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ADVANCE UNEDITED VERSION

Human Rights Committee

Concluding observations on the fifth periodic report of Iraq*

1. The Human Rights Committee considered the fifth periodic report of Iraq (CCPR/C/IRQ/5) at its 3214th and 3215th meetings (CCPR/C/SR.3214 and 3215), held on 26 and 27 October 2015. At its 3227th meeting (CCPR/C/SR.3227), held on 4 November 2015, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Iraq, albeit 13 years late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken by the State party during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/IRQ/Q/5/Add.1) to the list of issues (CCPR/C/IRQ/Q/5), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the legislative and institutional steps taken by the State party to protect human rights, including:

- (a) The adoption of Decision No. 201 of 2015 by the Council of Ministers to implement the National Emergency Plan to protect survivors of domestic violence;
- (b) The adoption of the Trafficking in Persons Act (Act No. 28 of 2012);
- (c) The adoption of the Protection of Journalists Act (Act No. 21 of 2011);
- (d) The adoption of the High Commission for Human Rights Act (Act No. 53 of 2008), and its establishment, in April 2012;
- (e) The adoption of the permanent Iraqi Constitution, on 15 October 2005.

4. The Committee welcomes the accession to the following international instruments by the State party:

* Adopted by the Committee at its 115th session (19 October–6 November 2015).

- (a) The Convention on the Rights of Persons with Disabilities, on 20 March 2013;
- (b) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 7 July 2011;
- (c) The International Convention for the Protection of All Persons from Enforced Disappearance, on 23 November 2010;
- (d) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, on 24 June 2008.

C. Principal subjects of concern and recommendations

Domestic applicability of the Covenant

5. While noting that treaties that have been ratified and published in the Official Gazette can be applied by the courts, the Committee regrets not having received examples of cases in which the provisions of the Covenant have been invoked before or applied by the courts. Furthermore, it notes that the State party has not yet acceded to the First Optional Protocol to the Covenant (art. 2).

6. The State party should make more vigorous efforts to raise awareness about the Covenant and its applicability in domestic law among judges, lawyers and prosecutors to ensure that its provisions are taken into account by the courts. It should also consider acceding to the First Optional Protocol to the Covenant providing for an individual complaint mechanism.

National human rights institution

7. The Committee is concerned at the reported difficulties faced by the High Commission for Human Rights in carrying out its mandate, including lack of adequate resources and constraints in practice to effectively discharge certain mandated activities, such as visiting and inspecting places of deprivation of liberty (art. 2).

8. The State party should adopt the measures necessary to ensure that the High Commission for Human Rights is able to carry out its mandate fully, effectively and independently, in conformity with the Paris Principles. It should ensure that the Commission has sufficient financial and human resources, that it is equally accessible to all persons throughout the State party's territory, and that all public authorities fully cooperate with it.

Counter-terrorism measures

9. The Committee acknowledges the State party's need to adopt measures to combat acts of terrorism. However, it is concerned at information that the Counter-Terrorism Act (Act No. 13 of 2005) provides for a broad definition of terrorism that is susceptible to wide interpretation and that the death penalty is mandatory for a wide range of activities defined as terrorist acts. The Committee is also concerned at reports of the extensive use of this Act, including with respect to children, as well as to women who fail to report the activities of their husbands suspected of terrorism (art. 2).

10. The State party should adopt the steps necessary to address the breadth of the definition of terrorism and to ensure that any existing or new counter-terrorism legislation, including the draft law before the legislature, is fully compliant with the Covenant. It should also ensure that measures taken to combat terrorism are fully

compatible with its obligations under the Covenant, do not include the mandatory imposition of the death penalty and are never abusively applied.

Non-discrimination and equal protection of rights

11. The Committee is concerned at allegations of acts of discrimination and violence against persons on the basis of their real or perceived sexual orientation or gender identity as well as the social stigmatization and social exclusion of these persons. Taking into consideration the State party's comment in its periodic report (CCPR/C/IRQ/5, para. 177), the Committee regrets the lack of clarity on the right of homosexuals to hold peaceful demonstrations. While the Committee observes the diversity of morality and cultures internationally, it recalls that they must always be subject to the principles of universality of human rights and non-discrimination. The Committee is also concerned at the lack of comprehensive anti-discrimination legislation (arts. 2, 6, 7, 17, 19, 21 and 26).

12. The State party should:

(a) Vigorously combat stereotypes about and negative attitudes towards persons on the basis of their sexual orientation or gender identity;

(b) Take measures necessary to ensure that such persons can fully enjoy all the human rights enshrined in the Covenant, including the right to peaceful assembly;

(c) Adopt robust measures to effectively prevent acts of discrimination and violence against such persons and ensure that all acts of violence against them are effectively investigated; perpetrators brought to justice; and victims compensated. It should also collect comprehensive data on cases of violence against persons on the basis of their sexual orientation or gender identity;

(d) Consider enacting comprehensive anti-discrimination legislation that provides full and effective protection against discrimination in all spheres and contains a comprehensive list of prohibited grounds for discrimination, including sexual orientation and gender identity.

13. The Committee is concerned about the persistence of discriminatory provisions against women in legislation, such as those contained in the Criminal Code and in the Personal Status Act, including those permitting polygamy under certain circumstances. It is also concerned at the low representation of women in the highest levels of Government and in the judiciary (arts. 3 and 26).

14. The State party should take more robust measures to guarantee de jure and de facto equality between men and women. In particular, it should:

(a) Speed up the review of its domestic legislation, and repeal, or amend in accordance with the Covenant, all provisions that discriminate against women and permit violence against them;

(b) Strengthen its efforts to increase the representation of women in public life, particularly at the highest levels of the Government and in the judiciary;

(c) Step up its efforts with a view to eliminating gender stereotypes on the role and responsibilities of men and women in the family and society.

Harmful practices that discriminate against women and girls

15. The Committee is concerned at reports of early, "temporary" and forced marriages. While welcoming the efforts undertaken to combat female genital mutilation (FGM) in the Kurdistan region, including its criminalisation, the Committee is concerned that this practice has not yet been prohibited in the rest of the State party's territory (arts. 2, 3, 7, 23 and 24).

16. **The State party should strengthen its efforts to prevent and eradicate harmful practices that discriminate against women and girls, particularly early, temporary and forced marriages and FGM, including by taking more vigorous measures to generate public awareness about their negative effects. It should also ensure that any form of FGM is prohibited in all its territory and that relevant criminal legislation in the Kurdistan region is efficiently enforced. The State party should further guarantee that victims of these practices have access to effective remedies.**

Past human rights violations

17. Recalling its previous concluding observations (CCPR/C/79/Add.84, para. 8), the Committee notes the adoption of the Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005) relating to the human rights violations perpetrated during the period 1968-2003 and the measures taken to provide remedies to victims of that period. It also notes the adoption of the Act on compensation of victims of military operations, military errors and acts of terrorism (Act No. 20 of 2009). The Committee notes the information provided by the State party that the Iraqi Supreme Criminal Tribunal is no longer functioning as it had served its purpose. It regrets not receiving detailed information on accountability for past human rights violations, particularly on the number of perpetrators convicted and sentences imposed and on any ongoing investigations, and reparations (arts. 2, 6 and 7).

18. **The State party should take all measures necessary to ensure that no serious human rights violation perpetrated within its territory in the past goes unpunished and that all victims or members of their families receive full reparation.**

Allegations of human rights violations in the context of the ongoing armed conflict

19. The Committee deplores the information on the grave crimes under international law perpetrated by the so-called Islamic State of Iraq and the Levant (ISIL) and affiliated groups, including killings, abductions, enslavement, rape, torture, recruitment of children, and forced marriages. In this respect, it notes with concern the report of the High Commissioner for Human Rights concluding that ISIL may have perpetrated genocide against the Yezidi community as well as crimes against humanity and war crimes (A/HRC/28/18, para. 78). While noting the information provided by the State party on its efforts to protect civilians in combat zones, the Committee is also concerned about allegations of human rights violations committed by Iraqi Security Forces and affiliated armed groups against civilians in their efforts to defeat ISIL, including extrajudicial killings, torture and indiscriminate attacks (arts. 2, 6, 7, 9, 24 and 27).

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

(a) **All serious human rights violations are independently, promptly and thoroughly investigated; that perpetrators are brought to justice and adequately sanctioned as soon as feasible; and that victims receive full reparation;**

(b) **Its forces, groups under its control and forces collaborating with it do not perpetrate human rights violations and take all necessary precautionary measures to avoid civilian casualties;**

(c) **All persons under its jurisdiction, in particular those most vulnerable due to their ethnicity or religion, are afforded the necessary protection from violent attacks and gross human rights violations;**

(d) **Victims, particularly women and girls released from ISIL, receive adequate support, and that children who have been used or recruited into armed conflict receive adequate assistance for their physical and psychological recovery and reintegration.**

Internally displaced persons

21. While noting the measures taken by the State party to address the situation of the more than 3 million internally displaced persons (IDPs), the Committee is concerned at reports that some IDPs have faced discriminatory constraints on their freedom of movement (arts. 2, 12, and 26).

22. The State party should continue to strengthen its efforts with a view to guaranteeing to IDPs the rights protected under the Covenant without discrimination, including their freedom of movement.

Asylum seekers and refugees

23. While welcoming the State party's hospitality towards asylum seekers and refugees, the Committee is concerned at information that the refugee legal framework in force does not adequately guarantee the protection of asylum seekers and refugees under the Covenant and at the delay in adopting a new comprehensive legal framework in line with the Covenant. It is also concerned at allegations that the current security situation and the lack of an adequate framework of protection have led to instances of refoulement. The Committee is further concerned at allegations that Palestinian refugees have faced protection issues, including violent attacks (arts. 2, 6, 7 and 13).

24. The State party should take the steps necessary to accelerate the adoption of a new comprehensive legal framework on asylum and refugee related matters that complies with the Covenant. It should also ensure that the prohibition against refoulement is strictly respected in all circumstances. In addition, the State party should strengthen its efforts in order to ensure the effective protection of asylum-seekers and refugees.

Violence against women

25. The Committee is concerned at reports that violence against women, including domestic violence and "honour-related killings", remains a serious problem in the State party and at allegations that local NGOs are prohibited from running shelters for victims of domestic violence. While welcoming the adoption of the Kurdistan Region Act on domestic violence (Act No. 8 of 2011), the Committee is also concerned that the State party has not yet adopted comprehensive legislation to combat violence against women, including marital rape, for the rest of its territory. It is further concerned at Criminal Code provisions establishing "honourable motives" as a mitigating circumstance for murder and allowing for the exoneration of rapists if they marry their victims (arts. 3, 6 and 7).

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

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

(b) Swiftly amend its legislation to guarantee adequate protection of women against violence, including by repealing the Criminal Code provisions establishing "honourable motives" as a mitigating circumstance for murder and allowing for the exoneration of rapists who marry their victims and by ensuring that all forms of violence against women such as domestic violence and marital rape are criminalized with appropriate penalties in all its territory. In this respect, the State party should speed up the adoption of the draft law on domestic violence at the national level and ensure that the final text is fully compliant with the Covenant;

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

Death penalty

27. Recalling its previous recommendation (CCPR/C/79/Add.84, para. 10), the Committee remains concerned that domestic law punishes with the death penalty crimes that do not meet the threshold of the “most serious crimes” within the meaning of article 6 (2) of the Covenant. It is also concerned at information that the death penalty is mandatory for certain crimes and that certain crimes punishable with death penalty are explicitly excluded from being granted special pardon. The Committee is further concerned about allegations of instances in which death sentences have been imposed on the basis of confessions obtained under duress or torture, or otherwise in the context of trials that did not meet the standards of article 14 of the Covenant. In addition, the Committee is concerned at reports of the great number of cases in which the death penalty is imposed and the frequency of its application (arts. 6, 7 and 14).

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

Prohibition of torture and ill-treatment

29. The Committee is concerned at information that the State party’s criminal legislation does not adequately ensure that acts covered by the internationally-accepted definition of torture are fully criminalized. It is also concerned at allegations that torture and ill-treatment are often practised by the police mainly as a means to elicit confessions; that, despite the prohibition in domestic law, confessions obtained under duress have been used as evidence in court and allegations made by defendants in this respect have not been adequately investigated; that many women deprived of liberty, particularly women detained on terrorism related charges, have been subjected to rape and sexual assault; and that a number of deaths in custody were the result of torture or ill-treatment. It also notes with concern the low number of investigations carried out vis-à-vis the number of complaints of torture and ill-treatment registered (arts. 2, 6, 7 and 14).

30. **The State party should:**

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

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

(c) **Ensure that confessions obtained in violation of article 7 of the Covenant are not accepted by courts under any circumstances; that allegations made by defendants that a statement was made under torture or ill-treatment are promptly**

and adequately investigated; and that the burden of proof that the confession was made voluntarily falls on the prosecution;

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

Trafficking in human beings and forced labour

31. The Committee is concerned about information that trafficking in persons and forced labour remain significant problems in the State party (art. 8).

32. The State party should further strengthen its efforts to combat, prevent, eradicate and punish trafficking in persons and forced labour. In particular, it should ensure that all cases of human trafficking and forced labour are thoroughly investigated; that perpetrators are brought to justice; and that victims receive full reparation and means of protection, including access to adequately resourced shelters. It should also adopt the measures necessary to guarantee that victims, in particular of sex trafficking, are not punished for activities carried out as a result of having been subjected to trafficking.

Right to liberty and security

33. The Committee is concerned at allegations that, despite existing legal safeguards, security forces carry out arrests without judicial warrants; that many persons have been detained for prolonged periods without being brought before a judge; and that not all detainees have been released immediately after having been discharged by courts or having served their sentences. While noting the denial by the State party of the existence of secret detention facilities, the Committee nonetheless remains concerned at allegations of persons having been held in secret detention. It is also concerned at allegations that a large number of persons have been in pre-trial detention for periods exceeding those prescribed in domestic law and that persons charged with offences punishable with the death penalty can be held in pre-trial detention indefinitely until the investigation phase is concluded (art. 9).

34. The State party should adopt the measures necessary to guarantee that anyone arrested or detained enjoys in practice from the outset of the deprivation of liberty all fundamental legal safeguards enshrined in article 9 of the Covenant. In particular, it should ensure that:

(a) Deprivations of liberty are carried out in full conformity with the Covenant;

(b) Anyone arrested or detained on a criminal charge is brought promptly before a judge and tried within a reasonable time or released;

(c) Detainees who have been discharged by courts or served their sentences are released without delay;

(d) No one is held in secret detention;

(e) Prescribed periods of pre-trial detention are respected in order to prevent excessive periods of detention and that persons charged with offences punishable with the death penalty are not held in pre-trial detention indefinitely.

Independence of the judiciary and fair trial

35. The Committee is concerned about reports indicating that, in practice, the judiciary is neither fully independent nor impartial. It is also concerned at allegations that judges, lawyers and court officials have been intimidated, threatened and subjected to physical attacks, particularly by non-State actors. The Committee is further concerned at reports that

violations of fair trial guarantees occur frequently in practice, including access to counsel, particularly in terrorism cases (art. 14).

36. **The State party should take all the measures necessary to ensure the full independence and impartiality of the judiciary in practice and guarantee that it is free to operate without any type of pressure or interference. It should also take the necessary steps to provide effective protection to judges, lawyers and court officials who are subjected to intimidation, threats and/or attacks and ensure that perpetrators are brought to justice. In addition, the State party should ensure that all judicial proceedings are conducted in full accordance with the fair trial guarantees enshrined in article 14 of the Covenant.**

Freedom of religion

37. The Committee is concerned about the existence of legal provisions and practices that may adversely affect the exercise of the right to freedom of religion or belief enshrined in article 18 of the Covenant. In particular, it is concerned about the affirmation by the State party that persons in Iraq have the right to change their religion “but only to Islam” and that Law No. 105 prohibiting the practice of the Baha’i faith remains in force (art. 18).

38. **The State party should guarantee that all people within its territory can fully enjoy their right to freedom of religion or belief enshrined in article 18 of the Covenant. In particular, it should eliminate discriminatory legislation and practices that violate the right to freedom of religion or belief.**

Freedom of expression

39. The Committee is concerned at allegations that journalists and media workers have been subjected to attacks and intimidation by both State and non-State actors as well as prevented by security forces from covering stories (arts. 2, 7 and 19).

40. **The State party should increase its efforts to protect journalists and media workers against any kinds of attacks or intimidation; ensure that all human rights violations perpetrated against them are thoroughly investigated and those responsible brought to justice; and guarantee that officials avoid any interference with the legitimate exercise of the right to freedom of expression.**

Reports of excessive use of force

41. The Committee is concerned about allegations of excessive use of force by law-enforcement and security officials to disperse demonstrations, which in some instances reportedly resulted in loss of lives and people wounded (arts. 6, 7, 19 and 21).

42. **The State party should ensure that all instances of excessive use of force are promptly, impartially and effectively investigated and those responsible brought to justice. It should also take measures to effectively prevent and eradicate all forms of excessive use of force by law-enforcement and security officials, including by guaranteeing their systematic training on the use of force, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

Rights of minorities

43. The Committee is concerned at reports of persistent discrimination and violence faced by persons belonging to ethnic or religious minorities and at the delay in adopting the draft bill on the protection of religious and ethnic minority rights (arts. 2, 6, 7, 26 and 27).

44. **The State party should increase its efforts to effectively prevent acts of discrimination and violence against persons belonging to minorities and should ensure that all acts of violence against them are effectively investigated; that perpetrators are**

brought to justice; and that victims receive full reparation. It should also speed up the adoption of the draft law on the protection of religious and ethnic minority rights and ensure that the final text is compliant with the Covenant.

Dissemination of information relating to the Covenant

45. The State party should widely disseminate the Covenant, the text of its fifth periodic report and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the other official language of the State party.

46. Pursuant to paragraph 5 of rule 71 of the rules of procedure of the Committee, the State party should provide, within one year, relevant information on the implementation of the recommendations made by the Committee in paragraphs 20 (allegations of human rights violations in the context of the ongoing armed conflict); 26 (violence against women); 28 (death penalty); and 30 (prohibition of torture and ill-treatment) above.

47. The Committee requests the State party to submit its next periodic report by 6 November 2018 and that it include in it specific up-to-date information on the implementation of all its recommendations and of the Covenant as a whole. The Committee requests that the State party, in preparing the report, broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.
