

# Iraq

## **Evaluation Report of the Iraqi High Commission for Human Rights**

*Report submitted to the Sub-Committee on Accreditation of National Human Rights Institutions as part of the re-accreditation of the Iraqi High Commission for Human Rights (IHCHR)*

**19 February 2021**

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# 1 Introduction

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The Iraqi High Commission for Human Rights (IHCHR or Commission) was founded in 2008 and became operational in 2012. In 2015, the Commission effectively supplanted the mandate of the former Ministry of Human Rights for budgetary reasons.<sup>1</sup>

The incumbent members (also known as Commissioners) of the IHCHR have been nominated in 2017 for a period of four years. Their term will effectively end on 3 August 2021 with the nomination of a new Board of Commissioners.

In 2015, the IHCHR was granted B status to mark the Iraqi IHCHR's partial compliance with the Paris Principles. The same year, the UN Human Rights Committee raised concerns over “reported difficulties faced by the High Commission for Human Rights in carrying out its mandate, including a lack of adequate resources and constraints in practice to effectively discharging certain mandated activities, such as visiting and inspecting places of deprivation of liberty”.<sup>2</sup>

In June 2021, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) will decide on the re-accreditation of the Commission based on an evaluation of the progress made since 2015.

Ahead of this examination, MENA Rights Group would like to provide information that may serve to assist in the evaluation of the compliance of the Iraqi national human rights institution (NHRI) with the Paris Principles in both legal and practical terms.

## 2 Methodology

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This report paid particular attention to the implementation, or lack thereof, of the recommendations issued by the SCA in March 2015 following the initial evaluation of the IHCHR.<sup>3</sup> In addition, we sought information on the role played by the IHCHR during the 2019-21 popular protests and the steps taken by the Commission to address the issue of the practice of enforced disappearance, which has remained pervasive since the last review of IHCHR by the SCA.

With these objectives in mind, MENA Rights Group consulted several members of the Iraqi civil society as well as international NGOs working on Iraq. The following organisations contributed to this report: **Al Wissam Humanitarian Assembly, Geneva International Centre for Justice (GICJ), Human Rights Watch, Iraqi War Crimes Documentation Center (IWDC), Peace and Freedom Organization (PFO), and PEN Iraq.** Please note that the information found in this report does not necessarily reflect the views of the contributing organisations.

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<sup>1</sup> Radio Free Europe, *Iraqi PM Scraps 11 Cabinet Posts in Reform Drive*, 16 August 2015, [available at: https://www.rferl.org/a/iraqi-reforms-cabinet-posts-eliminated/27191927.html](https://www.rferl.org/a/iraqi-reforms-cabinet-posts-eliminated/27191927.html) (accessed 11 February 2021).

<sup>2</sup> Human Rights Committee, *Concluding observations on the fifth periodic report of Iraq*, 3 December 2015, CCPR/C/IRQ/CO/5, para. 7.

<sup>3</sup> Sub-Committee on Accreditation, *ICC Sub-Committee on Accreditation Report – March 2015*, March 2015, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20MARCH%202015%20FINAL%20REPORT%20-%20ENGLISH.pdf> (accessed 11 February 2021).

We also reached out to victims of enforced disappearance and their families to have their views on the IHCHR's action to counter this practice. They were invited to give their opinion on the effective independence of the Commission, the composition of the members, the nomination process as well as on the activities conducted as part of its mandate.

In the interest of objectivity, we contacted all members of the Commission, inviting them to give their perspective on their work through answering a list of questions. Most members did not respond. Ali Akram Al Bayati, one of the IHCHR's Commissioners and director of the Turkmen Rescue Foundation, agreed to individually provide us with information on the functioning of the IHCHR. The president of the IHCHR, Mr Aqeel Jasim Ali, responded to our list of questions on 16 February 2021.

Although the present report specifically examines the performance of the Baghdad-based IHCHR, it is worth highlighting that a national human rights institution has been established in Kurdistan under Law No. 4/2010 as well.<sup>4</sup> On 15 January 2021, we contacted the Independent Human Rights Commission Kurdistan Region (IHRCKR) to ask its members how they perceive their collaboration with the IHCHR. Our email has remained unanswered.

We have been informed by the president of the Baghdad-based Commission that there is a relationship of mutual cooperation between the IHCHR and the IHRCKR. The IHRCKR's human rights monitoring reports are included in the IHCHR's annual reports. According to the president, the two commissions additionally cooperate on matters relating to the situation of displaced people in the Kurdistan region. This has been done through the IHCHR's establishment of a permanent branch, based in Erbil, which is responsible for following up and coordinating on human rights issues in the region and of liaising and coordinating between the meetings and work of both the IHRCKR and the IHCHR.

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<sup>4</sup> The website of the Independent Human Rights Commission in Kurdistan Region is available here: <https://ihrckr.org/en/ihrckr/> (accessed 16 February 2021).

## 3 Legal framework

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### 3.1 The enabling Law No. 53 of 2008

Article 102 of the Iraqi Constitution of 15 October 2005 foresees the establishment of the IHCHR, to be “considered independent” and “subject to monitoring by the Council of Representatives”, with its functions “regulated by law”. In 2008, the Council of Representatives passed the Law of the High Commission for Human Rights No. 53 (Law No. 53/2008 or enabling law).<sup>5</sup> In April 2012, the Commission was effectively established.

The fact that the IHCHR was established pursuant to a law adopted by the Council of Representatives and not by a decree issued by the executive must be commanded. It is indeed in line with section A.2 of the Paris Principles, under which “a national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a Constitutional or legislative text, specifying its composition and its sphere of competence.”

The role played by the legislative was also stressed in the 2012 Belgrade Principles on the relationship between national human rights institutions and parliaments, according to which “parliaments should have the exclusive competence to legislate for the establishment of a NHRI and for any amendments to the founding law.”

According to the president of the Commission, the IHCHR only maintains a “functional connection” to the parliament.

The IHCHR’s mission is enshrined in article 3 of the enabling law, which provides that the Commission aims to “ensure the protection and promotion of human rights in Iraq; protect the rights and freedoms stipulated in the Constitution, laws, treaties and international agreement ratified by Iraq; consolidate, improve and develop a culture of human rights.”

The following articles vest the IHCHR with a broad mandate to ensure the protection and promotion of human rights. It holds a wide range of competences, mirroring those demanded by Paris Principles (see chapter 4 on the effectiveness of the mandate).

It is not clear whether civil society has been involved in the drafting of the enabling law. All international and Iraqi human rights organisations we have contacted have indicated that they have not been consulted prior to the adoption of the law.

### 3.2 Amendments

Since 2008, Law No. 53 was amended three times. In 2012, the Council of Representatives adopted the Law of the First Amendment to Law No. 53/2008. It modified article 15 of the enabling law so that when an active member’s term of office is interrupted, she/he is to be replaced by a reserve member “according to the merits” and not according to a pre-established order fixed by the Council of Representatives.

Nevertheless, the amendment in question does not specify the “merits” to be considered, respectively which criteria should be taken into account when selecting a reserve member

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<sup>5</sup> The Law of the High Commission for Human Rights No. 53/2008 is available here: [https://menarights.org/sites/default/files/2016-12/IRQ\\_NHRI%20law\\_2008\\_AR.pdf](https://menarights.org/sites/default/files/2016-12/IRQ_NHRI%20law_2008_AR.pdf) (accessed 16 February 2021).

(skills, gender, expertise, membership to a national minority etc.), nor does it specify which body is in charge of selecting the reserve member. We believe that Law No. 53/2008 should be further amended to bring legal clarity regarding the selection of the reserve member in question.

We have been informed by the president of the IHCHR that, in practice, the Board of Commissioners is responsible for the replacement of a member whose term has ended. In other words, the selection is made internally without external oversight.

Although the legislation governing the IHCHR does not specify this, reserve members “enjoy the same rights and duties as the original member with the exception of voting on the council’s decisions”, according to the president of the Commission. He informed us that “it is customary not to count the votes of reserve members when taking a decision.”

In 2017, the Council of Representatives adopted amendments two and three to Law No. 53/2008. The second amendment, adopted on 20 February 2017, increases the number of “original members” from 11 to 12.

The third amendment, adopted on 4 July 2017, provides that the Committee of Experts no longer includes representatives of the United Nations Human Rights Office. The United Nations Human Rights Office may appoint a representative to attend the Committee’s meetings, but with an observatory status only (see chapter 5 on membership).

When asked about the legislative provisions that should be improved or removed, the president of the Commission mentioned article 8(1), which does not distinguish between the roles, duties, and privileges (including their role in meetings and achieving quorum) of the original Commissioners and the reserve members of the Board of Commissioners. The Commission has sent a letter to the parliament asking them to address this issue by making the necessary amendment to Law No. 53/2008.<sup>6</sup> The president has also recommended amending the provisions which state that the Board of Commissioners must continue performing its duties until a newly elected board is instituted.

## 4 Effectiveness of the mandate

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A national institution should have a broad mandate to protect and promote fundamental rights and freedoms.<sup>7</sup> The Paris Principles set out a list of functions that NHRIs should have. These include the power to comment on legislation or draft legislation, to advise state bodies and to make recommendations on all matters relating to fundamental rights.

Law No. 53/2008 vests the IHCHR with a broad mandate to ensure the protection and promotion of human rights and grants it a wide range of competences.

Articles 4, 5 and 6 of the enabling law state that the IHCHR’s mandate include drafting studies and researches; making evaluations of the current legislation and recommendations to the Council of Representatives; cooperating and coordinating with civil society organisations; disseminating human rights principles and standards in educational curricula as well as in the media, including through public reports; receiving complaints from individuals and carrying out its own investigations; submitting cases to the judiciary as well as visiting detention centres.

Furthermore, under article 12, the IHCHR’s Board of Commissioners, which is composed of the appointed members only, can “take the necessary decisions and recommendations to prevent

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<sup>6</sup> Letter No. 630 sent on 19 August 2020.

<sup>7</sup> Paragraph A.2 of the Paris Principles.



violating the rights and freedoms of citizens guaranteed by the Constitution and the legislation in force”.

## 4.1 Legislative work

The Paris Principles state that a NHRI can be vested with the power to recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.

In line with the above principle, article 4(3) of the enabling law states that the IHCHR shall “study and evaluate the legislation in force in conformity with the Constitution and submit its recommendations to the Parliament.”

As part of our consultation, we have been informed that the IHCHR has been involved in the drafting of the Draft law on the protection of persons from enforced disappearances. The Commission claims to have lobbied members of the Council of Representatives, the Parliamentary Human Rights Committee and the Parliamentary Legal Committee to ensure that the draft law be included in the agenda of the Iraqi Parliament in its session No. 29 on 29 June 2019.<sup>8</sup>

In August 2017, the Parliamentary Human Rights Committee began its work on the draft law. On 30 June 2019, another version was introduced, which is currently pending before the Council of Representatives. The text that is currently pending before the parliament contains several flaws that have been identified by the UN Committee on Enforced Disappearances (CED) in its 2020 Observations on the additional information submitted by Iraq under article 29(4) of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

The Committee expressed concern that the bill does not include a reference to enforced disappearance as a potential crime against humanity when committed in a widespread or systematic manner, the death penalty remains within the penalties applicable to crimes invoked to deal with enforced disappearance. In terms of criminal responsibility, the bill does not provide for the criminal liability of superiors as per article 6(1)(b) of the ICPPED. Moreover, under article 40 of the Iraqi Criminal Code, a public official or public servant who commits an enforced disappearance following an order from a superior, could use such order to justify an enforced disappearance, in violation of article 6(2) of the Convention.<sup>9</sup>

The IHCHR appears to be aware of the draft law’s lack of compliance with the ICPPED as described above. It informed the CED that it was monitoring “the process of maturing and enacting the law to ensure its compatibility with the provisions of the Convention”.<sup>10</sup>

The president of the IHCHR informed MENA Rights Group that the Commission worked on other legislations, including a law replacing custodial penalties with a fine, a bill organising the rights of the Faili Kurds, the draft law of the National Authority for Peaceful Coexistence, the

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<sup>8</sup> See IHCHR, *Shadow Report, Evaluation Report on Iraq’s Compliance with the International Convention for the Protection of All Persons from Enforced Disappearance* (hereinafter: IHCHR’s Evaluation Report on Iraq’s Compliance with the ICPPED), 2020, available at:

[https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/IRQ/INT\\_CED\\_NHS\\_IRQ\\_41963\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/IRQ/INT_CED_NHS_IRQ_41963_E.pdf) (accessed 19 February 2021), p. 5.

<sup>9</sup> Committee on Enforced Disappearances, *Observations on the additional information submitted by Iraq under article 29 (4) of the Convention*, 25 November 2020, CED/C/IRQ/OAI/1, paras. 6, 10.

<sup>10</sup> IHCHR’s Evaluation Report on Iraq’s Compliance with the ICPPED, *op. cit.*, p. 5.

draft law against domestic violence, the Right to Information Law, the Yazidi Women Survivors Bill and the draft Law on Combating Cybercrime.

## 4.2 Individual complaint procedure

Article 5 of the enabling law states that the Commission shall “receive complaints from individuals, groups, and civil society organisations” and be able to conduct preliminary investigations as a result. After verifying the validity of the complaint, the Commission can refer the case to the public prosecution. The complaint mechanism can be accessed on the IHCHR’s website.<sup>11</sup>

According to the figures provided by its president, the IHCHR received a total of 14,910 complaints in the last five years, 4,214 of which were transmitted to the prosecution.

On the specific issue of enforced disappearance, the IHCHR claims to have received, for the year 2019, 1,129 complaints from families of disappeared and missing persons, 131 of which were referred to the Presidency of the Public Prosecution. According to the Commission, those cases included “allegations that they were arrested by official security agencies.” For the years 2017 and 2018, the IHCHR has officially received 6,752 cases, of which 96 were “resolved” and 780 others were referred to the Public Prosecution.<sup>12</sup>

On 7 December 2020, the national office of the IHCHR issued an internal regulation for the attention of its regional offices, providing that victims of torture are only allowed to resort to the individual complaint procedure following a waiting period of six months after the commission of the violation in question. Ali Akram Al Bayati informed MENA Rights Group that the regulation was not approved by the Board of Commissioners. We assert that this six-month period is not appropriate to the nature of the crime of torture and weakens article 5 of the enabling law. Commissioner Al Bayati also informed us that this regulation was amended on 23 December 2020.

The NGOs we have consulted were very critical of the IHCHR’s complaint mechanism and pointed to its lack of effectiveness. According to them, the IHCHR has transferred cases to the prosecuting authorities, including cases of torture and enforced disappearances, particularly following the October 2019 protests. However, the public prosecutor has not followed through on these cases and, according to several NGOs, neither has the IHCHR.

PEN Centre in Iraq has found that the IHCHR, throughout its work, has failed to maintain the confidential identity of those reporting on human right abuses in contravention of article 5 of the enabling law, which states that complaints must respect the strict confidentiality of the complainant in violation of article 5(1) of the enabling law.

We have also talked to former victims of enforced disappearance and their families, who informed us that the Commission had failed to take action after their cases were transmitted to the IHCHR. This was notably the case for Ahmed Al Zubaidi who disappeared between 26 December 2019 and 17 March 2020. He was abducted in the context of the October 2019 protests. After his release, he informed MENA Rights Group that when his family reported his disappearance, the IHCHR asked them a few questions only, without taking further steps.

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<sup>11</sup> The complaint mechanism can be accessed in Arabic here: <http://ihchr.iq/index.php?name=sendmail>.

<sup>12</sup> Statistics of complaints regarding cases of people whose families are unaware of their whereabouts for the years 2017, 2018, 2019, available in IHCHR’s Evaluation Report on Iraq’s Compliance with the ICPPED, *op. cit.*, p. 11.



Al Zubaidi's testimony echoes information we have received from the family of Saba Al Mahdawi, a volunteer medic and human rights defender, who was abducted on 2 November 2019 after attending a demonstration in Baghdad.<sup>13</sup> Her family informed MENA Rights Group that they filed a complaint with the IHCHR. It seems that the only action taken by the IHCHR was to issue a press release on 4 November 2019.<sup>14</sup> Besides, her family were disappointed to see that the IHCHR did not get back to them when she was released on 13 November 2019 to enquire as to whether she had been subjected to torture or ill-treatment during her enforced disappearance.

The case of Sajjad Al Mishrifawi, also known as Sajjad Al Iraqi, is also illustrative of the lack of effective action following the filing of an individual complaint. He is a prominent activist who took part in the 2019-20 protests in the Dhi Qar governorate.<sup>15</sup> On 19 September 2020, he was allegedly abducted by members of a militia affiliated with the Popular Mobilisation Units (PMU). His family reported his disappearance to the IHCHR's regional office in Dhi Qar. The Commission later informed the family that his case had been transmitted to the United Nations Assistance Mission for Iraq. Al Mishrifawi's family is unaware of any other measures taken by the Commission.

### 4.3 Accessibility

It is imperative for a NHRI to ensure that it remains accessible to potential victims of violations, including victims from marginalized communities, or those located in isolated areas. This consideration is all the more important when the institution is empowered to receive complaints, as is the case with the IHCHR.

In that regard, language considerations are an important aspect of this requirement. It is therefore crucial that oral and written information be communicated in the different spoken languages of the country. It is also essential to ensure that everyone can address the IHCHR without experiencing language barriers.

As stated by the president, the Commission provides translators for all local and foreign languages, whether for the Board of Commissioners or for the employees. According to him, the IHCHR employs a total of 16 translators.

The enabling law does not contain any provision stipulating that complainants can express themselves in the language of their choice in the individual complaint procedure. It is also unfortunate that the IHCHR's website is only available in Arabic and English, although Kurdish is the second most spoken language in the country, followed by Turkmen, Syriac, and Armenian, all of which are official languages. For comparison purposes, it is important to point out that the IHRCK's website is accessible in English, Arabic, and Kurdish.

Article 2 of the enabling law states that the Commission must open offices and branches across the country. The IHCHR has a dozen "Provincial Offices" including in Babil, Karbala, Diwaniya, Wasit, Maysan, Basra, Muthana, Saladin, Najaf, Diyala, Thi-Qar, Anbar, Kirkuk,

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<sup>13</sup> For more information see MENA Rights Group, *Female human rights defender Saba Al Mahdawi subjected to reprisals after providing medical assistance to anti-government protestors*, last updated 8 January 2020, <https://www.menarights.org/en/caseprofile/female-human-rights-defender-saba-al-mahdawi-subjected-reprisals-after-providing> (accessed 25 January 2021).

<sup>14</sup> The statement is available here in English: <https://www.facebook.com/213437619211187/photos/a.218550638699885/525884654633147/?type=3&theater> (accessed 25 January 2021).

<sup>15</sup> For more information, see: MENA Rights Group, *Prominent activist in Dhi Qar governorate disappeared since September 19, 2020*, 15 October 2020, <https://www.menarights.org/en/caseprofile/prominent-activist-dhi-qar-governorate-disappeared-september-19-2020> (accessed 25 January 2021).

and Nineveh. However, the website does not redirect the visitor to the corresponding Provincial Offices' page.

While we salute the fact the IHCHR is present all across the country, we are concerned over the proximity of the Commission with local armed groups. According to the Iraqi War Crimes Documentation Center, regional offices of the IHCHR, in various provinces, have collaborated with militias and political parties accused of well documented human rights violations. According to the NGO, the political allegiances of the employees and the heads of local/regional offices of the IHCHR continues to severely impede its work (see section 5.3.4 on the lack of independence from political parties).

On 3 February 2021, the Human Rights Parliamentary Committee issued a press release announcing parliamentary oversight over the IHCHR. The press release stressed the need for the provincial coordinating body secretariat to follow up on the work of some governors who have failed to abide by the provisions of the Commission's law. According to the press release, steps should be taken to facilitate the activities of the Commission's regional offices so that they can monitor the human rights situation across the country without any undue interference from local administrations.<sup>16</sup>

Regarding violations that have been committed in remote areas, the president of the Commission explained that the IHCHR has taken steps to examine the violations reported in the governorates of Basra, Anbar, Kirkuk and Nineveh, without proving further details.

## 4.4 Visits to places of deprivation of liberty and challenges

According to the Paris Principles, NHRIs are entitled to freely consider any situation falling within their competence and, for that end, to hear any person and obtain any information and any documents necessary for assessing the situation in question. This includes the ability to visit places of deprivation of liberty.<sup>17</sup>

According to NGOs who knew of this matter, the IHCHR sometimes visits places of detention. The IHCHR claims to have conducted 418 visits in 2020.<sup>18</sup>

Accordingly, article 5(5) of the enabling law stipulates that it falls within the mandate of the IHCHR to carry out visits to prisons and similar detention facilities without the need for prior permission from the detention bodies, in order to meet with convicts and detainees, confirm cases of human rights violations, and inform the competent authorities to take appropriate legal measures. Moreover, according to article 6 of the enabling law, the ministries, agencies not associated with a ministry and all independent bodies have the obligation to provide documents, data, statistics and information related to the work and tasks of the Commission.

Until only recently (October 2020), article 45(4) of the Iraqi Act to Reform Inmates and Detainees No. 14 of 2018 stipulated that the members of inspecting bodies mentioned in article 45(1) of the same law, which includes the IHCHR, were only allowed to enter the prisons or detention centres on dates to be agreed upon with the Iraqi Reform Department. In addition, the IHCHR has denounced that for some prisons and pre-trial detention facilities, it needed to obtain approval from the competent authorities in advance and also to provide them with lists of names of persons they wish to visit.<sup>19</sup> The IHCHR added that this makes sudden and

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<sup>16</sup> The press release is available in Arabic here: <https://bit.ly/2NxiNFc> (accessed 16 February 2021).

<sup>17</sup> ICC SCA General Observations No. 2.10, p. 56.

<sup>18</sup> Information provided by the president of the IHCHR.

<sup>19</sup> IHCHR's Evaluation Report on Iraq's Compliance with the ICCPED, *op. cit.*, p. 5.

unannounced visits to achieve the desired real assessment of the situation in a detention facility impossible.

When asked whether visits in detention centres were always unannounced, the IHCHR's president said that visits in detention facilities were indeed always unannounced, while adding that the Commission has faced some "non-institutional challenges".

This part of the Commission's mandate is further impeded by the fact that multiple security services and agencies are in charge of implementing arrest and detention orders.<sup>20</sup> Indeed, the prison administration and detention centres are run by several bodies, such as the Ministry of Interior, the Ministry of Justice represented by the Iraqi Correctional Service and the Juvenile Correction Department, the Ministry of Defense in Baghdad and the general governorates, with the exception of the Kurdistan region, which has its own detention centres.<sup>21</sup> The lack of a centralised administration responsible for prison and detention centres entails difficulties for the Commission to investigate the fate of arrested or detained persons and to identify the location of their detention.<sup>22</sup>

Moreover, according to the Commission, a unified database that includes detainees' names as well as their personal data, location and date of detention is missing.<sup>23</sup> Equally concerning, the information system of security agencies in the Kurdistan region is not linked to the one of the Iraqi federal government.<sup>24</sup> The IHCHR also has denounced the lack of a national database containing all alleged or confirmed cases of enforced disappearance of persons as well as of a coordination mechanism regarding the matter between the federal government, the Kurdistan region, the different judicial authorities and the Justice and Defense Ministries in Iraq.<sup>25</sup>

The IHCHR has further made attempts to approach the relevant authorities – the National Security Advisory and further authorities concerned with detention – to convince them to develop a unified database on the people held in all detention facilities in Iraq. These steps were, however, in vain.<sup>26</sup> Moreover, the former Ministry of Human Rights cancelled a procedure that started to unify all data on persons held in detention.<sup>27</sup>

The lack of cooperation by the authorities experienced by the IHCHR does not only concern the creation of a unified database to facilitate the visit of prisoners, it also concerns cases in which the Commission has received allegations of persons being held in specific detention centres, but was told by the responsible authorities that they were not present in the facilities in question.<sup>28</sup>

Further rights' violations, such as arrests without warrants, the lack of access to information provided to families of detainees regarding their place of detention or the denial of visits by a legal counsel and family further impedes the Commissions' work on identifying detention facilities and visiting prisoners.<sup>29</sup>

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<sup>20</sup> *Idem*, p. 7.

<sup>21</sup> *Idem.*, p. 15.

<sup>22</sup> *Idem.*, p. 7.

<sup>23</sup> *Idem.*, p. 11.

<sup>24</sup> *Idem.*, p. 3.

<sup>25</sup> *Idem.*, p. 4.

<sup>26</sup> *Idem.*, pp. 8 and 16.

<sup>27</sup> *Idem.*, p. 16.

<sup>28</sup> *Idem.*, p. 10.

<sup>29</sup> *Idem.*, p. 5.

All these circumstances facilitate the creation and maintenance of secret detention facilities, which undermines the IHCHR's ability to pursue its mandate.

In its 2020 Observations on the additional information submitted by Iraq under article 29(4) of the ICPED, the CED expressed concern over allegations of the existence of about 420 places of secret detention in Iraq, including in Camp Justice, Camp Honor, Jadriya bunker, Al Muthanna airport prison, Baghdad airport prison, and the city of Jurf Sakhar.<sup>30</sup> Further sources have indicated that private premises, such as repurposed houses and basements, are also used as such secret detention locations.<sup>31</sup>

The IHCHR has stressed that the Iraqi Constitution prohibits the arrest or detention of anyone in places not designated for this purpose.<sup>32</sup> It also stated that the Ministry of Defense, the Anti-Terrorism Services and other security agencies run detention facilities, in which “accused detainees are not provided with legal protection”, and are held outside of any legal framework, national or international.<sup>33</sup> The Commission has further pointed out that records on detainees (for example, on where they are sent to, on family visits or charges brought against the detainee in question) are often kept manually only, which enables their manipulation and thus can contribute to the secret detention of persons.<sup>34</sup>

In its 2019 shadow report to the Human Rights Committee, the IHCHR has stressed that the Iraqi government is under the obligation to disclose any secret detention facilities, inform the supervisory authorities about them and allow them to visit. It also confirmed the Commission's mandate to verify any information regarding allegations of secret prisons or secret detention facilities.<sup>35</sup>

## 4.5 Reporting, public statements and recommendations

Article 4(2) of the enabling law states that the Commission shall prepare “studies and research, present recommendations and express opinions on issues related to the promotion and development of human rights”. In addition, article 4(7) of the same law stipulates that the Commission shall submit recommendations and proposals to the Committees in charge of preparing the reports that Iraq committed to submit to the United Nations:

### 4.5.1 Annual and thematic reports

The SCA states in its General Observation 1.11 that “in publishing and widely disseminating its annual report, the National Institution will play an extremely important role in educating the public on the situation of human rights violations in the country”.<sup>36</sup>

Article 4(8) of the enabling law states that the IHCHR shall submit an annual report to the Council of Representatives. The article specifies that the report should include “a general

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<sup>30</sup> Committee on Enforced Disappearances, *Observations on the additional information submitted by Iraq under article 29 (4) of the Convention*, 9 October 2020, available at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED/C/IRQ/OAI/1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED/C/IRQ/OAI/1&Lang=en) (accessed 14 January 2021), para. 16.

<sup>31</sup> See Euro-Mediterranean Human Rights Monitor, *Horrific testimonies, secret prisons portend catastrophe in Iraq*, 13 July 2020, available at: <https://euromedmonitor.org/en/article/3668> (accessed 1 February 2021).

<sup>32</sup> IHCHR's Evaluation Report on Iraq's Compliance with the ICPED, *op. cit.*, p. 15.

<sup>33</sup> *Idem.*, p. 5.

<sup>34</sup> *Idem.*, p. 15.

<sup>35</sup> IHCHR, *Shadow Report, Evaluation Report on Iraq's Compliance with the International Covenant on Civil and Political Rights*, 2019, available at: <http://ihchr.iq/upload/upfile/en/25.pdf> (accessed 1 February 2021), p. 25.

<sup>36</sup> See ICC SCA General Observations No. 1.11, p. 38.

assessment of the human rights situation in Iraq and should be published in various media outlets.”

The IHCHR’s website contains a list of thematic and annual reports.<sup>37</sup> The latest annual report published covered the year 2019. The latest public report in English tackles the issue of internally displaced people (IDPs) in the country and was published in 2019.<sup>38</sup>

#### **4.5.2 Interaction with UN Treaty Bodies and the Human Rights Council**

The IHCHR regularly submits shadow reports ahead of the review of Iraq before the various UN Treaty Bodies, with only a few exceptions.<sup>39</sup> For instance, we note that in 2015, ahead of the review of the fifth periodic report of Iraq by the Human Rights Committee, the IHCHR failed to submit a shadow report. However, the IHCHR submitted a shadow report ahead of the examination by the CED of the additional information submitted by Iraq in 2020.<sup>40</sup> The report is indicative of the Commission’s activities and positions on the crime of enforced disappearances as described below.

The shadow report examined the human rights violations committed by non-State actors, such as members of the Islamic State of Iraq and the Levant (ISIL), and State actors as well as State-affiliated armed groups. The Commission also highlighted that the Iraqi legislation as well as the government bodies in charge of conducting investigations into cases of enforced disappearances failed to comply with the requirements posed by the ICCPED. In the report, the Commission particularly stressed the lack of a centralised national database on enforced disappearance cases.

Regarding the legal framework, the IHCHR deplored the lack of an explicit definition of enforced disappearance as an autonomous crime in the Iraqi Penal Code and the delay in the adoption of the Draft Law on the Protection of Persons from Enforced Disappearance that would ensure that enforced disappearance is an independent crime in the Iraqi legal system. The draft law is still pending before the Council of Representatives.

As mentioned above, the draft bill is also not fully in line with the ICCPED. The IHCHR claims to have provided the government with advice on the inclusion of the standards stipulated in the Convention. The proposed amendments to the draft law suggested by the Commission were apparently not considered by the authorities.

The Commission also highlighted other loopholes contained in the Iraqi legislation, citing the Iraqi Supreme Criminal Court Act No. 10, which limits the possible qualification of widespread or systematically committed enforced disappearances as crime against humanity to enforced disappearances committed between 1968 and 2003.

The IHCHR also stressed the inconsistency of the Iraqi national legislation with the ICCPED’s requirement to encompass criminal responsibility of superiors ordering the crime of enforced disappearances as well as of public officials or servants committing it by following superior orders or instructions.

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<sup>37</sup> All the reports published by the IHCHR in Arabic are available on the IHCHR’s website here:

<http://ihchr.iq/index.php?name=Pages&op=page&pid=91> (accessed 16 February 2021).

<sup>38</sup> The public report is available here: <http://ihchr.iq/upload/upfile/en/37.pdf> (accessed 16 February 2021).

<sup>39</sup> See the OHCHR’s database on Iraq:

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=IRQ&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=IRQ&Lang=EN) (accessed 16 February 2021).

<sup>40</sup> The shadow report is available here:

[https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/IRQ/INT\\_CED\\_NHS\\_IRQ\\_41963\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/IRQ/INT_CED_NHS_IRQ_41963_E.pdf) (accessed 16 February 2021).



Regarding the search for disappeared persons and the investigation conducted into alleged enforced disappearance cases, the IHCHR deplored the limited capacities of investigative committees in governorates that were liberated from ISIL and saw high numbers of abductions and arrests. It also pointed out that many witnesses testifying to these committees live in fear of reprisals. In a similar vein, the Commission deplored the lack of legislation for the protection of witnesses and victims in line with the ICPED's provisions.

In the shadow report, the Commission gave differentiated data based on minority group affiliation of the victims and also gave due consideration to the issue of the *refoulement* of persons at risk of being disappeared in their home country in case of deportation from Iraq.

The Commission deplored a lack of cooperation on the part of the authorities with regard to the establishment of a centralised database and access to data. It also pointed at insufficient collaboration by the judiciary to expedite the consideration of complaints submitted to the IHCHR and their resolution. The poor cooperation could, at least partially, explain the seemingly rather low level of efficiency of the IHCHR's processing of individual complaints regarding cases of enforced disappearance.

As for the Universal Periodic Review (UPR), we note that the IHCHR submitted a report in the context of the third UPR of Iraq, which took place on 11 November 2019, even if the IHCHR was not listed in the Summary of stakeholders' information due to the B status.

During the review, several states made recommendations calling on Iraq to "allocate sufficient financial and human resources to the High Commission for Human Rights in order that it can carry out its mandate in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights".<sup>41</sup>

## 4.6 Responding to human rights violations

### 4.6.1 Enforced disappearances

The IHCHR's website contains a page on the subject of missing persons.<sup>42</sup> It appears to be little informative and lacks information on the concrete activities of the Commission related to the issue of enforced disappearances.

The Shadow Report submitted by the IHCHR to the CED as part of the review of the additional information submitted by Iraq under article 29(4) ICPED contains statistics of complaints regarding cases of people whose families are unaware of their whereabouts for the years 2017, 2018, 2019.

As previously mentioned, the report indicates that the IHCHR has received, for the year 2019, 1,129 complaints from families of disappeared and missing persons, 131 of which were referred to the Presidency of the Public Prosecution. According to the Commission, those cases included "allegations that they were arrested by official security agencies." For the years 2017 and 2018, the IHCHR has officially received 6,752 cases, of which 96 were "resolved" and 780 others were referred to the Public Prosecution. In its report, the IHCHR did not indicate whether it followed up on the cases referred to the prosecution office.

Al Wissam Humanitarian Assembly has stated that they have submitted hundreds of cases of arbitrary detention and enforced disappearances to the complaints department at the IHCHR;

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<sup>41</sup> Report of the Working Group on the Universal Periodic Review, 19 August 2019, A/HRC/WG.6/34/IRQ/3 Recommendation No. 147.35 (Slovakia).

<sup>42</sup> IHCHR, *Missing Persons*, 5 April 2015, <http://www.ihchr.iq/index.php?name=Pages&op=page&pid=87> (accessed 19 February 2021).



despite the passing of many years, neither this NGO nor the families of the arbitrarily detained or forcibly disappeared persons have received a response from the IHCHR on that matter.

#### 4.6.2 Role played during the 2019-21 protests

Since the beginning of the 2019-21 anti-government demonstrations, the IHCHR has been publicly taking position regarding the protest-related violence. It has been noted by a number of survey responses that, since the beginning of nationwide protests that have erupted in Iraq in October 2019 and continued in 2020, the IHCHR played a significant role documenting human rights abuses, including facts and figures on wounded and dead protesters. The IHCHR additionally condemned further abuses committed against protesters.

There is general agreement among surveyed NGOs that although the IHCHR publishes opinions, recommendations and reports, it only approaches the documentation of human rights abuses in a comprehensive and generalist manner, without identifying the authorities responsible for human rights abuses, despite the fact that the responsible authorities and perpetrators are often known.

While the IHCHR generally condemns the injuring and killing of protesters, the Commission appears to show great caution about assigning responsibility for the perpetration of the violence or merely calls on all parties to reinstate “calm and dialogue”, in spite of the apparent inequality of arms between protesters and security forces.<sup>43</sup> It has, for instance, previously called on protesters to “cooperate with the official security forces”<sup>44</sup> and urged State security forces to intervene and to “remove the saboteurs” who would put security forces, demonstrators, and public and private property at risk, without laying blame on any concrete stakeholder – in contrast to the protesters themselves who had been pointing at security forces and armed factions and the military wings of political parties as the perpetrators of the violence.<sup>45</sup>

The IHCHR has also become a source for protest-related death and injury tolls, until pressure exerted on the Commission in 2019 forced it to temporarily stop, which raises questions with regard to the Commission’s independence.<sup>46</sup>

The Commission has, as of February 2020, resumed the task of public reporting.<sup>47</sup> However, the publicised data appear to be significantly lower than those published by other stakeholders, such as the Baghdad medical community.<sup>48</sup>

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<sup>43</sup> Andalou Agency, *Iraq: 2 assassinated in 2 days at protests*, 10 January 2021, available at: <https://www.aa.com.tr/en/middle-east/iraq-2-assassinated-in-2-days-at-protests/2104629> (accessed 14 January 2021); see also: Iraqi High Commission for Human Rights, *IHCHR Condemns Insecurity in Thi Qar*, 11 January 2021, available at: <http://www.ihchr.iq/index.php?name=News&file=article&sid=758> (accessed 14 January 2021).

<sup>44</sup> See: Iraqi High Commission for Human Rights, *IHCHR: Targeting Peaceful Protesters in al-Khilani Square & Al-Sinak Bridge, Amount to Terrorist Crimes*, 7 December 2019, available at: <https://m.facebook.com/213437619211187/photos/a.214236305797985/551353485419597/?type=3&source=44> (accessed 14 January 2021).

<sup>45</sup> See France24, *Nearly 550 killed in Iraq protest violence: commission*, 7 February 2020, available at: <https://www.france24.com/en/20200207-nearly-550-killed-in-iraq-protest-violence-commission> (accessed 14 January 2021).

<sup>46</sup> France24, *Nearly 550 killed in Iraq protest violence: commission*, 7 February 2020, available at: <https://www.france24.com/en/20200207-nearly-550-killed-in-iraq-protest-violence-commission> (accessed 14 January 2021).

<sup>47</sup> *Idem*.

<sup>48</sup> Human Rights Watch, *Iraq: State Appears Complicit in Massacre of Protesters*, 16 December 2019, available at: <https://www.hrw.org/news/2019/12/16/iraq-state-appears-complicit-massacre-protesters> (accessed 14 January 2021).

When discussing the role of the Commission during the nationwide protests in Iraq, the president of the IHCHR stated that the Commission formed a high-level delegation tasked with visiting a number of Iraqi governorates to ensure the release of demonstrators who were not proven “to be involved in damaging public funds (entities) or abusing (misusing) the right to peaceful expression”, through settling complaints against them.

While we salute the efforts of the Commission to secure the release of peaceful protesters arbitrarily arrested in the context of the 2019-21 protests, we believe that the IHCHR should bring assistance to all detainees, regardless of the charges pressed against them, to ensure that their rights are protected while in detention.

#### **4.6.3 Political pressure on the IHCHR and acts of reprisals**

As explained by the president of the Commission, the IHCHR did record some cases of reprisals committed against some of its members by the authorities or armed groups in response to the processing of complaints. In one case, the governor of Kirkuk submitted a complaint against the director of the IHCHR’s office in Kirkuk, due to the latter’s exercising of his oversight role.

In addition, on 25 October 2019, the director of the Commission’s Maysan office was injured by gunfire while monitoring and following up on demonstrations in the governorate.<sup>49</sup> According to the president, a judicial complaint was also filed by the governor of Muthanna against a member of the Board of Commissioners.

## **5 Membership**

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### **5.1 Representativity**

Paragraph B.1 of the Paris Principles states that “the composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights.”

According to the president of the IHCHR, the Commission indeed reflects a broad professional spectrum of the Iraqi civil society: a number of Commissioners are former members of the former Board of Commissioners, and some are judges, university professors, and law and human rights specialists. Without providing specific names, he also added that a number of Commissioners were employees of higher education institutions dealing with human rights issues and some were heads of civil society organisations active in the field of human rights.

The SCA further emphasises the need to take into account considerations of public legitimacy in the selection criteria. This means that the national institution must reflect the ethnic, religious, linguistic and socio-economic diversity of society, and that the representation of disadvantaged groups, such as minorities and so-called “vulnerable” groups, must be ensured.

This consideration is all the more relevant in Iraq, which is composed of diverse ethnic and religious communities. In its last Concluding Observations, the UN Committee on the Elimination of Racial Discrimination (CERD) raised concerns about “long-standing inter-

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<sup>49</sup> The IHCHR reported on the attack via its Facebook page: <https://www.facebook.com/ihchr/posts/1276417109212985/> (accessed 17 February 2021).

ethnic and interreligious violence, and structural racial, ethnic and ethno-religious discrimination in Iraq, which has been exacerbated by the armed conflict”.<sup>50</sup>

The CERD thus urged the authorities to “ensure that ethnic and ethno-religious minorities, including minority women, are adequately represented in all elective bodies as well as in public office, by taking all necessary measures, including amending its electoral laws and ensuring the representation of minorities”.<sup>51</sup>

We regret that the enabling law also fails to provide a remedy and to ensure a pluralist representation of society. Article 8(5) of Law No. 53/2008 only requires two representatives from minority groups on a total of 15 Commissioners, one of them being a reserve member.

We believe that this provision does not fully reflect the multicultural and multireligious character of the Iraqi population and thus fails to fully guarantee the pluralist representation of the social forces as set forth in the General Observation No. 1.7 of the SCA. Indeed, more people belonging to Iraq’s minorities could be on the Commission.

While this is a positive aspect, the diversity of the IHCHR’s membership is tainted by a sectarian approach when dealing with human rights violations. One of the organizations that we consulted told us that the Commissioners tend to communicate on abuses that affect their specific ethnic/religious group.

Equally concerning, Law No. 53/2008 does not contain a provision governing the recruitment of the IHCHR’s staff. As with the Board of Commissioners, we believe that pluralism through staff that are representative of the diverse segments of society is paramount. According to article 13 of the Law No. 53/2008, the Council issues special rules for staffing the Commission. As these rules are not public,<sup>52</sup> it is impossible to know the IHCHR’s employees are recruited and on the basis of what criteria.

According to the IHCHR’s president the current staff was selected by an expert committee composed of members of the Board of Commissioners and advisors who are experts in the field of human rights. They were selected with due consideration of their technical expertise and the diversity of Iraqi society.

Lastly, article 9 of the enabling law states that the president and members need to take an oath before the Council of Representatives. According to the PFO, this oath shows a clear bias towards a particular religion and the members are obliged to conform to a particular religion when taking their oath. It is thus discriminating based on religion and thereby conflicting with article 8(5) of Law No. 53/2008.

## 5.2 Gender equality

General Observation 1.7 of the SCA refers to the need to ensure the equitable participation of women within the national institution.

Article 8 of the enabling law states that at least one third of the IHCHR should be composed of female Commissioners. In the same vein, the general observations accompanying the First Amendments to the enabling law state that the reason behind the modification of article 15 is to “increase the representation of women in the Board of Commissioners”.

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<sup>50</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-second to twenty-fifth periodic reports of Iraq*, 11 January 2019, CERD/C/IRQ/CO/22-25, para. 17.

<sup>51</sup> *Idem.*, para. 26.

<sup>52</sup> We could not find the said rules on the IHCHR’s website.

At the time of writing, this requirement has not been met. The Commission is currently composed of three women out of 15 Commissioners, following the termination of Wihda Mahmood Fahad's mandate when she decided to run for parliamentary elections. She has been replaced by a male reserve member. This issue was raised by the Human Rights Parliamentary Committee of the Council of Representatives, which urged the IHCHR to remedy this shortcoming in the 2021-2025 term.<sup>53</sup>

In terms of the IHCHR's staffing, the IHCHR's president told MENA Rights Group that the current percentage of female employees is estimated at 30%. However, he did not comment on whether current rules for service and staffing contain guarantees for the representation of women and minorities.

## 5.3 Appointment process

The mechanisms for the selection and appointment of members are among the most important elements to ensure the independence, diversity and accessibility of NHRIs.

The SCA states in its General Observation 1.8 that the selection and appointment process of the decision-making body of the NHRI should be "characterised by openness and transparency, i.e. it should be under the control of an independent and credible body and include open and fair consultation with NGOs and civil society."

According to article 7 of Law No. 53/2008, the members of the IHCHR shall be selected by a Committee of Experts among all candidates applying to a national appeal, while article 8 requires that members hold the Iraqi citizenship, reside permanently in Iraq, be at least 35 years old, hold a university degree, and be experienced in the field of human rights. According to the president of the IHCHR, the members' experiences were the basis for their selection as members of the Board of Commissioners by the Committee of Experts.

Some organisations we surveyed have stated that the above requirements are excessively restrictive. As a comparison, to run for parliament, one must only be 28 years old and have obtained a preparatory certificate.

We also regret that the enabling law does not provide more clarification regarding the needed qualifications or previous experience to fulfil the position.

The nomination process of the incumbent Commissioners in 2017 was criticised by some civil society organisations who claimed that the composition of the IHCHR did not bring about any significant change.

Accordingly, in its last Concluding Observations, the CERD highlighted the "lack of a transparent, participatory and merit-based process for the selection of its members", undermining the independence of the institution.<sup>54</sup>

According to a source who wishes to remain anonymous, only a limited number of Commissioners have expertise in human rights, in contrast to the requirements set out in article 8(2)(d) of the enabling law.

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<sup>53</sup> Information provided by the president of the IHCHR.

<sup>54</sup> Concluding observations on the combined twenty-second to twenty-fifth periodic reports of Iraq, *op. cit.*, para. 11.

GICJ regretted that article 8 of the law does not provide any details about the appointment process or the publicising of a vacancy, thus making the appointment of members to the Commissions less transparent and more subject to the influence of Iraq's political parties.

### 5.3.1 Concerns regarding the nomination committee

Article 7 of the enabling law states that “the Parliament Council shall form a Committee of Experts whose number does not exceed fifteen members, including representatives of the Parliament Council, the Council of Ministers, the Supreme Judicial Council, civil society organizations, and the United Nations Office for Human Rights in Iraq (UNAMI), which selects the candidates through a national declaration.”

First of all, we are concerned by the presence of a representative of the Council of Ministers within the Committee of Experts. It should be recalled that the Paris Principles stipulate that the “composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights [...]”. The Paris Principles further state that representatives of government departments should participate in the deliberations only in an advisory capacity.

At the moment, the United Nations Mission in Iraq (UNAMI) is the only institution within the Committee of Experts to have a non-voting status.

In addition, article 7 of the enabling law does not really ensure that diverse societal groups suggest or recommend candidates as part of the appointment procedures of the governing body of the IHCHR as prescribed in the SCA's General Observation No. 1.7.

Concerns have also been raised regarding the legitimacy of the Committee of Experts in charge of selecting the IHCHR's Commissioners. In a press release, the Iraqi Civil Society Solidarity Initiative (ICSSI)<sup>55</sup> claimed that this committee is not what it purports to be, i.e., a group of experts who are neutral and committed to supporting and protecting human rights across party and religious lines. In reality, the Committee includes ten representatives from the political blocs represented in parliament, who are not familiar with human rights issues.<sup>56</sup>

The PFO indicated that granting only two seats to members of civil society within the Committee of Experts was regrettable, particularly since the work of the Commission greatly concerns the work of Iraqi civil society organisations. In fact, Iraqi NGOs play a minor role, if no role at all, in the nomination process of the IHCHR (see section 5.3.4 on the lack of independence from political parties).<sup>57</sup>

Before the introduction of the third amendment to Law No. 53/2008, the UNAMI was part of the Committee of Experts. However, the UNAMI representative withdrew from the Committee to protest against “the party quotas, according to which the names of candidates for the Board of Commissioners were chosen”. It has also been reported in the newspaper Asharq Al Awsat

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<sup>55</sup> Please note that ICSSI did not take part in MENA Rights Group's survey.

<sup>56</sup> Iraqi Civil Society Solidarity Initiative, *The New Iraqi High Commission for Human Rights Faces Serious Objections from Civil Society*, 29 June 2017, <https://www.iraqicivilsociety.org/archives/7502> (accessed 3 February 2021).

<sup>57</sup> According to all CSOs consulted by MENA Rights Group, except GICJ, civil society organisations are not consulted prior to the nomination of the commissioners. GICJ stated that there was a small consultation with civil society and local NGOs.



that two members representing civil society organisations left the Committee of Experts in protest of this quota system.<sup>58</sup>

The PFO explained that in July 2017, civil society representatives sent their resignation letters to the head and members of the Committee on Civil Society Associations of the Iraqi Council of Representatives. The letters were sent in response to the process of nominating members of the IHCHR, which, according to the civil society representatives, was not a fair and equal one. Throughout the process, the names and evaluation forms of candidates to the Commission were leaked to various political parties, thus influencing the integrity and independence of the Commission.

### **5.3.2 Alleged irregularities during the elections of the IHCHR's president and vice president**

Article 8(3) of the enabling law states that on their first meeting, the IHCHR's members should elect the president and vice president of the Commission. MENA Rights Group has received concerning reports indicating that the election of Aqeel Jasim Ali and Ali Abdelkarim Mezar was tainted with irregularities:

According to the PFO, the process of electing Aqeel Jasim Ali to the presidency of the IHCHR was accompanied by violations of Law No. 53/2008. Following the election, a lawsuit was submitted to the competent courts by a member of the Board of Commissioners, Faten Al Halfi, on 23 December 2017, accusing Aqeel Jasim Ali of committing legal violations during his election, including forging the meeting minutes and the signatures of the Board of Commissioners.

This information was confirmed by a letter sent by the Presidency of the Republic to the IHCHR on 24 December 2017, regarding an official accusation directed by Al Halfi against the President of the Commission. The office of the president asked that the election results and the alleged forged meeting minutes and signatures be investigated. We have been informed that two members of the IHCHR, namely Mushreq Naji Abbood and Fadel Al Gharawi, also submitted complaints regarding various violations taking place during the election of the vice president of the Commission, Ali Abdelkarim Mezar, and the president.

Mr Abbood submitted a complaint to the head of the Commission regarding the election of the vice president. In the second round of the elections, Mr Abbood nominated himself as a candidate for vice president against Mr Mezar, who did not get the required votes in the first round. In the second round, neither candidates received the required number of votes. As a result, Mr Abbood decided to withdraw but Mr Mezar did not. Instead, he nominated himself for vice president and won during the third round of the elections, which is contrary to the rules. As a result, Mr Abbood requested the cancellation of the election results.

Mr Fadel Al Gharawi submitted a complaint on 2 January 2018 to the head of the Commission, regarding the election of the president and vice president of the IHCHR, including in relation to the fact that the elections took place in an open session, during a holiday, and without the official approval of the results.

### **5.3.3 Complaint before the Iraqi Federal Supreme Court concerning the nomination process**

MENA Rights Group has obtained from the PFO a copy of a complaint that was examined on 14 November 2017 by the Iraqi Federal Supreme Court. The lawsuit concerned the process of

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<sup>58</sup> *Idem.*



nominating and appointing the members of the current Commission by the Committee of Experts. The complainant noted a number of constitutional and further legal violations, especially with regards to articles 1(b), 1(g), 8, 14, 16, 20, 45(1), 46, 102, and other mentioned articles of the Iraqi Constitution. The court, however, ruled to dismiss the case.

### **5.3.4 Lack of independence from political parties**

According to the UN Centre for Human Rights, an effective NHRI is “capable of acting independently of government or party politics and of all other entities and situations which may be in a position to affect its work”.<sup>59</sup>

According to article 7 of the enabling law, the members of the IHCHR shall be selected by a Committee of Experts among all candidates applying to a national appeal. Article 8 requires members of the IHCHR not to be affiliated with political parties, in order to ensure the independence of the Commissioners.

When asked about the diversity of political currents and points of view within the IHCHR, the president of the IHCHR highlighted the need for members to be independent from political currents to ensure the impartiality of the Commission’s decisions.

However, we have been informed that the above requirements are not observed in practice. The criterion applied for the choice of the members of the IHCHR was in fact the political affiliation of the candidates rather than their merit or qualifications in terms of human rights competencies.

Although the nomination of Commissioners should be the responsibility of the Committee of Experts, political parties play a key role in the nomination of Commissioners. Former members of the executive have also played a role in the 2017 nominations.

The lack of independence from political parties was highlighted by Iraqi civil society organisations consulted by MENA Rights Group. When asked about the independence and role played by the president of the IHCHR, they expressed concern about the increasing influence of political parties and armed groups in shaping various Iraqi institutions, including the IHCHR.

Political pressure and interference both from the government and political parties was reportedly rampant during the appointment procedure and the elected Commissioners were chosen in order to ensure the representation of the different political parties and factions in power.

According to the ICSSI, 11 of the Commissioners appointed in 2017 were selected along the main party blocs and according to the current system of political quotas.

As part of this scheme, five seats were offered to the Shiite National Alliance, three seats to the Union of Iraqi Sunni Forces, two to the Kurdistan Alliance, and one to the Assyrian Movement. Such a quota system reflects the sectarian apportionment system, which has been prevailing in Iraq.

Most prominent members of the Board of Commissioners have strong ties with the main political parties that make up the aforementioned party blocs that have a representation at the Council of Representatives. They include the Islamic Dawa Party of the former Prime Minister Nouri Al Maliki, the Al Hakamah Party, and the Sadrist Movement.

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<sup>59</sup> Centre for Human Rights, *Professional Training Series No. 4*, National Human Rights Institution, 1995, para. 68.

Most specifically, both the president of the Commission and the vice president, Aqeel Jasim Ali Al Mousawi and Ali Abdelkarim Mezar, are affiliated to the Dawa Party.

Other Commissioners also have strong ties with political parties, including Zaidan Khalaf Obaid, who is affiliated with the Badr Organisation; Faten Abdul Wahid Abbas Al Halafi, who was nominated by the Dawa Party; Mushreq Naji Abbood, who was the leader of the Al Ahrar Block, which is affiliated with the Sadrist Movement; Basma Mahmood Mustapha, who was nominated by Iraq's former president Jalal Talibani; and Hemn Rashid Zedan Al Bajalan, who was nominated by Masoud Barzani, the head of the Kurdistan Democratic Party and former president of the Kurdistan region.

Wihda Mahmoud Fahad Al Jumaili was previously a parliamentarian before joining the IHCHR in 2017. She was the advisor to the Speaker of the Council of Representatives, Salim Al Jabouri, who is affiliated with the Muttahidoon party. It is alleged that her nomination was sponsored by Al Jabouri. She decided to leave the Commission to run for the 2018 Iraqi parliamentary election. She is now a member of the Human Rights Parliamentary Committee and is the head of the Takadum Party (Progress Party).

Anas Akram Mohammed is said to have been nominated to represent the communities of the Al Karābilah subdistrict, west of the Al Anbar Governorate. Ali Akram Al Bayati, it has been reported, was affiliated to Shiite Turkmen parties.

All respondents to our survey explained that the Board of Commissioners as a whole lacked independence from political parties, while specifying that some Commissioners have individually been able to demonstrate their independence while carrying out their mandate. Only Ali Akram Al Bayati and former member Wihda Mahmoud Fahad Al Jumaili were identified as genuine human rights advocates. However, Al Wissam Humanitarian Assembly suggested that Wihda Mahmoud Fahad Al Jumaili used her mandate as Commissioner to pursue her political career while highlighting that Anas Akram Mohammed was a reliable member.

It is worth noting that the enabling law does not contain any provision relating to the prevention of conflicts of interest. This shortcoming was already noted in the SCA report of March 2015.

This is particularly concerning considering the fact that it has been reported to us that two members of the Commission are in fact the spouses of two Iraqi political leaders.<sup>60</sup> Such allegation raises the issue of nepotism.

In addition, the mandate of the Commissioners itself is conflicting with their political affiliation. Some members, including Ali Abdelkarim Mezar, Faten Al Halafi, and Zaidan Khalaf Obaid, are said to be affiliated with parties that are linked to some of the armed groups belonging to the PMU. According to information provided by Al Wissam Humanitarian Assembly, they failed to denounce the violations committed by these armed groups.

## 5.4 Credibility of the IHCHR

The political allegiance of most Commissioners has a significant impact on the IHCHR's ability and credibility to carry out its mandate. According to the respondent NGOs, the work of the Commission is highly influenced by both armed groups and political parties in Iraq. As stated by one source who wished to remain anonymous, "the Commission is completely subject to the influence of political forces, the majority of which are linked to militias. Therefore, any voice

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<sup>60</sup> This information was provided by a source who wishes to remain anonymous.

contrary to the voice of the majority will find itself surrounded by threats, whether they are a member of the Commission or even just a simple employee.”

The ICSSI claims that the quota system described above makes it impossible for the Commission to carry out its mandate effectively, especially its monitoring work.

However, GICJ explained that the current Board of Commissioners performs better than its predecessor while highlighting the restraints on the Commissioners’ respective mandate.

According to Al Wissam Humanitarian Assembly and the IWDC, the Commission is subject to pressure from political parties and militias. The IWDC stated that “the sole role of the Commission [is] to improve the image of the political process in Iraq,” while Al Wissam Humanitarian Assembly found that the Commission is “certainly subject to pressure [from the militias] and has succumbed to such pressure; this is obvious through the measures that the Commission has taken, as it simply issues reports and conducts visits but does not effectively use the resources provided to it by law.” Al Wissam Humanitarian Assembly added, however, that, “despite all of this, the role played by this Commission is much better than its predecessor.”

Additionally, the GICJ has found that, “without doubt”, the Commission is subject to pressure from militias, as “no one is free from militia intimidation in Iraq.” In the same vein, another source explained the pressure on the Commission is “coming from political parties more generally, and some of those parties are linked to armed groups, whereas others are not.” This is a result of “the very structure of [the Commission], where Commissioners are added to the IHCHR based on political party affiliation.”

To conclude, it is our impression that the Board of Commissioners is composed of individuals who are acting individually rather than on behalf of the institution they are meant to represent. As a result, the IHCHR is not perceived as a cohesive institution. When responding to human rights violations, the Commissioners struggle to speak with a single voice or promote a coherent stand.

## 5.5 Functional immunity

Paragraph B.3 of the Paris Principles provides that “[i]n order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution’s membership is ensured.”

In line with international good practice, the SCA recommends in its General Observation 2.2 “that a period of appointment should be between three and seven years and that the incumbent should have the option of renewing his or her mandate once.”

Regarding the duration of the mandate, article 8(6) of the enabling law states that “the term of membership in the Commission is four years”. The law does not specify whether the mandate can be renewed. In addition, the law does not specify the maximum number of terms.

It appears that at least two members of the IHCHR were already Commissioners during the previous term.

It is also essential to guarantee the stability of the mandate of its members, who must not fear dismissal in the performance of their prerogatives. Thus, the grounds for dismissal must

necessarily be clearly defined in the enabling law and be limited to actions that have a negative impact on the member's ability to carry out his or her mandate.<sup>61</sup>

In its General Observation No. 2.3, the SCA explained that “[i]t is strongly recommended that provisions be included in national law to protect legal liability of members of the National Human Rights Institution’s decision-making body for the actions and decisions that are undertaken in good faith in their official capacity.”

It is thus regrettable that the enabling law does not contain a provision providing for functional immunity for the members of the IHCHR.

Furthermore, the SCA acknowledges that “no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances it may be necessary to lift immunity”.

Article 15(1) of the enabling law states that the mandate of a Commissioner shall end for one of the following reasons: “resignation; death; retirement; isolation; proven inefficiency; in case a Commissioner fails to attend a board meeting for three consecutive times; proven inability to perform his tasks due to his mental or physical disability; sentenced with a dishonorable crime”.<sup>62</sup>

We are particularly concerned by the lack of legal clarity concerning some of the resignation grounds contained in the above provision. Most notably, it is not clear what “proven inefficiency” entails.

Lastly, according to the SCA’s General Observations No. 2.3, the decision to terminate the mandate of a Commissioner “should not be exercised by an individual, but rather by an appropriately constituted body such as the superior court or by a special majority of parliament.”<sup>63</sup>

In line with General Observations No. 2.3, article 15(4) of the enabling law states that the chairman of the IHCHR may ask the Council of Representatives to terminate the mandate of a Commissioner. This decision must be approved by an absolute majority. The mandate of the president of the IHCHR can also be terminated by the Council of Representatives following a vote of an absolute majority in case of a breach of article 15 (1).

## 6 Conclusion and recommendations

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### 6.1 Conclusion

In light of the information provided above, MENA Rights Group considers that the IHCHR does not fully comply with the Paris Principles and the General Observations of the SCA and does not play the role expected of an independent, impartial and effective national human rights institution. The IHCHR should therefore not be granted A status until the serious shortcomings noted in this report are corrected. We suggest instead that the SCA recommends that the IHCHR retains its B status.

MENA Rights Group is particularly concerned over the gap between the enabling Law No. 53/2008 and the internal functioning of the Commission. Although members of the Commission

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<sup>61</sup> ICC SCA General Observations No. 2.1, p. 40.

<sup>62</sup> Under article 21 of the Penal Code, “dishonorable crimes” entail “theft, embezzlement, forgery, breach of trust, fraud, bribery and rape”.

<sup>63</sup> See ICC SCA General Observations No. 2.3, p. 44.

are not supposed to be affiliated with a political party, our reports found that the nomination process of the Commission is, quite contrary to this requirement, under the full control of political parties.

The members are nominated according to a quota system, which allows the main political parties to have a representation within the Commission. This quota system is not grounded in law and appears to stem from a political compromise among the parties that have a political representation at the Council of Representatives. As a result, the merit-based system mentioned in the enabling law is not applied in practice, which severely undermines the independence and impartiality of the IHCHR.

All organisations we have consulted stated that the lack of independence from political parties constitutes the biggest impediment to the effective functioning of the Commission as it undermines its ability to carry out its mandate without external interference.

Although some members of the Board of Commissioners appear to protect and promote human rights in good faith, others are accused of pursuing individual or party-based interests.

Even if the IHCHR has denounced human rights violations committed in the context of the 2019-21 protests, the political affiliation of certain Commissioners undermined the credibility of the institution with regards to the steps taken by it to remedy these violations. Some of the political parties that have a representation within the IHCHR's Board of Commissioners are affiliated with the very armed groups that perpetrated attacks against peaceful protesters.

We would also like to recall that we have received numerous testimonies from former victims of enforced disappearance and from relatives of missing persons who deplored the lack of concrete action taken to put an end to the practice.

For the above reasons, the IHCHR suffers from a lack of trust among members of civil society and victims of human rights violations. They perceive the IHCHR more as a product of party politics than as an effective remedy to deal with Iraq's most pressing human rights violations.

## **6.2 List of recommendations to improve the IHCHR's compliance with the Paris Principles**

In order to comply with the Paris Principles, the Commission should demonstrate real independence in the exercise of its mandate and ensure that it remains neutral and impartial in all circumstances in order to benefit from the confidence of citizens and civil society as a whole. As a result, we ask the SCA to address the following recommendations to the IHCHR and the Council of Representatives, to which the IHCHR answers:

### **a) Selection process**

1. Put in place a merit-based selection process;
2. Set the minimum age requirement to 27 years<sup>64</sup> and remove the obligation to hold a university degree to reflect the demographic makeup of Iraqi society and the wide range of professionals in civil society organisations who do not hold a university degree;
3. Ensure that the nomination process includes requirements for broad consultation and / or participation of civil society representatives in the screening and selection process;
4. Move away from the informal quota system, which currently governs the nomination of Commissioners based on party affiliation;
5. Ensure an equal representation of women and men in the Board of Commissioners;

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<sup>64</sup> The recommendation was proposed by PFO.



6. Amend the enabling Law No. 53/2008 to ensure that the replacement by a reserve member of a Commissioner whose mandate has ended is conducted according to clear, pre-established and transparent criteria;
7. Include a provision in the enabling Law No. 53/2008 against actual or perceived conflicts of interest;
8. Establish a clear and transparent electoral legal framework ahead of the election of the president and vice president for the 2021-2025 term.

#### **b) Committee of Experts**

9. Amend article 7 of the enabling Law No. 53/2008 relating to the Committee of Experts in charge of the nomination of the Board of Commissioners as to: specify the number of members from each segment of society who are to be included in the Committee of Experts; ensure a fair representation of civil society organisations working in the field of human rights and include other actors such as trade unions<sup>65</sup> and concerned social and professional organisations, such as associations of lawyers, doctors, journalists and eminent scientists; and ensure that representatives of the executive (from the Council of Ministers) only participate in the deliberations in an advisory capacity.

#### **c) Internal elections**

10. Ensure that the election of the president and the vice president of the IHCHR is free from any interference, including by the Council of Representatives.

#### **d) Accessibility**

11. Ensure *a minima* that the IHCHR's website is accessible in Kurdish;
12. Ensure that the IHCHR's regional branches can effectively carry out their mandate without fear of reprisals from local authorities and/or armed groups;
13. Develop synergies with the IHRCKR.

#### **e) Effectiveness of the mandate**

14. Develop strategies to conduct visits in secret or non-official detention centres where individuals remain detained outside the protection of the law or, take steps to put an end to the practice of secret detention;
15. Refrain from introducing undue restrictions, such as delays for filing complaints, which might hinder the public's trust in the IHCHR's complaint mechanism;
16. Ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency;
17. Systematically inform the victims of human rights violations who have used the IHCHR's complaint mechanism of the outcome of their complaint;
18. Specify in article 5 of the enabling Law No. 53/2008 that the IHCHR is authorised to receive complaints against both public and private bodies in its jurisdiction so as to reflect the human rights violations committed by State and non-State actors in the context the 2019-21 Iraqi protests.

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<sup>65</sup> PFO recommends that members of civil society organisations comprise "not less than 40%" of the Committee of Experts.