

## IRAQ

### CCPR A/35/40 (1980)

119. The Committee considered the initial report (CCPR/C/1/Add/45) submitted by the Government of Iraq at its 199<sup>th</sup>, 200<sup>th</sup>, 203<sup>rd</sup> and 204<sup>th</sup> meetings held on 20 and 24 March 1980 (CCPR/C/SR.199, 200, 203 and 204).

120. The report was introduced by the representative of the State party who stressed two particular points: firstly, that Iraq granted to the nationals of other Arab countries all the rights enjoyed by its own nationals, with very few exceptions; and secondly, that since the submission of its report, Iraq had adopted the law concerning the National Council and the law concerning the Legislative Council of the Autonomous Kurdistan Region, both of which had been promulgated on 16 March 1980, together with the amendment to the "Law of Personal Status". Another point of interest was the entry into force on 17 January 1980 of a new law on judicial organizations, which had replaced law No. 26 of 1963, referred to in the report. He pointed out that the establishment of a National Council, sharing legislative powers with the Revolutionary Command Council, was an important step towards the building of a democratic society. The text of the Bills concerning the National Council and Legislative Council had been officially submitted to the people for a period of 45 days, so that they could study, through the information media, the principles on which the Bills were based and the provisions they contained.

121. Members of the Committee expressed their appreciation for the exemplary way in which the report was prepared and for the additional documentation and information provided by the representative of the State party. In this connection, it was asked whether the Government of Iraq would consider publishing the report for the benefit of its citizens, whether the Covenant had been published in languages that the people understood, whether its text was readily available in public libraries or elsewhere and whether the Government had any plans to organize meetings to enable administrators and judges to discuss its various provisions.

122. Commenting on part one of the report concerning the general legal framework for the protection of human rights in Iraq, members of the Committee asked whether a permanent instrument would be adopted soon to replace the existing "interim constitution", promulgated in 1970; since the provisions of the Covenant were part of international law and binding on Iraq, what was the status of the Covenant in relation to the Constitution; whether its provisions overrode other legislative provisions adopted either before or after the Covenant was incorporated into domestic law; and whether the courts had many any rulings in respect of differences of interpretation between the provisions of the Covenant and those of the Constitution and domestic legislation. It was also asked whether the "Law for the Reformation of the Legal System" would reform the system gradually or would give immediate effect to newly established rules and institutions. Reference was made to a statement in the report that the enjoyment of the rights proclaimed in the Covenant was subject, *inter alia*, to "the compatibility of such enjoyment with the ideological principles and foundations of the political system and its prevailing plans and programmes", and it was pointed out that that was not compatible with the Covenant and could be used to apply harsh measures in

contradiction with its provisions.

123. With reference to the statement in part one of the report that the judicial system of Iraq was built on the principle of a single, rather than dual, jurisdiction, it was asked whether that meant that the administration normally acted under the supervision of the courts. Additional information was requested on the competence of shari'a courts and the relationship between shari'a and general law.

124. With regard to article 1, paragraph 2, of the Covenant, reference was made to the commitment of Iraq, as reflected in the report, to the establishment of a new international economic order as well as to the adoption of measures, including nationalization, with a view to achieving sovereignty over and disposal of its natural wealth and resources and it was asked how Iraq envisaged the promotion of human rights on both the national and international levels through that commitment.

125. In connection with article 2 of the Covenant, it was noted that the relevant article in the Iraqi Constitution made no mention of the fact that the rights had to be guaranteed without distinction of political opinion and the question was asked whether the Constitution allowed discrimination against individuals because of their political ideas. The fact that the Covenant had been incorporated in the Iraqi legal system invited many questions from the members of the Committee: Had the provisions of the Covenant been invoked before the courts and administrative bodies? Could they be invoked in preventive as well as in enforcement proceedings? What was the number of cases in which the courts had made specific pronouncement in proceedings involving the Covenant? Could the representative give some examples of such pronouncements or decisions? Referring to a statement in the report that the injured party was entitled to claim compensation for any harm caused to him by the person responsible for the violations of his human rights, one member asked whether the State would undertake to pay such compensation if the person responsible were one of its officials.

126. As regards article 3 of the Covenant, information was requested on the measures taken to ensure equal rights and duties for men and women in public office as well as on the political role of women, their percentage in the membership of the Ba'ath Party and on the kind of posts they could hold in the political, economic and social spheres.

127. With reference to article 4 of the Covenant, it was noted that no state of emergency had been declared in Iraq since the Covenant had entered into force in 1976, and it was asked whether any emergency measures, or measures which could now be classified as such, or legislation adopted before that date, were still being applied and whether a de facto state of emergency still existed in Iraq.

128. As regards article 6 of the Covenant, it was stressed that the right to life was an inherent right since creation and that it covered more than the deprivation of life by means of the death penalty. Information was requested on measures taken to increase the expectation of life and reduce the infant mortality rate. Noting that the report did not specify the "most serious crimes" punishable by death, some members of the Committee expressed their concern at the possible imposition, under the Penal Code, of the death penalty for certain non-violent offences, such as double membership in political parties, political activity in the army and the refusal of an individual to divulge his previous political activities, and asked whether, how and under what circumstances such activities had been so punished; how many people had been executed over the past two years and for what

crimes; and which courts could impose the death penalty and how far their procedures conformed to the provisions of article 14 of the Covenant.

129. Commenting on articles 7 and 10 of the Covenant, members of the Committee noted that the Iraqi Constitution prohibited the exercise of any form of physical or psychological torture, but that the report did not specify what safeguards or mechanisms there were to ensure the respect of that prohibition by the police and security services. Questions were asked as to what authorities a prisoner could apply in cases of alleged torture or maltreatment, whether an enquiry was automatically carried out thereon, what procedures were used to investigate the matter and bring the offenders to justice, what punishment existed for an investigator who resorted to torture or to cruel and degrading treatment in the process of investigation, and whether Iraqi legislation prohibited reliance on evidence extorted by torture and other illegal means. In this connection, reference was made to a statement in the report that, except for those who had committed criminal offences against the safety of the State, the rights of the people or the honour of allegiance to the Homeland, it was necessary to protect offenders from the cruelty of punishment, and it was pointed out that the exclusion of such offenders was incompatible with the requirements of the Covenant. It was also asked what was the precise nature of the special places of detention which were not covered by the provisions of the Prisons Administration Law referred to in the report; whether there were any provisions for the supervision of penal establishments to ensure that prisoners were treated humanely and whether independent persons or bodies were allowed to visit penal establishments from time to time to inspect them and to interview detained persons. Information was requested on the practical experience obtained in implementing the Iraqi policy of rehabilitation of ex-prisoners into society.

130. With reference to article 8, paragraph 3, of the Covenant, it was noted that Iraq had signed conventions prohibiting forced or compulsory labour and that the report spoke of work as a “scared duty”, and it was asked what precise legal duties flowed from that statement, whether the relevant section of the Penal Code making public service employees liable, under certain conditions, to imprisonment and forced labour if they stopped work, was applicable to judges and whether the youth training schemes involved forced labour.

131. As regards article 9 of the Covenant, information was requested on any administrative procedures and social institutions authorized by law to detain individuals on the grounds of mental illness, drug or alcohol intoxication or vagrancy, on the nature of the laws which applied in such cases and on the guarantees protecting the individuals concerned. It was also asked whether any persons were being detained without trial for political reasons and, if so, on what authority; what were the circumstances defined by law “in which a person could be arrested or detained without a warrant”; what authorities were empowered to order the arrest or detention of persons in those circumstances; what was the maximum length of detention pending trial; whether the detainee had the right to appeal for a reduction of the length of preventive detention and if his family was promptly notified of his detention; and whether the legal counsel of the accused was allowed to be present during interrogations to see that any confession was obtained by fair means.

132. Commenting on article 12 of the Covenant, one member asked what were the “cases defined by the law” in which an Iraqi citizen could be subject to restrictions imposed on his liberty of movement or on his freedom to choose his place of residence within the country. It was also asked in what circumstances might a passport or other travel document be refused and whether Iraqi

legislation provided for the possibility of introducing an appeal before the courts by any citizen who had been prevented by the administration from leaving his country.

133. In connection with article 14 of the Covenant, information was requested on the judicial system in Iraq, particularly on the types of disputes and criminal cases excluded from the jurisdiction of civil and criminal courts respectively; on the procedure and criteria followed for appointing judges, their terms of tenure and the disciplinary system which applied to them and on whether the judiciary was open to women; on the composition and competence of the Revolutionary Court and whether there were any other special courts established on an ad hoc or permanent basis; on the “cases specified by law” which the Revolutionary Court decided and the laws which served as the basis for sentences passed by this and other special courts and on the guarantees of their independence from the Executive and of their impartiality; on the remedies available for an individual who felt that a verdict of a special court was unjust and on whether the procedures of the special courts were in conformity with the provisions of the Covenant.

134. With regard to article 17 of the Covenant, it was noted that under the Iraqi Constitution persons were protected against arbitrary or unlawful interference in their privacy, family, home or correspondence, and it was asked what specific cases justified violation of that privacy “under the exigencies of justice and public security”, as stated in the report, and what were the powers of the police and security services in this respect.

135. In relation to article 18 of the Covenant, it was asked whether there were any restrictions on freedom of thought and what impact, if any, emergency measures had on that freedom. Noting that, under the Constitution, Islam was the State religion, members asked for an explanation of the practical consequences of that provision, particularly, whether it implied that Islam had a privileged position over other religions, whether persons professing Islam had not only political but social privileges, what was the legal situation of other religions in Iraq and whether persons had been arrested and punished in recent years for participation in religious meetings and, if so, how the Iraqi Government could justify such measures in view of its obligations under the Covenant. The question was also asked whether individuals who did not wish to participate in religious education were obliged to do so.

136. In connection with articles 19, 21 and 22 of the Covenant, it was noted that the right to freedom of opinion was an absolute and unqualified right which could not be restricted except within the terms of article 4 of the Covenant, and the question was asked whether the exercise of that right was subject to restrictions and reservations in Iraq. It was also noted that the right to freedom of expression and the rights of assembly and of association appeared to be subject to considerable restrictions, especially of a political nature, and it was asked what in fact were the rights of the individual in Iraq in that field, and to what extent was the dissemination of information through the media and the press subject to control. Referring to article 26 of the Constitution, under which the State endeavoured to provide the means required for practising freedoms “which are compatible with the nationalist and progressive line of the Revolution”, and noting that in the report of another socialist country the propagation of ideas of chauvinism and nationalism was prohibited by law, one member requested an explanation of the concept of “the nationalist line” in order to avoid any confusion in that regard. Noting that the report mentioned other political parties than the Ba’ath Party and that the Covenant not only provided for freedom of association but also set forth a general

prohibition of discrimination, some members asked how many political parties existed in Iraq and what was their position vis-à-vis the “Leading Party”. Information was requested on the conditions required for forming trade unions and on their role in the management of enterprises and the political life of the country.

137. As regards articles 23 and 24 of the Covenant, it was noted that a wife was required to accompany her husband at home or in travel, and it was asked what was the reason for this requirement and whether a reverse provision existed and if the courts would be in a position to rule in favour of the Covenant if the Covenant was invoked against that provision. Information was requested on “marriages which took place outside the courts” referred to in the report; on whether men and women had the same rights to divorce; on the meaning of the statement in the report to the effect that, after the dissolution of marriage, a nursing mother should not be married to a man unrelated to the child; and on the legal status of the illegitimate child of Iraq.

138. In connection with article 25 of the Covenant, information was requested on the Revolutionary Command Council, in particular on the way in which its membership was chosen, on its political structure, on the role it played in the Government and on its relation to the “Leading Party”; on the National and Progressive Front, its nature and role; on whether citizens were free to engage in political activity and to subscribe to varying political ideologies without being victims of some aspect of criminal law; on the composition and functions of the People’s Councils; on popular organizations and their contribution to the establishment of direct democracy; on the conditions under which the election of the new National Council would take place and on its powers; on whether the condition of literacy for candidates to the Legislative Council of the Kurdish Region was applied to candidates for the National Council; and on whether the members of these Councils would be chosen solely from among the members of the National and Progressive Front or whether persons representing other political trends could be elected.

139. With regard to article 27 of the Covenant, it was noted that Iraq had embarked on a course of granting full autonomy to the Kurdistan Region and on the recognizing the cultural rights of other ethnic minorities. Requests were made for additional information on the minorities existing in Iraq; on the Legislative Council to be established in Kurdistan; and on how and by whom judicial courts in the Kurdistan Region were constituted. It was also asked what were the effects on the social and cultural life of people of steps taken to modernize the regions where minorities were living and whether any particular difficulties had been encountered.

140. Commenting on questions raised by members of the Committee, the representative pointed out that, in accordance with a law promulgated in 1977 concerning ratification of treaties, the Covenant was published in the Official Gazette and in the official collection of treaties concluded by his country; that, like any other international instrument duly concluded and ratified by law, the Covenant became an integral part of the national legal system on the same footing as national laws, but that it could not acquire a status equal or superior to that of the Constitution. As to the “Law for the Reformation of the Legal System”, he stated that the law laid down basic principles and proclaimed the objectives of legislative reforms and that it did not consist of rules which were immediately applicable but proclaimed a short-term, medium-term and long-term legislative programme.

141. The representative stated that, in Iraq, there was no administrative jurisdiction existing side by side with the “ordinary jurisdiction” and that the competence of the courts extended to all natural or juridical persons, including public authorities; however, the President of the Republic, members of the Revolutionary Command Council and judges enjoyed immunity from the law unless the competent authorities ruled otherwise. “Shari’a”, which meant, according to context, Islamic Code, was one of the sources of law to which the judge had to refer when the statutes in force were inadequate, in particular with respect to the laws concerning personal status, which must be in conformity with the “Shari’a”.

142. Replying to questions raised under article 1, paragraph 2, of the Covenant, the representative gave a detailed description of his country’s policies with regard to the establishment of a new international economic order as well as to the building of socialism in Iraq, with a view to promote human rights on both the national and international levels.

143. In connection with article 2 of the Covenant, he stressed that since the Covenant simply stated general principles and fundamental rights, its provisions could not suffice to guarantee these rights and remedy their violations, but had to be supplemented by other legal provisions specifying the procedure and sanctions relevant to its application, as was the case for the Constitution or any other law laying down general principles. Provisions of the Covenant could be invoked before a court; but the court could do no more than take notice of the fact and would not be able to hand down any civil or penal judgement, except on the basis of the country’s Civil Code or Penal Code. He also pointed out that the courts were not competent to annul administrative acts or to declare a law illegal, their competence being limited to declining to apply it.

144. As regards questions raised under article 3 of the Covenant, the representative stated that the central thrust of his Government’s policy with regard to women was to release them from the economic, social and legislative obstacles which prevented their participation equally with men in all spheres and activities and in carrying out the comprehensive national plans for economic and social development. Iraqi women had their General Union which enabled them to co-ordinate and organize women’s activities so as to strengthen democratic progress in the country.

145. Replying to questions raised under article 6 of the Covenant, he pointed out that Iraq was making a determined effort to lower infant mortality and that the figure for infant mortality was now 69 deaths per thousand. He stressed that the only crimes for which the death penalty was imposed were spying, crimes against the security of the State, crimes relating to drug trafficking, crimes of homicide with aggravating circumstances and crimes against the national economy.

146. In relation to article 10 of the Covenant, he stated that the “place of detention”, referred to in the report, was that part of the prison establishment, commissariat or any other place under police authority allocated to such purpose. As to the Iraqi policy of rehabilitation of ex-prisoners, he pointed out that any prisoner who had served his sentence had the right to resume the employment he had had before his imprisonment, but that if he was a civil servant, the State was not obliged to appoint him to the same post he had previously occupied. The Iraqi authorities had not difficulty in applying that policy because there was no unemployment in Iraq.

147. Replying to questions raised under article 14 of the Covenant, the representative referred to

a new law enacted in 1979 the purpose of which was to allow the establishment of a legal machinery capable of supervising respect for the law while taking into account revolutionary ideals, and in which the courts would be independent and subject to no power except that of the law. He stressed that personal status and labour courts could in no way be regarded as courts of exceptional jurisdiction but that they were ordinary courts having competence in particular spheres; and that the Revolutionary Court, which was competent to rule only in cases of state security, contraband, arms-dealing, and drug trafficking as well as on economic and fiscal violations, was not a truly exceptional court because it applied the Penal Code and followed the Code of Criminal Procedure. The Court differed from the ordinary court, however, in that its findings were final and not subject to appeal. There was no recourse except in the case of a death sentence which could be reviewed, on request, by the President of the Republic. The Revolutionary Court consisted of three members, two of whom had to be jurists and the Public Prosecutor, and its independence was safeguarded in the same way as that of the ordinary courts. As to the recruitment of judges, he stated that according to the law of 1976 establishing the Institute of Judges, only the graduates of this Institute could become judges; that admission to the Institute was open, *inter alia*, to holders of a law degree, who were married and who had worked in a legal capacity or had been practising barristers for at least three years; that whereas in 1978 there had been no women among the first 40 graduates of the Institute, there were three women among the 110 judges who had graduated the following year; and that judges were appointed by presidential decrees. The council of Justice could, *inter alia*, terminate the career of a judge or transfer him to another post. The Committee on the Judicature could impose disciplinary measures against judges who had committed errors. Both the Council of Justice and the Committee on the Judicature were bodies established by law within the Ministry of Justice.

148. As regards article 18 of the Covenant, the representative stated that Islam was “the religion of the State” because more than 90 per cent of the people were avowed Moslems. Islam governed not only the spiritual life of man but also his temporal existence, thus amounting to a kind of universal law covering all aspects of human, civil, economic and social relations; however, that did not mean that Moslems were in any way privileged as against non-Moslems, and the Constitution guaranteed equality before the law, “without discrimination as to religion”. He also confirmed that religious instruction was obligatory in Iraq for everybody according to his own religion.

149. Replying to questions under articles 19 and 22 of the Covenant, he pointed out that freedom of opinion was guaranteed, but that should not be interpreted as meaning absolute freedom of opinion, in view of the requirements of public order, public morals and the freedom of others which must be protected, if necessary, by prohibiting certain activities. He stated that any group of at least 50 workers within a given province could form a union, if they belonged to one of the professions established under the law; that the law prescribed conditions for the establishment of trade unions; and that once the Ministry of Labour and Social Affairs had been informed and had given its approval, the new trade union was allowed to operate. Trade unions, he maintained, sought to develop the political, social, cultural and professional awareness of workers and were considered an important manifestation of the practical exercise and affirmation of popular democracy. The representative stressed that the freedom to establish political parties was guaranteed under the Constitution; that the official parties currently existing in Iraq were the Arab Ba’ath Socialist Party, the Communist Party, the Kurdistan Democratic Party and the Kurdish Revolutionary Party, all of which were members of the National and Progress Front in which the Ba’ath Party played a guiding

role.

150. In connection with articles 23 and 24 of the Covenant, the representative stated, in reply to a question as to why a wife was required to accompany her husband, that one could not speak of an equality between men and women that went so far as to sanction the dissolution of the unity of the family. He confirmed that the right to divorce was in fact guaranteed to each of the spouses in the specific instances listed in his Government's report but that previously, through a false interpretation of the Shari'a, in most cases only the husband had had the right to divorce. The mother of an infant could, after the dissolution of her marriage, marry a man not related to the infant but in such a case she lost her right to custody.

151. Replying to questions under article 25 of the Covenant, the representative pointed out that according to new amendments to the Constitution, all members of the Regional Command of the Ba'ath Party became members of the Revolutionary Command Council. One of the principle duties of the Revolutionary Command Council was to elect a President who, as a result, became President of the Republic, its other duties being as defined in the Constitution. The law of the Leading Party had bound all institutions to observe the political report adopted by the Eighth Regional Congress and had given the report a legal character and the role of a basic law. He explained the functions and role of the People's Councils which performed economic, social and cultural functions and activities at the local levels. The popular organizations were the framework in which the various sectors of the population could group together to co-ordinate their activities. Both the Popular Councils and the Popular Organizations represented a form of popular democracy which enriched the democratic experience in Iraq. As to the National Council, he stated that its members were to be elected by direct universal suffrage and would represent the various political, economic and social sectors of the population; that any Iraqi citizen, male or female, of more than 25 years of age, of good character and able to read and write, was eligible for membership of the Council. He stressed that the criterion of literacy was applied to candidates for election to both the National Council and the Legislative Council of the Kurdistan Region. In this connection, he drew attention to the fact that primary education was compulsory and that a national campaign for the elimination of illiteracy had been launched in 1978 with encouraging results.

152. As regards the questions raised concerning minorities in Iraq, the representative referred the members of the Committee to his Government's report (CERD/C/50/Add.1) submitted under the International Convention on the Elimination of All Forms of Racial Discrimination, which was made available to Committee members. Referring to the Legislative Council for the Autonomous Kurdistan Region, he pointed out that the Council, which would represent the whole population of Kurdistan, would have the power to legislate on any matter within the competence of the local authorities, such as education, housing, transport and communication, culture, youth or economic and social affairs. The judicial organization in the Region, however, fell within the competence of the central authority and was the same in Kurdistan as in the rest of Iraq.

153. The representative informed the Committee that his Government would reply in writing to certain questions raised under articles 2, 6 and 12 of the Covenant and would also be ready to supply the Committee with further information in writing as necessary.





## CCPR A/42/40 (1987)

346. The Committee considered the second periodic report of Iraq (CCPR/C/37/Add.3) at its 744<sup>th</sup> to 748<sup>th</sup> meetings, from 15 to 17 July 1987 (CCPR/C/SR.744-748).

347. The report was introduced by the representative of the State party, who said that the second periodic report was limited to new data collected since the presentation of the initial report. Iraq was very much aware of the need to implement human rights and to develop them in a sustained manner, despite the Iranian aggression that had started on 4 September 1980. Since the beginning of the war, Iraq had not declared a state of emergency nor had it suspended any human rights covered by its obligations under the Covenant. In fact, it had continued to improve the material, economic and social conditions of life and on that basis to develop the human rights of its citizens. Iraq also continued to carry out a national campaign on education. It had held democratic elections to the National Assembly in 1984 and to the Legislative Council of the Autonomous Region of Kurdistan in 1983 and 1986. Iraq had always been in favour of peace in the region and of ending the war being waged against it by the Islamic Republic of Iran. He recalled in that connection the five principles for peace that the President of Iraq had announced, namely, withdrawal of troops beyond the recognized frontiers, exchange of prisoners, conclusion of a non-aggression treaty, non-intervention in domestic affairs, and the engagement of both countries in ensuring stability in the region.

### Constitutional and legal framework within which the Covenant is implemented

348. With reference to that issue, members of the Committee wished to receive information about the relationship between the shariah and Iraqi law, and any changes relevant to the implementation of the Covenant made since the submission of the previous report, including those instituted pursuant to Act No. 35 of 1977. They asked whether the provisions of the Covenant were directly enforceable and, if so, whether there had been any actual cases in which court decisions had been based directly on the provisions of the Covenant, and they asked about factors and difficulties affecting the implementation of the Covenant. They also wished to receive additional information concerning the activities of the Iraqi Human Rights Association and Iraq's attitude towards the Arab Organization for Human Rights which had applied for consultative status with the Economic and Social Council. They asked whether the Iraqi legislature took into account the provisions of the Covenant in the law-making process. Examples were requested in relation to paragraphs 6 and 13 of the report, which stated that provisions of the Covenant could be invoked before the courts. Further clarification was requested concerning the relationship between the Covenant and domestic legislation, in particular as to the place of the Covenant in the hierarchy of Iraqi law, and it was asked whether in the case of a conflict between domestic law and the Covenant the latter would prevail, and whether there were any judicial precedents concerning the statement in the report that it was "prohibited for any court to abstain from delivering judgement on grounds such as ambiguity of the law or the lack or incompleteness of a textual provision". It was also asked whether human rights were taught to the young, whether there was any procedure similar to amparo or habeas corpus, whether the provisions of the Covenant were gradually being implemented, whether it was possible to appeal against the decisions of administrative tribunals in court, what was meant by the statement that the shariah was a "source" of law, and what the procedure was for determining the constitutionality of a law and its compatibility with the provisions of the Covenant. Finally,

information was requested on the measures Iraq was taking to stop the war.

349. In his reply, the representative of the State party explained that the shariah was the primordial and basic law and article 4 of the Constitution affirmed that Islam was the religion of the State. The shariah contained two elements - one concerned purely religious practice and the other the organization of social and commercial relations among the people. The philosophy and principles of the shariah were incorporated into positive law, particularly the Civil Code and the Family Code. For example, inheritance rights were based on the shariah and the legislator had no right to transgress the shariah.

350. The Legal System Reform Act (Act No. 35 of 1977) summarized many principles and legal theories and presented suggestions for law making and the function of law. The laws relating to organization of the judiciary, judicial procedure and social protection were adopted on the basis of Act No. 35. Treaties when adopted and promulgated became an integral part of the domestic legal system and acquired the force of law. Iraq had ratified both the International Covenants on Human Rights in 1970 and they had been published in an official newspaper. All Iraqi legislation was compatible with the principles of the Covenant and Iraqi courts applied both the letter and the spirit of the Covenant. There were a number of cases in which the Covenant could be invoked in court. As for the place of the Covenant in the hierarchy of Iraqi laws, it was on the same footing as the domestic law and did not take precedence over it. So far, there had been no problems or contradictions between the Covenant and domestic legislation, nor had there been any difficulties in implementing the Covenant. Any difficulties that could impede the implementation of the Covenant were connected mainly with interpretations, since the Covenant, like the Constitution, contained general provisions that had to be made explicit in concrete laws. There was no special body empowered to, determine the constitutionality of laws. Any ministry that was of the opinion that a given law contradicted the Constitution could request the National Council to rescind or modify it.

351. Responding to other questions, the representative stated that the Iraqi Human Rights Association was an unofficial body set up under Act No. 1 of 1969 and was active in human rights matters. It published articles in newspapers and magazines and used other mass media and organized seminars and actively participated in the celebration of international holidays relating to human rights. The Lawyers' Union and the Board of Barristers also engaged in such activities. Human rights was a subject taught at all levels of the educational system in Iraq, particularly in universities and other centres for higher education. Regarding the ending of hostilities in the region, Iraq had always wished to maintain good relations with the Islamic Republic of Iran and had made persistent and sincere efforts in that direction. Following repeated Iranian violations, which posed a direct threat to the independence and integrity of Iraq, his country had been obliged to exercise its legitimate right to self-defence on 21 September 1980 and had continued to do so to date. Iraq had responded positively to all peace initiatives.

#### Self-determination

352. With regard to that issue, members of the Committee requested clarification of the actual state of the relationship between the Government and the Kurds in the light of the fact that a number of different agreements had been concluded between them. It was also asked whether Iraq's claim to

sovereignty over natural resources extended beyond oil.

353. In his reply, the representative of the State party referred to article 5 of the Constitution, which recognized the ethnic rights of the Kurdish people as well as the legitimate rights of all minorities. Since Kurds were part and parcel of the Iraqi people, there could be no agreements between different ethnic groups. The relationship between any two ethnic groups was decided by various acts and laws. As to sovereignty over natural resources, efforts were being made to strengthen sovereignty over water resources, since Iraq was an agricultural country, and over sulphur, sulphate, iron and other mineral deposits. Abroad, the principle of permanent sovereignty over natural resources was upheld by Iraq in Arab and international forums.

#### State of emergency

354. With regard to that issue, members of the Committee wished to receive information on the impact of the war on the Government's efforts to respect the various provisions of the Covenant. Members also requested clarification of the content of paragraphs 123, 124 and 189 of the report concerning limitations and restrictions of various rights.

355. In responding to questions raised by members of the Committee, the representative stated that clear rules existed in Iraq for the declaration of a state of emergency. However, despite the circumstances resulting from Iranian aggression, Iraq had not made such a declaration. The enjoyment of human rights in general had not suffered from the war and in fact had been reinforced by the creation of more favourable economic and social conditions. Despite the war, a number of laws and measures relating to basic human rights had been introduced. Firstly, the Social Welfare Act had made the State responsible for securing a reasonable standard of living for all citizens. Secondly, the Welfare and Protection of Juveniles Act was designed to prevent delinquency and to provide for proper treatment of juvenile offenders. Thirdly, the Public Health Act assured human beings of humanitarian protection from conception until death. The State also provided free health care and a sophisticated hospital system. Fourthly, Iraq had instituted a wide-ranging national campaign against illiteracy at the primary level. The courts continued to operate normally and no exceptions had ever been resorted to because of the war. The representative further replied that no contradiction existed between paragraph 123 and other paragraphs of the report since the basic principles of human rights as enshrined in the Covenant had not undergone any change in Iraq. Nevertheless, it could not be denied that a state of war had some negative consequences. The most basic human right was the right to life and in regions where Iraqi citizens were repeatedly exposed to attacks by the Islamic Republic of Iran resulting in heavy casualties human rights obviously suffered. Emergency measures were sometimes administrative measures and were always linked to specific circumstances. Iraqi citizens were not barred from travelling outside the Republic but such travel was organized in a manner in keeping with Iraq's present circumstances. Similarly, foreigners in Iraq were prohibited from residing in certain areas, such as military regions close to hostilities.

#### Non-discrimination and equality of the sexes

356. With regard to that issue, members of the Committee wished to receive information concerning non-discrimination on grounds of political opinion, restrictions of the rights of aliens compared with those of citizens, and legislation contemplated with regard to the removal of any discrimination based on sex. Members also wished to know whether the fact that women retired five years earlier than men meant that women enjoyed less favourable pension rights, what the proportion of women at all levels of education was, whether the conditions of dissolution of a marriage contract were less favourable for women than for men, whether the provisions of the Personal Status Act referred to in paragraphs 70 and 71 of the report were aimed at eliminating existing discrimination based on sex, and whether the article quoted in paragraph 70 of the report meant that women were either excluded from succession or could receive only residual inheritance. They also requested clarification as to whether the property of children was administered by both parents or only by the father, whether priority was accorded to the father in matters concerning education and relations between parents and children, whether there was a specific hierarchy in the family unit and who was generally considered to be the head of the family. Information was requested concerning the practical difficulties, if any, that had been encountered in implementing legislation aimed at ensuring equality of the sexes, particularly in the fields of employment, female membership in trade unions and education. Finally, it was asked whether the legislation governing family matters and the position of men and women had changed since the initial report had been prepared, whether there was any contradiction between the provisions of the Constitution and recent legislation governing family matters, whether a religious ceremony of marriage was compulsory in Iraq, and whether an atheist could conclude a marriage contract.

357. In his reply, the representative of the State party said that the principle contained in article 19 of the Constitution was a general one of equality of citizens before the law without discrimination on grounds of sex, language, social origin or religion. Another legal basis for ensuring non-discrimination was found in article 26 of the Constitution, which guaranteed freedom of opinion, expression and assembly and also freedom to hold demonstrations and to establish political parties, trade unions and associations in conformity with the objectives of the Constitution and within the limits of the law. Furthermore, the Constitution committed the State to providing the necessary conditions for ensuring enjoyment of those freedoms. Iraqi legislation in general did not depart from the long-held principle that citizens had specific rights that were not shared with aliens, including, for example, the right to enter public or military service.

358. He reiterated that there was no discrimination whatsoever on the basis of sex and noted that Iraq had acceded to the Convention on the Elimination of All Forms of Discrimination against Women. While it was true that if a woman retired at 55 she received a smaller pension, the law did not force or oblige women to retire at that age. Primary education was compulsory and ensured equality in education up to the age of 10 years. Education at the secondary and higher levels was free of charge for all students of both sexes. He did not know the exact percentage of female students in higher education establishments, but could assure the Committee that the figure was very high. With regard to marriage and divorce, he explained that the Personal Status Act was based on the Islamic shariah. In the eyes of the law, marriage was a contract entered into between a man and a woman. In Iraq, shariah courts were called personal status courts and were not religious courts. A marriage contract had to be concluded before the competent authority, namely a shariah court. It was not simply a religious measure, it was a legal measure. Non-believers or non-Muslims were dealt with either under the competent institutions of their religion or under aspects of the Personal

Status Act. Divorce was allowed because it was a necessary although undesirable solution to ending married life. Divorce was primarily a male prerogative, but it could also be delegated to the woman. It was sufficient simply to declare a divorce for it to take place. Either spouse could request legal divorce or separation from the court. As for inheritance, the shariah clearly decided how it was divided and who would inherit - that was laid down in the Koran and it was mandatory.

359. The Social Welfare Act No. 126 of 1980 stipulated that either the husband or the wife or, in the event of the death of both parents, the eldest son, could be regarded as the head of the household. It was stressed that Iraq had lived for some six centuries under continuous foreign occupation, which had had a negative impact on social development where equality of the sexes was concerned. There was cultural resistance to accepting equality of the sexes, particularly in rural areas. However, the impact of the mass media and changes in socio-economic status were helping to alter traditional views on the place of women in society, particularly in regard to education and participation in public life. Concerning female employment, certain sectors were more appropriate for females than others. For example, teaching attracted a large proportion of women in Iraq and many were working in the medical profession and in the pharmaceutical field.

#### Right to life

360. With regard to that issue, members of the Committee wished to know which offences were subject to the death penalty, how often that penalty had been pronounced for “ordinary” or “political” offences during the past seven years and how often it had actually been carried out. Clarification was requested concerning , the references in paragraph 131 of the report to “political offences” and to the commutation of death sentences imposed for such offences to life imprisonment. It was noted that Iraq’s report contained a long list of offences for which the death penalty could be imposed. In that connection, it was asked whether the death penalty had been imposed in cases involving membership in Zionist or Masonic institutions. Members of the Committee also requested clarification of information contained in the report concerning, in particular, the death penalty for conspiring against the State and its security, and for members of outlawed political parties. They wished to know further whether all of the numerous offences listed in the report as punishable by death corresponded to the limitations of article 6 of the Covenant, which offences fell within the competence of the Revolutionary Court and how many offences carrying the death penalty were judged by that tribunal, whether the murder of the President of the Republic or of any of his deputies was deemed to constitute a political crime or conspiracy for which the death penalty was imposed and whether such penalty was subject to commutation, whether the act of insulting the President of the Republic or the Revolutionary Council under aggravating circumstances was an offence punishable by death and what the significance of resolution 840 of the Revolutionary Council was in that respect. It was also asked what the fields of competence of the Revolutionary Command Council were in legislating and to what extent they excluded those of the National Council, whether a law had been enacted by the Revolutionary Command Council or the National Council under which a member of the Ba’ath Party who defected to another political movement was liable to the death penalty and, if so, whether it had ever been applied, and whether it was established in the Constitution that the President could issue a special amnesty or commute a penalty.

361. Several members of the Committee recalled the general comment of the Committee according

to which the right to life was one of the rights of the Covenant from which no derogation was permitted. While the Covenant did not oblige a country to eliminate the death penalty it did state that "sentence of death may be imposed only for the most serious crimes". They also found it disturbing that even the long list contained in the report was not exhaustive since new offences had recently been added. One member asked whether there were prosecutions on a retroactive basis, and whether measures had been taken to investigate cases of shooting of demonstrators and other persons without trial and deaths during detention under remand. He noted that resolution 461 of the Revolutionary Command Council provided for prosecution on a retroactive basis and that that contravened the provisions of article 6, paragraph 2, and article 15 of the Covenant. As for arbitrary or summary executions, he said that the Special Rapporteur on that question had obtained information relating to the execution of 200 Kurds in northern Iraq, some of whom had been tortured before being killed. However, the Special Rapporteur had received no response to his inquiries from the Iraqi Government. The member asked what action the Government was taking to investigate that serious matter. Another member asked whether the delegation would be able to provide statistics on the number of death sentences imposed and carried out and, if not, whether it would be able to explain why the Government chose to keep such information secret. It was also pointed out that the Legal System Reform Act provided for a reduction in the number of offences punishable by the death penalty.

362. Some members of the Committee stated that, in their opinion, the list of offences punishable by the death penalty contained in the report was not exhaustive, and they therefore requested clarification of the acts specified in article 163, paragraph 3, article 165, paragraph 9, article 174, paragraphs 1 and 3, articles 200 and 225 of the Penal Code. One member asked if the death penalty could be imposed, in accordance with resolution 120 adopted by the Revolutionary Command Council on 29 January 1987, for forgery of a passport or financial or other documents.

363. In his reply, the representative of the State party referred to paragraphs 131 to 134 of the report, which gave details of offences punishable by the death sentence. Article 20 of the Penal Code divided offences into ordinary offences and political offences, the death sentence being commuted to life imprisonment in the case of political offences. It defined a political offence as one that had political motivation, with the exception of crimes that might have had a political motivation but were committed out of selfishness, such as premeditated murder, theft, embezzlement and bribery. He did not have statistics covering the number of death sentences imposed for "ordinary" offences during the past seven years and stated that the death penalty was no longer imposed for "political" offences. The basic outlook on the question of punishment in Iraq was that the penalty should serve to deter the recurrence of further criminal acts and also to help rehabilitate the criminal. Penalties were not applied categorically but in a flexible way, with a range of punishments from which the judge could choose the most appropriate. Attenuating as well as aggravating circumstances had to be taken into account and the sentence adjusted accordingly. The list in the report of crimes punishable by the death penalty was exhaustive and was intended to provide as full a picture as possible in that area. The crime of conspiring against the State and its security was considered to be among the most serious crimes for it threatened the citizen and society. An attempt to participate in such a crime meant that the person concerned had intended to participate therein and that was no less serious than actual participation. There was no prosecution on a retroactive basis. The principle of non-retroactivity of laws was incorporated in article 21 of the Constitution which stated that "no penalty shall be imposed, except for acts criminalized by the law, while they are

committed". The only exception to that principle was the case when a law was more favourable for an accused. No law had been adopted to impose the death penalty on members of outlawed political parties.

364. Concerning arbitrary disappearances and summary executions, Iraq was not a party to the Optional Protocol and therefore was not required to respond to communications in that field. However, since the 1968 revolution it had been seeking to develop and make progress in all walks of life. It was seeking to achieve economic independence hand in hand with political independence. There were so many allegations propagated by the enemies of Iraq that he was not surprised that there were unfounded claims alleging summary executions, firing on crowds and so forth. Iraq was concerned at such allegations and always sought to clarify them and to answer communications on such matters in detail. The sources making such allegations were never able to provide sufficient details for the cases to be studied and resolved.

365. Military crimes were totally separated from civil offences and were dealt with by military courts. A death penalty imposed by a military court could not be implemented without the approval of the President. As for Freemasons or Zionists or those who propagated their principles, Iraq was in reality punishing advocates of a policy which even the United Nations had characterized as racist. So far no death penalty had been applied in such cases. No law had been adopted to punish members who left the Ba'ath Party. It was totally untrue to say that political activities outside the Party were prohibited. There were other political parties in the country. Article 57 (m) of the Constitution stated that the President of the Republic issued "special amnesty" and ratified judgements of capital punishment". Concerning crimes against the person of the President, he said that, as they were political crimes, the death penalty would be commuted to a lesser punishment. The death penalty was implemented in accordance with the law and it was not carried out in public. As for those who publicly insulted or denigrated the President, capital punishment was not imposed. The maximum might be imprisonment for life. However, aggravating circumstances such as conspiracy or selfishness had to be taken into account and might lead to imposition of the death penalty. In fact many death penalties were commuted to imprisonment or the persons convicted were amnestied. The Government of Iraq had informed the Special Rapporteur on summary or arbitrary executions that there was no basis whatsoever for the allegation concerning killings of children. The Government was investigating the other allegations concerning the reported summary executions in northern Iraq and would report on its findings. The judicial system of Iraq was changing, many death penalties were commuted, and amnesties had been proclaimed and carried out.

366. The representative also declared that articles of the Penal Code that defined offences punishable by death were complemented by laws that defined the offences more precisely and the procedure for applying such laws. As to resolution 865 concerning the members of the Ba'ath Party who were members of other parties, they were not punished for political opinion but for infiltration in the Ba'ath Party while being a member of another party. Everybody was free to leave a party and join another one. Resolutions 840 and 120 of the Revolutionary Council were not mentioned in the report because they had been adopted after the report had been submitted. The forgery of a passport or financial documents was not an offence subject to the death penalty since it did not aim at jeopardizing the military, political or economic situation of Iraq in time of war, as stipulated in article 164 of the Penal Code. In other cases the maximum sentence for such offences was seven years.



## Liberty and security of person and treatment of prisoners and other detainees

367. With regard to those issues, members of the Committee wished to receive information on detention in institutions other than prisons and for reasons unconnected with the commission of a crime. It was also asked what the maximum length of pre-trial detention was, how soon after arrest a person could contact a lawyer, and how quickly after arrest the person's family was informed. Clarification was requested of the categories in which inmates and juvenile detainees were classified after their arrival at a social reform institution. Additional information was requested with respect to the composition of the Public Authority for Social Reform and its relationship to the courts, access of inmates to prison regulations and rules, and procedures for receiving and investigating complaints relating to article 7 of the Covenant. It was also asked whether independent boards or individuals were permitted to visit penal establishments to inspect them and to interview detained persons.

368. Committee members expressed satisfaction that the Government was co-operating in procedures to investigate allegations of summary or arbitrary executions. One member stressed that it was also important to investigate and resolve complaints relating to disappearances and incidents in which people had been expelled to the Islamic Republic of Iran. He therefore wondered whether any machinery existed in Iraq for the investigation of alleged cases of disappearances, particularly those for which officials might have been responsible. Another member asked what the competence of the security forces empowered to arrest civilians was, how often recourse procedures were instituted in cases of torture and ill-treatment and whether punishment was imposed in such cases. Concern was also expressed over the regulation under which an individual could be held in pre-trial detention for up to one quarter of the length of the sentence that could be imposed for his crime, as that seemed to cast doubt on the principle that an accused person was innocent until proved guilty. One member asked whether there had been any cases of investigation and punishment carried out under articles 322 and 324 of the Code of Criminal Procedure relating to action to be taken in case of abuse of prisoners by a government employee or a public servant. Clarification of regulations relating to torture was requested and it was asked whether individuals found guilty of the practice were brought to account, whether a confession obtained under torture could be used as evidence in court, whether there had been any cases of officials brought to account for the use of torture or ill-treatment, whether independent persons or organizations visited places of detention to see for themselves that the Standard Minimum Rules for the Treatment of Prisoners were being applied, and whether a recourse procedure was available to persons who alleged that they were being wrongfully detained.

369. In his reply, the representative of the State party said that in Iraq there was no detention in institutions other than prisons and for reasons unconnected with the commission of a crime. According to article 109 and some other articles of the Code of Criminal Procedure, the maximum length of pre-trial detention, which ranged from no more than 15 days on any one occasion to up to 6 months and beyond, depended on the maximum imposable sentence. A person could contact his lawyer and family at any point after arrest. Iraqi law did not contain provisions prohibiting a person from contacting a lawyer and, in accordance with article 57 of the Code of Criminal Procedure, he could ask to be acquainted with all the documents connected with his case. Prisons in Iraq were called "social reform institutions". Inmates younger than 18 were transferred to rehabilitation institutions of two types, one for children from 9 to 15 and the other for adolescents from 16 to 18.

There was also an institution for young adults from 19 to 22. They could study even in higher schools and universities. Men and women were detained in separate institutions. The representative of the State party stated that the laws and principles governing the treatment of inmates and detainees sought to ensure their reintegration in society and he described the various institutions and programmes set up with that objective. For example, Iraq was currently carrying out an experiment whereby willing inmates could work in a factory outside the institution, earn wages similar to those of regular workers and return to the reform institution after work. Institution rules and regulations were available to and well-known by inmates. Iraqi legislation contained numerous provisions aimed at preventing torture or cruel and inhuman treatment, as well as prohibiting medical experiments on inmates. There were various procedures for receiving and investigating complaints, even by telephone, and on certain days people could complain directly in person to the President. There were several cultural and sports facilities for inmates, including libraries, television and cinema. Administrative organs attached to the Ministry of Justice worked in close collaboration with the Ministry of Labour and Social Affairs, which inspected penitentiaries and visited detained persons. The Procurator General personally supervised that activity.

370. Responding to additional questions raised by members, the representative said that individuals who had been deported from Iraq to the Islamic Republic of Iran were Iranian citizens residing in Iraq who had failed to comply with the obligations of foreigners with respect to the host country. The allegations raised by the deported Iranians were totally unfounded statements made for propaganda purposes. He agreed that legal provisions alone were insufficient to guarantee the right to protection against torture and ill-treatment unless measures were taken to ensure their implementation. In Iraq, all officials were directly responsible for the application of the law and for respecting not just the letter but also the spirit of the law. They were required to submit monthly reports to the President of measures taken to deal with complaints and petitions received from citizens. Although there was no single body responsible for cases of disappearance, arbitrary arrest or other ill-treatment, such cases were routinely handled by responsible bodies within the overall legal system. Those bodies investigated all forms of illegal action, not just disappearances. Concerning the existence of human rights organizations in Iraq, there was an association of lawyers for the defence of human rights and the Iraqi Lawyers' Union was also active in that area. As for detention centres, there had been one for political detainees called Salman under the monarchy, but it had been closed down after 1958. There was a place of detention in Baghdad by the name of Udheiliya which encompassed a women's prison and a juvenile rehabilitation centre, and the main prison of Abu Ghraib stood on the outskirts of that city. Complaints against officials were frequently made by citizens. In the case of a well-founded claim, competent bodies took the necessary measures, ranging from administrative penalties to legal proceedings, and the results of those steps were made public.

371. Regarding the right to legal counsel, any accused person without means was entitled to a lawyer without charge provided by the Lawyers' Union or the court. As for extension of the detention period, Iraq believed in the innocence of the accused until he was proved guilty. Accordingly, Iraqi law established that, if there were extenuating circumstances, detention should not be extended. The pre-trial detention period could not exceed 15 days and with legal justification could be extended for a similar period but the total number of extensions could not exceed six months. During that period, the accused could be freed on bail and at all times had the possibility of appealing against the decision of the examining magistrate. In certain justified circumstances the

competent criminal court could permit the examining magistrate to extend the detention period beyond six months, but in no case could it exceed one quarter of the maximum sentence. All those measures were designed to avoid arbitrary extension of the detention period. In that connection, he noted that all courts and legal bodies in Iraq were under a time constraint to settle cases, which was a further safeguard against such arbitrariness. The accused or his representative had the right to attend the investigation proceedings and acquire copies of all documents relating to the case. Furthermore, the Lawyers' Union was obliged to provide an advocate for those who could not afford one.

372. Beyond the guarantees provided by article 22 of the Constitution and the provisions of the Penal Code, the Iraqi Government took a firm stand against all those who practised torture or harmed others. Article 127 of the Code of Criminal Procedure prohibited the use of unlawful means, including threats or intimidation, to obtain confessions. In cases where a victim lodged an appeal, the court could take a decision to review the case, and it had full discretion to accept or reject confessions that could have been obtained under torture. Furthermore, statements of the accused could not be considered as evidence against him but only against others. The directives of the President of the Republic to the competent law enforcement officers were material proof of the importance his Government attached to human rights. They reflected the Iraqi conception of human rights, which was a dual one of rights balanced against obligations. The security forces were instructed to respect the dignity of the human person, in return for which individuals had an obligation to respect the principles of the revolution. There was no contradiction between that conception and the provisions of the Covenant. Concerning visits to detainees, individuals were able to visit prisons for educational or research purposes or to collect statistical data. Naturally, relatives were also able to visit inmates; such visits were carefully regulated and usually took place on a periodic basis on weekends and holidays. Visits were carefully organized since it was not practical for penal institutions, which, because of their nature, had specific regulations, to open their doors to all citizens. With regard to grievances, inmates had the possibility of lodging complaints with the administrative staff of the prison. If not satisfied, they could then complain to any other organ they deemed appropriate.

#### Right to a fair trial

373. With regard to that issue, members of the Committee wished to receive additional information on the organization of the judiciary, including the Revolutionary Court and any special courts. They also asked what provisions had been made pursuant to Act No. 160 of 1979 to guarantee the independence of judges, what legal guarantees existed with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal, what the relevant rules and practices were concerning the publicity of trials and the public pronouncement of judgements as required by article 14, paragraph 1, of the Covenant and whether there were specific rules concerning the admission of the mass media. Clarification was requested of the statement in paragraph 145 of the report in relation to article 14, paragraph 5, of the Covenant and article 27, paragraph 2, of Act No. 66 of 28 July 1985. Members also wished to receive additional information concerning the composition and functioning of the Lawyers' Union.

374. In his reply, the representative of the State party said that the basis of the legal system in Iraq was not a dual one, in that there was no independent administrative branch. Two types of courts

existed, civil and criminal. The civil courts consisted of primary courts, labour courts, personal status courts and appeals courts. The criminal courts consisted of investigatory courts, correctional courts, juvenile courts and criminal courts proper. Both categories of courts were headed by the Court of Cassation, which was the highest legal body in Iraq. Litigants in any case could lodge appeals against the judgements of the primary courts. In civil cases, there were two levels of remedies - appeal and cassation. In criminal cases, however, there was no appeal stage, but sentences were reviewed directly by the Court of Cassation. One principle enshrined in Act No. 160 was that of the independence of the judiciary. Judges were competent to judge all physical and moral, private and public persons, and all trial proceedings were conducted in public unless the court decided otherwise for reasons of protection of security or morality. In all cases pronouncement of judgements was public. The law detailed the various obligations and duties of judges and laid down rules governing their appointment, promotion and transfer, as well as disciplinary sanctions which could be applied against them. There was only one Revolutionary Court, which had been established by Act No. 180 of 1968 and which was composed of three members, one of whom represented the Public Prosecutor. In all its proceedings, the Revolutionary Court applied the Code of Criminal Procedure in the same way as the other criminal courts in the country, which meant that an accused person enjoyed all legal guarantees. The accused had the right to be assisted by a lawyer who was provided by the Revolutionary Court if he was unable, to afford one. The Revolutionary Court was competent to examine and pronounce judgement in all cases related to the external security of the State, as well as drug cases and cases of embezzlement of state funds. It was true that decisions of the Revolutionary Court were not subject to review. However, death sentences handed down by the Court were reviewed by a legal advisory bureau in the Office of the President, consisting of judges of the Court of Cassation seconded to the Office of the President, judges of the primary courts and experienced jurists. When that office had handed down its opinion, the file was transmitted to the President who decided, in the light of the legal bureau's opinion, whether or not to endorse the sentence. The legal bureau therefore provided additional guarantees to those ensured through the normal procedure before the courts. In many cases, death sentences handed down by the Revolutionary Court had been commuted to life imprisonment by the legal bureau, and in others, a special pardon had been granted by the President of the Republic.

375. Regarding legal guarantees of a fair and public hearing, Iraqi legislation offered all guarantees of a fair and impartial trial; reference had been made earlier to the public nature of court hearings. The various procedural codes delimited the jurisdiction of each court in terms of time and place, and the principle of the independence of the judiciary was firmly established in article 63 of the Constitution. If a person felt that a sentence against him was unduly harsh, he could avail himself of various remedies laid down by law. The principle of public trials was enshrined in article 5 of the Constitution, and Iraqi legislation was in full conformity with the provision of article 14, paragraph 1, of the Covenant. In keeping with the principle of public trials, the Iraqi mass media, particularly television, broadcast trial sessions concerning certain serious crimes, while respecting the rights of the accused. The daily press also gave thorough coverage to certain trials of interest to the public. The Lawyers' Union was one of the oldest professional unions in Iraq and was governed by Act No. 163 of 1965. The objective of the Union was to organize the profession, establish its code of conduct and defend its members. It was obliged to provide the services of a lawyer for any person requiring them who could not provide them for himself. The Council of the Union supervised branches of lawyers' offices in courts, protected lawyers' rights and the dignity of the profession and ensured professional conduct. A considerable number of amendments had been introduced in the

original legislation governing the Union, including Act No. 66 of 1958, which established the right of a lawyer to examine the evidence for the prosecution and all documents related to any case with which he was entrusted. The law made it an obligation for all courts and official bodies to permit the lawyer to exercise his rights and ensure that he was allowed to carry out his duties properly. Any person who, wilfully or otherwise, prevented a lawyer from exercising his profession correctly was liable to prosecution.

376. Responding to other questions raised by members, the representative stated that judges in Iraq were trained in the Legal Institute, which was organized on similar lines to the French Ecole de la magistrature. The names of students who passed the final examination of the Legal Institute were submitted to the President of the Republic, who issued a presidential decree appointing them as judges. Judges of the Court of Cassation were also appointed by presidential decree. He explained the important role of the Council of Justice in the Ministry of Justice in guaranteeing the independence of judges. The Council of Justice was presided over by the Minister whose deputy was the President of the Court of Cassation; other members included the Public Prosecutor, the Chairman of the State Council and the Director-General of the Ministry of Justice. The Council of Justice had two functions: the general policy of the Ministry of Justice and the organization of the judiciary. Only members of the Council of Justice who were judges were empowered to carry out the judicial functions of the Council. They were responsible for disciplinary matters relating to judges. The fact that judges were independent did not mean that they were above the law, and their decisions were subject to review by higher judicial organs. Act No. 160 of 1979 set forth the basic legal philosophy of the Republic of Iraq. It contained principles for the appointment of judges and also proposed the establishment of people's committees, at the factory level for example, to deal with minor disputes or offences. The relationship between those people's committees and other judicial organs had still to be properly defined, but it was hoped that the people would be able to participate in the administration of justice through membership of the committees. Judges should apply the law in a revolutionary social spirit, but that did not mean that they had to be members of the Ba'ath Party. The work of the Revolutionary Court was governed by the normal Code of Criminal Procedure, but it was an exceptional court in that it was able to expedite legal proceedings. There were certain situations where justice demanded a speedy decision and that was the reason for the existence of the Revolutionary Court. Its decisions were not subject to review by the Court of Cassation, but death sentences passed by the court were not carried out until they had been approved in a decree promulgated by the President of the Republic. Members of the Revolutionary Court were not required to be members of the Ba'ath Party. The proceedings of that Court were conducted in public in most cases, even those concerned with the security of the State. There were no special courts in Iraq.

#### Freedom of movement and rights of aliens

377. With regard to that issue, members of the Committee wished to know whether expulsion orders against aliens could be appealed and, if so, whether the appeal had suspensive effect. It was also asked whether aliens residing in Iraq had to request permission to change their residence.

378. In his reply, the representative declared that tribunals in his country could examine all questions relating to aliens. Therefore, every individual had a recourse procedure available concerning matters of freedom of movement, residence or expulsion. The competent authorities had

to be informed of the change of residence of a citizen or an alien as a purely formal matter; foreigners who changed their residence had to inform the authorities within 48 hours.

### Right to privacy

379. With regard to that issue, members of the Committee wished to receive information concerning the protection guaranteed in law and practice against arbitrary and unlawful interferences with privacy, the family and the home, particularly with regard to postal and telephone communications. It was also asked what means were used by the authorities to investigate the violations of rights covered in articles 22 and 23 of the Constitution and whether telephone-tapping and surveillance were forbidden.

380. In his reply, the representative stressed that, in accordance with article 22 of the Constitution, the inviolability of the home was guaranteed in the broadest sense. A judge could order a search; however, every violation committed by an official was subject to punishment. Any interference with privacy by other State officials was also punishable. Article 23 of the Constitution guaranteed the secrecy of means of communications by mail, telegram and telephone, except for considerations of justice and security, in accordance with the rules prescribed by the law. Act No. 97 of 1973 concerning post and telecommunications provided for sanctions for violation of privacy. The Penal Code provided for more severe sanctions. The law categorically prohibited any kind of telephone-tapping or surveillance. If a person had a suspicion that his house had been entered or was under surveillance, he could lodge a complaint. Legal authorities would investigate the case and send it to the court where sanctions would be applied.

### Freedom of religion and expression

381. With regard to that issue, members of the Committee wished to know whether there were religions other than those officially recognized in Iraq and, if so, whether such religions could be freely practised and on what legal basis official recognition was accorded. They asked about cases, including recent ones, where persons had been arrested or detained on account of political views and about legislation and practice relating to the press and mass media, and they inquired whether there was censorship and, if so, how it was administered in time of war. One member requested information on the prohibition of the dissemination of any atheistic ideas and on the situation of atheists. It was asked if an atheist could become President of the Republic, Vice-President or a minister. Another member asked whether an Iraqi citizen had access to the foreign press, what restrictions were imposed on foreign correspondents and whether it was necessary to register photocopying machines. Several members requested clarification of the powers of the Censorship Committee of the Ba'ath Party in that area and asked whether publications were subjected to government authorization. Another member requested supplementary information on the measures taken to guarantee freedom of opinion, expression and research, and to compile and disseminate information abroad, as well as on authorized restrictions on those matters. Other members expressed their concern in that regard. One member asked whether religion had any influence on eligibility for public service.

382. In his reply, the representative of the State party referred to article 25 of the Constitution, which guaranteed freedom of religion, faith and the exercise of religious rights in accordance with

the rules of the Constitution and the laws and in compliance with morals and public order. He also referred to article 26 of the Constitution, which guaranteed freedom of opinion, publication, assembly, demonstrations and the formation of political parties. The press and mass media as a whole were effective means of disseminating information and creating cultural awareness in Iraq. In accordance with Act No. 206 of 1968, when a person was harmed by a publication or by other mass media he could exercise his right to recourse concerning the protection of his private life. Despite the war the press was not obliged to submit all information for censorship. The representative of Iraq further declared that all freedoms had to be organized and regulated. The Constitution was born of the conscience of the Iraqi people and the deep bonds between Iraq and the Arab nation. The choice of believing or not believing in a religion was a personal question, consequently legislation did not deal with that matter. The law intervened during demonstrations in favour of atheism, for the question of faith was securely anchored in the Arab soul. Public service was open to everyone with the required competence, on the basis of equality of opportunity. In that regard, religion had no influence on eligibility. It was, however, unimaginable that an atheist could obtain the highest offices in Iraq, for which it was necessary to pronounce the kind of oath referred to in articles 39 and 59 of the Constitution. However it was possible to take an oath in court without mentioning the name of God.

383. Foreign press correspondents could exercise their profession in complete freedom, in conformity with the legislation applied in Iraq. Restrictions of their movement were intended to protect them from dangers that could arise in the war zones. Photocopying machines were subject to registration. According to the Iraqi concept of public order, freedom of expression did not mean the freedom to say anything without any limitation, whether it concerned the press or the cinema. Major foreign newspapers and certain publications were accessible to every Iraqi citizen. The necessity of maintaining public order made some regulation in the field of publication and the cinema necessary to protect individual rights. Therefore, a committee on censorship of foreign films and publications had been created at the Ministry of Culture and Information. Nevertheless many well-known foreign publications and books were sold and available at libraries.

Freedom of assembly and association; protection of the family; right to participate in the conduct of public affairs; rights of minorities

384. With regard to those issues, members wished to receive information on restrictions, if any, on the right to freedom of assembly and association, on information regarding legislation governing the establishment and operation of associations, including political parties, on recent legislation designed to strengthen the role of trade unions, on the exercise of and restrictions on political rights, on legislation and practice regarding access to public office, and on equality of rights and the responsibilities of spouses before and during marriage and at its dissolution. It was also asked whether legal provisions concerning minorities related to all minorities in Iraq. Members of the Committee also wished to know whether there was a contradiction between paragraphs 249-251 of the report and the provisions of the Legal System Reform Act concerning the possibility of a person who was hostile to the existing state system obtaining a public service appointment, whether there were cases of violations of the rights of the Kurdish minority, whether members of the National Assembly were independent, how the people participated in the elections to the Revolutionary Command Council and in the consideration and adoption of the national budget, and whether a person who did not belong to the National Progressive Front could be elected to the National

Council and other State bodies.

385. In his reply, the representative of the State party explained that associations were registered according to Act No. 1 of 1960. If an application for registration was rejected, an association could lodge a complaint with the Court of Cassation whose decision was final. The same procedure was applicable for political parties. The Iraqi Government permitted a single trade union for state employees. As far as protection of the family was concerned, the spouses were considered to be equals and the consent of the two parties was necessary for a marriage contract. The husband was obliged to maintain his wife, even if she had an independent income. The shariah regulated divorce and the husband had the right to initiate it but could delegate that right to his wife at the time of their marriage. The exercise of political rights was guaranteed to the Iraqi citizen without consideration of social position. The elections of 1981 and 1984 to the National Council in time of war bore witness to the democratization of the country. The rights of minorities were defined in article 5 of the Constitution. All minorities had equal rights. There were no contradictions between the provisions of the report and those of the Legal System Reform Act because the latter was being introduced gradually.

386. Minorities enjoyed all the rights contained in Iraqi legislation as they belonged to the Iraqi people. Concerning the teaching of Arabic and Kurdish, Iraq's nationalist concept was one of civilization based on the rich heritage of the whole Arab nation and Arab thought. That concept did not include any fanaticism or any closed position *vis-a-vis* others, their aspirations or beliefs. That also applied to all the minorities in Iraq. The Iraqi Constitution spoke of the creation of a "national" generation, not an "Arab" generation. There were 250 constituencies. In each of them from 2 to 10 candidates were nominated. There was universal, secret and equal suffrage. A citizen was eligible for nomination when he reached the age of 25.

387. The Revolutionary Command Council was the supreme institution in the State. Its composition and functions were defined by the Constitution. There were also the National Council and the National Assembly. The Revolutionary Command Council, issued laws and decrees having the force of law and the decisions needed to apply the rules of the enacted laws. When a session of the National Assembly was not convened the Council used its legislative competence. If the Revolutionary Command Council and the National Assembly had different points of view they convened joint sessions and adopted laws by a two-thirds majority. The Revolutionary Command Council ratified the draft general budget. The members of the Council were also elected to the National Assembly.

#### General observations

388. Members of the Committee welcomed the high level of the members of the delegation of Iraq, who represented all the Ministries involved with human rights, as well as the detailed report that, as many members noted, had been prepared and presented despite the difficult circumstances in which Iraq currently found itself. Appreciation was expressed for Iraq's efforts to promote the implementation of human rights despite the war. It was noted that the introductory remarks by the representative of the State party had shed some light on the legislation giving effect to the provisions of the Covenant and on the manner in which Islamic law was compatible with human rights. The report, however, was found lacking in information on the difficulties encountered in giving effect



to the provisions of the Covenant.

389. It was noted that in general the report did not give equal attention to the various articles of the Covenant; one third of the entire report was devoted to equality between the sexes while other articles received very brief coverage. Furthermore, the report did not take due account of the general comments elaborated by the Committee on various aspects of the Covenant. Some members felt that there were important omissions, particularly regarding laws or decrees relating to new offences punishable by death and to freedom of thought and expression promulgated before the period covered by the report, i.e. before 31 December 1985. A number of concerns also remained in connection with the right to life, in particular the considerable number of cases in which the death penalty could be applied, the lack of information on the number of cases in which that penalty had been applied or implemented, the right to security of person, independence of the courts, and freedom of expression or opinion.. One member observed that the large amount of time spent by the Committee on the right to life reflected the importance and concern it attached to that question. Most Committee members indicated that they were well aware that the country was going through a difficult period, but expressed the hope that that period would soon come to an end and that some of the concerns that had been expressed, especially those relating to the Penal Code, could therefore be met.

390. In concluding the consideration of the second periodic report of Iraq, the Chairman also thanked the delegation for its co-operation and for having engaged in an open and constructive dialogue with the Committee.

## CCPR A/46/40 (1991)

618. The Committee considered the third periodic report of Iraq (CCPR/C/64/Add.6) at its 1080<sup>th</sup> to 1082<sup>nd</sup> meetings held on 18 and 19 July 1991 (see CCPR/C/SR.1080-1082).

619. Paragraphs 619 to 655 below reflect the Committee's consideration of the portion of the third periodic report of Iraq relating to articles 6, 7, 9 and 27 of the Covenant. Owing to the lack of time, the consideration of the remaining portion of Iraq's report was deferred by the Committee to its forty-third session.

620. The report was introduced by the representative of Iraq, who stressed his Government's willingness to pursue a frank and constructive dialogue with all United Nations bodies concerned with human rights, and especially with the Committee in its efforts to enhance the implementation of the Covenant.

621. The representative said that after the cease-fire had ended the armed conflicts in which Iraq had been recently involved, his country had adopted measures to enable citizens to exercise their rights and freedoms without discrimination. Those measures included the dissolution of the Revolutionary Court in favour of the ordinary courts, the lifting of travel restrictions and a new law on the freedom of political parties, which had just been adopted by the National Assembly. The Iraqi population had suffered heavily as a result of the destruction caused by the war of January-February 1991 and the economic sanctions applied by the international community to Iraq. It was now incumbent on the international community, which had been responsible for imposing the sanctions, to cooperate with Iraq in creating conditions for the full exercise of human rights by the Iraqi people.

622. Referring to the Committee's special request for information on the application of articles 6, 7, 9 and 27 of the Covenant, the representative pointed out that the recent Kuwait crisis had been the subject of several Security Council resolutions, which Iraq had accepted and would be implementing responsibly and with good will. Matters that were still pending before the Security Council could not be regarded as falling within the Committee's competence.

623. Members of the Committee, for their part, observed that by ratifying or acceding to the Covenant, States parties accepted the Committee's competence and could not evade their obligations under that instrument. The Committee had competence to monitor the implementation of the Covenant independently of any other obligations arising from Security Council recommendations and decisions or international instruments other than the Covenant. The Committee was well aware that the situation of Iraq was difficult. However, the root cause of those difficulties was the Iraqi intervention in Kuwait on 2 August 1990 and not the counter-action undertaken by the international community.

624. With regard to the information provided in the report under consideration, the members of the Committee, while welcoming the timely and cooperative response of the Iraqi authorities to their request, expressed the view that the report fell short of the Committee's expectations and did not provide the necessary information, especially on the period preceding the Kuwait crisis.

## Right to life

625. With reference to that issue, members of the Committee invited the representative of Iraq to comment on the effect of the events in the region since 2 August 1990 on the discharge by Iraq of its international obligations under article 6 of the Covenant, including its obligation to respect and to ensure that all individuals within its territory and subject to its jurisdiction enjoyed the rights recognized in that article. They also wished to know whether Revolutionary Command Council Decree No. 840 of 1986, prescribing severe penalties for offences against the President, was still in force; how often and for what offences the death penalty had been imposed since the consideration of Iraq's second periodic report; how often the death penalty had been carried out, in particular with respect to minors; what legal remedies were available to persons sentenced to death; whether there had been any violations of the rules and regulations governing the use of firearms by the police and security forces and, if so, what measures had been taken to prevent their recurrence and what disciplinary and other measures had been taken against those found guilty; whether any investigations had been carried out in respect of alleged disappearances of individuals and killings of persons in the course of military operations by the Iraqi armed forces and, if so, with what results; and what compensation was being made available in respect of casualties and disappearances in Kuwait following the events of 2 August 1990 and for damages resulting from the deliberate setting on fire of oil wells.

626. Recalling also the Committee's concerns about events occurring in Iraq before the Gulf war, which constituted serious violations of the Covenant, particularly of its articles 6 and 14, members of the Committee requested information regarding the reported manufacture of nuclear weapons in Iraq and the alleged use of chemical weapons by the army in 1987 against the population of Halabja and about the current status of Mr. January Richtes, a foreigner who had been tried in Iraq in 1987. It was also observed that while the report referred to Iraq's full cooperation with the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions, it said nothing about the measures the Government had taken to prevent the practice of arbitrary and extrajudicial executions to which the Special Rapporteur had drawn attention. The report was also largely silent about measures adopted to ensure protection of the right to life in connection with the recent "riots", although it was clear that the taking of hostages, the killing of hundreds of civilians in the Kirkuk region or the massive aerial bombardments in the Kurdish sector could not be considered as actions appropriate to dealing with riots. In the foregoing connection, information was requested on disciplinary and judicial measures that had been taken against those responsible for such acts. Concerning the large number of cases identified by the Working Group of the Commission on Human Rights on Enforced or Involuntary Disappearances that had not yet been elucidated, it was also asked whether appropriate investigations were under way.

627. In addition, members wished to know whether the expansion of the "most serious crimes" category under the emergency would be ended; what orders concerning standards of conduct had been issued to the military prior to the entry in Kuwait; what was the fate of persons who had been detained under instructions of the Revolutionary Court and how many death sentences had been imposed by the Courts why Farzad Bazoft and Jalil Mahdi Salek al-Nu'aيمي, who were sentenced to death in 1990 by the Revolutionary Court, had not been permitted to lodge appeals; and why the death penalty had been applied to minors in certain cases at the end of 1987.

628. In his reply, the representative of the State party said that Revolutionary Command Council

Decree No. 840 of 1986 was still in force but was undergoing review by a high-level committee. Criminal courts were obliged to report to the Public Prosecutor all cases in which the death penalty had been imposed for automatic transmission to the Court of Appeal. Prisoners under sentence could also appeal directly. Death sentences could not be implemented without the issuance of a Decree of the Republic, and sentenced persons also had the right of appeal to the President of the Republic. In the uncertain situation following the end of the Gulf war, Iraq had been obliged to use the armed forces to put down insurrections and maintain the sovereignty of the State. Disappearances of individuals and killings of persons were mainly the work of rioters. Some persons who had been reported to have disappeared, had in fact fled the country.

629. The representative then expressed regret that comments made by members of the Committee had sometimes been prompted by prejudice or unconfirmed rumours; he drew attention to the effort made by his Government to provide the Committee with information in its report which had been drafted in accordance with the Committee's decision of 11 April 1991 at a time when the Iraqi authorities were still suffering from the effects of recent events. While he respected the Committee's interpretation of its own competence, he could not provide the information requested concerning the Kuwait crisis because that information was in the possession of the Iraqi Minister for Foreign Affairs the United Nations Security Council and the International Committee of the Red Cross.

630. The representative stated further that his country's authorities had not envisaged including any new crimes among those punishable by death. He then denied all allegations concerning summary trials or the execution of children in Iraq. Capital punishment was commuted to life imprisonment when the convicted offender was between 18 and 20 years of age, and all Iraqi courts strictly applied the Code of Criminal Procedure.

631. With regard to the cases of involuntary disappearance that had not been cleared up, the representative said that that matter concerned primarily a tribe in northern Iraq composed of more than 2,300 persons who had collaborated with Iran during its occupation of Iraqi territory and who had left the territory with the occupation forces.

632. The representative further denied that the Iraqi armed forces had used chemical weapons against civilians. The availability of appeal to the Court of Cassation in criminal cases made it possible to ensure that sentences were fair and legal; the two persons executed in 1990 to whom the Committee had referred had been sentenced to the death penalty for the crime of espionage. Although the Iraqi people had suffered through the economic blockade imposed on his country, the infant mortality rate in Iraq, particularly among nursing infants had decreased by 40 per cent and was continuing to decline at the rate of 10 per cent per annum.

#### Treatment of prisoners and other detainees

633. With regard to that issue, members of the Committee wished to know what sanctions were provided for acts of torture or cruel, inhuman or degrading treatment and how often they had been applied during the reporting period. In this connection, they asked whether there were any independent and impartial procedures under which complaints could be made and investigated about the ill-treatment of individuals by the police, by members of the security forces, or by prison officials. They also requested additional information concerning the role of the representative of

the Department of Public Prosecution in investigating complaints of maltreatment or poor health conditions in detention centres.

634. Members of the Committee also wished to know how many cases of torture there had been involving military personnel and members of the security forces during the period of the report; what legal provisions were applicable to enable victims of torture to obtain compensation, in particular “moral” compensation; whether the instructions given with regard to the actions of the armed and security forces had been obeyed in practice, and whether they expressly prohibited acts of torture.

635. Questions were also raised about the disappearance of 353 Kurds in August 1988 and about the torture and degrading treatment inflicted on Kuwaiti citizens during the Iraqi occupation. In particular, members asked whether Iraq had made provision for any investigations, remedies and compensation in that connection; whether Iraqi prisons were still holding political prisoners; whether the list of all persons currently detained in Iraq would be made public; whether the organizations concerned would have access to court files; and whether detainees could be questioned and examined by physicians.

636. It was pointed out that, during the Committee’s consideration of the second periodic report of Iraq, doubts had been expressed as to the soundness of certain provisions included in a list of directives for the security service, and the question had been asked whether those directives were still in force. Members of the Committee also referred to the four judgements concerning acts of torture mentioned in the third periodic report of Iraq and to detailed information on the practice of torture in Iraq furnished by the Special Rapporteur on Torture of the Commission on Human Rights, by Amnesty International and by other international organizations. Such allegations could not be refuted by the Iraqi authorities; the members asked whether all the complaints concerning acts of torture had really been investigated and, if so, with what results. They also asked how many Iraqi soldiers had been tried for rape during the occupation of Kuwait; whether Iraq applied the United Nations Standard Minimum Rules for the Treatment of Prisoners; whether representatives of governmental and non-governmental organizations had been permitted to visit detention centres; and whether any persons had died following torture. They also asked what specific measures had been taken to prevent maltreatment in places of detention; whether Iraqi legislation included any provision enabling the State to take action *ex officio* in cases of torture; and whether the Iraqi Government would be prepared to conduct impartial investigations with the assistance of international experts.

637. In his reply, the representative of the State party referred to the provisions of the Iraqi Constitution and Penal Code designed to prohibit and punish any act of torture and to the criminal and civil procedures laid down to enable victims of torture to claim moral or material compensation. Investigations were conducted by the courts, which received complaints of torture and which took the necessary steps within their competence against the offenders. The Attorney-General played an essential role: it was his responsibility to institute proceedings on any information he received concerning acts of torture and to follow up the matter until judgement was passed. There were no special rules for the investigation of acts of torture; the procedure was that followed for all other offences, whether committed by police or by prison staff.

638. In addition, directive No. 4 of 1988 required the Department of Public Prosecution to

investigate prison conditions in order to verify that they conformed to the regulations. The Department's representative saw to it that physicians visited detention centres. He received complaints from detainees, whom he met in private and he instituted criminal proceedings against those responsible for ill-treatment or torture.

639. The representative stated that it was virtually impossible to estimate the total number of cases of torture because only those investigated and brought before the courts were officially registered. Torture victims could claim compensation from the State if there was evidence that a police officer had inflicted torture. The names of persons convicted of torture would be made available to international organizations if such a request was made to the competent Iraqi authorities. Clear instructions had been issued to the police and prison services in regard to arrests and detentions. The authority responsible for prisons was the Ministry of Labour and Social Affairs. Qualified experts ensured that standards were maintained.

#### Liberty and security of the person

640. In connection with that issue, members of the Committee wished to know whether there were any particular legal actions in Iraq that could be taken in cases of detention, such as habeas corpus; how quickly after arrest a person's family was informed; how soon after arrest a person could contact his or her lawyer; and what was the maximum legal period of detention in custody and of pre-trial detention. Clarification was also sought of the actual scope of decisions 103, 105, 109 and 121 of April 1991 and decision 126 of May 1991, particularly the nature of the acts punishable by law, the perpetrators of which were pardoned by successive amnesties, and of the term "indecent assault", used in paragraph 42 of the report. Members also requested statistics concerning the number of persons who left Iraq subsequent to 5 April 1991 and the number that had returned since the enactment of the various amnesty decisions and wished to know, in particular, whether all Kuwaitis taken to Iraq as prisoners after 2 August had been released or accounted for.

641. Members of the Committee also wished to know whether Iraqi law provided for administrative detention and, if so, whether the measure was applied in accordance with article 9 of the Covenant; what authority was responsible for verifying the lawful nature of arrests; and what had been the grounds for placing Ayatollah Syed Abdul Quasim Al-Khoie under house arrest and the legal justification for detaining members of his family and a number of persons who shared his opinions.

642. Members of the Committee deplored the bombing, by the Iraqi army, of Kurds fleeing Iraq and of the homes of certain opponents of the regime. They asked for clarification concerning the effective application of a number of amnesty decisions taken by the Iraqi Government with regard to certain accused persons; the safeguards provided for the protection of opponents of the Iraqi regime; the period of validity of amnesties for accused persons; and the application of the principle of the presumption of innocence in all judicial proceedings, as embodied in the Covenant.

643. In his reply, the representative of the State party referred to the provisions of the Iraqi Constitution and Penal Code concerning the conditions for lawful arrest and the penalties for unlawful arrest. As soon as he was arrested, a person was entitled to contact relatives and his counsel. The maximum period of detention in custody was 24 hours for offences punishable by three years' imprisonment or less; a detainee could be released on bail or surety. The period of

detention in custody could be extended by the court. Bail was not granted where crimes which carried the death penalty were involved. Appeals against all judicial decisions relating to arrest lay with the competent regional criminal court.

644. The representative stated that, during the recent disturbances in Iraq, crimes and other offences punishable under the Penal Code had been committed. Once they had put an end to those disturbances in April 1991, the Iraqi political authorities had set out to strengthen national unity. That had led the legislators to take a number of amnesty decisions, particularly with regard to Iraqi Kurds in the Autonomous Region of Kurdistan who had taken part in the riots. Certain serious crimes had been excluded from those measures. A general amnesty had subsequently been extended to all Iraqi citizens. The expression “indecent assault” covered crimes and other offences of a sexual nature. The majority of Iraqis who had left the country during the events connected with the Gulf war had now returned home and there were only 4,000 people still to be repatriated.

645. In addition, the representative stated that administrative detention existed in Iraq as a precautionary measure under the authority of the Ministry of the Interior. There had been no attacks of civilians by Iraqi airplanes subsequent to the cease-fire.

#### Rights of persons belonging to minorities

646. Referring to that issue, members of the Committee asked how many Kurds had fled the country and how many had returned to Iraq as a result of agreements sponsored by the United Nations and its agencies. They also wished to receive additional information on the status and functions of the Legislative Council of the Autonomous Region of Kurdistan and on the relationship between that institution and the National Assembly. Information was further requested with regard to ethnic or religious minorities in Iraq and the “positive measures”, mentioned in paragraph 76 of the report taken to enable minorities to exercise their rights without discrimination. It was asked, in particular, whether these minorities were represented in the National Assembly and local governing bodies.

647. In addition, members of the Committee wished to know the extent to which Iraqi Kurds were allowed to enjoy their own culture and to use their own language; how their status compared with the situation of Kurds in other countries; whether the Autonomous Region of Kurdistan had proved to be a workable solution; whether the Iraqi Government had taken any new measures as a result of the resumed dialogue with a delegation of Kurdish parties; what was the status of the negotiations; what the practical effects had been on minorities in Iraq of the constitutional provision establishing Islam as the State religion; whether the recognition of the Kurdish people’s rights would include their right to self-determination; and what rights had been recognized as legitimate for other minority groups.

648. Referring to Shiites currently in the marshes, who had been bombed and prevented by brutal means from obtaining assistance, members asked whether the United Nations and Amnesty International would be allowed to have access to them and to assist them. They also wished to know how many members of the Executive Council, established in 1989, were Kurdish and how many belonged to other groups; to what extent the Council was independent in governing the Autonomous Region; what positive measures had been taken to protect the fundamental rights of Kurdish, Shiite and Assyrian minorities; and what the situation was with regard to holy places in the towns that had

been subjected to heavy bombardment.

649. In his reply, the representative stated that he had no precise information on the number of Kurds who had left or had returned to Iraq. However, according to the Office of the United Nations High Commissioner for Refugees, most of those who had left the country had now returned. The Legislative Council of the Autonomous Region of Kurdistan exercised its powers, including legislative decision-making, in accordance with Autonomous Region Act No. 56 of 1980. The Legislative Council and the National Assembly acted independently. The Council was concerned with local matters, while the Assembly dealt with legislation covering all regions. Representatives of Iraqi Kurds were included as Iraqi citizens in the National Assembly. The electoral system in Iraq was based on the equality of all citizens. Minorities had the right to stand as candidates in national elections. No seats in the National Assembly were reserved for any particular minority, and its membership included citizens belonging to all minorities.

650. The representative further stated that the State supported the right of persons belonging to minorities to enjoy their own culture by publishing books and by broadcasting on radio and television in the local languages. The Kurdish language was the official language in the Autonomous Region of Kurdistan, and a major university existed in the region. According to the Iraqi Constitution, Kurds were considered not as a minority but as a people on an equal footing with the Arab people. Members of the Executive and Legislative Councils were elected by free and secret ballot. Negotiations between Kurdish representatives and the authorities in Baghdad were proceeding well and would reach a successful conclusion. Kurds in Iraq had political and cultural rights that did not exist for Kurds in other countries. The Iraqi Constitution enshrined the principle of non-discrimination, and the principle applied to religious matters.

#### Concluding observations

651. Members of the Committee said that while they had hoped that a constructive dialogue between the Committee and Iraq would be possible, unfortunately that had not proven to be the case. Rather, the representative of the State party had engaged in a kind of monologue or “stonewalling” and had sought constantly to evade certain issues and to avoid responding to the legitimate questions posed by members of the Committee. In the latter connection, they referred to questions they had raised regarding such important issues as disappearances, unlawful executions, including the execution of minors, torture and the existence of political prisoners, which had not received clear replies or had remained unanswered.

652. The report itself appeared largely to be an attempt by the Government to present its views on the Gulf crisis and its aftermath without addressing the real issue, that of Iraq’s compliance with the Covenant. It did not cover the entire reporting period from 1 January 1986 nor did it address any human rights violations or issues subsequent to 2 August 1990. In the latter regard, the State party’s claim that the Security Council’s involvement with events that had occurred after 2 August 1990 had pre-empted the Committee’s competence was clearly indefensible from a legal standpoint. The Security Council’s involvement did not in any way absolve Iraq from the need to observe the provisions of the Covenant nor remove from the Committee the mandate entrusted to it under the Covenant for monitoring the implementation of those provisions. Members also disagreed with the implication in the report that the difficult situation concerning human rights in the country was due



primarily to the Gulf war and to the sanctions that had been adopted against Iraq by the international community, noting in that connection the existence in Iraq of reliably attested human rights violations, including summary executions and arbitrary detention, well before the invasion of Kuwait on 2 August 1990. The failure of the report to address events in Kuwait after 2 August 1990, given Iraq's clear responsibility under international law for the observance of human rights during its occupation of that country, was a matter of particular concern to the Committee.

653. Members of the Committee also expressed deep concern with regard to the existence in Iraq of special courts, as well as death sentences without any possibility of appeal; the lack of protection of freedom of expression; the situation of the Shiites in the country; and the repressive action of the Government, particularly against the Kurds and the Shiites. Indeed, it was their overall impression that a situation of serious human rights violations that had already been very disturbing in 1987 had persisted and worsened throughout the intervening period.

654. Members of the Committee stressed that their criticisms had but one aim: the safeguarding of the rights and freedoms enshrined in the Covenant for everyone, including all Iraqis whatever their religion or ethnic origin. They expressed satisfaction with the State party's timely compliance with the Committee's request for the submission of the report and with the presence of the representative of the State party during its consideration by the Committee. They hoped that the Government of Iraq would change its attitude in the future by cooperating with the Committee not merely in form but also in substance, so as to allow for a fruitful and frank dialogue.

655. The representative of the State party reaffirmed his Government's desire to cooperate as fully as possible with the Committee even though he could not accept the criticism that inadequate replies had been given to the questions concerning protection of the right to life.

656. In concluding the debate, the Chairman of the Committee recalled that a number of issues concerning the third periodic report of Iraq had not yet been taken up for lack of time and that many questions posed by members had remained unanswered. The consideration of the report would, therefore, be resumed and completed at the next session of the Committee.

## CCPR A/47/40 (1992)

182. The Committee resumed and completed its consideration of the third periodic report of Iraq (CCPR/C/64/Add.6) at its 1106<sup>th</sup> to 1108<sup>th</sup> meetings, held on 30 and 31 October 1991 (CCPR/C/SR.1106 to 1108). <sup>9/</sup> (For the composition of the delegation, see annex VIII.)

183. In his introductory statement, the representative of the State party drew the Committee's attention to a number of important developments in the field of human rights that had occurred in his country since the consideration of the first part of the report. Much of the legislation objected to by the Committee had been repealed. Decree No. 416 of the Revolutionary Command Council had thus been suspended, the Revolutionary Court had been abolished and a decree had been adopted granting amnesty to persons convicted of political crimes, from which 187 persons had benefited. Furthermore, a law on political parties had come into effect on 16 September 1991. A Code of Human Rights, setting out provisions of international human rights instruments as well as those of Iraqi legislation, was in preparation, which would serve as a basis for incorporating such international standards into domestic law. Lastly, there was a continuous dialogue between the Government and the Kurds to seek an improved formula for greater autonomy for Iraqi Kurdistan.

184. Referring to a number of questions that had been left unanswered at the Committee's forty-second session, the representative stated that, following the cease-fire with the Islamic Republic of Iran in 1988, the number of death sentences passed in Iraq had declined markedly, and the decline had continued in 1991. He noted, in that regard, that 1,714 death sentences had been passed in the period 1987-1991, of which 1,223 had been carried out and 330 commuted to life imprisonment, with 161 persons having been pardoned. Revolutionary Command Council Decree No. 840 of 1986 and article 200 of the Penal Code, relating to severe life sentences, were currently under consideration for repeal.

185. Observing that economic, social and cultural rights and civil and political rights were closely interrelated, the representative said that the current blockade of Iraq was posing a danger to the right of people, particularly children, the elderly and the sick, to health, food and other basic needs. Furthermore, the shortage of medicines and pesticides had increased the incidence of disease. Cases of typhoid, hepatitis and cholera had sharply increased and infant mortality had risen from 5 to 21 per 1,000 between August 1990 and August 1991. Those circumstances had to be taken into account by the Committee in analysing the situation in Iraq. Since it was impossible to enjoy civil and political rights while being denied economic, social and cultural rights, the economic blockade should be lifted so that the Iraqi people could enjoy all their human rights.

### Constitutional and legal framework within which the Covenant is implemented

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<sup>9/</sup> For the first part of the consideration by the Committee of the third periodic report of Iraq, see Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40 (A/46/40), paras. 618-656.

186. With regard to that issue, members of the Committee wished to receive information concerning

developments, if any, that had taken place since the submission of the report regarding the promulgation of a new constitution and its adoption by referendum; the relationship between the Revolutionary Command Council, the Cabinet, the Office of the President and the National Assembly and their respective roles in so far as the implementation of the Covenant was concerned; the results of the examination by State organs subsequent to 1 April 1991 of wartime laws and regulations with a view to their abolition; and concerning persons characterized as “rioters” throughout the report.

187. In addition, members wished to know what concrete measures had been taken in order to attain the Government’s objectives of reconstruction, the establishment of democracy and a multiparty system, freedom of association, freedom of the press and the supremacy of law; whether the Covenant had specifically been taken into consideration in drafting the new Constitution and the law on political parties; whether the Covenant had been incorporated into Iraqi law and could be invoked before the courts; and what the remaining restrictions were under the state of emergency. It was also asked whether abuses committed by Iraqi military forces in Kuwait had been investigated; how many political parties had been created after the introduction of the multiparty system by Act No. 30 of 1991; why only 187 people had benefited from the amnesty decree of 21 July 1991 as compared with a total of 14,000 detainees who had benefited from previous amnesty decisions; and what the legal basis was for holding United Nations experts against their will. In addition, members questioned whether concentrating legislative and executive powers in the hands of the Revolutionary Command Council was in conformity with the Covenant.

188. Regarding the deterioration of the situation of the Kurds in northern Iraq, it was asked whether any military operation directed against them was under consideration. Concern was also expressed over the situation of some 50,000 Shiite refugees in the southern marshes and clarification was requested regarding the extent to which the Government was cooperating with international organizations in those areas. Information was further requested regarding the number of Kurdish and Shiite detainees, their treatment and the remedies that were available to them.

189. In his reply, the representative of the State party explained that, since the submission of the report, the law on political parties had been adopted and that the proposed new Constitution was to be submitted for approval in the referendum once the National Assembly had completed its discussion on it. Under a general rule embodied in a law, international instruments were considered as an integral part of domestic legislation. The purpose of drafting a code of human rights was precisely to clarify that point for those who applied the law and to remedy shortcomings in national legislation that might be inconsistent with international instruments. The Covenant was now considered to be part of Iraqi legislation and its provisions could be invoked by private individuals before the courts. A number of laws had been repealed, including Decree No. 461, thereby abolishing the Revolutionary Court. A review of all crimes carrying the death penalty was also being undertaken.

190. Responding to questions regarding the constitutional structure of the country, the representative explained that the National Assembly examined draft laws submitted to it by the Revolutionary Command Council. In the event of a divergence of views between those bodies, a joint meeting would be held at which a decision was taken by a two-thirds majority. A completely different constitutional structure was, however, to be put in place under the new Constitution. The

“rioters” referred to throughout the report were persons who in the course of rioting were accused of having committed serious crimes against the State and private individuals that were punishable under the Penal Code. Some 14,000 out of a total of 15,000 had been released as a result of an amnesty, while investigations had been completed in respect of approximately 1,000 persons, allowing them to be brought to trial. One hundred and eighty-seven persons, who were guilty of political offences and who had been incited to riot by external elements, had been excluded from the amnesty.

191. Military forces were positioned in northern Iraq, which formed an integral part of Iraqi territory, in order to demonstrate Iraq’s sovereignty in the area. The situation in that area was unstable and a matter of concern. There had also been confrontations between the Kurdish parties themselves and clashes had occurred as a consequence of the pursuit by foreign forces of Kurds withdrawn into the mountain regions. The Government was, however, continuing a constructive dialogue with the Kurds in order to regularize their situation within Iraq. When disturbances occurred, causing deaths in that part of the country, the authorities could not avoid their responsibility or cease to guarantee security throughout the national territory. Moreover, the Government had to see to it that the northern region of the country benefited from all the public services that were available in the other regions.

192. Referring to the situation in the Basra region where 50,000 Shiites lived, the representative stated that Iraq had always cooperated actively with international organizations working there. The situation of Shiites could not be regarded as special in character since, under the Iraqi Constitution and laws, the equality of all communities and denominations was guaranteed. The fact that the people in that region were Shiites bore no relationship to the actions by the authorities, which had been rendered necessary by the riots that had been raging in that area.

193. Referring to the alleged detention of experts of the International Atomic Energy Agency, the representative said that those experts had not been subjected to administrative detention. In the course of their research into Iraq’s nuclear programme, the experts had taken possession of a large number of personal files belonging to Iraqi scientists and had tried to seize them. The authorities had simply prevented the experts from leaving the location until they had returned the files in question.

#### Self-determination, state of emergency and non-discrimination

194. With reference to that issue, members of the Committee wished to receive clarification of proposals aimed at enhancing the autonomy of Iraqi Kurdistan; of the actual state of the relationship between the Government of Iraq and the Kurds; the events of 2 August 1990, in the light of Iraq’s obligations under article 1, paragraph 1, of the Covenant; and concerning the current situation of Shiites in the south of Iraq. They also wished to know why, in view of the troubles and uprisings that had occurred, Iraq had not declared a state of emergency and had not followed the notification procedure laid down in article 4, paragraph 3, of the Covenant; what status was accorded to the rights enumerated in article 4, paragraph 2, of the Covenant; what safeguards and effective remedies were available to individuals during a de facto state of war; and what specific measures had been taken to avoid any discrimination in the distribution of food and medicine and what mechanisms existed to ensure fair distribution.

195. Noting that the right of self-determination applied not only to colonial situations but to other situations as well and that the people of a given territory should be allowed to determine their economic and political destiny, members also requested clarification of the position of the authorities concerning the autonomy of Iraqi Kurdistan, particularly in the light of article 5 (b) of the Constitution, which recognized the national rights of the Kurdish people and the legitimate rights of all minorities within Iraq.

196. In his reply, the representative of the State party said that the question of enjoyment of rights by Iraqi Kurds was not an issue of self-determination under international law, but one of the rights of persons belonging to minorities, as embodied in article 27 of the Covenant. Article 5 of the Constitution highlighted that difference by stressing the unity of the Iraqi people, which consisted of two main ethnic groups, together with a number of other ethnic groups. The objective pursued by the law on autonomy had not been attained because many obstacles - some of them attributable to external factors connected with relations with neighbouring States - had served to slow down the process. That law was being revised and its provisions would be strengthened to ensure enjoyment by the Kurds of their rights, in conformity with the Constitution and Iraqi law. The Iraqi authorities had fully accepted the United Nations Security Council resolutions as well as the measures ensuing therefrom and had expressly undertaken to apply them. Following Security Council resolution 661 (1990), the Iraqi authorities had put in place a general scheme which guaranteed a minimum food supply to all citizens regardless of the region where they lived.

197. Responding to other questions, the representative said that a state of emergency had not been proclaimed in Iraq, either during the war with the Islamic Republic of Iran or the Gulf war, since the Government had felt that ordinary legislation should remain in force. A few legislative texts of a provisional character had been promulgated but they did not have the effect of suspending the exercise of the rights proclaimed in the Covenant. The Constitution and the social system of Iraq did not allow for any discrimination because Iraq consisted of a network of very diverse communities, which made for national unity. The Shiites were not subjected to any discrimination, lived throughout the whole of the country and did not have a special region reserved for them.

#### Right to a fair trial

198. With regard to that issue, members of the Committee wished to know whether legal deadlines, including the deadlines for appeals against judgements and decisions established by the Code of Civil Procedure, the Penal Code and any other law, had been re-established as of 30 April 1991 and what had been the consequences of the suspension of the rights of plaintiffs. In the light of the dissolution of the Revolutionary Court and the establishment of the Administrative Causes Court, they also requested information concerning the organization, independence and impartiality of the judiciary; procedures for the appointment and removal of judges; the scope of article 30 of the Public Prosecution Act as amended by Act No. 5 of 7 January 1987, in particular with regard to the right to have one's conviction and sentence reviewed by a higher tribunal; and the meaning of the statement in the report that an appeal could be made irrespective of the expiry of any legal deadlines. In the latter connection, members inquired whether an appeal could be made only when national interest, State property or public order was concerned.

199. In addition, members requested additional information concerning the study referred to in

paragraph 48 of the report; and about the competence and training required of candidates for appointment to the Court of Cassation. They also wished to know why a member of the State Council, who was not a judge, could exercise the functions of president of a court: whether all ad hoc courts had been abolished along with the Revolutionary Court; and whether the draft Constitution defined the functions of the judiciary or left the matter to be dealt with by ordinary legislation, as at present.

200. In his reply, the representative of the State party stated that Revolutionary Command Council decision No. 48 of 20 February 1991 had ceased to have effect on 30 April 1991. Time-limits for appeals, which had been suspended by that decision in disregard of the rights of litigants, had subsequently been extended so that those concerned could effectively exercise their right to a remedy. The dissolution of the Revolutionary Court and the revision of the emergency measures had made it possible to give back to the ordinary courts their jurisdiction in all areas as well as to strengthen the role of those courts in protecting human rights. The Administrative Causes Court had been established to examine complaints by persons who considered themselves to have been injured by administrative decisions taken against them by the authorities.

201. Referring to the organization of the judiciary, the representative explained that the Constitution set forth the major principles to be observed with regard to the independence of the judiciary, the jurisdiction of the courts and the rights of litigants, but that all questions relating to the appointment, removal, remuneration and conditions of work of judges were governed by relevant laws. The independence of justice and the neutrality of judges were guaranteed by the law of 1987 on the organization of the judiciary. The only authority having power to remove a judge was the Commission on Cases concerning Judges and Magistrates, which consisted of jurists belonging to the Bar. That Commission could recommend the dismissal of a judge if it found that he had dishonoured his profession or was unfit to continue to perform his functions because of considerations relating to integrity or competence. The Government made no recommendations with regard to the appointment of judges, who were chosen from among lawyers or other candidates selected by the Council of the Legal Institute, a totally independent body headed by a judge or a prosecutor. The law providing for the Administrative Causes Court to be headed by a member of the Council of State reflected a departure from the principle that all members of courts should be judges. That constituted a problem that deserved to be thoroughly addressed.

202. Responding to other questions, the representative explained that the power of the Director of Public Prosecutions to appeal against a decision taken in breach of the law and to the detriment of the national interest, State property or public order had been provided for under an amendment made in 1987 to the Public Prosecution Act. No special courts existed in Iraq and the prerogatives of the Revolutionary Court had been transferred to the ordinary courts in accordance with their respective areas of jurisdiction and geographical distribution.

#### Freedom of movement and expulsion of aliens

203. In connection with that issue, members of the Committee wished to know what legal provisions governed the expulsion of aliens; whether an appeal against an expulsion order had suspensive effect; what legal provisions governed the freedom of movement of aliens in the country; what had been the legal basis for the restriction of freedom of movement of aliens subsequent to 2

August 1990; what the basis was for the formulation of the measures applied in August 1990 by the authorities; and whether there had been any mass movements in Iraq during the period under consideration. In addition, further information was requested regarding freedom of movement of Iraqi citizens within the country.

204. In his reply, the representative of the State party said that aliens who had been legally authorized to enter Iraq could move freely within the confines of Iraqi territory. Certain zones, such as military bases and strategic laboratories, were forbidden to both Iraqi citizens and aliens. Article 11 of the Act governing the residence of aliens empowered the Director General of the responsible service to order the expulsion of an alien, who could then appeal against that decision to the Minister of the Interior within 15 days of its notification.

205. Referring to the restrictions placed on the freedom of movement of aliens in Iraq after 2 August 1990, he explained that such restrictions had constituted extraordinary measures applied in exceptional circumstances. The aliens concerned had not been placed in enforced residence in particularly uncomfortable places. The authorities had thus followed the principle whereby an exceptional situation called for exceptional measures. In any case, no national of a third country residing in Iraq had suffered from those measures and all the persons concerned had been able to leave Iraq eventually, so that when the war broke out no aliens were still being retained in Iraq.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

206. With reference to that issue, members of the Committee wished to receive information concerning registration or other procedures relating to the recognition of religious denominations and any difficulties encountered in that regard; recently drafted legislation relating to the press; and about controls exercised under the law on the freedom of the press and the mass media, including possible censorship. In addition, they wished to know how the right to seek information was ensured in Iraq; whether television and the audiovisual media were privatized or State controlled; what the extent of censorship was and whether the Government was considering any review of its use; whether dissemination of information not forming part of the "Islamic heritage" could be restricted; and, in general, whether Iraq was considering any measures to allow greater freedom of expression in the future. In addition, clarification was requested, in the light of article 19 of the Covenant, of the circumstances surrounding the condemnation and execution of a certain journalist.

207. In his reply, the representative of the State party said that there were 17 officially recognized religious communities in Iraq that enjoyed support from the authorities without any discrimination. In keeping with its Constitution, Iraq guaranteed respect for all religions and permitted individuals to embrace the religion of their choice. At the same time, Islam was the official State religion.

208. The draft legislation relating to the press would be submitted shortly to the National Assembly with a view to its promulgation. Although there was an official control service for the media, there was no longer any censorship and the restrictions that had been imposed on the activities of foreign correspondents because of the exceptional situation created by the war had been lifted. It had been very difficult to guarantee total freedom of expression, even though it had been provided for in the Constitution, during the war between Iraq and the Islamic Republic of Iran, and in any event such

freedom could be exercised only in compliance with rules governing morals and public order. The country was, however, trying to establish modern constitutional structures and, to that end, legislation permitting a multiparty system had been promulgated which allowed all political parties the right to publish their own magazines or journals.

209. Owing to Iraq's level of development, there were no private television or radio stations in the country, although they were not prohibited by law. Iraq was also endeavouring to revive its Arab Islamic culture and to teach the precepts of that civilization through radio and television. The journalist who had been sentenced to death and executed had not entered Iraq to express his views, but to obtain secret information in parts of the country that were off limits to journalists on account of the military installations there. He had been found guilty of espionage.

#### Freedom of assembly and association and right to Participate in the conduct of public affairs

210. Regarding those issues, members of the Committee wished to know whether recently drafted legislation relating to the freedom of political parties had entered into force; whether the law that made it a serious crime fraudulently to join the Baath Party or to defect from it had been abolished; what legal and practical consequences were attached to membership of professional federations, trade unions, associations and clubs; what the criteria and procedures were for the registration of associations and trade unions; how equitable access of members of minority groups to public service was ensured; and what the expected consequences were, on citizens in the conduct of political life, of the adoption of a new constitution and a new law on the freedom of political parties.

211. In addition, it was asked how the members of the National Assembly had been elected; whether it was intended to hold new elections following the promulgation of the new Constitution; whether any changes in the regulations for the holding of elections were under consideration; and how Act No. 30 of 1991 would operate, given the special position of the Baath Party under article 38 of the Constitution. Clarification was also requested of the purpose of the amendments to the National Assembly Act, according to which the Assembly could remove a member by challenging his good standing.

212. In his reply, the representative of the State party explained that Law No. 30/1991 on political parties had been promulgated and was now in force. That law guaranteed the equality of all parties, which had full freedom to establish themselves and to publish their literature, and would lead to an increase in the number of political parties and hence to broader participation by Iraqi citizens in public life. The new Constitution, when promulgated, would certainly be in line with the principles of that Act and would provide an appropriate framework for the encouragement of a multiparty system and consequently a diversity of ideas and opinions. Although nothing was yet known as to the place that was to be attributed under the new Constitution to the party in power, it would be inconceivable for the Constitution to make a distinction between the various political movements. While membership of professional federations, trade unions, associations and clubs had formerly been compulsory for technical and professional reasons, membership had now been made optional in the context of complete freedom of the individual. Equality of citizens and equal opportunities were guaranteed under article 19 of the Constitution and in no case could access to public office be based on adherence to any religion, belief or group. All Iraqi citizens had the right to challenge the good standing of any member of the National Assembly.



### Concluding observations by individual members

213. Members of the Committee expressed their appreciation to the representative of the State party for his cooperation in presenting the third periodic report of Iraq and for having engaged in an open dialogue with the Committee. Although the report had been somewhat overdue, great efforts had been made in difficult circumstances to submit it on time. Information had been updated as requested and efforts had been made to provide the Committee with answers to its questions. Furthermore, a certain degree of progress in the implementation of the Covenant had been noted, including drafting a code of human rights, abolishing the Revolutionary Court, moves towards permitting the establishment of political parties, formulating a new constitution and adopting an amnesty law. Iraq was thus making an endeavour to bring its domestic law into line with the Covenant and was taking some steps towards pluralism and democracy.

214. While welcoming those measures, members regretted that many of their questions had not received satisfactory replies and felt that the rights specified in the Covenant were neither adequately protected nor properly implemented. Serious concern was expressed, in particular, regarding the treatment of Kurds in northern Iraq and of Shiites in the south. The Government's interpretation of article 1 of the Covenant in that regard was not convincing. Furthermore, massive violations of human rights had occurred following the invasion of Kuwait. Deep and serious concerns were also expressed in respect of the legislation relating to the death penalty; the disappearance of persons, summary executions, torture and arbitrary arrests; the lack of independence of the courts; the limitations on the exercise of the freedom of expression, association and assembly; the lack of separation of powers; the position of the Baath party in law and in fact; and the excessive concentration of power in the hands of the Revolutionary Command Council.

215. With regard to the constitutional structure of the country, it was noted with regret that work on drafting a new constitution had slowed down. It was further observed that the law on political parties would remain a dead letter until the existing Constitution was amended and a multiparty system was established. Members also noted that the present Constitution contained a number of provisions that could lend themselves to violations of human rights, referring in that connection particularly to articles 38 and 40 of the Constitution, which differed significantly from the provisions of the Covenant. The retention of such provisions could lead to violations of, or restrictions on, proclaimed rights.

216. While members agreed that the population was clearly suffering greatly as a result of the war and the subsequent international sanctions imposed on Iraq, they emphasized that the war had been unleashed by Iraq through its attack on Kuwait. Claiming the war as the cause of difficulties in implementing civil and political rights in Iraq did not diminish the Iraqi Government's responsibility for the human rights situation. Furthermore, although it was obvious that there was a link between political and civil rights, on the one hand, and economic, social and cultural rights, on the other, all the shortcomings in the protection of the rights set forth in the Covenant could not be attributed to the economic situation prevailing in the country. The discrepancy between the provisions of the Covenant and the law and practice in Iraq during the period under review was itself one of the contributing factors that caused the war.

217. The representative of the State party said that the dialogue with the Committee had been most useful and expressed his delegation's thanks for the understanding and patience shown by the Committee. Iraq would take encouragement from it in continuing its efforts to build a constitutional and democratic society. He was also grateful for the sympathy the Committee had shown for the deep suffering imposed on the Iraqi people by the economic sanctions and trade embargo, which constituted an unavoidable obstacle to the enjoyment of human rights in Iraq.

218. In concluding the consideration of the third periodic report of Iraq, the Chairman also thanked the Iraqi delegation for the sincere efforts it had made to answer the many questions asked during a lengthy exchange of views that had extended over two sessions. The Committee's concerns were very serious as they related to a situation in which human rights were not being observed. Although Iraq was facing very difficult conditions that had resulted from the war and the present economic situation, those tragic circumstances could not dispense the Government of Iraq from its obligations under the Covenant. Accordingly, he expressed the hope that the concerns expressed by members of the Committee would be conveyed to the Government and would contribute to an improved observance of human rights in Iraq.

## **CCPR A/53/40 (1998)**

90. The Committee considered the fourth periodic report of Iraq (CCPR/C/103/Add.2) at its 1626<sup>th</sup> and 1627<sup>th</sup> meetings, on 27 October 1997, and at its 1640<sup>th</sup> meeting, on 5 November 1997, adopted the following observations.

### Introduction

91. The Committee welcomes the State party's fourth periodic report, and notes its timely submission and the willingness of Iraq to have a continued dialogue with the Committee. The Committee regrets that while the report provided information on Iraq's legislative framework, it did not deal with the actual state of implementation of domestic laws and of the Covenant, nor with the difficulties encountered in the course of their implementation. The presence of a delegation from the capital, which answered questions asked by members of the Committee and provided clarification on the situation in Iraq, is also welcomed by the Committee.

### Factors and difficulties affecting the implementation of the Covenant

92. The Committee recognizes that eight years of war with the Islamic Republic of Iran and the conflict following Iraq's invasion of Kuwait caused the destruction of part of the country's infrastructure and considerable human suffering, and produced a very difficult economic and social situation in Iraq.

93. The Committee notes that the effect of sanctions and blockades has been to cause suffering and death in Iraq, especially to children. The Committee reminds the Government of Iraq that, whatever the difficulties, the State party remains responsible for implementing its obligations under the Covenant.

### Positive aspects

94. The Committee welcomes the adoption of Revolutionary Command Council Decree No. 91 of 1996, which repeals the application of the death penalty and amputation in certain cases.

95. The Committee welcomes the repeal of Revolutionary Command Council Decree No. 111 of 1990, which exempted from prosecution certain "crimes of honour" involving the killing of female relatives.

### Subjects of concern and the Committee's recommendations

96. The Committee is deeply concerned that all government power in Iraq is concentrated in the hands of an executive which is not subject to scrutiny or accountability, either politically or otherwise. It operates without any safeguards or checks and balances designed to ensure the proper protection of human rights and fundamental freedoms in accordance with the Covenant. This appears to be the most significant factor underlying many violations of Covenant rights in Iraq, both in law and in practice.

97. The Committee regrets that many of its questions relating to allegations of serious violations of rights were not answered. In particular, the Committee notes with grave concern reports from many sources concerning the high incidence of summary executions, arbitrary arrests and detention, torture and ill-treatment by members of security and military forces, disappearances of many named individuals and of thousands of people in northern Iraq and in the southern marshes, and forced relocations. In this respect, the Committee expresses its regret at the lack of transparency on the part of the Government in responding to these concerns. The Committee also notes the statement by the delegation that a non-governmental committee has been established to deal with disappearances, and regrets that it was not able to obtain information on its functions or on its powers to investigate cases of involuntary disappearance, to bring those found responsible to justice and to otherwise prevent and combat disappearances in Iraq. Therefore:

The Committee recommends that all allegations mentioned above be fully, publicly and impartially investigated, that the results of such investigations be published and that the perpetrators of those acts be brought to justice. Information on the powers, functions and activities of the committee responsible for dealing with disappearances should be provided in the State party's next periodic report.

98. The Committee regrets that temporary decrees adversely affecting the implementation of certain Covenant rights have recently been enacted by the Revolutionary Command Council. In addition, the Committee expresses its concern that certain provisions of these decrees, which the State party has sought to justify on the ground that they are provisional, are incompatible with certain non-derogable Covenant rights, such as the right to life, the prohibition of torture and the principle of non-retroactivity of criminal laws. Therefore:

The Committee recommends that a thorough review of existing temporary laws and decrees be undertaken with a view to ensuring their compliance with the provisions of the Covenant. In this regard, the Committee stresses that Covenant rights may be derogated from only in accordance with article 4 of the Covenant.

99. The Committee also notes with great concern the increase in the categories of crimes punishable by the death penalty, pursuant to Revolutionary Command Council Decrees No. 13 of 1992, No. 9 of 1993, Nos. 86, 95, 179 and 118 of 1994, and No. 16 of 1995, and that the new categories include non-violent and economic infringements. These measures are incompatible with Iraq's obligations under the Covenant to protect the right to life. Therefore:

The Committee recommends that Iraq abolish the death penalty for crimes which are not among the most serious crimes, in accordance with article 6, paragraph 2, of the Covenant, and that total abolition of the death penalty be considered. In this regard, the State party should give careful consideration to the observations in the Committee's General Comment No. 6 on the right to life, and in particular those concerning the restricted scope of the expression "most serious crimes".

100. The Committee expresses concern that Revolutionary Command Council Decree No. 115 of 25 August 1994 violates the provisions of article 6, paragraph 2, of the Covenant, which restricts the application of the death penalty to the "most serious crimes", by stipulating that the death penalty will be imposed on persons who have evaded military service several times, and that it contains

retroactive provisions, contrary to article 15 of the Covenant. The Committee therefore recommended that:

The application of this decree should be suspended without delay and steps should be taken to repeal it.

101. The Committee is deeply concerned that Iraq has resorted to the imposition of cruel, inhuman and degrading punishments, such as amputation and branding, which are incompatible with article 7 of the Covenant. Similarly, the Committee is deeply concerned by Revolutionary Command Council Decree No. 109 of 18 August 1994, which stipulates that any person whose hand has been amputated for a crime thus punishable by law shall be branded between the eyebrows with an "X" symbol, by the application of this decree retroactively to persons whose hands have already been amputated, and by the explanation given by the delegation that this punishment was imposed to distinguish convicted offenders from persons mutilated in the war. In this regard:

The imposition of such punishments should cease immediately, and all laws and decrees providing for their imposition, including Revolutionary Command Council Decree No. 109 of 1994, should be revoked without delay.

102. The Committee expresses concern about the continued operation of family and inheritance laws which are incompatible with the principle of gender equality under articles 2, paragraph 1, 3, 23 and 26 of the Covenant. Therefore:

Steps should be taken to promote and ensure full equality between men and women in the political, economic, social and cultural life of the country, and to eliminate all forms of legal and de facto discrimination against women.

103. The Committee notes with concern reports of arbitrary restrictions imposed by the authorities on the right to freedom of movement within Iraq and freedom to leave the territory of the State party, in breach of Iraq's obligations under article 12 of the Covenant. Therefore:

Measures should be taken to ensure that article 12 is complied with and, among other things, that administrative costs for the issue of passports be reduced.

104. The Committee further notes with concern that special courts, which may impose the death penalty, do not provide for all procedural guarantees required by article 14 of the Covenant, and in particular the right of appeal. It also notes that in addition to the list of offences which are under the jurisdiction of the special courts, the Minister of the Interior and the Office of the President of the Republic have discretionary authority to refer any other cases to these courts. In that regard:

Courts exercising criminal jurisdiction should not be constituted other than by independent and impartial judges, in accordance with article 14, paragraph 1, of the Covenant. The jurisdiction of such courts should be strictly defined by law and all procedural safeguards protected by article 14, including the right of appeal, should be fully respected.

105. With respect to article 19 of the Covenant on the right to freedom of expression, the Committee

is concerned about severe restrictions on the right to express opposition to or criticism of the Government or its policies. The Committee is also concerned that the law imposes life imprisonment for insulting the President of the Republic, and in certain cases death. It also imposes severe punishments for vaguely defined crimes which are open to wide interpretation by the authorities, such as writings detrimental to the President. Such restrictions on freedom of expression, which effectively prevent the discussion of ideas or the operation of political parties in opposition to the ruling Ba'ath party, constitute a violation of articles 6 and 19 of the Covenant and impede the implementation of articles 21 and 22 of the Covenant, which protect the rights to freedom of peaceful assembly and association. Therefore:

Penal laws and decrees which impose restrictions on the rights to freedom of expression, peaceful assembly and association should be amended so as to comply with articles 19, 21 and 22 of the Covenant.

106. The Committee expresses concern about restrictions, prohibitions and censorship imposed on the creation and functioning of independent broadcasting media, as well as on the dissemination and broadcasting of foreign media, which are not in conformity with the requirements of article 19, paragraph 3, of the Covenant. Therefore:

Laws and decrees dealing with the press and other media should be amended to comply with article 19, paragraph 2, of the Covenant, which protects the right to freedom of expression, including the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of (one's) choice".

107. The Committee is concerned that under article 38 (c) of the Constitution, the members of the Revolutionary Command Council are not elected by universal and equal suffrage. This is incompatible with the right of citizens to take part in the conduct of public affairs, under article 25 (a) and (b) of the Covenant. Therefore:

The Committee recommends that steps be taken with a view to ensuring citizens the right and the opportunity to take part in the conduct of public affairs, either directly or through freely chosen representatives.

108. The Committee is also concerned that article 42 of the Constitution gives power to the Revolutionary Command Council to issue laws, decrees and decisions without being subject to independent scrutiny or review to ensure their compliance with the provisions of the Covenant. Therefore:

Provision should be made to ensure that individuals whose rights may be violated by such laws, decrees or decisions have an effective remedy as required by article 2, paragraph 3, of the Covenant.

109. The Committee expresses concern about the situation of members of religious and ethnic minorities, as well as other groups which are the subject of discrimination in Iraq, in particular the Shi'ite people in the southern marshes and the Kurds. The Committee also regrets the lack of information on the situation of other minorities, such as the Turkeman, Assyrian, Chaldean and Christian minorities, and on the enjoyment of their rights under articles 26 and 27 of the Covenant.

In this connection, the Committee calls attention to its General Comment No. 23 (50) on article 27 of the Covenant. Further:

The Committee recommends that measures be taken to ensure full equality of rights for members of all religious groups as well as ethnic and linguistic minorities, and that information be provided in the State party's next periodic report on the implementation of articles 26 and 27 of the Covenant.

110. The Committee notes with concern reports concerning the difficulties faced by non-governmental organizations in regard to their establishment and functioning. Therefore:

The Committee recommends that steps be taken without delay to facilitate the establishment and free operation of independent non-governmental organizations, with particular reference to those working in the field of human rights.

111. The Committee draws to the attention of the Government of Iraq the provisions of the guidelines regarding the form and contents of periodic reports from States parties and requests that its next periodic report, due on 4 April 2000, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Iraq.