



General Assembly

Distr.: General
29 August 2019

English only

Human Rights Council

Forty-second session

9–27 September 2019

Agenda items 3 and 4

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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), Association Ma'onah for Human
Rights and Immigration, Indian Movement "Tupaj Amaru",
International-Lawyers.Org, United Towns Agency for North-
South Cooperation, Union of Arab Jurists, 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.

[21 August 2019]

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



Truth, Reparation and Justice in the Republic of Iraq

Introduction

In March 2003, the United States, the United Kingdom of Great Britain and Northern Ireland and other countries (the Coalition) invaded Iraq. This invasion was led without the approval of United Nations (UN) Security Council, under the claim that Iraq had failed to abandon its weapons of mass destruction program in violation of UN Resolution 687 and that it had had a role in the 11 September 2001 terrorist attacks and thus the Coalition claimed it acted in self-defence. Such theories were later abandoned, the Bush administration conceding they made a mistake, and the invasion declared illegal by UN Secretary General Kofi Annan.

Despite the withdrawal of US troops in 2011 in application of the US–Iraq Status of Forces Agreement, the US is still heavily involved in the country as advisors and through military bases. Until now, the Government failed to advance the reconstruction of the country. The rise of non-State armed groups, as the so-called Islamic State of Iraq and the Levant (ISIL) has further complicated the situation. Nevertheless, the Government must not use the battle against ISIL as a pretext to put aside its other obligations.

Aggression under International Law

Wars of aggression were defined by the International Military Tribunal at Nuremberg, as “the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”

The UN Charter establishes the principle of the non-use of force in the international relations of States and provides two exceptions in which the use of force is permitted. First, when threat to or breach of peace is identified by the Security Council, it can decide on measures, including the use of force, to restore peace and security. Second, when an armed attack occurs against a State, it can exercise its right of individual or collective self-defence.

In the case of the Coalition’s invasion of Iraq, the Security Council did not allow the use of force, and the self-defence argument raised by the US was proved to be a false pretext. Therefore, the Coalition violated the UN Charter and breached the jus cogens prohibition against aggression and crimes against peace.¹ Consequently, all persons involved in the invasion and occupation must be held accountable for the grave human rights violations that they perpetrated.

Truth, Justice and reparation

Iraqi people are waiting since 2003 for steps to be taken towards truth, justice and reparation. The lack of improvements in this regard leads to obstacles in Iraq’s reconstruction process. Truth, justice, reparation and guarantees of non-recurrence are the principles defined by the Economic and Social Council’s Commission of Human Rights as essential for the promotion and protection of human rights.² Addressing injustice, ending impunity and providing measures of satisfaction are the only means to prevent future atrocities and create sustainable peace.

¹ “Chilcot Report: Key Points from the Iraq Inquiry”, The Guardian, 6 July 2016. <https://www.theguardian.com/uknews/2016/jul/06/iraq-inquiry-key-points-from-the-chilcot-report>.

² “Question of the impunity of perpetrators of human rights violations (civil and political), Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119”, E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997, United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. Updated on 8 February 2005, E/CN.4/2005/102/Add.1.

The crimes committed during the invasion and occupation have been particularly horrific and include all forms of torture, extrajudicial killings, enforced disappearances, forcible recruitment of children, rape and other sexual violence, destroying of homes and facilities, leading to a large number of victims suffering terrible health issues and needing support, as well as, resulting in many internally displaced persons and persons fleeing the country. These violations are condemned under international human rights law and international humanitarian law. As such, perpetrators must be held accountable and victims must obtain reparations for their losses.

Further violations have been committed by armed militias, including ISIL. We commend the creation of a Sanction Committee³ for the violations relating to Al-Qaida and ISIL by the UN Security Council but regret that no such steps have been taken for the violations that occurred during the US occupation. Thus, a Committee investigating all violations committed since 2003 by State and non-State actors must be established.

Iraq's judiciary system and its Institutions

During the occupation, the Coalition Provisional Authority (CPA) created new courts and appointed new judges in violation of international law. Nevertheless, they were not independent and did not work towards truth and accountability, which weakened the Iraqi judicial system and, by doing so, the CPA violated the Hague convention. Constant corruption and interference of the executive in the affairs of the judiciary, the lack of transparency and the worryingly broad use of Article 4 of the Anti-Terrorism law No. 13 to convict and execute individuals undermine the credibility of justice and raise questions regarding the cases tried.

It is necessary to build strong institutions that are able to investigate human rights violations, prosecute perpetrators and sentence them while respecting human rights, international law and international obligations of the State. Indeed, as the Iraq stated during the Human Rights Council's Interactive Dialogue on Truth, Justice and Reparation and on the Prevention of Genocide in September 2018, it is vital to establish legal legitimacy in the domain of transitional justice.⁴

It is worrying that armed groups, including militias created and supported by the Government, continue to operate in areas outside of State control and conduct illegal activities and grave human rights violations with impunity, which undermines the authority of the State and, once again, dampen the restoration of Iraq's institutions.

Accountability

Accountability is essential in Iraq for all acts of the past decades. With this aim, Iraq should ratify the Rome Statute of the International Criminal Court, and incorporate into its domestic legislation definitions of war crimes, crimes against humanity, genocide and establish specialised courts with technical capacities and jurisdiction over these crimes. Past crimes that cannot be brought before Iraqi courts, as with the case of private military and security companies operating in Iraq under the Coalition and that were immune from Iraqi legal processes according to a CPA order, should be prosecuted in American courts⁵ or other competent courts. We recall that international standards must be upheld in all proceedings.

We believe that a UN International Special Tribunal for Iraq should be established, with a competence for all crimes perpetrated under the US occupation since 2003.

³ Resolutions 1267 (1999) 1989 (2011) and 2253 (2015).

⁴ Human Rights Council holds interactive dialogue on truth, justice and reparation, and on the prevention of genocide, 14 September 2019.
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23562>.

⁵ A/HRC/18/32/Add.4 paragraph 65; CPA order 17, 2006.

Despite global recognition of the illegality of the Coalition invasion through official statements, no actions have yet been taken at the international level to establish accountability. The international community needs to take action to expose the truth of violations that happened in Iraq, which will allow prosecution, reparation and the creation of sustainable peace.

Justice should be sought through the prism of the United Nations Charter, Treaty Bodies and Special Procedures, such as the Human Rights Committee, the Committee against Torture, the Working Group on Enforced Disappearances and all other relevant bodies.

Recommendations

The NGOs signatories to this statement believe it is necessary to create an International Special Tribunal to prosecute all those involved in the invasion, including through the planning, administration and actual execution of the invasion and who have committed human rights and humanitarian law violations.

Pending creation of such a court, we call on the United Nations relevant bodies to ensure that:

- Iraq ratifies the Rome Statute of the International Criminal Court; accedes to the optional protocols on the International Covenant on Civil and Political Rights and to the Convention against Torture; incorporates into its domestic legislation definitions of war crimes, crimes against humanity, genocide and establishes specialised courts with technical capacities and jurisdiction over these crimes.
- The United States and other members of the Coalition investigate and prosecute those responsible for the invasion and for crimes committed during the Iraqi occupation – whether by the military or private security companies.
- All parties to the conflict acknowledge their part in the violations that took place, provide information about it, and make perpetrators accountable.
- The international community promotes and respects human rights, works together towards ending impunity and ensures such actions will not recur.
- The United Nations Human Rights Council creates a Special Rapporteur for Iraq to investigate all human rights violations since 2003.
- The United Nations Security Council creates An Independent Committee to investigate all human rights violations since 2003.

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, NGO(s) without consultative status, also share the views expressed in this statement.