Human Rights Directorate, which reports to the Office of the Inspector General at the Ministry of the Interior, has set up a number of inspection committees that conduct regular inspections throughout the year of the conditions of persons held in detention centres run by the Ministry of the Interior. During the visits, the officials monitor and take note of all negative circumstances, including failure to inform detainees' families of their imprisonment, with a view to ensuring that the families are subsequently informed of their location and with a view to facilitating visits at specific times.

32. Furthermore, the Department of Corrections permits all detained and convicted juveniles to have official meetings with their families, in accordance with the legal provisions, regulations and directives of rehabilitative facilities and schools. Juveniles are currently permitted to have telephone conversations with their relatives based on

the guidelines issued by the Ministry of Human Rights. The new Juvenile Welfare Bill incorporates that right (detainees and juveniles placed in institutional care).

V. Measures for reparation and for the protection of children from enforced disappearance (arts. 24 and 25)

Reply to paragraph 21 of the list of issues

33. The Ministry of Human Rights and other State institutions are taking serious action to identify people who have been involved in perpetrating the crime of enforced disappearance with a view to bringing them to justice. They are seeking to ensure that all victims of such crimes receive appropriate compensation by enacting a law that provides for reparations for victims, given the State's overarching responsibility to ensure the safety and security of its citizens. The bill is currently before the Chamber of Deputies with a view to its enactment. Article 21 of the bill on combating the crime of enforced disappearance requires the State to ensure that victims obtain reparation in the form of material and moral damages. It reads as follows:

Without prejudice to the provisions of Iraqi legislation concerning compensation for damages resulting from criminal offences, the State shall take the following action:

1. Provide compensation for damages resulting from the offences defined in this Act;
2. Establish health-care institutions and centres to rehabilitate victims and reintegrate them into society and to cover the costs of treatment, rehabilitation and reintegration.

Reply to paragraph 22 of the list of issues

34. The Ministry of Human Rights and other State institutions are taking serious action to identify people who have been involved in perpetrating the crime of enforced disappearance with a view to bringing them to justice. They are seeking to ensure that all victims of such crimes receive appropriate compensation by enacting a law that provides for reparations for victims, given the State's overarching responsibility to ensure the safety and security of its citizens. The bill is currently before the Chamber of Deputies with a view to its enactment. Article 21 of the bill on combating the crime of enforced disappearance requires the State to ensure that victims obtain reparation in the form of material and moral damages. The article is quoted in the previous paragraph.

35. Reparations were provided to victims of the crime of enforced disappearance under the previous regime pursuant to the Act concerning the Martyrs Foundation and the Act concerning the Political Prisoners Foundation. By 2014 the Martyrs Foundation had provided compensation to 37,601 persons and the Political Prisoners Foundation had provided compensation to 48,176 persons. Article 10 of the Act concerning the Political Prisoners Foundation established an easy and appropriate procedure for ensuring that the prisoners obtain reparations, namely the creation of special committees to receive prisoners' requests in Baghdad and the governorates. It reads as follows:

The following procedure shall be followed by the special committee:

1. The special committee shall decide whether the claims submitted by political prisoners and political detainees are covered by the provisions of this Act.

2. The committee's decision shall be taken by a majority of its members.
3. Any person with an interest in the matter may file a complaint with the special committee against the decision within 10 days of the date of its communication or the date on which it is deemed to have been communicated.
4. The committee shall adopt a decision on the complaint and its decision shall be considered final in administrative terms.
5. Any person with an interest in the matter may institute legal proceedings to establish the applicability of the decision after the committee's ruling on the complaint. The court's decision shall be final.

Reply to paragraph 23 of the list of issues

36. The legal framework applicable to mass graves in Iraq is the Mass Graves Act (Act No. 5 of 2006) and Order No. 1 of 2007. The Parliament has amended the Mass Graves Act to make it applicable to graves dating from the periods before and after 2003. The amended version will enter into force as soon as it is published in the Official Gazette.

Number of opened and remaining unopened sites, updated on 16 February 2015

No.	Governorate	Number of sites	Opened sites		Number of graves	Number of mortal remains	Remaining sites	
			Based on recommendation	Opened			Identified	Unidentified
1	Baghdad	6	1	2	2	7	1	2
2	Nineveh	2	0	0	0	0	1	1
3	Kirkuk	5	2	1	3	81	2	0
4	Al-Ramadi	3	1	1	31	954	1	0
5	Al-Diwaniyah	16	7	9	23	740	0	0
6	Salah al-Din	1	0	1	1	158	0	0
7	Diyala	5	3	1	1	12	1	0
8	Maysan	14	6	6	9	62	2	0
9	Babylon	9	5	4	8	898	0	0
10	Al-Basrah	24	7	13	13	33	3	1
11	Karbala'	15	5	8	8	80	2	0
12	Al-Samawa	19	9	10	14	160	0	0
13	Wasit	7	2	5	6	14	0	0
14	Al-Najaf	17	9	8	14	284	0	0
15	Al-Nasriyah	7	5	2	2	2	0	0
16	Al-Iqlim	4	0	3	5	17	1	0
Total		154	62	74	140	3 502	14	4

Total number of opened graves = sites opened based on a recommendation + number of graves = 62 + 140 = 202.

Reply to paragraph 24 of the list of issues

37. A person is deemed to be missing in accordance with article 36, paragraph 1, of Iraqi Civil Code No. 40 of 1951: "If it is not known whether an absent person is alive or dead, he shall be deemed, on the basis of an application filed by an interested party, to be missing." Article 86 of the Welfare of Minors Act (Act No. 78 of 1980) defines a

missing person as “a person concerning whom no news is available and it is not known whether he is alive or dead”. The laws applicable to missing persons are the Personal Status Act, military legislation, the Civil Code, the Welfare of Minors Act, provisions concerning the management of assets, and general provisions of the Islamic sharia concerning the status of missing persons. The missing person need not be legally competent; he or she may lack legal capacity or be legally incompetent. It is also of no consequence if a person’s whereabouts are unknown and if it is unclear whether a prisoner is alive or dead. The rationale underlying some of the provisions concerning missing persons and their relatives consists in the adoption of a measured and precautionary approach. Thus, a person is deemed to be alive until such time as confirmation that he is living or dead is secured. The person retains his assets, which continue to be managed and invested by his authorized agent or curator. As missing persons were competent members of society who had rights and duties, and as they usually possessed assets that might automatically increase, a judicially appointed agent should manage those assets to ensure that they are not lost in the absence of their owner. The court is required to appoint a temporary curator to act in legal proceedings with a view to determining matrimonial status and filiation. The court then issues a document confirming the person’s missing status and appoints a curator to manage his affairs and to ensure that no one disposes of his assets without the permission of the Directorate for the Welfare of Minors. Article 93 of the Welfare of Minors Act (Act No. 78 of 1980) stipulates that the court may declare a missing person dead if conclusive evidence of his death is discovered, if four years have passed since he was reported missing, or if he went missing in circumstances in which he can reasonably be presumed to have perished and if two years have passed since he was reported missing. If a person goes missing during a war, in a country struck by an epidemic, or as a result of the sinking of a ship or a plane crash in a remote area, he is declared missing. Article 87 of the Welfare of Minors Act stipulates that a decision declaring a missing person legally dead must be sent within 10 days to the Federal Court of Cassation. A judgement declaring the missing person dead entails the termination of his legal personality, the beginning of the legally prescribed period prior to his wife’s remarriage and the division of his estate among his surviving heirs at the time of the court judgement. Article 96 of Act No. 78 of 1980 stipulates that the estate of a missing person who is declared dead in accordance with article 95 of this Act shall be divided among his surviving heirs at the time when the court declares him dead. Any legal division of the missing person’s assets prior to the court’s declaration is deemed to be null and void. The legal division may be amended if the missing person’s wife is pregnant and gives birth to a child. If the missing person reappears, his legal personality is, of course, restored and all the consequences of the judgement declaring him dead are annulled. The assets of a missing person are managed in the same way as the assets of a minor. If the court appoints a curator to manage the assets or to sell those transferred to the missing person, the curator acts under the supervision of the Directorate for the Welfare of Minors. The curator may not purchase property on behalf of the missing person. The Directorate for the Welfare of Minors performs the customary management work on behalf of the missing or absent person if no curator has been entrusted with responsibility for the work. In the absence of the curator, the Directorate for the Welfare of Minors is also responsible for the management of a missing person’s assets in accordance with the provisions of the Act.

Reply to paragraph 25 of the list of issues

38. Part seven of the Criminal Code of the Internal Security Forces (Act No. 14 of 2008) concerning abuse of authority provides for the punishment of senior officers in the following cases:

1. If they request subordinates to perform tasks or personal services that are unrelated to their functions;
2. If they order subordinates to commit an offence; the officer concerned is deemed to be the principal offender if the offence is committed or attempted.

In addition, article 10, paragraph 2, of the bill on combating the crime of enforced disappearance prescribes a harsher penalty for certain perpetrators of the crime of enforced disappearance than those prescribed in articles 7 and 8 of the bill. It thus prescribes life imprisonment for those convicted of committing the crime against a child or woman. Article 10 reads as follows:

1. A person who commits one of the acts described in articles 7 and 8 shall be sentenced to imprisonment.
2. A sentence of life imprisonment shall be handed down if the offence is committed against a child or a woman, if the act leads to the death of the victim, or if the offence is committed by an organized group.
3. The court shall impose a more lenient sentence, notwithstanding the involvement of the accused in the commission of the offence, if he or she provided information that was used to establish the circumstances of the incident or the whereabouts of the disappeared person who was still alive, to clarify aspects of cases of enforced disappearance or to identify those responsible for the offence.

Reply to paragraph 26 of the list of issues

39. The information contained in paragraphs 160 to 162 of the report relate to the legal measures taken by the court mandated to consider the case submitted by the relatives of the missing person. Following their submission by the parties to the case, the relevant documents or other material supporting the claim of missing status and disappearance are investigated. If the legal evidence supports the claim, the court delivers a decision to the effect that the missing person is dead. After the final decision is handed down, the estate of the deceased is legally divided in accordance with the provisions of article 95 of the Act.

40. Article 29 of Social Welfare Act No. 126 of 1980 stipulates that:

1. The role of the State consists in caring for infants, children, adolescents and adults who suffer from family problems, loss of one or both parents, or domestic violence, and in placing them in a safe environment with a view to compensating for the loss of family care and affection and preventing them from feeling companionless.
2. The State believes that young children and adolescents should have access to free housing, clothing, food, health care and proper education, in accordance with the instructions issued by the Minister.

Article 31 of the above-mentioned Act highlights the State's role in assisting any person who is under 18 years of age and whose father is not alive. Article 32 divides the State's role into four parts:

1. The role of the State in support of infants: provision of care for infants under 4 years of age;
2. The role of the State in support of children: provision of support for children in the 5 to 12 age group;
3. The role of the State in support of adolescents: provision of support for adolescents in the 13 to 18 age group;

4. The State's role in support of adults: provision of support for adults over 18 years of age until they complete their university studies; support may be extended to all female beneficiaries until they find appropriate accommodation, marry or find employment.

41. Article 1, subparagraph (1) (d), of Social Protection Act No. 11 of 2014 stipulates that orphans are entitled to the social benefits specified in its provisions. Article 29, paragraph 3, of the Act requires the State to allocate a portion of the benefits as daily pocket money for the orphan. The amount of the portion is specified in the instructions issued by the Minister of Labour and Social Affairs. The remainder is reserved for the beneficiary in a closed savings account at a Government bank until he or she reaches the age of majority. The total amount deposited on behalf of orphans, including the interest that has accrued during the period concerned, is paid at a rate calculated in terms of the gold value of the Iraqi dinar when it is transferred to an orphan who has attained the age of majority, in accordance with article 29, paragraph 4, of the aforementioned Act. The total amount, including the interest that has accrued, is paid to orphans who have attained the age of majority when they leave the orphanage. It should not be less than the minimum amount of loans paid to small-scale enterprises in order to assist them and guarantee their future, in accordance with article 29, paragraph 5, of the aforementioned Act.

42. Minors over 9 years of age and less than 18 years of age who are vagrants or whose behaviour is considered to be deviant, in accordance with paragraphs 24 and 25 of the Juvenile Welfare Act (No. 76 of 1983) are referred by the investigating judge to the juvenile court, which issues its final decision after receiving a report from the Office for Personality Studies. The court may decide:

1. To deliver the child or juvenile to his legal guardian who shall implement the court's decision in the light of the report of the Office for Personality Studies with a view to ensuring the good conduct of the child or juvenile on the basis of an appropriate financial guardianship contract;
 2. In the absence of a legal guardian or where a guardian breaches the provisions of the guardianship contract, to deliver the child or juvenile to a reliable relative who so requests and who shall implement the court's recommendations in the light of the report of the Office for Personality Studies with a view to ensuring the sound education and good conduct of the child or juvenile on the basis of an appropriate financial contract;
 3. To place the child or juvenile in one of the State institutions provided for in the Social Protection Act or in any other social care institution.
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