



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Consideration of reports submitted by States
parties under article 29, paragraph 1, of the
Convention**

Reports of States parties due in 2012

Iraq*

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I. Introduction

1. The Republic of Iraq reaffirms its support for and faith in the United Nations human rights mechanisms and is pleased to submit its initial report to the Committee on Enforced Disappearances under article 29, paragraph 1 of the International Convention for the Protection of All Persons from Enforced Disappearance on the measures taken by the Iraqi Government to fulfil its obligations under the Convention.

2. A sectoral committee headed by the Ministry of Human Rights drafted the present report in accordance with the Guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The committee also included representatives of the Supreme Judicial Council, the General Secretariat of the Council of Ministers, the ministries of Foreign Affairs, Justice, Health, Labour and Social Affairs, Defence, the Interior and a representative from the Kurdistan region of Iraq. Wide-ranging and open consultations were held with various other government institutions and a number of non-governmental organizations, and a first draft of the report was posted for one month on the website of the Ministry of Human Rights. Subsequently, joint meetings were held with representatives of non-governmental organizations, activists and scholars in the field of human rights in Iraq. They all presented their views on the report and most of their comments were adopted.

3. The Government of Iraq has been doing everything in its power to work with the international community in order to formulate a framework in which to satisfy the aspiration of the Iraqi people to see the establishment of a united, democratic, federal State, a secure and stable State where all citizens have equal rights and duties. This is an obligation incumbent on the Iraqi Government and also on the international community, following the regime change of spring 2003. To this end, the Government is stepping up efforts to curb violence against the State and between religious and ethnic groups in Iraq, to ensure respect for the rule of law, and also for civil liberties and human rights and to develop an institutional framework by consensus. At the same time, it recognizes that the country is going through a transitional period in the wake of a dictatorship which lasted more than 35 years and led the country into three regional wars that destroyed national infrastructure and made the task of reconstruction even more arduous. Iraq has made clear that it has an international obligation to promote and protect human rights and to consolidate the rule of law. In order to do so, it must overcome its difficult legacy by adopting a comprehensive and countrywide rights regime, integrating international human rights standards into the national legal system and strengthening the Government's capacity to meet its international obligations.

II. A history of enforced disappearance in Iraq

4. The Government of Iraq fully understands the philosophy underlying the Convention and remains convinced that it must be implemented at the national level. The accession by Iraq to the Convention, through Act No. 17 of 2010, was an expression of its desire to establish the rule of law, to prevent enforced disappearance and limit its impact and consequences, which have afflicted the country in the past.

5. Enforced disappearance was widely used by the dictatorial regime which ruled Iraq from 1968 to 2003 and claimed the lives of thousands of Iraqis arrested for their political, ethnic or religious affiliations. They were never heard from again and the bodies of most of them have never been found.

6. The reports of Mr. Max van der Stoep, Special Rapporteur on the situation of human rights in Iraq from 1991 to 1999, indicate the extent to which enforced disappearance was used:

(a) The Special Rapporteur points to the widespread practice of enforced disappearance throughout Iraq in paragraphs 26–33 of his report (contained in document E/CN.4/1994/58, issued by the Commission on Human Rights of the Economic and Social Council on 25 February 1994);

(b) He reconfirms the extent of this offence in Iraq in paragraph 27 of his report (contained in document E/CN.4/1995/56, issued by the Commission on Human Rights of the Economic and Social Council on 15 February 1995).

7. The annual reports submitted by Mr. Andreas Mavrommatis, Special Rapporteur on the situation of human rights in Iraq from 1999 to 2004, reconfirm the widespread nature of enforced disappearances (contained in document E/CN.4/2001/42 of 16 January 2001).

8. These offences are referred to and condemned in a number of resolutions adopted by the Commission on Human Rights and the General Assembly of the United Nations between 1991 and 2003, including General Assembly resolutions A/RES/48/144 of 28 January 1994, A/RES/49/203 of 13 March 1995, A/RES/51/106 of 3 March 1997 and A/RES/56/174 of 27 February 2002. These resolutions condemn grave human rights violations, including cases of “enforced or involuntary disappearances, routinely practised arbitrary arrest and detention, including arrest and detention of women, the elderly and children, and consistent and routine failure to respect due process and the rule of law”.

9. In its concluding observations following consideration of the report submitted by Iraq under the International Covenant on Civil and Political Rights, the Human Rights Committee expressed grave concern with regard to the high incidence of disappearances in that country (CCPR/C/79/Add.4 of 19 November 1997).

10. Over more than 20 years, the Working Group on Enforced or Involuntary Disappearances has found Iraq to have one of the highest rates of enforced disappearances. More than 16,400 cases have been recorded, most of them prior to 2003 although people have reported cases to the Working Group which they claim took place after 2003. In 2012, the Iraqi Government formed a committee to look into these cases and provide documentary evidence to the Working Group. The committee, which includes representatives from a number of transitional justice organizations in Iraq and other specialized governmental institutions, found a large number of cases involving victims of the former dictatorship in Iraq and is currently compiling lists of these for presentation to the Working Group.

The Iraqi Supreme Criminal Tribunal

11. The Iraqi Supreme Criminal Tribunal has jurisdiction over persons resident in Iraq charged with genocide, crimes against humanity or war crimes. The definition of these offences is largely similar to that contained in the Rome Statute of the International Criminal Court. These offences have not been incorporated into Iraqi law, although Iraq is a party to the Geneva Conventions of 1949, to which it acceded in 1956, and to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, to which it acceded on 20 January 1959. Enforced disappearances were widespread in Iraq under the dictatorship, reflecting a systematic Government policy, and the number of victims was high. Accordingly, under article 12 of the Iraqi Supreme Criminal Tribunal Act No. 10 of 2005, as amended, enforced disappearances are now defined as crimes against humanity, as follows:

“1. For the purposes of this Act, ‘crimes against humanity’ means any of the following acts when knowingly committed as part of a widespread or systematic attack directed against any civilian population:

“(a) Wilful killing;

“(b) Extermination;

“(c) Enslavement;

“(d) Deportation or forcible transfer of population;

“(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

“(f) Torture;

“(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity;

“(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds recognized as impermissible under international law, in connection with any act of sexual violence of comparable gravity referred to above;

“(i) Enforced disappearance of persons;

“(j) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health.

“2. For the purposes of implementing the provisions set out in paragraph 1 of this article, the following expressions shall have the meanings ascribed to them below:

“(a) ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 of this article against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack;

“(b) ‘Extermination’ means the intentional infliction of living conditions, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

“(c) ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

“(d) ‘Deportation or forcible transfer of population’ means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

“(e) ‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the defendant but does not include pain or suffering arising from, or related to lawful sanctions;

“(f) ‘Persecution’ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or population;

“(g) ‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, the

State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

12. Various cases of enforced disappearance have come before the Iraqi Supreme Criminal Tribunal which, considering them to be crimes against humanity, has handed down sentences against a number of people for such offences committed during the period of the dictatorship between 1968 and 2003.

13. The Iraqi Supreme Criminal Tribunal has tried 12 cases involving former senior regime officials charged with offences against the Iraqi people and has convicted perpetrators of enforced disappearance as a crime against humanity in 5 of those cases, pursuant to article 12 (1) (i) of Act No. 10 of 2005. A summary of those cases is given below:

The Anfal campaign

14. Thousands of Kurdish citizens, men, women and children, suffered enforced disappearance during the military operations of 1988 which became known as the Anfal campaign. Following the military operations, they were held in army camps and detention centres where, according to documents and other evidence available to the Tribunal, enforced disappearances of persons as a crime against humanity took place. The Tribunal convicted members of the former regime for those crimes.

The attack on Halabja

15. After chemical bombs were dropped on the city of Halabja on 16 March 1988, survivors of the crime fled to neighbouring countries. An amnesty for Kurds was issued on 6 September 1988, but residents of Halabja who subsequently returned were arrested by the army and other security forces of the regime and detained in camps (Kirdat Jal and Bar Hushtar) and at Al-Salman Prison in Muthanna Governorate in southern Iraq. The Tribunal convicted those who perpetrated enforced disappearances in this case.

The events of 1991

16. The withdrawal of the Iraqi army from Kuwait in 1991 was followed by the Sha`ban Intifada, a popular uprising against the forces of the former Iraqi president and leadership and their repressive military and political hold on Iraq. Government forces used widespread repressive measures, including the detention of citizens from all sectors of society who participated in those events, which took place in the south of the country, particularly in Basrah and Maysan governorates. Regime forces committed numerous human rights violations during the uprising, including enforced disappearances. Some members of the former regime have been tried for those offences.

The suppression of secular parties

17. From the time the Baath party came to power on 17 July 1968 it deliberately sought to suppress all other political parties, which it saw as a threat to its own hold on power. It turned against the secular political parties of the time, chief among them the Communist Party, perpetrating the most heinous crimes against party members and violating their human rights, including through the practice of enforced disappearances. The Tribunal has convicted a number of members of the former regime responsible for those crimes.

The suppression of religious parties

18. Under the dictatorship, the only party allowed to engage in political activities was the Baath party, which has now been dissolved. Using various pretexts such as internal and external State security, the regime issued a number of decrees outlawing the formation or membership of political parties, including religious parties. Revolutionary Command Council Decree No. 461 of 31 March 1981 identified one religious party, the Islamic Dawa Party, as an enemy of the nation and its political activities as harmful to State security and stipulated that membership of the party was punishable by death. These measures also extended to all religious parties, and tens of thousands of political activists were killed and imprisoned. Enforced disappearance was one of the crimes perpetrated by the regime as part of a systematic policy against members of those parties. On the basis of documentary evidence available to the Tribunal it was established that certain members of the former regime were responsible for that crime. Those persons have been tried in accordance with the Iraqi Supreme Criminal Tribunal Act.

Transitional justice organizations

19. A number of transitional justice organizations have been established in order to lay the institutional foundations for democracy in Iraq and to tackle the legacy of serious human rights violations and crimes perpetrated by the former regime against the Iraqi people, including enforced disappearance. These organizations include the Martyrs Foundation, established pursuant to article 104 of the Constitution and Act No. 3 of 2006, and the Political Prisoners Foundation, established pursuant to article 132 of the Constitution and Act No. 4 of 2006. A law has also been passed for the return of political exiles, namely Act No. 24 of 2005, as amended. These organizations and laws are designed to rehabilitate a considerable number of victims of the former regime and members of their families and deliver justice to them, and to ensure that they receive material and moral reparation for the damage that they suffered as a result of those crimes, which includes discrimination and the exclusion of their family members from public service and from education.

The Protection of Mass Graves Act

20. The Protection of Mass Graves Act (Act No. 5 of 2006) was enacted with a view to: facilitating the search for mass graves of victims of the former regime; protecting those graves from desecration and random excavation or from being opened without official authorization from the Ministry of Human Rights; ensuring the excavation of such sites is regulated by law and carried out with respect for human dignity; identifying the victims buried there, and returning the remains to their families with due respect consistent with the sacrifice they made. In addition, the Act is intended to facilitate the work of the judiciary. It provides for the conservation of any evidence that may help establish the identity of victims or perpetrators of such crimes as genocide, illegal burial, enforced disappearance and extrajudicial executions.

21. Under paragraph 4 of Order No. 1 of 2007 which was issued to facilitate the implementation of the Protection of Mass Graves Act, in cases where a suspected mass grave site is discovered a committee is formed at the level of the governorate. Under article 6, if the committee deems the site to be a mass grave, a commission is formed chaired by the Ministry of Human Rights. Members will include: a judge nominated by the local court of appeal; a representative of the public prosecution service, nominated by the Office of the Public Prosecutor; a police officer, nominated by the Ministry of the Interior; a medical examiner, nominated by the Ministry of Health; and a member of the town council, nominated by the governorate concerned. This commission shall be responsible for opening the grave, identifying the remains, delivering the remains to the victims' families and for

issuing the decisions needed in order to accomplish its allotted tasks. Private claims are referred to the competent court, where action can be taken against the perpetrators of the crimes of the former regime. By 2012, 76 mass graves had been found, containing 3,073 bodies.

Efforts by the Kurdistan Regional Government in favour of victims of the dictatorship

22. A series of measures has been adopted to facilitate the handling of cases involving victims of the former dictatorship in the Kurdistan region. These measures include Act No. 9 of 2007, concerning the rights and privileges of victims of the Anfal campaign and other martyrs in the Kurdistan region of Iraq, which was introduced with a view to improving the services available to the families of such persons. The Ministry of Martyrs and Anfal Affairs was established pursuant to Act No. 8 of 2006, in order to provide assistance, compensation and services to families of victims of the Anfal campaign, political prisoners and other victims of the dictatorship. The Ministry of Human Rights of the Kurdistan Regional Government is cooperating with the Federal Government in search and excavation operations in central and southern governorates in order to locate the remains of Kurdish victims of the Anfal campaign in mass graves. These efforts are still ongoing under the auspices of the Ministry of Martyrs and Anfal Affairs in the Kurdistan Regional Government. Some 56 mass graves have been opened (at Hamrin, Mahara, Tubzawa, Al-Hadr, Al-Haydariyah, Khalkan and the asphalt plant in Arbil) in the governorates of Nineveh, Kirkuk, Najaf, Anbar, Arbil and Sulaymaniyah, and the remains of all victims have been returned to their families.

23. The Kurdistan Regional Government provides educational opportunities for the heirs and families of Anfal campaign victims and has allocated them a number of places in higher education centres so that they can complete their studies abroad, as part of a capacity-building programme. It also provides study grants to the families of martyrs and Anfal campaign victims who are attending private universities.

Victims of terrorism in Iraq

24. Acts perpetrated by American forces, in addition to other military errors and incidents, have caused harm to citizens and represent a humanitarian and legal challenge. In accordance with article 132 of the Constitution, the Iraqi Government has enacted Act No. 20 of 2009 to provide compensation to those who have sustained damages as a result of the war, military errors and acts of terrorism. The Act goes some way to repairing the harm caused to citizens as a result of such events, which include terrorist incidents and abduction by organized terrorist groups.

25. Article 2 of Act No. 20 of 2009 reads as follows:

“The compensation provided for under this Act shall cover the following cases of injury:

- “1. Death and loss in connection with the processes listed in this Act;
- “2. Total or partial incapacitation, as confirmed in a report by a specialized medical panel;
- “3. Injury and other conditions which require temporary treatment, as confirmed in a report by a specialized medical panel;
- “4. Damage to property;
- “5. Interruption of employment or study.”

26. Article 19 of the Act provides that the Act “will have effect from 20 March 2003”. In other words, it covers all forms of injury caused to citizens from the beginning of

military operations on 20 March 2003, as described in the Act. This mechanism is an important way for victims and their families to obtain redress for any injury they suffered as a result of activities including abductions and enforced disappearances carried out by armed groups, terrorist bands and criminal organizations.

27. Victims of the former dictatorship have access to a number of mechanisms that offer compensation and redress for injuries, with the assistance of various organizations that are described in the following paragraphs. The Iraqi Government uses the term “victims” in its broadest sense and takes it to include direct victims, their immediate family and their relatives. It has taken responsibility for these processes, which include providing redress for damages, restoring dignity, developing collective memory, holding perpetrators to account and providing opportunities for work, study and rehabilitation, as well as providing the compensation stipulated in the Code of Criminal Procedure (Act No. 23 of 1971).

28. The wages of military and civilian kidnap victims continue to be paid until their remains are found or they are legally declared dead. Thereafter, families have the right to receive a pension under article 49 of the Military Service and Retirement Act for military personnel and, for civilians, under Revolutionary Command Council Decree No. 88 of 1987.

Legal force of the Convention in Iraqi law

29. The ratification process for international treaties is covered in article 61 (4) of the Constitution, according to which such treaties are to be passed into law by a two thirds majority of the Council of Representatives. According to article 73 (2) of the Constitution, which concerns the ratification of international treaties after approval by the Council of Representatives, “such international treaties are considered to have been ratified 15 days from the date of receipt [by the President]”. Article 73 (3) deals with the ratification and issuance of laws enacted by the Council of Representatives and states that “such laws are considered to have been ratified 15 days from the date of receipt [by the President]”. Thus, the Convention becomes part of Iraqi national law simply by being published in the Official Gazette.

Application of the Convention by the Iraqi judiciary

30. The Supreme Judicial Council was dissolved but subsequently re-established pursuant to Coalition Provisional Authority Order No. 35 of 2003. Section 1 of the Order states that the purpose of re-establishing the Council is to create a body to oversee the judicial and prosecutorial systems and that the Council shall perform its functions independently of the Ministry of Justice. Those functions are:

- To provide administrative oversight of all judges and public prosecutors, excluding members of the Supreme Court;
- To investigate allegations of professional misconduct and incompetence involving members of the judiciary or public prosecutors and to take the appropriate disciplinary measures, including removal from office;
- To promote, advance, upgrade, and transfer judges and prosecutors;
- To assign or reassign judges and prosecutors to the posts provided for in the Judicial Organization Act (Act No. 160 of 1979) and the Public Prosecution Act (Act No. 159 of 1979);
- To assign judges and prosecutors to hold specific judicial posts as provided for in the Judicial Organization Act (Act No. 160 of 1979) and the Public Prosecution Act (Act No. 159 of 1979).

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

32. Article 87 of the 2005 Constitution provides as follows: “Judicial authority is exercised independently. The various types and levels of courts exercise this authority and deliver judgements in accordance with the law.” Article 88 provides that: “Judges are independent and are subject to no authority other than that of the law. No other entity shall have the right to interfere in the work of the judiciary or the affairs of justice.”

33. According to the Code of Criminal Procedure, the Office of the Public Prosecutor is empowered to issue indictments, while the investigating judge and investigators under the supervision of the investigating judge are empowered to investigate.

34. These matters were spelled out in the Public Prosecution Act No. 159 of 1979, under which the prerogatives of public prosecutors during the investigation stage were broadened. Article 2 (2) of chapter 2 provides that the public prosecution service is authorized to monitor investigations, collect evidence requiring further investigation and undertake any action which may lead to uncovering the truth behind an offence.

35. The judiciary applies current Iraqi legislation in accordance with due process of law. Work is under way to bring national legislation into conformity with the international treaties which Iraq has ratified.

III. Application of the Convention

Articles 1, 2, 3 and 4

Purpose, definition of enforced disappearance and the obligations of States

36. With the exception of article 12 (2) (g) of the Iraqi Criminal Court Act, Iraqi law does not define the offence of enforced disappearance in the terms in which it is described in the Convention. However, the existing legislation does reflect the spirit and letter of the Convention by classifying enforced disappearance as an autonomous offence, in terms consistent with those found in the guidelines on the form and content of reports. Moreover, it contains important provisions covering many offences that would constitute enforced disappearance, since they include the elements described in article 2 of the Convention, although it does not identify them as such. Even in the absence of clear provisions, the courts may, taking account of all circumstances, consider an act as an offence to which existing legal provisions can be applied, as illustrated below. The Government of Iraq is currently working to bring the national legislation into line with the international treaties that Iraq has ratified, including the International Convention for the Protection of All Persons from Enforced Disappearance; to this end it has formed a national commission headed by the General Secretariat of the Council of Ministers and with members drawn from relevant ministries. The Ministry of Human Rights is drafting an integrated bill for the implementation of the Convention, in particular article 4 thereof, and has put together a series of proposals which it is currently studying in order to devise appropriate wording. It will take some time for such legislation to be approved, given the complexity of the legislative process in Iraq. Therefore, the Government has decided to submit the present report even in the absence of legislation implementing article 4 of the Convention as a means of driving legislative efforts forward and identifying the changes required in order to implement the Convention.

37. Article 19 of the Constitution provides as follows:

“12.

“(a) Unlawful detention shall be prohibited;

“(b) Imprisonment or detention shall be prohibited except in places designated for that purpose under prison laws covering health and social care and subject to the authorities of the State.

“13. The documents relating to the preliminary investigation must be submitted to the competent judge within 24 hours of the arrest of the accused. This period may be extended only once and for a further 24 hours.”

38. Article 37 of the Constitution provides as follows:

“1.

“(a) Human freedom and dignity shall be protected;

“(b) No one may be kept in custody or interrogated except pursuant to a judicial decision;

“(c) All forms of psychological and physical torture and inhumane treatment are prohibited. No reliance shall be placed upon any confession made under duress, threat, or torture. Victims shall have the right to seek compensation for material and moral damages incurred, in accordance with the law.

“2. The State shall ensure that individuals are protected from intellectual, political and religious coercion.

“3. Forced (bonded) labour, chattel slavery, slave trading, trafficking in women and children and sex trafficking shall be prohibited.”

39. The Criminal Code (Act No. 111 of 1969) contains clear provisions concerning offences committed by public officials or public servants that could be categorized as enforced disappearance. Article 322 of the Code provides that: “Any public official or public servant who arrests, imprisons or detains a person in circumstances other than those stipulated by law shall be liable to a penalty of up to 7 years’ rigorous or ordinary imprisonment. The penalty shall be up to 10 years’ rigorous or ordinary imprisonment if the offence is committed by a person wearing an official uniform without authority to do so, or who uses a false identity or who produces a counterfeit warrant claiming it was issued by a legitimate authority.” Article 323 of the Code provides that: “Any public official or public servant who knowingly violates his or her legal duty by inflicting or ordering the infliction on a convicted person of a penalty more severe than that imposed by law, or a penalty to which the person has not been sentenced, shall be liable to imprisonment.”

40. Article 324 of the Criminal Code provides that: “Any public official or public servant entrusted with the administration or supervision of a prison or other custodial facility who admits a person without an order from a competent authority or who refrains from implementing an order issued for the release or continued detention of such a person following the prescribed period shall be liable to imprisonment.”

41. Regarding another aspect of enforced disappearance, article 421 of the Criminal Code imposes harsher penalties for the offence of abduction. It provides that: “Anyone who seizes, detains or deprives a person of his or her liberty in any way without an order from a competent authority in circumstances other than those described in relevant laws and regulations shall be liable to imprisonment.” The penalties stipulated in articles 421, 422 and 423 have been increased to life imprisonment, meaning the remaining natural life of the person concerned, pursuant to section 2 of Coalition Provisional Authority Order No. 31

dated 13 September 2003. A penalty of up to 15 years' rigorous imprisonment is imposed in the following cases:

- (a) If the offence is committed by a person wearing without authority to do so the uniform or other distinctive official mark of a government employee, or who uses a false identity or produces a counterfeit warrant of arrest, detention or imprisonment claiming it was issued by a legitimate authority;
- (b) If the offence is accompanied by the threat of death or of physical or mental torture;
- (c) If the offence is committed by two or more persons or by a person overtly carrying a weapon;
- (d) If the period of arrest, detention or deprivation of freedom exceeds 15 days;
- (e) If the motive for the offence is financial gain, sexual assault of the victim or vengeance against the victim or a third party;
- (f) If the offence is committed against a public official or public servant in the course of or as a consequence of the performance of his or her duty.

42. Article 422 of the Criminal Code provides as follows: "Anyone who either himself or by means of a third party abducts a person under the age of 18 without the use of coercion or deception shall be liable to a penalty of up to 15 years' rigorous imprisonment if the victim is female and up to 10 years' rigorous imprisonment if the victim is male. If the abduction takes place with the use of coercion or deception or with any of the aggravating circumstances defined under article 421, the penalty shall be rigorous imprisonment if the victim is female and up to 15 years' rigorous imprisonment if the victim is male."

43. Article 423 of the Criminal Code offers stronger protection to female victims: "Anyone who either himself or by means of a third party abducts a woman over the age of 18 with the use of coercion or deception shall be liable to up to 15 years' rigorous imprisonment. If the abduction is accompanied by sexual intercourse or attempted sexual intercourse with the victim, the penalty shall be death or life imprisonment."

44. Article 424 imposes harsher penalties in specific circumstances: "If the use of coercion described in articles 422 and 423 or of torture described in article 421 results in the death of the victim, the penalty shall be death or life imprisonment." Articles 425, 426, 427, 428 and 429 of the Criminal Code also impose harsher penalties under certain circumstances.

45. As part of efforts to combat organized crime and terrorism, specifically in connection with abduction, article 2 of the Anti-Terrorism Act (Act No. 13 of 2005) provides that: "The following acts are considered acts of terrorism: ... 8. Abducting, restricting the freedom of or detaining persons in order to extort money for the purpose of obtaining political, sectarian, nationalistic, religious or racial advantage in a manner that threatens national security and unity and promotes terrorism."

46. Coalition Provisional Authority Memorandum No. 2 of 2003 contains provisions prohibiting any acts that may be defined as enforced disappearance and places prisons and detention centres under permanent oversight, with a view to ensuring that the law is properly implemented. Some of the provisions contained in the Memorandum will be cited in the relevant paragraphs of this report.

47. The Government of Iraq is currently drafting a bill with a view to ensuring full implementation of the Convention, and article 4 thereof in particular. This will necessarily entail a review of the structure of the Criminal Code and other relevant legislation. A legal

analysis to identify mechanisms, for implementation, for the abrogation of legislation inconsistent with the Convention and for the adoption of new laws as required has already begun.

48. A section has been created within the headquarters of the Office of the Public Prosecutor to receive complaints from the Office of the High Commissioner for Human Rights (OHCHR). The new section, which is linked to the Office of the Chief Public Prosecutor, presents those complaints to the Chief Prosecutor, who then takes the necessary measures and informs OHCHR, in accordance with Administrative Order No. 30/Office/2013 issued by the Supreme Judicial Council on 11 January 2014.

49. Since the Criminal Code as amended currently lacks a clear definition of the offence of enforced disappearance, the provisions applied to acts classifiable as enforced disappearance (abduction, detention and arrest without judicial warrant) perpetrated by non-State entities tend to be those outlined above. The Anti-Terrorism Act No. 13 of 2005 was applied to deal with the organized criminal groups and armed bands which sought to undermine national security and carried out abductions on a wide scale during the period when parts of Iraq were in chaos.

50. The Ministry of Human Rights and the International Commission on Missing Persons organized a two-day conference (16 and 17 September 2012) on the effective implementation of the Convention. The conference was attended by a number of international experts, including the Italian expert Gabriella Citroni.

51. Article 19 (2) of the Criminal Code defines a public servant as “any official, employee or worker who is entrusted with a public task in the service of the Government or its official or semi-official departments, or offices belonging to the Government or under government supervision. This includes the Prime Minister, his deputies and ministers and members of representative, administrative and municipal councils. It also includes arbitrators, experts, creditors’ agents (syndics), liquidators, receivers, members of boards of directors, directors and employees of foundations, companies, corporations, organizations and institutions in which the Government or any of its official or semi-official departments has a financial interest in any capacity whatsoever. In general, a public servant is any person who works in public service, whether paid or unpaid.”

Article 5

Crimes against humanity

52. Iraq is not yet a party to the 1998 Rome Statute of the International Criminal Court but it is currently studying ways of updating its legal and judicial structures in preparation for accession. Nonetheless, the Iraqi Supreme Criminal Tribunal Act has adopted the wording of the Rome Statute because it reflects best practices in the field of international criminal law.

53. Iraq has recently made the transition from a totalitarian to a democratic regime; the issue of international humanitarian law is one of the most urgent priorities facing the country. The Government is currently working to define and disseminate the terminology of international humanitarian law, to which end the National Centre for Human Rights in the Ministry of Human Rights is offering training to internal security and defence forces, judges, lawyers, academics and representatives of civil society organizations.

54. When passing legislation to implement the Convention, the provisions of article 5 will be taken into account.

Article 6 Criminal liability

55. Article 92 of the Code of Criminal Procedure provides that: “No one may be arrested or apprehended except pursuant to a warrant issued by a judge or a court and in accordance with the conditions established by law.”

56. Article 40 of the Criminal Code, under Section 4 on “Justifications”, provides that:

“An act is not an offence if a public official or public servant in the following circumstances:

“1. Performs the act in good faith in the course of his legal duties or considers that the act is within his authority;

“2. Commits the act in implementation of an order from a superior which they are obliged or feel obliged to obey.”

“In both cases, it must be established that the belief of the person concerned in the legitimacy of their act is reasonable and that he performed the act only after taking suitable precautions. Moreover, no penalty may be applied in the second instance, in cases where an official is not allowed by law to question the order.”

57. Article 47 of the Criminal Code defines the perpetrator of an offence in the following terms:

“The perpetrator of an offence is:

“1. Anyone who commits an offence alone or with others;

“2. Anyone who participates in the commission of an offence that consists of a number of acts and who deliberately carries out one of those acts during the commission of the offence;

“3. Anyone who in any way incites another person to commit an act constituting an element of the offence, if that person is not in any way criminally liable for the offence.”

58. Article 48 of the Criminal Code defines an accomplice to an offence as:

“1. Anyone who incites another person to commit an offence which is then committed on the basis of such incitement;

“2. Anyone who conspires with others to commit an offence which is then committed on the basis of such conspiracy;

“3. Anyone who knowingly supplies the perpetrator of an offence with a weapon, instrument or any other item used in the commission of an offence, or deliberately assists him in any other way with acts which facilitate the offence or make it possible.”

59. Article 49 of the Code specifies the cases in which an accomplice to an offence is considered to be a perpetrator: “An accomplice is considered to be a perpetrator of an offence under the provisions of article 48 if he is present during the commission of the offence or of any of the acts constituting the offence.” Moreover, the Code provides that an accomplice is liable to the penalty prescribed for the offence, unless otherwise provided for by law.

60. Article 50 (2) of the Code provides that: “An accomplice shall be liable to the penalty prescribed by law even in cases where the perpetrator is not liable due to lack of criminal intent or other specific circumstances.”

61. According to article 421 of the Code: “Anyone who arrests, detains or deprives a person of his liberty in any way without an order from a competent authority under circumstances other than those established in the relevant laws and regulations shall be liable to imprisonment.”

62. Article 24 of the Army Act (Act No. 19 of 2009) stipulates yet more clearly that:

“1. If an order issued to carry out a military duty itself constitutes an offence, criminal responsibility for the offence rests with the person who issued the order;

“2. The lower-ranking party is considered to be an accomplice to the offence in the following cases:

“(a) If he exceeds the limits of the order;

“(b) If he is aware that the intention of the order received is to commit a military or civilian offence.”

63. Article 52 (1) of the Army Act provides that:

“(a) Anyone who uses the authority of his or her office, position or rank to commit an offence or orders a person of lower rank to commit an offence shall be liable to imprisonment;

“(b) The person who issued the order shall be considered the principal perpetrator of the offence if it is committed or attempted.”

Article 7 Penalties

64. Iraqi law does not contain a separate definition of enforced disappearance. However, it does cover offences under article 2 of the Convention, where enforced disappearance is defined as “arrest, detention, abduction or any other form of deprivation of liberty”, and it does apply severe penalties against perpetrators, instigators, participants and accomplices. Under article 322 of the Criminal Code, any public official or public servant who arrests, imprisons or detains a person in circumstances other than those prescribed by law shall be liable to up to 7 years’ rigorous or ordinary imprisonment. The penalty is up to 10 years’ rigorous or ordinary imprisonment if the offence is committed by a person:

- Wearing an official uniform without authority to do so; or
- Who uses a false identity; or
- Who produces a counterfeit arrest warrant claiming that it was issued by a legitimate authority.

65. Article 421 of the Criminal Code provides that: “Anyone who seizes, detains or deprives a person of his liberty in any way without an order from a competent authority in circumstances other than those described in relevant laws and regulations shall be liable to imprisonment.” The penalties stipulated in articles 421, 422 and 423 have been increased to life imprisonment, meaning the remaining natural life of the person concerned, pursuant to section 2 of Coalition Provisional Authority Order No. 31 dated 13 September 2003.

66. Article 422 of the Criminal Code provides as follows: “Anyone who either himself or by means of a third party abducts a person under the age of 18 without the use of coercion or deception shall be liable to up to 15 years’ rigorous imprisonment if the victim is female and up to 10 years’ rigorous imprisonment if the victim is male.”

67. If the abduction takes place with the use of coercion or deception, or with any of the aggravating circumstances defined under article 421, the penalty is rigorous imprisonment if the victim is female and up to 15 years' rigorous imprisonment if the victim is male.

Article 8 Statute of limitations

68. Iraqi law, by recognizing no statute of limitations on the right to launch criminal proceedings, provides greater protection for victims' rights than that stipulated in the Convention.

69. Article 17 of the Iraqi Supreme Criminal Tribunal Act also deals with the protection of victims' rights in related offences, including the crime of enforced disappearance, which is considered as a crime against humanity. Article 17 (3) provides that: "Grounds for exoneration from criminal responsibility under the Criminal Code shall be applied in a manner consistent with this Act and with international legal obligations concerning offences within the jurisdiction of the court." Paragraph 4 provides that: "The offences stipulated under articles 11, 12, 13, and 14 of this Act shall not be subject to any statute of limitations."

Articles 9, 10 and 11 Judicial jurisdiction, custody, criminal proceedings

70. The Criminal Code contains general rules defining the extent of the judicial jurisdiction of Iraq. Article 7 provides that: "The regional jurisdiction of Iraq includes the territory of the Republic of Iraq and all areas under its control including its coastal waters and airspace, as well as any foreign territory occupied by the Iraqi army insofar as any offence affects the security or interests of the army. Iraqi ships and aircraft are subject to the territorial jurisdiction of the Republic of Iraq wherever they may be."

71. Article 8 of the Code provides that: "This Code is not applicable to offences committed on foreign ships in Iraqi ports or coastal waters unless the offence affects the security of the region or the offender or victim is Iraqi or assistance is requested from the Iraqi authorities. The Code is not applicable to offences committed on foreign aircraft in Iraqi airspace unless the aircraft lands in Iraq after the offence has been committed or the offence affects the security of Iraq or the offender or victim is an Iraqi or assistance is requested from the Iraqi authorities."

72. Article 9 of the Code defines the jurisdiction *ratione materiae* of Iraqi criminal law as follows:

"This Code is applicable to any person who commits the following offences outside

Iraq:

"1. Offences that affect the internal or external security of the State, harm the Republican regime or its legally issued bonds or stamps or involve the forgery of official banknotes;

2. Offences of forgery, counterfeiting or imitation of notes or coins in circulation legally or in common use in Iraq or abroad."

73. Article 10 of the Code defines the jurisdiction *ratione personae* of Iraqi criminal law in the following terms: "Any Iraqi citizen who while abroad perpetrates or is an accomplice to an act that is considered a major or serious offence under the provisions of this Code is

punishable in accordance with those provisions if he is in Iraq and if the offence is punishable under the laws of the land in which it is committed. This provision is applicable irrespective of whether the offender obtained Iraqi citizenship after the commission of the offence or whether he had Iraqi citizenship at the time the offence was committed and subsequently lost that citizenship.”

74. Article 11 establishes an exception to the application of the Code when it provides that the Code: “... is not applicable to offences committed in Iraq by persons who benefit from statutory protection under the terms of international agreements or international or domestic law.” However, article 12 extends the jurisdiction of Iraqi law when it provides that:

“1. This Code is applicable to any public official or public servant of the Republic of Iraq who, while abroad, commits a major or serious offence stipulated by this Code in the course of his duty or as a consequence thereof.

“2. It is also applicable to Iraqi diplomats who, while abroad, commit a major or serious offence stipulated by this Code while enjoying the protection conferred upon them in accordance with international law.”

Article 13 of the Code establishes general jurisdiction for certain offences:

“In circumstances other than those stipulated in articles 9, 10 and 11, the provisions of this Code are applicable to all those who enter Iraq subsequent to committing an offence abroad, whether as perpetrators or accomplices in the following offences:

“Sabotaging or disrupting intelligence and international communications or trafficking in women, children, slaves or intelligence.”

75. Article 14 of the Code lays down special rules governing legal proceedings for certain offences:

“1. No legal proceedings may be brought against any person who commits an offence outside Iraq except by permission of the Minister of Justice. Such person cannot be tried if a final decision to acquit or convict him has already been handed down by a foreign court and any sentence imposed has been served in full, or if the case or sentence have been annulled or quashed in accordance with applicable law and the final decision or annulment or quashing of the case or sentence falls within the jurisdiction of the law of the land in which the decision was issued.

“2. If the penalty imposed has not been served in full or if an acquittal has been issued in respect of an offence stipulated in articles 9 and 12 due to the fact that the offence is not punishable under the law of that land, then legal proceedings may be brought against the accused in the Iraqi courts.”

76. Article 15 of the Criminal Code states: “When the sentence is imposed account will be taken of the length of time spent by the convicted person under arrest or in detention or imprisonment abroad for the offence for which he was convicted.”

77. Since Iraqi law does not criminalize enforced disappearance as an independent offence, certain articles of the Convention cannot be applied. However, current Iraqi legislation covering other forms of enforced disappearance is being applied until specific legislation can be passed, as indicated above. For this reason the Committee may notice that no reference has been made to the application of certain important provisions of the Convention.

78. Article 19 of the Constitution lays down guarantees for a fair trial:
- “1. The judiciary is independent and is subject to no authority other than that of the law;
 - “2. There is no crime or punishment except as defined by law. Penalties shall only be applied for acts that the law considers as offences at the time they were committed. Harsher penalties than those applicable at the time the offence was committed may not be imposed;
 - “3. The right to legal redress is protected and guaranteed for all citizens;
 - “4. The right to a defence is sacred and is guaranteed at all stages of the investigation and trial;
 - “5. An accused person is innocent until proven guilty in a fair legal trial and, if acquitted, may not be tried again for the same offence unless new evidence is produced;
 - “6. Every person shall have the right to just treatment in judicial and administrative proceedings;
 - “7. The proceedings of a trial shall be public unless the court decides otherwise;
 - “8. Punishment shall be personal;
 - “9. Laws shall not have retroactive effect unless stipulated otherwise. This condition shall not apply to laws concerning taxes and duties;
 - “10. Criminal laws shall not have retroactive effect, unless it is to the benefit of the accused;
 - “11. The court shall appoint defence counsel at the expense of the State for a person accused of a major or serious offence who does not have a defence lawyer;
 - “12.
 - “(a) Unlawful detention shall be prohibited;
 - “(b) Imprisonment or detention shall be prohibited except in places designated for that purpose under prison laws covering health and social care and subject to the authorities of the State;
 - “13. The documents of the preliminary investigation must be submitted to the competent judge within 24 hours of the arrest of the accused. This period may be extended only once and for a further 24 hours.”
- The Criminal Code and the Code of Criminal Procedure are both in accordance with these principles. Despite the absence of any law criminalizing enforced disappearance as a separate offence, current laws can regulate matters until such time as specific legislation is approved.
79. Under article 25 of the current Code of Criminal Procedure for the Internal Security Forces, ordinary courts are competent to try offences committed by military personnel against civilians and offences not involving the personal right of a third party, as indicated in article 4 of the Code of Military Criminal Procedure.

Article 12

Reporting and investigation of offences

80. In this report the Government of Iraq has outlined a number of important ways in which — even in the absence of a law specifically criminalizing enforced disappearance — it guarantees effective implementation of the Convention by applying other laws which cover certain aspects of enforced disappearance. At the same time, the Government is studying the various aspects of this legal lacuna.

Article 12 (1), (2) and (3)

81. Article 1 of the Code of Criminal Procedure provides that: “Criminal proceedings are initiated by means of an oral or written complaint submitted to an investigating judge, a judicial investigator, any officer at a police station or any member of a criminal investigation department by an injured party, his or her legal representative or any person who knows that an offence has taken place. In addition, any one of the aforementioned persons can notify the public prosecution unless the law states otherwise. In the event of an offence discovered *in flagrante* the complaint may be submitted to any police officer present.”

82. Article 47 of the Code, which deals with reporting offences, provides as follows:

“1. Any person against whom an offence has been committed or who learns that an offence has been committed in respect of which proceedings have been instituted without a complaint being submitted or who learns that a suspicious death has occurred may inform an investigating judge, a judicial investigator or the public prosecution or report the incident at a police station.

“2. If the complaint concerns offences against the internal or external security of the State, crimes of economic sabotage and other crimes punishable by death or life or fixed-term imprisonment, the informant may ask to remain anonymous and not to be called as a witness. The judge shall record this fact along with a summary of the informant’s report in a special record prepared for that purpose and shall then duly conduct the investigation using the information contained in the report without mentioning the informant’s identity in the documents pertaining to the investigation.”

83. The above article provides protection for witnesses to offences which may also include enforced disappearance after appropriate amendments have been made to the Criminal Code.

84. Article 57 of the Code of Criminal Procedure contains important provisions concerning the legal right of parties involved in a case to receive information:

“(a) An accused person, a plaintiff, a civil plaintiff, a person responsible in civil law for the actions of the accused and their representatives may be present during the investigation. The judge or judicial investigator may prohibit the attendance of any of them if the matter so requires, for reasons that he shall enter in the record, although they will be granted access to the investigation as soon as that requirement no longer exists. They shall not have the right to speak without permission and if that permission is not forthcoming a note to that effect shall be entered in the record.

“(b) Any of the aforementioned persons may request, at their own expense, copies of documents and statements unless the investigating judge considers that to provide such copies would affect the course or confidentiality of the investigation.

“(c) No persons other than the aforementioned may attend the investigation without the permission of the investigating judge.”

85. Article 5 of the High Commission for Human Rights Act (Act No. 53 of 2008) provides that the responsibilities of the High Commission include receiving complaints concerning human rights violations:

“The Commission shall:

“1. Receive complaints from individuals, groups and civil society organizations on violations committed before and after the entry into force of this Act while maintaining complete confidentiality as to the names of complainants;

“2. Conduct initial investigations into human rights violations on the basis of available information;

“3. Ascertain the veracity of complaints received by the Commission and conduct initial investigations as necessary;

“4. Institute legal proceedings in cases involving human rights violations and refer them to the Office of Public Prosecutions for the requisite legal formalities; notify the Commission of the outcomes;

“5. Visit prisons, social reform centres, detention facilities and all other such places, without the need to obtain prior permission from the relevant authorities; meet with convicted prisoners and detainees; document human rights abuses; and notify the competent authorities of the legal measures to be taken.”

86. The Kurdistan Regional Government played an important role during the trial of leaders of the former regime before the Iraqi Supreme Criminal Tribunal. It provided logistical and material support to the heirs and relatives of Anfal campaign victims and to witnesses, as well as supplying lawyers and experts for the cases before the Tribunal.

Article 12 (4)

87. Temporary removal (suspension) or permanent removal (dismissal) is envisaged in a number of pieces of national legislation. The aim of this is to ensure that suspects do not perform duties which may influence the progress of an investigation, including in cases of enforced disappearance. This legislation is outlined below.

The Criminal Code

88. Chapter 4, section 1 of the Criminal Code includes provisions to protect and prevent perversion of the course of justice, ensure confidentiality and expedite proceedings. These are contained in articles 329, 330, 331, and 332 of chapter 6, section 3 of the Code, which concerns officials who overstep the bounds of their duty.

State Officials Discipline Act

89. Penalties, their effects and procedures for their enforcement are dealt with in section 3 of the State Officials Discipline Act (Act No. 14 of 1991) under articles 8 (7) and (8). Article 8 (7) provides that:

“*Suspension* means the removal of an official from his post for a period defined in the decision to suspend, which shall set out the grounds for the imposition of this penalty, in the following terms:

“(a) A period of between one and three years if the official has been subjected to two of the following penalties, or to one of the following penalties on

two occasions, and has committed a third act requiring a similar penalty within five years from the date on which the first penalty was imposed:

“(i) Reprimand;

“(ii) Pay cut;

“(iii) Demotion.

“(b) If the official has been sentenced to imprisonment or rigorous imprisonment for an offence not prejudicial to honour, the time spent in detention — calculated from the date on which the sentence was handed down — shall be considered as part of the dismissal period, and the half wages paid during the suspension period will not be recovered.”

Article 8 (8) further provides that:

“*Dismissal* means the definitive removal from office of an official, who cannot then return to work in a Government office or in the public-private partnership sector. Dismissal takes place pursuant to a reasoned decision issued by the Minister in one of the following cases:

“(a) If it is established that the official committed a serious act by reason of which remaining in public service would be prejudicial to the public good;

“(b) If the official concerned is convicted for a major offence arising from his or her employment or committed in an official capacity;

“(c) If the official concerned had already been subject to suspension and then returned to work and committed another act necessitating suspension.”

90. Section 5 of the Act, which deals with suspension, provides as follows:

“Article 16. If an official is arrested by a competent authority, the department in which he works shall suspend him from office for the period during which he is in custody.

“Article 17.

“1. The Minister or the head of department may suspend an official for a period of not more than 60 days if they consider that his remaining in public service would be prejudicial to the public interest or could affect the course of investigations. At the end of that period, the official shall return to the same post unless for some reason he is assigned to another post;

“2. A committee may recommend the suspension of an official at any stage of the investigation.

“Article 18. An official who has been suspended shall receive half pay during the suspension period.”

The Army Act

91. Article 10 (2) of the Army Act establishes a number of secondary penalties, as follows:

“(a) Termination of contract;

(b) Discharge;

(c) Expulsion.”

92. Article 15 of the Act provides that:
- “1. A decision to discharge the defendant or terminate his contract shall be handed down in the event that of any of the following penalties is imposed:
- ...
- “(c) More than 5 years’ rigorous imprisonment;
- ...
- “(e) Failure to meet one of the conditions for appointment.
- “2. A decision to discharge the defendant or terminate his contract may be handed down in the event that he is sentenced to less than 5 years’ imprisonment.”
93. Articles 17 and 18 of the Act provide as follows:
- “Article 17.
- “1. A penalty of expulsion shall be imposed in the event that the defendant is sentenced to more than 1 year’s imprisonment;
- “2. A penalty of expulsion may be imposed in the event that the defendant is sentenced to less than 1 year’s imprisonment.
- “Article 18. A penalty of expulsion shall have the following effects, which do not need to be explicitly stated in the sentencing decision:
- “1. Loss of rank and military posting;
- “2. Inadmissibility of reappointment to the army as an officer or as an official.”
94. Articles 20 to 22 of the Army Act make the following provisions:
- “Article 20.
- “1. A penalty of deprivation of rank or grade shall be imposed in the event that the defendant is sentenced to more than 1 year’s ordinary imprisonment;
- “2. A sentence of deprivation of rank or grade may be imposed in the event that the defendant is sentenced to less than 1 year’s ordinary imprisonment.
- “Article 21.
- “1. Without having to be explicitly stated in the sentence, deprivation of rank or grade shall have the effect of demotion to one rank or grade lower, in addition to deprivation of all rights associated with that rank or grade.
- “Article 22.
- “1. Any member of the military shall be deemed to have been discharged from the army if he has been definitively convicted by a non-military court for offences against the internal and external security of the State or offences involving terrorism, sodomy or rape, or has been sentenced to more than 5 years’ rigorous imprisonment in respect of other offences committed after the entry into force of this law.”

The Internal Security Forces Act (Act No. 14 of 2008)

95. Article 41 of the Internal Security Forces Act provides that:
- “1. A police officer shall be discharged from service in the following circumstances:

“(a) If a competent court hands down a final decision imposing the death penalty or rigorous imprisonment on the officer;

“(b) If a final decision is handed down convicting the officer of the offence of sodomy or rape;

“(c) If a final decision is handed down convicting the officer for offences involving terrorism or prejudicial to the security of the State.

“2. An officer may be discharged from service if a competent court has handed down a final decision sentencing him to more than 3 years’ imprisonment.”

96. Article 42 of the Act provides as follows:

“1. An officer shall be expelled from service if a competent court has handed down a final decision sentencing him to between 1 and 3 years’ imprisonment;

“2. An officer may be expelled from service if the Internal Security Forces Tribunal has handed down a final decision sentencing him to less than 1 year’s imprisonment.”

97. Under article 43 of the Act: “Police officers given a custodial sentence by a civilian criminal court may be liable to a secondary penalty, in which case they shall appear before the competent Internal Security Forces court which shall consider their defence and may impose a secondary penalty as set forth in this Act.”

Article 13 Extradition

98. Article 21 of the Constitution provides that:

“1. No Iraqi shall be handed over to foreign entities or authorities;

“2. The right of political asylum in Iraq shall be regulated by law. No political refugee shall be handed over to a foreign entity or returned forcibly to the country from which he or she has fled;

“3. Political asylum shall not be granted to a person accused of committing international or terrorist offences or to any person who has harmed the interests of Iraq.”

99. While the Criminal Code does not specifically define the offence of enforced disappearance, for the purposes of extradition between States, enforced disappearance is not considered as a political offence, or as an offence connected with a political offence or inspired by political motives. Under the Convention, the Government of Iraq is obliged to consider enforced disappearance as an extraditable offence in any extradition treaty existing between States parties before the entry into force of the Convention, and it strives to include the offence of enforced disappearance as an extraditable offence in any subsequently concluded extradition treaty. Pursuant to article 13 of the Arab League Convention on Extradition, the Government considers the Convention on Enforced Disappearance as the necessary legal basis for extradition between States parties in respect of that offence and has concluded a number of agreements in this field with other States, including Saudi Arabia and Jordan.

100. The Code of Criminal Procedure regulates extradition procedures. Article 357 of the Code provides that:

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

“1. Is accused of committing an offence which took place either inside or outside the State requesting the extradition and which carries a minimum penalty of 2 years’ ordinary or rigorous imprisonment under the laws of the requesting State and the laws of Iraq;

“2. Has been sentenced by the courts of the requesting State to not less than 6 months’ imprisonment.

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

101. Article 358 of the Code of Criminal Procedure outlines the circumstances in which extradition is not permitted:

“Extradition is not permitted in the following circumstances:

“1. If the offence for which the extradition is requested is a political or military offence under Iraqi law;

“2. If the offence could be tried before the Iraqi courts despite having occurred abroad;

“3. If the person who is the subject of the request for extradition is pending investigation or trial inside Iraq for the same offence or has already been convicted or acquitted for that offence, if an Iraqi court or investigating judge has ruled that the person should be released, or if the criminal case has lapsed under the terms of Iraqi law or of the law of the State requesting the extradition;

“4. If the person concerned has Iraqi nationality.”

102. These conditions are reiterated in article 359 which provides that: “If the person whose extradition is requested is pending investigation or trial in Iraq for an offence other than the offence for which extradition is requested, the request will be deferred until the person concerned is released, acquitted or convicted and any penalty has been enforced.”

103. Article 360 of the Code of Criminal Procedure lays down the procedures to be followed when making an application for extradition under Iraqi law:

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

“1. A full statement about the person whose extradition is requested, including a description, photograph and documentary proof of nationality if the person concerned is a citizen of the requesting State;

“2. An official copy of the arrest warrant including the legal definition of the offence and the applicable penalty, in addition to an official copy of the documents of the investigation and of any judgement handed down in respect of the person concerned. In urgent cases, the request may be made by telegram, telephone or post without attachments.”

Article 14

Mutual legal assistance

104. Requests for legal assistance are regulated by the Code of Criminal Procedure as well as by the relevant bilateral treaties between Iraq and other States. Thus, the law takes account of international treaties, the rules of general international law and the principle of reciprocity.

105. The mechanism for requesting legal assistance is set out in article 353 of the Code of Criminal Procedure: “If a foreign State wishes to take measures to pursue an investigation into an offence through the Iraqi judicial authorities it must send a request to that effect through diplomatic channels to the Ministry of Justice. The request must be accompanied by a full account of the circumstances of the offence, the evidence for the accusation, the applicable legal provisions and a detailed specification of the measures it wishes to take.”

106. Article 354 of the Code of Criminal Procedure sets out specific rules for dealing with requests for legal assistance:

“A. If the Ministry of Justice considers that the request meets the requisite legal conditions and that its implementation would not affect public order in Iraq, it will refer the request for implementation to the investigating judge in whose area the request is to be carried out. A representative from the State requesting legal assistance may be present while the request is being implemented.

“B. The Ministry of Justice may ask the representative of the State requesting legal assistance to deposit an appropriate sum in order to cover witness expenses, experts’ fees, costs of documents and other such costs.

“C. If the requested measures are implemented, the investigating judge will submit the documents to the Ministry of Justice to be forwarded to the foreign State.”

107. Article 355 of the Code of Criminal Procedure concerns making requests for legal assistance: “If the Iraqi judicial authorities request legal assistance from the judicial authorities in another State to carry out specific measures, the request is to be submitted to the Ministry of Justice so that it can then be sent through diplomatic channels to the judicial authorities in the State concerned. Judicial measures undertaken pursuant to the request for legal assistance will have the same legal effect as if they had been undertaken by the judicial authorities in Iraq.”

108. The mechanism for recording witness statements is set out in article 356 of the Code: “The investigating judge or court shall request the Iraqi Consul to record the testimony or statement of an Iraqi person abroad. The request is to be submitted through the Ministry of Justice and must include an explanation of the matters about which information is being requested. The testimony or statement recorded by the Consul will be considered equivalent to testimony or statement recorded by an investigator.”

Article 15

International cooperation

109. Since 1991 the Iraqi Government has been working through the Tripartite Commission to resolve the issue of Kuwaiti citizens who went missing in Iraq after the Iraqi invasion of Kuwait in 1990; Iraq is one of the parties to the Tripartite Commission, while the United Kingdom, France, the United States, Kuwait and Saudi Arabia together form the second party and the International Committee of the Red Cross (ICRC) the third. A subcommittee formed in 1994 to deal with operational and procedural issues arising from the Commission’s resolutions has managed to resolve the cases of 241 of the 608 Kuwaitis missing in Iraq. At the beginning of the American occupation of Iraq in 2003, Kuwait began transporting the remains of Kuwaitis from a number of sites within Iraq and has carried out tests to confirm their identity and determine the causes of death.

110. The Ministry of Human Rights and the International Commission on Missing Persons signed a memorandum of understanding on 26 November 2011 with a view to strengthening cooperation between the Commission and Iraqi government agencies.

Pursuant to that memorandum, the Commission is providing training to Ministry of Human Rights personnel on the excavation and removal of human remains from mass graves dating from the time of the former dictatorship. In addition, the Commission is helping to assess the accomplishments of the Government department responsible for dealing with mass graves, while experts from the Commission are participating in excavations, providing scientific and practical consultation at grave sites and taking part in a national campaign to gather information and blood samples from victims' families. Cooperation is also underway with the International Red Cross in the field of training and capacity-building.

111. After the American occupation of Iraq in 2003, many specialized organizations that had been working in support of victims of the Anfal campaign and of political prisoners in the Iraqi Kurdistan Region since the uprising of the Kurdish people in 1991, stepped up their efforts, both inside and outside the region, to return the bodies of Anfal campaign victims to their places of origin, and to provide compensation and care to family members suffering mental and physical ailments.

Article 16

Non-refoulement

112. The Political Refugees Act (Act No. 51 of 1971) contains legal guarantees that are equivalent to the principle of non-refoulement as set forth in the Convention. Under the Act:

“1. A refugee cannot under any circumstances be returned to his or her country of origin;

“2. If the refugee's request for asylum in Iraq is rejected, the refugee may be sent to a third country, pursuant to a ruling by the competent authorities and with the agreement of the Minister.”

Thus, Iraqi legislation already accommodates the principle of non-refoulement, in respect of refugees and others.

113. The Foreigners' Residency Act (Act No. 118 of 1978), as amended, contains special provisions for dealing with foreigners, including deportation and expulsion from Iraq under circumstances regulated within the Act. Article 14 provides that: “Governors of governorates adjacent to the borders, and the Director General in other governorates, may order the expulsion of any foreigner who has illegally entered the Republic of Iraq.” Article 15 lays down rules concerning the deportation of foreigners from Iraq: “The Minister or his authorized representative may decide to deport any foreigner legally resident in the Republic of Iraq if it is established that he fails to fulfil the conditions set out in article 5 of this Act, or that he fails to fulfil one of those conditions having entered the country.”

114. The Iraqi Government is working to apply the principle of non-refoulement to former members of Mujaheddin e Khalq who are illegally resident in Iraq and whom the Government accuses of terrorism and of perpetrating crimes against the Iraqi people. The Government of Iraq, wishing to act in accordance with international law, agreed to mediation through a United Nations delegation, which adopted an initiative to resolve this problem. A memorandum of understanding was signed, under which individuals were transferred from Camp New Iraq to Camp Liberty, which was inspected by the United Nations Assistance Mission for Iraq (UNAMI) before the transfer and found to meet international standards. Implementation of the memorandum of understanding, signed on 25 December 2011, began in 2012 and residents were transferred under the supervision of UNAMI and a working group from the Ministry of Human Rights. According to the memorandum of understanding, the Office of the United Nations High Commissioner for

Refugees will examine requests for asylum presented by camp residents for resettlement in third countries.

Article 17

Detention and deprivation of liberty

115. Article 19 of the Constitution contains the following important stipulations to prevent secret detention:

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

...

“13. The preliminary investigation file shall be presented to the competent judge within twenty-four hours from the time of the suspect’s arrest and this deadline may be extended only once and for the same period of time.”

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

“1. In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) information concerning his identity;
- (b) the reasons for his commitment and the authority therefor; and
- (c) the day and hour of his admission and release.

“2. No person shall be received in an institution without a valid commitment order, the details of which shall have been entered in the register.”

The Prisons Division of the Department of Humanitarian Affairs in the Ministry of Human Rights carries out prison monitoring and inspection operations in which the registers are the first requirement to be checked.

117. Section 13 lays down the following important rules regulating the situation of prisoners:

“1. Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution;

“2. If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally;

“3. Every prisoner shall have the opportunity each week day of making requests or complaints to the prison master of the institution or the officer authorized to represent him;

“4. It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the prison master or other members of the staff being present;

“5. Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels;

“6. Unless it is patently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.”

118. Section 18 specifies the following obligations that the prison administration must fulfil in order to protect the prison inmates:

“1. Upon the death or serious illness of, or serious injury to, a prisoner or his removal to an institution for the treatment of mental afflictions, the prison master shall at once inform the spouse, if the prisoner is married, or the nearest relative, and shall in any event inform any other person previously designated by the prisoner;

“2. A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to visit the relative either under escort or alone;

“3. Every prisoner shall have the right immediately to inform his family of his imprisonment or his transfer to another institution.”

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

“There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be, in particular, to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.”

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

121. The reports of the Prisons and Detention Centres Division of the Ministry of Human Rights for 2010 and 2011 referred to ongoing monitoring of the procedures of the courts, as well as the Commission on Integrity and the offices of the inspectors general in the ministries responsible for the supervision of adult correctional facilities and juvenile reform schools, through the activities of the branch established to prevent enforced disappearance in collaboration with the inspectorate, information technology, database and missing persons branches.

122. Those reports called upon all the bodies supervising the investigation of the cases of disappearance referred to therein to expedite the resolution of those cases, call the persons at fault to account in accordance with the law and ensure that the legally prescribed penalties were imposed on them. On 26 December 2011, the Ministry of Human Rights transmitted all the prehearing documents in the enforced disappearance file to the Commission on Integrity and the Office of the Attorney General with a view to the resolution of those cases by determining whether they involved enforced disappearance and,

if so, identifying and prosecuting the persons at fault so that punitive measures could be taken against them in accordance with the law, since some of those cases had been pending for long periods of up to five years without final court judgements being rendered thereon.

123. The Ministry of Human Rights maintains a database on victims of enforced disappearance which lists the names of persons who, according to their relatives, were subjected to enforced disappearance. A conviction was obtained in one of those cases in which the persons accused were found guilty of a criminal act of enforced disappearance.

124. Iraqi prisons are subject to inspection by the following bodies:

(a) The Department of Public Prosecutions which, under the terms of article 7, paragraph 2, of the Public Prosecutions Act No. 159 of 1979, is responsible for the inspection of detention centres run by the adult and juvenile branches of the Department of Corrections and the submission of monthly reports thereon to the bodies concerned;

(b) The Ministry of Human Rights, Department of Humanitarian Affairs, Prisons Monitoring Division, in accordance with Coalition Provisional Authority Order No. 60 of 2004.

125. The secretariat of the Council of Ministers has established mechanisms for the receipt of complaints from citizens through its e-mail address, its Facebook page and the hotline that it has set up for this purpose. It has also established a Citizens' Affairs Office which receives complaints directly from citizens and carries out field visits. In 2012, this Office received 21,324 petitions. There are 53 citizens' affairs offices in Government ministries, and 89 in the governorates and districts, which received 94,936 petitions and interviewed about 44,195 citizens. The hotline set up for the receipt of complaints from citizens received 225,886 calls. These mechanisms could provide a useful means for the transmission of information to all the institutions responsible for inspecting prisons and responding to petitions for clarification of the fate of any person presumed to have been subjected to secret detention or enforced disappearance.

Article 18 Guarantees

126. Under Iraqi legislation, the relatives and legal representatives of any persons deprived of their liberty are guaranteed access to the register containing the information specified in article 18 of the Convention in respect of the said person. Such access is provided either directly or through the special inspection boards to which reference has been made in previous paragraphs of this report. The Ministry of Human Rights, for example, receives petitions for information on persons deprived of their liberty, looks into their situation and provides their relatives with the requisite information.

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

128. Paragraph 14 of the same section further stipulates that: "For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so

desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.”

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

130. Article 47, paragraph 2, of the Code of Criminal Procedure stipulates that: “In offences against the internal or external security of the State, offences involving economic sabotage and other offences punishable by the death penalty, life imprisonment or a lesser term of imprisonment, the informant has the right to remain anonymous and not to be called as a witness. The judge shall enter this, together with a summary of the information provided, in a special record prepared for this purpose and shall conduct the investigation in accordance with the standard procedure, making use of the information provided by the informant but without revealing the latter’s identity in the investigation records.”

Articles 19 and 20

Protection of personal information and the right to obtain information

131. The Department of Forensic Medicine is responsible for the collection and storage of details of examinations that it carries out at the request of the judicial and police authorities. Such details are stored by competent personnel on secure computers and it is prohibited to reveal them for use by any other body without permission, in due and proper form, from the investigating authority concerned.

132. The Department of Forensic Medicine operates in accordance with Act No. 37 of 2013 by which its activities are regulated. Article 11, paragraph 2, of the Act outlines the procedure for appeals against forensic medical decisions as follows: “The Governing Body of the Department of Forensic Medicine shall form, from among its members, a committee consisting of three specialized and serving medical examiners to look into appeals lodged against forensic medical reports. The committee’s decision shall be final from the standpoint of forensic medicine.”

133. Article 12 of the Act further stipulates that: “The decisions and recommendations of the Governing Body of the Department of Forensic Medicine shall be submitted to the Minister for ratification.”

134. Under article 7 of the Act: “The court, the Office of the Public Prosecutor or the persons concerned have the right to appeal against a forensic medical report before the committee referred to in article 11, paragraph 2, hereof.”

135. Under article 8 of the Act: “Medical reports drawn up at the request of the judiciary by other than forensic medical examiners shall be appealable by the court, the Office of the Public Prosecutor or the persons concerned to the health institutions to which the physicians who drew up the medical reports are attached.”

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

Articles 21 and 22

Release and sanctions in respect of obstruction of, or failure to comply with, the obligation to provide information

137. In order to implement article 21 of the Convention, the Republic of Iraq takes measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Section 3 of (dissolved) Coalition Provisional Authority Memorandum No. 2 of 2003 concerning the management of detention and prison facilities lays down the following strict rules regulating the admission and release of detainees:

“1. In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) information concerning his identity;
- (b) the reasons for his commitment and the authority therefor; and
- (c) the day and hour of his admission and release.

“2. No person shall be received in an institution without a valid commitment order, the details of which shall have been entered in the register.”

138. Significant measures to ensure the release of detainees in Iraq are taken by the above-mentioned bodies responsible for monitoring prisons, adult correctional facilities and juvenile reform schools. Article 324 of the Criminal Code prescribes the following deterrent penalty for public officials or agents found to be at fault in this regard: “Any public official or agent who, being entrusted with the administration or supervision of a detention centre, prison or other facility established for the enforcement of penalties or precautionary measures, admits a person thereto without an order to do so from a competent authority, or who declines to execute an order issued for the release of such person or for his retention beyond the period prescribed for his custody, detention or imprisonment, shall be liable to a term of imprisonment.”

139. The Iraqi institutions take the necessary measures to assure the physical integrity of detainees and their ability to exercise fully their rights at the time of release. These obligations, which are stipulated in Iraqi legislation and in the procedures adopted thereunder, are kept under close surveillance by the institutions responsible for monitoring prisons, adult correctional facilities and juvenile reform schools. In cases in which the provisions of article 6 of the Convention are not applicable to an act that does not constitute a criminal offence of enforced disappearance, any act without criminal intent which unjustifiably prevents access to or conceals information from the relatives of a person deprived of his liberty constitutes an offence punishable under the relevant laws. The same applies to any act that in any way obstructs or delays a complaint against any violation of the rights of a person deprived of his liberty which anyone with a legitimate interest, such as a relative or the lawyer or legal representative of the person concerned, has a right to file with a court competent to promptly determine the lawfulness of his deprivation of liberty and order his release if his deprivation of liberty is found to be unlawful. Non-fulfilment of the obligation to record every case of deprivation of liberty or the recording of any information that the registrar responsible for the official records and/or files knew, or should have known, to be false constitutes an infringement of the obligations stipulated in (dissolved) Coalition Provisional Authority Memorandum No. 2 of 2003 concerning the management of detention and prison facilities. Refusal to provide information on a case of deprivation of liberty when the statutory conditions for the provision of such information are met, or the provision of false information thereon, constitutes a violation of the

provisions of the said Act. Iraq will be drawing up more explicit texts to deal with any case covered by the Convention so that it can be applied in a full and effective manner at the national level.

Article 23

Training of personnel

140. Military personnel, internal security forces and civilians responsible for law enforcement, as well as medical personnel, public officials and other persons who may share responsibility for the custody or treatment of any person deprived of liberty, are receiving training from the Government of the Republic of Iraq in human rights culture in general and in the standard minimum rules for the treatment of persons deprived of their liberty. The training programmes organized by the Ministry of Human Rights, the Ministry of Defence, the Ministry of the Interior and the Ministry of Justice are designed to provide the necessary education and information regarding the relevant provisions of the Convention, which have been incorporated in those programmes since their introduction in 2006, even before Iraq became a party to the Convention. In general, the training provided in this regard is designed to achieve the following purposes:

- Prevent the involvement of such personnel in cases of enforced disappearance, since the official statistics indicate a decline in the number of allegations and complaints concerning cases of enforced disappearance and increased awareness by law enforcement personnel of human rights, including the necessary education and information regarding the relevant provisions of the Convention;
- Highlight the importance of preventing enforced disappearance and investigating cases thereof since this offence, although it is not covered by the Criminal Code promulgated under Act No. 111 of 1969, is an issue of primary concern to the monitoring groups of the Ministry of Human Rights as can be seen from the annual reports that it issues;
- Ensure recognition of the need for the prompt resolution of cases of enforced disappearance. In this connection, the Ministry of Human Rights and the institutions responsible for the management of adult correctional facilities and juvenile reform schools are endeavouring to facilitate access to information concerning any case of alleged enforced disappearance and to organize unannounced visits to those penal institutions and to any other institution in Iraq that might contain a secret prison.

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

Article 24

Rights of victims and guarantees thereof

142. The Criminal Code still regards “victim” as synonymous with the person who is the target of a criminal act. This is implicit in the provisions of the said Code, in which that

term is not used since the victim is presumed to be the person against whose freedom and human dignity the criminal act was committed. The Code of Criminal Procedure adopts the same approach by equating the victim with the target of a criminal act. However, it should be noted that the laws of transitional justice in Iraq have expanded the definition of “victim” to include members of the victim’s family who were affected as a result of the criminal act in which he was targeted and, in their capacity as additional victims of the same act, they now have a legal entitlement to claim fair compensation and assume the public functions of which they were deprived.

143. Accordingly, adoption of the definition contained in article 24, paragraph 1 (“For the purposes of this Convention, ‘victim’ means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”), will necessitate consideration of the amendment of the Iraqi legal system in regard to criminal acts of enforced disappearance. Iraqi law does not deny the right of the “victim” to know the truth regarding the circumstances of the enforced disappearance and the progress and results of the investigation, nor does it deny the personal right of his relatives to have access to that information and learn the fate of the disappeared person. The investigation authorities have a responsibility to ascertain the fate of the disappeared person by the means available to them under the law and they are required to make every effort to that end.

144. Under the provisions of the Code of Criminal Procedure, the victim’s relatives are entitled to claim compensation and reparation in respect of the harm suffered as a result of the offence committed against him. Article 10 of the Code stipulates that: “Anyone who has suffered direct material or moral damage as a result of any criminal act has the right to bring a civil action against the accused and the person bearing civil liability for the latter’s act, without prejudice to the provisions of article 9, by submitting a petition or a verbal request that shall be entered in the record during the collection of evidence, during the preliminary investigation or before the court hearing the criminal proceedings at any stage prior to the rendering of judgement in the case. Such petition or request shall not be admissible if it is submitted for the first time during an appeal in cassation.”

145. A civil action may be brought before the civil courts in accordance with article 26 of the Code, which stipulates that: “The civil court shall defer its decision in the case until the judgement rendered in the criminal proceedings brought in respect of the act on which the civil action is based becomes final. In the meantime, the civil court may order any urgent precautionary measures that it deems necessary.”

146. Article 27 of the Code of Criminal Procedure further stipulates that: “In the event of a decision on the civil action being deferred in accordance with article 26, the civil court shall resume its hearing and adjudication of the civil action as soon as the criminal proceedings have been completed.”

147. Under the provisions of the Islamic sharia codified in the Welfare of Minors Act (Act No. 78 of 1980), as modified, a missing person is legally equated with a minor. Article 3 of the Act stipulates as follows:

“1. This Act shall apply to:

“(a) Minors who have not reached the age of majority, which is set at 18 years except in the case of persons over 15 years of age who, having married with the permission of a court, are deemed to possess full legal capacity;

“(b) Foetuses;

“(c) Persons whom a court has deemed to be partially or totally lacking in legal capacity and has therefore placed under guardianship, including absent and missing persons.

“2. For the purposes of this Act, ‘minor’ shall mean a child, a foetus, anyone whom a court has deemed to be partially or totally lacking in legal capacity and an absent or missing person, unless otherwise indicated by the context.”

148. Article 86 of the Act defines a missing person as “an absent person of whom, in the absence of news, it is not known whether he is alive or dead”. Article 87 of the Act stipulates that: “The status of a missing person shall be declared in a decision issued by a court. In the case of members of the armed forces and the internal security forces, the decision shall be issued by the Minister of Defence or the Minister of the Interior. Such decision shall be annulled if the missing person is proved to be alive.”

149. Article 90 of the Act specifies the following procedure for the disposal of a missing person’s estate:

“1. The assets of a missing or absent person shall be released on the appointment of a curator and shall be managed in the same way as the assets of a minor.

“2. If a court appoints a curator to manage the assets of a missing or absent person, the curator shall act under the supervision of the Directorate for the Welfare of Minors.

“3. In the absence of a curator, the Directorate for the Welfare of Minors shall be responsible for the management of a missing person’s assets in accordance with the provisions of this Act.”

150. Under article 91 of the Act:

“1. Movable assets of a missing or absent person may be sold only if they are perishable or require disposal or maintenance.

“2. An asset may be purchased on behalf of a missing or absent person only if it is needed for the preservation or management of his other assets.”

151. For purposes of determining the fate of a missing person, article 92 of the Act stipulates that: “The absence shall terminate on the extinguishment of its cause, on the death of the missing person or when a competent court decides to declare him dead.”

152. Under article 93 of the Act:

“The court may declare a missing person dead in any of the following circumstances:

1. If conclusive evidence of his death is discovered;
2. If four years have passed since he was reported missing;
3. If he went missing in circumstances in which he can reasonably be presumed to have perished and if two years have passed since he was reported missing.”

However, under article 94: “In all cases, the court shall have an obligation to search for the missing person by every possible means with a view to ascertaining whether he is alive or dead before declaring him dead.” Article 95 specifies the date with effect from which a missing person is deemed to be dead (“The date of the missing person’s death shall be the date on which he is declared dead”).

153. With regard to the procedure for the division of a missing person’s estate, article 96 stipulates that: “The estate of a missing person who is declared dead in accordance with article 95 hereof shall be divided among his surviving heirs at the time when the court declares him dead.” The procedure is further elaborated in article 97 (“The assets of an absent or missing person shall be returned to him if he subsequently presents himself, or shall be given into the possession of his heirs subject to proof of his actual or legally declared death, in accordance with the provisions of article 59 hereof”). Under article 98:

“1. On the expiration of the time limit specified in article 93, paragraph 2, hereof, if the missing person has not been found and has no traceable heirs, the Directorate for the Welfare of Minors shall seek the approval of the Minister of Justice to register his assets in the escrow account; 2. The Minister of Justice shall return the said assets, if any, or the value thereof, to the missing person if the latter presents himself within five years from the date of the decision to register them in the escrow account.”

154. In order to alleviate the pain and suffering of the relatives of victims of the Anfal campaign, the Kurdistan Regional Government is implementing a number of service projects, including the construction of residential units for distribution among them. Plots of land are also being distributed to many of them and housing loans are being provided to enable them to build homes for themselves.

155. In accordance with the provisions of Act No. 11 of 2011 concerning benefits for political prisoners and victims of the Anfal campaign, the Kurdistan Regional Government has established a special department for political prisoners incarcerated under the dictatorial regime in order to improve their circumstances by granting them monthly pensions, plots of land and compensation.

156. The Kurdistan Regional Government is also supporting and assisting the families of martyrs and victims of the Anfal campaign and the genocide through a fund that was established under the terms of Act No. 37 of 2007 to support the children, heirs and relatives of victims of the Anfal campaign, and particularly those planning to marry who are given gifts of money to enable them to form a family, with a view to ensuring peace of mind and a decent life for the relatives of martyrs, victims of the Anfal campaign and political prisoners who suffered under the dictatorial regime.

157. According to the reports of the Directorate for the Affairs of Political Prisoners in the Ministry of Martyrs and Anfal Affairs, the Kurdistan Regional Government has provided the following assistance:

- Payment of monthly pensions to 5,296 former political prisoners;
- Distribution of plots of residential land to more than 2,544 former political prisoners;
- Award of education grants to more than 505 former political prisoners;
- Provision of housing loans for more than 575 former political prisoners;
- Award of marriage grants to more than 29 former political prisoners.

158. Iraqi legislation does not prohibit the establishment of organizations for the purpose of protecting the rights, or ascertaining the fate, of victims of enforced disappearance. This is evident from article 4 of the Non-Governmental Organizations Act (Act No. 12 of 2010) which stipulates as follows:

“1. Every Iraqi natural or legal person has the right to establish, join or withdraw from any non-governmental organization in accordance with the provisions of this Act;

“2. Founding members shall be required to meet the following conditions:

“(a) They must be Iraqi nationals or resident in Iraq;

“(b) In the case of natural persons, they must enjoy full legal capacity and must be over 18 years of age;

“(c) They must not have been convicted of a non-political felonious act or a shameful misdemeanour.”

159. Article 24 of the same Act permits the registration in Iraq of branches of foreign non-governmental organizations (“A branch of a foreign non-governmental organization may be registered in Iraq in accordance with the provisions of this Act”).

Article 25

Preventive measures and criminal penalties

160. In order to protect child victims of enforced disappearance, Iraqi law replaced adoption with the foster care system provided for in chapter V (arts. 39–46) of the Juvenile Welfare Act (Act No. 76 of 1983), as amended, under which a married couple may apply to foster a child who is a double orphan or of unknown parentage. Article 39 of the said Act stipulates that: “A married couple may make a joint application to the juvenile court to foster a child who is a double orphan or of unknown parentage. Before issuing its decision on the application, the court must ascertain that the applicants are Iraqis of good reputation and sound mind, free of communicable diseases, capable of supporting and bringing up a child, and well-intentioned.”

161. It is clear from the above text that certain conditions must be met not only by the applicants but also by the orphan to be fostered:

- (a) Conditions to be met by the applicants:
 - (i) A single joint application must be submitted by an established couple consisting of a husband and wife, neither of whom is entitled to apply solely on his or her own behalf, and they must not be separated or divorced at the time of application;
 - (ii) The couple must be Iraqis, i.e. both the husband and the wife must hold Iraqi nationality and it is not permissible for one of them to be Iraqi and the other non-Iraqi;
 - (iii) The couple must be of sound mind in the sense that both of them must be free of any mental disorder or disability affecting the enjoyment of their full mental faculties;
 - (iv) Their good reputation must be ascertained through the inquiries made by the juvenile court through the administrative head of the neighbourhood in which they are living or through their employer or colleagues or the testimony of witnesses. The decision in this matter is left to the discretion of the juvenile court, subject to oversight by the Court of Cassation insofar as any aggrieved party is entitled to lodge an appeal with the Court of Cassation against a favourable or unfavourable decision;
 - (v) A certificate confirming that the couple submitting the application for foster care are free of communicable or contagious diseases must be issued by a competent official medical body;
 - (vi) The applicants’ financial ability to care for the child must be ascertained by the juvenile court through a study of their assets, sources of income and other means of proof. The court has discretionary power in this regard;
 - (vii) The applicants must be well-intentioned in the sense that their purpose in fostering the orphan must not be illegal, immoral or more conducive to their own interests than to those of the orphan. However, both applicants are presumed to be well-intentioned in the absence of proof to the contrary.
- (b) Conditions to be met by the orphan to be fostered:

- (i) As stipulated in article 39 of the Juvenile Welfare Act, the orphan must be a child, i.e. a person under 9 years of age;
- (ii) The orphan must have lost both parents. The loss of only one parent precludes foster care since the text confines foster care exclusively to double orphans.

162. After verification, the juvenile court issues a provisional foster care order valid for a trial period of six months that may be extended for a further six months. During this period, the court sends a social worker to the home of the applicants at least once a month to make sure that the child is receiving proper care and that they still wish to continue providing such care. The social worker submits a detailed report thereon to the court. If the applicants have changed their mind about fostering, or if the court finds that the interests of the child are not being served thereby, the court issues an order for the child to be placed in the care of a Government-run institution. On the other hand, if the interests of the child are found to have been served during the trial period, the court issues a definitive foster care order.

163. As already indicated in previous paragraphs of this report in which reference was made to articles 422 and 423 of the Criminal Code, Iraqi law prescribes severe penalties for abduction and other offences committed against children and women. Under the provisions of article 424 of the Code, if the acts of coercion or torture referred to in the two preceding articles lead to the death of the victim, the maximum penalty is capital punishment and such acts of murder are the ones most likely to be invoked for the application of that article in Iraq.

164. The Criminal Code also prescribes severe penalties for other offences, such as falsification of documents, to which reference is made in this article of the Convention. For example, article 289 of the Criminal Code stipulates that “In circumstances other than those for which the Code prescribes a special penalty, any person who falsifies an official document shall be liable to a term of up to 15 years’ imprisonment” and, under the provisions of article 298 of the Code, “Any person who knowingly uses a falsified document shall be liable — depending on the circumstances — to the penalty prescribed for its falsification.”

IV. Conclusion

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