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REFERENCE: Follow-up/CAT –The Republic of Iraq

26 February 2024

Excellency,

In my capacity as Rapporteur for Follow-up to Concluding Observations of the Committee against Torture, I have the honour to refer to the follow-up to the consideration of the second periodic report of Iraq, in accordance with the Guidelines for follow-up to concluding observations (CAT/C/55/3).

At its 73rd session, held from 19 April to 13 May 2022, the Committee transmitted its concluding observations to your Permanent Mission. The Committee's concluding observations (CAT/C/IRQ/CO/2, para. 44) requested the State party to provide within one year further information on the specific areas of concern identified in paragraphs 9, 11 (a) and (c), 21 and 31 of its concluding observations.

On behalf of the Committee, allow me to express appreciation for your letter of 11 May 2023 providing your Government's response on the above-mentioned paragraphs (CAT/C/IRQ/FCO/2) and to make the following comments:

Criminalization of torture (para. 9 of the concluding observations)

While acknowledging the information provided by the State party about the ongoing legislative process to adopt the anti-torture bill pending before the Council of Representatives, the completion of the first reading of the draft anti-torture law before the Kurdistan Parliament, as well as the ongoing review of the draft Criminal Code, the Committee regrets that the State party's follow-up information does not include a comprehensive explanation as to how the above-mentioned pieces of draft legislation will address the Committee's concerns regarding the definition of the crime of torture. In this connection, the Committee recalls its previous recommendations that the legislation criminalizing torture should include the definition of torture that contains all elements as required by article 1 of the Convention. It should also exclude the offence of torture from the scope of amnesty laws, encompass the absolute and non-derogable character of the prohibition of torture, and explicitly recognise the principle of command responsibility for acts of torture committed by subordinates. The State party should provide detailed information on the contents of the pieces of legislation criminalizing torture in its third periodic report. Lastly, the Committee regrets not having received complete information concerning the minimum penalty that could be imposed for such acts (1/D).

.../...

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Fundamental legal safeguards (para. 11 (a) and (c) of the concluding observations)

The Committee appreciates the information provided by the State party about the legal provisions and procedures to guarantee the right to a lawyer prior to the interrogation of the accused, including children in conflict with law placed in the Juvenile Reform Service. It also takes note of the facilitated information regarding the entitlement to seek an independent and medical examination and treatment for persons in detention, if they or their family members request it, as well as the health services provided to prisoners in correctional facilities in the region of Kurdistan in response to the coronavirus disease (COVID-19). Nevertheless, the Committee regrets not having received information on other measures adopted by the State party to ensure that, in practice, detained persons enjoy all the fundamental legal safeguards from the outset of their deprivation of liberty (1/D).

While taking note of the statistics provided by the State party in its follow-up replies on complaints of torture and other crimes filed between 2021 and 2022, the Committee regrets that the State party has not provided information regarding the disciplinary measures and/or criminal sanctions imposed on law enforcement officials who did not immediately allow persons deprived of liberty to benefit from these safeguards (1/D).

Conflict-related sexual violence (para. 21 of the concluding observations)

The Committee welcomes the various steps taken by the State party to address conflict-related sexual violence, in particular the establishment of the General Directorate for Women Survivors at the Ministry of Labour and Social Affairs, a committee to review applications from survivors for pecuniary and non-pecuniary damages suffered, and an investigation and fact-finding team to search for Yazidi missing persons in the Sinjar province. It also takes note of the statistical data provided by the State party on rescued victims in captivity of Da'esh. The Committee further notes the information contained in the State party's replies on efforts made by the Supreme Council of the Judiciary to investigate and prosecute acts of conflict-related sexual violence. However, the Committee observes with concern that around 2,900 persons continued to be unaccounted for and 2,000 cases remain under investigation. In addition, based on the information before the Committee, the families of the victims are not systematically informed about the outcomes of the rescue missions. The Committee also lacks comprehensive information on convictions or sentences imposed, and the assistance provided to victims.

The Committee has received information about the introduction of a new requirement in the Yazidi Survivors Law, according to which the survivors' application and eligibility for reparation under such law depends on their willingness to file a criminal complaint.¹ This new requirement might substantially restrict their access to the administrative reparation programmes. The Committee would appreciate the comments of the Iraqi authorities on this matter.

The allocation of funding (ID 25 billion in 2022) for the implementation of the Yazidi Survivors Law pursuant to the Emergency Law for Food Security and Development is a positive step and the Committee would welcome further information about the adequacy and sustainability of such funding. Also, the Committee would appreciate clarification on whether this or a similar amount is planned to be regularly budgeted for the implementation of the above-mentioned law. While appreciating the information on the establishment of a number of treatment, support and rehabilitation centres for survivors and the provision of psychological and medical services provided to survivors, the Committee remains unclear about the sustainability of the funding of these centres and the services they provide, and requests further comments. The State party should also clarify the measures it has adopted to ensure that the

¹ See, for example, Special procedures, communication AL IRQ 3/2023.

rehabilitation programs are specialized and adequate to specific experiences and needs of the survivors.

Lastly, the Committee would appreciate the information on measures that have been put in place to ensure participation of women from the conflict-related communities in the implementation of the Yazidi Survivors Law. It should appreciate receiving information about the regular and structured capacity-building activities that are provided to the staff working on the implementation of this law (3/B1).

Death penalty (para. 31 of the concluding observations)

The Committee, while noting the State party's position regarding the death penalty, observes with concern that the draft Criminal Code continues to prescribe death penalty for a range of criminal offences. It further notices that the death penalty was carried out on a few occasions in the region of Kurdistan despite its de facto moratorium. In this connection, the Committee regrets to learn that the State party has not considered imposing a moratorium on the application of the death penalty in its whole territory with a view to subsequently abolish it. It also regrets the lack of information in the State party's follow-up report about any steps taken to review the application of the anti-terrorism legislation and the imposition of the death penalty in such context, to strengthen the due process guarantees in court proceedings on capital cases, and to improve the conditions of detention of prisoners on death row, among other things (1/C).

Implementation plans (para. 44 of the Committee's concluding observations)

The Committee regrets the lack of information about specific plans for implementing, within the coming reporting period, the recommendations included in its concluding observations (C).

The Government of Iraq is encouraged to provide additional information, which would further contribute to the Committee's analysis of the progress made regarding the specific issues of concern cited above. This additional information may be provided in any subsequent report by the State party pursuant to the Committee's request in its concluding observations on the third periodic report of Iraq or other future periodic reports.

The Committee looks forward to a continued constructive dialogue with the authorities of Iraq on the implementation of the Convention.

Accept, Excellency, the assurances of my highest consideration.



Bakhtiyar Tuzmukhamedov
Rapporteur for follow-up to concluding observations Committee
against Torture