



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

Initial reports of States parties due in 2012

Iraq*

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I. Introduction

1. The Republic of Iraq expresses its support for the international mechanisms protecting human rights and affirms its strong belief in the indivisibility and interdependence of human rights and in the ability of national mechanisms to complement international mechanisms in the protection of those rights by providing an appropriate environment for their exercise in a manner conducive to the promotion of respect for human dignity. Iraq is making progress in the adoption of human rights norms and their incorporation in its governmental policy as required by the principles of its national Constitution. Within this context, we wish to point out that the Republic of Iraq is a party to eight of the basic human rights instruments and is in the process of acceding to the ninth. It is diligently endeavouring to set up and support independent, governmental and non-governmental human rights institutions in the country and, in this connection, it should be noted that our country is engaged in a comprehensive and ongoing review of its international obligations to promote human rights and ensure that they are reflected in our Government's national policy. It is noteworthy that our country has submitted to the various committees all its overdue reports that were delayed for reasons relating to, *inter alia*, the country's previous political situation, the economic, social and cultural changes that occurred as a result of the adoption of certain policies that embroiled the country in numerous wars, and the challenges posed by the wave of violence that swept the country and through which terrorist groups attempted to create additional obstacles to the country's progress.

2. The Republic of Iraq's accession to this Convention was motivated by its Government's desire to contribute to the international community's endeavours to prevent torture and other forms of cruel, inhuman or degrading treatment or punishment. The earnest nature of this desire was expressed through the promulgation of Act No. 30 of 2008 approving Iraq's accession to the Convention, which was published in the Official Gazette No. 4129 on 13 July 2009, and the deposit of the Republic of Iraq's instrument of accession thereto on 7 July 2011.

3. This report has been prepared jointly by a number of governmental sectoral bodies (the Supreme Judicial Council, the Secretariat of the Council of Ministers, the Ministry of Foreign Affairs, the Ministry of Human Rights, the Ministry of the Interior, the Ministry of Health, the Ministry of Labour and Social Affairs, the Ministry of Justice and the Ministry of Defence). The first draft of the report was published on the website of the Ministry of Human Rights for more than a month and its publication thereon was announced in three of the country's principal newspapers in order to receive comments from civil society organizations, academics and other persons concerned. An expanded consultative meeting with civil society organizations was held to discuss the substance of the report so that non-governmental bodies could play a role in its preparation. At the same time, the Ministry of Human Rights, through the National Centre for Human Rights, organized numerous workshops and courses to make Government officials and members of civil society organizations more familiar with the provisions of the Convention which form part of the basic training programme that the National Centre for Human Rights is implementing for the staff of ministries, civil society organizations and independent bodies, and particularly law enforcement officers, in order to enhance their capacities and make them more aware of the importance of their role and responsibilities in ensuring the universal enjoyment of human rights.

II. Legal value of the Convention under Iraqi national law

4. In accordance with the provisions of article 80, paragraph 6, of the Constitution of 2005, the Iraqi Council of Ministers is empowered to negotiate and sign international treaties and agreements or designate any person to do so. Under the terms of article 61, paragraph 4, of the Constitution, the Council of Representatives is responsible for regulating the process of ratifying international treaties and agreements through the promulgation of an enactment approved by a two-thirds majority of its members. Under article 73, paragraph 2, of the Constitution, the President of the Republic is empowered to ratify international treaties and agreements after they have been approved by the Council of Representatives and they are deemed to have been ratified after fifteen days have elapsed from the date of their receipt by the President. Hence, all treaties enter into force in Iraq after their approval by the Council of Representatives in accordance with article 61, paragraph 4, of the Constitution and subject to fulfilment of the requirement that they must be ratified by the President of the Republic and published in the Official Gazette, after which the State authorities concerned have an obligation to apply them and enforce their provisions. Accordingly, the provisions of the Convention must be incorporated in national law through the adoption of new, or the amendment of existing, legislation that is consistent with the stipulations and principles of the Constitution concerning rights and freedoms.

III. Application of the Convention before the Iraqi judiciary

The Iraqi judicial system and the investigating authority

The Supreme Judicial Council

5. The previously dissolved Supreme Judicial Council was re-established pursuant to Coalition Provisional Authority Order No. 35 of 2003, section 1 of which stated that the purpose of the Order was to re-establish the Council, functioning independently of the Ministry of Justice, as an instrument for the supervision of the judicial system. Section 3 of the Order defined the principal functions of the Council as follows:

- To exercise administrative oversight of all the judges and members of the Department of Public Prosecutions, excluding, however, the members of the Federal Court of Cassation;
- To investigate allegations of professional misconduct by judges and members of the Department of Public Prosecutions and, when appropriate, to take appropriate disciplinary measures against them, including removal from office;
- To nominate and recommend the appointment of qualified persons as judges or members of the Department of Public Prosecutions;
- To promote, upgrade, second, transfer and delegate judges and members of the Department of Public Prosecutions;
- To appoint judges and members of the Department of Public Prosecutions to hold specific judicial and prosecutorial posts as provided for in the Judicial Organization Act No. 160 of 1979 and the Public Prosecution Act No. 159 of 1979, as amended.

6. Coalition Provisional Authority Order No. 35 of 2003 was abrogated pursuant to the Supreme Judicial Council Act No. 112 of 2012.

7. Article 19, paragraph 1, of the Constitution stipulates that: “The judiciary shall be independent and subject to no authority other than the law.” Article 87 further stipulates that: “The judicial authority shall be independent. The various types and levels of courts

shall exercise this authority and shall adjudicate in accordance with the law.” Under the terms of article 88: “Judges shall be independent and, in their administration of justice, shall be subject to no authority other than the law. No other authority shall have the right to interfere in the administration of justice or in judicial affairs.”

8. With regard to the investigative function, article 1, paragraph 1, of the Code of Criminal Procedure promulgated under Act No. 23 of 1971 provides as follows: “Criminal proceedings are initiated by means of an oral or written complaint submitted to an investigating judge, a judicial investigator, any officer at a police station or any member of the Criminal Investigation Department by an injured party, his or her legal representative or any person who knows that the offence has taken place or, alternatively, an offence may be reported to any of them by the Department of Public Prosecutions, unless otherwise provided by law. In the case of an offence discovered *in flagrante delicto*, the complaint may be submitted to any police officer or sub-officer present.”

9. Under the Iraqi Code of Criminal Procedure, authority to indict is vested in the Department of Public Prosecutions and investigative authority is assigned to the investigating judge and the judicial investigator acting under the supervision of the investigating judge.

10. This was further clarified by the Public Prosecutions Act No. 159 of 1979 which broadened the powers of members of the Department of Public Prosecutions during the investigation stage. Article 2, paragraph 2, of part II of the Act concerning the functions of the Department of Public Prosecutions permits the Department to monitor criminal investigations, collect evidence requiring further investigation, and take any measures conducive to the discovery of clues regarding the commission of offences.

11. Article 5 of the Act empowers the Department of Public Prosecutions to supervise the work of judicial investigators and members of the Criminal Investigation Department in such a way as to ensure that decisions taken by the investigating judge are respected and promptly implemented. The Department of Public Prosecutions also has the right to inspect investigation files and submit requests in connection therewith on which the investigating judge must rule within three days from the date of his receipt thereof.

12. The judiciary applies the Iraqi legislation in force in accordance with due process of law and steps are being undertaken to harmonize the national legislation in a manner consistent with the international instruments to which Iraq is a party.

13. A Human Rights Court has been established which receives complaints through the Commission for Human Rights, and the Department of Public Prosecutions has set up a section, reporting directly to the Attorney General, to receive complaints from the Commission and refer them to the said Court.

IV. Comments on the substantive provisions of the Convention

A. Article 1 (definition of torture)

14. The Republic of Iraq emphasizes its determination to promote, protect and safeguard human dignity and its genuine desire to combat and prevent all forms and types of torture. It also affirms its commitment to all the international instruments proscribing torture, including article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights which prohibit torture or the subjection of any person to cruel, inhuman or degrading treatment.

15. Article 37, paragraph 1 (c), of the Constitution stipulates that: “All forms of psychological and physical torture and inhuman treatment are prohibited. No account shall be taken of any confession extracted under duress, threat or torture and the victim shall have the right to claim compensation, in accordance with the law, in respect of the physical and mental harm suffered.”

16. Under the terms of article 333 of the Penal Code (Act No. 111 of 1969): “Any public official or agent who tortures or orders the torture of an accused person, a witness or an expert in order to compel him to confess to the commission of an offence, to make a statement or provide information about such offence, or to withhold information or give a particular opinion in respect thereof, shall be liable to a penalty of imprisonment. The use of force or threats shall be deemed tantamount to torture.”

17. The Iraqi legislature did not define torture in the Penal Code (Act No. 111 of 1969). The reason for this omission may have been to allow leeway for discretionary juristic interpretation without restricting the concept of torture to a specific definition which, with the passage of time and increasingly sophisticated methods of investigation and interrogation, might not be sufficiently all-embracing and exclusive. However, article 12, paragraph 2 (e), of the Iraqi Supreme Criminal Court Act No. 10 of 2005 stipulates that: “(e) ‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, on a person in the custody or under the control of the accused; except that torture does not include pain or suffering arising from, or incidental to, lawful sanctions.” Although this definition is not fully consistent with the text of the Convention, it introduces some relevant notions, such as the physical and mental aspects of torture which broaden the scope of criminal responsibility. Nevertheless, it is still restrictive insofar as victims of torture are defined as being persons in the custody or under the control of the offender, whereas article 333 of the Penal Code (Act No. 111 of 1969) had already extended the concept of victims of torture to include not only accused persons but also witnesses and experts, who are not usually in the custody or under the control of anyone.

B. Article 2 (legal, judicial and administrative measures to prevent torture)

18. Torture is prohibited by the Constitution, article 37, paragraph 1 (c), of which stipulates that: “All forms of psychological and physical torture and inhuman treatment are prohibited. No account shall be taken of any confession extracted under duress, threat or torture and the victim shall have the right to claim compensation, in accordance with the law, in respect of the physical and mental harm suffered.”

19. Article 37, paragraph 1, further stipulates that: “(a) Human freedom and dignity shall be safeguarded”; “(b) No one may be detained or investigated except in accordance with a judicial warrant”.

20. Under the terms of article 333 of the Penal Code (Act No. 111 of 1969), as amended: “Any public official or agent who tortures or orders the torture of an accused person, a witness or an expert in order to compel him to confess to the commission of an offence, to make a statement or provide information about such offence, or to withhold information or give a particular opinion in respect thereof, shall be liable to a penalty of imprisonment. The use of force or threats shall be deemed tantamount to torture.”

21. Under the terms of section 3, paragraph 2, of (dissolved) Coalition Provisional Authority Order No. 7 of 2003: “Torture and cruel, degrading or inhuman treatment or punishment are prohibited.” Moreover, in accordance with article 218 of the Code of Criminal Procedure, as amended by Coalition Provisional Authority Memorandum No. 3

of 2003, confessions extracted under torture or coercion have no legal value and cannot constitute a substantiating ground for a judgement.

22. Article 10 of the State and Public Sector Employees Disciplinary Act No. 14 of 1991 made provision for the formation of a committee of inquiry to prepare a written investigation report on employees referred to it. If the committee has reason to believe that any such employee, acting in his official capacity, committed an act constituting an offence, including offences of assault and torture, by virtue of his official authority, it must order his referral to the competent court. Likewise, if a minister, a head of department or a delegated representative of a minister believes that an employee under suspicion or investigation committed an act constituting an offence by virtue of his official capacity or authority, they must refer him to the competent court.

23. The Iraqi Supreme Criminal Court Act No. 10 of 2005 designated torture as a crime against humanity (arts. 11, 12, 13 and 14).

24. The authorities are on the lookout for, and take measures to address, alleged cases of torture by the following means:

(a) Investigation of complaints of torture made by the victim, his lawyer or any of his relatives.

(b) Medical examination of the alleged victim after his conviction and transfer from his place of detention to a prison run by the Ministry of Justice. If traces of torture are found, he is referred to the Department of Forensic Medicine for further examination.

(c) Prison inspections by the Department of Public Prosecutions and visits by monitoring teams from the Ministry of Human Rights.

All cases of detected or alleged torture are treated in the manner prescribed by law.

25. Article 123, of the Code of Criminal Procedure, as amended by (dissolved) Coalition Provisional Authority Memorandum No. 3 of 2003, stipulates as follows:

(b) Before questioning the accused, the investigating judge must inform him that:

(i) He has the right to remain silent and no adverse inference may be drawn from his exercise of this right;

(ii) He has the right to be represented by an attorney and, if he is unable to afford such representation, the court will appoint an attorney at no cost to the accused.

(c) Before questioning the accused, the investigating judge or judicial investigator must determine whether he wishes to be represented by an attorney. If the accused chooses to be so represented, the investigating judge or judicial investigator shall not begin the proceedings until an attorney has been appointed.

C. Article 3 (prohibition of the expulsion or *refoulement* of foreigners if they would thereby be in danger of subjection to acts of torture)

26. Article 4, paragraph 1, of the Political Asylum Act No. 51 of 1971 stipulates that: "A refugee shall under no circumstances be extradited to his or her country of origin." Article 8, paragraph 2, thereof permits an application for a residence permit in Iraq, in accordance with the Residence of Foreigners Act, if an application for asylum is rejected.

27. By law, a person who has been granted the right of asylum is entitled to the same rights as an Iraqi in regard to employment, exercise of a profession, enjoyment of all other health and cultural services and the right to be joined by his family.

28. The Residence of Foreigners Act No. 118 of 1978, as amended, specifies the circumstances under which foreigners legally or illegally residing in the Republic of Iraq may be expelled or deported from its territory by order of the competent authority. Article 14 of the Act stipulates that: "Governors of governorates adjacent to the borders and the directors general of other governorates may order the expulsion of any foreigner who entered the territory of the Republic of Iraq illegally." Article 15 further stipulates that: "The Minister or his authorized representative may order the deportation of any foreigner legally residing in the Republic of Iraq if it is found that he or she failed to fulfil, or no longer fulfils, any of the conditions laid down in article 5 hereof."

29. Article 16 provides alternative solutions for situations in which it might not be possible to expel or deport foreigners by stipulating that: "In the case of a foreigner who is stateless or cannot be expelled or deported, the Minister may restrict his or her residence to a designated location for a specified term which may be extended, if necessary, until such time as he or she can be expelled or deported from the territory of the Republic of Iraq."

30. Article 19 vests the competent minister with the power of deportation by stipulating that: "The Minister or his authorized representative may order the deportation of a foreigner from the territory of the Republic of Iraq whenever provision has been made therefor in a final judgement handed down by a competent court."

31. Under the terms of article 21: "Political refugees shall not be extradited or forced to return to the countries from which they fled" (para. 1); "The right of political asylum shall not be granted to persons who are accused of committing international or terrorist crimes or who have harmed Iraq" (para. 2). Article 4 of the Iraqi Political Asylum Act No. 51 of 1971 contains the following legal safeguards which are consistent with the principle of *non-refoulement* laid down in the Convention:

1. A refugee shall under no circumstances be extradited to his or her country of origin;
2. If a refugee's application for asylum in Iraq is rejected, the refugee may be expelled, on the recommendation of the competent departments and with the approval of the Minister, to a country other than his or her country of origin.

Iraqi legislation is therefore consistent with the principle of *non-refoulement* of refugees and other categories of foreigners.

32. The extradition of criminals is regulated by the Penal Code (Act No. 111 of 1969) and, specifically, by articles 357-368 thereof specifying the conditions under which criminals may be extradited and the offences in respect of which extradition is not permitted. Under the provisions of article 360, paragraph 2, of the Code, the attorney appointed by a court or by the person whose extradition is being sought is entitled to request copies of the investigation report, the arrest warrant, the legal categorization of the offence and other evidence to prove whether any confession made by his client was extracted under pressure, torture or coercion. The Ministry of Justice is the authority responsible for approving extraditions.

33. The Government of the Republic of Iraq has endeavoured to apply the principle of *non-refoulement* to former members of the Mujahedin-e Khalq organization who are residing in Iraq illegally. Being eager to act in conformity with the rules of international law, the Government agreed to mediation by the United Nations Assistance Mission for Iraq (UNAMI) which offered a solution to this problem and a memorandum of understanding was subsequently signed for the relocation of some residents of Ashraf camp to Camp Liberty, under the control and subject to inspection by UNAMI, prior to the final evacuation which it believed to be in conformity with international norms. The memorandum of understanding was signed on 25 December 2011 and was put into effect

in 2012 when the camp's residents began to be relocated under the supervision of UNAMI, which included representatives of the Office of the United Nations High Commissioner for Refugees, and a team from the Ministry of Human Rights which monitored all aspects of the process. Pursuant to the memorandum of understanding signed with UNAMI, the Office of the United Nations High Commissioner for Refugees, in accordance with its mandate, is examining requests by camp residents for asylum and resettlement in other countries.

D. Article 4 (criminalization of acts of torture)

34. Torture is prohibited by article 37, paragraph 1 (c), of the Constitution which stipulates that: "All forms of psychological and physical torture and inhuman treatment are prohibited. No account shall be taken of any confession extracted under duress, threat or torture and the victim shall have the right to claim compensation, in accordance with the law, in respect of the physical and mental harm suffered." Article 37, paragraph 1, further stipulates that: "(a) Human freedom and dignity shall be safeguarded"; "(b) No one may be detained or investigated except in accordance with a judicial warrant".

35. The provisions of article 123 of the Code of Criminal Procedure (Act No. 23 of 1971) set the following norms:

(a) The investigating judge or judicial investigator must question the accused within 24 hours from the time of his presentation after ascertaining his identity and informing him of the offence of which he is accused. His statements in this regard must be recorded, together with the details of any exculpatory evidence in his favour. The accused may be questioned again, if necessary, to establish the truth.

(b) Before questioning the accused, the investigating judge must inform him that:

(i) He has the right to remain silent and no adverse inference may be drawn from his exercise of this right;

(ii) He has the right to be represented by an attorney and, if he is unable to afford such representation, the court will appoint an attorney at no cost to the accused.

(c) Before questioning the accused, the investigating judge or judicial investigator must determine whether he wishes to be represented by an attorney. If the accused chooses to be so represented, the investigating judge or judicial investigator shall not begin the proceedings until an attorney has been appointed.

36. Article 126 of the Code further stipulates as follows:

(a) The accused shall not swear the oath unless acting as a witness against other accused persons;

(b) The accused shall not be compelled to answer the questions put to him.

Under the terms of article 127:

It is not permissible to use illegal means to influence the accused for the purpose of extracting a confession. Ill-treatment, threatened harm, enticement, promises, menaces, psychological pressure and the use of intoxicants or narcotic or other drugs are deemed to be illegal means.

37. The legislative framework in force for the regulation of prisons is provided by Coalition Provisional Authority Memorandum No. 2 of 2003 concerning the management of detention and prison facilities which states as follows:

Section 1:

1. This Memorandum prescribes standards to be applied in the Iraqi prison system, under the authority of the Ministry of Justice.

2. All prisons within Iraq shall, to the greatest extent practicable, operate in accordance with the following standards until otherwise directed. Any and all existing Iraqi prison regulations are hereby suspended.

...

Section 11:

...

8. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

9. Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

10. The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner.

11. The medical officer shall, on a daily basis, visit prisoners undergoing such punishments and shall advise the prison governor if he considers the termination or commutation of the punishment necessary on grounds of physical or mental health.

E. Article 5 (establishment of jurisdiction over offences of torture)

38. Article 6 of the Penal Code (Act No. 111 of 1969), like other modern criminal laws, applies the principle of the territoriality of criminal jurisdiction. This principle comprises two aspects. The first is “positive” in the sense that all offences are governed by the national law of the State, regardless of the nationality or status of their perpetrators. Iraq’s sovereign jurisdiction covers all the territory under its control, including its territorial waters, airspace, ships and aircraft and any foreign territory occupied by the Iraqi Army (art. 7). The Code does not apply to offences committed on board foreign ships in Iraqi ports or territorial waters except in cases in which the offence affects Iraq’s territorial security, the offender or victim is Iraqi, or assistance is requested from the Iraqi authorities. The Code is likewise not applicable to offences committed on board foreign aircraft in Iraqi airspace unless the aircraft lands in Iraq or affects the country’s security after the offence has been committed, or unless the offender or victim is Iraqi or assistance is requested from the Iraqi authorities (art. 8).

39. The Penal Code (Act No. 111 of 1969) also applies the principle of jurisdiction *in rem* under which the offences specified in article 9 thereof are governed by the Code and fall under the jurisdiction of the Iraqi judiciary. The offences concerned are those that affect the internal or external security of the State or are directed against the republican regime or its legally issued bonds or stamps or involve the falsification of its official documents or papers or the forging or counterfeiting of its banknotes or coins that are in circulation legally or through common use in or outside Iraq. This provision is necessitated by the fact that those offences affect the fundamental interests of the State insofar as they impinge on its sovereignty, integrity and unity. The nationality of the perpetrators of those offences, the place where they are committed and the standpoint adopted by the law of the State in which they are committed are irrelevant.

40. Article 10 defines the jurisdiction *in personam* of Iraqi criminal law as follows:

Any Iraqi citizen who commits an act abroad and does so as principal or accessory to an offence that constitutes a felony or misdemeanour under the provisions of this Code is liable thereunder if he is in Iraq and if the offence is punishable under the laws of the country in which it was committed. This provision remains applicable if the offender obtained Iraqi citizenship after the commission of the offence and even if, although holding Iraqi citizenship at the time of his commission of the offence, he subsequently lost it.

41. Article 11 makes provision for exceptions to this rule by stipulating that: "This Code is not applicable to offences committed in Iraq by persons enjoying statutory immunity under the terms of international treaties or international or domestic law." The jurisdiction of Iraqi law is reaffirmed in the cases referred to in the following paragraphs of article 12:

1. This Code is applicable to any public official or agent of the Republic of Iraq who, while abroad, commits an act designated herein as a felony or misdemeanour in the course, or as a consequence, of the performance of his duties.

2. It is likewise applicable to Iraqi diplomats serving abroad who commit an act designated herein as a felony or misdemeanour while enjoying the immunity conferred on them under public international law.

42. However, article 13 of the Penal Code acknowledges the principle of universal jurisdiction in respect of some offences:

In circumstances other than those specified in articles 9, 10 and 11, the provisions of this Code are applicable to any person who enters Iraq after committing abroad, in the capacity of principal or accomplice, any of the following offences:

Sabotage or disruption of international means of communication, or trafficking in women, children, slaves or drugs.

43. Article 14 regulates the conduct of legal proceedings in respect of certain offences by stipulating as follows:

1. No legal proceedings may be brought without authorization from the Minister of Justice against a person who commits an offence outside Iraq. Such person shall not be prosecuted if he has been acquitted or convicted under the terms of a final judgement handed down by a foreign court and has served in full any sentence imposed on him unless the proceedings or the sentence have been legally annulled. The finality of the judgement and the nullity of the proceedings or the sentence are matters to be determined in accordance with the law of the land in which the judgement was handed down.

2. If the penalty imposed has not been served in full or if the person accused was acquitted of any of the offences specified in articles 9 and 12 on the ground that it was not punishable under the law of the land, the said person may be prosecuted in Iraq.

44. In order to ensure the fairness of the proceedings conducted by the competent investigating and prosecuting authorities, legal safeguards must be provided during investigations and trials, especially for the accused who are the most vulnerable parties in criminal proceedings. In this regard, article 19 of the Constitution of 2005 stipulates as follows:

- The right to seek legal remedy shall be safeguarded and guaranteed to all;

- The right to a defence is sacrosanct and shall be guaranteed at all stages of investigation and trial;
- The accused shall be presumed innocent until proved guilty at a fair legal trial and, if acquitted, may not be tried again on the same charge unless new evidence is produced;
- Everyone has the right to be treated fairly in judicial and administrative proceedings;
- Criminal laws are non-retroactive unless they are more favourable to the accused.

45. Awareness of the safeguards enjoyed by the accused at these two stages is a reflection of the role that the law plays in preventing perversions of the course of justice. Such awareness also helps the accused to understand his position in regard to the offence with which he is charged.

F. Article 6 (requirements concerning the custody of persons involved in acts of torture)

46. Under Iraqi legislation, the relatives and legal representatives of any persons deprived of their liberty are allowed access to information concerning the said persons. Such access is provided either directly or through the special inspection boards. The Ministry of Human Rights, for example, receives petitions for information on persons deprived of their liberty, looks into their situation and provides their relatives with the requisite information.

47. Section 30, paragraph 13, of Coalition Provisional Authority Memorandum No. 2 of 2003 concerning the management of detention and prison facilities lays down the following important rule: "An untried prisoner shall be allowed to immediately inform his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution."

48. Paragraph 14 of the same section further stipulates that: "For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, to receive visits from his legal adviser with a view to his defence, and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official."

49. The questioning of the accused is regulated by article 123 of the Code of Criminal Procedure (Act No. 23 of 1971) under which the investigating judge or judicial investigator is required to question the accused, after ascertaining his identity, within 24 hours from the time of his presentation.

50. There is no reference in Iraqi law or procedure to any form of reprisal against persons requesting information on the fate of their relatives or clients.

G. Article 7 (prosecution of persons involved in acts of torture)

51. Article 333 of the Penal Code (Act No. 111 of 1969), as amended, stipulates that: "Any public official or agent who tortures or orders the torture of an accused person, a witness or an expert in order to compel him to confess to the commission of an offence, to make a statement or provide information about such offence, or to withhold information or

give a particular opinion in respect thereof, shall be liable to a penalty of imprisonment. The use of force or threats shall be deemed tantamount to torture.”

52. Under the provisions of article 322 of the Penal Code: “Any public official or agent who arrests, imprisons or detains a person in circumstances other than those prescribed by law shall be liable to a term of up to seven years’ imprisonment.”

53. The Code of Criminal Procedure for the Internal Security Forces (Act No. 17 of 2008) made provision for the formation of a board of inquiry to investigate police officers accused of committing an illegal act or offence. Such investigation may lead to the imposition of disciplinary sanctions on the officer concerned, or his referral to the competent court, depending on the gravity of his act.

54. The State and Public Sector Employees Disciplinary Act No. 14 of 1991 made provision for the formation of a committee of inquiry to investigate any public official or agent accused of an offence involving assault, torture or acts that are incompatible with his public duties or constitute an abuse of his authority so that he can be called to account and punished by disciplinary sanctions that may be as severe as dismissal from public service and referral to the judiciary.

55. Article 25 of the Code of Criminal Procedure for the Internal Security Forces (Act No. 17 of 2008) includes the following paragraphs:

2. The investigator or the board of inquiry may, on the basis of an interim *committitur* order, refer the case under investigation to the civil criminal courts if the offence was unrelated to, or did not result from, the official position held by the accused or if it involved civilians.

3. The civil criminal courts shall be competent to adjudicate in the following circumstances:

- (i) If the offence was committed by a police officer against a civilian;
- (ii) If the offence was committed by a civilian against a police officer.

H. Article 8 (extradition of persons involved in acts of torture)

56. The extradition of criminals is based on the concept of international cooperation to combat crime and ensure the triumph of justice through the prosecution of fugitives residing outside the territorial jurisdiction of a national judiciary. Iraqi legislation, as illustrated by articles 352-373 of the Code of Criminal Procedure (Act No. 23 of 1971), provides a road map indicating the conditions for the extradition of criminals.

57. Article 21 of the Constitution stipulates as follows: “1. The extradition of Iraqis to foreign entities and authorities is prohibited; 2. The right of political asylum in Iraq shall be regulated by law. Political refugees shall not be extradited or forced to return to the countries from which they fled; 3. The right of political asylum shall not be granted to persons who are accused of committing international or terrorist crimes or who have harmed Iraq.”

58. Extradition procedures are regulated by the Code of Criminal Procedure (Act No. 23 of 1971), article 357 of which stipulates as follows:

A. The request for extradition must state that the person who is the subject of the request:

- 1. Is accused of committing an offence which took place inside or outside the territory of the State requesting the extradition and which carries a

penalty of not less than two years' imprisonment under the laws of the requesting State and the laws of the Republic of Iraq; or

2. Has been sentenced by the courts of the requesting State to not less than six months' imprisonment.

B. If the person whose extradition is requested has committed multiple offences, the request for extradition shall be considered valid if the conditions are met for any one of them.

59. Article 358 specifies the circumstances in which the Iraqi authorities are not permitted to accede to an extradition request:

1. If the offence in respect of which the extradition is requested constitutes a political or military offence under Iraqi law;

2. If the offence could be prosecuted before the Iraqi courts notwithstanding the fact that it occurred abroad;

3. If the person who is the subject of the request for extradition is pending investigation or trial inside Iraq for the same offence; if the person has been convicted or acquitted; if an Iraqi court or investigating judge has ordered the person's release; or if the criminal proceedings are statute-barred under the provisions of Iraqi law or the law of the State requesting the extradition;

4. If the person concerned holds Iraqi nationality.

These conditions are supplemented by article 359 which stipulates that: "If the person whose extradition is requested is pending investigation or trial in Iraq for an offence other than that in respect of which extradition is requested, consideration of the request shall be deferred until the person concerned has been released, acquitted or convicted and any penalty has been enforced."

60. Article 360 lays down the procedures to be followed when making an application for extradition under Iraqi law:

The extradition request must be submitted in writing to the Ministry of Justice through diplomatic channels with the following documents attached, if possible:

1. Full details of the person whose extradition is requested, including a description, a photograph and documentary proof of nationality if the person is a citizen of the requesting State;

2. An official copy of the arrest warrant specifying the legal categorization of the offence, the penalty to which it is subject, and an official copy of the investigation report and of any judgment passed on the person concerned. In case of urgency, the request may be made by fax, telephone or post without attachments.

61. Iraq is a party to more than 10 bilateral and multilateral agreements for the extradition of criminals, including the Arab Convention on the Suppression of Terrorism ratified by Act No. 35 of 2008, the Arab Treaty on the Transfer of Inmates of Penal and Reform Institutions Serving Criminal Sentences ratified by Act No. 85 of 2012, and the Agreement on the Extradition of Accused and Convicted Persons concluded between the Government of Iraq and the Government of the Islamic Republic of Iran and ratified by Act No. 90 of 2012.

I. Article 9 (provision of the requisite assistance in connection with offences of torture within the framework of mutual judicial assistance)

62. Article 353 of the Code of Criminal Procedure explains the mechanism for requesting judicial assistance: "If a foreign State wishes to conduct an investigative proceeding in respect of an offence through the Iraqi judicial authorities, it must send a request to that effect through diplomatic channels to the Ministry of Justice. The request must be accompanied by full details of the circumstances of the offence, the evidence for indictment, the applicable legal provisions and the proceeding to be conducted."

63. Article 354 lays down specific rules for the processing of requests for judicial assistance:

(a) If the Ministry of Justice considers that the request meets the legal requirements and that acceptance thereof would not be detrimental to public order in Iraq, it shall refer the request to the investigating judge in whose area of jurisdiction the requested proceeding is to be conducted. A representative of the State requesting the assistance shall be permitted to be present while the proceeding is being conducted.

(b) The Ministry of Justice may require the representative of the requesting State to deposit an appropriate sum to meet the expenses of witnesses, the fees of experts and charges for documents, etc.

(c) If the requested proceeding is conducted, the investigating judge shall submit the documents to the Ministry of Justice for forwarding to the foreign State.

64. Article 355 indicates the procedure for the transmission of requests for judicial assistance: "If the Iraqi judicial authorities wish to request legal assistance from the judicial authorities in another State to conduct a specific proceeding, the request shall be submitted to the Ministry of Justice so that it can be sent through diplomatic channels to the judicial authorities in the State concerned. The judicial proceeding conducted pursuant to the request for assistance shall have the same legal effect as if it had been conducted by the judicial authorities in Iraq."

65. Article 356 of the Code specifies the procedure for recording the depositions of witnesses as follows: "The investigating judge or court shall request the Iraqi consul to record the deposition or testimony of any Iraqi person outside the country. The request shall be submitted through the Ministry of Justice and must include details of the matters on which information is required. The deposition or testimony recorded by the consul shall be deemed equivalent to a deposition or testimony recorded by a judicial investigator." The legal provisions in force allow scope for adaptation in the manner needed to resolve any procedural problem impeding achievement of their purpose.

J. Article 10 (training and information regarding the prohibition against torture)

66. Military and civilian personnel responsible for law enforcement, as well as medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, are receiving training from the Government of the Republic of Iraq in human rights culture in general and in the standard minimum rules for the treatment of persons deprived of their liberty. The training programmes organized by the Ministry of Human Rights, the Ministry of Defence, the Ministry of the Interior, the Ministry of Justice and the Ministry of Labour and Social Affairs are designed to provide the necessary education and information regarding the relevant provisions of the

Convention, which have been incorporated in those programmes. In general, the training provided in this regard is designed to achieve the following purposes:

- (a) Prevent the involvement of such personnel in cases of torture and promote increased awareness of human rights among law enforcement personnel;
- (b) Highlight the importance of preventing torture and investigating cases thereof since this offence is an issue of primary concern to the monitoring groups of the Ministry of Human Rights as can be seen from the annual reports that it issues;
- (c) The Ministry of Human Rights and the institutions responsible for the management of prison and reform facilities are endeavouring to facilitate access to information concerning any alleged case of torture and organize unannounced visits to those facilities and to any other location in Iraq that is alleged to contain a secret prison;
- (d) The ministries concerned, including the Ministry of Human Rights, the Ministry of Defence, the Ministry of the Interior, the Ministry of Justice and the Ministry of Labour and Social Affairs, as well as the Supreme Judicial Council, prepare training and guidance programmes to enhance the capacities and skills of law enforcement and other officials, and particularly of judges, officers and members of the internal security forces, judicial personnel and sociologists, in the field of human rights, the international covenants and conventions pertaining thereto and Iraqi national laws.

67. In the light of the above, following the improvements have been made in the education of Government officials and law enforcement officers, orders or instructions prescribing, authorizing or encouraging torture have become virtually non-existent and the very few cases that are currently identified are solely of an individual nature and motivated by personal interests. The Iraqi Military Penal Code promulgated under Act No. 19 of 2007 and the Penal Code promulgated under Act No. 111 of 1969 guarantee the full protection of any Government official who refuses to obey orders to commit an act of torture. The monitoring institutions are always ready to receive information concerning the commission of such acts and any information provided is protected so that there is no risk of reprisals being taken against informants.

68. The Studies and Development Section of the Human Rights Directorate/Department of the Legal Adviser in the Ministry of Defence disseminates human rights education and awareness of the law through lectures delivered in the field, at the headquarters of army divisions, to all officers and other ranks and has also prepared a booklet (*Human Rights in the Armed Forces*) which will be distributed to all military units with a view to promoting and disseminating human rights culture among army personnel.

69. The Commission on Integrity develops and operates mechanisms to ensure transparency and accountability and organizes training courses to increase the ability of senior and intermediate-level administrators to combat corruption.

70. The National Centre for Human Rights, which is run by the Ministry of Human Rights, organizes symposiums and educational courses for all officials responsible for the management of detention centres in Baghdad and the provinces.

71. The Ministry of the Interior of the Kurdistan Region/Directorate-General of Police has organized 13 human rights training courses in and outside Iraq which were attended by 125 officers of both sexes.

K. Article 11 (measures to prevent torture in places of detention)

72. Article 19, paragraph 12, of the current Constitution contains the following important provisions to prevent secret detention:

- (a) Administrative detention is prohibited;
- (b) Imprisonment and detention are permitted only in facilities which are designated for that purpose in the prison legislation making provision for health and social care and which are under the control of the State authorities.

Paragraph 13 of the same article further stipulates that: "The preliminary investigation file must be presented to the competent judge within 24 hours from the time of the suspect's arrest and this deadline may be extended only once and for the same period of time."

73. Section 3 of (dissolved) Coalition Provisional Authority Memorandum No. 2 of 2003 concerning the management of detention and prison facilities contains the following additional stipulations to prevent secret detention through the establishment of strict rules and legal procedures for the documentation of all inmates of such facilities:

1. Every facility where persons are imprisoned shall maintain a bound register with numbered pages in which shall be entered in respect of each prisoner received:
 - (a) Details of his identity;
 - (b) The reasons for his committal and the authority that ordered it;
 - (c) The date and hour of his admission and release.

74. Prison officials are not permitted to admit any person to their facility without a valid committal order, the details of which must be entered in the register, and the Prisons Division of the Department of Humanitarian Affairs in the Ministry of Human Rights carries out prison monitoring and inspection operations in which the registers are the first requirement to be checked.

75. Section 11 of the same Memorandum stipulates as follows:

1. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.
2. No prisoner shall be employed in the service of the institution in any disciplinary capacity.
3. This standard shall not, however, impede the proper functioning of systems based on self-government under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups so that they can be handled collectively.
4. The following shall always be determined by the law or by the regulations of the competent administrative authority:
 - (a) Conduct constituting a breach of the peace or a disciplinary offence;
 - (b) The types and duration of punishment that may be inflicted;
 - (c) The authority competent to impose such punishment.
5. No prisoner shall be punished except in accordance with the provisions of the law or such regulation, and never twice for the same offence for which he has already been punished.
6. No prisoner shall be punished unless he has been informed of the offence that he is alleged to have committed and in respect of which he has been given a proper opportunity to defend himself. The competent authority shall conduct a thorough examination of the case.

7. Where necessary and practicable, the prisoner shall be allowed to present his defence through an interpreter.
 8. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.
 9. Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
 10. The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner.
 11. The medical officer shall, on a daily basis, visit prisoners undergoing such punishments and shall advise the prison governor if he considers the termination or commutation of the punishment necessary on grounds of physical or mental health.
76. Section 13 lays down the following important rules regulating the rights of prisoners:
1. Every prisoner, on admission, shall be provided with written information about the regulations governing the treatment of prisoners of his category, the requirements for the maintenance of discipline and order in the prison, the authorized ways to obtain information and make complaints, and all other matters as are necessary to enable him to understand his rights and his obligations and to adapt himself to prison life;
 2. If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally;
 3. Every prisoner shall have the opportunity, on any day of the week, to make requests or complaints to the prison governor or his authorized representative;
 4. The prisoner shall be permitted to make requests or complaints to the prison inspector during his visit and shall be given a opportunity to talk to the inspector or to any other inspecting official without the prison governor or other members of the staff being present;
 5. Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration or any judicial or other appropriate authority through approved channels;
 6. Unless it is patently frivolous or groundless, every request or complaint shall be dealt with promptly and replied to without undue delay.
77. Section 18 places the prison administration under a number of obligations to protect inmates:
1. Upon the death or serious illness of, or serious injury to, a prisoner or his transfer to an institution for the treatment of mental disorders, the prison governor shall immediately inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner;
 2. A prisoner shall be informed immediately of the death or serious illness of any relative. In the event of the serious illness of a near relative, the prisoner should be authorized, whenever circumstances permit, to visit the relative either under escort or alone;

3. Every prisoner shall have the right to immediately notify his family of his imprisonment or his transfer to another prison.

78. In order to clearly regulate prison inspection, section 21 stipulates as follows:

There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be, in particular, to ensure that these institutions are administered in accordance with the laws and regulations in force and in such a way as to achieve the purposes of penal and correctional services.

79. Prisons and detention centres are monitored by numerous bodies in accordance with their respective mandates. The Ministry of Human Rights comprises a special division to monitor such facilities and ensure that international and local standards in regard to the rights of persons deprived of their liberty are respected. This division's annual report on its activities, which is published in the various media, makes important recommendations to governmental and other institutions for improvements in prison conditions and also contains a special section on alleged cases of torture.

L. Article 12 (investigation of acts of torture)

80. In conformity with the requirements of article 12 of the Convention under which each State party has an obligation to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, the Iraqi judicial authorities rapidly open an investigation and conduct the necessary inquiries whenever it comes to their knowledge or appears that any person has been subjected to torture.

81. The national courts in Iraq apply the Penal Code and the Code of Criminal Procedure in accordance with general constitutional principles the tenor of which is consistent with the means of redress provided for in Iraqi laws and the implementation of which provides a real guarantee of the protection of human rights and the sovereignty of the law. The main principles can be summarized as follows:

1. The principle that there is no crime or punishment except as provided by law (art. 19, para. 2, of the Iraqi Constitution currently in force);
2. The right to seek legal remedy is guaranteed to all (art. 19, para. 3, of the Constitution);
3. The right to a defence is sacrosanct and guaranteed at all stages of investigation and trial (art. 19, para. 4, of the Constitution);
4. The principle of presumption of innocence (art. 19, para. 5, of the Constitution);
5. The right to be treated fairly in judicial and administrative proceedings (art. 19, para. 6, of the Constitution);
6. The principle that punishment must be personal (art. 19, para. 8, of the Constitution);
7. The principle of the non-retroactivity of criminal laws unless they are more favourable to the accused (art. 19, para. 10, of the Constitution);
8. The principle of the public nature of trial proceedings (art. 19, para. 7, of the Constitution);

9. The principle of the prohibition of administrative detention (art. 19, para. 12 (a), of the Constitution);

10. The principle of the prohibition of detention except in facilities designated for that purpose (art. 19, para. 12 (b), of the Constitution);

11. The principle of the independence of the judiciary (art. 19, para. 1, of the Constitution).

82. The objective of the Department of Forensic Medicine, which operates in conformity with the provisions of Act No. 37 of 2013, is to regulate the practice of forensic medicine in Iraq and develop and enhance the skills and level of professional competence of its practitioners in order to serve the interests of justice, as required by article 2 of the said Act, since forensic practitioners are responsible for the examination of injured persons in order to determine the nature and cause of their injuries. They also give expert opinions on medical evidence submitted to the courts and conduct on-site inspections and examinations when required, in addition to other tasks and procedures, in accordance with article 5 of the Act. Under article 7 of the Act, the court and the Department of Public Prosecutions have the right to appeal against a forensic medical report before a committee established to this end. Medical reports drawn up at the request of the judiciary by other than forensic medical examiners are also appealable by the court, the Department of Public Prosecutions or the persons concerned to the health institutions to which the physicians who drew up the medical reports are attached.

83. In general, this Act adheres closely to judicial procedures. The information obtained as a result of forensic medical examinations is protected, documented and stored in a safe place. The working procedures prescribed in the Act make provision for channels of appeal against forensic medical decisions and the Act imposes clearly defined and stringent restrictions on access to information relating to victims and forensic medical examinations.

M. Article 13 (right of victims of torture to submit complaints to the competent authorities)

84. Article 19, paragraph 3, of the Constitution stipulates that: "The right to seek legal remedy shall be safeguarded and guaranteed to all."

85. Under Iraqi criminal law, any individual claiming to have been subjected to torture has the right to submit a complaint to the competent authorities, which have an obligation to look into such complaint in a prompt and impartial manner (art. 1 of the Code of Criminal Procedure promulgated under Act No. 23 of 1971).

86. Article 2 of the Code of Criminal Procedure stipulates that: "Legal proceedings shall not be suspended, discontinued or dropped, and the enforcement of judgements rendered therein shall not be waived or suspended, except as provided by law."

87. Under the terms of article 7 of the Code: "If the victim dies after submitting the complaint, his demise shall not affect the course of the proceedings." With regard to the reporting of offences, article 47 of the Code stipulates that:

1. The victim of an offence or any person who comes to know that an offence has been committed in respect of which proceedings have been instituted without a complaint being submitted, or who learns that a suspicious death has occurred, may inform the investigating judge, the judicial investigator, the Department of Public Prosecutions or any police station.

2. In cases involving offences against the internal or external security of the State, offences involving economic sabotage and other offences punishable by the

death penalty, life imprisonment or a lesser term of imprisonment, the informant has the right to remain anonymous and not to be called as a witness. The judge shall enter this, together with a summary of the information provided, in a special record prepared for this purpose and shall conduct the investigation in accordance with the standard procedure, making use of the information provided by the informant but without revealing the latter's identity in the investigation records.

88. Article 57 of the Code contains the following important provisions concerning the provision of information to all parties with a legal interest therein:

(a) The accused, the complainant, the civil plaintiff and the person who bears civil liability for the act of the accused, as well as their representatives, have the right to attend the investigation proceedings. The judge or judicial investigator may, if necessary, bar any of them from attending on grounds that he shall enter in the record, although their presence shall once again be permitted as soon as their exclusion can no longer be justified. They shall not have the right to speak without permission and, if they are not so permitted, a note to that effect shall be entered in the record.

(b) Any of the aforementioned persons may request copies of documents and statements at their own expense unless the investigating judge believes that their provision would affect the course or confidentiality of the investigation.

(c) No person other than those aforementioned may attend the investigation without the permission of the investigating judge.

89. Under Iraqi law, testimony is one of the most important means of proof since it establishes a specific fact of which the witness came to know by sight or hearing. It is an element of material evidence and eyewitness testimony is usually effective in judicial proceedings even though its merits are subject to the court's discretion. Article 21 of the Iraqi Supreme Criminal Court Act No. 10 of 2005 stipulates that: "A criminal court must ensure the protection of victims, their families and witnesses and maintain the confidentiality of their identities in accordance with the rules of procedure and evidence annexed hereto." Although section 4, chapter 2, of the Code of Criminal Procedure (Act No. 23 of 1971) deals with the hearing of witnesses in articles 58-68, these articles do not make explicit provision for witness protection.

90. The Commission for Human Rights was established in the Republic of Iraq under the terms of Act No. 53 of 2008 for the purpose of disseminating human rights education, protecting, promoting and safeguarding such rights and monitoring and redressing violations thereof. Under article 5 of the Act, the Commission was vested with a mandate that covers the following functions:

1. Receipt of complaints from individuals, groups and civil society organizations concerning violations prior and subsequent to the entry into force of the Act, and maintenance of the full confidentiality of the complainants' names;
2. Conduct of preliminary investigations of human rights violations in the light of the information received;
3. Verification of the complaints received, and the conduct of preliminary investigations if the circumstances so require;
4. Bringing actions in respect of human rights violations by referring them to the Department of Public Prosecutions so that it can institute legal proceedings and notify the Commission of the outcome;
5. Visiting prisons, social reform centres and all other detention facilities, without the need for prior permission from the authorities concerned, in order to meet convicted prisoners and detainees, verify any cases of infringement of human

rights and bring them to the attention of the competent authorities so that appropriate legal action can be taken.

91. Every individual therefore has a recognized right to report offences of torture and the competent authorities have an obligation to receive, and take the necessary action on, such reports, any remissness in this regard being punishable by law. Any victim of torture has effective and legally guaranteed means of redress and the requisite measures are taken to ensure the protection of complainants and witnesses in accordance with the laws in force.

92. Complaints concerning acts of torture can be channelled through the following monitoring bodies:

- Ministry of Human Rights (inspection teams/Office for Citizens' Complaints);
- Ministry of Justice (Directorate of Human Rights attached to the Department of the Inspector General);
- Ministry of the Interior (Directorate of Human Rights attached to the Department of the Inspector General);
- Ministry of Defence (Directorate of Human Rights attached to the Department of the Inspector General);
- Ministry of Labour and Social Affairs (Office of the Inspector General);
- Commission on Integrity;
- Department of Public Prosecutions, through the permanent offices that it has established in detention facilities;
- Civil society organizations.

93. The Ministry of the Interior has established monitoring committees to make field visits to places of detention in order to identify the principal shortcomings therein and endeavour to rectify them in the most appropriate manner. All complaints and allegations of torture or inhuman or degrading treatment that are received by the Ministry of the Interior are first verified, after which an investigation is promptly opened. Emphasis is placed on the need for rapid results so that the offenders can be referred to the competent courts in accordance with the law. The questionnaires of the Special Rapporteur on torture are available at all detention facilities run by the Ministry of the Interior.

94. The committees of the Directorate of Human Rights attached to the Department of the Legal Advisor of the Ministry of Defence make regular periodic visits to the pretrial detention centres of Iraqi army units and pays great attention to the training of the personnel serving therein whom it provides with wall posters and pamphlets emphasizing the criminal nature of torture and the penalties to which its perpetrators are liable.

95. The Directorate of Human Rights attached to the Department of the Legal Advisor also forms ad hoc fact-finding committees to look into allegations of unlawful detention, ill-treatment or torture in pretrial detention centres. The details provided in the allegations are promptly verified and, if necessary, recommendations are made to the authorities to expand the scope of the investigation and take the requisite measures if breaches of the law are found to have been committed.

96. The secretariat of the Council of Ministers has established mechanisms for the receipt of complaints from citizens through its e-mail address, its Facebook page and the hotline that it has set up for this purpose. It has also established a Citizens' Affairs Office which receives complaints directly from citizens and carries out field visits. In 2012, this Office received 21,324 petitions. There are 53 citizens' affairs offices in the Government ministries, and 89 in the governorates and districts, which received 94,936 petitions and

interviewed about 44,195 citizens. The hotline set up for the receipt of complaints from citizens received 225,886 calls. These mechanisms could provide a useful means for the transmission of information to all the institutions responsible for inspecting prisons and responding to petitions for clarification of the fate of any person presumed to have been subjected to secret detention or torture.

N. Article 14 (right of victims to claim compensation in respect of acts of torture)

97. Article 37, paragraph 1 (c), of the Constitution stipulates that: “All forms of psychological and physical torture and inhuman treatment are prohibited. No account shall be taken of any confession extracted under duress, threat or torture and the victim shall have the right to claim compensation, in accordance with the law, in respect of the physical and mental harm suffered.”

98. Any person who has been subjected to torture has the right to apply to the courts in accordance with the law, to lodge a complaint against the accused person or body and to bring a civil action for damages.

O. Article 15 (inadmissibility of confessions made as a result of torture)

99. Article 37, paragraph 1, of the Constitution reads as follows: “(a) Human freedom and dignity shall be safeguarded; (b) No one may be detained or investigated except in accordance with a judicial warrant; (c) All forms of psychological and physical torture and inhuman treatment are prohibited. No account shall be taken of any confession extracted under duress, threat or torture and the victim shall have the right to claim compensation, in accordance with the law, in respect of the physical and mental harm suffered.”

100. Article 127 of the Code of Criminal Procedure stipulates that: “It is not permissible to use illegal means to influence the accused for the purpose of extracting a confession. Ill-treatment, threatened harm, enticement, promises, menaces, psychological pressure and the use of intoxicants or narcotic or other drugs are deemed to be illegal means.”

101. Article 218 of the Code, as amended by Coalition Provisional Authority Memorandum No. 3 of 2003, contains the requirement that: “Confessions must not have been made as a result of physical or psychological coercion, promises or threats.” Hence, confessions extracted under torture or coercion have no legal value and cannot constitute a substantiating ground for a judgement.

102. A confession made by the accused, in accordance with the legally stipulated conditions, before any of the various types of judicial bodies carries considerable weight and significantly influences the body before which it is made. Under the provisions of article 19, paragraph 4 (f), of the Iraqi Supreme Criminal Court Act No. 10 of 2005: “An accused person who has been indicted on any charge is entitled to a fair and impartial trial in accordance with the following minimum safeguards: he must not be compelled to confess and he has the right to remain silent and refrain from making any statement without his silence being interpreted as an indication of guilt or innocence.”

P. Article 16 (prevention of cruel, inhuman or degrading treatment or punishment)

103. The Republic of Iraq regards the preservation of human dignity and physical and psychological integrity as an indivisible and inalienable right which all individuals are entitled to exercise against any form or degree of domineering or abusive treatment. Inhuman or degrading acts are prohibited throughout Iraq.

104. Article 15 of the Constitution stipulates that: "Every individual has the right to life, security and liberty and these rights shall not be withdrawn or restricted except as provided by law and on the basis of a ruling handed down by a competent judicial body."

105. Article 17, paragraph 2, of the Constitution stipulates that: "The inviolability of homes shall be safeguarded; they shall not be entered, searched or intruded upon except under the terms of a judicial warrant and in accordance with the law."

106. Article 322 of the Penal Code (Act No. 111 of 1969), as amended, prescribes a penalty of up to seven years' imprisonment for any public official or agent who arrests or detains a person in circumstances other than those prescribed by law and this penalty is increased to a term of up to 10 years' imprisonment if the offender:

- Wore an official uniform to which he was not entitled;
- Used false identification;
- Presented a fake warrant ostensibly issued by an authority empowered to issue such warrants.

107. Article 421 of the same Code emphasizes that: "Anyone who arrests, detains or in any way deprives a person of his liberty without a warrant from a competent authority in circumstances other than those in which such is permitted by the laws and regulations shall be liable to a penalty of imprisonment." In accordance with section 2 of Coalition Provisional Authority Order No. 31 of 13 September 2003, the penalties prescribed in articles 421, 422 and 423 of the Code were increased to life imprisonment, which ends only on the death of the convicted person.

108. Article 422 of the Code stipulates that: "Anyone who, in person or through a third party, abducts a juvenile under 18 years of age without using force or deception shall be liable to a term of up to 15 years' imprisonment if the victim is female, and up to 10 years' imprisonment if the victim is male."

109. If the abduction involves the use of force or deception or any of the aggravating circumstances specified in article 421, the penalty is life imprisonment if the victim is female, and a term of up to 15 years' imprisonment if the victim is male. Under the terms of article 423, these heavier penalties may be further increased to capital punishment in the event of the rape or attempted rape of a female victim.

110. Article 424 increases the above-mentioned criminal penalties for abduction to life imprisonment or capital punishment if the use of force or torture results in the death of the victim.

V. Conclusion

111. The Republic of Iraq reaffirms its commitment to the promotion and protection of human rights and its desire to cooperate with the Office of the High Commissioner for Human Rights in the exchange of expertise and capacity building with a view to improving the human rights situation in Iraq. The Government of the Republic of Iraq is making progress in the implementation of the plan drawn up to provide more safeguards in human rights-related matters and looks forward to cooperation with all the stakeholders in order to achieve the goals that are being pursued.
