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Human rights situations that require the Council's attention

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), International-Lawyers.Org, United Towns Agency for North-South Cooperation, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2019]

* Issued as received, in the language(s) of submission only.



Discrimination in Iraq

It is well-established that discrimination of any kind is prohibited under international human rights law. The Universal Declaration of Human Rights clearly articulates this principle, which is incorporated verbatim into both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Iraq is a state party to both covenants making the Iraqi government responsible for guaranteeing that the rights in the conventions can be enjoyed by its population without discrimination, including discrimination based on race, ethnicity or religion.

Iraq's Government Engages Directly in Discrimination

Iraq's government creates policies and engages directly in acts of discrimination. During the United States of America occupation in 2003, new laws were created favouring Shi'a and Kurds, thus generating discrimination against Sunni Arabs and other minority groups. This discrimination has been reflected in the practices of the successive Iraqi governments since 2005. Iraq's leading politicians continue to foster this culture of discrimination, which is evident in the distribution of government positions, from leadership positions to the simplest civil service jobs, and in every aspect of how government services are delivered to citizens.

For example, a sectarian representation system has become the practice for allocating government leadership positions, even though Iraq's 2005 Constitution prohibits discrimination. According to this system the president of Iraq should be a Kurd, the prime minister a Shi'a, and the speaker of the parliament a Sunni Arab. The ministries and other top jobs have also been allocated on this basis, entirely replacing merit as the primary determinant of who is appointed to senior positions. This has resulted in smaller minority groups entirely losing out on any opportunity for senior government positions.

Even more unfortunate is that UN officials have continued the practice of the U.S. occupation authority of giving deference to one religious sect's leading cleric for advice on government and other official issues. This favouritism is contrary to the UN's role as a neutral party administering programs in Iraq. Many Iraqi politicians, including Shi'a members of parliament, are opposed to this. They believe that giving one religious leader such informal power works against the proper development of a constitutional order and the rule of law in Iraq.

A key law used to engage in discriminatory behaviour is Iraq's Anti-Terrorism Law (Law No. 13 of 2005). Officially this law is primarily used to counter the threat posed by "terrorist" groups. However, the Iraqi government makes extensive use of its Anti-Terrorism law to justify all manner of human rights violations against groups within its own population. The most appalling are the wide-spread and ethnically- and religiously-motivated occurrences of arbitrary arrests, executions, enforced disappearances and torture. Unfortunately, the ability of the Government of Iraq to overuse (and mis-use) the Anti-Terrorism Law should come as no surprise given its poor drafting, as noted by an analysis commissioned by the Iraq National Commission on Human Rights.¹

The Anti-Terrorism Law has been widely used as a weapon against political opponents, journalists and intellectuals to suppress public criticism of the government. However, its application also reveals the law to be a tool of discrimination because particular groups are usually targeted, especially Sunni Arabs. Not only is the law's application discriminatory, its impact is dire: The punishment for terrorism is death. NGOs have documented that most convicts sentenced to death belong to geographic areas of similar ethnic identity, such as the provinces of Al-Anbar, Nineveh, Salah Al-Din and Diyala. This law has given the Iraqi authorities a claim of legitimacy for sectarian-motivated efforts to rid themselves of opponents by arresting, detaining, torturing and sentencing hundreds of innocent civilians to death.

¹ Toby Collis & American Bar Association Center for Human Rights, *Compliance of Iraq's Anti-Terrorism Law (2005) with International Human Rights Standards* (June 2014).

The de-Ba'athification policy, originally implemented by the occupation authorities, has also become a tool for discrimination. This policy is heavily used by the government to bring severe penalties on anyone the government believes to be sympathetic toward the Ba'ath Party. However, the government focuses its use of this policy against people it wishes to persecute, especially Sunni Arabs and other disfavoured groups.

When not engaging in discrimination, Iraq also fails to protect its people from the violent discriminatory acts of others. Our organizations receive numerous videos, testimonies and other forms of evidence that demonstrate that such discriminatory acts are ongoing, widespread, and systemic. In response to this striking evidence of discrimination and abuse, the Iraqi government usually adopts an attitude of denial, claiming the incidents are either isolated cases due to the misbehaviour of a few individuals or they are in fact Daesh fighters disguised as the official security forces. Even if we believe the government's claims, Iraq remains responsible for guaranteeing its people's human rights without any type of discrimination.

Iraq's Government Supports Discrimination by Third Parties

Iraq's government also violates the country's obligations by supporting third parties in their discriminatory behaviour. Several militias operating in Iraq are officially sanctioned by the Government of Iraq to support its security forces. However, there are numerous and repeated examples of human rights abuses by these militias, often with either overt or subtle sectarian overtones. Shockingly, laws and government policy officially protect the militias from accountability, thus allowing the militias to engage in discrimination and countless other human rights violations with impunity.

For example, people fleeing Saqlawiya, a small city affected by the indiscriminate bombings and airstrikes near Fallujah in 2016, headed to the closest military camps for refuge and found the camps to be in the hands of officially-sanctioned militias. There, according to surviving eye-witnesses, they were subjected to deplorable treatment based on sectarian attitudes, including verbal and psychological abuse, as well as torture, including stabbing with weapons, being burned alive, and summary executions. A number of official militias were also heavily involved in the so-called "trials" and executions after the Camp Speicher massacre mentioned above. Leaders of these militias have publicly admitted to having executed many people from different areas just as an act of revenge to the Camp Speicher massacre.

Officially-sanctioned militias have engaged in ethnic and religious discrimination in the Province of Diyala since Daesh was driven out of that area in January 2015. Starting in the city of Al Muqdadiah, militias have gathered people, usually men and boys, from the surrounding towns and villages, beating and taunting them with sectarian insults, eventually killing many of them. Eye-witnesses reported that on 11 January 2016, several Shi'a militias (Badr Brigade, Asa'ib Ahl al-Haq militia and other Shi'a militias) started to roam the streets of the city using loudspeakers and shouting sectarian slogans, threatening Sunni Arab groups or those they called "Nawassib", ordering them to leave the city or face death, and then conducting mass executions.

In addition to abusing large numbers of people, the official militias, under the umbrella name of Al-Hashad Al-Shaabi (Popular Mobilization Forces - PMF), also abduct people and conduct extrajudicial executions. Iraqi militias often arrest and detain individuals on a purely sectarian basis without giving them or their families any information about the arrests. Instead, they deny the person has ever been arrested. These detainees, the vast majority of whom are Sunni Arabs, are kept in secret prisons so the family does not know where the detainee is being held, or the physical or mental condition of the detainee. Over the past fifteen years, NGOs have publicized lists of people that are missing and believed to have been executed. These lists clearly show how militias have specifically targeted certain families of the same ethnicity or religion. The government has made no real efforts to provide redress and reparation to the families of the disappeared nor to identify the perpetrators and bring them to justice.

Conclusion

Numerous NGOs have spent years documenting and reporting on the unbelievably widespread and systematic violation of virtually every human right in Iraq. We would be pleased to support the Iraqi government's efforts to eliminate discrimination and provide justice to its victims; however, we are not convinced that the government is genuinely addressing the problem. On the contrary, all the government practices confirm that discrimination is a fundamental part of the mentality of those in power.

Even the people of Iraq agree with us. After years of the sectarian representation system, the anti-government demonstrations occurring around the country since 2011 have made it clear that most Iraqis do not support the system. This lack of support has been emphasized since July 2018 by the anti-government demonstrations taking place in majority-Shi'a provinces in central and southern Iraq that are supposedly benefiting from the sectarian system. Citizens are calling for the removal of the sectarian policies imposed during the occupation and a return to the prior policy of the government officially treating all groups equally.

Recommendations

We recommend that:

- Iraq establish a law against hate speech by state officials.
- Iraq ban militias.
- Iraq dismantle the ethnicity-based leadership allocation system.
- Iraq remedy victims of discrimination.
- The UN ensure that accountability systems address all perpetrators of discrimination and other atrocities, not just ISIS as specified in Security Council Resolution 2379 (2017).

Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, The International League of Iraqi Academics (ILIA), Iraq Solidarity Association in Stockholm), Association Maonah for Human Rights and Immigration, NGO(s) without consultative status, also share the views expressed in this statement.