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COMISIÓN DE DERECHOS HUMANOS
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**CUESTIÓN DE LA VIOLACIÓN DE LOS DERECHOS HUMANOS Y LAS
LIBERTADES FUNDAMENTALES EN CUALQUIER PARTE DEL MUNDO**

Situación de los derechos humanos en el Iraq

**Informe presentado por el Relator Especial, Sr. Andreas Mavrommatis,
de conformidad con la resolución 2002/15 de la Comisión ***

Adición **

* El resumen del informe se distribuye en todos los idiomas oficiales. El informe se adjunta como anexo al resumen y sólo se distribuye en el idioma en que fue presentado y en árabe.

** De conformidad con el párrafo 8 de la resolución 53/208B de la Asamblea General, se señala que este documento se ha presentado con retraso para poder incluir en él información más reciente.

Resumen

El presente documento es una adición al informe (E/CN.4/2003/40) presentado por el Relator Especial sobre la situación de los derechos humanos en el Iraq a la Comisión de Derechos Humanos en su 59º período de sesiones, de conformidad con la resolución 2002/15 de la Comisión. Abarca el período del 1º de enero al 28 de febrero de 2003.

Debido a las circunstancias que rodean al Iraq, el Relator Especial decidió no emprender la segunda visita al país que tenía prevista y en su lugar, dedicó sus esfuerzos a las consultas celebradas en Ginebra del 27 al 31 de enero y del 25 al 28 de febrero de 2003 con el Representante Permanente del Iraq ante la Oficina de las Naciones Unidas en Ginebra, miembros de una delegación de alto nivel del Departamento de Derechos Humanos del Ministerio de Relaciones Exteriores del Iraq, representantes permanentes y altos funcionarios de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH), así como representantes del Comité Internacional de la Cruz Roja y de organizaciones no gubernamentales (ONG) internacionales.

En la primera reunión, celebrada el 27 de enero de 2003, se trató principalmente de cuestiones como la abolición de la pena de muerte por determinados delitos, la abolición de los decretos sobre la amputación de manos o el marcado de personas, la abolición de los tribunales especiales y su sustitución por un Tribunal de Seguridad del Estado dependiente del Ministerio de Justicia, y del número de presos y detenidos a los que ha beneficiado el decreto de amnistía.

En la segunda reunión, celebrada el 25 de febrero de 2003, se pudo entrar en más detalle y no sólo se habló de los asuntos habituales del programa, sino también de otras cuestiones, como los derechos políticos, la democracia, un sistema multipartidista y otros esfuerzos por establecer firmemente el respeto de las libertades fundamentales. En previsión de los cambios necesarios para rehacer toda la estructura de los derechos humanos en el Iraq, el Relator Especial sugirió que una presencia de derechos humanos en el país podría contribuir al proceso de cambio necesario y a encontrar la manera de implantar la cultura de los derechos humanos. También instó al Gobierno del Iraq a respetar los derechos de la persona en todo momento, incluso en tiempo de guerra. Se plantearon también otras cuestiones, como la de los desaparecidos y los prisioneros de guerra kuwaitíes, la "arabización", el estado de las marismas, los cristianos en el Iraq, y la cuestión de la libertad de religión y de circulación de los chiítas. Se trató también brevemente de las modalidades de la próxima visita del Relator Especial al Iraq.

El Relator Especial reconoce que la cooperación con el Gobierno del Iraq ha sido un proceso lento y laborioso y que los muchos años de un régimen autoritario y monopartidista explican la falta de una cultura de derechos humanos, de instituciones democráticas en funcionamiento y de mecanismos eficaces de protección de los derechos y libertades individuales. El Relator Especial subrayó a sus interlocutores que en el futuro su labor se concentraría más en crear la infraestructura necesaria para rectificar la situación, empezando por elementos como una constitución moderna, una carta de derechos, un poder judicial independiente y otros mecanismos de derechos humanos, ONG libres y una sociedad civil que participe plenamente en una democracia multipartidista. La comunidad internacional, en particular el ACNUDH y el Relator Especial son de importancia fundamental en la planificación de las medidas que deben adoptarse para lograr el respeto de los derechos humanos y las libertades básicas y de la dignidad humana en el 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

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

* All mentioned notes are available for consultation at OHCHR.

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
