NATIONS UNIES **E**

Conseil économique et social

Distr.
GÉNÉRALE

E/CN.4/2005/G/12
24 janvier 2005

FRANÇAIS
Original: ARABE/ANGLAIS

COMMISSION DES DROITS DE L'HOMME
Soixante et unième session
Point 4 de l'ordre du jour provisoire

RAPPORT DU HAUT-COMMISSAIRE DES NATIONS UNIES AUX DROITS DE L'HOMME ET SUIVI DE LA CONFÉRENCE MONDIALE SUR LES DROITS DE L'HOMME

Note verbale datée du 27 juillet 2004, adressée au Haut-Commissariat des Nations Unies aux droits de l'homme par la Mission permanente de l'Iraq auprès de l'Office des Nations Unies à Genève

La Mission permanente de l'Iraq auprès de l'Office des Nations Unies et des autres organisations internationales à Genève présente ses compliments au Haut-Commissariat des Nations Unies aux droits de l'homme et, se référant à la lettre datée du 6 mai 2004, adressée à des hauts responsables iraquiens et concernant la situation des droits de l'homme et du droit humanitaire dans l'Iraq d'aujourd'hui, a l'honneur de lui faire tenir ci-joint le rapport du Gouvernement iraquien sur les questions relatives aux droits de l'homme.

La Mission permanente de l'Iraq serait très reconnaissante au Haut-Commissariat de faire distribuer le présent rapport* en tant que document officiel de la soixante et unième session de la Commission des droits de l'homme.

* Le texte du rapport est reproduit en annexe tel qu'il a été reçu, dans la langue originale et en anglais seulement.

Annex

Reply of the Government of the Republic of Iraq to the questions of the acting High Commissioner for Human Rights about the situation of human rights in Iraq

Geneva, August 2004

The political context

The Iraqi people suffered from political repression at the hands of a backward regime and from a protracted period of sanctions that destroyed the foundations of Iraqi society. Today, having won back its freedom, it rejects all forms of violence and tyranny at home and abroad and has regained its lawful place among nations. It intends to preserve its national unity and territorial integrity, to trace the future outlines of the new Iraq, to eliminate the effects of racist and sectarian policies and resolve its transitional problems, while totally rejecting war, bloodshed, terrorism and violations of human rights.

On 22 May 2003, the Security Council adopted resolution 1483 (2003), acknowledging the occupation and recognizing the authorities, responsibilities, and obligations of the occupying States, namely the United States of America and the United Kingdom of Great Britain and Northern Ireland.

On the basis of that resolution, the Iraqi Governing Council was established on 13 July 2003, following negotiations with various political and religious representatives in Iraq. The Council, which had an advisory role with respect to the United States civilian administration, consisted of 25 members. A Cabinet, made up of 25 ministers, was also formed.

The Interim Iraqi Government

On 30 June 2004, power was handed over in full to the Interim Iraqi Government, which enjoys complete sovereignty.

The Interim Iraqi Government consists of the President, the two Vice-Presidents, the Prime Minister and the Deputy Prime Minister. The Prime Minister heads the Council of Ministers and is responsible for running the Government.

An interim national council will be established to promote constructive dialogue, build a national consensus, advise the new Government, monitor the implementation of laws, and approve the 2005 budget. The members of the interim national council will be selected by a national conference, due to be held in July, with the participation of at least 1,000 Iraqi delegates from all parts of the country. The interim national council will represent all sectors of Iraqi society.

The judiciary will be established as a separate branch of government, as stated in the Transitional Administrative Law. It will include the Federal Supreme Court, the country's highest court, which will have competence for the resolution of constitutional disputes.

The Interim Iraqi Government was established in accordance with a process of wide-ranging consultations that were undertaken with the Iraqi people, including political, tribal, and religious, leaders and civil associations. Mr. Lakhdar Brahimi, the Special Envoy of the Secretary-General of the United Nations to Iraq, played an active part in the process.

The main responsibility of the new Interim Government is to administer Iraq's affairs, in particular by guaranteeing the Iraqi people prosperity and security, boosting economic growth and preparing Iraq for elections to be held not later than 31 December 2005.

On 30 June 2004, the Transitional Administrative Law became the highest law in the land. The Interim Iraqi Government will work in accordance with the Law during the transitional period. The Transitional Administrative Law provides a list of the Iraqi people's historical rights and a blueprint for the establishment of a permanent constitution in 2005.

The Iraqi people will freely express their will by electing the next government in a democratic electoral process. Under the Transitional Administrative Law, elections for a transitional national assembly must be held not later than 30 December 2005.

The transitional national assembly will draft a permanent constitution for the Iraqi State. Thereafter, general elections will be held, pursuant to the constitution, to form an Iraqi government.

The Interim Iraqi Government: basic facts

The general framework for the Interim Government

The Interim Government works in accordance with the legal framework established in the Transitional Administrative Law, of which a copy is annexed hereto.

On 30 June, power was transferred to the Interim Government, the mandate of which will come to an end upon the selection of a transitional government in democratic elections to be held not later than 31 December 2005.

The Interim Iraqi Government consists of the President, the two Vice-Presidents, the Prime Minister and the Deputy Prime Minister.

The new Government will also include an interim national council representing all sectors of Iraqi society.

The Presidency Council

The Council of the State Presidency consists of the President and the two Vice-Presidents. It represents the sovereignty of Iraq and oversees the highest affairs of State. The Presidency carries out protocol functions and its unanimous approval is required for executive orders issued by the Prime Minister.

The Prime Minister and the Council of Ministers

The Prime Minister has responsibility for the day-to-day running of government and the Ministers report to him. The Government has the task of improving the security situation, steering economic development and preparing for democratic elections in December 2005.

The Council of Ministers, with the unanimous approval of the Presidency Council, issues orders and regulations that have the force of law. The interim national council will have the power to veto those orders and regulations by a two-thirds majority vote.

The National Conference Higher Preparatory Committee and the interim national council

The Higher Preparatory Committee consists of 94 Iraqis, including representatives of the governorates, former members of the Governing Council, and other distinguished persons.

The Committee has the task of organizing a national conference for not less than 1,000 participants, the purpose of which is to launch a meaningful dialogue on the challenges facing the country. The national conference will be held in July and will bring together Iraqis representing each of the governorates, depending on the relative size of the population, as well as political parties, tribal leaders, trade union federations, universities, religious leaders and a number of distinguished Iraqis.

The national conference will elect a 100-member interim national council to assist and oversee the Government. As stipulated in the annex to the Transitional Administration Law, the council will be able to canvass the views of the public, offer the Government political advice and establish committees. In addition, it will have the right to veto the Cabinet's orders and regulations by means of a two-thirds majority vote of its members. It will have the authority to appoint replacements to the Presidency Council, in cases of death or resignation, and will also have the right to approve the 2005 Iraqi national budget.

The judicial authority

The judicial authority is independent from the executive branch of Government, as stipulated in the Transitional Administrative Law. The federal branch of the judiciary will consist of the Federal Supreme Court, the Court of Cassation, the appeal courts and the Iraqi Central Criminal Court, together with the courts established in the region of Kurdistan. There will also be a higher juridical council to supervise the federal judiciary and manage the budget.

Powers of the Interim Government

The Interim Government which assumed power on 27 June will have complete sovereignty over the management of Iraq's affairs. It will have the authority to conclude international agreements on economic reconstruction, including Iraq's sovereign debt. However, it will not have the power to amend the Transitional Administrative Law or conclude agreements that affect the future of the elected Government or the destiny of Iraq. The Iraqi people have already made it clear that only an elected government can have such powers.

The Interim Government will act in accordance with the laws specified in the Transitional Administrative Law, including the annex thereto. The Transitional Administrative Law provides

a list of the Iraqi people's historical rights and a blueprint for the creation of a permanent constitution in 2005.

Annex to the Transitional Administrative Law

The annex to the Transitional Administrative Law describes the legal norms that apply to the Interim Government.

The annex defines the powers of the Interim Government. The Interim Government is only a provisional Government.

Composition of the Interim Government

Mr. Lakhdar Brahimi, Special Adviser to the Secretary-General of the United Nations, visited Iraq in February 2004, at the invitation of the Governing Council and the Coalition Provisional Authority (CPA). His mission was to provide advice on the feasibility of holding elections by 30 June 2004, the deadline for the handover of power and the ending of the occupation. After that fact-finding visit, the United Nations team accompanying Mr. Brahimi decided that the minimum period required for the holding of free and fair elections and the launching of the electoral process was eight months.

The Governing Council and the CPA invited Mr Brahimi to return to Iraq to hold wide-ranging consultations with the Iraqi people, with a view to reaching a consensus on the Interim Government that would assume power on 30 June 2004, pending the holding of elections at the earliest possible date, and in any case not later than 31 December 2005.

Over the past few months, Mr. Brahimi held intensive consultations with Iraqis in all parts of the country. Political leaders, religious leaders, professional and civil associations, trade unions, universities and women's groups expressed their desire to nominate some of the members of the Interim Government. Mr. Brahimi was given the opportunity to travel to Mosul, Irbil, Basra and other parts of Iraq. He found that the Iraqi people clearly wanted the Interim Government to be made up of impartial and competent individuals who would perform their functions until democratic elections could be held.

The situation of women and children

The erroneous policies of the former regime brought about a sharp deterioration in the situation of women and children. The damage caused to this sector of society is briefly described hereunder.

The situation of children

1. Children, particularly juveniles, were employed below the legal age for employment and 12-year-olds were allowed to work in accordance with Revolution Command Council Decree No. 1362 of 1984. Since the minimum age for admission to employment is 15 years, the Ministry of Labour and Social Affairs has taken the necessary steps to repeal the decree.

2. The number of cases of child psychological trauma increased as a result of a succession of unjustified wars and constant bombardment of civilian residential districts, which affected children, women and older persons in particular.

3. Children attending day nurseries run by the Ministry of Labour and Social Affairs have no access to modern educational and recreational resources.

4. The health and environmental conditions in a large number of the Ministry's day nurseries in Baghdad and other governorates are very bad.

5. The phenomenon of street children, homeless children and child beggars has spread.

6. Growing numbers of children are dropping out of school and abandoning education.

7. There was an increase in the number of minors orphaned because their fathers died in wars imposed by the policies of the former regime.

The situation of women

1. There has been an increase in the incidence of miscarriage and neonatal genetic deformities. No appropriate treatment is available for these conditions.

2. A growing number of women were widowed after their husbands were forced to take part in unjustified wars.

3. Material need and the spread of poverty have damaged the social structure of the family, triggering a sharp rise in divorce.

4. The percentage of women who are single has increased; some statistics show that, in Iraq, around 1 million women between the ages of 35 and 40 are not married.

5. The repressive policies of the former regime reduced women's opportunities for training and vocational training.

6. Many women had to leave their jobs in the civil service because of poor rates of pay that are insufficient to meet their family's daily needs.

7. There has been an increase in the proportion of women suffering from serious illnesses such as cancer of the womb, ovarian cancer, breast cancer, renal cancer, and other diseases caused by the poor socio-economic and health conditions of the Iraqi family.

In this connection, in 2000, the United Nations Children's Fund (UNICEF) and the Central Bureau of Statistics published a joint survey showing that Iraqi children have been deprived of the most fundamental rights guaranteed them under the Convention on the Rights of the Child, including the right to health, education, leisure and a decent life, and that a large number are orphans, street children and child beggars who have dropped out of school. The situation is described in detail hereunder.

A. Enrolment in primary education

The survey shows that 88.3 per cent of children enrol in the first grade of primary school and continue their studies up to the fifth primary grade. Of these, 92.2 per cent are boys and 83.6 per cent girls.

B. Water and sanitation

A total of 83.3 per cent of the population of Iraq has access to sources of safe drinking water. The majority (97.5 per cent) of the urban population receives its water from those sources, as compared with only 51.5 per cent of the rural population. This percentage remains low because, given the current situation in Iraq, water purification projects have been disrupted and water collection facilities have not been built. In rural areas, the proportion of housing units connected to public water networks amounts to only 27.1 per cent, as compared with 77.8 per cent in towns.

C. The nutritional situation

In order to evaluate the nutritional status of children, UNICEF and the World Health Organization (WHO) devised quantitative measures to compare the nutritional status of children in other countries, in a range of different categories, with that of children in Iraq. Three main measures are used. They are the indicators of:

1. Malnutrition;

2. Stunting; and

3. Wasting.

With regard to malnutrition indicators, the survey found that:

- A total of 15.9 per cent of children suffer from severe or moderate malnutrition and 2.5 per cent suffer from severe malnutrition;

- A total of 22.1 per cent of children suffer from moderate or severe stunting and 6.4 per cent suffer from severe stunting;

- A total of 5.9 per cent of children suffer from moderate or severe wasting and 1.2 per cent suffer from severe wasting;

- Furthermore, malnutrition indicators (underweight, stunting and wasting) are higher in rural areas than urban areas, at both the moderate and severe ends of the scale.

Immunization coverage

UNICEF and WHO recommend immunizing children against tuberculosis, administering three doses of the triple vaccine (to protect them against diphtheria, pertussis and tetanus) and vaccinating them against infant poliomyelitis and measles three times during the first 12 months of life within the framework of a specially designed national immunization programme.

According to the survey, a total of 91.7 per cent of children aged between 12 and 23 months are immunized against tuberculosis. The percentage of children given the first, second and third doses of the triple vaccine amounts to 85.5 per cent, 78.0[†] per cent and 68.9 per cent respectively. The proportion of children who receive the zero dose and the first, second and third doses of the polio vaccine amounts to 73 per cent, 93.5 per cent, 89.4 per cent and 81.8 per cent respectively. As for the proportion of children given the measles vaccine, this amounts to only 78.2 per cent. The survey showed that 60.7 per cent of children had received all of the aforementioned vaccines. The percentage of children who had completed a full course of the recommended vaccines amounted to only 70.3.

Pre and perinatal care

Perinatal care that is supervised by trained medical personnel is important for ensuring a safe delivery, both for the woman and the child, since it makes use of appropriate techniques. It also reduces the possibility of complications during delivery and allows for faster treatment of any health problems that may occur. According to the survey, 76.4 per cent of women between the ages of 15 and 49 years receive prenatal care under the supervision of a doctor, while 22.4 per cent receive no form of prenatal care. The percentage of women receiving care under a doctor's supervision is much higher in urban than rural areas.

Children's living conditions

According to the survey, 94.8 per cent of children live with their parents and 2.7 per cent live with their mother only, because their father has died. According to the figures in one of the tables, 3.5 per cent of children have lost one or both parents.

Child labour

According to another table in the survey (table 40), at the time the survey was conducted, 14 per cent of children between the ages of 5 and 14 years were currently working. The percentage was higher in rural areas, where 27.8 per cent of children were working, while the percentage of working children in the younger age group (5-9 years) amounted to 6.9[‡] per cent.

All the above-mentioned material and moral circumstances of children's families have contributed to a sharp increase in the number of children who drop out of school, especially during the primary and secondary stages, in order to support their families, which have been ground down by the circumstances inflicted on them, as on all sectors of society, by the methods of the former regime.

[†] Translator's note: The figure given in the Arabic text is incorrectly transcribed from the 2000 Multiple Indicator Cluster Survey. There are also slight variations between the figures contained in the survey tables and those discussed in the body of the survey report. Where reference is made to a specific figure in a table, the figure as it appears in the table is given here.

[‡] The figure in the Arabic text is incorrectly transcribed from the original.

The economic, social and cultural situation

At the time it was established, the Governing Council inherited a heavy legacy, consisting of a situation of economic, social and cultural decline, accompanied by a deteriorating security situation which prevented the competent authorities from implementing reform programmes and plans and creating the basic conditions required to boost the economic sectors and economic activity. In spite of the huge burden of that legacy and the limited availability of resources, many achievements were scored and several programmes were put in place in various sectors, as described hereunder.

Economic rights

The Governing Council and the CPA took the necessary decisions to try to kick-start the Iraqi economy and to improve living standards in accordance with rules and procedures designed to coordinate movements of prices, wages and salaries with financial, monetary, and fiscal, policies; the economic decline caused by wars and sanctions had depressed per capita income, affecting living standards, particularly for persons with limited incomes. The fact that more than 50 per cent of household income was being spent on food made it more difficult for people, particularly those on limited incomes, to get by, and made it impossible to satisfy other basic needs, since the bulk of the family's income went on food.

This is why one of the first decisions that was taken was to revise current salaries upwards and extend salary scales vertically and horizontally, taking account of qualifications and length of service, so as to achieve equity to the extent possible and distribute the benefits of the new system to all State employees, without discrimination among them on grounds of race, religion, denomination or sex.

One effect of the introduction of the new system, which was accompanied by the issuance of a new currency that won the confidence of, and acquired stability on, the market, was to stimulate the market by increasing the purchasing power of citizens, particularly State employees.

The liberalization of imports and exports has also stimulated trade at home and with neighbouring States and the rest of the region. It has had a positive impact on the economic situation in general, although it does have a number of drawbacks, which include the lack of health controls, the non-application of national and international standards, and the flooding of the market with inferior goods and materials. It is hoped that, when security and stability are restored, there will be high levels of economic activity that will benefit all citizens and have the knock-on effect of creating prosperity and improving citizens' standards of living, without any form of discrimination among them.

The development experiments of recent decades have clearly failed, since higher growth rates do not necessarily translate into better lives and the satisfaction of people's basic needs. The strategies adopted created further poverty and worsened living conditions for the vast majority of the people. For that reason, any development programmes will focus in future on people's basic needs, which constitute the foundation of the contemporary concept of development, and development priorities will be directed towards the satisfaction of those needs.

Perhaps one of the clearest symptoms of the erosion of economic rights is the national unemployment rate. Recent surveys show that approximately one third of the country's workforce is unemployed. The impact of this phenomenon is exacerbated by the fact that the Iraqi economy is currently unable to achieve natural growth and to generate many employment opportunities, particularly in urban centres. This phenomenon will be accorded priority and efforts will be made to curtail it.

Social rights

The State's programmes and policies define the direction of both economic and social activities with a view to integrating them. One of the aims of production must be to expand the range and improve the quantity and quality of social services that are offered to citizens.

In general terms, the aim of social development is to increase the number of existing service units to a satisfactory minimum and in so doing to increase the number of beneficiaries of different services. This aspect of development focuses on quantity in terms of increasing the number of units providing services to citizens, distributing those units in a balanced manner among the different regions of Iraq with a view to satisfying their needs, while taking account of the respective needs of urban and rural areas. If social development is inextricably linked to economic development and revolves around the potential created by developments in the manufacturing and agricultural sectors, services are also inter-linked and need to be planned in a coordinated and coherent manner in order to avoid duplication in service provision. Proper planning of services begins from the bottom up, since top-down planning may overlook practical problems and fail to take account of the needs of local communities. Needs-based services can be divided into the following two main categories:

- Basic services: such as educational, health and cultural services, security, justice and defence, social and religious services, government planning services and personal services;

- Public services: such as housing, transport and public utilities, road building and maintenance, and leisure and tourism services.

The State will endeavour to implement its strategies and objectives in the social services domain and facilitate public access to those services. It will establish guidelines for basic and public service activities, since they constitute the pillars of social development and the object of people's desires. These services include:

Educational services: which will focus on designing educational plans, expanding the number of schools, colleges and faculties that can accommodate students and improving the quality of education;

Health services: which will focus on health care provision and the delivery of health services to citizens in urban and rural areas;

Housing services: which will focus on providing suitable accommodation for citizens in towns and villages;

Youth services: these services include those that cater for the scientific, artistic and social needs of young people, as well as programmes designed to develop their personalities in accordance with the philosophy and aims of society;

Social and religious services: social development rights guarantee the freedom of the individual and the special rights and freedoms derived from divine laws, religions and noble principles that seek to do the best for society, improve social equality and justice, remove social inequities and distribute the country's resources equitably among the people;

Tourism services: the plans relating to tourism activities are designed to develop and stimulate domestic tourism, expand tourist facilities, implement a number of essential tourist projects, establish welcome centres and tourist hotels, and provide essential services supplies.

In striving to deliver the above-mentioned services to all citizens, without discriminating among them or against particular groups, the State will also endeavour to give citizens an active role in the planning and implementation of these projects and to use these projects to guarantee the right of all Iraqis to equality of opportunity without discrimination.

Since culture and awareness are important components of social development, they will be dealt with in detail in a separate section here below.

Cultural rights

Culture is one of the basic necessities of life as far as citizens are concerned. It is no less important than the other services that are provided to citizens during different stages of their lives, beginning at kindergarten and proceeding through school all the way up to higher education, and including leisure and amusement facilities and cultural clubs. Culture serves as an effective tool in preparing free human beings who are capable of taking responsibility and achieving material and spiritual progress for themselves and their community. Moreover, the inculcation of democratic principles in citizens from their early years develops their capacity to contribute to political decision-making and to play a more active and effective part in the political life of the community. The State will continue to expand the country's solid cultural base by guaranteeing everyone the freedoms of thought, expression and opinion, encouraging cultural and artistic creativity, and promoting the right to establish cultural associations and print and audiovisual media organizations. It will endeavour to unleash the individual's creative potential as both a means and an end in the building of a new life and the affirmation of his independence and human spirit, expressed in the context of the rights and obligations of citizenship and his personal aspirations.

The State intends to support and develop cultural institutions and media that take an interest in cultural affairs, including radio and television, theatre and the arts, tourist activities, museums, libraries and exhibitions that provide citizens with knowledge that throws light on their contemporary identity in the modern world, raises their awareness and enables them to adjust to their contemporary environment, including the impact of globalization on culture.

Special attention will be devoted to children's culture, in accordance with the Convention on the Rights of the Child, which calls on States to recognize the important function performed by the media and to ensure that children have access to information and material from a diversity of national and international sources, especially those aimed at the promotion of their social, spiritual and moral well-being and physical and mental health. To that end, the media will endeavour, with the encouragement of the State, to disseminate information and material of social and cultural benefit to children. The State will also encourage the production and dissemination of children's books and encourage the mass media to have particular regard to the linguistic needs of the child and the protection of the child from information and material injurious to his or her well-being.

All these services will be provided to all citizens without discrimination, according to their respective indigenous languages and cultures. The liberation of women and the assertion of their human rights is a liberation of society itself. The assertion of women's rights has been given priority, since it will allow women to participate widely in different areas of life, strengthening their involvement in power structures and the decision-making process, safeguarding their rights, protecting them against violence, improving their access to health and educational services and increasing their economic independence.

Treatment of prisoners

1. On the morning of 7 March 2004, the Ministry of Justice held a meeting with Mr. Edward Schmultz, the United States Coordinator for the CPA. Mr. Bartlett, the CPA supervisor of Iraqi prisons, also attended. The issues discussed at the meeting included the following:

- Local media reports about abuses carried out by United State prison guards against women prisoners in Abu Ghraib prison. The Ministry of Justice asked the Coalition forces to launch an in-depth investigation and to inform it of the outcome;

- The CPA supervisor of Iraqi prisons indicated that an investigation had already been launched into the reports about abuses of female prisoners. He said that he would inform the Ministry of the outcome. He added that the abuses had occurred before the women had been transferred and placed in the care of United States guards and that there was evidence to suggest that some members of the Iraqi police were also involved. He stated that he was not aware that there were any women in Abu Ghraib prison, since the only prisoners there were men. He said that he would look into the matter and would pass on the details to the Director-General of Corrections for transmittal to the Ministry of Justice.

2. The Ministry of Justice sent a letter dated 7 March 2004 addressed to the CPA and to Mr. Edward Schmultz, pointing out that the story had been given wide play in the press. For example, in its issue No. 102 dated 1 March 2004, a newspaper called Al-Nahda had published an article, entitled: "Abu Ghraib prison, a market for strange stories about women". According to the article: "The residents of the area close to the prison are saying that letters have been smuggled out containing reports that a number of women detainees have been indecently assaulted and are saying they would rather die than live. They have appealed for help from important persons and local religious leaders and have called for someone to blow up the prison, with the inmates inside, since they can no longer go on living either in the prison or outside.

Indeed, people living close to the prison are abandoning their homes for fear of being harmed in an explosion." Since we live in a conservative, eastern society where the overwhelming majority of the people are Muslims, among the different aspects of the concept of honour, that aspect which relates to sex, sexual dishonour and the purity and virtue of women is accorded special importance. In order to wipe away the stain of dishonour, a man and woman who engage in illicit fornication must be killed or the woman and the person who commits an assault upon her honour, modesty or life must be killed, regardless of how the incident occurred.

Based on the Ministry of Justice's assessment of the grave nature of this matter, it explained in its letter that such abuses constitute a violation of human rights, of the Geneva Conventions and of order No. 2, dated 8 June 2003, and memorandum No. 10, dated 8 June 2003, which were issued by the CPA itself.

The Ministry of Justice ended by asking for due note to be taken of this grave matter and for an investigation to be launched at the earliest possible juncture. It also asked to be informed of the outcome.

3. Representatives of the Ministry of Justice had a meeting with Ambassador Bremer on Monday, 7 March 2004 to discuss the matter. They subsequently received a letter, dated 11 March 2004, from Mr. Edward Schmultz. Referring to the meeting and the questions raised by the Ministry's representatives on the subject, inter alia, of torture of prisoners in Abu Ghraib prison, he confirmed that the CPA had undertaken to conduct a separate investigation into that allegation, which related to assaults committed using electrical batteries and humiliating treatment and sexual abuse. He said that a separate administrative investigation had been launched and the senior command would take appropriate action after examining the findings.

With regard to press reports about sexual abuse of inmates in Abu Ghraib prison, Mr. Schmultz told us that he was unable to confirm whether the investigations covered that allegation. However, the CPA was attempting to determine whether the reports were credible. With regard to the Ministry's letter about the Coalition forces' ill-treatment of the population of the Azamiyya district, which is a devout community, he replied: "Unfortunately, we are unable to find this letter and would ask you to send us another."

4. On 4 May 2004, the Ministry of Justice sent the CPA a letter referring to information indicating that Coalition forces responsible for prisoners' affairs were continuing to perpetrate indecent acts against Iraqi prisoners and detainees. The Ministry described these humiliating, immoral and inhuman practices as an expression of moral decay and abhorrent crimes that were condemned in international conventions, particularly subparagraph (a), paragraph 1 of article 2 which is common to the four Geneva Conventions of 1949. Accordingly, the Ministry called on the CPA to set up an independent commission of inquiry, under the supervision of Amnesty International and with Iraqi representatives, to investigate those responsible for committing these shameful acts. It also asked that the Iraqi Department of Corrections (which is responsible for prisons) be allowed to take over the supervision of prisons and prisoners and that an invitation be issued to the International Committee of the Red Cross and the Organization of Red Crescent Societies to visit the prisons and talk to detainees and prisoners.

5. The Ministry received a memorandum, dated 7 May 2004, from Mr. Schmultz, confirming that the United States had conducted a criminal investigation into ill-treatment of prisoners at

Abu Ghraib prison and that, after that investigation, General Sanchez, the commander of the forces in Iraq, had asked for a separate administrative investigation to be launched into the internal administrative procedures and rules relating to the detention of prisoners. The investigation had been completed, General Sanchez had approved the recommendations made, and he had decided to discipline six individuals occupying positions of responsibility in Abu Ghraib and to impose a lesser penalty on a seventh. The six persons in question had been charged with conspiracy, dereliction of duty, cruel treatment, abuse, and engaging in immoral conduct. The evidence consisted of photographs of individuals occupying different positions in the prison who could be seen committing inappropriate acts with the prisoners, some of them of a sexual nature. The new prison command was aware of the situation and had been ordered to exercise strict vigilance in order to prevent abuse of Iraqi prisoners. He said that the United States military and the United States of America condemned the abuse and would do everything in their power to put a stop to it and punish those who had perpetrated or encouraged it.

6. The Deputy Minister of Justice and the Superintendent of the Department of Corrections visited Abu Ghraib prison, together with the Director-General of Corrections and two members of the Coalition forces responsible for supervising the prisons. The Deputy Minister learned that, on the day of his visit, a total of 1,211 prisoners were being held in the prison. That figure can be broken down as follows:

1. A total of 338 individuals had been incarcerated by the Coalition forces without a formal investigation having been initiated or an arrest warrant issued. The members of the Coalition forces were told that the Ministry would send investigating judges to question the individuals concerned. They replied that the prisoners would be interrogated and, if no evidence was found against them, they would be released. The representatives of the Ministry made it clear that these kinds of arrests are a violation of human rights and of the law. It is illegal to detain a person without an arrest warrant;

2. A total of 251 individuals were being held even though the time limits for their detention had already expired. The only option was to send judges, at least once a week, to find out what was happening to them, since the sheer numbers involved precluded the possibility of taking the detainees to the investigating judges and the journey would in any case pose a security threat;

3. A total of 352 individuals had been convicted.

The delegation from the Ministry of Justice discovered that the prison infirmary was short of medicines and that it had no fans or air conditioners, even though it was summer.

The Juridical Council was informed that investigating judges would be dispatched to deal with prisoners who had been detained without an arrest warrant and/or who were being held in the prison beyond the legal time limits.

7. On 17 May 2004, the Ministry of Justice asked the Civilian Governor of Iraq to reopen the Department of Public Prosecutions, which would come under the Iraqi Department of Corrections. Before the fall of the former regime, the Department of Public Prosecutions had responsibility for enforcing legal decisions, judgements, penalties and other measures in accordance with article 1, paragraph 4, and article 18 of the Department of Public Prosecutions

Act No. 159 of 1979. The Department was closed down after the fall of the regime and its functions were suspended.

In the light of these circumstances and new developments, the Department needs to be reinstated so that it can liaise with the Coalition forces running the prisons to organize visits to detainees and prisoners at Abu Ghraib and elsewhere in order to verify the conditions in which prisoners are being held and investigate and resolve their problems.

Our sense of responsibility, our principled and moral commitment to the promotion and protection of human rights and our assessment of the extremely damaging consequences of these human rights violations are just some of the many factors that have prompted us to refer, on this occasion, to the current position taken by the international community on these kinds of issues. For example:

– According to article 4, paragraph 1, of the second Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol II), which was adopted on 8 June 1977: "All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely."

Paragraph 2 of the same article specifies the acts referred to in article 1 that are and shall remain prohibited at any time and in any place whatsoever. They include violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; and threats to commit any of the foregoing acts.

General Assembly resolution 43/173, adopted on 9 December 1988, produced a body of principles for the protection of all persons under any form of detention or imprisonment, stipulating that they must be treated in a humane manner and with respect for the inherent dignity of the human person. According to the second of these principles: "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose."

Article 76 of the Fourth Geneva Convention adopted on 12 August 1949 and article 5, paragraph 2, subparagraph (a), of the second Protocol Additional to the Geneva Conventions of 12 August 1949, adopted on 8 June 1977, stipulate that women shall be held in quarters separated from those of men and shall be under the immediate supervision of women. Article 76, paragraph 1, of the first Protocol Additional to the Geneva Conventions, adopted on 8 June 1977, furthermore stipulates that women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault, while, under article 7, paragraph (a), of the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the States parties undertake to refrain from engaging in any act or practice of violence and to ensure that institutions act in conformity with that obligation.

Today, more than at any time in the past, women need to be afforded special protection against outrages upon their person and against violence and sexual abuse committed by prison officers or guards. This requires an intensive effort of awareness-raising and education about the importance of women and honour and the way that most Iraqis correlate the one with the other.

Today, everybody is aware of the large number of standards established in international treaties, human rights instruments and international humanitarian law to put a stop to torture and other cruel, inhuman or degrading treatment or punishment. As mentioned above, these include paragraph 1, subparagraph (a), of article 3 which is common to all the Geneva Conventions of 1949. It stipulates that, with respect to persons taking no part in hostilities, acts of violence to life and person, in particular murder, mutilation, cruel treatment and torture, are prohibited at any time and in any place. Article 75, paragraph 2, subparagraph (a), of the first additional Protocol to the Geneva Conventions and article 4, paragraph 2, subparagraph (a), of the second additional Protocol prohibit any form of violence to the life, health or well-being of persons, in particular murder, torture and mutilation. Similar provisions are contained in article 27, paragraph 2, of the American Convention on Human Rights and article 15, paragraph (2), of the European Convention on Human Rights.

Article 7 of the Rome Statute of the International Criminal Court confirms the grave nature of the offence of torture in explicit terms by designating it as a "crime against humanity". Article 8, paragraph 2, subparagraph (ii), of the Statute defines acts of torture or inhuman treatment as "war crimes" which constitute grave breaches of the Geneva Conventions of 1949.

It must be stressed that non-respect for human dignity cannot be justified on any grounds, nor can it be used for the infliction of any punishment. International human rights law does not permit the restriction of these rights, even in the most dangerous circumstances. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, stipulates, in its article 2, paragraph 2, that: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

Article 13 furthermore stipulates that: "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities." Similarly, article 5 of the Inter-American Convention to Prevent and Punish Torture of 1985 states that: "The existence of circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance ... or disasters shall not be invoked or admitted as justification for the crime of torture." It also stipulates that: "Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture."

Article 86, paragraph 2, of the second Protocol to the Geneva Conventions establishes that: "The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

The competent Iraqi authorities intend to establish basic principles and devise measures to guarantee compliance with the law and respect for fundamental rights and to put an end to these kinds of violations. The only way to achieve this is to change prison guidelines and procedures and to change the people who run the prisons by giving them intensive human rights and behavioural training and teaching them about the character of the Iraqi people, a people who come from an ancient civilization and have a deep-rooted sense of integrity, nobility, pride and respect for themselves and for that which is sacred, as well as a passionate attachment to freedom, dignity and virtue. The only way to achieve this is to set up independent inspection teams that will carry out their duties, in a methodical manner, in all places of detention, looking into violations of the human rights of persons who have been deprived of their freedom, especially women. Clearly, the members of these teams must be allowed to communicate freely or confidentially with the detainees and prisoners, and must report on their findings. At the same time, detainees and prisoners must be given the opportunity to find out about the procedure for making complaints and the authorities must react promptly by launching investigations that demonstrate a high degree of rigour and impartiality. If violations are committed, such investigations must produce meaningful outcomes, i.e. the offender or offenders must receive appropriate punishments that are commensurate with the gravity of the violation. The person whose rights have been violated must also be compensated.

The Ministry of Justice called for the creation of an independent judiciary that is capable of translating these principles into facts on the ground. The CPA responded by issuing an order for the establishment of the Juridical Council, which will be vested with responsibility, inter alia, for scrutinizing the conduct of the judiciary and members of the Department of Public Prosecutions and imposing disciplinary measures - including dismissal - upon those found guilty of improper conduct. The Council will also have responsibility for other matters, such as the nomination of persons eligible for appointment as judges or members of the Department of Public Prosecutions, and appointments to judicial office.

Freedom of religion and belief

Since the fall of the dictatorship on 9 April 2004, there has been a clear and palpable shift in the way that Iraqis from all religions and denominations perform their religious observances, beliefs and rites, a right that was denied them for many long years. Perhaps the first manifestation of this was the participation of hundreds of thousands of Iraqis in the pilgrimage to Karbala in May 2003, which marked the anniversary of the fortieth day after the death of Imam Hussain. Since Iraqis felt that they had been liberated from all the forms of repression imposed on them by the loathsome dictatorship, in the first few hours after the liberation they began to exercise their right to freely express their beliefs and ideas. They began to found a number of non-governmental organizations and publish magazines that disseminated all kinds of information about their respective religions, denominations, doctrines and ideas, without fear or trepidation. It is worth noting that the Iraqi people come from many religious traditions andbackgrounds. Although the overwhelming majority are Muslims, there are also Christians, Mandaeans, Yazidis and others who enjoy complete freedom and the right to express their opinions and beliefs and practise their religious observances as they see fit, without prejudice to other religions.

The fact that the Iraqis have won this freedom has enraged some extremists and others whose interests lay with the fallen regime. Afraid that Iraq will achieve stability and progress on

the basis of a new form of democracy, they have attempted to exploit certain religious occasions to stir up trouble and destroy and destabilize Iraq, as happened in Kazimiyah and Karbala on the tenth day of the month of Muharram and in a number of Islamic, Christian, and other houses of worship in Kurdistan, during the recent celebration of Id al-Adha.

The forces of international terrorism that are trying to settle their accounts with the United States Administration and the powers which supported it want to gain a foothold in Iraq. The Iraqis understand better than anyone that these terrorist practices are specifically targeted at them and are designed to split their ranks and stir up sectarian, racial and ethnic strife that will lead to internal conflict. They also understand that the only persons to benefit from such a situation would be the supporters of the former regime and extremists and fundamentalists.

Other civil and political rights

The repressive regime that ruled Iraq for four decades denied all Iraqis their civil and political rights, practising arbitrary detention, using torture to extract confessions, carrying out summary executions and banning political parties that did not share the ideology of the ruling party. Newspapers, magazines and books were strictly censored by the security forces and intelligence services, and laws and decrees were introduced to restrict the right to publish and limit the availability of information to that provided by the regime and its leader (both the individual and the party). After Iraq was liberated from that regime and was placed under United States and United Kingdom occupation the idea of political freedom took hold, to some extent, and individuals began to sense that they would be given their civil rights. The occupation forces introduced some new principles that had not prevailed in Iraqi society during the previous 40 years. These included the right of the individual to a fair trial and the right, upon arrest, to be informed of one's civil rights before making a statement or a confession. Torture is now prohibited (by law) and the special courts have been dissolved. Tens of political parties, non-governmental organizations, cultural, social and political associations and groups, and trade unions have been set up and tens of daily and weekly newspapers and magazines of various kinds have appeared. Hundreds of different books reflecting different points of view and ideas have been published, and the Transitional Administrative Law of 8 March 2004 recognizes the Iraqi people's right to elect their president and head of government in a democratic process in which there will be no outside interference. This, God willing, is what will happen at the end of next year.

The acts perpetrated by the occupation forces against Iraqi prisoners in a number of Iraqi prisons and detention centres contravene the principles and purposes of the Geneva Conventions. Minors and adults have been held in the same quarters and prisoners detained for security reasons have been put together with those being held on criminal charges. The quality of services provided to everyone is low and several prisoners, particularly men and women accused of offences against security, have been subjected to humiliating treatment that was shown by all the media. This is in addition to the daily acts of humiliation perpetrated by occupation soldiers against people on the streets, in their homes, at work, in places of worship, at gatherings, etc. The occupation forces have furthermore closed down some newspapers and magazines for various reasons. Iraqis have also experienced some of the negative effects of their newly-won political freedom, with clashes erupting between political parties and their militia. In addition, the lack of security has led to an increase in the crime rate and in cases of robbery, rape, abduction and murder.

It is vital to undertake a wide-ranging review of all the laws and decrees issued by the now defunct regime with a view to repealing all the provisions that are incompatible with human rights principles. Joint committees of the Ministry of Justice and the Ministry of Human Rights have been established to review the laws enacted between 1968 and 2004 in order to establish a system of law that is consistent with domestic and international human rights principles.

Courts have been set up to try the leaders and figureheads of the previous regime for the crimes they committed against the Iraqi people and to hold them to account for the tragic situation now facing the Iraqi people.

Economic, social and political rights

After the fall of the previous regime, there was an improvement in the economic circumstances of many groups in Iraqi society, particularly those who had long suffered from deprivation and poverty, such as civil servants and persons with limited incomes. While their salaries and wages were doubled, a number of Iraqis, including ordinary (and more senior) members of groups affiliated to the ruling party and members of the military, the intelligence services and certain ministries, were stripped of the income and benefits they had received under the former regime. Insecurity and instability have hampered reconstruction projects, raising the unemployment rate to an estimated 50 per cent of the Iraqi workforce (and sometimes more). Repeated terrorist attacks against Iraqi oil pipelines and electricity-generating stations have exacerbated the suffering of the Iraqi people by generating daily crises (such as petrol crises, protracted electricity blackouts, etc). This has all been accompanied by large and significant increases in the prices of many goods and services, which have reduced the overall standard of living of all members of Iraqi society. It should be mentioned that Iraq ratified the International Covenant on Economic, Social and Cultural Rights in 1976.

It may also be useful to mention that the breakdown of security and the constant and protracted electricity blackouts that have taken place since the fall of the regime have adversely affected education in Iraq, since many parents refuse to send their children, particularly their daughters, to school. The situation has also had a negative impact on students' ability to keep up with their studies. Comprehension rates have fallen and there has been a marked and regrettable increase in school drop-out rates.

The situation of the health sector has also worsened considerably, both for the reasons mentioned above and because hospitals, health centres, Ministry of Health warehouses and pharmacies were looted, plundered and sabotaged after the fall of the regime. It should be pointed out that some of these activities were carried out in full view of the occupation army. A new phenomenon has appeared in Iraq, which has contributed to the deterioration of the health service. It is the abduction of doctors, who are murdered or threatened in order to secure payment of a ransom in exchange for their release. Because of this, several doctors have been forced to emigrate, depriving the country of their much-needed skills and services and further widening the gap between national health performance indicators and international health standards.

On the administrative and financial front, corruption has spread and equipment, supplies and hardware have been stolen and smuggled abroad. Major investigations have been launched into these offences and some of the guilty parties have been prosecuted. The quality of

municipal services is very low, particularly with regard to drinking water. Many Iraqis have contracted a variety of diseases caused by contaminated drinking water and inadequate health controls of food and drinks manufactured at home or imported from abroad. The sanitation system is in a dire state. In many districts of Baghdad and other cities, there are foul-smelling overflows that damage human health. Streets and public gardens have been turned into rubbish dumps and tips for the disposal of various kinds of debris. Perhaps the most serious threat posed to the Iraqi environment is the theft and looting of equipment and supplies that once belonged to the Atomic Energy Organization and a number of military industrial plants (particularly those involved in nuclear and chemical manufacturing).

The persons harmed by the former regime are still waiting for compensation, although a national compensation commission has been set up, with links to the Bar Association, and has received an initial injection of capital amounting to $25 million.

The Ministry of Human Rights

In April 2003, after the fall of the regime, the decision was taken to establish a ministry for human rights. One of the Ministry's basic objectives is to create the right conditions for the enjoyment of human rights and to prevent violations being committed by any authority, organization or political party. The Ministry also has responsibility for disseminating a human rights culture among Iraqi society and creating a climate conducive to respect for human rights so as to make them a normal part of everyday life in Iraq. The Ministry has to deal with the legacy of the former regime and document the human rights violations committed during its reign. It will also review all laws and decrees with a view to removing any provisions that may be incompatible with human rights.

Since its establishment, the Ministry has used all the means and resources at its disposal to pursue these objectives. It has devised plans for a number of projects, the most important of which entail:

- The development of a national human rights monitoring network;
- The creation of a compensation fund, enjoying financial autonomy, to provide at least minimum compensation to Iraqis damaged by the policies of the former regime;
- The establishment of the Iraqi National Institute for Training in Human Rights;
- The founding of a centre that will research and analyse Iraqi public opinion trends with respect to government programmes and plans and institutions;
- The creation of the Iraqi human rights documentation centre, which will build up an archive of official documents of the former regime relating to human rights violations;
- The establishment of a statistical office specialized in research on, and establishing what has happened to, disappeared persons.

The Ministry of Foreign Affairs and the Ministry of Human Rights took an active part in the proceedings of the regular and special sessions held by the Human Rights Committee of the League of Arab States to update the Arab Charter on Human Rights and in the sixtieth session of the Commission on Human Rights which was held at Geneva from 15 March to 23 April 2004. A number of Ministry personnel also took part in a special session on human rights that was jointly organized by the Arab Institute for Human Rights and other regional and international institutions and organizations to provide the Ministry's cadres with training and develop their skills.

The Ministry has set up an office to monitor violations in Abu Ghraib prison and some officials from the office have paid several visits to the prisoners to verify the conditions in the prison and the services and treatment that prisoners are receiving. The Ministry is determined to prevent the recurrence of the violations that were perpetrated against Iraqi prisoners in Iraqi prisons.

In conjunction with its counterparts in Irbil and Suleimaniya, the Ministry organized a national conference, at Dukan, for all civil society institutions, in order to find common ground on the development of mechanisms and procedures to support civil society organizations.
