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**QUESTION DE LA VIOLATION DES DROITS DE L'HOMME ET DES LIBERTÉS
FONDAMENTALES, OÙ QU'ELLE SE PRODUISE DANS LE MONDE**

Situation des droits de l'homme en Iraq

**Rapport présenté par le Rapporteur spécial, M. Andreas Mavrommatis,
en application de la résolution 2002/15 de la Commission
des droits de l'homme***

Additif**

* Le résumé du présent rapport est distribué dans toutes les langues officielles. L'annexe au résumé est distribuée dans la langue dans laquelle elle a été reçue et en arabe.

** Conformément au paragraphe 8 de la résolution 53/208B de l'Assemblée générale, le présent document est soumis après les délais afin de pouvoir prendre en considération les renseignements les plus récents.

Résumé

Le présent document est un additif au rapport (E/CN.4/2003/40) présenté par le Rapporteur spécial sur la situation des droits de l'homme en Iraq à la cinquante-neuvième session de la Commission des droits de l'homme, en application de sa résolution 2002/15. Il couvre la période allant du 1^{er} janvier au 28 février 2003.

Compte tenu des circonstances qui prévalent en ce qui concerne l'Iraq, le Rapporteur spécial a décidé de ne pas effectuer la deuxième mission qu'il avait prévu de faire dans ce pays. Au lieu de cela, il a consacré ses efforts aux consultations qui se sont tenues à Genève du 27 au 31 janvier et du 25 au 28 février 2003 et qui ont réuni le Représentant permanent de l'Iraq auprès de l'Office des Nations Unies à Genève, des membres d'une délégation de haut niveau du Département des droits de l'homme du Ministère iraquien des affaires étrangères, des représentants permanents et des hauts fonctionnaires du Haut-Commissariat des Nations Unies aux droits de l'homme (HCDH), ainsi que des représentants du Comité international de la Croix-Rouge et d'organisations non gouvernementales internationales.

La première réunion, qui s'est tenue le 27 janvier 2003, a été consacrée à diverses questions, dont l'abolition de la peine de mort pour certains crimes, l'abrogation du décret prévoyant l'amputation des mains ou le marquage au fer de certaines personnes, la suppression des tribunaux d'exception et leur remplacement par une cour de sûreté de l'État relevant du Ministère de la justice, et le nombre de prisonniers et de détenus ayant bénéficié d'un décret d'amnistie.

La deuxième réunion, qui a eu lieu le 25 février 2003, a permis d'avoir une discussion plus approfondie, non seulement au sujet des questions qui figurent habituellement à l'ordre du jour, mais également au sujet de questions telles que les droits politiques, la démocratie, le multipartisme et les efforts déployés pour asseoir le respect des libertés fondamentales. En prévision des changements nécessaires dans le domaine des droits de l'homme en Iraq, le Rapporteur spécial a fait observer qu'une présence des droits de l'homme dans le pays pourrait accompagner les changements nécessaires et contribuer à définir les moyens permettant de consolider une culture des droits de l'homme. Il a également invité instamment le Gouvernement iraquien à respecter les droits de la personne à tout moment, y compris en temps de guerre. D'autres questions ont également été évoquées, parmi lesquelles la question des prisonniers de guerre koweïtiens et des personnes dont on est sans nouvelles, «l'arabisation», le statut de la région des marais, les chrétiens en Iraq, ainsi que la question de la liberté de religion et de circulation des chiïtes. Les modalités de la prochaine mission du Rapporteur spécial en Iraq ont également été évoquées lors d'une brève discussion.

Le Rapporteur spécial reconnaît que le processus de coopération avec le Gouvernement iraquien est lent et laborieux et que de nombreuses années d'un régime autoritaire de parti unique expliquent l'absence de culture des droits de l'homme, d'institutions démocratiques opérationnelles et de mécanismes efficaces visant à assurer la protection des droits et des libertés individuelles. Le Rapporteur spécial a attiré l'attention de ses interlocuteurs sur le fait que, à l'avenir, ses travaux devraient être davantage axés sur la création des structures nécessaires pour remédier à cette situation, à commencer par une constitution moderne, une charte des droits, un pouvoir judiciaire indépendant, ainsi que d'autres mécanismes de protection des droits de l'homme, des organisations non gouvernementales libres et une société civile qui soit en mesure

de participer pleinement à un système démocratique multipartite. La communauté internationale, et en particulier le Haut-Commissariat et le Rapporteur spécial, ont un rôle primordial à jouer pour indiquer la voie à suivre afin d'assurer le respect des droits de l'homme, des libertés fondamentales et de la dignité humaine en Iraq.

ANNEX

Introduction

1. This document is an addendum to the report (E/CN.4/2003/40) of the Special Rapporteur on the situation of human rights in Iraq submitted to the Commission on Human Rights at its fifty-ninth session, in accordance with Commission resolution 2002/15. This brief addendum covers mainly the period from 1 January to 28 February 2003.
2. Owing to the well-known circumstances surrounding Iraq, the Special Rapporteur decided not to undertake, at present, a second visit to Iraq, as initially planned. Instead, his main efforts were centred around the consultations held in Geneva from 27 to 31 January and from 25 to 28 February 2003 with the Permanent Representative of Iraq to the United Nations Office at Geneva and members of a high-level delegation from the Human Rights Department of the Iraqi Ministry for Foreign Affairs, permanent representatives and senior officials of the Office of the High Commissioner for Human Rights (OHCHR), as well as representatives of the International Committee of the Red Cross (ICRC) and international non-governmental organizations (NGOs).
3. Comments on the main report were received from the Permanent Missions of Iraq and Kuwait and discussed with the interested parties, and the Special Rapporteur made or shall make such use of those comments as appropriate.

I. Meetings in Geneva

4. During and between meetings with governmental representatives of Iraq, the Special Rapporteur received a series of notes verbales and other oral information referring to steps taken by the Government of Iraq to improve the human rights situation in the country or in order to comply with the recommendations of the Special Rapporteur.
5. A list of all notes verbales received and translated, as well as a selection of these notes, is appended to this addendum. Notes verbales recently received and not yet translated will be dealt with in due course.
6. The Special Rapporteur, whilst welcoming the increased cooperation manifested by the Government of Iraq as well as the compliance, whether partial or total, with recommendations made, would like to urge the Government to give more complete replies and to accept all his recommendations in their entirety, in particular to comply urgently with the request to provide complete lists of persons executed, as well as of people who did or did not benefit from the recent amnesty.
7. The first meeting in Geneva, held on 27 January 2003, focused on some of the issues raised in the seven notes verbales handed to the Special Rapporteur during this meeting regarding the abolition of the death penalty for certain crimes; the abolition of decrees on the amputation of hands or the branding of people, as well as the abolition of the Special Courts and their replacement by a State Security Court attached to the Ministry of Justice; and the number of prisoners and detainees having benefited from the amnesty decree. In the following days, other notes verbales were received by the Special Rapporteur on the easing of the restrictions on travel abroad by Iraqi citizens, the two meetings of the Technical Subcommittee for Missing Persons

held on 8 and 22 January 2003 in Amman, and on the visit by the High-Level Coordinator of the Security Council, Mr. Vorontsov.

8. During the second meeting, which proved to be quite useful, the Special Rapporteur, in view of the presence of the delegation from Baghdad, could go into a more detailed discussion which was not limited to the items usually on the agenda based either on information received by the Special Rapporteur or contained in notes verbales, but also covered such issues as political rights, democracy, a multi-party system and other efforts to firmly establish respect for fundamental freedoms.

9. Anticipating the changes that are needed to completely overhaul the human rights picture in Iraq, the Special Rapporteur suggested that a human rights presence in Iraq could assist in various ways in accompanying the process of required changes and developing ways to entrench a human rights culture.

10. The Special Rapporteur also used the opportunity to request further clarifications and urged the Government of Iraq to respect the rights of individuals at all times, including times of war.

11. The question of the Kuwaiti prisoners of war and persons unaccounted for was raised during the discussions with the Iraqi delegation in connection with the relevant note received. The Special Rapporteur urges the Government of Iraq to fully cooperate so that this very urgent and long-delayed humanitarian issue can be resolved as soon as possible. Other issues were reviewed during the meeting, including "Arabization"; the change of nationality for non-Arabs; the status of the Marshlands; certain issues of concern to Christians in Iraq, such as the naming of their children; as well as freedom of movement for Shi'ah clerics and other religious dignitaries and the present situation of Iraqi women.

12. During the meeting, time constraints only allowed a tentative discussion on the modalities of the next visit of the Special Rapporteur to Iraq. The Special Rapporteur reiterated his readiness to visit Iraq as soon as circumstances allow it.

II. Conclusions

13. It is now over three years since the Special Rapporteur was appointed to deal with the difficult and sensitive issue of human rights in Iraq. Therefore, the time is now ripe to take stock of the situation. In this process, the methodology employed should be examined and its effectiveness evaluated. The main causes for the sad state of affairs in Iraq should be identified and thought given to basic remedial action.

14. It is almost beyond dispute that human rights mechanisms can do a lot in identifying human rights violations, but less in achieving substantial improvements in the absence of genuine cooperation on the part of the State involved. This, as well as the gratification of knowing that his work has contributed to saving the life of even one person or prevented the torture of another, was why the Special Rapporteur consistently sought the cooperation of the Government of Iraq from the outset.

15. Cooperation was a slow, painstaking process, and thus it took two years for the Special Rapporteur to be allowed a short exploratory visit to Iraq, and almost 30 months before beginning to receive acceptable replies to queries and reactions or acceptance of his recommendations or suggestions. Even today, replies and reactions received are at times incomplete and unsatisfactory, and some of them are still forthcoming. Yet, the Special Rapporteur believes that everything was well worth trying and, had cooperation existed from the outset, the results might have been much better.

16. The Special Rapporteur's visit to Iraq, his contacts with Iraqis abroad, with permanent and other members of the Security Council, countries neighbouring Iraq, NGOs and others, as well as the thousands of pages of documentation made available to him, including the very useful reports of his predecessor, permit him to draw, today, a number of conclusions.

17. Although Iraq is a country with a rich past and an enviable history and an almost unparalleled ancient civilization with a sophisticated population, the years of one-party authoritarian regime have resulted in the lack of a human rights culture and functioning democratic institutions. The situation is compounded by the absence of independent and effective mechanisms that would protect individual rights and freedoms.

18. Although Iraq has ratified both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the infrastructure for their effective implementation is not present.

19. As a result, the Special Rapporteur, in any future action in the domain of human rights, whilst not giving a wider berth than at present to individual complaints of violations, would concentrate on efforts towards the creation of a human rights culture and entrenching democratic institutions, in particular a multi-party system, beginning with a modern constitution, with a Bill of Rights that stands very high in the hierarchy of laws. This would be followed by a restructuring of the judiciary, ensuring the complete independence, impartiality and effectiveness of judges and procurators. Institutions such as a national human rights commission, ombudspersons, freely functioning NGOs and a civil society that can freely express opinions on matters of public interest are other important steps. Respect for basic freedoms in a multi-party democratic system, non-discrimination, freedom of expression, and the right to participate equally in elections are sine qua non conditions.

20. One does not expect miracles overnight. It is a slow process, but the laying of appropriate foundations is urgent and pressing. In this process, the international community, in particular OHCHR and the Special Rapporteur, have a crucial role to play in drawing the road map that would safely lead to not only respect for, but actually ensure individual basic human rights and freedoms, as well as human dignity.

Appendix

Notes verbales received from the Permanent Mission of Iraq between 30 December 2002 and 19 February 2003*

Note verbale No. 397, dated 30 December 2002

Reply to the Special Rapporteur's letter dated 1 July 2002 on the number of people executed in 2000 and 2001

Note verbale No. 11, dated 14 January 2003

Composition of the Iraqi delegation attending the meeting on 25 February 2003 with the Special Rapporteur

Note verbale No. 13, dated 16 January 2003

Report on "The impact of the embargo on health in Iraq", containing a brief commentary and statistical analysis on the study concerning "The impact of the unjust embargo on the health of the Iraqi people"

Note verbale No. 15, dated 16 January 2003

Comments by the Permanent Mission of Iraq to the United Nations Office at Geneva on the report of the Special Rapporteur to the fifty-ninth session of the Commission on Human Rights

Note verbale No. 38, dated 26 January 2003

Abolition of Decree No. 179 of October 1994 regarding the death penalty for falsification of a military service record book or document (sentence of 10-15 years' imprisonment instead)

Note verbale No. 39, dated 26 January 2003

Abolition of article 1 of Decree No. 137 of November 1996 regarding persons being held in custody on charges of entering or leaving Iraq illegally

Note verbale No. 40, dated 26 January 2003

Abolition of Decree No. 6 of July 1994 regarding the penalty of life imprisonment or amputation of the hand for falsifying official documents

Note verbale No. 41, dated 26 January 2003

Abolition of Decree No. 117 of October 1994 prohibiting the removal of brand marks from the forehead

Note verbale No. 46, dated 27 January 2003

* All mentioned notes are available for consultation at OHCHR.

Abolition of article 1 of Decree No. 1133 of September 1982 regarding the death penalty for robbery by a new article limiting the imposition of the death penalty to persons found guilty of committing armed robbery in time of war, and only in the case of a repeat offence

Note verbale No. 47, dated 27 January 2003

Abolition of Decree No. 109 of August 1994 concerning the infliction of the penalty of branding

Note verbale No. 48, dated 27 January 2003

Promulgation of Act No. 1 of 2003 abolishing the Special Courts and replacing them by a State Security Court attached to the Ministry of Justice as of 1 January 2003

Note verbale No. 49, dated 29 January 2003

Promulgation of Decree No. 238 of October 2002 to ease the restrictions on travel abroad by Iraqi citizens

Note verbale No. 59, dated 4 February 2003

Information regarding the two meetings of the Technical Subcommittee for Missing Persons, held on 8 and 22 January 2003 in Amman

Note verbale No. 61, dated 7 February 2003

Information regarding the trip of the High-Level Coordinator, Mr. Vorontsov, to Iraq, 18-20 January 2003

Note verbale No. 90, dated 19 February 2003

Information regarding the number of prisoners (29,071) and detainees (13,325) who benefited from the amnesty decree
