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Racial Discrimination

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to the

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This document is submitted as an alternative report for consideration by the Committee on the Elimination of Racial Discrimination (CERD) during its review of the State Party Report of Iraq.

November 2018

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Introduction

1. Geneva International Centre for Justice (GICJ) is pleased to offer this shadow report to the Committee on the Elimination of Racial Discrimination (the Committee) on the state of Iraq's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention).

2. Since it was established, GICJ has been tackling issues of justice and accountability pertaining to Iraq. GICJ maintains partnerships with various NGOs, lawyers and a vast civil society network within Iraq and the Middle East region. Through these channels, GICJ receives documentation and evidence of human rights violations and abuses in Iraq as they occur. GICJ reports on human rights violations through its regular participation at sessions of the Human Rights Council and reports to various human rights treaty bodies. In the preparation of this short report, GICJ communicated and met with several Iraqi NGOs including a meeting in Turkey in October 2018.

3. In addition to reporting on human rights violations, GICJ actively supports capacity-building efforts for Iraqi institutions to strengthen both the rule of law and the engagement of civil society. For example, GICJ conducted a five-day training workshop for Iraqi parliamentarians in 2015 in collaboration with the UN Development Programme (UNDP). The workshop was aimed at strengthening the operational, legislative, outreach, and oversight capabilities of the Iraqi Council of Representatives as part of the UNDP's project on Strengthening Participatory and Accountable Governance.

Background

Historical Context

4. Iraq is a birthplace of ancient civilizations and a crossroads of cultures. The multiplicity of ethnicities in Iraq are a result of this history and form the basis of its unique and rich culture. Indeed, the State Party report refers to preserving the heritage of Iraq "as a multi-ethnic, multi-faith, multi-confessional and multicultural country."[1]

5. The modern Republic of Iraq obtained independence from the British in October 1932. Over the years, Iraq has been ruled by different types of governments, including both monarchical and republican regimes. Despite the occasionally extreme political differences and ideological conflicts between these styles of government, Iraq developed into a modern and advanced country. Through much of the 20th century, it was recognized as the best among the neighbouring countries of the region in education, health care, industry and agriculture. Iraq also embraced an advanced social welfare system. Significantly, none of these governments engaged in discrimination between individuals or groups of citizens on any basis, including by race, religion, or ethnicity. Regardless of the type of regime, citizens did not face racial discrimination in obtaining a job or government services. This changed dramatically with the occupation by the United States in 2003.

[1] Combined Twenty-Second to Twenty-Fifth Periodic Reports Submitted by Iraq Under Article 9 of the Convention ¶ 79, U.N. Doc. CERD/C/IRQ/22-25 (22 Nov. 2017) [hereinafter State Party Report].

6. As part of the preparations for the invasion of Iraq, the United States and United Kingdom organized a conference in London on 14 and 15 December 2002. It was portrayed before and during the conference that Shiites and Kurds had suffered significant injustices in Iraq in the past and that it was necessary to establish systems to correct the alleged injustices. As a result, the conference was used to formulate a new representation system based on ethnic and sectarian allocations of government positions that distinguished, for the first time in Iraqi history, between Shiites, Kurds, and Sunni Arabs. Unsurprisingly, after the invasion the Iraqi participants at the London conference became, and remain, the rulers of Iraq and have perpetuated the sectarian system.

7. Even though the Constitution prohibits ethnic discrimination, the sectarian representation system has nevertheless become the practice for allocating government leadership positions. For example, according to this system the president of Iraq should be a Kurd, the prime minister a Shiite, and the speaker of the parliament a Sunni Arab. The ministries and other top jobs have also been allocated on this basis, entirely replacing merit as the primary determinant of who is appointed to senior positions. This has resulted in smaller racial minorities entirely losing out on any opportunity for senior government positions.

8. During the occupation, laws were created favouring Shiites and Kurds, thus generating discrimination against Sunni Arabs. This new ethnically-based discrimination was reflected in government budgets, government operations and the administration of justice. The practices of the successive Iraqi governments since 2003 and their leading politicians have continued to foster this culture of discrimination, which is not only evident in the distribution of government positions, from leadership positions to the simplest civil service jobs, but also in every aspect of how government services are delivered to citizens.

9. Among the circumstances lending legitimacy to the discrimination was, for example, the behaviour of Paul Bremer, who governed Iraq from 12 May 2003 to 28 June 2004, as the US administrator of the Coalition Provisional Authority (CPA), began the practice of consulting with the Shiite Grand Ayatollah Ali Al-Sistani on any matter related to government operations, from the composition of the government to the contents of the new constitution. Publicly seeking advice from the head of one religious group in making public policy decisions is contrary to the democratic ideals of equal rights and fair representation of all views in government decision-making.

10. GICJ's partners in Iraq have stressed the importance of mentioning that UN officials unfortunately continue to follow this lead. In particular, the UN Secretary-General's Special Representative for Iraq continues to consult Al-Sistani for advice and guidance.[2]

[2] For example, Special Representative Mr. Ján Kubiš had the following to say after a meeting with Grand Ayatollah Al-Sistani: "And from this meeting, perhaps, I took several very important points as a guidance for our activities as to the United Nations." *SRSG Kubiš Meets with His Eminence Grand Ayatollah Ali Al-Sistani in Najaf* (30 May 2016), http://www.uniraq.org/index.php?option=com_k2&view=item&id=5698:srsg-kubis-meets-with-his-eminence-grand-ayatollah-ali-al-sistani-in-najaf-30-may-2016&Itemid=542&lang=en. A year later, Mr. Kubiš was still seeking advice: "And I value, not only the fact that I was received, but also that we had an in-depth discussion about what is on the agenda of the country, of Iraq, and I was listening to the points His Eminence was making on as a guidance for future activities, future steps." *Remarks by SRSG for Iraq, Mr. Ján Kubiš, to the Press Following His Meeting with His Eminence Grand Ayatollah Ali Al-Sistani in Najaf, Iraq* (29 Nov. 2017), http://www.uniraq.org/index.php?option=com_k2& view=item&id=8267:remarks-by-srsg-for-iraq-mr-jan-kubis-to-the-press-following-his-meeting-with-his-eminence-grand-ayatollah-ali-al-sistani-in-najaf-iraq-edited-for-brevity&Itemid=605&lang=en.

This favouritism is contrary to the UN's role as a neutral party administering programs in Iraq. It is critical to note that many Iraqi politicians, including Shiite members of parliament, are opposed to this. They believe that giving one religious leader, who himself has never claimed any expertise in governance issues, such informal power works against the proper development of a constitutional order and the rule of law in Iraq.

11. After fifteen years of this sectarian representation system, the anti-government demonstrations occurring around the country since 2011 have made it clear that most Iraqis do not support this system. This lack of support has been emphasized since July 2018 by the anti-government demonstrations taking place in majority-Shiite provinces in central and southern Iraq that are supposedly benefiting from the sectarian system. Citizens are calling for the removal of the sectarian policies imposed during the occupation and a return to the prior policy of the government treating all groups equally.

Domestic Legal Context

12. Racial and ethnic discrimination are prohibited by the text of the Iraqi Constitution and various national laws. The State Party report focuses much attention on these legal safeguards and recent legal and institutional changes that allegedly support them.[3] Many of the legal safeguards are positive in appearance; however, the unfortunate reality is that they are words without force. All too often, actions by the government do not follow the statements in the Constitution and laws. Also, laws themselves sometimes do not follow the Constitution or, in many cases, simply don't exist to implement Constitutional guarantees.

13. The government has given up much of its authority to the militias, tribal leaders and political parties resulting in extremely weak government institutions. As a result, the rule of law is often non-existent in Iraq. Citizens cannot rely on the justice system, which is subject to the widespread corruption endemic in the government and is often under the control of militias. Raising a case of racial discrimination, a right guaranteed by the Constitution, is effectively impossible due to the severe retaliation faced by a potential plaintiff.

14. Overall, a culture of rampant corruption and sectarian favouritism results in political, law enforcement, and justice systems that serve the interests of those in power, along with their families, relatives, and those who wish to benefit, at the expense of the rest of the population. In short, the State Party report is big on words but short on actions and actual data that show how the legal protections against racial discrimination are being implemented.

The Nature of Racial Discrimination in Iraq

15. The term "racial" in the Convention refers to a range of personal and group identification terms: "race, colour, descent, or national or ethnic origin."[4] While the Convention does not directly address discrimination that is based solely on religious affiliation, in the Iraqi context the concept of racial discrimination often implicates religious beliefs. For many ethnic groups, religion is an integral part of their ethnic identity, and so discrimination

[3] *E.g.*, State Party Report ¶¶ 14, 20, 25, 31, 36, 46, 90, 94, 108, 111, 112.
[4] International Convention on the Elimination of All Forms of Racial Discrimination art. 1(1), *opened for signature* 21 Dec. 1965, 660 U.N.T.S. 195 [hereinafter Convention].

against the group that may be based on religious animus effectively operates as discrimination on the **basis of ethnicity**. We believe the Committee's use of the term "ethno-religious" in its prior report on Iraq in 2014 describes such situations.

16. Islam is the majority religion and official religion of Iraq. In Islam, certain families are recognized as being descendants of key historical religious figures (especially the Prophet Mohammed). In Iraq, these families have come to control the government, which in turn treats such families with extreme favouritism. The result of this favouritism is that non-members of these families are discriminated against when it comes to government jobs, services, protection, etc. Therefore, what may at first appear to be discrimination on the basis of religion, which is not covered by the Convention, is actually discrimination on the **basis of descent**, which *is* covered by the Convention.

17. Based on this understanding of Iraq's context, this report will discuss racial discrimination that focuses primarily on ethnicity and descent and essentially creates a small, favoured group within the country. However, for the sake of simplicity, the term "racial discrimination" will be used to refer to discrimination on the basis of both ethnicity and descent.

Iraq's Obligations Under the Convention

18. The fundamental obligations of the Convention are laid out in Article 2 and part of Article 5. Article 2, which generally condemns racial discrimination and requires states to eliminate such discrimination in all its forms, breaks down the general obligation by addressing three types of state party actions. First, a state must not directly engage in an "act or practice of racial discrimination" through its institutions at the national or local level.[5] Second, the state must not actively "sponsor, defend or support racial discrimination" by third parties.[6] Third, the state must go one step farther to "prohibit and bring to an end, by all appropriate means" the racially discriminatory practices of third parties.[7] There is also a broad obligation in Article 5 that requires the state to generally guarantee the "right to security of person and protection…against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution."[8] Within this one provision, one sees the three aspects of Article 2 requiring the state to protect against discriminatory actions by itself or third parties. Taken together, GICJ views these provisions of Articles 2 and 5 as fundamental obligations the Convention imposes on the states parties.

19. The Convention elaborates on these fundamental obligations with reference to various specific rights in Article 5. The unfortunate reality is that many of the rights listed in Article 5 are commonly violated in Iraq. However, while this list calls attention to numerous specific rights, the underlying obligation is to provide "equality before the law."[9] This means that all legal rights, be they political, civil, social, economic or cultural,

[5] Convention art. 2(1)(a).
[6] Convention art. 2(1)(b).
[7] Convention art. 2(1)(d).
[8] Convention art. 5(b).
[9] Convention art. 5.

and whether they are specifically listed or not, are to be protected by the state through its obligations under Article 2.

20. Rather than discuss violations of particular rights, this report will focus on Iraq's failures to abide by its fundamental obligations since these failures result in negative impacts to all the rights listed in Article 5.

Iraq Engages Directly in Racial Discrimination

21. Contrary to its Article 2 obligations, Iraq engages directly in acts and practices of racial discrimination. One key tool for this discriminatory behaviour is Iraq's Anti-Terrorism Law (Law No. 13 of 2005). Officially this law is primarily used to counter the threat posed by "terrorist" groups. However, the Iraqi government makes extensive use of its Anti-Terrorism law to justify all manner of human rights violations against groups within its own population. The most appalling are the wide-spread and racially motivated occurrences of arbitrary arrests, executions, enforced disappearances and torture.

22. Since its adoption in 2005, the Anti-Terrorism Law has been widely used as a weapon against political opponents, journalists and intellectuals to suppress public criticism of the government. However, its application also reveals the law to be a tool of racial discrimination because particular ethnic groups are usually targeted, especially Sunni Arabs. Not only is the law's application discriminatory, its impact is dire: The punishment for terrorism is death. GICJ has documented that most convicts sentenced to death belong to geographic areas of similar ethnic identity, such as the provinces of Al-Anbar, Nineveh, Salah Al-Din and Diyala. This law has given the Iraqi authorities a cover of legitimacy for sectarian-motived efforts to rid themselves of opponents by arresting, detaining, torturing and sentencing hundreds of innocent civilians to death on the basis of fabricated reports.

23. A specific example is the thirty-six executions on 21 August 2016 related to the Camp Speicher massacre where it was reported that nearly 1700 Iraqi soldiers were captured and executed by Daesh after Daesh forces took Mosul in 2014. The mass trial leading to these death sentences was flawed and criticized in the international community.[10] According to GICJ sources in Iraq, many of the accused were prosecuted on the sole basis of their geographical origin and ethnic background. While GICJ strongly condemns the Camp Speicher massacre and recognizes the importance of holding its perpetrators accountable, the prosecutions and resulting executions were used as an act of revenge against persons, based on their ethnicity, who had no relation whatsoever with this crime. It should be noted that even more people have since been executed while others are still being prosecuted by the government as part of the Camp Speicher case.

24. The ability of the Government of Iraq to overuse (and mis-use) the Anti-Terrorism Law should come as no surprise given its poor drafting. An analysis commissioned by the Iraq National Commission on Human Rights said that the Anti-Terrorism Law does not satisfy requirements of either the International Covenant on Civil and Political Rights or the Arab Charter on Human Rights. (Iraq is a party to both of these human rights treaties.) The analysis said the law is vague and overly broad giving the government wide latitude to

[10] *Iraq Sentences 40 'IS' Members to Death Over Tikrit Massacre*, Deutsche Welle (18 Feb. 2016), https://www.dw.com/en/iraq-sentences-40-is-members-to-death-over-tikrit-massacre/a-19056987.

prosecute many crimes under the moniker of "terrorism." The result is an ability to apply the death penalty without due regard to the severity of the alleged crime.[11]

25. The de-Ba'athification policy, originally implemented by the occupation authorities, has also become a tool for racial discrimination. Under this policy the Ba'ath Party was dissolved, and any former members of the party were removed from their government jobs and blocked from any future government involvement. The implementation of this policy was without any sort of due process, thereby violating the basic rights of the affected individuals. This policy continues to be heavily used by the government to bring severe penalties on anyone the government believes to be symphathizing with the Ba'ath Party or anything done by the former Ba'athist regime. However, the government focuses its use of this policy against people it wishes to persecute, especially Sunni Arabs and other disfavoured ethnic groups.

26. It should be noted that Iraq is responsible for the actions of the Kurdistan regional government, which forms part of the Iraqi state. Kurdistan also engages in ethnic discrimination, including through the use of its own Anti-Terrorism Law. For example, in Kirkuk the Kurdish authorities discriminate against Arab and Turkmen ethnic groups by denying jobs, representation and government services. The Committee should carefully examine how the actions of the Kurdistan government impact on Iraq's obligations under the Convention.

Iraq Supports Racial Discrimination by Third Parties

27. Iraq also violates Article 2 of the Convention by supporting third parties in their racially discriminatory behaviour. Several militias operating in Iraq are officially sanctioned by the Government of Iraq to aid in what it calls its "enormous efforts to establish security and the rule of law in Iraqi territory" against Daesh forces.[12] However, numerous and repeated examples of human rights abuses by these militias, often with either overt or subtle racial overtones, proves that official use of such militias is inappropriate at best. In addition, laws and government policy officially protect the militias from accountability, thus allowing the militias to engage in racial discrimination and countless other human rights violations with impunity.

28. For example, the city of Fallujah and the surrounding areas were subjected to heavy shelling and indiscriminate bombings and airstrikes during May and June 2016. People fleeing Saqlawiya, a small city near Fallujah, headed to the closest military camps for refuge and found the camps to be in the hands of officially-sanctioned militias. There, according to records obtained by GICJ, they were subjected to deplorable treatment, including verbal and psychological abuse, as well as torture, including stabbing with weapons, being burned alive, and summary executions. According to those who survived, the civilians were subjected to this treatment based on claims of allegedly belonging to Daesh, but the abuse had ethnic overtones.

29. A number of official militias were also heavily involved in the so-called "trials" and executions after the Camp Speicher massacre mentioned above. Leaders of these militias

[11] Toby Collis & American Bar Association Center for Human Rights, Compliance of Iraq's Anti-Terrorism Law (2005) with International Human Rights Standards (June 2014).
[12] State Party Report ¶ 29.

have publicly admitted to having executed many people from different areas just as an act of revenge to the Camp Speicher massacre.

30. Officially-sanctioned militias have engaged in ethnic cleansing in the Province of Diyala since Daesh was driven out of that area in January 2015. Starting in the city of Al-Muqdadiyah, militias have gathered people, usually men and boys, from the surrounding towns and villages, beating and taunting them with sectarian insults, eventually killing many of them. In the second week of January 2016, a bombing campaign was launched in Al-Muqdadiyah, destroying more than a dozen mosques and killing many worshipers. GICJ sources at the scene reported that on 11 January 2016, several Shia militias (Badr Brigate, Asa'ib Ahl al-Haq militia and Hezbollah militia) started to roam the streets of the city using loudspeakers and shouting sectarian slogans, threatening Sunni Arab groups or those they called "Nawassib", ordering them to leave the city or face death, and then conducting mass executions.[13]

31. Several GICJ sources document the campaign in Al-Muqdadiyah that involved the bombing of five mosques on 11 January 2016, the execution of 30 people, and the wounding of more than 60 others. The former chief of the security committee of Diyala Province, Hussein al-Zobaydi, confirmed on *Al-Jazeera* TV on 12 January that the campaign was "a preplanned operation" that followed the bombing of a mosque blamed on Daesh.

32. It is important to note that two reporters from the Iraqi news channel *Al-Sharqiya*, Saif Talal and Hassan al-Anbaki, were assassinated on 12 January 2016 after they had been covering the events in Al-Muqdadiyah.[14] While the killer was not identified, the timing and evidence strongly suggest a link to one of the militias that recognized the individuals as members of the press.

33. In addition to abusing large numbers of people, the official militias, under the umbrella name of Al-Hashad Al-Shaabi (Popular Mobilization Forces - PMF), also abduct people and conduct extrajudicial executions. Iraqi militias often arrest and detain individuals on a purely sectarian basis without giving them or their families any information about the arrests. Instead, they deny the person has ever been arrested. These detainees, the vast majority of whom are Sunni Arabs, are kept in secret prisons so the family does not know where the detainee is being held, or the physical or mental condition of the detainee.

34. Over the past fifteen years, NGOs have publicized lists of people that are missing and believed to have been executed. These lists clearly show how militias have specifically targeted certain families. The government has made no efforts to provide redress and reparation to the families of the disappeared nor to identify the perpetrators and bring them to justice. For example, in a 12 October 2016 letter to the UN High Commissioner for Human Rights, GICJ included a list with the names of 643 persons kidnapped by the officially-sanctioned militias after the above-mentioned event in Saqlawiya.[15]

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[13] GICJ, *IRAQ: Ethnic and Sectarian Cleansing in Diyala* (Feb. 2016), http://www.gicj.org/gicj-reports/500-human-rights-in-iraq-diyala-province-2.
[14] *Saif Talal*, Committee to Protect Journalists, https://cpj.org/data/people/saif-talal/.
[15] GICJ, *Fallujah: Inside the Genocide* (June 2016), http://www.gicj.org/gicj-reports/495-the-situation-in-iraq-fallujah-genocide.

35. Al-Dour is another example of ethnic targeting. GICJ has documentation of the names of 161 people taken by official militias from 31 families they targeted in the Al-Jallam area of the city of Al-Dour. These individuals were abducted and their whereabouts are now unknown. Additionally, the militias looted and burned the homes of Sunni Arabs across the city. The lists of names are clear evidence that the militias are abducting men and boys belonging to certain families and tribes, thus demonstrating the racial discrimination that motivates their actions.

Iraq Fails to Use "All Appropriate Means" to End Racial Discrimination

36. Finally, Iraq does not comply with Article 2 the Convention because it fails to use all appropriate means at its disposal to end racial discrimination, including discrimination by third parties. Instead of seriously addressing abuse and discrimination by third parties, the government attempts to avoid responsibility by explaining away discriminatory activities. Below are just a few of many examples of this failure.

37. Since October 2014, what remained of the population of the town of Jarf Al-Sakhr was completely displaced by several militias, especially the Hezbollah and Badr Brigade militias. These militia took over the area and continue to refuse to allow the return of the 120,000 displaced residents because they are Sunni Arabs. This is in spite of repeated requests by the residents who are now living in desperate situations. The Iraqi government has claimed that the militias are not operating under government direction, and it is unable to force the militia to allow residents to return. However, given the government's legal recognition of the militias, GICJ doubts the government's claim and asserts that the government is not using all appropriate means at its disposal to end the continuing, racially-motivated displacement of residents.

38. GICJ has footage of numerous people being racially victimized. In one example, a soldier is being tortured by a group of more than ten persons wearing Iraqi army uniforms and federal police uniforms. The victim is severely beaten by the aggressors, then shot several times by different people until he lies dead on the ground. GICJ sources have explained that the soldier's only "crime" was that he belonged to the Sunni community; our sources strongly believe that this is the reason behind his killing. Unfortunately, such videos are even abundant on the Internet. They show horrific footage of terrified young Sunni men, and sometimes children, being tortured or ill-treated in appalling ways, including being kicked on the head, beaten up, burned alive, and shot, all while having ethnic insults shouted and being accused of having ties to Daesh.

39. In response to this striking evidence of racially-motivated discrimination and abuse, the Iraqi government usually adopts an attitude of denial, claiming the incidents are either isolated cases due to the misbehaviour of a few individuals or they are in fact Daesh fighters disguised as the official security forces. Even if we believe the government's claims, Iraq remains responsible for using "all means appropriate" to end what appear to be very clear acts of discrimination. GICJ receives numerous videos, testimonies and other forms of evidence that demonstrate that such acts are ongoing, widespread, and systematic racial discrimination and sectarian revenge against the Sunni Arab population. Still, Iraq fails to take any real action to stop this egregious discriminatory behaviour beyond crafting pages of empty words in reports, laws, and ministerial decisions.

Iraq Fails to Protect Against Violence or Bodily Harm

40. Because of the violent nature of the examples of racial discrimination presented above, Iraq is also not meeting its fundamental obligation under Article 5 of the Convention to guarantee the "right to security of person and protection…against violence or bodily harm."[16] As shown above, much violence and bodily harm in Iraq is the result of racial discrimination both by government officials as well as other individuals and groups. Thus, Iraq is clearly failing in its obligation to provide individuals and groups with security and protection against racially-motivated violence and bodily harm.

Conclusion

41. GICJ has spent years documenting and reporting on the unbelievably widespread and systematic violation of virtually every human right in Iraq. While the stage was set by the illegal invasion of Iraq in 2003 by a U.S.-led coalition, all successive Iraqi governments have chronically failed to address these violations. GICJ would be pleased to support the Iraqi government's efforts to eliminate racial discrimination and provide justice to its victims; however, we are not convinced that the government is genuinely addressing the problem. On the contrary, all the government practices confirm that racial discrimination is a fundamental part of the mentality of those in power.

42. Under the pretext of fighting Daesh, government forces along with militias have destroyed most of the cities where Sunni Arabs are the ethnic majority, including the cities of Mosul, Ramadi, Al-Dour, Baiji, Fallujah, Jurf Al-Sakhar, and Hawija. In each case, the government failed to prevent hundreds of Daesh members from taking control of the city and then chose to totally destroy the cities in the name of expelling Daesh, resulting in the displacement of millions of inhabitants into the desert. The Sunni Arab inhabitants of these cities believe this pattern demonstrates the discriminatory policies against them. In addition, as a general policy, government and militia forces target Sunni Arabs by abducting them, threating and killing their intellectual, religious and social leaders, insulting their symbols, and destroying or burning their places of worship.

43. GICJ recognizes the challenging situation faced by the Government of Iraq in meeting its obligations under the Convention in areas where it is in fact unable to exercise effective control over its territory. However, the government's habit of blaming other groups for violations of the Convention is a pretext that has been used for the last fifteen years as an excuse to avoid meeting their obligations.

44. GICJ believes that a thorough and independent international investigation should be conducted regarding all the abuse and discrimination cases mentioned in this report, as well as all other human rights violations in Iraq, in order to put an end to the suffering of the Iraqi people and end impunity by bringing perpetrators to justice.

[16] Convention art. 5(b).

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