

Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls

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15 September 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 45/10, 45/3, 44/5, 44/8, 43/8, 49/10, 50/L.7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged failure of the Iraqi Government to conduct prompt, impartial and effective investigations into the disappearances and potentially unlawful deaths of victims of the Islamic State of Iraq and the Levant (ISIL), to criminally prosecute and sanction the perpetrators of those crimes and to provide full reparation to victims, in line with international standards.**

According to the information received:

Whilst the Islamic State of Iraq and the Levant (ISIL) controlled some areas in Iraq and Syria, the group widely detained individuals incommunicado in unknown locations in conditions tantamount to enforced disappearance and subjected them to torture, sexual slavery and killings. This practice increased from 2013 onwards. ISIL carried out these acts in a systematic manner against activists, journalists and individuals perceived to hold dissenting views against ISIL. Minorities were particularly targeted by ISIL, which waged a genocidal campaign primarily against the Yazidis (especially affecting women and children), but also other minorities across the Sinjar region and the Nineveh plains. It is estimated that the fate and whereabouts of more than 8,143 individuals detained by ISIL, including 2700 Yazidi women and children, remain unknown.

Women and children were singled out by ISIL for particularly brutal treatment, demonstrating that the violence committed by ISIL has been highly gendered. Older women were reportedly enslaved and forced to engage in domestic work, while younger women and girls were sexually enslaved, raped,

and forcibly married. The Independent International Commission of Inquiry on the Syrian Arab Republic established that these forms of gender-based violence were used as deliberate tools to commit the crimes of genocide, war crimes and crimes against humanity against the Yazidis.¹

Criminal accountability

After the territorial defeat of ISIL, the Iraqi judiciary conducted criminal proceedings against members of ISIL, which did not comply with international fair trial standards and failed to reflect the nature and gravity of the international crimes reportedly committed by them. It is reported that the Iraqi authorities investigating and prosecuting ISIL members have charged suspects for offenses under the counter-terrorism law, primarily for ISIL membership, but have failed to bring separate charges against them and investigate them for crimes committed under the criminal code, including in connection to the aforementioned disappearances.

In this connection, it is reported that the judicial authorities have prosecuted individuals for membership in ISIL without investigating their rank, role, and involvement in the organization's structure; information about the crimes they may have been involved with; or the valuable and privileged knowledge they may possess about the fate and whereabouts of the disappeared victims or in connection to other international crimes. The failure to conduct comprehensive criminal investigations and prosecutions into all crimes committed by members of ISIL has detrimentally affected the pursuit for truth and justice for families of victims of acts tantamount to enforced disappearances, including valuable information about their fate and whereabouts.

Reports indicate that trials against ISIL members did not respect due process, proceeded solely on the basis of confessions, were based on the overly broad and vague definition of terrorism under Iraq's Anti-Terror Law, which include offenses such as "association" and "membership" in a terrorist organization, and led to the imposition of the death sentence for offenses that did not meet the threshold of the most serious crimes.

Moreover, judicial authorities involved in counter-terrorism cases against members of ISIL have reportedly foregone gathering evidence from victims and, generally, have made no efforts to solicit victims' participation in the trials. Judicial authorities have also reportedly failed to inform victims about the conduct of trials against members of ISIL or to solicit their participation in ongoing trials. This has also led to the loss of valuable information to assist in truth seeking and criminal justice efforts.

In addition, under the General Amnesty Law of 2016 (no.27/2016), detained ISIL members who can prove that they joined the group against their will and did not commit terrorist offenses that resulted in killing, maiming or attacking of State institutions or the Iraqi Security Forces before 2016, may be granted amnesty.

The country lacks a comprehensive national legislation that criminalizes the offense of enforced disappearance as an autonomous crime and protects rights of the victims and their families. A draft law in this regard remains pending at the Iraqi Parliament since 2017. In addition, Iraq's criminal laws do not adequately and sufficiently consider gender-based violence crimes.

Implementation of the Yazidi Survivors Law

In March 2021, Iraq passed the Yazidi Survivors Law (YSL) recognizing the genocide and crimes against humanity committed by ISIL against Yazidi Turkmen, Christian, and Shabak communities, and establishing the duty of government authorities to investigate and prosecute those crimes, protect witnesses and survivors, search for missing persons and provide reparation to victims. New regulations on the law were passed by Iraq's parliament in September 2021.

The law establishes the duty to provide reparation for survivors from the Yazidi, Christian, Turkmen, and Shabak communities, which include financial support, medical and psychological care, as well as the provision of land, housing, education and a quota in public sector employment. The following categories of victims are eligible to apply and receive benefits under the law: i) Yazidi Turkmen, Christian, Shabak women or girls kidnapped by ISIL who were subjected to crimes of sexual violence from their kidnapping, sexual slavery, selling on slave markets and separation from their family; were forced to change religion, to marry, to get pregnant and to abort; or were inflicted physical and psychological harm by ISIS since 3 August 2014 and who were freed afterwards; ii) Yazidi children survivors who were under the age of eighteen at the time of their kidnapping (no limitations concerning crimes they were subjected to but only to ethnicity); iii) Yazidi, Turkmen, Christian and Shabak survivors of the mass killings and mass elimination carried out by ISIS in their areas (no limitation related to gender).

With regards to memorialization efforts, the law sets up a national remembrance day on the 3rd of August. In addition, the YSL's associated bylaws impose on the Government the duty to develop specialized curricula regarding the conflict with ISIL, aimed at promoting peaceful coexistence and the renunciation of violence.

Despite its decidedly positive achievements, the law does not recognize all categories of victims. Under the law, the following groups cannot apply and receive benefits: i) survivors of ISIL conflict from groups other than those indicated above; ii) men and boys, survivors of conflict-related sexual violence; iii) children born of conflict-related sexual violence; iv) survivors of crimes committed by non-ISIL armed state or non-state actors active during the ISIL conflict in Iraq.

Furthermore, in the year that has elapsed since its adoption, insufficient progress has reportedly been made towards the implementation of the law due to several related problems, including: i) the insufficiency of state funding, ii) delays starting the process of application and verification of claims and of delivery of services; iii) insufficient outreach efforts; iv) delays setting up the sub-offices of the directorate mandated to receive and process claims; v)

insufficient number of qualified staff and training of personnel; vi) lack of relevant safeguards to protect privacy and avoid stigmatization and re-traumatization of survivors during outreach, application, review, and delivery of services; and vii) lack of a code of conduct detailing concrete obligations for personnel working with survivors.

In addition, the authorities have reportedly failed to set up rehabilitation centers to provide mental health and medical services to survivors, and to establish an effective mechanism to coordinate State efforts to search and rescue victims in ISIL captivity.

Other administrative avenues through which ISIL victims may claim compensation

Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions (Law No. 20) passed by the Iraqi Parliament in 2009 and amended in 2015 and 2020 provides a framework by means of which victims of ISIL atrocities could claim material compensation in form of one-time payment, award of family rent or plot of land. Beneficiaries are civilian victims of war or their family members in cases when the direct victim is no longer alive. Compensation is to be provided in case of death, enforced disappearance, disability, injuries, damaged property and/or disadvantage related to job or education.

The reparation framework envisaged in Law No. 20 focuses mainly on material compensation, and to some extent restitution, leaving out other forms of reparation. The law fails to address gross human rights violations such as conflict related sexual violence, slavery, and the use of child soldiers, as well as the large-scale and systematic nature of the violations committed by ISIL amounting to atrocity crimes, including but not limited to genocide.

The implementation of Law No. 20 has a number of reported practical problems, including high evidentiary requirements where victims need to submit a number of official documents and incur relatively high costs which create an insurmountable obstacle for most of those residing in camps wanting to file a claim. Implementation is reportedly further hampered by insufficient allocation of State funds, shortage of qualified staff, exclusion of certain groups of victims due to their perceived association with ISIL, and complicated and protracted procedures that hinder swift and effective implementation.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the alleged failure of the Iraqi Government to conduct prompt, impartial and effective investigations into the disappearances, torture, sexual violence, slavery and killing of victims of ISIL, and to criminally prosecute and sanction the perpetrators of those crimes in line with international standards. We are seriously concerned that this failure is detrimentally affecting the pursuit for truth and justice of victims and survivors of the aforementioned international crimes committed by members of ISIL, including families of victims of acts tantamount to enforced disappearances. The systematic and alarming failure of the national authorities to effectively address these violations is inevitably affecting victims' fundamental rights.

We express further concern at the reported failure of the relevant authorities to ensure that the information stemming from criminal prosecutions against ISIL members on countering-terrorism charges informs the search for disappeared persons and related truth seeking and criminal accountability efforts, and at their reported failure to make this information readily available to the families of the victims and their legal representatives. In addition, we are concerned about the alleged failure of judicial and prosecutorial authorities involved in counter-terrorism cases against members of ISIL to gather evidence from and solicit the participation of victims in ongoing trials, as well as their failure to inform them about the conduct of these trials.

We note with concern that the reportedly flawed proceedings limited the possibility for victims, their families, and the general public to see the perpetrators being held to account, failed to expose the full range of extremely serious human rights abuses committed by ISIL members, and prevented access to valuable information regarding those crimes. We are seriously concerned that these deficiencies have reportedly led to the loss of valuable information about the fate and whereabouts of persons disappeared by ISIL. While we are aware of the massive caseload of the Iraqi Judicial System against its existing capacities, including the High Judicial Council and its courts' structure, which we bring to the attention of your Excellency's Government to adequately address, we remind you that States have a duty to adopt reasonable measures to prevent human rights violations and to investigate, prosecute, punish and provide reparation when such violations perpetrated by terrorist groups arise, in accordance with the ordinary rules of criminal law and procedure. This obligation implies that the eventual trial of a person accused of involvement in the act of terrorism must meet international standards of a fair and public hearing before an independent and impartial tribunal (A/HRC/20/14). Weak and compromised accountability undermines the rights of victims and contributes to further instability in the region and beyond.

In this regard, we are concerned about reports that the trials against ISIL suspects did not comply with fair trial standards, used the overly broad and vague definition of terrorism and related offences (such as 'association with' or 'membership of' a terrorist organization) contained in Iraq's Anti-Terror Law, insufficiently distinguished between suspects who participated in violence and those who didn't, established penalties that failed to distinguish degrees of underlying culpability, and imposed the mandatory death penalty for a wide range of acts that do not reportedly meet the 'most serious crimes' threshold required under international law for the imposition of the death penalty. We remind your Excellency's Government that the positive obligations of the State towards victims of terrorism go beyond the investigation of terrorist acts requiring little evidence and entailing a reductionist view of the role of individuals within terrorist groups. Such reductionist view omits the nuances and complexities related to someone's so called "association with a designated terrorist group", and gives wide discretion to those in charge of applying the laws. All survivors of terrorism must be protected and assisted. These victims collectively have the right to be recognized, to be treated with compassion and respect for their dignity, and to be informed of their right to adequate, effective, and prompt reparation. They must be provided legal recognition and status, as well as access to adequate remedies, including physical and psychosocial support, legal and material assistance, justice and truth (A/HRC/16/51, para. 25).

Furthermore, we express concern that pursuant to the General Amnesty Law of 2016 (no.27/2016) it is inferred that ISIL detainees who joined the group against their

will and did not commit serious terrorist offenses against State institutions or the Iraqi Security Forces (before 2016), could be granted amnesty even if they have committed gross human rights violations against civilians. In this connection, we recall that international human right standards set clear limits to the adoption of amnesties in respect of serious human rights violations.

We welcome the progress achieved towards recognizing and redressing the harm suffered by Yazidi, Christian, Turkmen, and Shabak communities through the adoption of the Yazidi Survivors Law of March 2021 and its regulations of September 2021, marking long-overdue progress for many who suffered atrocities committed by the ISIL. However, we urge the relevant authorities to adopt the necessary measures to ensure their effective and prompt implementation, and to guarantee access to justice and reparations to all categories of ISIL victims, as well as to all survivors of crimes committed by non-ISIL state or non-state actors active during the conflict with ISIL in Iraq. Iraqi authorities must step up efforts to address the needs of all survivors, including by providing reparations for children who were born as a result of sexual violence by ISIL members during women's captivity. We are concerned that the current legal framework is insufficient to allow for the adequate prosecution and reparation of victims of these crimes, as it precludes meaningful justice for women and girls. We deem particularly concerning that although one third of the victims of ISIL are women and children, particularly girls, Iraq's criminal laws do not yet adequately and sufficiently consider gender-based violence crimes.

Additionally, we express concern at the lack of a comprehensive national legislation that criminalizes the offense of enforced disappearance as an autonomous crime and protects the rights of the victims and their families in accordance with Iraq's international obligations under the International Convention for the Protection of All Persons from Enforced Disappearance. The adoption of such legislation would help provide enhanced protection from and prevention of enforced disappearances as well as establish national institutions mandated and resourced to undertake effective search efforts linked to criminal investigations leading to accountability. Such legislation will also ensure the protection of rights of victims, families and relevant civil society organizations, including those related to the right to information, truth and justice as well as their participation into the search efforts and criminal investigations. A draft law in this regard remains pending at the Iraqi Parliament since 2017, although Iraq acceded the Convention in November 2010 expressing its commitment to criminalize the offense of enforced disappearance.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law and international humanitarian law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please inform about the steps taken to effectively guarantee the rights of victims to an effective remedy for the gross violations of human

rights and humanitarian law committed by members of ISIL. In particular, please provide information on the measures adopted by the Iraqi Government to conduct prompt, impartial and effective investigations into disappearances and potentially unlawful deaths, and to criminally prosecute and sanction the perpetrators of those crimes in line with international standards. Please inform about the capacity of the Iraqi Government to carry out such processes and about their outcome.

3. Please inform about the steps taken to ensure that the information stemming from criminal prosecutions against ISIL members charged for counter-terrorism activities informs truth seeking and criminal accountability efforts related to the disappearances committed by members of ISIL, and how is this information made available to the families of the victims and their legal representatives.
4. Please provide information on the steps taken to locate those who have disappeared. In particular, kindly include information on the adoption of a national legislation criminalizing the offense of enforced disappearance as well as the implementation of the Guiding Principles for the Search for Disappeared Persons (2019); and the steps taken to bring to justice the perpetrators. Moreover, what measures have been taken to prevent future disappearances?
5. Please inform about the measures adopted to ensure effective and full reparation for victims of gross human rights violations committed by ISIL and other state and no-state actors during the conflict with ISIL in Iraq, including women and girls who were subjected to sexual and other forms of gender-based violence, as well as child survivors who were abducted before the age of 18. In particular, explain how the implementation of the Yazidi Female Survivors Law and Law N° 20 is victim-centered, accessible to all eligible survivors, and receives adequate financial and technical support for its effective implementation.
6. Please inform about the steps taken to rehabilitate and reintegrate the women survivors and provide them with the healthcare services required, including sexual and reproductive healthcare.
7. Please provide information about the Government's strategy to reintegrate the children born in captivity and the measures adopted to ensure effective and full reparations for them.
8. Please include information on the implementation of the *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016))*; on the existing forensic capacities to conduct investigations into unlawful deaths and to search for, exhume and identify victims of enforced disappearances; and on any needs for technical assistance and capacity building in this regard.

9. Please explain how the Iraqi General Amnesty Law of 2016 (no.27/2016) is in compliance with international human rights standards.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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Melissa Upreti

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Annex

Reference to international human rights law and international humanitarian law

In connection with the above alleged facts and concerns, and without prejudging the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to refer to the obligation to investigate and punish gross human rights violations and to provide redress to victims. Article 2 of the Covenant on Civil and Political Rights, ratified by Iraq on 25 Jan 1971, establishes that States must adopt measures to ensure that persons whose rights or freedoms are violated have an effective remedy, and that the competent authorities enforce such remedies when granted. We further recall article 6 (1) of ICCPR which guarantees the right to life and personal security; article 7 which stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; and article 14 which guarantees the right of everyone to a fair and public hearing by a competent, independent and impartial tribunal established by law". We recall that the failure to provide information on the fate and whereabouts of disappeared persons and the attitude of official indifference of authorities in the face of the relatives' suffering may amount to a form of ill-treatment, in breach of article 7, read alone and in conjunction, with article 2 (3) of the ICCPR.² Furthermore, with regard to the disappeared person, the lack of search and investigation is also a violation of Arts. 6, 7, 9, 10, 16, read alone and in conjunction of art. 2 (3) ICCPR. The impossibility to obtain the mortal remains of a loved one and to perform the last rituals and mourn and obstructions to seek and receive information amount to a violation of the right to privacy and family life and the right to freedom to seek information enshrined in article 17 and 19 of the ICCPR, respectively.

In its General Comment No. 31, the Human Rights Committee established that States have an obligation to investigate and punish serious human rights violations, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances (paragraph 18). Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties. Impunity for such violations can be an important element contributing to the recurrence of violations.

We would also like to refer to General Comment No. 36 of the Human Rights Committee, which notes that "investigations into allegations of violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent (...) Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations (...) An investigation into violations of the right to life should commence when appropriate *ex officio*."

See Human Rights Committee, Communication No. 107/1981, María del Carmen Almeida de Quinteros *et al.* v. Uruguay, 21 July 1983.

Concerning the obligation to prosecute persons allegedly responsible for grave breaches of International Humanitarian Law, we would like to recall article 146 of the Geneva Convention (IV) according to which the High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the Convention defined in article 147. In addition, each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a 'prima facie' case. Furthermore, each Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in article 147. In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

In connection to the duty of States to ensure criminal accountability for serious violations of human rights and humanitarian law, we wish to recall that international law imposes limits on the use of benefits such as amnesty, pardon and commutation of sentences in respect of serious human rights violations. These measures are incompatible with the obligation to prosecute crimes under international law and deny victims the right to truth, access to justice and to request appropriate reparations. The reduction of sentences based on common criminal law principles and procedural rules ignores the special gravity of crimes against humanity. The international community recognizes the need to restrict the use of certain rules of law, such as procedural benefits, in order to combat impunity and prevent these rules from becoming an obstacle to justice (E/CN.4/Sub.2/1997/20/Rev.1). The provision of such benefits could involve hidden forms of impunity that contravene international human rights obligations.

In this connection, we recall that the updated Set of Principles reaffirms the obligation of States to take appropriate measures in respect of perpetrators of human rights violations (principle 1) and sets out restrictions on amnesties and clemency measures (principle 24). The Committee against Torture has also considered that the imposition of less severe penalties is incompatible with States' obligations. (CAT/C/34/D/212/2002 (2005), par. 6.7). Similarly, Human Rights Committee's General Comment 31 establishes that States may not relieve perpetrators from personal responsibility, through amnesties and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable.

Furthermore, we would like to recall the right of victims of human rights violations to receive full reparation for the harm suffered. Pursuant to article 2.3(a) of the ICCPR victims of human rights violations are entitled to an effective remedy. We draw the attention of your Government to the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International

Humanitarian Law, according to which states should include full and effective reparation, as appropriate, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Furthermore, we would like to recall the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, of February 2005, which established that any human rights violation gives rise to a right to reparation on the part of the victim, or his or her beneficiaries. This implies a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator (principle 31). All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings. Reparations may also be provided through programmes, based upon legislative or administrative measures addressed to individuals and to communities (principle 32). As stipulated in principle 34 of this instrument, the right to reparation should cover all injuries suffered by victims. Reparations afforded to victims should include measures of restitution, compensation, rehabilitation, and satisfaction, as provided by international law.

We would also like to refer to the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes, as established in the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005 (principle 2). Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 5).

We remind your Excellency's Government that all individuals, regardless of the severity of the charges brought against them, have a right to due process and fair trial. Provisions within many universal terrorism-related conventions require compliance with the right to a fair trial and the rule of law. The right to a fair trial is recognized not only in human rights treaties but also within international humanitarian law, international criminal law, counterterrorism conventions and customary international law (see A/63/223). We remind your Excellency's Government that Article 14 of the ICCPR, ratified by Iraq, provides *inter alia* for the principle of equality before competent, independent, and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defence, and the right of accused persons to communicate with counsel of their own choosing.

With regards to the crime of enforced disappearances, we would like to refer to General Comment No. 36 which states that extreme forms of arbitrary detention that are themselves life-threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life. The committee further explained that the failure to respect the procedural guarantees found in article 9, paragraphs 3 and 4, designed *inter alia* to prevent disappearances, could also result in a violation of article 6. (para.57). Furthermore, the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. General Comment No. 36 also highlights that "enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life (...) States parties must take adequate measures to prevent the enforced disappearance of individuals and conduct an

effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance. States parties should also ensure that the enforced disappearance of persons is punished with appropriate criminal sanctions, and introduce prompt and effective procedures for cases of disappearance to be investigated thoroughly by independent and impartial bodies that operate, as a rule, within the ordinary criminal justice system. They should bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation. Under no circumstances should families of victims of enforced disappearance be obliged to declare them dead in order to be eligible for reparation. States parties should also provide families of victims of disappeared persons with means to regularize their legal status in relation to the disappeared persons after an appropriate period of time. (para. 58)”

Further, we would like to refer to article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)³, which stipulated that no one shall be held in secret detention. Article 18 of the ICPPED further provides that States must guarantee access to information regarding persons deprived of liberty to anyone with a legitimate interest such as relatives, their representatives or counsel. Article 6 of the ICPPED provides that States shall take all necessary measures to hold criminally responsible any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance (ICPPED, article 1.2).

Under article 3 of ICPPED, State parties are also obliged to take appropriate measures to investigate acts of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice. In addition, we would like to draw your Excellency’s Government’s attention to articles 12 and 24 of the ICPPED which highlight the State’s obligation to undertake an investigation, even if there has been no formal complaint; to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against ill-treatment or intimidation as a consequence of the complaint or any evidence given and that victims of enforced disappearance or those directly affected by it have a right to obtain reparation and compensation. In this sense, we recall the Concluding Observations on Iraq by the Committee on Enforced Disappearances, whereby it expressed concern at the limited number of investigations carried out to prosecute and sanction members of ISIL (CED/C/IRQ/OAI/1, paras. 8-9).

We also take this opportunity to refer to the Guiding Principles for the Search for Disappeared Persons, issued by the Committee in 2019, in particular Principles 5, 7 and 13.

We further draw your Excellency’s Government’s attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which establishes that no State shall practice, permit or tolerate enforced

To which Iraq has acceded on 23 November 2010.

disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We recall that the Declaration sets out the necessary protection to be ensured by States regarding all persons deprived of liberty. In particular articles 7, 10, 12, 13, 16 of the Declaration establish that no circumstances whatsoever, may be invoked to justify enforced disappearances; to ensure access to a prompt and effective judicial remedy; to ensure competent national authorities have access to all places of detention; to ensure persons deprived of liberty be held in an officially recognized place of detention, and to be brought before a judicial authority promptly and after detention; to provide accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest; to ensure maintaining of an official up-to-date registers of all detained persons in every place of detention; and authorities to suspend persons presumed responsible for such acts from any official duties during the investigation and try them only by the competent ordinary courts. Also, article 19 of the Declaration provides that victims of acts of enforced disappearance and their families shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible. In the event of the death of the victim as a result of an acts of enforced disappearance, their dependents shall also be entitled to compensation.

Reference is also made to article 17 of the Declaration, which stipulates that these acts shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared, and these facts remain unclarified.

We further refer to the General Comment from the Working Group on Enforced or Involuntary Disappearances regarding the Right to the Truth in Relation to Enforced Disappearances, which highlights that the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. The State has the obligation to let any interested person know the concrete steps taken to clarify the fate and the whereabouts of the person. Such information must include the steps taken on the basis of the evidence provided by the relatives or other witnesses. The relatives of the victims should be closely associated with an investigation into a case of enforced disappearance.

We also draw the attention of your Excellency's Government to the report of the Working Group on Enforced or Involuntary Disappearances on standard and public policies for an effective investigation of enforced disappearances, published on 7 August 2020 (A/HRC/45/13/Add.3). The report highlighted that completion of the criminal investigation, along with any conviction or acquittal of the persons accused of having committed an offence of enforced disappearance, should not constitute an obstacle to the continuation of search activities or be invoked to justify their suspension. These activities should be pursued until it has been possible to determine with certainty the circumstances of the disappearance and the fate and whereabouts of the disappeared person or their remains. A failure to investigate would amount to a violation of the ICCPR itself.

Under customary International Humanitarian Law, we would like to recall rule 117 according to which each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide

their family members with any information it has on their fate. Moreover, rule 98 establishes that enforced disappearance is prohibited.

As regards the obligations vis-à-vis the dead we wish to also recall rules 112-116 according to which:

112) Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.

113) Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.

114) Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them.

115) The dead must be disposed of in a respectful manner and their graves respected and properly maintained.

116) With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.”

We would like to bring to your Excellency’s attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women which Iraq ratified in 1986. It provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. The Declaration also notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

Furthermore, we would like to draw your attention to the resolution 2467 adopted by the Security Council in 2019, which calls for a survivor-centered approach to inform all prevention and response measures, including holistic survivor-centered transitional justice to address the root causes of conflict-related sexual violence and provides for transformative reparations (S/RES/2467).

We also deem it appropriate to make reference to Commission on Human Rights Resolution 2005/41, which strongly condemns violence against women and girls committed in situations of armed conflict, such as murder, rape, including widespread and systematic rape, sexual slavery and forced pregnancy, and calls for effective responses to these violations of human rights and international humanitarian law. In this context, reference is further made to the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention), which provides that in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction

founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, are and shall remain prohibited acts at any time and in any place whatsoever with respect to the above-mentioned persons.

In its report to the Human Rights Council on women deprived of liberty (A/HRC/41/33), the Working Group on discrimination against women and girls noted that women and girls may also be targeted and detained based on their religion, ethnicity, tribal identity or place of origin, specifically referencing the abduction and detainment of Yazidi women in Iraq. The experts urged Governments to provide effective protection for women and girls from abduction and detention by non-State criminal or armed groups, guarantee non-recurrence and provide gender-sensitive and comprehensive services and adequate restitution to those who have been held captive by such groups.

In its report to the Human Rights Council on sexual and reproductive rights in crisis (A/HRC/47/38), the Working Group on discrimination against women and girls expressed deep concern about the widespread impunity for violations of the sexual and reproductive health rights of women and girls. The experts recalled the importance of ensuring access to the full range of sexual and reproductive health services during a conflict, as highlighted by Security Council resolution 2122 (2013) on women and peace and security. The Working Group recommended expanding the availability of sexual and reproductive health services and ensuring access to a full range of contraceptive information and services for women and girls, including emergency contraceptives. It also recommended expanding access to safe abortion services and remove legal barriers to abortion, in particular in situations of crisis.

In its report on women deprived of liberty (A/HRC/41/33), the Working Group on discrimination against women and girls noted that recent armed conflicts have seen both State and non-State actors using women's deprivation of liberty as a tool to further their ends. In situations of conflict, women's liberty and bodies are instrumentalized in multiple ways leading to deprivation of liberty. Non-State armed groups have engaged in high-profile abductions or detention of women, who have then been subjected to forced marriage or sexual slavery and forced recruitment for combatant or support roles in conflicts. Such kidnappings and detention are often in part motivated by attempts to impose a social order based on strict gender roles and the subjugation of women. State authorities responding to conflict may detain and confine women in the service of their own cause. Women who are able to escape from non-State armed groups or who are simply suspected of having been involved with them have been held by the military and other State actors in camps, prisons and other detention sites, rather than receiving the services they need. Measures to combat terrorism and corresponding national security measures sometimes profile and target women, in particular those from certain groups, and sometimes even women human rights defenders. Women and girls may also be targeted and detained based on their religion, ethnicity, tribal identity or place of origin. Deprivation of liberty involves human rights violations and has devastating consequences for women's lives, putting them at risk of torture, violence and abuse, unsafe and unsanitary conditions, lack of access to health services and further marginalization. It cuts women off from educational and economic opportunities, from their families and friends, and from the possibility of making their own choices. The Working Group recommended providing effective protection for women and girls from abduction and detention by non-State criminal or armed groups, guarantee non-recurrence and provide gender-sensitive and

comprehensive services and adequate restitution to those who have been held captive by such groups.

With respect to victims of terrorism, we recall your Excellency's Government that States have a responsibility for implementing preventive initiatives aimed at reducing the risk of future acts of terrorism. This can be seen as a dimension of the State's positive obligation under article 6 of the Covenant to take steps to protect the lives of future potential victims of acts of terrorism. States must tackle not only the manifestations of terrorism, but its causes, as foreseen in chapter I of the Strategy. Conditions conducive to the spread of terrorism, as identified by Member States, include prolonged unresolved conflicts; dehumanization of victims of terrorism in all its forms and manifestations; lack of the rule of law; violations of human rights; ethnic, national and religious discrimination; political exclusion; socio-economic marginalization and lack of good governance. The victim or the victim's family must in all cases be provided with the information necessary to exercise any rights they may have in domestic law to participate in criminal proceedings against the suspected perpetrator. All States should establish a support service to assist victims of terrorism throughout the process, until the conclusion of any ordinary avenues of appeal. Professionals should brief victims or their next-of-kin as to their rights, and direct them to institutions where they can obtain the required assistance.

Finally, we refer your Excellency's Government to the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the Framework principles for securing the human rights of victims of terrorism (A/HRC/20/14), according to which:

- 1) It is the obligation of the State to protect and secure the right to life. The latter includes the duty to take appropriate steps to safeguard the lives of individuals within its jurisdiction. Consequently, (i) the State has a duty under international law to put in place effective criminal law provisions to deter the incitement, preparation and commission of terrorist offences, supported by law-enforcement machinery for the prevention, suppression and sanctioning of breaches; (ii) relevant public officials come under a positive operational duty to take preventative action where they know, or ought to know, of the existence, at the relevant time, of a real and immediate risk to the life of an identified individual or group of individuals, and yet fail to take measures, within the scope of their legal powers and available resources, and in conformity with the State's international obligations, which judged reasonably, might be expected to avoid that risk.
- 2) The State has an obligation to investigate, convict and punish in accordance with the ordinary rules of criminal law and procedure persons suspected of involvement in the incitement, preparation, instigation or commission of terrorist acts, or to extradite them for trial in another jurisdiction. This implies a fair and public hearing before an independent and impartial civilian court. States are under a duty to provide mutual legal assistance in the investigation and prosecution of terrorist offences and to cooperate, as far as they consider reasonable, in the exchange of intelligence with other States.
- 3) The State is obliged to conduct an effective official investigation whenever individuals have been killed or seriously injured as the direct or indirect result of an act of terrorism, with a view to securing accountability and

learning lessons for the future. The key features of such an investigation are that (i) the authorities must act *ex officio*; (ii) the investigation should always begin promptly and be carried out with reasonable expedition; (iii) the authorities must ensure that the victim or his/her next-of-kin are kept fully informed of the progress of the investigation, and are provided with an adequate opportunity to participate in the process; (iv) investigators must be genuinely impartial; (v) the investigation must be capable of leading to the identification, accountability and, where appropriate, the punishment of those responsible for any act or omission which has caused or contributed to the death or serious physical or psychological injury of a victim of terrorism, including any public official implicated in the events; (vi) there must be a sufficient element of public scrutiny of the investigation and its results to secure accountability; (vii) the authorities must have taken all reasonable steps to secure the relevant evidence; and (viii) any conclusions must be based on a complete, objective and impartial analysis of all relevant elements, including an examination of the authorities' own actions. Where State responsibility is at issue the investigative authorities must be independent from those potentially implicated.

Finally, we would like to draw the attention of your Excellency's Government to article 6(2) of the ICCPR which states that the sentence of death may be imposed only for the most serious crimes. The UN Human Rights Committee has interpreted this to mean that the death penalty must be an "exceptional measure and should not be used on non-violent crimes" (Communication No. 838/1998, 20 December 2002, paras. 6.3,7). The Human Rights Committee also noted that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant (CCPR/C/79/Add.25). This provision has consistently been interpreted by the Human Rights Committee to mean that the death sentence may only be imposed in respect of intentional killing. Moreover, article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that capital punishment may only be carried out following a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

In this regard, we reaffirm that mandatory death sentences are inherently over-inclusive and unavoidably violate human rights law. The categorical distinctions that may be drawn between offences in the criminal law are not sufficient to reflect the full range of factors relevant to determining whether a death sentence would be permissible in a capital case. In such cases, individualized sentencing by the judiciary is required in order to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life (A/HRC/4/20, para. 4). In this connection, we recall that the Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved and that "[t]he mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment" (A/HRC/4/20, para. 4).