

# **Iraq and the Rule of Law**

A Study by the  
International Commission of Jurists

February 1994

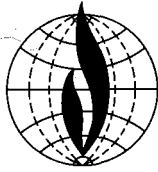
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**INTERNATIONAL COMMISSION OF JURISTS**

P.O.Box 160 - 26, chemin de joinville  
CH-1216 Cointrin/Geneva  
Switzerland

Tel: (4122) 788 47 47  
Fax: (4122) 788 48 80

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# TABLE OF CONTENTS

<b>Preface</b> .....	9
<b>Historical Introduction</b> .....	11
A. The Historical Foundations of the Iraqi State .....	11
B. Constitutional and Legal Developments .....	14
<b>Part One: The Constitution of 1970</b> .....	23
Introduction .....	24
A. The Baath Party: A Historical Introduction .....	24
B. The Adoption of the Constitution of 1970 .....	25
Section I: Characteristics of the Present Iraqi Constitution .....	28
A. Private Property .....	29
B. The Economy .....	34
C. Secularism .....	38
D. Social Principles .....	39
Section II: Republican Institutions .....	45
A. The Revolution Command Council .....	45
1. Composition of the Revolution Command Council .....	46
2. Powers of the Revolution Command Council .....	50
B. The National Assembly .....	64
1. The Conditions that must be met by Candidates Seeking. Election to the Assembly .....	64
2. Submission of Candidature .....	67
3. Procedures of the National Assembly .....	69
4. Powers of the National Assembly .....	72
C. The President of the Republic .....	82
D. The Council of Ministers .....	85

Section III: The Judiciary .....	88
A. Introduction .....	88
B. The Ordinary and Administrative Courts.....	91
1. Types of Courts .....	92
2. The Department of Public Prosecutions .....	103
3. Appointment of Judges .....	104
C. The Special Emergency Courts .....	108
1. The Revolutionary Court .....	109
2. The State Security Court .....	113
3. The Special Court .....	114
<b>Part Two: Political Life .....</b>	<b>117</b>
Section I: Rights and Obligations Provided for in the Iraqi Constitution .....	118
A. Rights Guaranteed by the Constitution .....	118
B. The Obligations of Citizens .....	135
Section II: The Relationship Between the Ruling Regime and the Political Parties .....	137
A. Examples of the Persecution of Political Parties .....	137
B. The Relationship between the Ruling Party and the Kurds .....	141
C. Hegemony of the Baath Party.....	148
D. The New Political Parties Act .....	151
ANNEX: Comments of the Government of Iraq, January 1994 .....	161

## Preface

For many years, the International Commission of Jurists (ICJ) has been concerned with the human rights situation in Iraq. Long before the 1990 invasion of Kuwait, the ICJ brought the case of Iraq before the United Nations. In February 1991, the United Nations Human Rights Commission finally appointed a Special Rapporteur to look into the situation of human rights in Iraq, a step which the ICJ had been advocating for several years.

A country's constitutional system has a direct impact on the human rights situation and, indeed, on development in that country. Iraq is a clear example of how a prevailing legal system facilitates violations of human rights.

The basic Iraqi legal document is the Interim Constitution of 1970, which was amended in 1973, and again in 1974. According to the provisions of the Constitution, the Revolution Command Council is the supreme body of the state. The Council exercises both executive and legislative powers by proposing legislation and passing administrative decrees. The overwhelming majority of these administrative decrees, which frequently contradict even the principles contained in the Iraqi Constitution itself, in effect erode the notion of the Rule of Law. More disturbing is the fact that the Iraqi judicial system does not possess the power to review such administrative orders.

The Iraqi legal model is far from unique. Indeed, several one-party states operate a legal structure similar to that of Iraq. The features of consolidating power in the hands of the single ruling party, the artificial and fragile separation of powers, and the largely powerless and highly dependent judiciary are all too common elements in constitutional systems of one-party states.

The growing departure from one-party state systems in Africa, Asia, Latin America and the Middle-East necessitates a closer analysis of the Iraqi model. If the Iraqi human rights crisis is to be avoided, it is imperative to specify the structural deficiencies in the Iraqi system itself, not only its human rights practices. The deficiencies of such systems have to be clearly identified. This enhances the comprehension of appropriate adjustments in comparable legal systems. Such a process is crucial for the modification of these systems according to the norms of international law.

Towards this end, the ICJ began two years ago to study the Iraqi



legal system. The aim of this study is to help identify the structural defects in such a system of justice.

Thus, the ICJ has reviewed Iraqi laws, using the Arabic version of the Iraqi Official Gazette as the main source of reference. As this Gazette is updated in Switzerland until 1991, the study claims to be comprehensive until this year only. Laws which are enacted after 1991 are not thoroughly examined in this study.

On 26 November 1993, the ICJ sent an earlier draft of this study to the Iraqi government for comments. On 17 January 1994, the ICJ received the comments of the Iraqi government. We appreciate this cooperation. The ICJ took some of the comments into account. The Iraqi government's comments are reproduced in the Annex.

As an organization dedicated to the promotion of the Rule of Law and the legal protection of human rights, the ICJ hopes that such an analysis of the legal structure of Iraq will assist in modifying the inadequacies of this system and others with similar structures.

Adama Dieng  
Secretary-General  
February 1994

# Historical Introduction

## A. The historical foundations of the Iraqi State

### 1. The Hashemite Kingdom

The First World War resulted in the demise of the Ottoman Empire and the end of Ottoman rule over Iraq that began in the year 1534. Iraq, which had been divided into three Ottoman vilayets (provinces) - Baghdad, Mosul and Basra- was put under a British Mandate.

The executive and administrative measures taken by the British forces following their entry into Iraq, particularly the levying of land tax, roused the anger of the people, who revolted in June 1920. The British authorities responded to the revolt with force and succeeded in re-establishing order within a few months.

On his arrival at Baghdad on 11 October 1920, Mr. Cox, the British High Commissioner, announced that his priorities included the conclusion of a treaty with Iraqi officials and popular leaders concerning the establishment of a popular government. Abdul Rahman al-Gailani, the senior official at Baghdad, was entrusted with the task of forming the first government and, on 11 November, announced the formation of an Assembly.

This Assembly undertook the administration of the State, albeit under the constant supervision of the High Commissioner, and foreign and military affairs, with the exception of matters relating to locally appointed officers, fell outside the scope of its jurisdiction. The High Commissioner, who exercised de facto authority, also appointed a British assistant to advise each Minister.

In order to avoid any future disturbances, Great Britain decided to form a national government under British supervision and appoint an Arab prince as head of State. Prince Faisal, son of the *Sharif* of Mecca, was proposed and, in spite of objections from France, Churchill supported his nomination.

The Iraqi Government therefore accepted the nomination of Prince Faisal as King of Iraq on the condition that "His Majesty's Government would be a constitutional, parliamentary and democratic Government subject to the rule of law". Prince Faisal ascended the throne on 23 August 1921 after the Minister of the Interior had organized a popular referendum.

After the country had been permitted to form a provisional government, Great Britain signed a treaty with Iraq on 10 October 1922 under which its mandatory powers were transferred to the State of Iraq. However, this treaty gave Great Britain the right to supervise Iraq's internal and external affairs and Iraq's lack of independence vis-à-vis Great Britain was emphasized by four subsequent agreements signed on 25 May 1924: an agreement concerning British civil servants, a military agreement, a legal agreement and a financial agreement.

Following the signature of the 1922 treaty, a 100-member Constituent Assembly was elected and vested with limited power to ratify the treaty and promulgate an electoral law and domestic legislation, as required by the same treaty.

The Assembly met for the first time on 26 May 1924. Initially, under the pressure of public opinion, the Assembly hesitated to ratify the treaty but, in the face of threats from the British Government to leave Iraq to stand alone against Turkish and Iranian attacks, the Assembly ratified the treaty within the specified time-limit.

Iraq did not achieve its independence until 30 June 1930 when it signed a treaty of friendship and alliance with Great Britain, which superseded the 1922 treaty. Although Great Britain retained a military base in Iraqi territory, Iraq became an independent State and joined the League of Nations as a member on 3 October 1932. King Faisal I died in September 1933 and the throne passed to his son Ghazi.

King Ghazi possessed neither the political experience nor the respected status of his father and therefore found it difficult to deal with Iraq's unsettled and complicated situation. The first attempted coup d'état took place in 1936, during his reign.

King Ghazi died in a car accident in April 1939 and was succeeded by his four-year-old son Faisal, who was proclaimed King. However, by law, he was unable to run the affairs of his State before reaching the age of 18 and Abdul Ilah, King Ghazi's cousin, was therefore appointed Regent by the National Assembly. Although he exercised the powers of the King only until 1953, he continued to play an important political role until the final days of the monarchy.

During the rule of the Regent, Iraq was faced with popular unrest beginning with the 1945 revolt in Kurdistan and, in 1948, following the signature of the treaty with Great Britain which replaced the 1930 treaty, violent demonstrations at Baghdad prevented the ratification of that treaty.

King Faisal II assumed power when he came of age in April 1953.

However, due to the events and the constant disturbances, he was unable to exercise power effectively and de facto control of the State remained in the hands of Abdul Ilah and Prime Minister Nuri Said. In fact, Nuri Said dominated the political scene in Iraq from the time when he became Prime Minister in 1954 until the collapse of the monarchy in 1958.

Nuri Said's foreign and domestic policies were rejected by the people. At the domestic level, he made every attempt to neutralize the reform and Arab nationalist tendencies and repressed the Communists. In 1954, he dissolved all the political parties and declared martial law.

His foreign policy was pro-Western and, on 24 February 1955, he signed a treaty of cooperation (the Bagdad Pact) with Turkey in view of his hostility towards the Soviet Union and his fear of the consequences of the Nasserite revolution. In the same year, Great Britain, Pakistan and Iran acceded to that treaty, the aim of which was to oppose Soviet expansion towards the South. Nuri Said attempted to consolidate his powers by forming a federal Arab Union between the Jordanian and Iraqi Kingdoms of which he became Prime Minister. Faisal II, Abdul Ilah and Nuri Said were killed in a revolution that broke out on 14 July 1958 and put an end to the monarchy.

## **2. The Iraqi Republic**

The coup that overthrew the monarchy was led by two officers, Abdul Karim Qasim and Abdul Salam Aref. The first was an Iraqi nationalist and the second an Arab nationalist with close links to the leaders of the Baath Party. A Government consisting of 14 members, 11 of whom were military personnel, was formed with Qassem as its Prime Minister. Amongst the very first measures taken by the new government, were the invalidation of the federal union with Jordan and the denunciation of the Bagdad Pact.

The agreement between Qassem and Aref did not last long. Aref was soon stripped from his functions and deposed along with members of the Baath Party. Qassem's policies were regarded as opposing Arab unity which alienated his regime within the Arab world and Arab support for his foes increased.

On 8 February 1963, Aref led a military putsch that overthrew the Qassim regime. Qassem and his closest collaborators were executed after a quick trial. Ahmad Hassan al-Bakr, a leader of the Baath party who assisted in the putsch, was designated as Prime Minister. But less than nine months later, Aref was able to depose al-Bakr and dissolved all political parties including the Baath, and on 14 July 1964 he formed the

Arab Socialist Union, in the image of the only Egyptian party. He also imitated Egypt in proceeding with socialist economic policies which had disastrous consequences on the economy. He was killed in a helicopter accident in 1966.

Iraq was ruled over the next two years by Aref's brother, General Abdul Rahman Aref who also presided over the government. On 17 July 1968, however, Baath Party officers, led by al-Bakr overthrew the Aref regime and took over power without bloodshed. Aref was allowed to leave the country. The end of the regime of the Aref brothers thus represented the beginning of the Baath Party era which continued until this day. Saddam Hussein, the present leader of Iraq, took over power after al-Bakr resigned in 1979.

## **B. Constitutional and Legal Developments**

### **1. The Basic Law of 1925**

This Law was the first constitutional instrument that attempted to embody Iraq's semi-democratic experience under the monarchic regime which lasted until 1958. In spite of its weaknesses, it merits study in view of its influence on the subsequent development of the legal system in Iraq.

Although this Law was approved by the Constituent Assembly on 10 July 1924, it was not ratified by the King and put into effect until 21 March 1925. Under the monarchic regime, the Basic Law of 1925 established a parliamentary system modelled on the British system but with the fundamental difference that, in Iraq, the King was the effective ruler whereas, in Britain, for reasons relating to the historical development of the system<sup>1</sup> in that country. Although the King did not

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1 The Iraqi Constitution was drafted by a committee chaired by the British High Commissioner and comprising two other members selected from among his British staff. The draft was sent to the British Colonial Office, which amended some of its provisions, and was then transmitted to the Iraqi Government, which studied it and made further necessary amendments, including an amendment which made the Government answerable to the House of Representatives rather than to the King. Following consultation with the British judicial authority, the draft in its final form was referred to the Constituent Assembly.

enjoy exemption from legal accountability, he exercised numerous fundamental powers that helped to strengthen his influence and enabled him to impose his control over the State institutions and agencies. These powers were: choice of the Prime Minister and appointment of Ministers nominated by the Prime Minister;<sup>2</sup> appointment of all the members of the Senate;<sup>3</sup> the appointment and dismissal of all civil servants, including administrators, diplomats and judges, supreme command of all the armed forces; and proclamation of martial law.

The Basic Law concentrated executive authority in the hands of the King and the Council of Ministers which, from the political standpoint, was collectively and individually answerable to the Parliament. The Parliament consisted of two Houses: the House of Representatives and the Senate. From 1946, the House of Representatives comprised 108 members elected in two stages until 1952 when they were elected directly by the electorate. The Senate comprised 20 members, all of whom were appointed by the King.

One of the distinctive features of the Basic Law of 1925 was its establishment of a Supreme Court (consisting of a President and eight members elected by the Senate, four being members of the Senate and four being senior judges) which met under the chairmanship of the President of the Senate to hear cases brought against Ministers and members of the National Assembly who were accused of political offences or offences in connection with their public duties, as well as cases brought against judges of the Court of Cassation in respect of offences committed during the discharge of their duties. This Court had the power to interpret the Basic Law and monitor the constitutionality of legislation.

However, this Law was not applied in a proper and satisfactory manner for two main reasons. First, the social structure and political concepts of Iraqi society, since the tribal mentality and allegiance to tribal sheikhs were prevalent and there were no parties with clearly-defined political programmes. This deprived the electoral process of any real significance and distorted the concept of democracy. Competition in

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2 Article 65 of the Basic Law stipulated that the Prime Minister must submit "the recommendations of the Council of Ministers to the King in order to receive his orders".

3 Article 62, paragraph 3, stipulates that a bill of law must be approved by both the House of Representatives and the Senate, although it did not acquire the force of law until it had been ratified by the King.

the political field, instead of being between political parties, took the form of conflict among individuals seeking to achieve their own ends and personal ambitions.

Second, the political situation, illustrated by the unfairness of parliamentary elections in which the Government sometimes interfered in favour of Palace candidates, as well as the lack of political parties and the prevalence of Palace intrigues, placed the Government in an unstable position. This general situation also affected the Parliament in so far as, from 1934, it became customary to dissolve the Parliament whenever a new Government was formed. During the period of the monarchy, 58 Governments were formed.

## **2. The Constitution of the First Republic**

On 27 July 1958, two weeks after the overthrow of the Monarchy and the inauguration of the republican regime, the Iraqi Constitution was declared. It contained 30 articles divided under four chapters that declared that "the Iraqi State is an independent and fully sovereign Republic", <sup>4</sup> "Iraq is part of the Arab nation", and, in its second chapter devoted to public rights and duties, it affirmed that "the people is the source of all authority". <sup>5</sup> It also listed the liberties that it guaranteed: freedom of opinion and expression, religious freedom, and the inviolability of the home. The Constitution also designated Islam as the religion of the State. <sup>6</sup>

With regard to the judiciary, it merely indicated that judges were independent and subject to no authority other than that of the law,<sup>7</sup> that court hearings should be held in public except in circumstances provided for by law <sup>8</sup> and that judgements should be handed down and executed in the name of the people. <sup>9</sup>

In actual practice, however, many of these rights were rendered inoperative. Following its establishment, the Government proclaimed

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4 Article 1 of the 1958 Constitution.

5 Article 7 of the 1958 Constitution.

6 Article 4 of the 1958 Constitution.

7 Article 23 of the 1958 Constitution.

8 Article 24 of the 1958 Constitution.

9 Article 25 of the 1958 Constitution.

martial law in the country and set up a "Special Supreme Military Court", to try prominent members of the former corrupt regime<sup>10</sup> and enemies of the revolution.<sup>11</sup> This Court which, due to the temperament of its President and its concept of "revolutionary conditions", was transformed into a "people's court" or a "political platform" as it used to call itself. Needless to say, the right to defence was not safeguarded and trials were held in an atmosphere of psychological terror. The Court handed down final and irrevocable judgements which were not subject to appeal, except in the case of death sentences which were not carried out until they had been approved by the Prime Minister. It was the latter who, in 1960, effectively put an end to the role of the Special Supreme Military Court.

With regard to political organization, the Constitution of 1958 was the first of the Iraqi Constitutions to reject the principle of the separation of powers and inaugurate autocratic rule. In three very short articles, the Constitution stipulated that the Presidency of the Republic would be exercised by a Ruling Council consisting of a Chairman and two other members and vested legislative and executive power in the Council of Ministers. It subsequently became clear, from actual practice, that the Prime Minister, who also held the post of Commander-in-Chief of the Armed Forces and Minister of Defence, was actually the country's sole *de facto* ruler, who derived his influence and authority from the support that he received from the armed forces.

### 3. The Constitution of 1963

After the coup of 8 April 1963, which brought the Baath Party and Abdul Salam Aref to power, Proclamation No. 15 informed the people that the National Revolution Command Council would in future exercise supreme power, even over the legislative authority, in the Republic of

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10 The death sentence was carried out on only three officials of the monarchic regime: Said Qazzaz (former Minister of the Interior), Abdul Jabbar Fahmi (Governor of Baghdad) and Bahjat al-Atiyya (Head of Intelligence). See Khaddura (M.) A Study in Iraqi Politics Since the Revolution of 1958, Oxford University Press, 1969, p. 81.

11 This description applies to those who took part in the coup with Abdul Karim Qasim and subsequently disagreed with him, such as Abdul Salam Aref, or those who attempted to instigate a revolt or a coup, such as Abdul Wahhab al-Shawwaf and his associates (the Mosul revolution) or Rashid Ali al-Kilani and his associates.



Iraq. It would also exercise the functions of Commander-in-Chief of the Armed Forces, elect the President of the Republic and appoint the Government.

The new Constitution was ratified by the National Revolution Command Council on 4 April 1963. The Constitution contained 20 articles dealing with the Council, its composition, its powers, the secretariat, salaries and allowances, the President of the Republic and his relationship with the Council.

This Constitution concentrated power in the hands of a single body, the Council, which was designated as the supreme revolutionary force which led the masses and the national armed forces on 8 March 1963, overthrew the regime of Abdul Karim Qasim and, in the name and in the interests of the people, established the present revolutionary leadership in Iraq.

The Council enjoyed legislative and executive powers and, consequently, had the authority to promulgate laws and directives, ratify treaties and conventions, declare war, conclude peace treaties, command the security and armed forces, approve decisions taken by the Council of Ministers and appoint, dismiss or pension off civil servants, etc.

The President of the Republic, who was elected by the members of the Council, was vested with authority to ratify the legislative enactments approved by the Council, to appoint the Government, to accept its resignation and dissolve it if the Council so desired, and to appoint Iraq's ambassadors. The President of the Republic exercised these powers with the support of the Ministers and under the auspices of the Council.

#### **4. The Constitution of 1964**

Following the coup engineered by President Abdul Salam Aref on the morning of 18 November 1963, which drove the Baath Party from power, Communiqué No. 1 dissolved the National Revolution Command Council, most of the members of which were Baathists, and established a new National Assembly presided over by the President of the Republic and consisting of the Prime Minister and the officers who had taken part in the coup. The President of the Republic was appointed Commander-in-Chief of the Armed Forces and vested with all the powers of the National Revolution Command Council for a period of one year which would be automatically extended for a further year if, in his opinion, circumstances so required. The purpose of that communiqué, which implicitly abolished the Constitution of 4 April 1963, was to enable the President of the Republic to control the situation and monopolize

authority by concentrating all power in his own hands. In fact, the President of the Republic, assisted by the Ministers, became the country's absolute ruler.

On 22 April 1964, a decree known as the National Revolution Command Council Act No. 61 of 1964, was promulgated. It comprised 17 articles dealing with the composition and powers of the National Assembly and its relationship with the Council of Ministers.

That decree confirmed the provisions contained in the above-mentioned Communiqué No. 1 by vesting the President of the Republic with full power, including the powers exercised by the National Revolution Command Council, for a period of one year, renewable at the President's personal discretion. One noteworthy aspect of that document lies in the stipulation that the members of the National Assembly must not belong to a political party or faction. The purpose of this stipulation was to exclude persons linked to political parties, particularly the Baath Party.

This short Constitution formed the prelude to the Provisional Constitution promulgated on 29 April 1964, which contained 106 articles. It stipulated that Iraq was a socialist democratic Republic which derived its democracy from the Arab heritage and the spirit of Islam, that the aim of the Iraqi people was to achieve full Arab unity, and that the official religion of the State was Islam. The Constitution promised to establish stability, to ensure adequate opportunities for all the people, without discrimination on grounds of sex, origin or religion, and to rectify the social situation in order to build a better society and safeguard public freedoms. With regard to the regulation of public authority, it vested executive authority in the President of the Republic and the Ministers and legislative authority in a "National Assembly" elected by the people. However, it also stipulated that, during an interim period not exceeding three years from the date of entry into force of the Provisional Constitution, the legislative authority would be exercised by the Council of Ministers.

The Constitution of 1964 was the first, after the 1958 revolution, to stipulate that Parliament should be elected. However, these elections were never held and the Aref brothers' regime ended before a National Assembly was established. On the dissolution of the National Revolution Command Council, power was distributed among three bodies: the President of the Republic, the Council of Ministers and the National Defence Council.

The Constitution stipulated that the President of the Republic would form a National Defence Council over which he would preside

and the powers of which would be defined by law. The President of the Republic did, in fact, form this Council consisting of himself, the Prime Minister, the Ministers of Defence, the Interior, Foreign Affairs and Finance, the Army Chief of Staff and the Commander of the Air Force. One of the principal functions of the Council, acting in collaboration with the Government, was to elect the President of the Republic, accept his resignation, approve any declaration of war and agree upon truces and peace treaties. In actual fact, however, the Council constituted a mini-Government surrounding the President of the Republic and including the Ministers closely associated with him, who held the principal portfolios and on whom the President relied for the formulation and implementation of the State's public policy.

The influence of the President of the Republic gradually increased after he personally assumed the post of Prime Minister in May 1967. This was the first time that the Head of State had combined the posts of President of the Republic and Prime Minister. From that time, the cumulation of these two posts became a customary tradition in Iraq.

In short, it can be said that the Constitution of 1964 consecrated autocratic rule by making the President of the Republic the effective ruler in control of all the State institutions. Although numerous powers were vested solely in the President of the Republic, his legislative and executive power was shared by the Government which had to ratify legislative enactments and regulations. The influence of the President of the Republic reached its peak when he combined the post of President of the Republic with that of Prime Minister (with effect from 1967), after which he exercised direct control over the executive and legislative authorities.

## **5. The Constitution of 12 September 1968**

The Baath Party regained power on 17 July 1968 and formed a Revolution Command Council similar to that established in 1963. On 21 September 1968, the Council adopted a new Constitution which remained in force until the promulgation of the present Constitution on 16 July 1970. Since the two Constitutions are largely similar, they are studied together in Part One, which is devoted to a study of the present Constitution.

## 6. Conclusion

From this review of the Iraqi Constitutions preceding the present Constitution, it is clear that, with the exception of the Basic Law of 1925 which established a monarchic parliamentary system, the Constitutions promulgated after the 1958 Revolution produced regimes that cannot be classified as parliamentary or presidential systems in the classical sense. In fact, they can be said to be a special type of regime that enables the ruler to extend his influence and monopolize power in the country. Consequently, although these Constitutions differed in their details, they pursued the same aims and objectives, namely the establishment of a strong system of government or a single-party system by concentrating power in the hands of a small number of individuals.

After the 1958 revolution, the system of government evolved from a military regime (under Qasim and the Aref brothers) into a military-party regime when the Baath Party came to power in 1966

A comparison of these Constitutions shows that they share a number of characteristics, such as disregard for the principle of the separation of powers, rejection of the concept of popular representation through the abolition of Parliament (the symbol of democracy), and concentration of executive and legislative authority in a single body - the Council of Ministers in the Constitutions of 1958 and 1964, or the Revolution Command Council in the Constitutions of 1963, 1968 and 1970 - controlled by a single person (the Prime Minister, the President of the Republic or the Chairman of the Revolution Command Council) who derived his influence from the support of the armed forces (and the ruling Party with effect from 1968).

It is ironic that these Constitutions (which were imposed on the people by successive groups that seized power by military force) stipulated that the people was the source of authority. In actual fact, however, they denied the people any opportunity to participate in political activity and prevented them from expressing their opinion on matters relating to the conduct of public affairs by depriving them of the right to elect representatives to exercise power in their name. In 1980, when the people were granted the right to elect a representative assembly, for the first time since the establishment of the Republic, this right was hedged with conditions and restrictions that rendered it ineffective and distorted its significance, as we saw in Part One when we spoke of the National Assembly.

The Constitutions of 1958 and 1964 (like the Constitutions of 1968 and 1970) made provision for numerous public freedoms. In practice,

however, the rulers did not respect the Constitutions that they had promulgated, since they failed to abide by their provisions. Likewise, the emphasis that those Constitutions laid on the independence of the judiciary did not prevent the establishment of special courts of a political nature.

# **PART ONE :**

## **The Constitution of 1970**

## Introduction

### A. The Baath Party: A Historical Introduction

The Arab Baath Party was founded in Syria by two intellectuals from Damascus: Mr. Michel Aflaq, an Orthodox Christian, and Mr. Salah ed-Din al-Bitar, a Sunni Muslim, both of whom had completed their studies at the Sorbonne University. In addition to them, mention should also be made of Mr. Zaki Arsouzi, an Arab Alawite Muslim from Iskenderun,<sup>12</sup> who was a member of the National Movement League, a pan-Arab nationalist movement established in Syria in the early 1930s. Due to internal party disagreements, however, Arsouzi withdrew from the League and, together with Aflaq and al-Bitar, established a new party known as the "Arab Revival". In 1943, Arsouzi withdrew from political life and his followers joined Aflaq. The Arab Revival Party was renamed the Arab Baath Party at the first congress held at Damascus on 4 April 1947. In 1953, the Baath Party merged with the Arab Socialist Party, which was founded in 1950 by Mr. Akram al-Hourani, a lawyer and politician from Hama. The Arab Baath Socialist Party was born from this merger. However, this change was not simply a change of name; it also implied a change in orientation in so far as socialism became an important component of the Party's ideology.

It is important to remember that these movements originated between the 1920s and 1940s, i.e., during the period when all the Arab States were under British or French occupation and their peoples were aspiring towards independence. Arab nationalism became closely linked with resistance against the occupying Power. From 1949, this political climate helped the Baath Party to gain a firm foothold in Iraq under the leadership of Mr. Sami Shawkat and, subsequently, Mr. Fuad al-Rikabi. A branch was eventually established in Jordan by Mr. Abdallah al-Rimawi, and another in Lebanon by Jibran Majdalani. In spite of this, the Baath Party did not play a significant role in political life outside Iraq and Syria due to the predominance of Nasserism in the political arena for more than two decades. Even after the death of President Gamal Abdel Nasser, the Baath Party was unable, for various reasons, to gain the influence that had been enjoyed by Nasserism, since the split in the Party

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12 In the Syrian region that was annexed by Turkey under the agreement concluded with France, the mandatory Power, on 24 June 1939.

in 1966 and competition between Baghdad and Damascus impaired its credibility. Moreover, the Arab defeat in 1967 and the death of Gamal Abdel Nasser, an advocate of Arab nationalism, in 1970 contributed to the decline of this movement.

The Baathists presented themselves as revolutionary, unionist, socialist and populist. The ideology of the Iraqi Baath can be summed up in three principal catchwords - Unity, Freedom and Socialism - and the belief that the Arab nation is a distinctive nation with an eternal mission. The political report confirmed these principles by recognizing the revolution of 17 July 1968, by its very nature and results, as a liberational, democratic, socialist and unionist revolution.

## **B. The Adoption of the Constitution of 1970**

The task of the Aref Government was made difficult by several factors, such as the Arab defeat in the 1967 war, the precarious economic situation resulting from the general political instability and the nationalization of a large sector of the economy which became a burden on the Government, and the bad relations with Syria. This weakness was exploited by the Baath Party. Mr. Ahmad Hassan al-Bakr, who was preparing to seize power, attempted to reorganize the Party and recruited new young members, particularly from his area, Tikrit. He succeeded in persuading Mssrs. Abdul Razzaq al-Nayef, Ibrahim Abdul Rahman Daoud and Saadoun Gheidan to collaborate with him in his *coup d'état* and, at dawn on 17 July 1968, these three were able to overthrow the Aref regime and seize power peacefully. Aref was permitted to leave Iraq for Great Britain, a Revolution Command Council was established and Mr. al-Bakr was elected President of the Republic.

Mr. al-Bakr succeeded in remaining in power until his resignation on 16 July 1979. Three major events occurred during his term in office:

- Iraq signed a friendship and cooperation treaty with the Soviet Union in April 1972.
- On 1 June 1972, the Government nationalized the Iraq Petroleum Company.
- On 5 March 1975, Iraq signed an agreement with Iran at Algiers, which was followed by the signature of a border demarcation treaty at Baghdad on 13 June 1975. In that treaty, Iraq did not hesitate to make concessions to Iran in return for an undertaking by the latter to cease its assistance to the Kurds.



Mr. Saddam Hussein, who was born at Tikrit in 1937, joined the Baath Party at a very young age and participated in the *coup d'état* engineered by al-Bakr in 1968. In 1969, he was elected Vice-Chairman of the Revolution Command Council and was able to play an important and effective role in the Party. Consequently, when Mr. al-Bakr resigned "for health reasons" on 16 June 1979, Mr. Saddam Hussein succeeded him as leader on 28 June.

Iraq's present Constitution was drafted while al-Bakr was in power and it was promulgated as a Provisional Constitution in Proclamation No. 297 issued by the Council on 16 July 1970. It was subsequently amended on several occasions (in 1973, 1974, 1977, 1979, 1980, 1982 and 1987). This Constitution comprises 70 articles in five sections dealing with the Republic of Iraq (arts. 1-9), its socio-economic structure (arts. 10-18), its fundamental rights and obligations (arts. 19-36), its institutions (arts. 37-64), and general procedure (arts. 65-70). Article 65, concerning the eligibility requirements for membership of the Council, for the post of Vice-President of the Republic and for ministerial portfolios, stipulates that those posts should not be occupied by persons engaged in a liberal profession or commerce. Article 66 concerns amendments to the Constitution.<sup>13</sup>

Some features of the Constitution of 1970 are similar to those of the Constitution of 1968 with regard to political orientation and the structure of the Government, in so far as the Constitution of 1970 monopolized authority in the hands of the President of the Republic at the expense of the powers vested in Parliament. This practice began with the third constitutional amendment in 1986 with a view to the establishment of a presidential system with special characteristics. In this connection, it is noteworthy that the present Constitution, unlike its predecessors, makes no mention of "Government" or "executive authority" but merely refers to a "Council of Ministers", which is a body consisting of the Ministers and presided over by the President of the Republic.<sup>14</sup>

The Constitution, having been adopted by the ruling political Party, naturally reflected the Party's ideology and the socio-economic aims that the Party was striving to achieve.<sup>15</sup> In fact, this Constitution

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13 From the purely legal standpoint, the Iraqi Constitution is a flexible Constitution, since it can be amended by a decree promulgated by a majority of two thirds of the members of the Council.

14 Article 61 of the Constitution of 1970.

can be regarded as a “constitutional programme” because, far from confining itself solely to a description of the political structure of the State, it also defines the political aims to be achieved, namely the establishment of a single Arab State and the formulation of a socialist system to promote the ideology of the Baath Party.

In addition to the Constitution of 1970, four political texts that were issued are also of importance in this regard, since they with the Constitution, form what could be called the “political code” of the State. These texts are:

- The “Charter of the National Movement”, proclaimed by President Ahmad Hassan al-Bakr in November 1971, which defines the nature of the regime and its institutions.
- The “Political Report of the Eighth Regional (Iraqi) Congress of the Baath Party”. This Congress was held at Baghdad in November 1974. According to the Ruling Party Act No. 142 of 1974, every Minister and administrative body must use this report as a reference when exercising their powers. Accordingly, the report forms part of the legislation.
- The “Kurdish Regional Autonomy Act”,<sup>16</sup> which places theoretical interpretations on some of the procedures provided for in the Constitution.
- The Constitution of the Baath Party, adopted at the Party’s first congress at Damascus in April 1947, which contains basic political concepts.

In this Part, we will study the characteristics of the Iraqi Constitution (in Section I) and the republican institutions (in Section II).

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15 See, for example, article 28, concerning education.

16 Act No. 35 of 1974.

## Section I

### Characteristics of the Present Iraqi Constitution

Article 1 of the present Iraqi Constitution defines Iraq as a “people’s democratic and sovereign Republic, the basic aim of which is to achieve a unified Arab State and establish a socialist system”. It goes on to say that “Iraq is part of the Arab nation”,<sup>17</sup> and that “Islam is the religion of the State”.<sup>18</sup> This definition is derived from the Baath ideology, which seeks to achieve a full Arab union of all the Arab countries and to establish a socialist system, which is regarded as the “ideal system that permits the Arab people to achieve its potential and brings its genius to full fruition”.<sup>19</sup> Until such time as this aim is achieved, Iraq will be a people’s democratic Republic. The meaning of this expression, by analogy with the provisions contained in article 5 of the Party’s Constitution, is that, in theory, sovereignty belongs to the people, which is the sole source of all control and authority. This is confirmed in article 2 of the Constitution, which stipulates that “the people is the source of authority and its legitimacy”. In actual fact, however, the Revolution Command Council, which is the “supreme body in the State”, is the effective holder of power and the political decision maker.

The Constitution defines the Iraqi people as consisting of two principal ethnic groups: Arabs and Kurds. The Constitution also recognizes the ethnic rights of the Kurdish people, as well as the legitimate rights of all minorities, within the framework of Iraqi unity.<sup>20</sup> It goes on to say that “the Kurdish language shall be an official language, in addition to Arabic, in the Kurdish region”,<sup>21</sup> and that “the region in which the majority of the population are Kurds shall enjoy autonomy in the manner provided for by law”.<sup>22</sup>

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17 Article 5(a) of the Constitution.

18 Article 4, op. cit.

19 Article 4 of the Constitution of the Baath Party.

20 Article 5(a) of the Iraqi Constitution.

21 *Idem*, article 7(b).

22 *Idem*, article 8(c).

The present Iraqi Constitution is the first Constitution to recognize Kurdish ethnic identity; it speaks of the "Kurdish people" and explicitly provides for Kurdish autonomy.<sup>23</sup> In spite of the positive nature of these provisions, however, actual practice, illustrated by the gross violations of human rights in the Kurdish region, detract from their credibility. These articles consecrate the agreement concluded between the Central Government and the Kurds in March 1970, concerning autonomy within the framework of the Republic of Iraq. On 11 March 1974, President Hassan al-Bakr promulgated the "Kurdish Regional Autonomy Act", to which we will be referring in some detail when speaking of the relationship between the Baghdad Government and the Kurds.

The Iraqi Constitution is based to a large extent on the principles of the Baath Party. The main features of this Constitution, reflecting the aims of the ruling Party, are as follows:

### **A. Private Property**

The regulation of the ownership of landed property, and particularly agricultural property, has been a matter of concern to the successive regimes in power in Iraq since 1958. At the time of the July 1958 revolution, Iraq had a class of large landowners comprising the sheikhs of Arab and Kurdish tribes, sayyids claiming descent from the Prophet, and large merchant families. One per cent of the landowners monopolized 55 percent of all private property (totalling an estimated 32 million dunums of agricultural land),<sup>24</sup> while 49 families of tribal sheikhs, sayyids and merchants owned a total of 17 percent of the

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23 Compare article 3 of the Constitution of 1958, which states that Arabs and Kurds are partners in the country and further stipulates that the Constitution recognizes their ethnic rights within the framework of Iraqi unity. See also article 21 of the Constitution of 1968, which stipulates that "Iraqis are equal in regard to their rights and duties, without discrimination among them on grounds of sex, race, language or religion. They shall cooperate to preserve the national entity, which includes Arabs and Kurds. This Constitution recognizes their ethnic rights within the framework of Iraqi unity".

24 The dunum is equivalent to 1,000 m<sup>2</sup>.

agricultural land. On the other hand, 80 per cent of Iraqi families owned no land.<sup>25</sup>

One of the first measures taken by the Government of Abdul Karim Qasim was the promulgation of the Agrarian Reform Act of 30 September 1958. Through that Act, the Government sought to achieve two aims: (i) to eliminate the influence of the feudalists who formed the mainstay of the previous monarchic regime; and (ii) to prove the new leadership's resolute determination to eliminate capitalism and establish a new social system. There was an urgent need to improve the situation of the peasants, who were suffering from harsh working conditions imposed on them by the landowners. The promulgation of the Agrarian Reform Act of 1958 constituted the first step towards a restructuring of the socio-political forces and was also an indication of the new regime's ability to deal with one of the principal and most complex social problems of Iraqi society at that time.

The main provisions of that Act can be summarized as follows: The maximum private land holding was set at 250 hectares of irrigated land or 500 hectares of rain-fed land,<sup>26</sup> all land in excess of that maximum being expropriated within five years from the date of entry into force of the Act. This deadline was subsequently extended to 10 years due to the need to establish title to landed property. This land was then to be distributed among farmers in accordance with a scale of priorities, on the understanding that the area of distributed land should not be less than 7.5 or more than 15 hectares of irrigated land, nor less than 15 hectares or more than 30 hectares of rain-fed land. The Act also stipulated that the owner of expropriated land should receive compensation commensurate with the value of the land and the investments and installations that it comprised.<sup>27</sup>

The application of this Act encountered considerable difficulties in connection with the expropriation and distribution of land during the

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25 In this connection, see Batatu H., *The Old Social Classes and the Revolutionary Movement of Iraq; A Study of Iraq's Old Landed and Commercial Classes and of its Communists, Ba'thists and Free Officers*, Princeton University Press, 1978. See also Barakat, Halim; *Al-Mujtama' al-Iraqi al-Mu'asir*, Centre for Arab Unity Studies, 3rd edition, Beirut, 1986, pp. 141-142 and 151-152.

26 The hectare is equivalent to 10,000 m<sup>2</sup>.

27 Al-Sayegh, Youssuf; *Iqtisadat al-Alam al-Arabi*, Arab Institute for Research and Publishing, Beirut, 1982, part I, p. 90 ff.

interim period, partly due to the incompetence and inexperience of the authority responsible for administering the reform. Consequently, this Act failed to achieve the desired results and agricultural production declined to such an extent that Iraq had to import most of the agricultural produce that it required.

When the Baath Party came to power in 1968, it had to face the problem of agrarian reform and attempt to rectify its course, in the light of practical experience, in accordance with its concept of social justice and the economic policy that it intended to pursue.

In this connection, it should be noted that the Baath Party's socialism is based, in theory, on the concept of social justice and cooperation among individuals. The Party therefore claims that it rejects class conflict, relies on the individual and his potential, refuses to condone the stifling of personal liberty and, accordingly, upholds the right to own and inherit property. However, it places restrictions on this liberty for the ostensible purpose of preventing the individual from misusing the country's resources or exploiting the labour of others.<sup>28</sup> In this context, the Constitution of the Baath Party states that: "The party prohibits exploitation of the labour of others".<sup>29</sup> It further states that: "Agricultural property rights shall be regulated in a manner commensurate with the owner's ability to develop his land fully, without exploiting the labour of others, under the supervision of the State and in accordance with its general economic programme".<sup>30</sup> "All citizens are permitted to own landed property, although they do not have the right to lease or exploit it to the detriment of others".<sup>31</sup> The Party also believes that "ownership and inheritance of property are natural rights that must be safeguarded within the limits of the national interest".<sup>32</sup>

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28 See Michel Aflaq's article "The difference between our socialism and communism and national socialism" (in Arabic), in Sabil al-Baath, p. 209 ff. According to the political report of the eighth congress of the Baath Party (1974), the Baath Party is "a revolutionary socialist Party that regards socialism as a prerequisite for the liberation, unification and modern revival of the Arab nation ... Accordingly, one of the principal aims of its struggle is to promote socialist concepts and values". See also: The Legal System Reform Act No. 35 of 1977.

29 Article 8 of the Constitution of the Baath Party.

30 Article 30 of the Constitution of the Baath Party.

31 *Idem*, article 33.

32 *Idem*, article 34.

The present Constitution of Iraq reflects the principles of the Baath Party. It stipulates that: "Property ownership plays a social role within the limits of social objectives and State policies,<sup>33</sup> private property and individual economic freedom being guaranteed within the limits of the law on the understanding that they must not be exploited in a manner incompatible with, or detrimental to, general economic planning.<sup>34</sup> The Constitution further stipulates that private property may be expropriated only if the public interest so requires and subject to fair compensation in accordance with legally defined principles.<sup>35</sup> With regard to agricultural property rights, the Constitution states that the maximum extent of such holdings will be determined by law, the surplus being regarded as belonging to the people.<sup>36</sup> The Constitution guarantees the right to inherit movable and immovable property,<sup>37</sup> and, on principle, prohibits non-Iraqis from owning landed property unless otherwise provided by law.<sup>38</sup>

In these articles, the Constitution attempts to reconcile protection of individual property rights with the elimination of feudalism. On the one hand, it stipulates that private property must be safeguarded and may be expropriated only if the public interest so requires and subject to fair compensation while, on the other hand, it stresses the need to limit the maximum extent of agricultural land ownership in order to prevent large land holdings, since "the revolutionary authority has rejected the semi-feudal/capitalist system and has adopted a socialist course of action with a view to putting an end to man's exploitation of man and eliminating incompatibilities between the interests of the individual and society".<sup>39</sup> The Agrarian Reform Act promulgated on 21 May 1970<sup>40</sup> applied these constitutional provisions and made numerous changes to the previous Act. The most important provisions of the new Act were a reduction in the maximum limit on ownership, particularly in the case of irrigated

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33 Article 16(a) of the Iraqi Constitution.

34 *Idem*, article 16(b).

35 *Idem*, article 16(c).

36 *Idem*, article 16(d).

37 *Idem*, article 17.

38 *Idem*, article 18.

39 For details concerning the manner in which individual property rights are regarded by the ruling Baath Party in Iraq, see the Legal System Reform Act No. 35 of 1977, Al-Waqa'i al-Iraqiya, No. 2576 of 14 March 1977.

40 Act No. 117 of 1970.

land, in so far as the maximum holding was set at around 250 hectares of rain-fed land and 10-150 hectares of irrigated land (with exceptions in the case of land cultivated with fruit and dates) and permission for the owner to continue exploiting land in excess of the maximum holding, under the terms of a contract with the State pending actual expropriation of the excess, in order to avoid non-exploitation of the land as happened in the past. The new Act permitted the distribution of land among citizens of Arab countries and also established special committees to determine land ownership and avoid the delays and infractions that accompanied the application of the previous Act. It also simplified the regulations governing the leasing of land and explained the leasing and exploitation rights. Act No. 116, which was promulgated on the same day as the Agrarian Reform Act, established the Higher Agricultural Council, which was chaired by the President of the Republic and included among its members the Minister for Agrarian Reform, the Minister of Agriculture and Irrigation, the President of the Federation of Agricultural Associations and five full-time experts to supervise the implementation of agrarian reform.<sup>41</sup>

There is no doubt that, under the Agrarian Reform Act of 1970, the Baath Party system was able to avoid many of the mistakes that accompanied the implementation of agrarian reform up to the early 1970s. It also expedited the process of the expropriation and distribution of land. However, the agrarian reform failed to achieve dazzling results, since the new Act abolished the compensation payable to landowners in respect of their expropriated land,<sup>42</sup> and restricted compensation to buildings and agricultural machinery, such as pumps etc., thereby violating the provisions of the Constitution. As already mentioned, article 16, paragraph (c), of the Constitution stipulated that private property could be expropriated only in the public interest and in return

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41 AlSayegh, Youssuf; *op. cit.*, pp. 9597.

42 Article 18 (as amended on 15 May 1969) of the Iraqi Constitution of 1968, in the light of which the Agrarian Reform Act was promulgated, stipulated that the maximum agricultural landholding would be specified by law and any land in excess thereof would revert to the State without compensation. It also stipulated that non Iraqis could not own agricultural land except in the circumstances provided for by law. See also article 16 of the present Constitution, and particularly paragraph (d) thereof, which stipulates that the maximum limit on agricultural landholding will be specified by law, any excess being regarded as belonging to the people (i.e. reverting to the State without compensation).



for fair compensation in accordance with legally defined principles. The Expropriation Act of 1970 promulgated in this connection was subsequently superseded by the Expropriation Act No. 12 of 1981 which applied to all land holdings, including agricultural land, and defined the circumstances in which government departments could expropriate landed property, as well as the procedures for such expropriation and the manner in which compensation should be assessed.

## B. The Economy

In the economic sphere, the Republic pursues a socialist policy. Article 1 of the Constitution states that the aim of the Republic of Iraq is to establish a socialist system. To that end, and with a view to developing socialism on a scientific and revolutionary basis, the State undertakes the planning, direction and guidance of the national economy.<sup>43</sup> Consequently, the Constitution states that all natural resources and basic means of production belong to the people and are exploited directly by the central authority in the Republic in accordance with the public planning requirements of the national economy.<sup>44</sup> The Constitution further states that public assets and property belonging to the public sector are regarded as particularly inviolable and the State and the people as a whole have an obligation to safeguard and protect them, any act of sabotage or aggression against them being tantamount to an act of sabotage or aggression against the social structure.<sup>45</sup>

The present Baathist regime was not the first to call for the establishment of a socialist system in Iraq. In fact, this system was advocated by all the successive rulers who came to power after the 1958 Revolution. Socialism was presented as the ideal alternative to the "reactionary" capitalist system which prevailed under the monarchy. It was regarded as constituting a popular demand, since it implied social justice, equality of opportunity, elimination of exploitation and the guarantee of a decent life for all citizens. One of the first indications of the socialist policy was the promulgation of the Agrarian Reform Act of

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43 Article 12 of the Iraqi Constitution.

44 This article implies that the Iraqi Government is entitled to exploit the oil wells situated in the region of Kurdistan for its own benefit.

45 *Idem*, article 15.

1958<sup>46</sup> under President Abdul Karim Qasim. That Act was followed by Act No. 80, promulgated in December 1961, which stipulated that all the areas within the concession of the Iraq Petroleum Company and which IPC had not exploited (99 percent of the area of the concession) must be handed back. In 1964, under President Abdul Salam Aref, all the private banks, insurance companies and large industrial and commercial enterprises were nationalized and several legislative enactments were promulgated to limit freedom of investment in the private sector and grant persons working in that sector various privileges (such as the allocation of 25 per cent of the profits of joint stock companies to their employees, who were also given the right to be represented on the boards of directors of industrial companies).<sup>47</sup> These measures marked the beginning of a radical change in the structure of the political, social and economic forces, which were to be restructured in accordance with the declared aims of the Revolution.

When the Baath Party came to power in 1968, it stressed the need to establish a socialist system since socialism, like Arab unity and freedom, was among the pillars of the Party's ideology. The Government therefore took control of all the means of production, supervised foreign and domestic trade and promulgated a new Agrarian Reform Act.<sup>48</sup> On 1 June 1972, the Government nationalized the Iraq Petroleum Company and thereby gained control of the country's most important resource. The Iraqi authorities spent large sums of money on development projects, using the petroleum revenues that rose sharply in 1973 following the Arab-Israeli war and once again in 1979 as a result of the Iranian revolution. The authorities attached special importance to agrarian reform projects, the modernization of the infrastructure and education and the eradication of illiteracy and established a new pension and social security scheme for workers.

The State exercised virtually full control over the economy, leaving little scope for the private sector. However, this scope was sufficient to allow the development of a large number of small and medium-size private enterprises which benefited from the extensive government spending on development and construction projects in the

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46 Act No. 30 of 30 September 1958.

47 In this connection, see: Youssuf al-Sayegh, *op. cit.*, p. 19 et. seq. These enactments were similar to the nationalization laws promulgated in Egypt in 1961.

48 Act No. 117 of 1970.

1970s and some of which participated in the implementation of projects that did not require advanced technology. Others acted as intermediaries between the State and the foreign companies implementing those projects. However, the war with Iran depleted the State's financial reserves and, with effect from 1982, Iraq began to borrow extensively from the Arab Gulf States and the industrialized countries. This critical situation induced the Government to adopt a more liberal economic policy and, in 1985, it sold to the private sector a total of 42 public enterprises employing more than 20,000 persons. In 1987, it sold a further 47 enterprises and encouraged the private sector to increase its participation in economic activity by permitting it to import new types of goods.<sup>49</sup> Nevertheless, in spite of this policy of liberalization, the State remained largely in control of the economy and economic planning and Iraq remained totally dependent on petroleum, which provided 98 per cent of its revenue.

The adoption of a planned economy enabled the political leaders to strengthen their grip on the country through their domination of the economy, their direct management of public utilities and their control of petroleum revenues. This led to the establishment of a strong and domineering State which was effectively present in all fields and monopolized decision-making power in all public affairs. Citizens came to rely on the State for the provision of employment opportunities<sup>50</sup> and for housing and education for their children, in addition to the supply of basic foodstuffs and medicines at reasonable prices that could not be manipulated by shopkeepers.<sup>51</sup> Under such a politically and economically dominant State, there were no longer any class differences based solely on wealth, such as distinctions between feudalists and peasants or between capitalists and workers. These differences were

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49 Marion F.-S., "Irak, rente pétrolière et concentration du pouvoir", *Monde Arabe*, Maghreb-Machrek, No. 131, January-March 1992, p. 3 et. seq.

50 According to some estimates, in the 1980s the proportion of the total economically active population working in the public sector in Iraq amounted to at least 30 per cent. See the figures given in EIKhalil S., *Iraq, La machine infernale*, (ed.) Lattés, 1991, p. 63, et. seq.

51 See, for example, Revolution Command Council Decision No. 1315 of 2 December 1984, *Al-Waqa'i al-Iraqiya* No. 3024 of 17 December 1984, which stipulated that anyone who refused to sell a commodity at its fixed price, or who sold it at a price exceeding that fixed by the State, was liable to confiscation of his movable and immovable property, as well as a penalty of imprisonment for up to 15 years.

replaced by a new type of social distinction that were linked to the dominance of the State and based on the bureaucratic hierarchy within the machinery of the State and the ruling Party. In other words, a person's influence and status increased as he rose in the governmental or Party hierarchy.

Being aware of the importance of the economy for the consolidation of their authority and prestige, the political leaders accorded it the necessary protection by imposing severe penalties on anyone who contravened the economic regulations that they promulgated. They also attempted to combat corruption in government departments in order to safeguard the regime's reputation. For example, Revolution Command Council Decision No. 1016 of 1 August 1987<sup>52</sup> stipulated that the hearing and judgement of offences prejudicial to the national economy, trade and financial confidence in the State, as well as bribery<sup>53</sup> and embezzlement, as defined in the Penal Code, fell within the jurisdiction of the Revolutionary Court.<sup>54</sup> Under Revolution Command Council Decision No. 313 of 13 March 1984,<sup>55</sup> the death penalty is prescribed for anyone found guilty of dealing in contraband Iraqi or foreign currency or gold with the "Iranian enemy". Within the context of its measures to combat bribery, the Revolution Command Council promulgated a decision prohibiting any government official from conducting any private negotiations or establishing any economic relations with any foreign State, institution or company. Any negotiations with such bodies must be conducted in the presence of not less than two representatives from the Iraqi side.<sup>56</sup>

One extremely noteworthy decision<sup>57</sup> stipulates that any

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52 Al-Waqa'i al-Iraqiya No. 2668 of 14 August 1987.

53 On page 294 of its report for 1988, Amnesty International stated that the Revolutionary Court sentenced five civil servants to death after they had been convicted of taking bribes from foreign companies operating in Iraq. On page 346 of its report for 1987, it stated that five persons, including a senior official in the Ministry of Petroleum at Baghdad, had been executed after being convicted and sentenced to death for economic offences.

54 This Court will be referred to later during discussion of the legal system.

55 Al-Waqa'i al-Iraqiya No. 2986 of 26 March 1984.

56 Revolution Command Council Decision No. 398 of 4 April 1984, Al-Waqa'i al-Iraqiya No. 2989 of 16 April 1984.

57 Revolution Command Council Decision No. 1219 of 7 November 1984, Al-Waqa'i al-Iraqiya No. 3020 of 19 November 1984.

government official or public servant who is sentenced to a term of imprisonment for embezzlement of State funds must not be released after serving his sentence unless the embezzled funds are recovered from him. The decision further stipulates that he is not entitled to benefit from general amnesties or decisions under which penalties are commuted. This means that anyone who is convicted of embezzling State funds remains in prison after serving his sentence until he is able to return the funds that he embezzled. If, for any reason, he is unable to return those funds, he must remain in a situation similar to that of a person sentenced to life imprisonment; his retention in prison would be based not on a court judgement but solely on a decision promulgated by the Revolution Command Council, his original sentence being the penalty for committing the offence of embezzlement while the period during which he remains in prison after serving his sentence would be tantamount to an additional penalty and a means of coercion to induce him to return the embezzled funds. This type of decision taken by the Revolution Command Council reveals a latent defect in the Iraqi Constitution, which vests that Council with the authority to amend the Constitution and promulgate legally binding legislation and decisions which are not subject to any judicial or political control.

### C. Secularism

Most Western political writers describe the Baath Party as a secular party. However, this view is inaccurate and requires clarification. If the intention is to describe the Baath Party as secular, in so far as the Party does not derive its ideology from the Islamic religion and does not seek to establish an Islamic religious regime, this description is correct. On the other hand, if the intention is to describe the Party as secular in the Western sense of the term, i.e., full separation between religion and the State and refusal to permit the Church to interfere in State affairs or promulgate positive laws, particularly to regulate personal status, including marriage and its consequences, this concept does not apply to the tenets of the Baath Party, which regards Islam as a cultural basis for Arab society. Although Aflaq, the principal theoretician of the Baath Party, was a Christian, in many of his speeches and articles he stressed the importance of the Islamic religion in the life and heritage of the Arabs and described it as the "national religion of the Arabs". In an article entitled "Religion in the Arab Baath", Aflaq denied that there was any contradiction between the tenets of the Baath and religion, since "the Arab Baath, being a positive spiritual movement, cannot deviate from or clash with religion, although it can deviate from inertia, utilitarianism

and hypocrisy". He went on to say that "the Arab Baath is a national movement which addresses all Arabs, regardless of their religious or confessional differences, sanctifies freedom of belief and regards all religions as equally worthy of reverence and respect; however, it also sees in Islam a national aspect that has played an important role in shaping Arab history and Arab nationalism".

Although the Constitution of the Baath Party makes no reference to secularism, it explicitly guarantees freedom of belief and stipulates that "uniform legislation should be formulated, in total freedom, for the Arab State in a manner consistent with the spirit of the present age and in the light of the past experiences of the Arab nation".<sup>58</sup> Although this article implies that the Islamic Shari'a will not be strictly applied in the "Arab State" since positive laws will be promulgated in conformity with the "spirit of the age", it does not exclude the possibility that the provisions of the Shari'a might be applied in some respects "in the light of the past experiences of the Arab nation".

When the Baath Party came to power, matters of personal status remained, as in the past, subject to the provisions of the Islamic Shari'a and the laws of religious communities (in the case of non-Muslims) and competence to hear such matters was vested in the Shari'a and other religious courts.

#### **D. Social Principles**

The Constitution regards social solidarity as the cornerstone of Iraqi society. This solidarity is interpreted as meaning that every citizen must fulfil all his obligations to society, while society must safeguard all the citizen's rights and freedoms.<sup>59</sup> The citizen is required to contribute to the development and defence of socialist society through work, which is an honour and a sacred duty for every citizen,<sup>60</sup> and through military service, which the Constitution designates as obligatory.<sup>61</sup> In return, society guarantees the rights and freedoms of its citizens as recognized in the Constitution, such as their right to free education, to work, and to

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58 Article 18 of the Constitution of the Baath Party.

59 Article 10 of the Iraqi Constitution.

60 *Idem*, article 32.

61 *Idem*, article 31.

benefit from social security, health care, etc.

According to the Constitution, "the family is the nucleus of society and the State shall ensure its protection and promotion and shall cater for the welfare of mothers and children".<sup>62</sup> This article is similar to article 38 of the Constitution of the Baath Party, paragraph 1 of which stipulates that "the family is the basic unit of the nation and its protection, development and happiness must be ensured by the State". The same article 38 goes on to stipulate that children are a responsibility entrusted firstly to their families and secondly to the State, both of which must endeavour to increase their number and cater for their health and upbringing (paragraph 2), marriage being regarded as a "national duty" which the State must "encourage, facilitate and control" (paragraph 3).

As part of this social system, the Revolution Command Council has endeavoured to enhance the status of women by encouraging them to study and participate in working life.<sup>63</sup> The new Labour Act<sup>64</sup> contains several provisions to protect working women. For example, it stipulates that pregnant women must not be required to undertake additional work that might damage their health or the health of their unborn children<sup>65</sup> and makes provision for 72 days' maternity leave on full pay.<sup>66</sup> Working mothers may also be granted, in agreement with their employers, special maternity leave without pay for a period of up to one year so that they can look after their children.<sup>67</sup> Working women are also entitled to a rest period of up to one hour in order to breast-feed their children, this period being regarded as working time.<sup>68</sup>

With regard to marriage, the State encourages young men to marry by granting Iraqi citizens who marry before reaching the age of 22 years an interest-free loan of 500 dinars repayable in equal annual instalments over a 10-year period. The State also pays a grant of 500 dinars if the marriage is consummated before the husband reaches the age of 22 years

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62 *Idem*, article 11.

63 Revolution Command Council Decision No. 632 of 13 May 1981, Al-Waqa'i al-Iraqiya No. 2832 of 1 June 1981.

64 Act No. 71 of 1989.

65 Article 82 of the new Labour Act.

66 *Idem*, article 84.

67 Article 86 of the Iraqi Constitution.

68 *Idem*, article 87.

and the amount of both the loan and the grant are increased to 750 dinars if the husband is a student. In such a case, both the student and his wife benefit from free accommodation in the halls of residence that the State provides for that purpose. They are also entitled to free travel within the country on State-owned means of transport, with the exception of aircraft. All the persons who benefit from the provisions of this decree have a preferential right to acquire a dwelling or a plot of land for its construction, which the State distributes to citizens who apply therefor before reaching the age of 22 years.<sup>69</sup>

However, in the 1980s, the Revolution Command Council issued several decrees which loosened the marital bond, encouraged divorce and led to the break-up of families. These decrees were issued for political motives directly linked to the deep-seated hostility between Iraq and Iran, without regard for their tragic effects on family members or the harm caused to society. For example:

1- Revolution Command Council Decision No. 180 of 3 February 1980<sup>70</sup> stipulated that no foreign woman married to an Iraqi and who had resided in Iraq for five years prior to the promulgation of that decision could continue to reside there. Within six months from the date of its entry into force, she had to either declare her wish to acquire the nationality of her Iraqi husband or leave Iraq. A foreign woman married to an Iraqi also had to choose between the acquisition of Iraqi nationality or departure from Iraq on the expiration of the three-year period during which she must acquire Iraqi nationality or leave the country. She had no choice but to leave Iraq if she had resided therein for five years without choosing Iraqi nationality.

Accordingly, a foreign woman married to an Iraqi and who fails to apply for Iraqi nationality within the specified time-limit is liable to be deported from Iraq even if she is the mother of children of an age at which they need her care and attention. This situation allows scope for numerous hypotheses that might prejudice the mother's rights in regard to her children. For example the Iraqi authorities can prevent the mother from taking her children with her, particularly since the decision does not

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69 See also: Revolution Command Council Decision No. 1642 of 9 December 1981, Al-Waqa'i al-Iraqiya No. 2864 of 28 December 1981, which revoked all the legal provisions prohibiting marriage during the period of study, including the legislation concerning admission to military colleges and academies.

70 Al-Waqa'i al-Iraqiya No. 2757 of 18 February 1980.



deal with that aspect. The authorities can also refuse to permit the husband to leave the country with his wife if, for example, he is a civil servant or a member of the armed forces or if he has not completed his compulsory military service. Consequently, the wife may find herself obliged to leave Iraq and may be forcibly separated from her family.

That decision to deport foreign wives who fail to acquire the nationality of their husbands, and who do not pose a threat to the country's integrity, is inhuman and inconsistent not only with article 11 of the Iraqi Constitution but also with the International Bill of Human Rights and the Declaration on the Elimination of Discrimination against Women, and particularly article 5 thereof.<sup>71</sup>

2- Revolution Command Council Decision No. 1610 of 23 December 1982<sup>72</sup> prohibits women married to non-Iraqis from transferring ownership of their movable or immovable property to their non-Iraqi husbands.<sup>73</sup> It also stipulates that, if they die before their non-Iraqi husbands, their property and assets revert to their legal heirs and their non-Iraqi husbands are denied their share of the estate. Moreover, in the event of death, any assets that are disputed between an Iraqi wife and her non-Iraqi husband are regarded as the property of the wife in the absence of legal proof that they are owned by the husband. This decision also deals with the question of child custody and stipulates that "the Iraqi wife shall be granted custody of her children, until they reach the age of majority, in the event of divorce or separation from her non-Iraqi husband if the wife applies to the courts for such custody". This decision has retroactive effect since it stipulates that it shall enter into force with effect from the date of its publication in the Official Gazette and its provisions shall apply to legal acts and occurrences preceding the date of its entry into force.

This decision obviously does not respect a person's right to dispose of his private property in accordance with his wishes. In fact, this decision discriminates between Iraqi and non-Iraqi husbands and, in some cases, could prejudice the interests of minor children. For example,

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71 General Assembly resolution 2263(XXII) of 7 November 1967.

72 Al-Waqa'i al-Iraqiya No. 2919 of 10 January 1983.

73 It should be noted that Revolution Command Council Decision No. 518 of 10 April 1980, Al-Waqa'i al-Iraqiya No. 2771 of 5 May 1980, excludes foreigners of Iranian origin from the provisions concerning naturalization as set forth in the above-mentioned Decision No. 180. Consequently, an Iranian married to an Iraqi woman cannot acquire Iraqi nationality.

in some cases, it might be in the children's interest for the property of their mother to revert, on her death, to their father, or it might be in their interest to be placed in the custody of their father after divorce or separation.

3- In accordance with Revolution Command Council Decision No. 1529 of 21 December 1985,<sup>74</sup> a wife has the right to apply for separation from her husband if he evades or deserts from military service for a period in excess of six months or if he deserts to join the enemy. In such a case, the court must grant the separation. Under the terms of this decision, the separation is regarded as a revocable divorce in so far as the husband has the right to return to his wife if he enlists for military service or, after deserting, returns during the waiting period which she must observe before remarrying.

It is obvious from the text of this decision that it not only makes it easy for a wife to apply for separation from her husband who has evaded or deserted from military service or deserted to the (Iranian) enemy but also encourages a husband who has evaded or deserted from military service to enlist or re-enlist for military service by allowing him to return to his wife on the condition that he enlists or re-enlists during her waiting period (three menstrual cycles). Accordingly, this decision turns the marital relationship into a means to bring pressure to bear on husbands who have evaded or deserted from military service, without regard for the family problems that this might cause.<sup>75</sup>

4- Decision No. 474 of 10 April 1981<sup>76</sup> is possibly one of the most detrimental to family rights, since it stipulates as follows: "The Iraqi husband of a woman of Iranian nationality shall be paid an amount of 4,000 dinars in the case of a soldier, and 2,500 dinars in the case of a

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74 Al-Waqa'i al-Iraqiya No. 3081 of 20 January 1986.

75 There is an unsigned document, allegedly a "confidential, urgent and coded telegram" dated 21 October 1982 from the Director of Public Security to transmission list D, notifying approval by the Ministry of Defence of the application of the following orders concerning the families of persons who desert to the Iranian enemy: "(a) If the criminal fugitive is married, his wife and children must be detained; (b) If he is unmarried, his father and mother or, if his parents are dead, the most influential person in his family must be detained; (c) The fugitive's brothers serving in the armed forces must be detained. The orders apply to the families detained since the beginning of the war with the Iranian enemy and remain in force".

76 Al-Waqa'i al-Iraqiya No. 2827 of 27 April 1981.

civilian, if he divorces his wife or sends her out of the country". The second paragraph of the decision further stipulates that: "Payment of the above-mentioned amount is conditional on proof of the divorce or forced departure, substantiated by the official authorities concerned, and the contracting of a new marriage to an Iraqi woman".

This arbitrary decision obviously encourages Iraqi husbands to divorce their Iranian wives and send them out of Iraq in return for a generous financial reward because their wives are of Iranian origin. Consequently, this decision is contrary to article 11 of the Constitution, which stipulates that families must be protected and strengthened.

All the above-mentioned decisions constitute interference in the private lives of citizens and, in the final analysis, are designed to achieve objectives relating to State policy rather than to preserve the cohesion of families and ensure their happiness in the best interests of society.

## Section II

### Republican Institutions

Articles 37-64 in chapter IV of the Constitution deal with "Iraqi Republican Institutions". A special section is devoted to each of the following five institutions: The Revolution Command Council, the National Assembly, the President of the Republic, the Council of Ministers and the Judiciary.

#### A. The Revolution Command Council

Article 37(a) of the Constitution defines the Revolution Command Council as "the supreme body in the State which, on 17 July 1968, assumed responsibility for the fulfilment of the general popular will by wresting power from the reactionary, autocratic and corrupt regime and restoring it to the people".<sup>77</sup> This article clearly focuses on the "historic role" played by the members of the Revolution Command Council who carried out the military *coup d'état* against the regime of Abdul Rahman Aref on 17 July 1968, bearing in mind the fact that, when the Constitution of 1970 was promulgated, two of those who participated in that *coup d'état* and formed part of the Revolution Command Council had been dismissed from membership of the Council. One after the other, the remaining members of the Council abandoned their positions of authority, or, as in the case of Hardan al-Tikriti, were forced to resign, the last being President Ahmad Hassan al-Bakr in 1979. In order to justify the authority that they exercised, their successors on the Council, who had not actually taken part in the 17 July *coup d'état*, insisted that the Revolution Command Council was a permanent standing institution, regardless of the identity of its members, and that the successive Councils were a continuation of the first Council which "led the popular

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<sup>77</sup> Article 41 of the Constitution of 1968 stipulated that "the Revolution Command Council is the revolutionary body which led the popular masses and the armed forces on the morning of 17 July 1968 and the members of which shall be designated by a legislative enactment".

masses and the armed forces on the morning of 17 July".<sup>78</sup>

On the basis of the above dictum, which was incorporated in the Constitution of 1968 and the present Constitution, the Revolution Command Council assumed absolute power and began to exercise it alleging that it was "the true representative of the will of the Iraqi people".<sup>79</sup> We will first consider the composition of this Council and then its powers.

## 1. Composition of the Revolution Command Council

The original text of article 38(c) stipulated that the members of the Council should be chosen from among the members of the regional command of the Arab Baath Socialist Party and the Council should not comprise more than 12 members. However, in accordance with the constitutional amendment of 4 September 1977, the above-mentioned paragraph(c) was deleted and two new paragraphs (b) and (c) were added to article 37.<sup>80</sup> Paragraph (b) stipulated that the members of the regional command of the Arab Baath Socialist Party would be regarded as members of the Revolution Command Council. Paragraph (c) increased the membership of the Council to 22.<sup>81</sup> However, in its Decision No. 836 of 12 July 1982,<sup>82</sup> the Council abrogated paragraphs (b) and (c) of article

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78 Communiqué No. 23, Al-Waqa'i al-Iraqiya No. 1602 of 7 August 1968, stated that the Revolution Command Council, which planned and led the revolution of 17 July, consisted of: Ahmad Hassan al-Bakr (President of the Republic), Abdul Razzaq Al-Nayef (Prime Minister), Ibrahim Abdul Rahman al-Daoud (Minister of Defence), Salih Mahdi Ammash (Minister of the Interior), Hardan al-Tikriti (Army Chief of Staff), Hammad Shihab (Commander of the Baghdad garrison) and Saadoun Gheidan (Commander of the Republican Guard). On 30 July 1968, Abdul Razzaq al-Nayef and Ibrahim Daoud were dismissed from membership of the Revolution Command Council (see Communiqué No. 27, Al-Waqa'i al-Iraqiya No. 1603 of 10 August 1968).

79 See Iraq's replies to the questions of the Special Rapporteur of the Commission on Human Rights concerning Iraq in document A/46/647 of 13 November 1991, p. 30 (French version).

80 Revolution Command Council decision No. 987 of 4 September 1977, Al-Waqa'i al-Iraqiya No. 1506 of 26 September 1977.

81 The names of the members of the Revolution Command Council were listed in Revolution Command Council Decision No. 988, Al-Waqa'i al-Iraqiya No. 1506.

37 and replaced them with a new paragraph (b), which read as follows: "The Revolution Command Council shall consist of the following members ..." (the list contained the names of nine persons headed by Mr. Saddam Hussein (Chairman) and Izzat Ibrahim-Khalil (Vice-Chairman)).

Paragraph (b) designated the Chairman and the members of the Revolution Command Council by name, as though they derived their authority from the Constitution in their personal capacity rather than by virtue of their position as members of the Revolution Command Council. This procedure had two consequences. First, it vested the members with a halo of respectability and created the impression that, in accordance with the provisions of the Constitution, they were designated to steer the revolution and fulfil the popular will, as indicated in paragraph (a) of that article. The second consequence was that, from the constitutional standpoint, the fact that the names of the members of the Revolution Command Council were listed meant that any change in the composition of the Council, either through the death of one of its members or through his resignation or removal from office by the Council itself, as happened in the case of Na'im Haddad,<sup>83</sup> required an amendment to the Constitution.<sup>84</sup> It should also be noted that the designation, by name, of the Chairman of the Revolution Command Council, who is also President of the Republic (article 38(a)), means that the Head of State is designated in the Constitution and is entitled to retain his post until the Constitution is amended. The purpose of this procedure is possibly to consolidate the mandate of the President of the Republic, since the Constitution does not explicitly specify his term in office, as will be discussed under the heading "The President of the Republic."

The above-mentioned Revolution Command Council Decision No. 836, which amended article 37 of the Constitution, did not specify the manner in which new members of the Revolution Command Council should be appointed. However, by analogy with the provisions of article

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82 Al-Waqa'i al-Iraqiya No. 2892 of 12 July 1982.

83 Na'im Haddad was dismissed from membership of the Revolution Command Council by Decision No. 582 of 16 July 1986, Al-Waqa'i al-Iraqiya No. 3109 of 4 August 1986. It is noteworthy that the Council based this decision on the provisions of article 38(d) and article 42(a) of the Constitution and made no reference to article 66(b), concerning amendment of the Constitution.

84 Although, as will be seen below, such amendments are not difficult to make.

38(d) which empowers the Revolution Command Council to dismiss any of its members by a majority decision of two thirds of its membership, it can be deduced that the Revolution Command Council can also appoint its members by a similar majority decision among its members since a two-thirds majority decision by the Council is sufficient to amend the Constitution (article 66(b)).

With regard to the eligibility requirements for membership of the Revolution Command Council, article 65(a) stipulates that "every member of the Revolution Command Council, every Vice-President of the Republic and every Minister must be Iraqi by birth and born to parents who were also Iraqi by birth". This means that any person who acquired Iraqi nationality or who was born to parents one or both of whom acquired Iraqi nationality is not eligible to become a member of the Revolution Command Council. It is noteworthy that this article does not stipulate a specific age requirement, nor does it stipulate that the members of the Council must belong to a particular religion or ethnic group. In other words, a member of the Council may be Arab, Kurdish, Muslim or Christian as long as he was born to parents who were Iraqi by birth. This is in keeping with the nature of Iraqi society, which consists of different racial, religious and confessional groups.

Although the Constitution refers only to nationality and does not explicitly impose other eligibility requirements, in actual practice membership of the Revolution Command Council is restricted to leading members of the Baath Party who are closely associated with the Chairman of the Council. As already mentioned, article 37(b) of the Constitution (before its amendment in 1982) stated that leading members of the Baath Party were ex officio members of the Revolution Command Council. This means that membership of the Council was linked to, and conditional on, membership of the regional command of the Baath Party. After the amendment to article 37(b), the question of the appointment of members of the Revolution Command Council became unclear in view of the lack of an explicit constitutional provision in this regard. At all events, the members of the Council are chosen independently of the people and without participation by any other State institution (the National Assembly or the Council of Ministers, for example). The Constitution stipulates that, during their term in office, the members of the Revolution Command Council must not engage in any liberal profession or commercial activity, nor must they purchase State property or sell or barter to the State any of their own property.

It is important to note, however, that any member of the Revolution Command Council is entitled to nominate himself for membership of the National Assembly with the approval of the Chairman of the Revolution

Command Council and, if he is elected, he has the right to combine membership of the Council and the Assembly.<sup>85</sup> He also has the right to combine membership of the National Assembly with administrative portfolio.<sup>86</sup> This combination of membership of the Revolution Command Council with membership of the National Assembly or a ministerial portfolio increases the influence of the incumbent and also enables the Revolution Command Council to tighten its grip on the reins of power. The Iraqi regime does not apply the principle of the separation of powers and maintains that the sole authority in the State should be exercised by the Revolution Command Council. Consequently, there is nothing to prevent a member of the Council from participating in other State institutions.

It should also be noted that the Constitution does not specify the duration of the mandate of the Revolution Command Council, nor does it specify the term in office of its members. This implies that the Council is a standing institution and that its members are appointed for an indefinite period and remain in office until they die, resign or are dismissed by decision of the Council, as already indicated. This also applies to the President of the Council, who is at the same time President of the Republic, as is described later in this chapter.<sup>87</sup>

From the above, it is evident that the people are in no way involved in the choice of members of the Revolution Command Council and cannot call them to account. Since 1968, successive members of the Council have been appointed without any attempt to seek the opinion of the people, who have no say in the choice of members of the "State's supreme body" although, under article 2 of the Constitution, the people are the "source and legitimation of authority".

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85 Article 4 of the National Assembly Act No. 55 of 1980.

86 For example, Na'im Haddad (a former member of the RCC) was elected speaker of the National Assembly in 1980 and Tariq Aziz (another member of the RCC) is currently Deputy Prime Minister.

87 Before taking up his duties, every member of the Revolution Command Council must take the following oath before the Council: "I swear by Almighty God, by my honour and by my beliefs, to uphold the Republican system, to respect the Constitution and the law, to protect the interests of the people, to safeguard the independence and the territorial integrity and unity of the country, and to diligently endeavour to achieve the aspirations of the Arab nation in regard to unity, freedom and socialism" (article 39). Each member is accountable to the Council for any violation of the Constitution and for any breach of his constitutional oath (article 45).



## 2. Powers of the Revolution Command Council

The Constitution vests the Revolution Command Council with various extensive powers relating to all aspects of governmental activity and firmly establishes the Council's control over the country's political life. The Constitution designates the Revolution Command Council as the principal legislative authority and vests it with absolute power to promulgate laws and decisions which have the effect of law in all fields. The Council also participates in the legislative work of the National Assembly (the Parliament), over which it exercises a form of control.

In addition to this legislative power, the Revolution Command Council, in its capacity as the "State's supreme body", exercises a number of highly important powers at the domestic level and also in the field of international relations. The Council manages the country's affairs independently of all the other State institutions. It also elects the President of the Republic, approves the State's general budget, ratifies international treaties and conventions, takes the final decision on matters concerning defence and public security and has the exclusive right to amend the Constitution. As already indicated, the Iraqi regime does not believe in the principle of the separation of powers but maintains that society has a single political authority that is exercised by a single political leadership which, according to the Iraqi Constitution, is the Revolution Command Council.

### a. Matters Relating to the Composition and Work of the Council

As already mentioned, all matters relating to the choice of members of the Revolution Command Council, their dismissal from membership of the Council or the acceptance of their resignation fall within the sole jurisdiction of the Council, which takes its decisions in this regard by a majority of two thirds of its members. The Council is a self-constituting, self-sustaining and fully independent institution in the affairs of which no other State institution has any right to interfere. The people have no right to choose the members of the Council or to express their opinion on them, nor do the people or the judiciary have any right to supervise their actions.

The Council establishes its own rules of procedure and prerogatives, appoints its own staff, determines its own budget and fixes the salaries, allowances and other emoluments of its Chairman, its members and its staff. These matters are decided by a majority vote among its members.<sup>88</sup>

The Chairman of the Revolution Command Council, as well as its

Vice-Chairman and its members, enjoy full immunity and no proceedings can be instituted against any of them without the prior consent of the Council.<sup>89</sup> They are accountable solely to the Council for any violation of the Constitution, any breach of their constitutional oath or any act or conduct that the Council deems dishonourable in their position of responsibility.<sup>90</sup> In such a case, a majority of two thirds of the members of the Council may decide to indict and prosecute the delinquent member.<sup>91</sup> It should be noted that the Constitution does not specify the prosecution procedures that must be followed in such a case, leaving the Council with full discretion to establish the rules for the prosecution of its members, such as the composition of the court and the procedures to be followed therein. These matters are determined by decision of a majority of the members of the Council.<sup>92</sup> In this connection, it should be noted that the Council plays the role of prosecutor and judge at the same time, since it is the Council which indicts its members (including the Vice-Presidents of the Republic, who are appointed by the President, and the Ministers) and then prosecutes them in accordance with procedures which it alone establishes. The Constitution also permits the Council to prosecute any of its members for "any act or conduct which the Council regards as dishonourable in their position of responsibility", without explaining what is meant by this expression, leaving the definition of the offence to the discretion of the Council.

b. Election of the Chairman of the Revolution Command Council/President of the Republic

The Council elects from among its members a chairman known as the "Chairman of the Revolution Command Council", who is *ex officio* President of the Republic. It also elects a vice-chairman who replaces the chairman during his absence or when it is difficult or impossible for him to exercise his constitutional powers. They are elected by a majority of two thirds of the members of the Council.<sup>93</sup>

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88 Article 43(e) of the Iraqi Constitution.

89 *Idem*, article 40.

90 *Idem*, article 45.

91 *Idem*, article 38.

92 Article 43(f) of the Iraqi Constitution.

### c. Amendment of the Constitution

Article 66(b) of the Constitution stipulates that the Constitution can be amended only by a majority decision taken by two thirds of the members of the Revolution Command Council. It is noteworthy that, according to this article, amendments to the Constitution do not require complicated procedures; it is sufficient for two thirds of the members of the Revolution Command Council to agree to a draft amendment for it to enter into force. The stipulation concerning a two-thirds majority does not pose a problem in view of the similarity of the views held by the members of the Council and their subservience to its chairman. The majority required for a constitutional amendment can be described as a "numerical" rather than a "pluralistic" majority in so far as the members of the Council belong to a single party and do not represent different political parties or tendencies. In this respect, therefore, the Iraqi Constitution is flexible since it can be amended easily without any special procedures. In fact, constitutional amendments are made at closed secret meetings of the Revolution Command Council<sup>94</sup> in the same manner as that in which ordinary legislation is promulgated. Since its proclamation, the Constitution has been amended several times (in 1973, 1974, 1979, 1980, 1982 and 1987), but these amendments, the most important of which was made in 1973,<sup>95</sup> did not affect the basic nature of the system. However, this flexibility has its shortcomings in so far as it permits the Revolution Command Council to amend the Constitution, whenever and however it wishes, on its own exclusive initiative without being obliged to follow special procedures or seek the approval or advice of any other body. In any case, the Council can promulgate laws or decisions having the force of law, even if they are contrary to the Constitution, whenever its interests so require, since there is no control over the constitutionality of legislation and the decisions of the Council are not subject to any review procedure.

### d. Defence and Public Security Affairs

The Revolution Command Council has the sole authority to supervise defence and public security affairs, promulgate legislation and

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93 *Idem*, article 38.

94 *Idem*, article 41(b).

95 This amendment added articles 46, 61 and 62 and modified articles 53, 56(a) and 57, which were renumbered to become articles 54, 57 and 58.

take decisions on all aspects of the organization and powers of the defence and security establishments.<sup>96</sup> All matters relating to defence and public security fall within the sole competence of the Council and when the National Assembly discusses the draft general budget it has no right to interfere in any way with the budget of the Ministry of Defence or the public security establishment, nor do the members of the National Assembly have the right to propose any bill of law concerning military matters or public security affairs.<sup>97</sup> The purpose of making the Revolution Command Council the sole authority competent to supervise defence and public security affairs is obviously to enable the Council to control the armed and public security forces so that it can retain its grip on power. It is noteworthy that the wording of article 43(a) is general and all-embracing and implies that the Revolution Command Council has comprehensive and unlimited authority in regard to defence and public security matters. Only the Council has the right to take decisions on such matters.

e. State Financial Affairs

The Revolution Command Council is empowered to approve, by a majority vote among its members, the State's draft budget, as well as the independent and development budgets annexed thereto, and also to approve the final accounts.<sup>98</sup> The Council exercises this power in its capacity as the State's supreme body. It will be seen that, although the National Council is empowered to endorse the general budget (before it is approved by the Revolution Command Council), it has no right to discuss the defence and public security budget or "any other matter which the President of the Republic may decide to exclude from its debates".

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96 Article 43(a) of the Iraqi Constitution.

97 See articles 105 and 109 of the Rules of Procedure of the National Assembly, which were promulgated on 6 November 1980.

98 Article 43(c) of the Iraqi Constitution.

f. International Relations

The Revolution Command Council ratifies international treaties and conventions<sup>99</sup> and the President of the Republic is empowered to negotiate, conclude and ratify such international treaties and conventions.<sup>100</sup> The Revolution Command Council therefore has the power to declare war and partial or full general mobilization in the country and also to approve truces and conclude peace agreements.<sup>101</sup>

The Revolution Command Council ratifies international treaties and conventions either immediately after their conclusion and without submitting them to the National Assembly or after referring them to the National Assembly for endorsement.<sup>102</sup> In the latter case, the National Assembly may either approve the bill of law ratifying the treaty or convention or reject it *in toto*. It cannot vote on individual sections or articles of a bill, nor can it introduce any amendments thereto.<sup>103</sup>

The Constitution does not stipulate that draft international treaties and conventions must be submitted to the National Assembly by the Revolution Command Council. Accordingly, the Revolution Command Council does not regard itself as being under an obligation to refer all draft treaties to the National Assembly. In fact, it has full discretion to decide, in the light of the content of a particular treaty or convention and the circumstances surrounding its conclusion, whether the treaty or

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99 *Idem*, article 43(d).

100 *Idem*, article 58(h).

101 *Idem*, article 43(b).

102 In accordance with article 47 of the National Assembly Act No. 55 of 1980.

103 Article 105 of the Rules of Procedure of the National Assembly.

convention should be submitted to the National Assembly, since there are clearly-defined criteria in this regard.<sup>104</sup>

g. Legislative Powers

Article 42 of the Constitution stipulates that the powers of the Revolution Command Council include "the promulgation of legislation and decisions having the force of law", in paragraph (a). The Council adopts these legislative enactments and decisions by a majority vote among its members.<sup>105</sup> In accordance with the provisions of article 42(a), the Council exercises its legislative function either by promulgating laws or by taking decisions which have the force of law.

i. Legislation<sup>106</sup>

The following paragraphs will consider the legislative enactments promulgated by the Revolution Command Council on its own initiative, in accordance with the provisions of article 42(a). Its contributory role in the legislative activities of the National Assembly, in accordance with the provisions of articles 52 and 53 of the Constitution, will be dealt with later on in this report.

The text of the above-mentioned article 42(a) is general and all-embracing, i.e. it empowers the Council to promulgate legislation and decisions having the force of law in all matters. Moreover, as already seen, article 43(a) vests the Council with the sole authority to promulgate legislation concerning defence and public security matters. This means

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104 For example, the National Assembly has endorsed bills of law concerning the following conventions: an agreement concerning the issue of certificates of origin and handicraft products between the Government of the Republic of Iraq and the Austrian Government (Act No. 53 of 1983), the Riyadh Arab agreement on judicial cooperation (Act No. 110 of 1983), the agreement on international rail transport (Act No. 39 of 1984), ILO Convention No. 107 concerning protection of indigenous, tribal and semitribal populations and their integration in the national society of independent States (Act No. 58 of 1986), ILO Convention No. 108 concerning national documents to establish the identity of seafarers (Act No. 60 of 1986) and the international communications agreement (Act No. 59 of 1986).

105 Article 41(c) of the Iraqi Constitution.

106 In accordance with the provisions of article 42(a).

that, under the Constitution, the Revolution Command Council possesses general and basic legislative authority in the State. The National Assembly exercises legislative authority only on the matters specified in its Statutes<sup>107</sup> and under the supervision and with the participation of the Revolution Command Council.

In so far as the Constitution does not oblige the Revolution Command Council to seek the advice or approval of the National Assembly before promulgating legislation and does not specify the matters falling within the legislative jurisdiction of the National Assembly, the Revolution Command Council enjoys absolute legislative authority. If it wishes to promulgate a legislative enactment directly, it invokes article 42(a) or, if it wishes to involve the National Assembly in the promulgation of an enactment, it refers a bill of law to the Assembly in accordance with article 52 of the Constitution. In other words, the referral of a bill of law to the National Assembly is an exceptional occurrence that is left to the discretion of the Revolution Command Council, which is not bound by a mandatory constitutional provision. This highlights the two-track nature of Iraq's legislative system, since there are two institutions exercising legislative authority simultaneously: one (not elected by the people) exercises absolute legislative authority; while the other (elected by the people subject to certain restrictive conditions),<sup>108</sup> has limited legislative authority which it shares with the former which, in this context, plays a role similar to that of a second house in systems that have two houses of parliament (a House of Representatives and a Senate).

This legislative function is one of the main prerogatives of the Revolution Command Council, since it enables the Council to regulate all political, social and economic affairs in accordance with the general policy that it formulates and which safeguards the interests and extends the influence of the existing regime. In fact, since it came to power in 1968, the Baathist regime has promulgated a large number of legislative enactments affecting all aspects of activity in the country. The ruler justified the need for a change in the previous legislation and for the Revolution Command Council to act as a legislative body on the ground that "the survival of legislation promulgated by the exploiting classes was in flagrant contradiction not only with the requirements for the revolutionary changes to be introduced by the Party but also with the

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107 The National Assembly Act No. 55 of 1980.

108 See below subsection B of this Section for a more complete discussion.

Party's national, socialist and democratic concepts for the establishment of a new society". Accordingly, "since its assumption of power, the Party encountered the problem of existing laws and legislation ... and the revolution found itself unable to lead the country while those laws and legislation remained in force. Consequently, the Revolution Command Council acted in the capacity of a supreme legislative body and took decisions having the force and effect of law".<sup>109</sup>

The Revolution Command Council exercised sole legislative authority until the first National Assembly elections in 1980. During that period it promulgated a large number of important enactments in accordance with the provisions of article 42(a) of the Constitution. These are illustrated, in accordance with the sequence in which they were promulgated, by the following: the Code of Criminal Procedure,<sup>110</sup> the Workers' Retirement and Social Security Act,<sup>111</sup> the Literary Works and Cinematographic Films Censorship Act,<sup>112</sup> the Kurdistan Regional Autonomy Act,<sup>113</sup> the Legal System Reform Act<sup>114</sup> (the working paper on the reform of the legal system included the Administrative Courts Act,<sup>115</sup> the State Advisory Council Act and the Public Prosecutions Act),<sup>116</sup> the National Assembly Act,<sup>117</sup> and the Act regulating the General Federation of Authors and Writers in Iraq,<sup>118</sup> etc.

The important legislative enactments promulgated by the Revolution Command Council after the establishment of the National Assembly included: the Expropriation Act,<sup>119</sup> the Ministry of Culture

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109 See the political report of the eighth regional (Iraqi) congress of the Arab Baath Socialist Party (1974) and the Legal System Reform Act No. 35 of 1977, Al-Waqa'i al-Iraqiya No. 3576 of 14 March 1977.

110 Act No. 23 of 1971.

111 Act No. 39 of 1971.

112 Act No. 64 of 1973.

113 Act No. 33 of 1974.

114 Act No. 35 of 1977.

115 Act No. 140 of 1977.

116 Act No. 159 of 1979.

117 Act No. 55 of 1980.

118 Act No. 70 of 1980.

119 Act No. 21 of 1981.



and Information Act,<sup>120</sup> the Medical Association Act,<sup>121</sup> the Labour Act,<sup>122</sup> and the Workers' Association (Trade Union) Act,<sup>123</sup> etc.<sup>124</sup> Some of these laws will be discussed below.

The Revolution Command Council adopts legislative enactments, by a majority vote among its members, at closed meetings. Since the Council's meetings and deliberations are confidential,<sup>125</sup> there is no possibility of checking the minutes of its meetings with a view to gaining an insight into the Council's deliberations preceding the promulgation of those enactments in order to use them as a guideline for the interpretation of any legislative provisions that might be ambiguous. However, the Council's enactments frequently refer to the reasons necessitating their promulgation and, in the case of important enactments, the Council sometimes gives an extensive account of the reasons for their promulgation and of the principles that they contain.<sup>126</sup> Legislation is published in *Al-Waqa'i al-Iraqiya* (the Official Gazette) and every enactment is allocated a serial number, to which is appended the date of its promulgation, and a title derived from its provisions.<sup>127</sup> The Chairman of the Revolution Command Council arranges their publication in the Official Gazette. In this connection it should be noted that the present Constitution does not set a time-limit in which the Chairman of the

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120 Act No. 94 of 1981.

121 Act No. 81 of 1984.

122 Act No. 71 of 1987.

123 Act No. 52 of 1987.

124 It should be noted that, under the Constitution of 1968, the Revolution Command Council adopted the Penal Code (Act No. 111 of 1969) which, although amended on several occasions, still remains in force. Concerning the present regime's concept of justice and the legislation that it has promulgated or intends to promulgate, see "*Masirat alAdala Fi Dhill alThawra* (the Course of Justice under the Revolution), published by the Iraqi Ministry of Justice, 1984.

125 Article 41(b) of the Iraqi Constitution.

126 See, for example, the substantiating grounds for the promulgation of the Workers' Retirement and Social Security Act No. 39 of 1971, *AlWaqai allraqiya* No. 1976 of 22 March 1971, and the explanatory notes annexed to the Code of Criminal Procedure (Act No.23 of 1971), *AlWaqai allraqiya* No. 2004 of 31 May 1971.

127 Article 4 of Act No. 78 of 1977, concerning publication in the Official Gazette.

Council must sign the enactment promulgated by the Council,<sup>128</sup> in contrast to the Constitution of 1968 which required the Chairman either to ratify decisions adopted by the Council, or to make his opinion known to the Council, within seven days.<sup>129</sup>

ii. General Decisions Having the Force of Law

The Revolution Command Council exercises its legislative authority and promulgates enactments by taking decisions of a general regulatory nature, which have the force of law, in accordance with the provisions of article 42(a) of the Constitution. These decisions, which can be described as legislative decrees, differ from ordinary legislation neither in regard to their form (since they are promulgated by the same Council by the same majority vote) nor in regard to their content (since, like legislation, they contain general abstract regulations applicable to an indefinite number of individuals) nor their effect (since they have the force of law). However, they differ from legislation in so far as they normally confine themselves to subsidiary or contingent matters requiring special or rapid solutions.

The situations in which the Council resorts to the promulgation of decisions having the force of law are so numerous and varied that it is difficult to define or categorize the matters with which they deal. In general, however, a review of the Council's decisions indicates that they:

- criminalize acts for which no provision is made in the Penal Code,<sup>130</sup>

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128 See article 44 of the Constitution.

129 Article 52 of the Iraqi Constitution.

130 See, for example, Decision No. 461 of 31 March 1980, Al-Waqa'i al-Iraqiya No. 2769 of 21 April 1980, which made the provisions of article 156 of the Penal Code (concerning the death penalty) applicable to members of the Da'wa Party, or Decision No. 458 of 21 April 1984, Al-Waqa'i al-Iraqiya No. 2992 of 7 May 1984, making the said article of the Penal Code applicable to anyone found to be a member of a party or association seeking to change the regime by armed force.

- increase the penalty for acts which are already legally designated as criminal,<sup>131</sup>
- add new provisions to, or amend the existing provisions of, a particular enactment,<sup>132</sup> or
- limit the jurisdiction of the courts in ordinary criminal matters.<sup>133</sup>

The Council also frequently promulgates general amnesties by decisions having the force of law.<sup>134</sup> It is also noteworthy that the Council has promulgated numerous decisions having the force of law in order to deal with situations arising from or relating to the war with Iran, such as the decisions:

- prescribing the death penalty for persons who commit the crime of deserting to the enemy or deserting from military service,
- forbidding the police and the courts from hearing complaints against the squads responsible for tracking down deserters and evaders of military service,

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131 See, for example, Decision No. 840 of 4 November 1986 amending article 225 of the Penal Code by increasing the penalty incurred by anyone who insults the President of the Republic, the Revolution Command Council, the Baath Party, the National Assembly or the Government. However, the amendment to article 230 of the same Code was made under the terms of Decision No. 35 of 1986, which indicates that the Revolution Command Council regards decisions having the force of law as exactly equivalent to legislation.

132 For example, the amendment to the provisions of the Nationality Act (Decision No. 180 of 3 February 1980), or the National Assembly Act (Decision No. 60 of 4 February 1989), the imposition of duty on the production of "locally manufactured cigarettes" (Decision No. 261 of 29 March 1986), the establishment of a special court (Decision No. 967, *op. cit.*) or the extension of the jurisdiction of the Revolutionary Court (Decision No. 1016 of 1 August 1978).

133 For example, Decision No. 1009 of 25 June 1980 under which the courts were forbidden to hear cases involving injury to persons run over by vehicles outside pedestrian crossings, designated by the Traffic Department, in public thoroughfares.

134 See, for example, Decision No. 958 of 16 July 1987, Decision No. 103 of 10 April 1991 or Decision No. 241 of 21 July 1991.

- prescribing penalties for anyone found to be dealing in contraband Iraqi or foreign currency or gold with the “Iranian enemy”,
- prescribing penalties for shopkeepers who fail to abide by the prices fixed by the State or who illegally hoard or conceal goods from the public,
- excluding persons of Iranian origin from the regulations concerning the acquisition of Iraqi nationality,
- encouraging Iraqi husbands to divorce their Iranian wives, or
- other decisions to which reference has already been made or will be made below.

In short, most subsidiary legislation is promulgated in the form of decisions having the force of law which, from the standpoint of their binding effect, do not differ from ordinary legislation.

### iii. Power of Enforcement

Article 42(b) empowers the Revolution Command Council to “promulgate any decisions needed for the application of the provisions of the legislation in force”. The provisions of paragraph (b) imply that the Revolution Command Council is empowered to promulgate decisions similar to the implementing regulations (decrees) which, under a parliamentary system, are promulgated by the enforcement authority to give actual effect to legislative enactments by detailing the procedures needed for their application. In such cases, the Council’s decision must confine itself to the content of the enactment to be implemented, without amending it or adding any new provisions.

However, the Revolution Command Council does not promulgate decisions under the provisions of article 42(B). It normally requests the President of the Republic, who holds the “executive authority” (article 57), to promulgate the decisions needed for the application of the provisions of an enactment through a stipulation that appears in the text of the enactment itself. Sometimes, it may request the competent

Minister to promulgate such decisions.<sup>135</sup>

Reference to Al-Waqa'i al-Iraqiya shows that the Revolution Command Council promulgates only decisions having the force of law in accordance with the provisions of article 42(a), even in cases in which the decision is of an individual administrative nature, i.e., when it does not contain general abstract regulations applicable to everyone (such as the general decisions already mentioned) but is legally applicable only to one or more specifically designated persons. There are countless examples of this type of decision, such as:

- the appointment, dismissal or transfer of the chairman or a member of the Executive Council of the Autonomous Region,
- the appointment, promotion or transfer of employees of government departments (bearing in mind the fact that, under article 58, paragraph 5, of the Constitution, the appointment and dismissal of civil servants falls within the jurisdiction of the President of the Republic),
- the granting of Iraqi nationality to the mother of a martyr,
- the prohibition of a surgeon from exercising his profession for a period of two years,
- the prohibition of a lawyer from exercising his profession and from representing government departments for a specified period,
- recovery of sums of money from contractors who executed work assignments in a manner contrary to the agreed technical specifications,
- waiving the remainder of a prison sentence imposed on a debtor by a criminal court (bearing in mind that special

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<sup>135</sup> See, for example, Decision No. 1 of 1986, promulgated by the Minister of Trade, establishing the Health Insurance Fund for employees of the Ministry of Trade (in accordance with the power vested in him under article 2, paragraph, 1, of the Health Insurance Fund for Employees of Government Departments Act) or Directive No. 1 of 1981, issued by the Minister of the Interior, concerning the enjoyment by Palestinians of the right to own landed property (in accordance with the power vested in him under Act No. 215 of 1980).

pardons fall within the jurisdiction of the President of the Republic in accordance with article 58(j) of the Constitution), etc.

These are all individual administrative decisions which are legally applicable only to the designated person or persons. Nevertheless, the Revolution Command Council promulgates them in the form of decisions having the force of law in accordance with article 42(a) of the Constitution. The Council intervenes in such administrative matters because the Council of Ministers does not enjoy the requisite discretionary authority (as will be seen below). Hence, it is the Revolution Command Council that decides on most administrative matters, regardless of whether they are of a regulatory or individual nature, and can therefore be described as the "State Administrative Council".<sup>136</sup>

#### iv. Other Powers

Under the Constitution, the Revolution Command Council enjoys wide and varied powers. However, it does not regard itself as restricted thereto since, in its capacity as the "State's supreme body", it is entitled to take any action that it deems appropriate. For example, although the Constitution does not make explicit provision for general amnesties, the Council does not hesitate to proclaim them in its capacity as the holder of a general legislative mandate.<sup>137</sup> Although the Constitution does not empower it to dissolve the National Assembly, the National Assembly Act<sup>138</sup> contains a provision that permits it to dissolve the National Assembly "in order to ensure the proper operation of the republican institutions".<sup>139</sup> Even though that article 60 can be regarded as contrary to the Constitution, this changes nothing in so far as there is no

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136 Dr. Edmond Rabat used this expression to describe the Lebanese Council of Ministers. In 1979 (i.e. prior to the war with Iran), the Revolution Command Council promulgated 1,745 decisions. The Revolution Command Council, which is convened by its chairman, its vice-chairman or one third of its members, usually meets at least once every week.

137 Article 51 of the Constitution of 1968 stipulates that "general amnesties can be proclaimed only by a legislative enactment". Article 153, paragraph 1, of the Penal Code (Act No. 111 of 1969) also stipulates that general amnesties can be proclaimed only by a legislative enactment.

138 Act No. 55 of 1980.

139 Article 60.

constitutional control. Although the Constitution guarantees the independence of the judiciary, the Council frequently intervenes in the work of the courts and impedes the course of justice (as will be seen below). In short, the Revolution Command Council is the focal point of political life and the principal institution that promulgates the main decisions around which the other State institutions hover.

## **B. The National Assembly**

Chapter IV, section 2, of the Constitution deals with the National Assembly in articles 47 to 56. Article 47 stipulates that the Assembly is composed of representatives of all the political, economic and social sectors of the people and that its composition, as well as its membership, its procedures and its powers, are to be defined in a special enactment known as the "National Assembly Act". This National Assembly Act, which was promulgated in 1980,<sup>140</sup> stipulates that the National Assembly consists of 52 members<sup>141</sup> chosen in free, direct and public elections, based on secret ballot,<sup>142</sup> by Iraqi citizens over 18 years of age.<sup>143</sup> In accordance with the provisions of the National Assembly Act, the National Assembly was elected for the first time in 1980 and subsequently in 1984 and 1989.<sup>144</sup> In this section, the structure of the National Assembly and its role in the legislative field will be discussed. We will discuss, in succession, the conditions that candidates must meet, the Assembly's procedures and the Assembly's powers.

### **1. The Conditions that must be met by Candidates Seeking Election to the Assembly**

Article 14 of the National Assembly Act specifies the following conditions that must be met by candidates:

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140 Act No. 55 of 1980.

141 Article 1, as amended, of Act No. 55 of 1980.

142 Article 2 of Act No. 55 of 1980.

143 Article 13 of Act No. 55 of 1980.

144 See Revolution Command Council Decision No. 56 of 31 January 1989 postponing the date for the holding of the National Assembly elections from 1 March 1989 to 1 April 1989, Al-Waqa'i al-Iraqiya No. 3241 of 13 February 1989.

- They must possess full legal capacity and be over 25 years of age.
- They must have completed their military service or been exempted therefrom and must not have committed the offence of desertion or evasion of military service during the period of Saddam's Qadisiya.<sup>145</sup> The Iraqi regime regards this as an extremely serious offence punishable by death.<sup>146</sup>
- They must not be married to foreigners.
- They must not have been sentenced to expropriation of property under the terms of a court order.
- They must not have been convicted of the offence of conspiring against the revolution of 17-30 July 1968 or against the regime or of attempting to overthrow the system of government or maintaining contacts with a foreign Power.
- They must not have been convicted of a dishonourable offence or sentenced to imprisonment for the crime of murder.
- They must hold a certificate of primary education or, at the very least, a certificate of eradication of illiteracy equivalent to the sixth primary grade.
- They must be Iraqi by birth, born to parents who were Iraqi by birth and not of foreign origin, or Iraqi by birth and born to a father who was Iraqi by birth and not of foreign origin and an Arab mother who was a national of an Arab country. It is noteworthy that this article places great emphasis on the candidate's origin and categorically stipulates that he must be Iraqi by birth and born to parents who were Iraqi by birth and not of foreign origin. The purpose of this emphasis is primarily to exclude any person of Iranian origin since citizenship, i.e. the person's right to enjoy the status of a citizen in Iraq is based on the "certificate of nationality", which is an official document issued by the Ministry of the Interior in the light of the civil status registers dating back to

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145 The Iraqi regime refers to the war with Iran as "Saddam's Qadisiya", which they regard as an auspicious designation in view of the fact that the Arabs, led by Saad ibn Abi Waqqas, defeated the Persians at the Battle of Qadisiya in 637 A.D. (the sixteenth year of the Hegira).

146 Revolution Command Council Decision No. 1370 of 13 December 1983.



the 1920s and which refer to two categories of persons: those of Ottoman origin and those of Iranian origin. Between 1980 and 1988, the present regime exploited this situation to deport a large number of persons who were entered in the civil status registers as being of Iranian origin even though a large proportion of them belonged to Iraqi tribes which had formerly claimed to be of Iranian origin in order to evade military service.

- They must believe in the principles and objectives of the glorious revolution of 17-30 July and must have taken part in the sacred battle against Iranian aggression by participating in, or volunteering or donating funds for, effective and notable activities or fields of production. They must also believe that Saddam's Qadisiya was a crowning glory for Iraq and the only way to safeguard Iraq's security, holy places, territorial integrity, water resources and airspace.<sup>147</sup>

This last condition detracts from the credibility of the electoral process and constitutes a violation of freedom of opinion in so far as it disqualifies candidates who do not share the ruling Party's views concerning the benefits of the war with Iran or the role of "Saddam's Qadisiya" in safeguarding the territory of Iraq. It is true that, under the terms of paragraph 15, a person wishing to stand as a candidate is merely required to make a declaration approving the content of paragraph (c) of that article. However, a non-Baathist candidate who does not agree to that condition is faced with two alternatives: either he submits to the condition imposed on him, in spite of his total lack of conviction in that regard, or he refrains from standing as a candidate, thereby leaving the field open solely to supporters of the ruling Party.

In this connection, it is also noteworthy that Act No. 60 promulgated by the Revolution Council on 12 January 1982 stipulates that: "Any member of the National Assembly shall forfeit his seat therein if his membership of the Arab Baath Socialist Party is terminated for any reason". On the basis of this provision, any Baathist member of the National Assembly who was elected by the people may be expelled therefrom at any time on the basis of a decision taken by the leadership of the Baath Party for reasons that may be totally unrelated to his

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147 Act No. 60 of 4 February 1989 omitted the expression "Believing in the leading role played by the Arab Baath Socialist Party", which had been included in this paragraph in Act No. 57 of 7 June 1984.

activities as a member of the Assembly and without regard for the opinion of the electors. It should be borne in mind that this stipulation is inconsistent with the provisions of article 3 of the National Assembly Act, which states that members of the National Assembly represent the entire population of the Republic of Iraq (and not a specific Party).

It is noteworthy that membership of the National Assembly may be combined with membership of the Revolution Command Council and a ministerial portfolio and any member of the Assembly may also be an employee of a government department or the socialist sector. Combination of membership of the National Assembly with another public office obviously has considerable drawbacks in so far as the employee, being under the influence of the executive authority, would be unable to discharge his duties in the Assembly in an impartial and free manner. Any member of the Assembly can also hold a senior post in a trade union or professional federation, although he cannot be the chairman or a member of the board of directors of a company in the private sector, nor can he enter into contractual relations with the State or public bodies corporate in the capacity of an agent or a contractor.<sup>148</sup>

## **2. Submission of Candidature**

Within 20 days from the date of promulgation of the Presidential Decree setting the date for the elections, candidates must submit their applications, together with the documents specified in article 14, to the head of the administrative unit, who must inform the applicant as to whether his candidature has been accepted within 24 hours from the time of its submission. If the application is unacceptable due to the fact that the requisite documents were not attached thereto, the head of the unit may reject it on the basis of a substantiated decision, which must be notified to the prospective candidate within 24 hours of the time at which it was taken. An appeal against this decision may be lodged, within three days from the date of its notification, with the commission supervising the elections in the electoral district and the prospective candidate may lodge a further appeal, within three days, against that commission's decision with the higher commission supervising the elections throughout the country, whose decision in this regard is final.<sup>149</sup>

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148 Articles 4-6 of the National Assembly Act.

149 Articles 15 and 16 of Act No. 55 of 1980.

All candidatures are transmitted to the higher commission, through the Ministry of Local Government, together with the Ministry's comments and recommendations concerning the candidates.<sup>150</sup> In other words, in addition to forwarding the applications received from the local Governor, the Ministry expresses its opinion on each candidate in the light of the information that it has gathered on him, particularly in regard to his political affiliation.

The higher commission prepares a list containing the names of candidates for membership of the National Assembly from each district. It can remove any candidate from the list if it is convinced that he does not believe in the principles and objectives of the revolution of 17-30 July or in the role played by Saddam's Qadisiya in safeguarding Iraq, if it is convinced that his contribution to Saddam's Battle of Qadisiya was not commensurate with his abilities and potential or if it finds that he does not meet the conditions required of candidates or that he failed to submit all the requisite documents. Any one whose name is removed from the list of candidates can lodge a protest, within three days, with the Revolution Command Council, whose decision in this regard is final.<sup>151</sup> No one whose candidature for membership of the National Assembly has been rejected can resubmit his candidature within five years from the date on which his previous application was rejected.<sup>152</sup>

This review clearly shows that the names of the candidates are vetted by the district and national electoral commissions before they are approved so that, ultimately, only members of the Baath Party and supporters of its policy can stand as candidates following the exclusion of all other untrustworthy candidates. Consequently, even if we acknowledge that the members of the National Assembly are chosen through "free elections" as required by article 2 of the National Assembly Act, it is certain, on the other hand, that persons wishing to stand as candidates for membership of the Assembly are not fully free to do so, since they must first be approved by the higher commission supervising the elections. The simple fact that this higher commission is constituted by order of the Revolution Command Council, presided over by a member of the Revolution Command Council and includes among its members the Minister for Local Government, the Minister of Justice, a member of the Arab Baath Socialist Party and a member of each party

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150 Article 17 of Act No. 55.

151 Article 18 of Act No. 55.

152 Revolution Command Council Decision No. 542 of 2 September 1989.

participating in the elections (bearing in mind that, in practice, all parties are prohibited), shows that this commission, being linked to the Revolution Command Council, cannot be impartial.<sup>153</sup>

### 3. Procedures of the National Assembly

The National Assembly is elected for four one-year legislative terms beginning on the date of its first sitting and ending with its last sitting in the fourth legislative term. A legislative term consists of two sessions, the first of which begins on the first Saturday in April and ends on the last day of May and the second of which begins on the first Saturday in November and ends on the last day of December, but only after the State budget has been approved. The National Assembly may decide, by a majority vote among its members, to extend the session for a period of one month in order to conclude specific business. The President of the Republic may also extend a session of the Assembly and may convene the Assembly for a special sitting whenever circumstances so require.

The Assembly meets in the capital, Baghdad, but may also meet elsewhere in the Republic of Iraq, if so required, by decision of the President of the Republic. The Assembly is convened by Presidential Decree within 15 days from the date of announcement of the election results and its members are sworn in<sup>154</sup> at its first sitting, which is presided over by the member who is most senior in age.

It is obviously difficult for anyone who is not a member of the Baath Party, or at least sympathetic to its ideology and policy, to take the oath and undertake to uphold the principles of the revolution of 17-30 July, which inaugurated Baathist rule and imposed the Party's beliefs.

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153 Concerning the composition of the higher and district commissions and committees supervising the elections, see articles 25-27 of the National Assembly Act.

155 The wording of the oath of office, as specified in article 54 of the National Assembly Act, is as follows: "I swear by Almighty God and by my honour and beliefs to safeguard the Republic's system of government, to abide by its Constitution and laws, to serve the interests of the people, to protect the independence, security and territorial integrity of the Republic of Iraq, to uphold the national and social principles of the revolution of 17-30 July and to endeavour, in a spirit of total devotion and sincerity, to achieve the people's aims of unity, freedom and socialism".

This oath implies that there is no place in the National Assembly for anyone who does not believe in the principles of the Baath Party or who does not support the current regime. It also implies a ban on parties opposed to the ruling Party.

After the oath-swearing ceremony, the Assembly elects, by secret ballot at its first sitting, its Speaker, Deputy Speaker and Secretary, who constitute the presidium of the Assembly. Needless to say, only prominent members of the Baath Party are elected to these posts.<sup>155</sup>

The Assembly elects, from among its members, seven standing committees, each of which studies matters falling within its jurisdiction in accordance with the Rules of Procedure of the Assembly. Any member of the Assembly may stand as a candidate for membership of these committees although, in the case of the Committee on Legal and Administrative Affairs, candidates must hold a degree in law. No member of the Assembly may be a member of more than one standing committee. The Assembly may also establish temporary and fact-finding committees in accordance with the requirements of the matters brought before it.

The legal quorum for sittings of the Assembly is achieved if a majority of its members are present. Although the sittings of the Assembly are public, they may be held *in camera* at the request of the President of the Republic, the Speaker of the Assembly or 20 of its members with the approval of a majority of the members present.

Voting takes place in public, by a show of hands, but may be secret in the circumstances provided for in the Rules of Procedure, such as a proposal to dismiss a Minister from office or to disqualify a member of the Assembly from holding his seat, or a recommendation concerning appeals against the validity of the election of members of the Assembly. In the event of a tied vote, the Speaker has a casting vote but must be the last to vote.

The National Assembly is competent to hear appeals against the validity of the election of its members and may expel any member on the basis of a decision taken by a two-thirds majority of its members. This procedure to determine the validity of membership has been adopted in

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155 The first Speaker of the National Assembly was Na'im Haddad, a member of the Revolution Command Council who was President of the Special Court in 1979 and was dismissed from his posts in 1986. The current Speaker is Saadi Mahdi Salih.

many parliaments throughout the world and is designed to enable the Assembly to take an independent decision concerning its members' eligibility, without interference from any public authority. Appeals concerning validity of membership are accepted only from candidates for election in the electoral district in which the winning candidate was the member whose election is contested.

According to article 10 of the National Assembly Act, membership of the Assembly expires on the expiration of the Assembly's term in office, when the Assembly is dissolved by the Revolution Command Council or when the member concerned resigns or is disqualified from membership by decision of a majority of the members of the Assembly. As already indicated, any member of the National Assembly may be expelled therefrom if, having been a member of the Baath Party, he is dismissed from the Party for any reason.<sup>156</sup> Membership is also terminated<sup>157</sup> if the member concerned takes up a post or a job outside Iraq for a period of not less than six months, if he fails to attend any session without a valid excuse or if he fails to attend meetings of the Council for two legislative terms (two years).

In order to enable the members of the Assembly to perform their duties in a free and independent manner without any pressure, they enjoy parliamentary immunity in accordance with the provisions of article 50 of the Constitution. In its broad sense, this immunity means that the members of the Assembly are not liable for their statements and opinions and cannot be arrested or subjected to criminal prosecution unless the Assembly so permits.

Article 50, paragraph (a), of the Constitution stipulates that the members of the Assembly are not accountable for the views that they express or the proposals that they make during their performance of their official duties. In other words, the members of the Assembly are not liable for the views and political ideas that they express in or outside the Assembly and its committees. However, the selective manner in which candidates for membership are chosen reduces the significance of this safeguard, since they are all members or supporters of the ruling Party. The non-liability exempts the members of the Assembly from criminal prosecution in all matters relating to their activities as members of the National Assembly. This is an important safeguard without which the

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156 Revolution Command Council Decision No. 60 of 12 January 1982.

157 Under the terms of Act No. 63 of 1988, amending the abovementioned article 10.

members of the Assembly could not participate in debates or express opinions freely without fear of prosecution.

Article 50, paragraph (b), further stipulates that no member of the National Assembly can be prosecuted or arrested, without the permission of the Assembly, for an offence committed during its sessions except in cases of *flagrante delicto*. During inter-sessional periods, permission for prosecution must be obtained from the Speaker of the Assembly, under paragraph (c). In accordance with these provisions, no member of the Assembly can be arrested, detained or subjected to criminal proceedings during sessions of the Assembly unless the Assembly decides to lift his immunity. During inter-sessional periods, permission is required only from the Speaker of the Assembly. Parliamentary immunity does not apply in cases of *flagrante delicto*.

However, article 8, as amended, of the National Assembly Act contains a provision that contradicts the above-mentioned article 50 in so far as it stipulates that: "No member of the Assembly can be prosecuted or arrested for an offence committed during its sessions or during inter-sessional periods without the permission of the Chairman of the Revolution Command Council, except in cases of *flagrante delicto*. The granting of permission for prosecution or arrest is equivalent to the lifting of the member's immunity." According to this provision, therefore, the lifting of the member's immunity is effected by a decision of the President of the Republic. However, this provision is contrary to article 50 of the Constitution, since the empowerment of the President of the Republic to lift this immunity infringes upon the independence of the National Assembly and constitutes interference in its affairs, quite apart from the fact that it thwarts the purpose of immunity, which is to enable the members of the Assembly to perform their duties freely without being exposed to threats or pressure from the executive authority.

#### **4. Powers of the National Assembly**

The National Assembly exercises legislative power, i.e., authority to promulgate legislation within the limits laid down in the Constitution. However, the National Assembly does not enjoy absolute authority in the legislative spheres, since it does not exercise its legislative function alone, being obliged to share it with the Revolution Command Council. In addition to its legislative competence, the National Assembly regulates its own internal affairs, discusses the general policy of the State and advises the President of the Republic. It is noteworthy that the Constitution deals only very briefly with the powers of the National

Assembly, some of which are specified in the National Assembly Act,<sup>158</sup> which also specifies the Assembly's Rules of Procedure and the manner in which it should perform its duties. In practice, the Revolution Command Council exercises full hegemony over the activities of the National Assembly.

a. Competence of the Assembly to Regulate its Internal Affairs

In accordance with the principle that elected councils should be permitted to regulate their internal affairs independently, the National Assembly establishes its own Rules of Procedure, specifies its privileges, determines its budget and appoints its staff.<sup>159</sup> The Assembly established its Rules of Procedure on 6 November 1980, i.e., only a short time after its election, and those Rules are still in force. With regard to the emoluments and allowances of the Speaker and members of the Assembly, article 51 of the Constitution states that they are to be determined by a legislative enactment, although article 9 of the National Assembly Act stipulates that the Speaker, the Deputy Speaker and the members of the Assembly should receive a fixed stipend determined by decision of the Revolution Command Council.<sup>160</sup>

The Council can accept the resignation of any of its members and such resignation is effective from the date of its acceptance by a two-thirds majority of the members of the Assembly.<sup>161</sup> However, under the terms of an amendment, the Chairman of the Revolution Command Council was empowered to accept the resignation of any member of the National Assembly during its inter-sessional periods.<sup>162</sup> In other words, it is the Chairman of the Revolution Command Council, rather than the National Assembly itself, who has the final word on the question of resignation.

The Assembly may decide, by a majority vote among its members, to terminate the membership of any member who fails to meet the

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158 Act No. 55 of 1980, as amended.

159 Article 51 of the Constitution and articles 48 and 50 of the National Assembly Act.

160 The Council fixed their salaries in Decision No. 1683 of 9 November 1980.

161 Article 10, paragraph 2, of the National Assembly Act.

162 Revolution Command Council Decision of 6 October 1986.



eligibility requirements for membership of the Assembly.<sup>163</sup> The Constitution<sup>164</sup> also empowers the National Assembly to establish procedures for the indictment and prosecution of any of its members who violate the Constitution or the undertakings given in the constitutional oath or engage in any activity or conduct which the Assembly regards as prejudicial to the honourable responsibility that they have assumed.<sup>165</sup> The Assembly is competent to hear appeals against the validity of the election of its members, whose membership can be terminated by a decision taken by a two-thirds majority of its members.<sup>166</sup> Under the Rules of Procedure of the National Assembly, appeals against the validity of membership can be accepted only from a candidate for election in the electoral district in which the winning candidate was the person against whose election the appeal is lodged. Such appeals must be lodged with the Speaker of the National Assembly within one week from the date of the Assembly's first sitting after its election.<sup>167</sup>

b. Discussion of the General Policy of the State

Article 55, paragraph (a) of the Constitution stipulates that the Vice-Presidents of the Republic, as well as the Ministers and persons of equivalent rank, are entitled to attend sittings of the National Assembly and participate in its debates. Paragraph (b) of the same article further stipulates that the National Assembly may summon any member of the Council of Ministers in order to answer questions and provide clarifications.

On the basis of the above-mentioned article 55, the National Assembly Act of 1980 stipulates that the Assembly has the right to discuss the internal and external general policy of the State, to summon any member of the Council of Ministers to answer questions or provide clarification, and to propose the dismissal of any member of the Council of Ministers from his post, in accordance with the provisions of the

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163 Article 10, paragraph 3, of the National Assembly Act.

164 Articles 51 and 56 of the Constitution of 1970.

165 In December 1991, the National Assembly decided to remove five of its members (four Shiites and one Kurd) from office after indicting them for conspiracy against the State and involvement in acts of subversion. See the edition of *AlHayat* newspaper published on 11 December 1991.

166 Article 51 of the National Assembly Act.

167 Articles 14-19 of the Rules of Procedure of the National Assembly.

## Constitution and the Rules of Procedure of the Assembly.<sup>168</sup>

The Revolution Command Council has broadened the competence of the National Assembly in this regard by empowering it and its committees, by order of the President of the Republic, to inspect government departments and institutions in the socialist sector and to summon the Prime Minister, Ministers and any civil servant in order to question him on any matter that requires clarification in order to establish the truth.<sup>169</sup> The Assembly can also make any recommendations that it deems appropriate in the light of the conclusions that it reaches, including a recommendation to the effect that confidence should be withdrawn from them or that they should be dismissed, retired or referred to the competent courts. The National Assembly has been granted authority to inspect official departments and question the persons in charge thereof, although it can exercise this authority only by order of the President of the Republic. The Rules of Procedure of the National Assembly, which were promulgated by the Assembly on 6 November 1980, contain a detailed specification of the procedures for such

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168 Article 47, paragraphs 5, 6 and 7, of the National Assembly Act.

169 Revolution Command Council Decision No. 115 of 31 January 1988.

questioning.<sup>170</sup> Following the interpellation, the Assembly may propose that the Minister be dismissed from his post and the Speaker of the Assembly transmits this decision to the President of the Republic.

It is clear that the National Assembly's authority to monitor the actions of Ministers is limited, since it is confined to the submission of a proposal to the effect that the President of the Republic should dismiss the Minister from his post and does not comprise the right to withdraw confidence from the Minister in order to induce him to resign from his post. Under the Iraqi system, Ministers are not accountable to the Parliament and do not need the confidence of the Parliament in order to perform their duties and remain in office, as is the case in other

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170 Articles 94-97 of the Rules of Procedure of the National Assembly. These procedures can be summarized as following: Any member of the National Assembly has the right to address verbal or written questions, through the Speaker of the Assembly, to any Minister concerning a decision taken by him or a position or course of action adopted in regard to an aspect of the Ministry's policy. Verbal questions do not give rise to a debate, since the question is merely put to the Minister, who answers it. However, if the Assembly decides to hold a debate, any member has the right to participate therein. If the person putting the question is not satisfied with the Minister's reply, he can submit a written question, which the Speaker of the Assembly must transmit to the Minister, who can reply thereto either verbally or in writing during the same sitting or request a period of grace in order to reply within a period not exceeding one week. The person putting the question may declare himself satisfied with the Minister's reply or transform his question into an interpellation. Any member of the National Assembly can also address a written interpellation, through the Speaker of the Assembly, to a Minister requesting him to explain the policy that he is pursuing, the position that he has adopted on a specific issue, or an alleged shortcoming or negligence on the part of the Ministry. For the Speaker of the Assembly to accept an interpellation and transmit it to a Minister, the motion requesting the interpellation must be supported by 10 members of the Assembly and, once this approval has been obtained, the presidium of the Assembly agrees, with the Minister, on a time for the interpellation to be discussed. The discussion of the interpellation begins with the submission of its content by a member supporting the interpellation, after which the Speaker of the Assembly gives the floor to the competent Minister so that he can reply. The discussion ends with a vote. If the vote is in favour of rejecting the interpellation, the matter is deemed to be closed but, if the Assembly supports the content of the interpellation by a two thirds majority of its members, this support is deemed to constitute a proposal for the dismissal of the Minister from his post.

parliamentary systems. In fact, they are accountable solely to the President of the Republic.<sup>171</sup>

In actual practice, the National Assembly has not hitherto submitted a proposal to the President of the Republic to the effect that he should dismiss a Minister from his post, since the general policy of the State is determined by the President of the Republic in conjunction with the Revolution Command Council and the Ministers are close associates of the President of the Republic, some of them being also members of the Revolution Command Council. As long as a Minister retains his portfolio, this means that the President of the Republic is satisfied with him and has confidence in him, thereby deterring any member of the National Assembly from questioning a Minister, particularly if he is a close associate of the President. Furthermore, in so far as the members of the National Assembly are members or supporters of the Baath Party, their relations with the Ministers are friendly and harmonious and the Speaker of the Assembly, who is a leading member of the Baath Party, plays a major role in maintaining mutual understanding between the Ministers and the members of the Assembly and also in keeping matters under control within the Assembly.

It sometimes happens that, in the case of important issues, the competent Minister makes a statement before the Assembly in order to explain the policy that the Government wishes to pursue. Such statements are followed by a debate that may end with a vote on recommendations submitted by the National Assembly to the Government, as happened in 1990 on the question of the demarcation of the Iraqi-Kuwaiti border in accordance with the map prepared by the International Commission of the United Nations. At that time, the National Assembly condemned the Commission's decision and called for non-compliance and opposition thereto at the international level. This position was similar to that held by the Government.

### c. Offering of Advice to the President of the Republic

Under the terms of two amendments made to article 47 of the National Assembly Act in 1985 and 1987, the President of the Republic was empowered to refer any matter to the National Assembly so that it can advise him thereon after the matter has been studied by the Assembly's competent committee or committees or debated in the

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<sup>171</sup> Article 59 of the Constitution of 1970.

Assembly.<sup>172</sup> The Assembly may also, on its own initiative, offer advice to the President of the Republic on any matter after it has been studied by its committees or its presidium or debated within the Assembly.<sup>173</sup>

It is noteworthy that there is no obligation to seek the advice of the National Assembly. In other words, the President of the Republic is not compelled to consult the Assembly, nor is the President of the Republic bound to accept its advice, which he can follow or disregard at his absolute discretion.

#### d. Legislative Power

The legislative function is the field of competence in which the National Assembly enjoys the greatest scope. However, this competence is not absolute since there are matters, such as military and public security affairs, in which the Assembly has no right to interfere. Moreover, the Assembly performs its legislative function under the supervision and with the participation of the Revolution Command Council and is not empowered to amend the Constitution, this power being vested solely in the Revolution Command Council, as already indicated. The procedural rules for the performance of this legislative function are as follows:

- The National Assembly considers bills of law proposed by the Revolution Command Council within 15 days from the date of their receipt by the office of the presidium of the National Assembly. If the Assembly approves the bill, it is submitted to the President of the Republic for promulgation. However, if the Assembly rejects or amends it, it is referred back to the Revolution Command Council and, if the latter accepts the amendment, the bill is then submitted to the President of the Republic for promulgation. If the Revolution Command Council insists on a second reading, it is referred back to the National Assembly for submission to a joint sitting of the Assembly and the Council and the decision taken by a two-thirds majority is final.<sup>174</sup>
- The National Assembly considers bills of law submitted to it by the President of the Republic within 15 days. If the

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172 Article 47, paragraph 9(a), of the National Assembly Act.

173 Article 47, paragraph 9(b) of the National Assembly Act.

174 Article 52 of the Constitution of 1970.

Assembly rejects the bill, it is referred back to the President of the Republic with an explanation of the reasons for its rejection. If the National Assembly wishes to amend it, the bill is referred to the Revolution Command Council and, if the latter approves the amendment, it can then be promulgated. However, if the Revolution Command Council rejects the amendment to the bill or makes a counter-amendment, it is referred back to the National Assembly within one week. If the National Assembly endorses the opinion of the Revolution Command Council, the bill is submitted to the President of the Republic for promulgation. If, at the second reading, the National Assembly persists in its opinion, a joint sitting of the Assembly and the Council is held and the bill approved by a two-thirds majority is regarded as final and is submitted to the President of the Republic for promulgation.<sup>175</sup>

- The National Assembly adopts the general budget.<sup>176</sup> This budget is an estimate of the public expenditure and income of the State during the coming year. However, from the formal standpoint, it is regarded as a legislative enactment. The Assembly considers the budget during its second regular session beginning on Saturday, 1 November, and ending on the last day of December, bearing in mind the fact that this session cannot be concluded until the public budget has been adopted.<sup>177</sup>

Since military and public security affairs do not fall within the competence of the National Assembly, the latter does not have the right to discuss the budget of the Ministry of Defence and Public Security Affairs and refrains from discussing questions that the President of the Republic decides to exclude from its debates.<sup>178</sup> In other words, the Assembly adopts the budget without discussing some of its sections or items which relate to the budget of the Ministry of Defence and Public Security Affairs or which the President of the Republic decides to exclude from its debates, even if they do not relate to military or security affairs.

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175 Article 53 of the Constitution of 1970.

176 Article 47, paragraph 3, of the National Assembly Act.

177 Article 57, as amended, of the National Assembly Act.

178 Article 105, paragraph 2, of the Rules of Procedure of the National Assembly.

- The Assembly discusses bills of law ratifying international treaties and conventions, which it can reject or approve in toto, without having the right to vote on, or amend, their individual sections or articles.<sup>179</sup> As already seen, the power to ratify treaties and conventions is vested in the Revolution Command Council.
- The National Assembly considers bills of law submitted by a minimum of one quarter of its membership and bills which it approves are submitted to the Revolution Command Council for consideration within 15 days from the date of their receipt by the office of the Assembly. If the Revolution Command Council approves them, they are submitted to the President of the Republic for promulgation but, if the Council rejects or amends them, they are referred back to the National Assembly. If the latter persists in its opinion during the second reading, a joint sitting of the Assembly and the Council is held and the bill approved by a two-thirds majority is regarded as final and is submitted to the President of the Republic for promulgation.<sup>180</sup> However, in practice, the members of the National Assembly have not hitherto exercised their right to propose bills of law and all such bills that the Assembly adopts are received either from the President of the Republic or the Revolution Command Council.

Article 108 of the Rules of Procedure of the Assembly stipulates that joint sittings of the Assembly and the Council are convened by the Chairman of the Revolution Command Council and are presided over either by the Chairman or his Deputy. Bills of law are deemed to be adopted if they are approved by a two-thirds majority of the total membership of the Assembly and the Council. From the numerical standpoint, the balance is weighted in favour of the National Assembly, since the number of its members far exceeds that of the Revolution Command Council. However, the relationship between the Revolution Command Council and the National Assembly is governed by influence rather than number and it is well known that the Revolution Command Council is the supreme body in the State and its members include some of the highest-ranking officials of the Baath Party, who are close

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179 Article 105, paragraph 2, of the Rules of Procedure of the National Assembly.

180 Article 54 of the Constitution of 1970.

associates of the President of the Republic and, as such, enjoy considerable influence. Furthermore, the Revolution Command Council has the right to dissolve the National Assembly "in order to ensure the proper functioning of the State institutions".<sup>181</sup> In the words of Maurice du Verger, "a threat to dissolve the Parliament is tantamount to the commencement of trial proceedings against its members". If the National Assembly were to attempt to pursue a policy that was inconsistent with the policy laid down by the Revolution Command Council, the latter would dissolve the National Assembly. However, this is a purely theoretical hypothesis, since the National Assembly consists of members and supporters of the Baath Party who are committed to the general policy formulated by the Party and comply with its directives. Consequently, there is little possibility of a serious rift between the National Assembly and the Revolution Command Council on substantive matters.

The number of bills of law promulgated each year by the National Assembly is small<sup>182</sup> in comparison with the number of legislative enactments and decisions having the force of law which are promulgated by the Revolution Command Council. Most of the basic enactments were also promulgated during the period preceding the constitution of the National Assembly (1980) within the context of the so-called reform of the legal system, as already indicated during our discussion of the Revolution Command Council.<sup>183</sup> The referral of bills of law to the National Assembly is at the discretion of the Revolution Command Council, since the latter can promulgate legislation without referring it to

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181 Article 60 of the National Assembly Act.

182 Iraq's reply to the questions raised by the Special Rapporteur of the Commission on Human Rights stated that, during the past two years (the report was dated October 1991), the National Assembly considered 105 bills of law, of which it adopted 60 without amendment and 41 with amendment and rejected 4. See the note of the Secretary General of the United Nations in document A/46/647 of 13 November 1991, p. 32 (of the French version).

183 The legislative enactments promulgated by the National Assembly include, for example: The Public Health Act No. 89 of 1981, the Public Highways Act No. 1 of 1983, the Private Sector Employment Identity Card Act No. 64 of 1983, the Juvenile Welfare Act No. 76 of 1983, the Labour Act No. 80 of 1983, the Customs Act No. 23 of 1984, the Commercial Activities Act No. 30 of 1984 and the Act comprising the second amendment to the State Advisory Council Act establishing the Administrative Court (Act No. 106 of 1989).



the National Assembly.

In short, the National Assembly does not enjoy wide powers, since it exercises its legislative function under the supervision of the Revolution Command Council and it is difficult for us to regard the National Assembly as being representative of the various political schools of thought in the country because it comprises only Baathists and their supporters and leaves no scope for opposition. It is a single-party Assembly consisting of persons who hold similar political views and are committed to the general policy determined by the ruling Party to which they belong. The inability of the National Assembly to adopt positions independently of the Revolution Command Council became apparent during the war with Iran and the subsequent invasion of Kuwait in so far as it played no role during those events. This was not surprising in view of the fact that it has no authority over the Revolution Command Council and does not have the right to discuss military affairs, quite apart from the fact that the Revolution Command Council can dissolve the Assembly whenever it wishes.

### **C. The President of the Republic**

In accordance with the Constitution, the President of the Republic is Head of State, Commander-in-Chief of the Armed Forces and Prime Minister. He is also Regional Secretary-General of the Baath Party in Iraq (this aspect is not mentioned in the Constitution).

The President of the Republic is elected by the Revolution Command Council by a two-thirds majority of its members, in accordance with article 38(a) of the Constitution. The President-Elect immediately assumes the post of President of the Republic. The Constitution does not specify the President's term of office. Since the Revolution Command Council is a standing institution the members of which hold office for an indefinite period, as already indicated, this means that the mandate of the President of the Republic is also for an indefinite period and he remains in office until he is dismissed by the Council, dies or resigns from his post, as happened in the case of President Ahmad Hassan al-Bakr. In the preceding section it has already been pointed out that article 37(b) of the Constitution<sup>184</sup> designates the Chairman and members of the Revolution Command Council by name, as though they derived their authority from the Constitution in a personal

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184 Article amended by Revolution Command Council Decision No. 836 of 1982.

capacity. Since the Chairman of the Revolution Command Council is *ex officio* President of the Republic, as already mentioned, this means that the President of the Republic is designated in the Constitution itself, thereby endowing him with a special halo of influence. The Constitution vests the President of the Republic with wide and varied powers in keeping with the numerous titles that he bears. These powers are as follows:

- The President of the Republic is responsible for preserving the country's independence and territorial integrity, protecting its internal and external security, safeguarding the rights and freedoms of its citizens and supervising the proper application of the Constitution, as well as the laws, decisions and court judgements. He also has the sole right to ratify death sentences and issue special pardons.<sup>185</sup>
- The President of the Republic appoints and dismisses the Vice-Presidents, who are accountable to him for their actions. He may also order the prosecution of any of them who commit breaches of their official duties or who exploit or misuse their authority.<sup>186</sup> The Vice-Presidents are sworn in by the President of the Republic.<sup>187</sup>
- The President of the Republic is entitled to propose bills of law to the National Assembly.<sup>188</sup> He is also entitled to convene an extraordinary meeting of the National Assembly whenever circumstances so require. The President is responsible for the promulgation of legislation approved by the National Assembly and, in his capacity as Chairman of the Revolution Command Council, signs the laws and decisions promulgated by that Council and orders their publication in the Official Gazette. However, the President of the Republic is

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185 Article 58, (a), (b) and (j) of the Constitution of 1970.

186 Articles 58(c), 59 and 60 of the Constitution of 1970.

187 It is important to distinguish between the Vice Presidents of the Republic (whose number is not specified in the Constitution and who are appointed by the President of the Republic) and the Vice Chairman of the Revolution Command Council, who is elected by the Revolution Command Council and replaces the Chairman during his official absence or whenever it is difficult or impossible for him to exercise his constitutional powers (article 38(b)).

188 Article 35 of the Constitution of 1970.

not empowered to refer a bill of law back to the National Assembly for a second reading, since this falls within the competence of the Revolution Command Council, as already mentioned. In this connection, however, it is noteworthy that the Constitution does not specify a time-limit for the President of the Republic to promulgate legislation. This means that the President can disrupt, or at least obstruct, the work of the National Assembly by refusing to promulgate, or postponing the promulgation of, legislation for lengthy periods of time.

- The President of the Republic enjoys wide diplomatic powers, having the right to conduct negotiations, conclude international treaties and conventions, accept the accreditation of diplomatic and international representatives and request their recall. He is also responsible for the appointment of Iraqi diplomatic representatives and their accreditation to other States and to international conferences and organizations. In fact, the President of the Republic is directly responsible for the country's external policy, since the Minister for Foreign Affairs, like the other Ministers, merely acts as an assistant to the President of the Republic from whom he receives instructions and to whom he is accountable for their implementation.
- *The President of the Republic is the head of the executive authority and, in this capacity, can appoint and dismiss the Prime Minister and the Ministers, who are accountable to him for their actions. He can also order the prosecution of any of them for breaches of their official duties. He presides over the Council of Ministers, supervises and coordinates the work of the Ministries and other public institutions and is empowered to appoint and terminate the services of judges, civil servants and military personnel.*
- The President of the Republic is Commander-in-Chief of the Armed Forces, which is an extremely important post in a system that depends on support from the army. This enables the President to keep the armed forces under his tight control and personal direction and to formulate national defence policy and supervise its implementation, including armament programmes and all matters relating to military industrialization, to which the present Iraqi regime has attached supreme importance and on which it has spent large sums of money.

The President of the Republic exercises his constitutional powers by promulgating the requisite decrees.<sup>189</sup> These decrees do not require the signature of the competent Minister and cannot be contested in the courts, since they are "sovereign acts" (this is the term used in the Act establishing the Administrative Court).<sup>190</sup>

The Iraqi regime has veered towards a presidential system since the third amendment to the Constitution of 1968, which was made in November 1969. The substantiating grounds for that amendment specified, *inter alia*, that Iraq was faced with challenges from imperialism, Zionism and their allies, which it could not overcome decisively without adopting a presidential system.<sup>191</sup> The present Constitution adopted this option and increased the powers of the President of the Republic. When Mr. Saddam Hussein assumed the presidency in 1979, the President of the Republic became the sole *de facto* ruler of the country.

The Constitution undoubtedly vests the President of the Republic with many important powers which maintain his authority and influence. In spite of those broad constitutional powers, the President of the Republic could not have become the *de facto* ruler of the country without controlling the leadership of the people's Party, the army and the security apparatus and without divesting the institutions of their real significance. Far from being political personalities enjoying popular and ideological support, the members of the Revolution Command Council are merely civil servants acting under the orders of the Chairman. The National Assembly consists of an overwhelming majority of members and supporters of the Baath Party and opposition is totally lacking. There are no political parties permitted to operate freely other than the ruling Baath Party, which has been transformed into the "President's Party" and the ideology of the Party has been replaced by the ideology of the "President and Leader". The only information media in the country are the official media.

#### **D. The Council of Ministers**

The present Constitution devotes only two articles to the Council of Ministers. Article 61, as amended, stipulates that the Council of

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189 Article 57(b) of the Constitution.

190 Act No. 106 of 1989.

191 See Al-Waq'at al-Iraqiya No. 1798 of 10 November 1969.

Ministers consists of the Deputy Prime Ministers and the Ministers and is presided over by the President of the Republic. According to the same article, the Council of Ministers is convened by the President of the Republic, who presides over its meetings.<sup>192</sup>

Article 62 lists the powers of the Council which, under the Council of Ministers Act of 1991, are as follows:

- The drafting of bills of law to be submitted to the President of the Republic for consideration of their promulgation in accordance with the Constitution.
- The drafting and promulgation of regulations, with the exception of regulations concerning the Ministry of Defence and all the security agencies and departments, which the President of the Republic promulgates without referring them to the Council of Ministers.
- Monitoring of the application of legislation and promulgation of the decisions needed for its implementation.

According to the Political Parties Act of 1991, the Council of Ministers is empowered to permit the establishment of a political party, monitor its activities and order its dissolution. In actual fact, however, the Council of Ministers does not enjoy significant decision-making powers and its role in the political and administrative fields is extremely limited because the President of the Republic alone exercises executive authority, in which he is assisted by the Ministers. It is the President who appoints and dismisses the Ministers, whenever he wishes, and they are accountable to him and not to the Parliament (the National Assembly). Accordingly, they do not need the confidence of Parliament as is the case in other parliamentary systems. It is also the President of the Republic who appoints and dismisses the Prime Minister at his sole discretion. However, dismissal of the Prime Minister does not entail the resignation of all the other Ministers, as normally happens in parliamentary systems. Since 1967, in the time of President Abdul Rahman Aref, the Iraqi Presidents have been in the habit of combining the post of President of

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<sup>192</sup> It is noteworthy that the present Constitution uses the expression "Council of Ministers" rather than the expressions "Government" or "executive authority", which were used in the Constitution of 1968.

the Republic with that of Prime Minister.<sup>193</sup>

The Ministers are the administrative heads of their Ministries and the highest authority to whom all the staff of their Ministries and their subordinate institutions report. They enjoy organizational authority, which entitles them to take decisions concerning their Ministries and issue instructions with which their staff must comply. In some cases, the same Act empowers them to take decisions of a general nature in order to implement the provisions of the Act. However, no Minister countersigns decrees promulgated by the President of the Republic, regardless of their content, since the President of the Republic alone is empowered to direct the affairs of State and the Ministers are merely assistants to the President of the Republic, from whom they receive orders and directives.

However, although the Council of Ministers, as a body, does not enjoy significant powers, since the role of Ministers is confined to managing the affairs of their Ministries in accordance with the orders and wishes of the President of the Republic, this does not prevent some Ministers who are close associates, family members or old friends of the President from playing an important role in the formulation of State policy. Mr. Saddam Hussein is in the habit of availing himself of the services of members of his family to direct the affairs of the country by entrusting them with important ministerial portfolios.<sup>194</sup>

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193 President Saddam Hussein also used to assume the post of Prime Minister. However, in May 1991 after the Gulf war, he appointed Saadoun Hammadeh as Prime Minister but subsequently dismissed him and, on 13 September of the same year, replaced him with Mr. Muhammad Zubaidi.

194 For example, Hassan al-Majid, the Minister of Defence, is Saddam Hussein's cousin and Watban Ibrahim al-Hassan, the Minister of the Interior, is his mother's brother. Hussein Kamil Hassan al-Majid, the President's son-in-law, is his adviser and currently in charge of the Military Industrialization Commission, having formerly been Minister for Industry and Military Industrialization (he is regarded as the founder of Iraq's military industries, particularly in the field of missiles and chemical weapons). He subsequently became Minister of Defence in 1990 and remained in that post until the appointment of Hassan al-Majid, the present Minister of Defence. The President's son Qusayy is head of the Special Security Service. In short, Saddam Hussein depends largely on members of his family and persons from his district (Tikrit) in order to extend his full authority over the country.

## Section III

### The Judiciary

#### A. Introduction

Section V of the Iraqi Constitution deals briefly with the judiciary. It stipulates that the judiciary is independent and subject to no authority other than the law. It also guarantees the right of all citizens to apply to the courts for legal redress<sup>195</sup> and stipulates that the composition, levels and jurisdiction of the courts, as well as the conditions for the appointment, transfer, promotion, legal accountability and retirement of judges, shall be defined by law.<sup>196</sup> It further stipulates that the functions of the Department of Public Prosecutions and its agencies, as well as the conditions for the appointment, transfer, promotion, legal accountability and retirement of public prosecutors and their deputies shall be determined by law.<sup>197</sup>

Under article 20 of the Constitution, the accused is presumed innocent until proven guilty at a lawful trial and the right of defence is sacrosanct at all stages of the investigation and trial in accordance with the provisions of the law. Court hearings must be public unless the court decides to hold them *in camera*.<sup>198</sup>

The above articles imply that the Constitution subjects the organization of the courts, including their composition, levels and jurisdiction and the regulations governing their judges and examining magistrates, to the legislative authority, which is empowered to

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195 Article 63, paragraphs (a) and (b), of the Constitution.

196 Article 63, paragraph (c), of the Constitution.

197 Article 64 of the Constitution.

198 Article 5 of the Organization of the Judiciary Act stipulates that court hearings must be public unless the court decides to hold them *in camera* in order to maintain public order or safeguard morality or the sacrosanct nature of the family, subject to the proviso that the judgement must be read out in public. Article 81 of the Constitution of 1968 explicitly stipulates that court hearings must be public unless the court decides to hold them *in camera* in order to safeguard public order and morality. The text of the abovementioned article 5 is consistent with the provisions of article 14 of the International Covenant on Civil and Political Rights.

promulgate whatever legislation it deems appropriate in this regard. However, the judiciary in Iraq is not an independent authority, since the Iraqi regime recognizes the existence of only one authority in society, which is exercised by the Revolution Command Council and subdivided into legislative, administrative and judicial functions. However, the nature of the service performed by the judiciary, namely "the administration of justice through the application of the law and the assurance of respect for the letter and the spirit of the law", means that the persons performing that service should be able to act independently. The independence of the judiciary is also necessitated by the need to respect the will of the legislature, as expressed in the enactments that it promulgates.<sup>199</sup> Consequently, although the judiciary is a distinctive function, it is not an independent authority since its organization and the scope of its jurisdiction are subject to the will of the Revolution Command Council, which is the State's supreme body vested with overall legislative power.

The present regime has endeavoured to regulate the judiciary on a new basis and, to this end, has promulgated a number of enactments, including the Public Prosecutions Act<sup>200</sup> and the Organization of the Judiciary Act.<sup>201</sup> In 1976, it established the Judicial Academy at which prospective judges receive training similar to that provided at the Judicial Academies in France and Lebanon. The Institute of Forensic Medicine was also attached to the Ministry of Justice in 1979 in order to develop forensic medicine and train medical examiners to perform their tasks.<sup>202</sup>

The real weakness of the Iraqi judicial system lies not in the legal texts but in the practices of the Revolution Command Council, which frequently interferes in the administration of justice by promulgating decisions that have the force of law and impede or paralyse the work of the judiciary, as illustrated by the following examples:

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199 See the Legal System Reform Act No. 35 of 1977, Al-Waqa'i al-Iraqiya No. 2576 of 14 March 1977.

200 Act No. 159 of 1979.

201 Act No. 160 of 1979.

202 To that end, new enactments were promulgated in connection with the Code of Penal Procedure (1971), the administrative tribunals (1977), the State Advisory Council (1979) which was vested with legal jurisdiction in the administrative field in 1989, the Law of Evidence (1979), the Enforcement Act (1980) and the Legal Fees Act (1981), etc., all of which are recent enactments based on modern foreign legislation.



- A decision to postpone the hearing of actions brought by Iraqi contractors against Ministries and institutions in the socialist sector for a period of one year with effect from the promulgation of the decision.<sup>203</sup>
- A decision prohibiting the courts from hearing any action brought against the squads assigned to track down deserters and evaders of military service if those squads were obliged to use force to arrest them.<sup>204</sup>
- A decision prohibiting the courts from hearing any actions in connection with the transfer of the title to real estate property within the boundaries of the city of Mosul, and the "closure" of the files on such actions on which the competent court had not handed down a judgement.<sup>205</sup>
- A decision suspending legal proceedings against persons accused of major offences, such as murder, and ordering their release without giving any specific reason therefor.<sup>206</sup>
- A decision annulling judgements handed down by a civil court.<sup>207</sup>

Needless to say, the decisions of the Revolution Command Council are final and not subject to any form of judicial or political control and the courts must respect and apply them even if they are contrary to the Constitution.

The second problem affecting the proper administration of justice is the existence of a comprehensive system of special courts vested with extensive powers. Until 1991, the Revolution Command Council retained the Revolutionary Court, which was established in 1958, and broadened its powers over the years to cover ordinary offences which basically fell within the jurisdiction of the criminal courts. The RCC also resorted, on more than one occasion, to the establishment of special courts to try

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203 Act No. 1020 of 13 September 1983, the validity of which was extended by Decision No. 793 of 5 October 1986.

204 Act No. 986 of 21 July 1981 and Act No. 749 of 15 September 1986.

205 Act No. 50 of 28 January 1989.

206 See, for example, Decisions Nos. 707 of 27 August 1986, 714 of 31 August 1986 and 684 of 24 October 1989.

207 See, for example, Decision No. 885 of 4 July 1987 annulling a judgement handed down by a conciliation court at Baghdad.

persons accused of the offence of "conspiracy and treason against the Party and the State" in accordance with procedures that did not provide the minimum safeguards required for the defence of the persons brought before that court, the judgements of which were final.

In this connection, it is noteworthy that the Iraqi Constitution, unlike some Western Constitutions,<sup>208</sup> does not prohibit the establishment of special or emergency courts, nor does it make explicit reference to every person's right to a fair trial by a competent, independent and impartial tribunal. On the contrary, it merely indicates that "the right of defence is sacrosanct at all stages of the investigation and the trial, in accordance with the provisions of the law". Accordingly, the Constitution leaves the regulation of the right of defence to the law, i.e., in practice, to the will of the Revolution Command Council, which has the right to promulgate, at its discretion, enactments and decisions which have the force of law and are not subject to any form of legal control or accountability. A more thorough discussion of the special courts will follow the general explanation of the judicial system in Iraq.

## **B. The Ordinary and Administrative Courts**

The legal system in Iraq does not differ greatly from that in other Arab States, being largely based on the French legal system. From the standpoint of organization and jurisdiction, there are many similarities between the Iraqi Court of Cassation and the French Court of Cassation. Moreover, the Criminal Courts in Iraq are organs of the Court of Appeal, like the Criminal Courts in France and in States in the Arab region, such as Lebanon and Egypt, which have been influenced by French law.

The courts in Iraq are currently governed by the Organization of the Judiciary Act No. 160 of 1979 and the Department of Public Prosecutions is governed by the Public Prosecutions Act No. 159 of 1979. Act No. 106 of 1989 established administrative tribunals that are independent of the ordinary courts. The following sections will be dealing with the various types of courts, as well as the Department of Public Prosecutions, before discussing the conditions governing the appointment of judges.

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208 See, for example, article 58 of the Swiss Federal Constitution.

## 1. Types of Courts

Article 11 of the Organization of the Judiciary Act lists the following types of courts: the Court of Cassation, the Courts of Appeal, the Courts of First Instance, the Administrative Tribunals, the Personal Status Courts, the Criminal Courts, the Misdemeanours Courts, the Juvenile Courts, the Higher Labour Court and the Labour Tribunals (the Higher Labour Court was subsequently abolished and the Labour Tribunals were attached to the Court of Cassation and the Examining Courts). The Administrative Court of Justice, which was established in 1989,<sup>209</sup> can also be added to this list. All these courts are attached to the Court of Cassation, with the exception of the Administrative Court of Justice which is fully independent of the Court of Cassation, as is the case in France and other States that have adopted a two-track judicial system (i.e. ordinary and administrative courts).

### a. The Court of Cassation

This is the highest judicial body in the country and exercises judicial supervision over all of the courts, unless otherwise provided by law. It consists of a president, five vice-presidents and a number of judges that must not be less than 30. It is based in Baghdad.<sup>210</sup>

The Court of Cassation holds "plenary sessions", presided over by its president or most senior vice-president and attended by all its other vice-presidents and judges, to consider matters referred to it by any of its organs if the latter deem it advisable to deviate from a principle established in previous judgements, or to consider a dispute concerning a conflict between judgements handed down by the Court of Cassation, or to consider cases in which death sentences have been passed by a criminal court.<sup>211</sup> It should be noted that sentences of death or life imprisonment passed by the criminal courts must be referred to the Court of Cassation even if such referral has not been requested by the convicted person or the Department of Public Prosecutions.<sup>212</sup>

The Court also holds "expanded sessions", presided over by its president or most senior vice-president and attended by not less than 10

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209 Under the terms of Act No. 106 of 1989.

210 Article 12 of the Organization of the Judiciary Act.

211 Article 13, paragraph 1(a), of the Organization of the Judiciary Act.

212 Article 254, as amended, and article 255 of the Code of Penal Procedure.

of its judges, to consider disputes arising in connection with the enforcement of two conflicting judgements handed down on a single issue in which the evidential requirements have been met and the said dispute is between the same opposing parties or one of them is a party in both judgements, or to consider disputes concerning spheres of jurisdiction or to take a decision on judgements referred to it by its president.<sup>213</sup>

In addition to these two types of sessions, the Court has subsidiary divisions to consider judgements handed down by lower courts. These subsidiary divisions are presided over by a vice-president or a person chosen by the presidium and are attended by not less than two judges of the Court. Alternatively, they may be presided over by a vice-president and attended by not less than four judges of the Court in the case of a civil division considering judgements handed down by a court of appeal or in the case of a criminal division considering judgements, other than sentences of death or life imprisonment, handed down by a criminal court.<sup>214</sup>

The Court of Cassation monitors the legality of judgements handed down by lower courts. If it finds that a judgement is contrary to the law, based on erroneous application or interpretation of the law or attributable to a substantive procedural defect or a mistake in the appraisal of the evidence or in the determination of the penalty, it may quash or ratify the judgement. It is noteworthy that, in criminal cases, the criminal division of the Court of Cassation may quash or ratify a judgement and reduce a penalty but cannot increase a penalty imposed on a convicted person. If it feels that a heavier penalty should be imposed or that a defendant acquitted by a court should have been found guilty, it sends the file back for review by the court which handed down the judgement. If, following the review, the latter court persists in its refusal to increase the penalty or fails to convict the defendant, the division may ratify the judgement if it is satisfied therewith. However, if it, in turn, persists in its belief that the penalty should be increased or that the defendant acquitted by the court should be found guilty, it must refer the matter to a plenary session of the Court of Cassation, which then decides whether to convict the defendant, increase the penalty or ratify the judgement handed down by the competent court.<sup>215</sup>

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213 Article 13, paragraph 1(b), of the Organization of the Judiciary Act.

214 Article 13, paragraphs 2 and 3, of the Organization of the Judiciary Act.

215 Arts. 859 and 263 of the Code of Penal Procedure.

Objections in cassation must be lodged within 30 days beginning on the day following the date on which the judgement was handed down in the presence of the defendant or the date on which it was deemed to have been so handed down in the case of a judgement *in absentia*.<sup>216</sup> The plenary session of the Court of Cassation considers cases in which sentences of death have been handed down and the criminal courts automatically refer their sentences of death or life imprisonment to the Court of Cassation even if such referral has not been requested by the convicted person or the Department of Public Prosecutions. Under the Code of Penal Procedure, defendants enjoy adequate safeguards in contrast to the procedures applied by the Revolutionary Court and other special courts, as will be seen.

b. The (Civil) Courts of First Instance

In the main town in each governorate or district there is a court of first instance, consisting of a single judge, which sits to hear civil and commercial cases falling within its jurisdiction.<sup>217</sup> These courts of first instance, which replaced the conciliation courts with effect from 1979, consist of a single judge, like all first-level courts in Iraq, regardless of the type of case or the value of the amounts claimed.

The judgements handed down by the courts of first instance are subject to appeal before a court of appeal. The court of appeal is the highest judicial body supervising the courts in one or more governorates. There are eight courts of appeal sitting at Baghdad, Basra, Mosul, Hilla, Kirkuk, Arbil, Nasiriya (1980) and Najaf (1982). Courts of appeal can be established or abolished by a presidential decree based on a proposal from the Minister of Justice.<sup>218</sup> These courts are presided over by their president or one of his vice-presidents and are attended by two other judges. Their judgements in civil and commercial cases are subject to appeal before the Court of Cassation (Civil Division).

The president of a court of appeal supervises administrative matters and the distribution of work within his area. He may also preside over a court of appeal in its appellate capacity or as a criminal court.<sup>219</sup> Each area in which there is a court of appeal also has a council known as the

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216 Arts. 252, 143 and 243 of the Code of Penal Procedure.

217 Arts. 21 and 23 of the Organization of the Judiciary Act.

218 Article 16, paragraph 3, of the Organization of the Judiciary Act.

219 Article 20 of the Organization of the Judiciary Act.

“Appellate Area Council”, consisting of the president of the court of appeal, his vice-presidents and the judges of the court, which studies and settles difficulties and problems facing the courts or submits proposed solutions to the Ministry of Justice. It also makes proposals, whenever necessary, to improve the working methods and the standard of performance of the courts in its area.

c. The Misdemeanours and Criminal Courts

At every location in which there is a court of first instance, there is also one or more misdemeanours courts which are competent to hear cases involving misdemeanours or contraventions.<sup>220</sup> A misdemeanour, as defined in the Iraqi Penal Code, is an offence punishable by imprisonment or penal servitude for a period of three months to five years.<sup>221</sup> A contravention is an offence punishable by imprisonment for a period of 24 hours to three months or a fine not exceeding 30 dinars.<sup>222</sup>

The misdemeanours court consists of a single judge and the judge of the court of first instance acts as the judge of the misdemeanours court if it does not have a judge of its own. In other words, the same judge fulfils both official functions if the workload does not warrant the appointment of two judges. It is noteworthy that the judgements handed down in cases involving misdemeanours are not subject to appeal, although an objection can be lodged with the Court of Cassation (Criminal Division) within 30 days if the judgement is felt to be contrary to the law, based on erroneous application or interpretation of law, attributable to a substantive procedural defect or a mistake in the appraisal of the evidence or in the determination of the penalty. In the explanatory notes appended to the Code of Penal Procedure, the inadmissibility of appeal against judgements of misdemeanours courts is substantiated on the ground that “the admissibility of appeal would be illogical, since it would accord judgements handed down in cases involving misdemeanours a higher status than those handed down in cases involving felonies”.<sup>223</sup> Judgements handed down in cases involving contraventions can form the subject of an objection in cassation, which

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220 Article 31, paragraph 1, of the Code of Penal Procedure.

221 Article 26 of the Code of Penal Procedure.

222 Article 27 of the Code of Penal Procedure.

223 Al-Waq'ī al-Iraqiyya No. 2004 of 31 May 1971.

must be lodged with a criminal court within 30 days.<sup>224</sup>

The main town in each governorate also has a criminal court which hears cases involving felonies. A felony, as defined in the Iraqi Penal Code, is an offence punishable by death, life imprisonment or imprisonment for a period of 5 to 20 years (article 25).

The criminal court forms part of the court of appeal, as is the case in France and countries that have been influenced by French law. In towns in which there is a court of appeal, the criminal court consists of three judges and is presided over by the president of the court of appeal or one of his vice-presidents. In the governorates in which no court of appeal is based, the criminal court is presided over by the vice-president of a court of appeal and is attended by two other judges. Its judgements can form the subject of an objection in cassation, which must be lodged with the Court of Cassation (Criminal Division), although death sentences must be reviewed at a plenary session of the latter Court.

The president of the criminal court must appoint a lawyer to defend a person accused of a felony, if the defendant has not appointed his own legal counsel, and the fees of the said lawyer are borne by the State Treasury. The appointed lawyer is under an obligation to attend the hearings and defend his client, failing which the court orders him to pay a fine as a penalty for his dereliction of duty.

#### d. The Specialized Courts

In addition to the ordinary courts of which mention has already been made, there are also a number of specialized courts which hear particular types of cases. For example, each governorate has a labour tribunal, consisting of a single judge appointed by the Ministry of Justice on the basis of a proposal made by the president of the court of appeal, to hear cases arising in connection with the application of the provisions of the Labour Act and the Workers' Pension and Social Security Act. The judgements of the labour tribunal can form the subject of an objection in cassation, which must be lodged with the Court of Cassation (Labour Division) within 30 days. The Court of Cassation can ratify or quash the judgement or take a decision on the merits of the case.<sup>225</sup>

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224 Article 265 of the Code of Penal Procedure.

225 Articles 137-146 of the Labour Act of 1987.

There are also juvenile courts. According to the Iraqi Penal Code, a juvenile is a person who, at the time of his commission of an offence, was over 7 but under 18 years of age.<sup>226</sup> Cases involving contraventions or misdemeanours committed by juveniles are heard by a "juvenile magistrate", whereas cases involving felonies fall within the jurisdiction of the "juvenile court", which is presided over by a juvenile court judge and attended by two assessors. Its judgements are handed down in accordance with the Juveniles Act.<sup>227</sup>

In this connection, it is noteworthy that, under the terms of the Penal Code, no juvenile can be sentenced to death. The Code stipulates that, if a juvenile commits a felony punishable by death or life imprisonment, he must be sentenced to detention in a reformatory for a period of not less than 2 years and not more than 5 years if he was under 15 years of age at the time of his commission of the offence; he must be sentenced to detention in an institution for juvenile offenders for a period of not less than 2 years and not more than 15 years if he was over 15 but under 18 years of age.<sup>228</sup> However, it seems that these rules are not always respected and have even been the subject of serious violations in recent years since, according to the report of Amnesty International for 1987, death sentences were carried out on seven Kurdish minors between 15 and 17 years of age after a special security court found them guilty of engagement in armed acts of sabotage. Eight other persons were also executed at a prison near Baghdad and some of these were tortured before their execution.<sup>229</sup>

In addition to the above-mentioned courts, there are also special courts to hear matters of personal status. These courts, which are established at every location in which there is a court of first instance, are presided over by a single judge, who is the (Muslim) judge of the court of first instance if the personal status court does not have a judge of its own.<sup>230</sup> Under the terms of article 65, paragraph 3, of the Organization of the Judiciary Act of 1979, the former designation "Shari'a court" was replaced by the designation "personal status court".

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226 Article 66 of the Penal Code.

227 Article 33 of the Organization of the Judiciary Act.

228 Articles 72, 73 and 74 of the Penal Code.

229 Amnesty International, *When the State Kills*, 1989, p. 153.

230 Articles 26, 27 and 28 of the Organization of the Judiciary Act.



Christians have their own ecclesiastical courts, the jurisdiction of which is confined to hearing matters of family law, such as marriage and divorce, etc. The Organization of the Judiciary Act does not deal with these courts, the organization of which is left to the religious communities concerned.

e. The Examining Courts

One or more examining courts are established in every area in which there is a court of first instance. Their examining magistrate is the judge of the court of first instance unless they have been assigned a special magistrate. The Minister of Justice is empowered to form a board of inquiry, presided over by a judge, to investigate one or more specific offences. Such boards exercise the authority vested in an examining magistrate.<sup>231</sup>

The examining magistrate investigates misdemeanours and felonies. If he finds that the act is punishable and that the evidence is sufficient for the accused to be put on trial, he orders the latter's referral to the competent court. If the act is not punishable by law, or if the evidence is insufficient, he closes the case and orders the release of the accused if the latter is detained.<sup>232</sup> The examining magistrate can render judgement immediately in cases involving contraventions, in which no compensation or recovery of money has been claimed, without the need to refer such cases to a misdemeanours court. The examining magistrates are empowered to render judgement on this type of contravention in order to ease the workload of the misdemeanours courts and prevent the accumulation of a backlog of cases.<sup>233</sup>

By law, no one can be arrested or detained except in accordance with an order issued by a judge or a court or in circumstances in which such arrest or detention is permitted by law.<sup>234</sup> The examining magistrate must question the accused within 24 hours from the time of his appearance after establishing his identity and informing him of the charge brought against him.<sup>235</sup> He does not have the right to use any

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231 Article 35 of the Organization of the Judiciary Act.

232 Article 130 of the Code of Penal Procedure.

233 See "Masirat al-Adala fi Dhill al-Thawra", op. cit.

234 Article 92 of the Code of Penal Procedure.

235 Article 123 of the Code of Penal Procedure.

means of physical or psychological coercion to obtain a confession from the accused.<sup>236</sup> A person accused of a contravention cannot be detained unless he has no fixed abode. Moreover, the examining magistrate must release, with or without bail, a person accused of an offence punishable by imprisonment for a period of three years or less unless, in his opinion, such release would prejudice the course of the investigation or lead to the abscondment of the accused.<sup>237</sup> In the case of a person accused of an offence punishable by more than three years' imprisonment, the examining magistrate can order his detention for successive periods of up to 15 days, provided that the total duration of such detention does not exceed one quarter of the maximum penalty; it must under no circumstances exceed six months.<sup>238</sup>

None of these safeguards are applied in cases involving political offences, since the Revolution Command Council has empowered the Minister of the Interior to detain persons suspected of criminal conduct.<sup>239</sup> In 1990, the number of persons detained in accordance with that decision on the charge of "prejudicing public order and public morality" amounted to 1,610 according to the Iraqi Government's reply to the questions raised by the Special Rapporteur of the Commission on Human Rights on Iraq.<sup>240</sup>

#### f. The Administrative Tribunals

Administrative tribunals, which are independent of the Court of Cassation, were recently established in Iraq under the terms of Act No. 106 of 1989 to adjudicate in administrative disputes arising between the Administration and individuals. They are similar to the administrative tribunals in France and in countries that have adopted a two-track judicial system. The Administrative Tribunals Act No. 140 of 1977 made provision for the establishment of an administrative tribunal, consisting of a single judge, in the Baghdad appellate area, although its jurisdiction was confined to hearing civil proceedings brought by Ministries and

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236 Article 127 of the Code of Penal Procedure.

237 Article 110 of the Code of Penal Procedure.

238 Article 109 of the Code of Penal Procedure.

239 Revolution Command Council Decision No. 26 of 1971.

240 See document A/46/647 of 13 November 1991, p. 23 (in the French version).

State and socialist sector institutions against each other, the private sector being permitted to appear with one of the parties to the proceedings. The judgements handed down by these tribunals can form the subject of an objection in cassation, which must be lodged with the Court of Cassation within 30 days. Act No. 65 of 1979 subsequently provided for the establishment of a State Advisory Council, the terms of reference of which were confined to the expression of opinions concerning bills of law and questions submitted to it by government departments; it did not have any judicial authority. This situation remained unchanged until the promulgation of Act No. 106 of 1989,<sup>241</sup> which amended the above-mentioned Act No. 65 of 1979 by according the Council judicial advisory authority in the field of legal codification and legal opinion. To that end, it established within the State Advisory Council a court known as the "Administrative Court of Justice" and also attached to the Council a "General Disciplinary Council" to hear cases concerning civil servants.

The Administrative Court of Justice has general jurisdiction in administrative disputes, with the sole exception of administrative decisions which, by law, are subject to a special appeal procedure and decisions which the Court is prohibited from hearing under the terms of Act No. 106 of 1989. In addition to its power of annulment, this Court also enjoys more comprehensive power in so far as, quite apart from being empowered to annul or modify contested decisions, it can also award compensation for damages suffered by a complainant due to an illegal act on the part of the Administration. The Court consists of three judges, the presiding judge being a Grade-I judge or a Chief Justice on the State Advisory Council and the other two being judges ranking not lower than Grade-II.

The Administrative Court of Justice is competent to adjudicate on the validity of administrative orders and decisions issued by civil servants and bodies in government departments and the socialist sector. The substantiating grounds for contestation are, in particular, if a decision is contrary to the law, regulations or instructions, if it was issued in violation of the rules concerning jurisdiction, if it was based on an erroneous application or interpretation of laws, regulations or instructions, or if it entailed improper or abusive use of authority.<sup>242</sup> To be admissible, objections to such decisions must meet the following requirements:

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241 Al-Waqa'i al-Iraqiya No. 3285 of 11 December 1989.

242 Article 6, paragraph 2(e), of Act No. 106.

- The objection must be submitted by a person with a recognized interest and must refer to a possible situation. Probable interest is sufficient if there is cause to fear the infliction of damage on the person concerned.
- Before submitting the objection to the Court, the complainant must have complained to the administrative body concerned (i.e. the administrative body that issued the contested decision), which is under an obligation to take a decision on the complaint within 30 days from the date of its official receipt. If no decision is taken on the complaint within that time-limit, the Administration's silence is taken to signify an implicit rejection against which an appeal can be lodged with the Court in the same way as an appeal against an explicit decision to reject the complaint.
- The complainant must submit his objection to the Court within 60 days from the date of its rejection by the Administration or from the date of expiration of the 30-day time-limit for a decision to be taken on the complaint, failing which the complainant forfeits his right of appeal. However, after that time-limit, the law permits the complainant to apply to the ordinary courts to claim his right to compensation for damage resulting from the violation forming the subject of the complaint. The Administrative Court of Justice may decide to reject the objection or annul or amend the contested decision and award compensation if it is warranted and if the complainant has applied for such compensation. The decision of the Court can form the subject of an objection in cassation, which must be heard by a plenary session of the State Advisory Council within 30 days from the date of its submission.

Act No. 106 of 1989 limited the scope of the jurisdiction of the Administrative Court of Justice by explicitly stipulating that the Court was not competent to hear objections against decrees or decisions promulgated by the President of the Republic (which it described as "sovereign acts") or against administrative decisions taken pursuant to directives issued by the President of the Republic in accordance with his constitutional powers.<sup>243</sup> This category of administrative acts thereby falls totally outside the jurisdiction of the Court and is not subject to

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243 Article 6, paragraphs (a) and (b), of Act No. 106.

judicial control; such acts cannot be contested, nor can an application be submitted for their annulment or for the payment of compensation in respect of the damage that they cause. The fact that this category of administrative acts is not subject to any judicial control undoubtedly constitutes a violation of the principle of legality and detracts from the sovereignty of the law, since the President of the Republic is left free to take decisions, without any control, even if they entail violation of the public rights and freedoms of individuals, who have no right to apply to the courts in order to defend their rights and put an end to such violations. Decisions taken by the Revolution Command Council are likewise not subject to any judicial control.

g. The Supreme Constitutional Court

Article 87 of the Constitution of 1968 stipulated that a Supreme Constitutional Court should be established, under the terms of a legislative enactment, to interpret the provisions of the Constitution, determine the constitutionality of legislation, interpret administrative and financial regulations and determine whether regulations violated the relevant laws, the Court's rulings being binding in this regard. Pursuant to the provisions of the above-mentioned article 87, the Supreme Constitutional Court was established under the terms of Act No. 159 of 1968,<sup>244</sup> which specified the manner in which it was to be formed,<sup>245</sup> defined its powers in accordance with the relevant provisions of article 87 of the Constitution and regulated its working procedures. However, the present Constitution does not make provision for the establishment of a court of this type and thereby implicitly abolished the Supreme Constitutional Court, together with all control over legislation. The practical consequence of this abolition was that all the decisions and enactments promulgated by the Revolution Command Council have the force of law<sup>246</sup> and are not subject to any form of judicial control.

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244 Al-Waqa'i al-Iraqiya No. 1659 of 2 December 1968.

245 The Supreme Constitutional Court was presided over by the president of the Court of Cassation and included among its members the chairman of the Financial Control Board, three judges from the Court of Cassation and three senior civil servants holding a rank not lower than director-general.

246 Article 42(a) of the Constitution of 1970.

## 2. The Department of Public Prosecutions

The Department of Public Prosecutions was organized in accordance with Act No. 159 of 1979, article 1 of which defined its principal objectives as follows: to protect public order and security and the institutions of the State, defend the achievements of the revolution, safeguard the financial resources of the State, promote the socialist system, assist the judiciary in the rapid detection of criminal acts, endeavour to settle cases rapidly, monitor the execution of judgements and penalties and law enforcement, help to monitor the phenomenon of criminal activity and disputes, make practical proposals for their solution, and protect the family and children.

The Department of Public Prosecutions consists of the Director of Public Prosecutions, two Deputy Directors, a public prosecutor at the Court of Cassation and in each appellate area and criminal court, and deputy public prosecutors. The Director of Public Prosecutions is based at Baghdad; his jurisdiction covers all parts of the Republic and he reports to the Minister of Justice, who is empowered to control and supervise all the members of the Department of Public Prosecutions.<sup>247</sup>

Penal proceedings are instituted through the submission of a verbal or written complaint to an examining magistrate, a police officer or a member of a criminal investigation department by the victim of the offence, his legal representative or a person who is aware of the occurrence of the offence, or by notification from a public prosecutor. A member of the Department of Public Prosecutions is required to be present during the examination of cases involving felonies or misdemeanours so that he can make observations and request legal action. A member of the Department must also be present at court hearings (with the exception of those of the Court of Cassation) in order to submit his pleas to the court.<sup>248</sup> The courts must inform the Department of Public Prosecutions of any decisions that they take without trial, concerning arrest, detention or release with or without bail, within three days from the date on which the decision is taken. The criminal courts must transmit directly to the Director of Public Prosecutions the files of cases that they have heard in connection with offences that are legally punishable by death or life imprisonment. The juvenile courts must also transmit to the Department of Public

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247 Article 26 of Act No. 159.

248 Article 9 of Act No. 159.

Prosecutions the files of criminal cases in which they have handed down judgements.

A member of the Department of Public Prosecutions must also attend the labour tribunals, the Committee on Judicial Matters, the Committee on Public Prosecution Matters, the disciplinary committees, the tax investigation committees and any other committee or board of a penal nature.<sup>249</sup>

A member of the Department of Public Prosecutions may attend hearings of the personal status courts or the civil courts on matters concerning minors, missing or absent persons, divorce, separation, family desertion or any other matter in which the Department feels obliged to intervene in order to protect the family and children.<sup>250</sup> A member of the Department may also attend civil hearings to which the State is a party<sup>251</sup> and the Department is entitled to express its opinion on cases of that type.

The Department has a right to object to decisions or judgements handed down by examining magistrates or the above-mentioned courts, committees and boards in accordance with the objection procedures and within the time-limits specified for each type of decision or judgement.<sup>252</sup> Accordingly, under the terms of the Public Prosecutions Act, the Department of Public Prosecutions is entitled to appear and make statements before all the courts and in most types of legal proceedings in order to closely observe and monitor their activities, particularly in the case of penal proceedings. Through the Department of Public Prosecutions, the Minister of Justice, in turn, is able to monitor the activities of the courts.

### **3. Appointment of Judges**

Article 36 of the Organization of the Judiciary Act (and likewise article 41 of the Public Prosecutions Act) stipulates that persons appointed as judges or members of the Department of Public

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249 Article 12 of Act No. 159.

250 Article 13 of Act No. 159.

251 Article 14 of Act No. 159.

252 Article 17 of Act No. 159

Prosecutions must meet the following requirements:<sup>253</sup>

- They must be Iraqi by birth. In other words, no person who has acquired Iraqi nationality by naturalization can become a judge. This requirement is incompatible with the constitutional provisions<sup>254</sup> concerning equality among citizens and equal opportunities for all citizens.<sup>255</sup>
- They must be married. This requirement undoubtedly constitutes interference in the private lives of individuals and entails discriminatory treatment between married and unmarried persons.
- They must be graduates of the Judicial Academy. Persons seeking admission to this Academy must hold a degree in law, must have practised law or held judicial posts for not less than three years and must pass the examination for admission to the Academy. The period of study at the Academy lasts for two years, during which the prospective judges enrolled attend theoretical lectures on the various branches of law and receive practical training in judicial functions.

Judges are appointed by presidential decree and the Minister of Justice specifies the court in which the judge is to work. No judge can take up his duties until he has taken the legal oath<sup>256</sup> before the President of the Republic or his authorized representative.<sup>257</sup> Judges are retired when they reach the age of 63.<sup>258</sup>

Judges receive an automatic increment every year and are promoted to a higher grade (there are four grades, A, B, C and D) by decision of

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253 Compare with articles 10 to 14 of the United Nations Basic Principles on the Independence of the Judiciary of 1985.

254 Article 19 of the Constitution of 1970.

255 Compare, for example, article 61 of the Lebanese Judiciary Act (Legislative Decree No. 150/83), which stipulates that a candidate seeking a post in the judiciary must have been Lebanese for at least 10 years.

256 Act No. 2 of 1989 modified the wording of the oath by deleting the expression "I shall apply the law ... in a manner consistent with its objective of establishing a united socialist and democratic society".

257 Article 37 of the Organization of the Judiciary Act, as amended by Act No. 2 of 1989.

258 *Idem*, article 42.



the Council of the Judiciary, provided that they have reached the lowest salary level for the grade to which they are to be promoted and have written a thesis on a subject relating to their fields of legal specialization. When considering the promotion of judges, the Council must take into consideration the reports of the heads of appellate areas and judicial supervisors concerning the competence of the judge, the number of his decisions that have been ratified or quashed, the reasons given for their annulment, and the opinion of the Minister of Justice concerning the judge's conduct.<sup>259</sup> In short, promotion from grade IV to grade I requires approximately 20 years. The vice-presidents and judges of courts of appeal must be in grade I or II and the president of a court of appeal is appointed from among the vice-presidents of courts of appeal ranking as grade-I judges or from among the directors-general of the central departments or agencies of the Ministry of Justice.<sup>260</sup> Judges of the Court of Cassation are appointed by presidential decree, on the basis of a proposal by the Minister of Justice, from among grade-I judges who have held high judicial posts.<sup>261</sup> The president of the Court of Cassation is appointed by presidential decree, on the basis of a proposal by the Minister of Justice, and holds the rank of Minister, thereby receiving the salary and allowances of a Minister.<sup>262</sup>

Judges enjoy immunity<sup>263</sup> and cannot be transferred to a non-judicial post without their written consent. However, a judge can be dismissed or transferred to a civilian post by presidential decree, based on a decision by the Council of the Judiciary or a proposal by the Minister of Justice, if his promotion is deferred on more than two successive occasions and he remains in the same grade.<sup>264</sup> A judge may be assigned, with his written consent, to a legal post on the Revolution Command Council, in the Office of the President of the Republic or in central departments or agencies of the Ministry of Justice or to teach at a

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259 Articles 39 and 45 of the Organization of the Judiciary Act, as amended by Act No. 104 of 1989.

260 Article 47 of the Organization of the Judiciary Act.

261 These are listed in detail in article 47, paragraph 2, of the Organization of the Judiciary Act.

262 Article 38, paragraph 2, of the Organization of the Judiciary Act.

263 Compare with article 16 of the United Nations Basic Principles on the Independence of the Judiciary of 1985.

264 Article 39 of the Organization of the Judiciary Act.

university or the Judicial Academy, provided that the duration of his assignment does not exceed three years, during which the judge retains his judicial status and rights. The Minister of Justice is empowered to supervise all the courts and judges and to monitor the proper administration of the courts and the conduct of their personnel. To that end, he is entitled to inspect all the courts or delegate a judge of the Court of Cassation, the director of the Judicial Supervisory Board or any other judge to carry out such inspections. Inspections of the work of the Court of Cassation and the supervision of its judges are carried out by its president, who is required to submit an annual report on the work of the Court to the Minister of Justice. The president of a court of appeal supervises all the judges and courts in his area and is required to submit an annual report to the Minister of Justice containing his comments on the conduct, competence and diligence of each judge and also on the administrative and financial affairs of their courts. These reports are kept in the judge's personal file.<sup>265</sup> The divisions of the Court of Cassation, as well as the courts of appeal and the criminal courts, are required to prepare periodic reports specifying judgements and decisions in which the judge has committed a blatant error and to transmit them to the Ministry of Justice. These reports are kept in the judge's personal file and the courts also maintain records of such errors.<sup>266</sup>

Disciplinary proceedings (concerning professional misconduct) may be instituted against a judge,<sup>267</sup> on the basis of a decision by the Minister of Justice, before the Committee on Judicial Matters, which consists of three members chosen by the Council of the Judiciary from among its own members. The proceedings are conducted *in camera* and are attended by a representative of the Minister of Justice and by the Director of Public Prosecutions or a public prosecutor who is authorized to represent him. The judge is required to appear in person and may avail himself of the services of a lawyer. The Minister of Justice, the Director of Public Prosecutions and the judge have the right to challenge the decision of the Committee on Judicial Matters by lodging an appeal before an expanded session of the Court of Cassation within 30 days from the date of notification of the decision. The expanded session may

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265 Article 55 of the Organization of the Judiciary Act.

266 Article 56 of the Organization of the Judiciary Act.

267 Compare with arts. 17 to 20 of the United Nations Basic Principles on the Independence of the Judiciary of 1985.

ratify, annul or modify the Committee's decision and its own decision on this matter is final.<sup>268</sup>

The selection, appointment and grading of judges are subject to conditions that are designed to ensure that judges are qualified and competent. The Organization of the Judiciary Act attaches importance to master's degrees and doctorates, which it encourages judges to obtain by granting them sabbatical leave, on full pay, in or outside Iraq for a period of two years.<sup>269</sup> Judges of the Court of Cassation and grade-I and grade-II judges are also granted one year's leave on full pay in order to devote their full time to the preparation of a study or thesis on a subject relating to their judicial fields of specialization. Judges enjoy immunity in so far as they cannot be transferred to a non-judicial post without their written consent, nor can they be transferred from their place of work before they have spent three years there, unless there is a valid reason to justify such transfer, in which case the decision to transfer them must be substantiated.

However, none of the above-mentioned rules apply to the special courts, which will be described below, and which do not provide the requisite safeguards in regard to the competence and impartiality of judges and their independence of the executive authority, nor do they guarantee the right of defence for persons referred to them for trial.

### **C. The Special Emergency Courts**

In addition to the ordinary courts, i.e., the misdemeanours and criminal courts, special emergency courts have been established in Iraq at various times to hear offences which, in the regime's opinion, are extremely serious and pose a threat to the internal or external security and integrity of the State. These courts have been characterized by their repressive nature and their failure to ensure an impartial and fair trial of the persons referred to them. In fact, they have frequently been transformed into an instrument of repression and a means to take reprisals against political opponents of the regime. The most notable of these courts are: the Revolutionary Court, the State Security Court and the Special Provisional Court.

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268 Article 62 of the Organization of the Judiciary Act.

269 Article 41 of the Organization of the Judiciary Act..

## 1. The Revolutionary Court

This court was established immediately after the July 1958 revolution under the terms of Act No. 7 of 1958 concerning the punishment of persons who conspire against the integrity of the country and undermine its system of government. This court, which was known as the "Special Higher Military Court", consisted of five officers presided over by Colonel Fadhil Abbas al-Mehdawi and tried a number of prominent personalities in the monarchical regime and, subsequently, persons who were accused of conspiring against the regime of Abdul Karim Qasim or taking part in the events that occurred at Mosul. President Qasim put an end to the activities of this court in 1960.

When the Baath Party assumed power in 1968, it re-established this court under the name of the "Revolutionary Court" under the terms of Act No. 180 of 1968 (which amended Act No. 7 of 1958, concerning the punishment of persons who conspire against the integrity of the country or undermine its system of government).<sup>270</sup> In accordance with this Act, the court was presided over by an officer holding a rank not lower than colonel and consisted of two other members who were officers holding a rank not lower than major. They were appointed by presidential decree.

Although this Act specified the military rank of the President and the two other members, it did not stipulate that they should hold a university degree in law. According to Act No. 180, the Revolutionary Court was competent to hear and judge the offences specified in Act No. 7 of 1958, as well as offences prejudicial to the external or internal security of the State and which were referred to it by order of the Prime Minister.

Under the terms of Act No. 1 of 1969,<sup>271</sup> the Revolutionary Court was empowered to hear not only the offences specified in the above-mentioned Act No. 180 of 1968 but also any other offence referred to it by order of the Prime Minister or his authorized representative. Act No. 1 of 1969 also stipulated that the offences heard by the court should be investigated by an examining board, consisting of civilian magistrates and officers appointed by the Prime Minister, in accordance with the procedures laid down in the Baghdad Code of Penal Procedure. The board exercised the same powers as an examining magistrate and was required to submit the results of its investigation, together with its legal

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270 Al-Waqa'i al-Iraqiya No. 1663 of 9 December 1968.

271 Al-Waqa'i al-Iraqiya No. 1675 of 2 January 1969.

recommendation, to the Prime Minister or his authorized representative so that they could decide whether the case should be referred to a court.<sup>272</sup> Trials were conducted in accordance with the Baghdad Code of Penal Procedure (which was superseded by the Code of Penal Procedure promulgated in Act No. 23 of 1971) and the accused had the right to appoint a lawyer to defend him; if he failed to do so, the court appointed a lawyer to fulfil that function. However, an accused person who was tried *in absentia* was not permitted to appoint a lawyer. Further amendments to Act No. 180 of 1968 were subsequently made in Acts Nos. 85 and 120 of 1969, which stipulated that the court should consist of a president and two members chosen from among military and civilian government officials, it being stipulated that at least two members of the court must be jurists.

However, the most significant change affecting the Revolutionary Court consisted in the extension of its jurisdiction under the terms of Revolution Command Council Decision No. 1016 of 1 August 1978,<sup>273</sup> which vested the Revolutionary Court with competence to hear and judge cases involving the following offences:

- Offences prejudicial to the internal or external security of the State;<sup>274</sup>
- Offences against the public authorities;<sup>275</sup>
- Offences specified in the Punishment of Foreign Intelligence Agents Act;<sup>276</sup>
- Offences involving bribery;<sup>277</sup>
- Offences of embezzlement committed by civil servants;<sup>278</sup>

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272 Under the Constitution of 1968, the Prime Minister was the head of the executive authority and President Hassan al-Bakr combined the posts of President of the Republic and Prime Minister throughout the period of his rule (1968-1979). Under the present Constitution, however, executive authority is exercised by the President of the Republic.

273 Al-Waqa'i al-Iraqiya No. 1096 of 14 August 1978.

274 As specified in articles 156 to 222 of the Penal Code.

275 As specified in articles 223 to 226 of the Penal Code.

276 As specified in Act No. 141 of 1974.

277 As specified in articles 307 to 314 of the Penal Code.

278 As specified in articles 315 to 323 of the Penal Code.

- Offences specified in the Punishment of Illicit Commission Agents Act No. 8 of 1976;
- Offences prejudicial to the national economy and to financial confidence in the State;<sup>279</sup>
- Offences prejudicial to the national economy and trade;<sup>280</sup>
- Offences involving narcotic drugs;<sup>281</sup>
- Offences involving facilitation of the illegal entry of foreigners into the country;<sup>282</sup>
- Offences involving highway robbery (banditry);<sup>283</sup>
- Offences involving weapons;<sup>284</sup>
- Offences involving sexual assault and rape.<sup>285</sup>

Paragraph 14 of the above-mentioned Decision No. 1016 stipulated that the court was competent to hear cases involving any other offence specified in special legislation or referred to it by the President of the Republic or his authorized representative. It is noteworthy that most of

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279 As specified in articles 280 to 305 of the Penal Code.

280 As specified in articles 9 to 15 of the Trade Regulation Act No. 20 of 1970, as amended.

281 As specified in article 14 of the Narcotic Drugs Act No. 68 of 1965, as amended.

282 As specified in article 27, paragraph 1, of the Residence of Foreigners Act No. 36 of 1961, as amended (abrogated), and article 24, paragraph 1, of the Residence of Foreigners Act No. 118 of 1978.

283 As specified in article 441 of the Penal Code.

284 As specified in articles 29 and 30 of the Weapons Act No. 151 of 1968, as amended, and also the offences specified in Revolution Command Council Decision No. 807 of 29 July 1975.

285 As specified in the first paragraph of Revolution Command Council Decision No. 488 of 11 April 1978.

these offences were punishable by death or life imprisonment.<sup>286</sup>

Accordingly, Decision No. 1016 transformed the Revolutionary Court into a penal tribunal whose jurisdiction paralleled that of the criminal courts after its role had been strengthened at the expense of the latter by granting it jurisdiction to hear ordinary offences that had no bearing on the security or integrity of the State, since they basically fell within the jurisdiction of the criminal courts. This step had an adverse impact on the integrity and credibility of the administration of justice and constituted a violation of human rights in so far as the Revolutionary Court consisted of civil servants rather than professional judges possessing the minimum degree of competence and integrity required of criminal court judges. Trials before the Revolutionary Court were conducted *in camera* and defendants did not enjoy adequate safeguards for their defence, since they were not permitted to contact their lawyers freely and without surveillance.<sup>287</sup> The judgements of the Revolutionary Court were final and could not be contested before any other official body; they were carried out immediately, except in the case of death sentences, which were carried out only after their ratification by the President of the Republic.<sup>288</sup> In contrast, the judgements of the criminal

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286 Iraq's reply to the questions raised by the Special Rapporteur of the Commission on Human Rights on Iraq stated that the number of death sentences handed down by the ordinary courts and the Revolutionary Court from 1987 to 1991 amounted to 1,714 and the number of long-term prison sentences amounted to 7,790. However, the reply did not specify the number of sentences handed down solely by the Revolutionary Court, nor did it mention the number of persons on whom the death penalty had been carried out. See the note of the Secretary-General of the United Nations in document A/46/647 of 13 November 1991.

287 In this connection, see the content of the report of the Special Rapporteur of the Commission on Human Rights concerning the trial of Ian Richter in document A/46/647 of 13 November 1991, pp. 6 and 69 (of the French version). In this respect, the trial of Farzad Bazoft, the British journalist of Iranian origin who was sentenced to death and executed, and his British companion Daphne Parish, who was sentenced to 15 years' imprisonment and subsequently released, was no better than the trial of Richter.

288 The convicted person could appeal only to the President of the Republic, who was empowered to grant a special pardon. The Revolution Command Council also promulgated decisions quashing sentences handed down by the Revolutionary Court, together with all their legal consequences, in accordance with the provisions of article 42(a) of the Constitution. (See, for example, Decisions Nos. 894 and 897 of 4 July 1978).

courts could be contested before the Court of Cassation.

Furthermore, Act No. 6 of 1985, which was promulgated by the Revolution Command Council on 12 January 1985,<sup>289</sup> empowered the President of the Republic "to order the annulment of a judgement handed down by the Revolutionary Court in any proceedings and to refer the case back to the Court for retrial". The Revolution Command Council subsequently promulgated another Act (No. 50 of 1986)<sup>290</sup> which granted the President of the Republic the right to "provisionally or permanently halt the examination or trial proceedings at any stage of the examination or trial before the Revolutionary Court". These two Acts empowered the President of the Republic to interfere in the work of the Revolutionary Court (if we assume that the Revolutionary Court was impartial and independent of the executive authority) and deprived the Court of its credibility.

The Revolutionary Court was abolished under the terms of Revolution Command Council Decision No. 140 of 19 May 1991.<sup>291</sup> However, there is nothing to prevent the Revolution Command Council from reconstituting the Revolutionary Court or establishing another similar court, since the Revolution Command Council exercises absolute legislative authority and none of its enactments or decisions are subject to any form of control.

## **2. The State Security Court**

This emergency court was established under the terms of the National Security Act No. 4 of 1965. According to the last amendment made to the Act in 1969, the Court comprised a president and two members chosen from among military and civilian government employees. If necessary, it could consist solely of military personnel, who were not required to be jurists. The composition of the Court, as well as the geographical scope of its jurisdiction and the location at which it should sit, were specified by presidential decree. This Court was competent to hear offences prejudicial to the external or internal security of the State, as well as offences referred to it by the Prime Minister.

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289 Al-Waqa'i al-Iraqiya No. 3030 of 28 January 1985.

290 Al-Waqa'i al-Iraqiya No. 3099 of 26 May 1986.

291 See the Iraqi Government's reply to the questions of the Special Rapporteur of the Commission on Human Rights in document A/46/647, p. 35.



The judgements of the State Security Court could form the subject of an objection in cassation that had to be lodged with the State Security Court of Cassation within 20 days from the date on which they were handed down. However, sentences of death or life imprisonment had to be referred immediately to the State Security Court of Cassation, even if such referral had not been requested by the convicted person.

These courts ceased their activity when the state of emergency was lifted by Presidential Decree No. 595 of 24 October 1970. However, a special military court was established at Kirkuk in 1974 to try Kurds who had been arrested for political reasons. The trials before that court were conducted *in camera* and without the attendance of a lawyer to defend the accused. It handed down a large number of death sentences, most of which were carried out. Although this court was abolished in 1982, other emergency courts have been established in recent years, such as the Special Provisional Court which was constituted in 1986 to hear offences prejudicial to the economy.<sup>292</sup>

### 3. The Special Court

The Baathist regime establishes a special provisional court whenever it "discovers" a conspiracy against itself. These courts try the conspirators and their work is concluded as soon as they have handed down a judgement in the case. Such courts, consisting of members of the Revolution Command Council, were established following the discovery of an attempted *coup d'état* in 1967 and subsequently in 1973. In 1979, the Revolution Command Council established<sup>293</sup> a special court, consisting of seven of its members, to try persons accused of the offence of "treasonable conspiracy against the Party and the State" following the

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292 See the reports of Amnesty International (in French) for 1982 (p. 381), 1983 (p. 382) and 1988 (p. 295), particularly the report entitled "When the State Kills", 1989, pp. 151-153. The military emergency courts that are established in the region of Kurdistan to try Kurdish insurgents should not be confused with the ordinary military courts that try members of the armed forces in accordance with the practice followed in all States.

293 Under the terms of its Decision No. 967 of 28 July 1979.

discovery of an attempted *coup d'état* in which several members of the Revolution Command Council itself were involved<sup>294</sup> as well as some leading members of the Baath Party. This court sentenced 21 persons to death after a rapid trial and the sentences were carried out immediately. The Revolution Command Council can order the establishment of a special court whenever it wishes to "liquidate" so-called conspirators against the Party or the State or repress any insurgent movement.

From the above, one can conclude that the special emergency courts differ from the ordinary penal courts not only in regard to their composition and trial procedures but also in regard to their objectives, since the purpose of their establishment is primarily to take reprisals against enemies of the regime by handing down sentences of death or long terms of imprisonment. These courts are therefore an instrument designed to protect the existing regime rather than to defend the safety and security of society.

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294 See Revolution Command Council Decision No. 968 of 23 July 1979, Al-Waq'a'i al-Iraqiya No. 2725 of 13 August 1979, which dismissed four members of the Revolution Command Council from membership of the Council in view of their involvement in an attempted coup d'etat (although this Decision did not mention the reason for their dismissal from membership of the Council).

PART TWO :

**Political Life**

## Section I

### Rights and Obligations Provided for in the Iraqi Constitution

Chapter III of the Iraqi Constitution, entitled "Basic rights and obligations"<sup>295</sup> establishes a number of constitutional principles and makes provision for public freedoms which are intended not only to protect the freedom of individuals *vis-à-vis* the public authorities but also to safeguard some economic, social and cultural rights that the State guarantees to its citizens. In return, the Constitution imposes various obligations on citizens.

#### A. Rights Guaranteed by the Constitution

The Constitution devotes not less than 15 articles, out of a total of 70 articles, to the guarantee of a number of public rights and obligations specified in the Universal Declaration of Human Rights and the International Covenants adopted by the United Nations in 1966.<sup>296</sup> However, the Constitution divests many of those articles of their substance and prevents their entry into force by making their application conditional on the promulgation of ordinary legislative texts and leaving scope for the restriction of those rights and freedoms through subsequent legislative enactments, since some of its articles contain expressions such as "within the limits of the law", "in accordance with the provisions of the law" and "except where otherwise provided for by law", etc.

These rights will be examined by classifying them as civil and political rights and economic, social and cultural rights.

#### 1. Civil and Political Rights

Civil and political rights refer in particular to the rights of the individual to liberty and security of person from the physical and

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<sup>295</sup> Articles 19 to 36 of the Constitution of 1970.

<sup>296</sup> Iraq ratified these two Covenants and became a party thereto with effect from 1971. However the Covenants were not put into effect until 1976.

psychological standpoints. The Iraqi Constitution guarantees the following rights and freedoms:

a. The Right to Equality and Equal Opportunities

Article 19 of the Constitution stipulates that "citizens are equal before the law, without distinction on grounds of sex, race, language, social origin or religion" in paragraph (a) and "equal opportunities are guaranteed to all citizens within the limits of the law" in paragraph (b).

It is certain that all the leading positions and important posts in the State are occupied by members and supporters of the Baath Party, who are accorded precedence over the citizens in regard to the occupation of sensitive posts. The Legal System Reform Act referred to the need to "politicize" the civil service "since civil servants apply legislation, which comprises economic and social options governed by the joint political vision of the leadership".<sup>297</sup> The Revolution Command Council also regards work in government departments as an extension of work for the Party and expressed this concept in one of its decisions with the words: "The performance of tasks in the Party and the State by members of the Baath Party constitutes part of the same valiant endeavour ... and a functional assignment in the State is a political party obligation rather than a conventional official post since it is the field in which the Party's ideology and theories are put into tangible practical effect".<sup>298</sup>

However, discrimination among citizens is not confined solely to government posts. During the war with Iran, the Revolution Command Council promulgated a number of decisions granting specific privileges to persons holding decorations and medals of valour in order to reward them for their outstanding performance in battle. One of the strangest decisions taken by the Revolution Command Council in this regard is possibly the decision under which

"friends of the President and leader Saddam Hussein who hold three or more medals of valour shall enjoy the following privileges in addition to those accorded to the holders of medals of valour: 1. Five marks shall be added to the final average grade of their children or spouses for

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297 Act No. 35 of 1977, Al-Waqa'i al-Iraqiya No. 2576 of 14 March 1997, p. 366.

298 Decision No. 437 of 3 April 1978, Al-Waqa'i al-Iraqiya No. 2649 of 17 April 1978.

purposes of admission to schools, colleges and universities; 2. Their children shall be admitted to military academies and colleges without the need to meet the requirements concerning average grade and age; 3. The provisions of this decision shall be applied during the war and for a period of five years following its conclusion".<sup>299</sup>

That decision granted privileges to the families of members of the armed forces in regard to admission to colleges, universities and military academies at the expense of other candidates seeking to enter those institutions and meeting all the requirements therefor. This constitutes a violation of the principle of equality and equal opportunities among citizens.

#### b. The Right to a Fair Trial

Article 20 of the Constitution stipulates that the accused is presumed innocent until proved guilty at a legal trial, under paragraph (a); the right of defence is sacred at all stages of the investigation and trial, in accordance with the provisions of the law, under paragraph (b); and court hearings must be public unless the court decides to hold them *in camera*, under paragraph (c). Article 21 stipulates that punishment is personal, under paragraph (a); punishment cannot be inflicted except for an act which legally constituted a crime at the time of its commission; and it is not admissible to inflict a penalty more severe than that applicable at the time of commission of the offence, under paragraph (b). Furthermore, article 67(b) recognizes the principle of the non-retroactivity of penal legislation, tax laws and financial dues. Article 63(b) states that the right of legal redress is guaranteed to all citizens. These articles, although brief, comprise an explicit recognition of everyone's right to a legal public trial and prohibit conviction for an act that did not constitute a legal offence at the time of its commission. It is similarly prohibited to inflict a penalty more severe than that applicable at the time of commission of the offence.

In this respect, the articles of the Iraqi Constitution are consistent with some of the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. However, many of the safeguards provided for in article 14 of the International Covenant on Civil and Political Rights are not guaranteed.

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299 Decision No. 1033 of 18 September 1984, Al-Waqa'i al-Iraqiya No. 3013 of 1 October 1984.

It has already been shown, that the right to a fair trial and to a defence, are not recognized by the Revolutionary Court or the other special courts. These courts are established by the ruling regime in order to take reprisals against its political enemies whom it accuses of conspiring against the State and the Party. The Iraqi authorities have resorted to collective punishment and reprisals against the families of members of the opposition and Kurdish fighters.<sup>300</sup> Moreover, in 1980, the Revolution Command Council promulgated a decision prescribing the death penalty for members of the Islamic Da'wa party in accordance with the provisions of article 156 of the Penal Code, with the stipulation that "this Decision is applicable to offences committed prior to its promulgation".<sup>301</sup> This decision, therefore, violates article 67 of the Constitution, as well as article 11, paragraph 2, of the Universal Declaration of Human Rights and article 15 of the International Covenant on Civil and Political Rights.<sup>302</sup>

c. The Right to Liberty, Security of Person and Respect for Human Dignity

The Constitution<sup>303</sup> stipulates that human dignity shall be safeguarded and prohibits the practice of any form of physical or mental torture. The law prohibits the use of any illicit means to induce an accused person to make a confession and such illicit means are deemed to include ill-treatment, threats, physical harm, psychological pressure

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300 In this connection, see Van Boven (Th), *Les critères de distinction des droits de l'homme* in "Les dimensions internationales des droits de l'homme", published by UNESCO, Paris, 1980, p. 45 et seq.

301 Revolution Command Council Decision No. 461 of 31 March 1980, Al-Waqa'i al-Iraqiya No. 2769 of 21 April 1980.

302 In its reply to the questions raised by the Special Rapporteur of the Commission on Human Rights on Iraq, the Iraqi Government asserted that it had not referred any person for trial under the terms of the above-mentioned Decision No. 461 which, consequently, had never been put into practical effect (document A/46/647 of 13 November 1991, p. 35, which erroneously gave the date of Decision No. 461 as 31 March 1985 due to a typographic error in the Arabic text, the correct date being 31 March 1980). However, even if that assertion were correct, it does not negate the fact that Decision No. 461 violated not only the Constitution but also the two above-mentioned International Covenants.

303 Article 22, paragraph (a), of the Constitution of 1970.

and the use of narcotics, intoxicants and drugs.<sup>304</sup> The law also prescribes punishment for any public official who treats any person cruelly or who tortures or orders the torture of an accused person, a witness or an expert with a view to inducing him to confess to offence, to make statements, to provide information concerning an offence, to conceal facts or to give a particular opinion in regard thereto.<sup>305</sup>

In addition to the prohibition of torture, article 32(b) of the Constitution stipulates that no person may be arrested, detained, imprisoned or searched except in accordance with the provisions of the law. This principle is confirmed in article 92 of the Code of Penal Procedure, which states that no one may be arrested or detained except in accordance with an order issued by a magistrate or a court in the circumstances in which such is permitted by law.

The Constitution emphasizes the inviolable nature of homes, which cannot be entered or searched except in accordance with the legally defined procedures.<sup>306</sup> It also guarantees the confidentiality of postal, telegraphic and telephone communications, which cannot be disclosed except in accordance with the legally specified procedures.<sup>307</sup>

The provisions of articles 22 and 23 of the Constitution are consistent with those of articles 5, 9 and 12 of the Universal Declaration and articles 7, 9(a) and 17 of the International Covenant on Civil and Political Rights and, in theory, guarantee not only respect for human dignity but also everyone's right to security of person from the physical and psychological standpoints. In actual practice, however, the Iraqi authorities rarely respect those texts. Sufficient evidence of the fact that torture has become widespread in Iraqi prisons can be found in the annual reports of Amnesty International and other non-governmental organizations concerned with human rights, as well as the report of the Special Rapporteur of the Commission on Human Rights on Iraq.<sup>308</sup> It should be noted that Iraq has not acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.

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304 Article 127 of the Code of Penal Procedure of 1971.

305 Articles 332 and 333 of the Penal Code.

306 Article 22, paragraph (c), of the Constitution of 1970.

307 Article 23 of the Constitution of 1970.

308 Document A/46/647 of 13 November 1991, pp. 7 and 64.



Furthermore, the Revolution Command Council has promulgated a decision empowering the Minister of the Interior to detain persons suspected of criminal conduct.<sup>309</sup> This violates the principle that no one may be arrested except under the terms of a judicial warrant. The Iraqi Government has admitted that 1,610 persons were arrested in 1990 in accordance with that Decision.<sup>310</sup> Furthermore, it used the most violent means to suppress the Kurdish and Shi'ite insurrections after the conclusion of the Gulf War in March 1991. It used chemical weapons against the Kurds in 1988.

d. The Right to Freedom of Movement and Choice of Place of Residence

Article 24 of the Constitution stipulates that no citizen may be prohibited from leaving or returning to the country, nor may his movements or residence within the country be restricted except in the circumstances defined by law.

However, Iraqi legislation imposes many restrictions on freedom of movement and, in particular, on travel out of the country. Under the terms of Revolution Command Council Decision No. 1562 of 14 December 1982,<sup>311</sup> Iraqis are not permitted to own landed property within the governorate of Baghdad unless they were resident within the limits of the City of Baghdad according to the 1965 census. In its replies to the questions raised by the Special Rapporteur of the Commission on Human Rights on Iraq, the Iraqi Government justified that measure on the ground that its purpose was to curb migration from rural areas and other governorates to the capital.

Citizens cannot obtain a passport until the authorities have conducted a thorough investigation into their circumstances and the reasons for their travel.<sup>312</sup> Anyone leaving or attempting to leave Iraq in violation of the provisions of the Passport Act is liable to a penalty of imprisonment and sequestration of his movable and immovable property.

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309 Decision No. 26 of 1971.

310 Document A/46/647 of 13 November 1991, p. 23.

311 Al-Waqa'i al-Iraqiya No. 2918 of 3 January 1983.

312 The restrictions imposed on travel abroad were eased at the beginning of 1990 and travellers were permitted to take with them an amount of currency equivalent to US\$770. However, the restrictions on travel were reimposed after the Iraqi invasion of Kuwait on 2 August 1990.

Anyone who loses his passport through negligence is liable to a fine of 500-1,000 dinars and is not issued with a new passport until two years from the date of his conviction unless the Minister of the Interior agrees to issue him with a new passport before the expiration of that time-limit.<sup>313</sup> In this connection, it may be useful to note that any Iraqi citizen who acquires the nationality of a foreign State while he is abroad forfeits his Iraqi nationality.<sup>314</sup> However, according to an amendment made to that article under the terms of Act No. 60 of 1970, the Minister of the Interior, acting with the approval of the Minister for Foreign Affairs, may exempt some persons from the forfeiture of Iraqi nationality, as provided for in the above-mentioned article 11. This is a further example of unequal treatment of citizens in regard to vital matters, such as nationality, since the forfeiture or retention of Iraqi nationality depends on a decision by the Minister of the Interior.

e. The Right to Freedom of Religion and Belief

Article 25 of the Constitution guarantees freedom of religion and belief, as well as freedom of religious observance, provided that such freedom is neither inconsistent with the provisions of the Constitution and the law nor incompatible with public order and morality.

In 1990, the International Bank for Reconstruction and Development estimated that Muslims constituted about 95 per cent of the total population amounting to 17.77 million persons divided into two principal religious communities, Shi'ites (51-53 per cent) and Sunnis (at least 42 per cent of the total population). Christians of all denominations constituted about 4 per cent of the population. Although the number of Jews in Iraq amounted to not less than 120,000 persons until the late 1940s, large-scale Jewish emigration occurred in the early 1950s following the establishment of the State of Israel, as a result of which only a small number of Jews, amounting to no more than 1,000 persons, remain in Iraq at the present time. When the Baath Party came to power, a number of Jews were accused of spying for Israel and 15 of them were executed between 1969 and 1970.<sup>315</sup>

The Constitution stipulates that Islam is the religion of the State (article 4). However, the Iraqi authorities respect the observances of other

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313 Act No. 84 of 1983, Al-Waqa'i al-Iraqiya No. 2957 of 5 September 1983.

314 Article 11 of the Iraqi Nationality Act No. 43 of 1963, as amended.

315 See the report of Middle East Watch, *op. cit.*, p. 72.

divinely-revealed religions and do not prevent non-Muslims from engaging in religious worship. This even applies to the Jewish community, which has a synagogue at Baghdad. The authorities spend large sums of money on the construction and renovation of mosques.<sup>316</sup> Nevertheless, the Iraqi regime does not show indulgence towards politically active religious movements such as the persecuted Islamic Da'wa party. Baha'i activity is prohibited under Iraqi law and members of the Baha'i sect are liable to a penalty of imprisonment, or even the death penalty in the case of a person who returns to the Baha'i faith after leaving it.<sup>317</sup>

f. The Right to Freedom of Opinion, Expression, Assembly and Association

Article 26 of the Constitution stipulates that:

“Freedom of opinion, publication and assembly, as well as freedom to demonstrate and freedom to establish political parties, trade unions and associations are recognized in accordance with the aims of the Constitution and within the limits of the law. The State shall endeavour to provide the facilities needed for the exercise of these freedoms, which are consistent with the nationalist and progressive policy of the Revolution”.

The rights provided for in the above-mentioned article 26 are, however, disregarded in practice, since the Iraqi regime is a single-party regime. This state of affairs was confirmed in the Leading Party Act No. 142 of 1974, which stipulated that “Ministries and all government departments, institutions, bodies and agencies must adopt the political report of the Eighth Regional Congress of the Arab Baath Socialist Party, which guides the authorities and the State, as a programme and a guideline for their work ...”. The ruling Party has persecuted other political parties, prevented them from engaging in their activity, and brutally repressed the opposition. In an attempt to conciliate the Kurdish

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316 *Idem.*, p. 70. In this connection, see also the reply of the Iraqi Government to the questions raised by the Special Rapporteur of the Commission on Human Rights on Iraq in document A/46/647 of 13 November 1999, p. 52 (of the French version).

317 Act No. 141 of 1979, containing an amendment to the Prohibition of Baha'i Activity Act No. 105 of 1970, Al-Waqa'i al-Iraqiya No. 2741 of 19 November 1979.

parties during the phase of dialogue with the Kurds concerning the establishment of an autonomous region and the democratic future of Iraq in the wake of the Gulf war and the suppression of the insurrection, on 1 September 1991 the Iraqi authorities promulgated the Parties Act, which permitted the establishment of political parties. That Act could have been regarded as a positive step towards democracy, but for the many restrictions that it imposed on the establishment of parties. Its provisions permitted the authorities to monitor the activity of political parties from the time of their establishment until their dissolution and also to interfere in their affairs, including their political activity and their sources of funding. These restrictions limit the significance of the Parties Act in regard to the promotion of democracy; it was rejected by the opposition and the negotiations between the Kurdish parties and the Government ended in failure. This act will be discussed below.

In addition to the above-mentioned Act No. 142, the Revolution Command Council promulgated a decision amending article 225 of the Penal Code (Act No. 11 of 1969) in such a way as to make anyone who publicly insulted the President of the Republic, his deputy, the Revolution Command Council, the Baath Party or the National Assembly liable to a penalty of life imprisonment and sequestration of his movable and immovable property (instead of a term of up to seven years' imprisonment as prescribed in the original text of that article 225). The penalty was to be death in the case of a blatant insult or attack designed to inflame public opinion against the authorities.<sup>318</sup> That decision was naturally designed to deter citizens from criticizing the authorities or expressing their opinion concerning official actions and public affairs.

#### g. Freedom of the Press

First of all, reference must be made to the fact that all the information media, including the press, radio, television and the news agencies, are State-owned, with the exception of some publications that are uninfluential and do not compete with official information. Since its assumption of power in 1968, the Baath Party has endeavoured to strengthen its control and domination of all the information media, as well as writers and artists. To that end, the Revolution Command Council promulgated a number of decisions, such as the Press Act No. 206 of 1968 and the Literary Works and Cinematographic Films Censorship Act

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318 Decision No. 840 of 4 November 1986, Al-Waqa'i al-Iraqiya No. 3124 of 17 November 1986.

No. 64 of 1973. It also promulgated the Artists' Trade Union Act No. 129 of 1969 and the General Federation of Authors and Writers in Iraq Act No. 70 of 1980. The Ministry of Culture and Information was restructured under the terms of the Ministry of Culture and Information At No. 94 of 1981. These Acts considerably restricted the scope for the exercise of freedom of opinion and expression.

Article 1 of the above-mentioned Act No. 94 stipulates that the functions of the Ministry of Culture and Information include the promotion and development of all aspects of culture and the arts "in accordance with the principles of the Arab Baath Socialist Party and the objectives of the Glorious Revolution of 17-30 July 1968",<sup>319</sup> as well as the "dissemination, promotion and inculcation of the ideology and principles of the Arab Baath Socialist Party in Iraq".<sup>320</sup> This indicates the extent of the interlinkage between culture and the principles of the Baath Party, as well as the importance of the role that the ruling Party plays in the dissemination of information. In fact, it is difficult to imagine anything being published that is incompatible or at variance with the views and policy of the Baath Party.

The noteworthy articles include article 27 of the General Federation of Authors and Writers in Iraq Act, which provides for the dissolution of all cultural and literary federations and associations pursuing aims similar to those of the General Federation and prohibits the licensing of any association or federation pursuing similar aims after the entry into effect of the said Act. Pursuant to that article, the Minister of Culture and Information promulgated a decision ordering the amalgamation of 16 cultural federations and associations with the General Federation of Authors and Writers in Iraq.<sup>321</sup> Under the Press Act No. 206 of 1986, prior approval from the authorities was required for the publication of periodicals (newspapers and magazines); numerous conditions were imposed on the owner and the editor-in-chief of the publication and everything that was written and published was subjected to strict censorship. Article 16 of that Act totally prohibited the writing of any articles on 12 subjects, including anything that might be deemed prejudicial to the President of the Republic or members of the Revolution Command Council, as well as anything that might be detrimental to the Revolution, the republican institutions and Iraq's relations with Arab and

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319 Article 1, paragraph 1(a), of Act No. 94 of 1981.

320 Article 1, paragraph 1(a), of Act No. 94 of 1981.

321 Decision No. 2 of 1983, Al-Waq'a'i al-Iraqiya No. 2956 of 29 August 1983.

friendly States, bearing in mind the fact that the official information media attack Arab and foreign States. Authorization was also required from the competent official authority before any articles could be written on seven subjects. That Act subjected foreign publications to censorship and prohibited their distribution if they dealt with any of the subjects specified in article 19, including anything that might be inconsistent with the policy of the Republic of Iraq and anything that might promote colonialist aims or racist movements or besmirch the reputation of the armed forces, etc. Furthermore, the editor-in-chief was held liable for "publication offences" committed through his newspaper, even if the articles, illustrations or other means of expression used to commit the offence were quoted or translated from other publications that had appeared in Iraq or abroad.<sup>322</sup>

In short, the Iraqi government does not permit freedom of opinion and expression and has transformed authors and writers, by inducement or threat, into mere employees of the State<sup>323</sup> and any of them who fail to comply with the directives of the Ministry of Culture and Information or fail to keep in step with the policy of the ruling regime are liable to imprisonment, torture and possibly liquidation.<sup>324</sup> In connection with freedom of the press, it might be useful to note that, on 24 April 1992, President Saddam Hussein's son Udayy was elected president of the Association of Journalists for a two-year term of office; he won the nomination following the withdrawal of the two other candidates shortly before the vote, which took place by a show of hands. Udayy Hussein is also chairman of the board of directors of the *Babil* newspaper and the *Rafidain* magazine, in addition to his chairmanship of the Iraqi Olympic Committee.<sup>325</sup>

#### h. The Right to Political Asylum

Under article 34 of the Constitution: "The Republic of Iraq shall grant the right of political asylum to all freedom-fighters who are

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322 Articles 81-84 of the Penal Code.

323 With regard to the ruler's domination over information and his arbitrary control over freedom of opinion and publication, see Fatima al-Muhsin, "Al-thaqafa fi Iraq Saddam" (Culture in Saddam's Iraq), a study in five parts published in the Al-Hayat newspaper from 13 to 18 March 1992.

324 Fatima al-Muhsin, *idem.*, part II, Al-Hayat newspaper, 15 March 1992. See also Middle East Watch, *op. cit.*, p. 62.

325 Al-Hayat newspaper, 25 April 1992.

persecuted in their country by virtue of their defence of the liberational and humanitarian principles to which the Iraqi people are committed. It is not permissible to extradite political refugees”

Although the Constitution implies that persons who are persecuted in their country must be granted the right of political asylum, the Iraqi authorities have demanded the extradition of Iraqi nationals who seek asylum in other countries in order to escape from the regime.

i. The Absence of the Right to Life

The Constitution disregards the most important right, namely the right to life recognized in article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights. As will be seen in the concluding comments at the end of this paper, the right to life is not respected in Iraq in view of the large number of offences that are legally punishable by death and the frequent lack of proportionality between the gravity of the criminal act and the death penalty prescribed. Article 6, paragraph 2, of the International Covenant on Civil and Political Rights stipulates that sentence of death may be imposed only for the most serious crimes. Furthermore, most of the offences punishable by death were referred to the Revolutionary Court (before its abolition in 1991) or to special emergency courts which were neither independent nor impartial and which did not provide adequate safeguards to enable accused persons to defend themselves before final judgements were handed down. These procedures are incompatible with the provisions of article 14 of the said International Covenant, and particularly paragraph 5 thereof which stipulates that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal. It is also incompatible with United Nations General Assembly resolution 2393(XXIII) of 26 November 1968, which invites Member States to ensure the greatest possible safeguards for the accused in capital cases in which the death penalty applies. There are also cases of disappearance, execution without trial, assassination, torture and other forms of inhuman treatment which frequently lead to death. Mr. Max van der Stoel, the Special Rapporteur

of the Commission on Human Rights on Iraq, has referred to several of these practices.<sup>326</sup>

## **2. Economic, Social and Cultural Rights**

The Iraqi Constitution recognizes a number of economic, social and cultural rights, particularly the right to own property, the right to work and the right to preventive health care and treatment. Special emphasis is placed on the right to education. These rights will be discussed in succession.

### **a. The Right to Own Property**

Articles 16, 17 and 18 of the Constitution are devoted to private property. These articles were discussed in a fairly detailed manner during our study of the social and economic principles of the Republic of Iraq in the preceding section. To avoid repetition, the reader is referred to the content of the preceding section, concerning the right to own property and the legislation that has been promulgated in this regard.

### **b. The Right to Work**

The Iraqi Constitution defines work as a right which the State undertakes to secure for each citizen capable thereof; it is also an honour and a sacred duty for every citizen capable thereof and is required by the need for participation in the development of society. The Constitution places the State under an obligation to improve working conditions and to provide all citizens with social security covering sickness, disability, unemployment and old age (article 32).

The Constitution also deals with the civil service, which it describes as "a sacred trust and a social service based on sincere and conscious commitment to the interests, rights and freedoms of the masses". Provision is made for equality of access to public service (article 30). However, racial and religious denominational considerations, as well as membership of the Baath Party, still govern the choice of public sector employees.

Since its assumption of power, the Baath Party regime has endeavoured to regulate labour issues and, to that end, promulgated the

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326 Document A/46/647 of 13 November 1991, op. cit., pp. 7-9 and 63-66.



Labour Act No. 151 of 1970, as well as a number of regulations such as: the Regulation of the Employment of Women Act No. 36 of 1972, the Regulation of the Employment of Young Persons Act No. 37 of 1972 and Act No. 30 of 1973 concerning the employment of non-Iraqis in various occupations and professions in Iraq. Act No. 151 and the above-mentioned regulations were abrogated and superseded by the present Labour Act No. 71 of 1987, which is a modern enactment guaranteeing the rights of workers in general. The Workers' Pension and Social Security Act No. 39 of 1971, which superseded the Social Security Act No. 112 of 1969, guarantees social security, covering sickness, occupational injuries and retirement, for all members of the working class. It should also be noted that, under the terms of Act No. 150 of 1987, workers in government departments and the socialist sector were transformed into civil servants. The Ministry of Labour and Social Affairs explained that the purpose of that Act was to ensure equality between workers and civil servants in regard to their rights and obligations in order to improve the socio-economic conditions of workers through their enjoyment of rights and privileges that were better than those which they formerly enjoyed in their capacity as workers.

The establishment of trade unions is subject to Act No. 52 of 1987, which regulates trade unions. It applies to employees in the public, mixed and cooperative sectors.<sup>327</sup> However, public sector employees do not have the right to form their own trade union or to join any other trade union, even though they form the majority of workers in view of the State's domination of economic life in the country. According to unofficial statistics, in the 1980s persons working in the public sector constituted 30 per cent of the total economically active population.

The activities of trade unions are supervised and monitored by the General Federation of Trade Unions, which comprises all the trade-union federations in the various governorates. The General Federation's General Assembly elects a 55-member Central Council which, in turn, elects from among its members an Executive Board consisting of 7-9 members. The Board, in turn, elects a chairman and a vice-chairman and its chairman serves as president of the General Federation.<sup>328</sup> Needless to say, the trade unions and the General Federation are controlled by

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327 Article 2 of the 1987 Act.

328 Article 24 of the 1987 Act.

members of the Baath Party and no one can become president of the General Federation unless he is approved by the ruling party.<sup>329</sup>

No strikes or labour disturbances have been reported in Iraq during the last two decades. It should be noted that the Labour Act of 1987 specifies in detail the manner in which collective labour disputes should be settled;<sup>330</sup> it does not permit workers to withdraw their labour (the word "strike" is not used) unless the employer or employers refuse to implement a decision on the dispute taken by the Labour Affairs Division of the Court of Cassation, which is the highest and final authority for the settlement of collective labour disputes. In such a case, the workers must notify the Minister of Labour and Social Affairs and the president of the General Federation of the withdrawal of their labour as soon as it begins. They must also explain the reasons that induced them to take that course of action, as well as the precautions that they have taken to preserve order and security and protect the means of production.<sup>331</sup>

### c. The Right to Education

Under the Constitution, the State undertakes to combat illiteracy and guarantees the right to free education at all primary, secondary and university levels for all citizens. It also undertakes to make primary education compulsory, to expand technical education and vocational training and to promote evening courses which enable the popular masses to combine work with education. The State also guarantees freedom of scientific research and encourages and rewards talent and creativity in all intellectual and scientific activities.<sup>332</sup>

The aims of education are defined in article 28 of the Constitution, which stipulates that the purpose of education is to raise and enhance the cultural level of the public, develop scientific thought, stimulate the spirit of research, meet the requirements of socio-economic development

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329 See, for example, the Office for the Affairs of Popular Organizations Act No. 169 of 1979, *Al-Waqa'i al-Iraqiya* No. 2749 of 31 December 1979. The Office, which reports directly to the Revolution Command Council, provides popular organizations, such as occupational associations, trade unions and workers' federations, with specialized Party personnel, who are chosen from among activists in the ranks of the Baath Party.

330 Article 24 of the 1987 Act.

331 Article 136 of the 1987 Act.

332 Article 27 of the Constitution of 1970.

programmes and create an emancipated and progressive national generation that is proud of its people, its country and its heritage and is ready to combat capitalist philosophy, exploitation, reactionary ideology, Zionism and colonialism in order to achieve Arab unity, freedom and socialism. It is noteworthy that the text of this article of the Constitution links education to socio-political aims derived from the ideology of the Baath Party.<sup>333</sup>

The Iraqi regime has to a large extent fulfilled its obligations, as set forth in the Constitution, in the field of education, which is free at the primary, secondary and university levels. Primary education has been made compulsory and a successful large-scale campaign has been conducted to eradicate illiteracy (the adult illiteracy rate dropped from 66 per cent in 1970 to 48 per cent in 1985).<sup>334</sup> According to UNESCO estimates, in 1990 the illiteracy rate amounted to 40.3 per cent, which was still high in comparison with the average illiteracy rate in some other Arab countries, such as Jordan and Lebanon where it was estimated to be lower than 20 per cent, although the rate was lower than the general average illiteracy rate in the Arab World as a whole, which was estimated at about 42 per cent in 1990. The war with Iran, with all that it entailed by way of military spending and mobilization of human resources, undoubtedly impeded the implementation of the programmes for the eradication of illiteracy. According to the UNDP annual report on human development in 1991, in 1986 Iraq spent 32 per cent of its GNP on armaments, as compared with a figure of only 3.7 per cent on education and 0.8 per cent on health; i.e., military spending was seven times higher than the total amount spent on education and health. Iraq's military spending from 1979 to 1988 has been unofficially estimated at about US\$ 65 billion and the value of the armaments imported between 1988 and 1989 exceeded US\$ 10 billion.

#### d. The Right to Medical Care and Social Services

The State has undertaken to protect public health through a constant expansion of free medical services (preventive, therapeutic and

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333 See articles. 41 and 44-48 of the Constitution of the Arab Baath Socialist Party.

334 United Nations Development Programme (UNDP), Human Development Report, 1991.

pharmaceutical) in urban and rural areas.<sup>335</sup> It has also undertaken to protect the family and cater for the welfare of mothers and children.<sup>336</sup> The Iraqi regime has endeavoured to provide its citizens with health and social services by, *inter alia*, subsidizing the prices of medicines sold at pharmacies and providing medicine free of charge for patients at government hospitals, in addition to subsidizing the prices of basic foodstuffs. The Workers' Pension and Social Security Act No. 39 of 1971, to which reference has already been made, guarantees medical care for workers, in the event of sickness or occupational injuries, from the time of occurrence of the sickness or injury until it is cured or until disability or death are registered. Care and treatment are also guaranteed for pregnant women covered by the social security scheme, who benefit from two-and-a-half months' maternity leave and may be considered to be on sick leave for a period of up to nine months in the event of a difficult delivery, delivery of more than one child or the appearance of ante- or postnatal complications or diseases. The spread of education and the wider provision of medical services have led to an increase in the number of medical practitioners, which has been reflected in a decline in the mortality rate among children under five years of age. As a result, the average life expectancy rose from 48.5 years in 1960 to 65 years in 1990.

In spite of this notable progress in the field of medical services, spending on health has remained very low in comparison with military spending, since the proportion of GNP spent on health has never exceeded 1 per cent, as compared with 32 per cent on armaments. This high level of military spending is attributable to the war with Iran. Furthermore, as a result of the second Gulf war and the economic sanctions which the Security Council imposed on Iraq following its invasion of Kuwait, Iraq's infrastructure was destroyed and its health services declined sharply. This had an extremely adverse effect on the health situation in the country, particularly in the case of children, among whom the mortality rate quadrupled and 990,000 of whom, under the age of five, are suffering from malnutrition.<sup>337</sup>

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335 Article 33 of the Constitution of 1970.

336 Article 11 of the Constitution of 1970.

337 Concerning the living and health conditions in Iraq after the Gulf war, see document A/46/647 of 13 November 1991, op. cit., pp. 53-59 and 73.

## B. The Obligations of Citizens

The Iraqi Constitution emphasizes the need for social solidarity, which it regards as the main foundation of society. This solidarity means that citizens should fulfil their full obligations towards society which, in turn, guarantees their full rights and freedoms.<sup>338</sup>

### 1. The Obligation to Work

As already indicated, work is both a right and a sacred duty of every citizen capable thereof and is required by the need for participation in the development of society.<sup>339</sup>

### 2. Payment of Taxes

The Constitution stipulates that taxes can be levied, modified and collected only by a legislative enactment.<sup>340</sup> It further stipulates that legislation concerning taxes and financial dues cannot have a retroactive effect.<sup>341</sup> However, this protection is theoretical as long as the Revolution Command Council can promulgate arbitrary enactments and decisions that have the force of law, without being subject to any legislative control or accountability.

### 3. The Duty to Defend the Homeland

The Constitution stipulates that every citizen has a duty to defend the homeland. This is described as a "sacred duty and an honour for citizens". Accordingly, military service is compulsory<sup>342</sup> (article 31 (a) of the Constitution). This duty assumed special importance due to the war with Iran and the death penalty was prescribed for the offence of

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338 Article 10 of the Constitution of 1970.

339 Article 32 of the Constitution of 1970 and article 3 of the Labour Act.

340 Article 35 of the Constitution of 1970.

341 Article 67(b) of the Constitution of 1970.

342 The duration of compulsory military service in Iraq is three years but, in December 1991, was reduced to two years in the case of holders of university degrees.

desertion or evasion of military service.<sup>343</sup> Anyone who committed this offence during the war with Iran is prohibited from standing as a candidate for membership of the National Assembly, as already indicated.

With regard to the offence of desertion or evasion of military service, it is noteworthy that during the war with Iran, the Revolution Command Council promulgated three decisions prohibiting the courts and police departments from hearing any complaint against the squads assigned to track down deserters and evaders of military service if those squads felt obliged to use force in order to arrest the fugitives, even if it resulted in death or injury to the fugitives, injury to other persons by mistake or material damage.<sup>344</sup> It is noteworthy that the above-mentioned decisions exempt the squads assigned to track down deserters and evaders of military service from accountability and prosecution before the courts, even if they use force arbitrarily or exceed the limits laid down for the discharge of their duty in violation of the provisions of article 3 of the Code of Conduct for Law Enforcement Officials, which was adopted by the United Nations.<sup>345</sup>

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343 See Revolution Command Council Decisions Nos. 1140 of 26 August 1981 (Al-Waqa'i al-Iraqiya No. 2848 of 7 September 1981) and 1370 of 13 December 1983 (Al-Waqa'i al-Iraqiya No. 2974 of 2 January 1984).

344 See Revolution Command Council Decisions Nos. 986 of 21 July 1981, 1303 of 5 November 1983 and 749 of 15 September 1986.

345 This Code was adopted in General Assembly resolution 34/169 of 17 December 1979.

## Section II

### **The Relationship Between the Ruling Regime and the Political Parties**

When the Baath Party assumed power on 17 July 1968, it endeavoured to consolidate its control of this power in order to avoid a repetition of the events of 1963 when Abdul Salam Aref succeeded in driving them from power and restricting their political role. Their first step was to eliminate Abdul Razzaq al-Nayef, the Prime Minister, and Ibrahim Abdul Rahman Daoud, the Minister of Defence, (neither of whom belonged to the Baath Party), after less than two weeks from the successful *coup d'état*, by expelling them from membership of the Revolution Command Council and sending them into retirement. It then attempted to curb the Communist Party and the Kurdish parties and prevent them from engaging in political activity before they could turn against the Baath Party and drive it from power. The Baath Party also endeavoured to find a solution to the Kurdish problem by granting the Kurds autonomy in 1974.

#### **A. Examples of the Persecution of Political Parties**

##### **1. The Arab Socialist Union**

Immediately after its assumption of power, the Baathist regime dissolved the Arab Socialist Union under the terms of Act No. 85 of 1968.<sup>346</sup> President Abdul Salam Aref had established that Union, following the example set by the Arab Socialist Union in Egypt, in 1964 as the country's sole political organization after the dissolution of the political parties. The substantiating reasons given for the dissolution of the Arab Socialist Union, as mentioned in Act No. 85 of 1968, included the assertion that the Union failed to express the people's struggle and also failed to reflect their glorious past and present. Act No. 85 also ordered the sequestration of all the Union's movable and immovable property for the benefit of the State.

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346 Al-Waqai' al-Iraqiya No. 1611 of 25 August 1968.

## 2. The Islamic Da'wa Party

The Islamic Da'wa Party, which was established in 1957, is a political movement based on Islam and is endeavouring to establish an Islamic State in Iraq. The ranks of the party include only devout Muslims and most of its members are Shi'ites. Following the establishment of the Islamic Republic in Iran, the party placed itself under the leadership of the Iranian Islamic Revolution and adopted the theory of the "vice-regency of the Islamic jurist", which it regarded as the "soundest leadership theory". It called for the establishment of links of allegiance and obedience between the Islamic movement in Iraq and the "Imam and the vice-regency of the Islamic jurist".<sup>347</sup> In view of its attitude towards the Islamic revolution and fears of a fundamentalist tidal wave, the party has been persecuted at the hands of the Baathist regime. In 1980, the Revolution Command Council promulgated a decision which designated the Da'wa Party as a "hireling party linked to foreigners and a traitor to the homeland and to the aims and interests of the Arab nation" and prescribed the death penalty for its members.<sup>348</sup> The liability of members of the Da'wa Party to the death penalty was reconfirmed in another decision promulgated in 1983.<sup>349</sup> Following the outbreak of the war with Iran, the ruling regime intensified its persecution of the Da'wa Party and arrested and executed a number of its members.<sup>350</sup>

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347 Muhammad Abdul Jabbar, "Aspects of the absence of ideology and the toning down of texts in party ideological programmes" (in Arabic), *Al-Hayat* newspaper, 19 June 1992. See also the contrary opinion expressed in Martin P., "Les chiites d'Irak de retour sur la scène politique", *Monde arabe Maghreb-Machrik*, No. 132, April-June 1991, p. 30 et. seq.

348 Decision No. 461 of 31 March 1980, *Al-Waqa'i al-Iraqiya* No. 2769 of 12 April 1980.

349 Decision No. 1370 of 13 December 1983, *Al-Waqa'i al-Iraqiya* No. 2974 of 2 January 1984.

350 See, for example, the report of Amnesty International for 1983, which refers to the execution of 166 members of the Da'wa Party. According to the same report, in 1982 the Iraqi President pardoned 30 members of the Da'wa Party, although this may not have been done for humanitarian reasons but solely pursuant to Revolution Command Council Decision No. 526 of 13 April 1980, which made provision for the exemption from the stipulated death penalty of any member of the Da'wa Party who surrendered to the authorities and provided information that he had gathered concerning the party and its members.



### 3. The Communist Party

The Iraqi Communist Party was founded in 1934 by Youssuf Salman Youssuf, nicknamed "Fahd", who was an Assyrian Christian from Mosul. Under the monarchy, the Communist Party was persecuted and Fahd was executed, together with three of his comrades, in 1949 when a number of the Party's leaders were arrested and others fled abroad. Consequently, when the Republic was established in 1958, the Communist Party supported the new regime enthusiastically and regarded the participation of a left-wing Minister sympathetic to the party<sup>351</sup> as a gain for it and for the leftist movement. Its influence increased during the following year with the entry into the Government of three Ministers who were sympathetic to the Party.<sup>352</sup> Abdul Karim Qasim used the Communist Party to weaken the Baath and Nasserite unionist parties, particularly when he fell out with Abdul Salam Aref, whom he drove from power and arrested. In return, the Communist Party benefited from the new regime's indulgence and support in order to restructure its ranks and propagate its ideology. Within a short period of time, it succeeded in infiltrating the labour and student movements and the army and published several newspapers.<sup>353</sup> When the Shawwaf insurrection occurred at Mosul in March 1959, the Communist Party exploited it in order to take reprisals against its political opponents. A few months later, it fomented sanguinary disturbances at Kirkuk and terrorized the entire city. Although the leaders of the party subsequently washed their hands of the conduct of undisciplined elements, those disturbances gave rise to feelings of indignation and hostility towards the Communists and heralded a decline in the party's popularity. At the beginning of 1960, the party suffered two setbacks: the first consisted in a split within the party<sup>354</sup> and the second was the dismissal of the three

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351 Ibrahim Kubba, the Minister for the Economy.

352 They were Feisal Samir, Awni Youssuf and Naziha Dulaimi (the latter was the first woman to attain the rank of Minister in Iraq).

353 In January 1959, the Communist Party published *Itihad al-Shaab*, which was replaced by *Sawt al-Shaab* in 1960. Two other newspapers expressing left-wing points of view were *Al-Ra'y al-Am* and *Sawt al-Ahrar*. In this connection, see Khaddura M., *Republican Iraq*, op. cit., p. 121.

354 Following the promulgation of the Political Parties Act in January 1960, both the Secretary-General of the Communist Party and Daoud Sayegh, a member of the splinter Party, applied to the Ministry of the Interior for a license. The Ministry issued the license to Sayegh, who enjoyed the support of Abdul Karim Qasim. See Khaddura, op. cit.

Ministers<sup>355</sup> from the Government. This estrangement between Abdul Karim Qasim and the Communist Party curbed the influence of the Communists while, at the same time, weakening the regime, which thereafter had to rely solely on the army for support. This is evident from the ministerial reshuffle of 14 May, when Abdul Karim Qasim expelled Faisal Samir, the last left-wing Minister, from the Government, after which most of the Ministers were military personnel.

When Abdul Karim Qasim was overthrown on 8 February 1963 and the Baath came to power with Abdul Salam Aref, the Communist Party was persecuted by the National Guard, which was formed by Ali Salih al-Saadi, the Baathist Minister of the Interior, to track down and take revenge on the Communists. The pressure on the Communists was maintained until Abdul Salam Aref succeeded in driving the Baath Party from power in November 1963. However, President Aref dissolved all the political parties in the following year and established the Arab Socialist Union in order to absorb them, as already mentioned.

When the Baath Party resumed power in July 1968, it attempted to conclude a truce, albeit provisionally, with the "nationalist and progressive" parties in order to be able to consolidate its power and devote its efforts to dealing with urgent questions such as, in particular, the deteriorating economic situation and the Kurdish question. To that end, in 1971, President Hassan al-Bakr offered those parties a "national action pact" with a view to establishing an alliance among the various components of the national progressive movement in order to meet the challenge posed by imperialism, Zionism and reactionary forces. The pact defined the existing political system as a "democratic, revolutionary and unionist" system which guaranteed all the democratic freedoms of the popular masses. Legislative and executive power was assumed by the institutions designated in the provisional Constitution of 1970 on the understanding that a permanent constitution would be drafted and approved through a public referendum.

The Communist Party and the Kurdistan Democratic Party agreed to that action pact and, in 1973, signed with the Baath Party a document establishing the "National Progressive Front" under the leadership of the Baath Party. They both participated in the Baathist Government, in which the Communist Party was represented by two Ministers.

The factors that contributed to the reconciliation between the Baath Party and the Communist Party included Iraq's signature of a treaty of

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355 Kubba, Youssuf and Dulaimi.

friendship and cooperation with the Soviet Union on 9 April 1972. However, the Communist Party soon began to complain of Baathist hegemony and came to realize that, constitutionally and in practice, the Revolution Command Council possessed *de facto* power, which it was not prepared to share with anyone. Power was indeed monopolized by the Baathists and the Baath Party categorically refused to open membership of the Revolution Command Council to any other party. The Communist Party publicly criticized that hegemony and a dispute soon broke out between it and the Baath Party when the latter began to purge the army of Communists and subsequently executed some of them on the charge of forming clandestine cells within the army. The final rupture between the two parties occurred when the two Communist Ministers were dismissed from the Government in 1979. That coincided with Mr. Saddam Hussein's assumption of power as the successor to President Ahmad Hassan al-Bakr and heralded a new phase characterized by a single-party system governed by the will of one man. It is easy to understand the reasons for the failure of the alliance between the Baath and Communist Parties in the light of what Michel Aflaq wrote concerning the Communist Party: "The Communist Party is a destructive party for two reasons: firstly, its deceptive socialism which promises to meet the Arab people's urgent need for socialism while its actual objective is to link the destiny of the Arabs to the destiny of another State, namely Russia, and, secondly, its internationalist and anti-nationalist propaganda".<sup>356</sup>

## **B. The Relationship Between the Ruling Party and the Kurds**

Immediately after its assumption of power, the ruling regime attempted to find a peaceful and permanent solution to the Kurdish problem. Following negotiations with Mulla Mustafa Barzani, the leader of the Kurdistan Democratic Party, on 11 March 1970 the Revolution Command Council issued a declaration in which it defined the legal framework for a solution to the Kurdish problem.<sup>357</sup> The principal points contained in that declaration were as follows:

- One of the Vice-Presidents of the Republic should be a Kurd.

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356 Michel Aflaq, *op. cit.*, p. 65.

357 Revolution Command Council Decision No. 288 of 11 March 1970, *Al-Waq'a'i al-Iraqiya* No. 1863 of 4 April 1970.

- The Kurdish language should be an official language, together with Arabic, in the areas in which the majority of the population were Kurds. The Kurdish language should be a language of instruction, together with Arabic, in those areas.
- Civil servants in administrative areas populated by a majority of Kurds should be Kurds or persons fluent in the Kurdish language.
- There should be no discrimination between Kurds and others in regard to access to public office, including sensitive and important posts in the State, such as Ministries and the Army High Command, etc., with due regard for the principle of competence and proportional representation of the population.

On 16 July 1970, the Revolution Command Council promulgated the new Provisional Constitution containing two articles that were of great importance to the Kurds. Article 5(b) stipulated that: "The Iraqi people consists of two principal ethnic groups: Arabs and Kurds. This Constitution recognizes the ethnic rights of the Kurdish people, as well as the legitimate rights of all minorities, within the framework of Iraqi unity". This constitutional text comprised the first official recognition of Kurdish national identity and also contained the expression "the Kurdish people".<sup>358</sup> Article 7(b) further stipulated that: "The Kurdish language shall be an official language, in addition to Arabic, in the Kurdish region". This was in accordance with the content of the above-mentioned March declaration.

Although the Kurdistan Democratic Party agreed to the national action pact proclaimed by President Bakr in 1971 and agreed to join the National Progressive Front and participate in the Government, as already indicated, it failed to reach an agreement with the ruling Baath Party concerning a solution to the problem of autonomy. On 11 March 1974, the Revolution Command Council promulgated the Kurdistan Regional Autonomy Act No. 33 of 1974<sup>359</sup> pursuant to the declaration of 11 March 1970. It also decided to amend article 8 of the Constitution by adding a new paragraph which stipulated that: "The region in which the majority of the population are Kurds shall enjoy autonomy in the manner prescribed by law".

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358 See article 3 of the Constitution of 1958.

359 The Autonomy Act of 1974 was promulgated under the terms of Revolution Command Council Decision No. 248, which was published in *Al-Waqa'i al-Iraqiya* No. 2327 on 11 March 1974.

The Kurds did not agree to some of the provisions of the Autonomy Act, nor did they approve of the demarcation of the borders of the autonomous region or of the policy of Arabization which the Iraqi Government intended to pursue in the Autonomous Region. This dispute led to the dismissal of the Kurdish Ministers from the Government in April 1974, which was followed by the outbreak of an armed insurrection in Kurdistan under the leadership of Mustafa Barzani and with support from the Shah of Iran. In order to be able to suppress the Kurdish insurrection, the Iraqi Government concluded an agreement, known as the Algiers Agreement, with Iran which provided for the signing of a border demarcation and good neighbourliness treaty between the two countries. Under that treaty, which was signed at Baghdad on 13 June 1975, Iraq made important concessions concerning the Shatt al-Arab in return for an undertaking by Iran to immediately cease its assistance to the Kurds.<sup>360</sup> As a result, the Kurdish insurrection ceased only a few weeks after the signing of the treaty and Barzani was forced to seek refuge in Iran, from whence he emigrated to the United States where he died in March 1979. The Kurds therefore submitted reluctantly to the Autonomy Act of 1974.

### **1. The Kurdistan Regional Autonomy Act**

Article 1 of the Autonomy Act No. 33 of 1974 stipulated that the region of Kurdistan would enjoy autonomy. The region would be regarded as a single administrative unit with its own corporate personality and would enjoy autonomy within the framework of the legal, political and economic unity of the Republic of Iraq. The region would form an integral part of the territory of Iraq and its people would constitute an integral part of the people of Iraq. The autonomous institutions would form part of the institutions of the Republic of Iraq and Arbil would be the headquarters of the Autonomous Administration. This article emphasized the territorial unity of Iraq in order to avert any future misinterpretation of the concept of autonomy.

The region would constitute an independent financial entity within the financial unity of the State and would have its own budget consisting of resources derived from taxes and dues collected in the region, together with credits appropriated to the region in the State's budget in order to cover the region's budgeted expenditure in such a way as to ensure a

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360 Concerning the content of the Iraqi-Iranian treaty of 1975, see *Revue générale de droit international public*, 1975, p. 1172 et. seq.

balance between the region's development and the development of all other parts of the Republic of Iraq (article 5).

Article 2 of the Act stipulated that the Kurdish language would be the language of instruction for the Kurds in the region, however, the teaching of the Arabic language would be compulsory at all educational levels and institutions. However, Act No. 28 of 1983 stipulated that the Arabic and Kurdish languages would be the two languages of instruction in the region, on the understanding that the Arabic language would be taught from the fourth primary grade and at all subsequent educational levels.<sup>361</sup> The Kurds protested that Act, which gave rise to misgivings concerning the intentions of the Central Government and which they regarded as contrary to the Autonomy Act.

Articles 10-15 of chapter II of the Autonomy Act, entitled "Autonomous Institutions", entrusted the administration of the region to two bodies: the Legislative Council and the Executive Council.

a. The Legislative Council

This Council<sup>362</sup> consisted of 50 members<sup>363</sup> chosen in free and direct elections by public secret ballot. Of those 50 members, 21 represented the governorate of Arbil, 22 represented the governorate of Sulaimaniya and 7 represented the governorate of Dohuk. The Legislative Council's term in office was three years and three elections were held in accordance with the above-mentioned Legislative Council Act No. 56, the most recent being those held on 10 September 1989.

Candidates for membership of the Council were required to be Iraqis born to parents who were also Iraqi by birth. They were required to be over 25 years of age, entitled to enjoy their civil and political rights, and fluent in spoken and written Kurdish or Arabic. However, Act No. 56 of 1986, which amended Act No. 56 of 1980<sup>364</sup> added a new requirement, namely that candidates for membership of the Council should "believe in the leading role of the Arab Baath Socialist Party and in the principles and aims of the glorious revolution of 17-30 July 1968

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361 Al-Waqa'i al-Iraqiya No. 2933 of 11 April 1983.

362 According to Act No. 56 of 15 March 1980, as amended.

363 According to Act No. 36 of 1974, the Legislative Council consisted of 80 members.

364 Published in Al-Waqa'i al-Iraqiya No. 3103 of 23 June 1986.

and should have played a notable role in the implementation of those principles and aims". Moreover, Act No. 56 of 1989<sup>365</sup> stipulated that candidates "should not have been convicted of the offence of conspiring against the revolution of 17-30 July 1968 or against the regime, nor should they have been convicted of attempting to overthrow the regime or of maintaining contacts with a foreign body". This excluded candidates opposed to the regime and restricted candidature to persons sympathetic to the Baathist regime, even though they might not properly represent and express the opinions and viewpoints of the Kurdish population.

The Legislative Council, in its capacity as the region's elected legislature, exercised the following powers: adoption of the legislative resolutions needed to develop the Autonomous Region and improve the standard of its social, cultural, infrastructural and economic facilities; adoption of legislative resolutions concerning semi-official departments and local institutions; approval of draft socio-economic plans prepared by the Executive Council, as well as development plans for the educational, health and labour sectors; and approval and amendment of the region's budget within the limits of the amounts appropriated to the region. The Legislative Council was also empowered to hold discussions with the Executive Council and question the latter on matters falling within its jurisdiction.

The Legislative Council held two annual sessions. The Executive Council or any 10 members of the Legislative Council could propose legislative resolutions and the Executive Council was obliged to promulgate the legislative resolutions that had been approved within 10 days from the date of their receipt or, within that time-limit, to request their reconsideration. If the Legislative Council persisted in its opinion, the resolution was deemed to be final and had to be promulgated. Any member of the Legislative Council had the right to question members of the Executive Council and one quarter of the members of the Legislative Council could table a motion for withdrawal of confidence from the Executive Council or any of its members. The resolution concerning withdrawal of confidence required approval by a majority of the members of the Legislative Council.

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365 Published in *Al-Waqa'i al-Iraqiya* No. 3262 of 3 July 1989.

b. The Executive Council

This was the executive body responsible for the administration of the Autonomous Region. It consisted of a chairman, a vice-chairman and a number of members equivalent to the number of autonomous departments.<sup>366</sup> The President of the Republic designated a member of the Legislative Council to form and preside over the Executive Council and the designated chairman then chose the members of the Executive Council from among the members of the Legislative Council or from among persons meeting the requirements for membership thereof. He then applied to the Legislative Council for a vote of confidence, which, if given by a majority of members of the Legislative Council, was followed by the promulgation of a Presidential Decree concerning the formation of the Executive Council.<sup>367</sup> The chairman and members of the Executive Council held the rank of Minister and the chairman attended the meetings of the Council of Ministers. The President of the Republic<sup>368</sup> was empowered to dismiss the chairman of the Executive Council from his post.<sup>369</sup> The Executive Council was responsible, within the Autonomous Region, for the enforcement of laws and regulations, maintenance of security and public order, supervision of local public facilities, appointment of regional civil servants whose appointment did not require the promulgation of a Presidential Decree, promulgation of legislative resolutions adopted by the Legislative Council, preparation of draft plans for the development of the Autonomous Region and management of the Region's ordinary budget. The Council had to submit an annual report on the situation in the Region to the President of the Republic and the Legislative Council.<sup>370</sup>

From this review, it is evident that the Autonomous Administration

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366 Article 13 of the Autonomy Act.

367 See, for example, Presidential Decree No. 775 of 5 October 1986, specifying the composition of an 8-member Executive Council, Al-Waqa'i al-Iraqiya No. 3120 of 20 October 1986.

368 Article 13, paragraph (f), of the Autonomy Act.

369 See Revolution Command Council Decision No. 1264 of 18 November 1984, which dismissed the chairman of the Executive Council of the region of Kurdistan from his post and appointed him to another post, Al-Waqa'i al-Iraqiya No. 3302 of 3 December 1984. It is noteworthy that this decision was promulgated by the Revolution Command Council and not by the President of the Republic.

370 Article 15 of the Autonomy Act.



was not fully independent of the central authorities. As seen already, it was the President of the Republic who chose the chairman of the Executive Council, instructed him to form the Council and then appointed the Council by Presidential Decree. He could also dismiss the chairman of the Council from his post, even if the latter enjoyed the confidence of the Legislative Council, in some circumstances specified in article 20 of the Autonomy Act, such as a situation in which the Council was unable to exercise its powers due to the resignation of half its members, or in which the confidence required for the formation of the Executive Council was not granted on more than two successive occasions.

In addition to the above, a special session of the Court of Cassation, consisting of the president of the Court and four members chosen by him from among the members of the Court of Cassation, exercised supervision over the legality of the resolutions adopted by the autonomous institutions. The Minister of Justice was entitled to lodge an objection against such resolutions before the Court of Cassation within 30 days from the date of their notification to him and such objection to those resolutions led to the suspension of their implementation pending a final decision by the Court, which was empowered to annul them either wholly or in part.

## **2. Development of the Situation in Kurdistan from the Promulgation of the Autonomy Act**

The region of Kurdistan enjoyed relative stability from 1975 to 1980. However, following the outbreak of the war between Iraq and Iran, the situation in the region became disturbed and the Baghdad Government accused some Kurdish factions of engaging in acts of subversion detrimental to national security and of facilitating the occupation of some Iraqi territory by Iranian forces. On the pretext of liberating that occupied territory, Iraqi forces bombarded Kurdish areas and used chemical weapons, as happened at Halabja in March 1988.

Following the cease-fire between Iraq and Iran on 8 August 1988, the Iraqi authorities promulgated a number of amnesties for the benefit of the Kurds and some of the displaced population returned. However, when war broke out between Iraq and the coalition States as a result of Iraq's invasion of Kuwait in 1990, Iraq suffered considerable losses and the Kurds and Shi'ites revolted in an attempt to overthrow the regime. The government forces succeeded in suppressing that revolt by resorting to

gross violations of human rights<sup>371</sup> and imposed an economic blockade on Kurdistan that is still being maintained. Negotiations were held between the two leaders of the Kurdistan Front, Massoud Barzani and Jalal Talabani, and the Iraqi Government concerning the future of the Autonomous Region and of democracy in the country. However, those negotiations ended in failure and were finally suspended in October 1991.

The disturbances that occurred in Kurdistan led to the collapse of the autonomous institutions and, in order to fill the governmental vacuum, the Kurdistan Front called for the election of a new Legislative Council, consisting of 105 members, from which a new Government would be formed. At the elections, which were held on 19 May 1992 on the basis of proportional representation, only two Parties were victorious (the Kurdistan Democratic Party led by Massoud Barzani, and the Patriotic Union of Kurdistan led by Jalal Talabani, since no other Party obtained the 7 per cent of the votes needed to win a seat. The Parliament held its first meeting at Arbil on 4 June 1992 and, in July of the same year, announced the formation of a 16-member Council of Ministers for the Region of Kurdistan, which was presided over by Fuad Ma'soum and comprised representatives of the various Parties belonging to the Kurdistan Front.<sup>372</sup>

### **C. Hegemony of the Baath Party**

The Iraqi government derives its main source of support from two institutions, namely the army and the Baath Party, in addition to the security forces and the subsidiary intelligence agencies of those two institutions. The army is the instrument with which the regime suppresses any attempted revolts against itself and the Party constitutes the ideological framework in or through which executive members of the

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371 See Middle East Watch report No. 21, op. cit.

372 The Patriotic Union of Kurdistan and the Kurdistan Democratic Party agreed to share power by appointing a member of the PUK as Prime Minister and a member of the KDP as Deputy Prime Minister, while the Parliamentary Speaker was to be a member of the KDP and his deputy a member of the PUK. The two Parties also agreed to allow the other Parties to participate in the Government, particularly the Kurdistan Democratic Socialist Party (which had recently been formed through an amalgamation of three Parties) and the Communist Party.

regime and officers in the armed forces are taught to be loyal to the existing regime and its leader. The army's involvement in politics since 1958 has undoubtedly impeded the establishment of a democratic society in Iraq. Adoption of the ideology of the Baath Party and imposition of a single-party system have also negated the freedom of civilian society, which lost its right to choose its political orientation when the ruling authority imposed a specific political dogma.

The Baath Party's hegemony over the State institutions and its monopoly of power were consolidated by a series of enactments and decisions promulgated by the Revolution Command Council.

Under the terms of the Leading Party Act No. 142 of 1974, all Ministries and government departments, institutions and agencies were obliged to adopt the political report of the Eighth Regional Congress of the Baath Party "which guides the authorities and the State" as a programme and a functional guideline for the discharge of their duties. The Revolution Command Council also made it obligatory for all government departments<sup>373</sup> to apply and comply with the decisions taken by the regional (Iraqi) leadership of the Baath Party.

In order to protect the ruling Party from external infiltration, the Revolution Command Council promulgated Act No. 107 of 1974<sup>374</sup> which prescribed the death penalty for any member of the Baath Party who deliberately concealed his previous political links or affiliations or who, during his commitment to the Baath Party, was found to have links with any other political party or organization.

Act No. 145 of 1976<sup>375</sup> forbade any member of the Baath Party, under penalty of prosecution, to join any other political party or organization after the severance of his links with the Baath Party.<sup>376</sup> The same article also made provision for the prosecution of anyone who recruited for any political party or organization a person who had organizational links with the Baath Party, even after their severance, if he was aware of the existence of those links.<sup>377</sup>

Under the terms of Revolution Command Council Decision No.

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373 In accordance with its Decision No. 434 of 3 April 1978.

374 Al-Waqa'i al-Iraqiya No. 2390 of 22 July 1974.

375 Al-Waqa'i al-Iraqiya No. 2561 of 6 December 1976.

376 Article 200 of the Penal Code.

377 Act No. 111 of 1978, Al-Waqa'i al-Iraqiya No. 2659 of 19 June 1978.

884 of 3 July 1987,<sup>378</sup> any police officer who, on his separation from service for any reason after 17 July 1968, was found to have joined or worked for any political party or organization other than the Baath Party was liable to the penalty of death by military firing squad.

Revolution Command Council Decision No. 437 of 3 April 1987<sup>379</sup> is noteworthy in so far as it stipulated that the effects of the Party sanctions applied to the functional position of a (civilian or military) State employee who was a member of the Party, i.e., a government department must impose on any of its employees who is a member of the Baath Party a disciplinary sanction consistent with the Party sanction determine by the Party leadership, even if he has not committed a professional fault (the list annexed to that Decision No. 437 specified the type of the original Party sanction and the incidental professional sanction corresponding thereto). This Decision indicates the extent of the interlinkage between the ruling Party organizations and the State institutions.

As already mentioned in the preceding section, the National Assembly Act of 1980 stipulates that anyone standing as a candidate for membership of the National Assembly "must believe in the principles and aims of the glorious revolution of 17-30 July". As well, it was noted that three quarters of the members of the National Assembly are members of the Baath Party and we will see that the Political Parties Act of 1991 prohibits political parties other than the Baath Party from engaging in any party-political education, activity or organization within the ranks of the armed forces, the internal security forces and other associated agencies.

The above-mentioned enactments, all of which are designed to protect the interests of the ruling Baath Party, indicate the extent of that Party's hegemony over political life in the country, as well as its monopoly of power. The Political Parties Act of 1991 strengthened the position of the ruling Party instead of permitting a multi-party system on a sound basis as a first step towards democratization.

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378 Al-Waqa'i al-Iraqiya No. 2664 of 17 July 1987.

379 Al-Waqa'i al-Iraqiya No. 2649 of 17 April 1987.

## D. The New Political Parties Act

The Revolution Command Council promulgated the Political Parties Act on 1 September 1991, at a time when the Iraqi Government had agreed to enter into a dialogue with the Kurds on the question of autonomy in Kurdistan. The Iraqi authorities' purpose in promulgating that Act was to give their Kurdish interlocutors and public opinion the impression that the regime was well-intentioned and open-minded with regard to other political tendencies. They attempted to portray the new Act as a positive and major step towards democratization. However, the real purpose of the promulgation of the Act at that particular time was to forestall the Kurdish demand for the adoption of a series of measures leading to the establishment of a democratic system in the country, including the election of a Constituent Assembly to draft a new Constitution. In this way, the Iraqi Government confronted the Kurds and the other political organizations with a *fait accompli*, although it failed to convince anyone of its good intentions or of the serious nature of the Act that it had promulgated, particularly since the Act contained many clauses that enabled the Government to interfere in the internal affairs of political parties and to monitor their activities closely. Hence, from the time of its proclamation, the Act was not expected to restore the lost confidence between the existing regime and the opposition parties, since the latter would pay it no heed and would prefer to continue their activities outside its scope in an "illegal" manner rather than place their necks on the block for the authorities, which is what the Baath Party itself and other parties did when the Political Parties Act of 1960 was promulgated in the time of Abdul Karim Qasim.

The new Political Parties Act contains 34 articles divided into six sections dealing with: fundamental principles,<sup>380</sup> procedures for the establishment of a political party,<sup>381</sup> conditions for membership of a political party and procedures for the amalgamation of two parties,<sup>382</sup> the rights and obligations of a political party,<sup>383</sup> the funding of a political party<sup>384</sup> and general and final provisions specifying, *inter alia*, the circumstances in which a political party can be dissolved. The main provisions of the Act, concerning the establishment of a political party,

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380 Articles 1-6 of the Political Parties Act of 1991.

381 Articles 7-10 of the Political Parties Act of 1991.

382 Articles 11-14 of the Political Parties Act of 1991.

383 Articles 15-22 of the Political Parties Act of 1991.

384 Articles 23-26 of the Political Parties Act of 1991.

the rights and obligations of a political party and the grounds for the dissolution of a political party, are reviewed below.

## 1. Stipulations Concerning the Establishment of a Political Party

Article 1 of the new Act defines a political party as a "political organization, consisting of persons sharing common principles and aims and a clearly defined and declared programme, operating in a lawful, proper and democratic manner within the framework of the Republican system and in accordance with the Constitution and the law".

In accordance with the above-mentioned article, a political party must operate in a public, lawful, proper and democratic manner and must not attempt to seize power through force, i.e., through a military *coup d'état* or an armed popular revolution. A political party must also operate within the framework of the Republican system, which is the country's final system following the overthrow of the monarchical regime in 1958. The stipulations concerning the establishment of a political party are as follows:

### a. The Party's Ideology

A political party's principles and aims must be clearly defined in regard to the maintenance and defence of the independence, territorial integrity, sovereignty and national unity of Iraq and the party must show pride in Iraq's heritage and glorious history, as well as in the achievements of the national struggle, especially the revolutions of 14 July 1958 and 17-30 July 1968; it must not adopt a hostile attitude towards the legitimate aspiration of the Arab nation to achieve full liberation, solidarity and Arab unity (article 3).

From article 3, it is evident that a political party must acknowledge that the two military coups *d'état* that took place in 1958 and 1968, but not the coup of 1963, were popular revolutionary struggles the achievements of which should be a source of pride, including the war against Iran and the invasion of Kuwait. Article 3 further stipulates that a political party must seek to promote Arab unity, which is advocated by the Baath Party, even though Iraq has many political parties for which Arab unity is not an ideological concept or constitutes only part of their concerns, as in the case of the Iraqi Communist Party or the Kurdish Parties. In other words, in order to obtain a license and acquire legal status, a political party must show loyalty to the existing regime and acknowledge the correctness of its policy and the soundness of its political aspirations.

The new Act prohibits the establishment of a political party on an "atheistic, confessional, racial, regional or anti-Arab basis". Likewise, a political party is prohibited from including any stipulations based on race or religious confession in its statutes.<sup>385</sup>

The danger of this article lies in its phraseology, which is couched in general terms the meaning of which is not defined, thereby allowing the authorities scope to interpret and explain them and to grant a license to one political party while refusing it to another after disqualifying it on any of the grounds mentioned in the text. In this connection, it might be wondered whether "atheism" is intended to disqualify the Communist Party, "confessionalism" the Islamic Parties and especially the Da'wa Party, and "anti-Arab or racist tendencies" the Kurdish Parties which the Iraqi regime is attempting to portray as hostile to the Arabs. Moreover, is "regionalism" synonymous with "country-specific patriotism" which the Baathist dictionary defines as the antithesis of "nationalism"?

According to the new Act, a political party must undertake to respect the rights and freedoms of citizens, as set forth in the Constitution, as well as the human rights enshrined in the International Covenants and the international instruments to which Iraq has acceded. Every political party must also respect the rights of other parties and professional and popular organizations.<sup>386</sup> Although this is a self-evident stipulation for democratic party-political activity, the Baath Party is unfortunately not bound by this text.

Under the Act, neither the composition nor the activity of a political party must resemble those of a military or paramilitary organization, nor must it establish such organizations.<sup>387</sup>

#### b. Requirements to be Met by Members of a Political Party

According to article 11 of the Political Parties Act, anyone wishing to join a political party must meet the following requirements:

- Must be of Iraqi nationality;
- Must be over 18 years of age;

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385 Article 5 of the Political Parties Act of 1991.

386 Article 6 of the Political Parties Act of 1991.

387 Article 20 of the Political Parties Act of 1991.

- Must not have been convicted of the crime of murder or of a dishonourable offence;
- Must accept the party's statutes.

The second paragraph of article 11 further stipulates that anyone who is found to be in breach of the above conditions must be dismissed from the party. However, the text does not explicitly specify the body that is competent to take the decision to dismiss a member who fails to meet the requirements; is it the party leadership or the State, and according to what procedures?

Under article 12 of the Act, a person is prohibited from being a member of more than one political party at the same time. Anyone who contravenes this stipulation is liable to a fine of 500-1,000 dinars and dismissal from both parties. It is easy for the competent authorities to detect such contraventions since, under the terms of the Act, every political party is required to maintain a register containing the names, addresses, occupations and membership dates of its members, as will be seen below.

#### c. Establishment Procedures

Every male or female Iraqi has the right to establish or join a political party (article 2). The establishment application must be submitted to the Minister of the Interior after it has been signed by not less than 150 founding members over 25 years of age who have not been convicted of the crime of murder or of a dishonourable offence. They must annex to the application a statement containing the first and family names and the occupation of each founding member, together with his curriculum vitae, a certificate of his Iraqi nationality<sup>388</sup> and a copy of the party's political manifesto and statutes.<sup>389</sup>

Article 8 specifies the details that must be included in the statutes, such as the name and organizational structure of the party, the conditions governing membership or forfeiture of membership, the procedures for the election of the party's leadership, its sources of funding and the manner in which the party's statutes can be amended, etc.

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388 The certificate of Iraqi nationality is a document issued by the Ministry of the Interior indicating that the person concerned is of Ottoman or Iranian origin according to the personal status records compiled in the 1930s.

389 Article 7 of the Political Parties Act of 1991.



If the establishment application meets the legal requirements, the Minister of the Interior refers it to the Council of Ministers within 60 days from the date of its official receipt by the Ministry. The Council of Ministers then has 60 days, from the date of its receipt of the application, in which to decide whether to approve or reject the application. Its decision must be substantiated in either case. If it fails to take a decision on the application within the specified time-limit, the application is legally deemed to be approved.<sup>390</sup> A decision by the Council of Ministers to reject the application, like any decision taken by the Council of Ministers in connection with the application of the provisions of the Political Parties Act, can form the subject of an objection submitted by the founders to a plenary session of the Court of Cassation within 30 days from the date of its notification, in accordance with article 30 of the Political Parties Act. Further reference will be made to this article below.

Article 9 elicits two comments. Firstly, the Political Parties Act stipulates that the licensing of the establishment of a political party falls within the competence of the Council of Ministers rather than the Revolution Command Council which, in its capacity as the country's supreme body, decides on the domestic and foreign policy of the State, as already mentioned. The reason for this was possibly to appease the Kurdish Parties which, during the short stage of dialogue with the Government, were demanding the dissolution of the Revolution Command Council and the election of a Constituent Assembly to draft a new Constitution. Secondly, failure by the Council of Ministers to take a decision on the application within 60 days from the date of its receipt by the Council is deemed to constitute an implicit decision to approve the establishment of the party. This is one of the few positive aspects of the Political Parties Act.

## **2. The Rights and Obligations of a Political Party**

A political party enjoys corporate personality from the date of its inclusion in the register of political parties at the Ministry of the Interior<sup>391</sup> and subsequently has the right to publish a political newspaper and/or magazine, provided that the Minister of Culture and Information is duly notified thereof (article 15). The party also has the right to acquire the premises needed for its headquarters and branches, for meetings of its

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390 Article 9 of the Political Parties Act of 1991.

391 Article 10 of the Political Parties Act of 1991.

members and for its journalistic activities.<sup>392</sup>

It is noteworthy that, although the Political Parties Act designates Baghdad as the headquarters of all the political parties, each party is entitled to establish branches in other administrative units, provided that the Ministry of the Interior and the head of the administrative unit concerned are duly notified (article 10). The stipulation that the headquarters of all political parties must be situated at Baghdad undoubtedly restricts their freedom of action, since many parties would prefer to be based in other cities, such as Sulaimaniya, Kirkuk or Najaf, where they enjoy popular support. Could it be that the purpose of designating Baghdad as the headquarters of all the political parties is to enable the central authorities to monitor their activities and records more easily and effectively?

Political parties can establish contacts or links with political parties or organizations abroad only through the "Arab and International Relations Committee" of the National Assembly. It is prohibited to establish direct or indirect relations with any governmental body in a foreign State and anyone who contravenes this prohibition is liable to a penalty of life imprisonment.<sup>393</sup>

Furthermore, political parties are prohibited from sending money to associations, organizations or persons abroad without the consent of the Council of Ministers and anyone who contravenes this prohibition is liable to a penalty of 1-3 years' imprisonment. Likewise, political parties can receive donations in cash or in kind from parties, associations, organizations or persons abroad only with the consent of the Council of Ministers and anyone who contravenes this prohibition is liable to a penalty of life imprisonment and confiscation of the donations received by the party.<sup>394</sup>

The two above-mentioned articles clearly show that political parties cannot establish any type of links with individuals or parties abroad without the consent and supervision of the Iraqi authorities. The purpose of this strict control is to prevent political parties not only from assisting the Iraqi political opposition abroad but also from receiving assistance from foreign individuals, parties or other States in the region which Iraq accuses of inciting and aiding the opposition.

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392 Article 16 of the Political Parties Act of 1991.

393 Article 17 of the Political Parties Act of 1991.

394 Article 18 of the Political Parties Act of 1991.

The many obligations and restrictions that the Act imposes on political parties in order to enable the State authorities to monitor their activities and interfere in their affairs are illustrated by articles 21 and 22, which merit closer consideration.

Article 21 stipulates that political parties must maintain the following records, certified by a notary public as in the case of a commercial company:

- A register of members, containing their names, addresses, occupations and dates of membership.
- A register of resolutions, containing the resolutions adopted by the party.
- Accounting records showing the party's income and expenditure. It is noteworthy that, under the terms of article 26 of the same Act, the accounts of political parties are subject to audit by the Financial Control Office, which submits to the Council of Ministers an annual report on the financial situation of each political party.
- A register of assets, showing the party's movable and immovable assets.
- Any other records required by the party's activities.

This provision empowers the State authorities to thoroughly monitor the situation and affairs of political parties by placing them under an obligation to keep additional records on the pretext that the nature of their activities necessitates the maintenance of such records.

Under article 22, political parties are obliged to submit to the Minister of the Interior, in January of each year, a statement showing the number, as well as the names, addresses, occupations and dates of membership, of new members, the names of those whose membership has been cancelled, and any other details specified in official instructions. In this way, the Ministry of the Interior is able to monitor the membership turnover of political parties, ascertain the number of members of each party, and compile lists of their names and addresses in order to make them easy to locate and also in order to facilitate identification of the political affiliation of citizens.

Finally, it should be noted that the new Act does not treat all political parties on an equal footing; it accords the ruling Baath Party a special and distinctive status in so far as, under the terms of article 19 of the Act, all political parties other than the Baath Party are prohibited from engaging in any party-political or organizational activity among the

armed forces, the internal security forces or other security agencies "in view of the Baath Party's historic role in launching and leading the glorious revolution of 17-30 July". This prerogative accorded to the ruling Baath Party undoubtedly consecrates the concept of the hegemony of a single party.<sup>395</sup> However, this concept is totally incompatible with democracy and political pluralism.

### **3. Dissolution of a Political Party**

A political party can dissolve itself in accordance with the provisions of its statutes.<sup>396</sup> Article 28 of the Political Parties Act also lists the following eight cases in which the Council of Ministers can dissolve a political party:

- If, within two years from the date of the party's establishment, the number of its registered members does not amount to 2,000. This provision leads to the elimination of small political parties, as though freedom of opinion and association were conditional on "number" rather than "personal conviction". Moreover, two years is a relatively short time-limit in which to attract mass support under the shadow of the ruling Party's hegemony.
- If it is found to have engaged in any activity prejudicial to the security, territorial integrity, sovereignty, independence or national unity of the State.
- If it is found to have established military or paramilitary organizations.
- If it is found to have engaged in any activity likely to detract from the rights and freedoms of other political parties or professional or popular organizations.
- If it is found to have interfered in the internal affairs of any Arab or foreign State in a manner detrimental to the higher interests of Iraq.
- If it is found to have stockpiled military weapons, firearms or explosives at its headquarters, at any of its branches or at any other location.

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395 Act No. 142 of 1974 describes the Baath as the "leading Party".

396 Article 27 of the Political Parties Act of 1991.

- If it has resorted to the use of violence in its political activities.
- If, after being warned, the party commits a repeated violation of the provisions of article 17, paragraph 2, (by establishing direct or indirect relations with a governmental body abroad) or article 18, paragraph 2, (by receiving donations in cash or in kind from parties, associations or individuals abroad without the consent of the Council of Ministers).

The text of article 28 clearly shows that there are many and varied grounds on which a political party can be dissolved and these grounds are defined in vague and flexible terms so that it is not difficult for the ruling authorities to find a pretext to dissolve a political party of which they disapprove. In this way, the authorities can use article 28 as a means to bring pressure to bear on a political party that is attempting to oppose them. The President of the Republic also possesses a means to bring effective pressure to bear on political parties, since it is he who determines the amount of the annual grant that the State accords to each party in the light of the number of its members, the number of its representatives in the National Assembly and "its role in the national struggle".<sup>397</sup> The President determines the amount of the grant at his full discretion and his decision in this regard is not subject to any form of control.

In this context, it should be noted that, under the terms of article 30 of the Political Parties Act, every decision taken by the Council of Ministers concerning the application of the provisions of the Act, including any decision to dissolve a political party, must be substantiated and can form the subject of an objection submitted to a plenary session of the Court of Cassation within 30 days from the date of its notification. The decisions of the plenary session are final and not subject to appeal.

In spite of the importance of article 30, which permits a political party to lodge an objection against decisions of the Council of Ministers with the highest judicial body in the country, the benefits of this article remain limited since decisions taken by the Council of Ministers concerning the higher interests of the country are governmental acts or "sovereign acts", to use the words with which they are described in Iraqi law, and, as such, normally fall outside the scope of judicial control. It is highly probable that the plenary session of the Court of Cassation would regard itself as incompetent to determine whether the activity of a political party was prejudicial to the "sovereignty and national unity of

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397 Article 24 of the Political Parties Act.

the State" or to the "higher interests of Iraq" or whether it constituted "interference in the internal affairs of an Arab or foreign State", because the assessment of such matters falls within the sole jurisdiction of the Government.

# ANNEX

## **Comments of the Government of Iraq**

# Comments of the Government of Iraq

**January 1994**

In its draft report on Iraq and the Rule of Law, the International Commission of Jurists explained that Iraq has since its independence known three political regimes:

1. The monarchic-parliamentarian regime;
2. The military regime; and,
3. The present constitutional regime.

This constitutional evolution in Iraq evokes an important question which was not grasped by the writer of the report: what caused these fundamental changes to Iraq's political systems? The answer to this question lies in the fact that democracy and the political regime of any country are firmly linked to its economic and social development. Thus, when we argue that a country is economically backward then it must be politically backward. Democratic development is linked to economic development.

In conclusion, the draft study on the Iraqi constitutions and their relationship to the Rule of Law lacks scientific objectivity and realism. From the objective point of view, most specialists in constitutional law give priority to the economic development and growth of a country and associate them to the exigency of political development and growth in order to acquire a proper formula to govern. In other words, the best notion of the State, the philosophy of Government and the constitutional system, remains undetermined.

The study lacks realism because it is abstract and superficial. It relied on documents and neglected the causes for the constitutional changes. It did not explain, for example, why Iraq's parliamentary system had failed, and how such failure had affected the following political stages. In addition, it did not shed light on the political, economic and social development experienced by Iraq under the current constitutional regime.

The draft study has admitted that the parliamentary system in Iraq had failed, but it did not explain why it had failed. This explanation is very important in order to fathom the constitutional development in Iraq and its relationship to the Rule of Law.

In brief, the parliamentary system was founded and grew in the



shadow of Western liberalism. It suited occidental societies and it mirrored that suitability perfectly. This system had therefore failed to confront the convoluted political and economic problems common to Third World countries. Therefore, to employ the foundations and elements of Western democracies in order to examine the degree of success or failure of Third World governments is unrealistic and unscientific.

The monarchic regime in Iraq and the military regimes that followed did not find the necessary solutions to Iraq's political and economic problems. Iraq had been in a desperate need to have these problems tackled. Among these problems, for example:

1. The concept of a State and its structure;
2. Democracy and constitutional institutions;
3. Political parties and popular organizations;
4. Determining the economic and social problems facing Iraqi society, which can be summed up as being:
  - a) The position vis-à-vis religion;
  - b) The problem of national minorities;
  - c) How to solve economic and social developmental problems.

The Arab Socialist Baath party took over power in Iraq and confronted all these problems at once. It inherited State institutions which were dismantled and weak. The relationship between the Government and the governed was almost non-existent.

The Party has made special efforts to develop the Iraqi political system by linking political development to economic development. It began by concentrating on building State institutions and national unity, and developing the political aptitude of the Iraqi people so that they will take full responsibility for the running of their government. This scientific balance, as well as the reliance on the Party's philosophy of government, has enabled the Party to create the political and economic foundation necessary for the people to exercise their full rights to govern.

But this exemplary development has annoyed international powers which began to lay obstacles in the way of this extraordinary political and economic development, resulting in Iraq becoming the target of numerous international conspiracies including the Iranian aggression which lasted ten years. Iraq came out of the aggression victorious. This resulted in international powers resorting to direct attack by launching a cruel war against Iraq. Regardless of their prettexts, the war was meant by

the powers to halt Iraq's political and economic growth. During this period, which was characterized by exceptional circumstances, it was natural that the State should do its utmost to maintain internal peace and order. This had to be done by consolidating the executive authority in order to face these exceptional circumstances created by foreign forces. He who today decries the Rule of Law in Iraq is the same person who violated the legitimacy and rule of international law in the past. The International Commission of Jurists is well aware of the flagrant violations of international law during the assault on Iraq by those countries which claim to be democratic. We are well aware of the positions of many Commission members regarding these violations of international law.

....

The study has paid particular attention to the Constitution of 1970 (the present constitution) thus our reply will deal with this issue.

Contrary to the norms of scientific and objective research, those sections of the study that treated the Iraqi political, constitutional and judicial systems sanctioned by the Constitution of 1970, were emotional, self-indulgent. This has weakened the study to a point where we are forced to avoid discussing all that can be considered polemical- since such discussion can be, least to say, unproductive and unconstructive within the realm of scientific research.

We will deal with the contents of this study by starting with the preliminary section , detailing our opinions and comments.

### **1. The Introduction to Part One.**

The Preliminary Section of Part One, included a brief and compact review of insignificant aspects of the establishment of the Arab Socialist Baath party about which we will note the following:

- By maintaining that the Arab Nation is a nation with an eternal message, the Arab Socialist Baath party means that this nation must play its distinguished role in the cultural development of humanity, a role it had played during its renaissance. No reference was made to racism, a concept which this nation has not known throughout history. Instead, it has known religious and ethnic tolerance as many religious and ethnic minorities lived among its ranks.

- In the introduction and the rest of the study, inappropriate expressions were used to describe former or present presidents of Iraq, which is a member of the United Nations. Also, unusual depictions were given to the political regime. This included references to former President of Iraq, Mr. Ahmad Hassan al-Bakr, and President Saddam Hussein. Also, the Iraqi political system was labeled “the Baathist Regime.”
- The revolution of 17-30 July 1968 was depicted as a *coup d'état*. There is no need for us to recount the revolutionary nature of its political, social and economic aspects.
- The introduction concluded by presenting four political texts as if they were complements to the Constitution, and alleged that, all together, these texts make up what is known as the State Political Law. This is only part of the truth. Given that these texts carry considerable political significance, we do not submit that they possess the extent and might of constitutional articles. Instead, they are consultative and periodic, such as the political report of the 8<sup>th</sup> National Convention of the Socialist Arab Baath party in Iraq. This report is associated with a certain period after which there were two other reports associated with later periods. This is a pivotal objection on our part to many conclusions of this study that were based on this false conception.
- In many areas, the study refers to constitutional and judicial rulings which were amended or annulled altogether. This gives the wrong impression that they are still in force. Moreover the study bases certain conclusions and observations on these amended or annulled rulings in a manner which prejudices Iraq. We will point to some of those conclusions later on.

## **2. Section I of Part One: Characteristics of the Present Iraqi Constitution**

Within the presentation of the constitutional and judicial position on private ownership, it was said that the Agrarian Reform Act could not avoid many of the mistakes which accompanied its implementation. It was said that the Agrarian Reform Act of 1970 had abolished the compensation payable to landowners in respect of their expropriated land and had restricted compensation to buildings and agricultural machinery and others. This is an inaccurate statement. Paragraph d of article 16 of

the Constitution of 1970 was clear in stipulating that "the maximum limit on agricultural ownership is determined by the law and whatever is in excess is considered public property." This text is fair and clear. It is clear because it does not require interpretations similar to those in the study. And it is fair because there were three types of agricultural ownership at that time: absolute private ownership which is protected by the constitution and the law, and which was not affected; *Tabou*-earmarked land; and land granted by way of *thimmah*. The last two were inherited from the Ottoman State which, under certain pretexts, granted tribal chiefs and some economic, social or even religious functionaries, lands to be cultivated on the condition that these lands would remain State-owned.

Therefore, to reclaim lands which are in excess of the maximum limit and then to cultivate them for the benefit of the people is a befitting and legal action justified by theoretical and practical considerations for setting up social welfare and justice, and was accompanied by wide public celebrations, especially among the peasants who throughout the ages were deprived of the fruits of their efforts. The principles of the Agrarian Reform Act has drawn the attention of scholars, while law colleges taught it to their students.

...

Although we will try not to discuss several points made in the study since they were already answered in the study itself. Nor will we discuss those issues which are illogical or based on generalities and those that include aggressive terminology. It is, however, necessary to reply to those that were allegedly based on the law. For example, it was said on the economy: "being aware of the importance of the economy for the consolidation of their authority and prestige, the political leaders accorded it the necessary protection by imposing severe penalties on anyone who contravened the economic regulations that they promulgated. They also attempted to combat corruption in government departments in order to safeguard the regime's reputation. For example, Revolution Command Council Act No. 1016 of 1 August 1978 stipulated that the hearing and judgment of offenses prejudicial to the national economy, trade and financial confidence in the State, fell within the jurisdiction of the Revolutionary Court, etc."

The reasons for the enactment of this decision is that a country which is experiencing exceptional circumstances issues laws and acts to protect its society's basic interests. This was the intention of the Revolution Command Council when it issued this act during the Iraq-Iran war. It was issued in order to protect the people's welfare against

fraud and exploitation for individual profit. Again, we would like to point out that the study was produced in 1993, i.e., a long time after the annulment of the Revolutionary Court whose jurisdiction was transferred to the civil courts. We don't know why this jurisdiction was repeatedly brought up in the study without any reasonable scientific purpose.

Additionally, the study spoke about the the Revolution Command Council Act No. 313 of 13 March 1984. It said that "any government official or public servant who is sentenced to a term of imprisonment for embezzlement of state funds must not be released after serving his sentence unless the embezzled funds are recovered from him, while the period during which he remains in prison after serving his sentence would be tantamount to an additional penalty and a means of coercion to induce him to return the embezzled funds." Specialists in criminal law have failed to solve such damaging crimes, especially in centrally-planned societies. It is most unreasonable that an embezzler of public funds would spend a year or two behind bars only to enjoy the fruits of his crime upon his release. This crime has greatly decreased which corresponded to the legislator's wishes.

As to what was mentioned in the study regarding some decisions of the Revolution Command Council on marriage control, these are organizational procedures within the framework of caring for family unity and to encourage foreign wives to gain the Iraqi citizenship of their spouses. As for granting women the right of separation from their spouses who have avoided military draft, we believe that military service represents a fundamental social value in the Iraqi society represented by the deep belief in the love and loyalty to the nation of which military service is the supreme portraiture. Keep in mind that the demand for separation by women is a right rather than a compulsion by the State.

### **3. Section II of Part One: Republican Institutions**

In this section, the study has taken upon itself to present and analyze certain topics concerning the institutions of the Republic of Iraq. The following are our remarks:

- The Revolution Command Council

We would like to remind that democracy has a long history that stretches to the earlier stages of the development of human civilization in various parts of the world including Iraq. Thus the concept of democracy meant different things for various societies.

Social, religious, national and local characteristics of a nation, in addition to the philosophies of the ruling regime, all had clear effects on the various subsequent types of democracy.

Thus the Western style of democracy which is derived from Free Philosophy "liberalism" is a style of democracy that succeeded in the Western societies because it suited the characteristics of those societies. Therefore a question remains: is it justifiable to impose on other countries, in the name of democracy, certain archetypes of democracy?

In other words: are not the attempts to exercise Western styles of democracy on nations which have different characteristics, and which are incompatible with this style of democracy, at least for now due to their degree of social, economic and cultural development, a type of imposition of Western styles of democracy?.

On this basis, when article 73 of the Constitution of 1970 granted Revolution Command Council the rank of the highest authority in the State and the right to legislate, it did so because the Council had taken upon itself, on 17 July 1968, the responsibility of realizing the will of the people to take over the authority from the autocratic and reactionary regime and restore it to them.

As for granting the Revolution Command Council legislative and executive authorities, this was for a period necessary to advance social and institutional development of the State so as it will be able to handle constitutional authority and exercise the type of democracy that the people prefer, in accordance to their social and national characteristics.

As soon as the political, social and economic development reached a degree of maturity on the road to starting a new political and constitutional era, the Iran-Iraq war started in which Iraq had to defend himself. And as soon as this war ended, a new era started and new methods of political and constitutional development were considered, including the cancellation of many decisions and exceptional measures which were inherited from the war. The aggression of the anti-Iraq alliance was launched, taking advantage of what is called the Kuwait crisis in order to destroy the foundations of the various developmental fields in the country, adding to it an economic embargo which has resulted in Iraq having to once more issue decisions and rulings in order to face these ponderous emergency circumstances.

There is no doubt that, under these circumstances, it was necessary to resort to more emergency procedures. These exceptional circumstances have no doubt hampered the democratic, political and constitutional drive in the country.

In 1990 a draft constitution of the Republic of Iraq was published in order to be studied and discussed by the various official and popular sectors in the country on the way to taking the necessary measures to approve it in a proper way.

The draft constitution includes fundamental revisions to the political and constitutional structure of government based on a grand expansion to the democratic base.

Also the Political Parties Act No. 30 of 1991, and the order to implement it, Act No. 1 of 1992, were issued to insure that political parties will carry out their activities freely according the law.

Thus in reaction to what was noted in the study regarding the expanded authority of the Revolution Command Council, especially the legislative authority, one can argue that this authority is based on the Constitution, derived from it and will remain so until the constitutional process of drafting legislation has been completed once the exceptional circumstances which were imposed on Iraq for known political purposes by certain states which are taking advantage of the so-called New World Order, has terminated. Additionally, the draft of the new constitution does not mention the existence of a Revolution Command Council, instead it creates a *Shura* council in addition to the National Council as well as consolidating the principle of the election of the President of the Republic by direct public secret ballot.

- The National Council

The study has included a presentation and an analysis of the decisions that defined the structure and the constitutional and judicial functions of the National Council.

It has raised the issue of the intertwining of legislative functions of the Revolution Command Council and the National Council. We would like to state that articles 52 and 53 of the Constitution have clarified this relationship.

The following is a discussion of what has been noted on this issue.

a. The prerequisite of candidature to the Iraqi National Council of being of Iraqi parents by birth and not of foreign origin is a prerequisite required by many world parliaments, specially those that use the citizenship law *vis-à-vis* residency law in defining the citizenship of the person. In addition, this prerequisite involves only the candidates rather than the voters.

b. As for the prerequisite of believing in the principles and aims of the revolution of 17- 30 July and the Qadisiyeh of Saddam, it is meant

here as a condition of loyalty to the country, its unity and safety.

c. As for what was mentioned regarding the bias of the Supreme Council which supervises the elections since it is presided by the member of the Revolution Command Council and included in its membership the Minister of Local Affairs, the Minister of Justice, a representative of the Socialist Arab Baath party and a representative of all the parties participating in the elections. This is only meant to provide a strong and effective guarantee to the freedom and impartiality of the elections.

The elections were successfully carried out three times so far in 1980, 1984 and 1989 under the supervision of judges in election centres and in the presence of press representatives.

But in light of the issuance of the Political Parties Act, and the expected passing of the new draft constitution, as soon as the situation in the country settles, especially after the lifting of the economic embargo, it is very likely that new elections for the National Council will be held, while taking into consideration the demands of this period of multi-parties and the consolidation of democracy.

d. Regarding the allegation of the study that all the candidates for membership in the National Council are member or supporters of the Socialist Arab Baath party, this is untrue since there are members in the National Council who belong to other parties and it is evident that the number of independent members is very large. This in fact is a proof of the democratic way of the elections to the National Council.

e. The study's allegations that doubted the seriousness of the application of the constitutional and judicial principles in the National Council are inaccurate. The democratic aspects of the National Council's activities grow more serious one session after another. Democratic experience will further be deepened and consolidated in light of the Political Parties Act and the democratic characteristics derived from Iraq's national heritage.

- The President of the Republic

A quick look at the observations and opinions regarding the Constitution of 1970, concerning the President of the Republic, his election and the expansion of his powers (which does not differ from many countries especially in the developing world), would indicate that the study has been so harsh as to insult a President of a sovereign state which has its weight among other nations, has since ancient times participated in human development and which participates today in setting standards for peace and international cooperation.



It might be difficult to contest these allegations in an objective manner. We will thus sidestep them. For example, the study states: "The Iraqi regime has veered towards a presidential system since the third amendment to the Constitution of 1968, which was made in November 1969... The present Constitution (meaning the Constitution of 1970) adopted this option and increased the powers of the President of the Republic. When Mr. Saddam Hussein assumed the presidency in 1979, the President of the Republic became the sole *de facto* ruler of the country". We do not know how to counter this point. How could that be possible when the study assumes that to conform to a certain political regime as the present deserves such description as above? This regime is well known constitutionally and is adopted by many countries regardless of the degree of their development.

Although we agree that the Constitution of 1970 has given the President many important powers, many of which could be found in various constitutions including those in Western countries.

We shall avoid discussing many of the unscientific expressions that were included in the study whether they concerned the President or the members of the Revolution Command Council. We suggest that they should be omitted since they lack courtesy and discretion as required in objective research.

- The Council of Ministers

In fact, just as the study dealt with the constitutional and judicial rulings concerning the President of the Republic, it repeats itself when it deals with the constitutional and judicial rulings concerning the Council of Ministers. The two issues were treated in an emotional manner.

The study does not present itself as a study that could be beneficial in its conclusions and suggestions. Instead, it sheds doubts on the seriousness of the function of the Council of Ministers. It should be clear that the political regime in Iraq remains constitutionally Presidential, while the establishment of the Council of Ministers in 1991 came only as a beginning of a process. In the light of the passing of the draft Constitution and the Political Parties Act, the Council's functions will be expanded. The study has dealt with this issue in an emotional manner and claimed that ministerial positions are given to those who are close to the President. This is a baseless allegation taken up by a study which should not concern itself with individuals and personal matters. The relatives of the President who have acquired leadership positions in the State did so due to their proficiency. They are a small number compared to the sum of positions.

- The Judiciary

We had hoped that the study will be more reasonable in dealing with the constitutional and judicial rulings concerning the judiciary, since this subject has a judicial content unrelated to politics. But it seems the study aims to prejudice all that is included in the political, constitutional and even judicial matters in Iraq. It is not the objective study whose scientific findings we had hoped to profit from.

The study begins this subject by claiming: "Section V of the Iraqi Constitution deals briefly with the judiciary ... although the judiciary is a distinctive function, it is not an independent authority since its organization and the scope of its jurisdiction are subject to the will of the Revolution Command Council which is the State's supreme body vested with overall legislative power."

We believe that democratic faith implies that societies are free to choose their constitutional regime. Given that constitutional philosophy is divided among itself by envisaging the division of authority into three types: (legislative, executive and judicial), while others may advocate a fourth division to include the media, another type of constitutional philosophy does not see the possibility of dividing authority since it is an inadvisable unit. The issue here is not whether to divide authority into three or four divisions but what can be done to ensure the independence of constitutional institutions.

The study could not avoid mentioning the principle of the judicial function in Iraq in light of Article 63, paragraph (a), of the 1970 Constitution, which states that "The judiciary is independent and subject to no authority other than the law."

After detailing the basic principles of the judiciary and finding them satisfactory in guaranteeing its independence and building its proficiency and framework, the study returned and made abstract generalities basing them on other institutions of the republic, saying, for example, that the Revolution Command Council interferes in the application of justice by issuing decisions in the form of laws.

In fact, pressing this case in this manner is false and subjective. The intervention of the Revolution Command Council here is not in the sense of an executive authority but as a legislative one such as when it issued a decision based on Act 42, paragraph (a), of the Constitution. This is a common intervention found in many states in the form of a legislative intervention taken in cases when the National Council is not in session, and in exceptional circumstances.

The study continues to discuss what it calls Special Emergency

Courts pointing to their regulations and jurisdiction since some were established in 1958, and links their activities to the present time.

The Special Military High Court and the Court of State Security ceased to exist many years ago. Also, the Revolutionary Court, which was established in 1968, was also annulled in 1991 and its jurisdictions were returned to the civil courts.

This so far has been a quick review of the style of the study in dealing with this subject. What follow are detailed observations:

a. The study criticizes the Iraqi judicial system because it includes, in addition to normal courts, exceptional or special courts.

In fact, the judicial system in Iraq is based on a normal judicial system, but has utilized a type of specialized judiciary which deals with specific crimes that pose great social danger, and only in special circumstances imposed by the situation that the country had been going through since the Iran-Iraq war and the Alliance aggression. The proof is that the jurisdiction of this exceptional judiciary diminishes as the political situation stabilizes. Many decisions and emergency regulations have been annulled after being in use as a result of the aggression of the Alliance and what followed of the economic embargo which hurt and antagonized all aspects of life.

b. The study includes this statement: "The Iraqi Constitution, does not clearly grant the individual the right to a fair trial by an independent and specialized court, but only points out that the right to legal defence is guaranteed during all periods of interrogation and trial."

Although the proof of this principle is written in the Constitution and includes a simple understanding that the individual has the right to a fair trial, we would like the writer of the study to review the following texts of the Constitution in order to feel reassured that the Constitution has been conclusive in this matter (Article 20/a, b, c, 21/a, b, 22/a, b, c). We also would like him to look into paragraph (b) of Article 63 (The right to trial is guaranteed for all citizens).

c. After it reviews the most important principles of criminal procedure and the provisions of the Organization of the Judiciary Act concerning types of criminal courts and their jurisdiction, the study states: "Under the Code of Penal Procedure, defendants enjoy adequate safeguards in contrast to the procedures applied by the Revolutionary Court and other special courts...."

We will merely point out here that the decision of the Revolution Command Council No. 180 of 1968 which formed the Revolutionary

Court (now annulled) and limited its jurisdiction was clear in indicating the necessity of adhering to the Criminal Courts Acts. Thus the guarantees which were included in these acts and mentioned in the study were adhered to by the Revolutionary Court.

d. The study states that the Iraqi Penal Code considers that a juvenile is a person who, at the time of his commission of an offense, was over 7 but under 18 years of age.

In fact, Article 64 of the Penal Code was amended by article (2/3) of the Juvenile Act No. 76 of 1983, which stated that a juvenile is a person over nine years of age. At the end of the same page, it was mentioned that the Penal Code forbids imposing the death sentence on juveniles. A careful study would show that Article 79 of the Penal Code says that "no death sentence will be imposed on someone who, at the time of the commission of his crime, has reached 18 but is not 20 years old yet. A life sentence will be substituted for the death penalty."

e. Concerning the report of Amnesty International, we emphatically deny the report's contents. We also point out that scientific research demands that names and actual events be stated, not empty statements which would damage the reputation of criminal justice in Iraq.

f. Having outlined the safeguards offered to detainees during the interrogation period in accordance to the Penal Code, the study adds that "none of these safeguards are applied in cases involving political offenses, since the Revolution Command Council has empowered the Minister of Interior to detain persons suspected of criminal conduct."

We don't understand how the study, which should be objective, has chosen to ignore the text of this decision since it applies to people suspected of criminal activities (non-political). In addition, since this decision has been issued by a minister, it has become liable to be contested in the Court of Administrative Judiciary according to Act 106 of 1989.

g. When the study discussed the administrative judiciary, it states that "it is unfortunate that act number 106 of 1989 limited the jurisdiction of the Administrative Court of Justice..." Knowing that act 106 of 1989 is the act that established the Administrative Court of Justice, for the first time in the history of Iraq, we do not know how this act came about to limit the jurisdiction of this court. The objective style in searching for more legal and judicial acts to protect and consolidate human rights lies in approving the establishment of the Administrative Court of Justice and then for calling for the expansion of its jurisdiction.

h. While the study claims that the Minister of Justice can observe

court procedures through the functions of the Public Prosecutor, this understanding does not relate to the reality of the function of the Public Prosecutor in representing the public by way of proper observation of the correct application of the law according to act 159 of 1979.

i. The study deals with the appointment of judges by objecting to the requirement that the judge must be Iraqi by birth, considering that the prohibition of the appointment of naturalized Iraqis a matter that is incompatible with the Constitution, adding that the requirement of marriage constitutes an interference in the private lives of individuals.

It does not see harmony between the requirement for Iraqi citizenship and the Constitution which is a requirement demanded in many countries for less important positions. And we do not see that the requirement of marriage is an interference in the private lives of individuals but as a requirement that is befitting the traditions and social values of the Iraqi society, knowing that this requirement applies from the date of the enactment's of the Organization of the Judiciary Act, No. 160 of 1979, and the Act of Public Prosecution, No. 159 of 1979, and does not apply to unmarried judges who were appointed before this date, some of whom are still in service.

j. The study deals with the issue of the Special Emergency Court and includes the Revolutionary Court, the State Security Court and the Special Court in a style that is painted with emotional zeal and is based on preconceptions and accusations that have political implications aimed to damage the political, constitutional and judicial reputation of Iraq.

Staying away from the atmosphere of emotional zeal and improper expressions which the study has attempted to drag us into, we state once more that the Revolutionary Court has been canceled by the decision of the Revolution Command Council No. 140 of 1991, and that its jurisdiction has been given back to Civil Court, which renders discussion on this issue a matter of history unfruitful in the building of the future.

As for the State Security Court, they have not retained any judicial jurisdiction since 1968 due to the establishment of the Revolutionary Court by the above-mentioned decision of the Revolution Command Council.

We recall that Iraq has since its revolution of 17-30 July 1968 passed through grave periods tainted by conspiracies from various reactionary forces, which wish for Iraq to return to the ages of backwardness and demise, and later passed through grave exceptional circumstances when Iran imposed the war during eight years followed by the aggression of the allied countries, taking advantage of the so-called

Gulf crisis. This has compelled Iraq to divert certain types of crimes which threatened its security, independence and ability to defend the people, to the Revolutionary Court until these exceptional circumstances were eliminated so that the court jurisdiction was decreased and then the Court was canceled, as mentioned.

We also recall that Iraq's utilization of these measures is justified by article 4 of the International Convention on Civil and Political Rights which allows states in exceptional emergency situations which threaten the life of the nations to take measures that are not restricted by its obligations according to the Covenant, within the limits of this article.

This justifies the fact that Iraq took some exceptional measures such as the establishment of the Revolutionary Court in accordance with the International Convention on Civil and Political Rights, although Iraq had not declared a state of emergency in an attempt to avoid applying more exceptional measures.

#### **4. Part Two: Political Life**

The person who was appointed to draft a report on Iraq and the Rule of Law has exposed his subjectivity, prejudice and lack of neutrality in presentation and analysis as he wrote this section, because this section is characterized by the following:

- Absolute generalities;
- Reliance on undocumented reports;
- Referring to laws and decisions which have already been cancelled;
- Pointing to a number of operational laws and regulations without attempting to understand why the authorities had enacted them;
- He did not mention the aggression on Iraq from either Iran or the United States and its allies which brought about the enactment of a number of laws and decisions imposed by the consequences of the aggression;
- Interpreting some laws and decisions in a manner that serves his own aims;
- His obligation to admit to the great efforts that the Iraqi government has made on the social, economic, and cultural levels in Iraq, but he tries to diminish their importance in a

noticeable manner which clearly indicates his unreliability and subjectivity in drafting a critical scientific research;

- Reliance on documents which have no constitutional or judicial weight.

In order to clarify the above-mentioned points, the Iraqi government will reply to the remarks and the criticism within this chapter not only for the sake of objective rebuttal but to elucidate the actuality and the calculated blunders that appeared in this chapter and which attempt to damage the international reputation of Iraq:

When examining the issue of discrimination against citizens, the study says "the Legal System Reform Act referred to the need to politicize the Civil Service...." In this concern, we say that this act is not but an assembly of directives and advisories to the concerned Iraqi authorities as they legislate laws and directives so as they will conform to the economic social and cultural development experienced by Iraq.

As for what was stated about granting specific privileges to certain employees or families in an attempt to ascertain the existence of discrimination among citizens, we say that the study did not refer to the real causes as to why certain groups were included for these privileges. Granting these privileges was due to the fact that they had carried out heroic acts during the Iranian aggression and the American attack whether during military service or by carrying out distinguished civilian acts. This is common among all countries where privileges are given to people who provide notable service to society and we do not believe that there exists a single Iraqi family that has been deprived of these privileges.

As for the Revolutionary Court and Special Courts, one can refer to this reply on the subject.

As for imposing the death sentence on the members of the Daawa Party. This was done because the Daawa Party has carried arms against Iraq, attempted to threaten its security and the safety of its people and undertook to return Iraq to the ages of backwardness and demise through coordinating its criminal activities with Iran during its aggression on Iraq.

The study states that "torture in Iraqi prisons has become commonplace". Torture is forbidden by the Iraqi Constitution and is a crime punishable by articles 332 and 333 of the Penal Code while confession under torture is considered null and void according to article 127 of the Criminal Courts Act. A number of verdicts have been issued to convict and punish some employees who tortured detainees. (Please

refer to the Third Periodic Report on the application by Iraq of the International Convention on Civil and Political Rights in order to consult these court verdicts.)

The study states that Iraqi legislation impose many restrictions on the freedom of travel, especially abroad. It is true that the exceptional circumstances resulting from the armed conflict have imposed restrictions on the travel of Iraqi citizen for the purpose of tourism. A decision to permit travel was made on 17.1.1990, then restrictions were re-imposed on 2.8.1990 while a new decision to allow Iraqi citizens to travel was reissued on 15.5.1991.

The study states "the ruling party has oppressed other political parties and prevented them from carrying out their activities, has severely oppressed the opposition and did not hesitate to use the most violent methods to terminate the rebellion of the Kurds and Shiites after the end of the Gulf War in March 1991."

It is well known that the Allied attack on Iraq was accompanied by a frank and public call for the replacement of the Iraqi political system which is a violation of the right of the Iraqi people to self-determination and an obvious intervention in Iraq's internal affairs. As soon as the cease-fire came into effect on 28 February 1991, incidents of disorder were directed from abroad and included people who had crossed the border.

These incidents had completed the destruction which was not accomplished by the allied airborne military forces. The participants in the disorder carried out mass murders, rape, robbery, arson. They destroyed schools, hospitals, storage houses, government buildings, banks, courts and robbed public and private properties. In addition, they incited religious and ethnic strife among the citizens.

All these acts are punishable by law. In the face of these acts and despite the grave circumstances, the State, represented by its military forces, carried out its responsibilities by restoring the authority of the State, eliminating disorder and restoring security among the citizens. This was finalized on 5 April 1991. The Revolution Command Council has since issued many decisions pardoning participants of the disorder with the exception of those who perpetrated acts of murder and rape.

...

The writer of this study, despite his lack of objectivity and in light of reliable evidence, could not but admit to the great efforts accorded by Mr. President Saddam Hussein to the subject of the right of education



and medical and social services.

Yet, due to the writer's biased style of presentation and analysis, he wanted to link expenditure on these two sections and expenditure on armory, an inapplicable linkage. But he made this linkage because he could not otherwise criticize the State's policy in the fields of education, medical and social service. This confession by the writer proves what we had said before: that the leadership in Iraq has affiliated political development with the economic and social development of the people. Democracy can not be practised in a sick society, or a society dominated by illiteracy. Thus the purpose of concentrating on these issues in Iraq has been and is still to build the proper popular bases in preparation for constructing the democratic system.

...

Iraq had, after the cease-fire in the armed conflict with Iran, seriously reviewed all the measures that were imposed due to the situation of the armed conflict, in order to enable the citizens to exercise their rights and freedoms without constrictions.

This approach continued after the cease-fire of the war that was launched by the Allied Forces against Iraq between 17 January and 28 February 1991, as citizens were allowed to travel, the Revolutionary Court was annulled, and restrictions on foreign reporters and media representatives in Iraq were lifted. In addition, the measures of registering typing machines and photocopiers were cancelled, and the National Council in Iraq had approved the Political Parties Act on 4 July 1991.

The writer of the report wrote about the relationship between the Socialist Arab Baath Party with a number of parties in Iraq, briefly and inconclusively trying to accuse the Baath Party of menacing these parties. But he was compelled to admit on page 120 that President Ahmad Hassan Al Bakr "proposed the National Covenant to these parties in November 1971 which aimed to found a coalition among the various members of the Progressive National Movement to confront imperialism, Zionism and reactionary forces"

Therefore, the principal position of the Baath Party *vis-à-vis* political parties is to offer them a hand of coordination and cooperation to lead Iraq. But the Party refuses to cooperate with any party that has questionable ties with Iraq's enemies nor will it cooperate with a party that strives to spark factionalism and the annihilation of national unity.

The writer wrote in details about the Autonomy Act for Kurdistan

but he could not put aside his bias and continued his hostile equivocation against Iraq when he said that the administration of the autonomy is not totally independent of the central authority:

a. The autonomy for Iraqi Kurdistan had secured the legal basis for the legislative and executive local authority and set up the basis for the relationship between the local and the central authorities. Total independence does not exist in any system of autonomy known by other countries.

b. The relationship with the Kurds has been directly overseen by the President of the Republic Saddam Hussein in order to find a proper and legal formula for their problem. This has led to the Autonomy Act which is considered the first law in the region that recognized the national rights of the Kurds and built legislative and executive institutions in order to exercise these rights.

Finally, the government of the Republic of Iraq appeals to the International Commission of Jurists not to publish this report due to its lack of objectivity and reliability and due to the fact that it mentioned laws and directives which have ceased to exist. But if this report is to be published for whatever reason, the Iraqi government would like that its observations be considered or else the study will be seen as a instrument to damage the international reputation of Iraq. We are confident that the International Commission of Jurists will be true to its judicial principles and will decide not to publish this study. The Iraqi government is willing to continue this discussion in order to converge on the truth with objectivity in presentation and analysis.

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