

The Iraqi Courts' Approach to Protecting Human Rights

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ABSTRACT

This study analyzes the role of Iraqi courts in protecting human rights, focusing on the Federal Supreme Court, ordinary courts, and the administrative judiciary in safeguarding rights and freedoms guaranteed by the Iraqi Constitution of 2005 and relevant international human rights instruments ratified by Iraq. It addresses the central question of the extent to which Iraqi courts have effectively translated constitutional provisions on human rights into practical judicial protection. The findings indicate that the Iraqi judiciary serves as a key pillar in human rights protection. Ordinary courts contribute by ensuring fair trial guarantees and protecting individuals from arbitrariness, while administrative courts oversee the legality of administrative decisions and limit executive abuse. The study also highlights that Iraqi courts have reinforced essential legal principles such as the rule of law, equality before the judiciary, fair trial guarantees, and the protection of personal rights and public freedoms. The study concludes that improving human rights protection requires strengthening judicial independence, updating legislation in line with international standards, enhancing human rights training for judges, and ensuring effective enforcement of court decisions. It further recommends broader judicial interpretation to reinforce rights and align national jurisprudence with evolving international legal developments.

Keywords: Human Rights Protection, Iraqi Judiciary, Federal, Supreme Court, Judicial Independence, Constitutional Rights and Freedoms.

1. Introduction

The subject of the Iraqi courts' approach to protecting human rights is of great legal significance due to its direct connection with the extent to which the principles of justice and the rule of law are entrenched within the state. The protection of human rights is not limited to constitutional and legislative provisions; rather, it is realized in practice through judicial application. Courts represent the primary mechanism through which these provisions are activated, transforming them from theoretical norms into tangible reality. The Constitution of

the Republic of Iraq of 2005 accorded significant attention to rights and freedoms by establishing a range of guarantees; however, the true value of these guarantees depends on the judiciary's commitment to interpreting and applying them in a manner that ensures effective protection for individuals.

1.1 Significance of the study

The significance of this study lies in its focus on the vital role played by Iraqi courts whether ordinary, administrative, or constitutional in

safeguarding human rights and preventing their violation. This is achieved through judicial review of the legality of laws and procedures, ensuring fair trial guarantees, and confronting any form of arbitrariness by public authorities or individuals. The study also derives its importance from its contribution to evaluating the Iraqi judicial reality, assessing its compatibility with international human rights standards, and identifying both strengths and shortcomings in judicial performance. Such analysis contributes to the development of the judicial system and enhances its role in protecting rights and freedoms.

1.2 Research problem

The research problem is centered on the following primary question: to what extent have Iraqi courts succeeded in adopting an effective approach that ensures the protection of human rights in light of legal and practical challenges? This main question gives rise to several subsidiary issues, including: what is the legal basis upon which courts rely in protecting human rights? To what extent is judicial practice consistent with constitutional provisions and international standards? What are the most significant obstacles limiting the effectiveness of the judiciary in this field? And has the Iraqi judiciary been able to strike a balance between the protection of rights and freedoms and the requirements of security and public order? Accordingly, this study seeks to analyze the approach of Iraqi courts in protecting human rights through an examination of judicial applications, assessing their effectiveness in consolidating such protection, and ultimately presenting a legal perspective that contributes to strengthening the role of the judiciary as a fundamental guarantor of rights and freedoms within society.

2. The Legal Basis for The Role of Iraqi Courts in Protecting Human Rights

This chapter provides the theoretical and legal framework upon which Iraqi courts rely in performing their role in protecting human rights. Judicial application cannot be fully understood without examining the constitutional, legislative, and international foundations governing this role. Human rights constitute one of the fundamental pillars of modern statehood, representing the framework

through which the legitimacy of authority and its commitment to the rule of law are measured. Attention to human rights is no longer a mere theoretical or ethical concern; it has become a legal obligation imposed by national constitutions and international instruments. This requires states to establish effective judicial systems responsible for protecting human rights and ensuring they are not violated. In this context, the judiciary emerges as the faithful guardian of rights and freedoms and the true guarantor of the practical implementation of legal provisions (Al-Obaidi, 2018). In Iraq, the protection of human rights has acquired special significance in light of the political and constitutional transformations following 2003, culminating in the adoption of the Constitution of the Republic of Iraq in 2005. This Constitution provides a comprehensive system of fundamental rights and freedoms covering civil, political, economic, and social spheres, while emphasizing the supremacy of the Constitution and the subordination of all authorities to its provisions. The judiciary was entrusted with a central role in safeguarding these rights, including the authority to review the constitutionality of laws and ensure their proper implementation in line with constitutional standards. The legal basis for the role of Iraqi courts in protecting human rights is a highly significant topic, as it reflects the framework upon which the judiciary relies to perform its function, whether through constitutional provisions, ordinary legislation, or international treaties to which Iraq is a party. The Constitution represents the highest source of rights, while national laws provide detailed regulation, and international agreements add a global dimension to the legal protection framework, serving as an important interpretive reference for national courts (Al-Khazraji, 2016).

3. The Constitutional Framework for Protecting Human Rights in Iraq

Human rights constitute one of the most important foundations of the constitutional structure of modern states. They are no longer merely ethical slogans or philosophical principles, but legally binding rules that obligate the state to respect, protect, and ensure they are not violated. In this regard, the Constitution serves as the supreme legal instrument that enshrines these rights and provides guarantees for their protection, as it represents the highest

expression of the will of the people and the source of legitimacy for all authorities. Therefore, studying the constitutional framework for human rights protection in Iraq is of particular importance, given the profound transformations in Iraq's constitutional system, especially after the adoption of the Constitution of 2005(Adel, 2017). The constitutional framework for protecting human rights in Iraq is an integrated legal system established by the 2005 Constitution. It does not merely enumerate rights and freedoms, but accompanies them with constitutional and judicial guarantees ensuring respect for these rights and protection from violations. This framework is reflected in the direct link between constitutional provisions and their practical implications. Initially, the Constitution laid down the general basis for rights protection through Article 2 (First / C), which prohibits enacting any law that conflicts with fundamental rights and freedoms. This serves as a direct restriction on the legislative authority and reinforces the principle of constitutional supremacy over all other laws. The Preamble also emphasizes the state's commitment to justice and human rights, providing an interpretive context for other provisions. The Constitution establishes the principle of equality as a fundamental guarantee of human rights. Article 14 states that all Iraqis are equal before the law without discrimination on any grounds, including gender, ethnicity, religion, or other factors. This provision is a cornerstone for building a just society, preventing discrimination and obliging all authorities to respect the principle of equal opportunity(Shawis, 2014). Regarding fundamental individual rights, Article 15 guarantees the right to life, security, and liberty, as natural rights that may not be infringed except in accordance with the law. This is complemented by Article 17, which ensures the right to privacy, protecting individuals from unlawful intrusion. Article 19 establishes judicial guarantees, including the principle of "no crime or punishment except by law," the presumption of innocence, the right of defense, and the prohibition of torture in all forms, thus strengthening the protection of human dignity and preventing abuse of power(Adel, 2017). The Constitution also guarantees a wide range of public freedoms. Article 36 guarantees freedom of expression and freedom of the press, reflecting the adoption of a pluralistic democratic system. Article 38 guarantees the freedom of peaceful assembly and

demonstration, providing individuals with means for collective expression. Article 39 ensures freedom of association and the right to establish political parties, promoting civic participation and political organization. Article 37 emphasizes the protection of human dignity and prohibits torture and arbitrary detention, providing a fundamental safeguard against severe violations. With respect to political rights, Article 20 guarantees citizens' participation in public affairs, including the right to vote and stand for election, reflecting the principle of popular sovereignty and ensuring peaceful power transfer. Economic and social rights are also recognized: Article 22 guarantees the right to work and obliges the state to provide employment; Article 30 ensures social and health security; Article 31 guarantees healthcare; and Article 34 affirms the right to education, which is compulsory at the primary level, reflecting the social dimension of the Constitution in achieving social justice. The Constitution does not merely enumerate rights but also provides guarantees for their protection. Article 93 empowers the Federal Supreme Court to review the constitutionality of laws, ensuring that legislation does not violate rights and freedoms. Articles 44 and 46 stipulate that restrictions on rights and freedoms must be imposed only by law and must not affect the essence of the right, preventing authorities from imposing arbitrary limitations(Al-Dreini, 2006). In another context, the Constitution, in Article (8), emphasized Iraq's commitment to international treaties, including human rights conventions, thereby reinforcing constitutional protection through alignment with international standards.

In summary, the constitutional framework for human rights in Iraq is characterized by comprehensiveness and integration. It combines the enshrinement of rights and freedoms with the provision of necessary safeguards for their protection, linking them to effective judicial oversight, in addition to its adherence to international standards. Nevertheless, the effectiveness of this framework remains contingent upon proper practical implementation and the extent to which various authorities respect these provisions and cultivate a culture of human rights within society(Al-Zubaidi, 2017).

4. The Legislative and International Framework for the Protection of Human Rights

In addition to the Constitution, national laws play a pivotal role in detailing and regulating human rights. Examples include the Iraqi Penal Code, which criminalizes violations of fundamental rights, and the Code of Criminal Procedure, which guarantees fair trial safeguards such as the right to defense and the presumption of innocence. The administrative judiciary also plays a critical role through the State Council laws, which grant individuals the right to challenge administrative decisions that violate their rights, thereby enhancing protection against administrative arbitrariness (Alwan, 2013). The legislative and international framework for human rights protection constitutes an integrated legal system based on the interaction between national rules and international obligations, aiming to safeguard human dignity and protect fundamental rights from any violation. This framework manifests through domestic legal texts that translate constitutional principles, alongside the international conventions to which Iraq is a party and which form part of its legal obligations. Domestically, the Iraqi legislature has embodied human rights protection through various laws, foremost among them being the amended Iraqi Penal Code No. (111) of 1969. It contains explicit provisions criminalizing acts that infringe upon human rights. Article (332) stipulates penalties for any public official or employee who uses coercion against individuals by virtue of their position, constituting legal protection against torture and ill-treatment. Article (333) criminalizes the torture of accused persons, witnesses, or experts to extract confessions, reflecting the legislature's absolute prohibition of torture. Protection also extends to personal liberty, as Articles (421 and following) penalize unlawful arrest, detention, or deprivation of freedom (Zia, 2015). This framework is further strengthened by the amended Code of Criminal Procedure No. (23) of 1971, which serves as a fundamental guarantee for criminal justice. Article (92) prohibits arrest or detention without a judicial order, limiting the arbitrary use of authority. Article (123) affirms the right of the accused to legal counsel, while Article (127) prohibits the use of unlawful methods, such as coercion, torture, or psychological pressure, to obtain confessions, thereby reinforcing fair trial guarantees and protecting human dignity. Furthermore, the legislature established institutional mechanisms for human rights

protection through the Independent High Commission for Human Rights Law No. (53) of 2008. Article (3) defines the Commission's objective as promoting and protecting human rights and ensuring their respect, while Article (5) grants the Commission the authority to receive complaints and investigate violations, reflecting a commitment to independent oversight of government actions (Al-Amiri, 2019).

Other legislation has also contributed to this protection, such as the Anti-Human Trafficking Law No. (28) of 2012, which criminalizes the exploitation of individuals; the Labor Law No. (37) of 2015, which guarantees workers' rights; and the Law on the Care of Persons with Disabilities and Special Needs No. (38) of 2013, which ensures the protection of vulnerable groups. At the international level, Iraq has engaged with the global human rights system by acceding to numerous international treaties that complement national legislation. Foremost among these is the Universal Declaration of Human Rights of 1948, which in Article (1) affirms that all human beings are born free and equal in dignity and rights, in Article (3) guarantees the right to life, liberty, and security, and in Article (5) prohibits torture and cruel, inhuman, or degrading treatment. Iraq has also committed to the International Covenant on Civil and Political Rights (1966), which emphasizes, in Article (6), the right to life; in Article (7), the prohibition of torture; in Article (9), the right to liberty and security and protection against arbitrary detention; and in Article (14), fair trial guarantees. Complementarily, the International Covenant on Economic, Social, and Cultural Rights (1966) reinforces socio-economic rights, guaranteeing, in Article (6), the right to work; in Article (9), the right to social security; in Article (12), the right to health; and in Article (13), the right to education (Al-Amiri, 2019). This system is further supported by specialized international treaties, such as the Convention Against Torture (1984), which obliges states to take effective measures to prevent torture; the Convention on the Rights of the Child (1989), ensuring child protection across all domains; and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), aiming at achieving gender equality. The integration between the legislative and international frameworks is evident in how national laws operationalize international principles into enforceable domestic rules, while

international conventions serve as references for interpreting and reinforcing these laws. Iraq's adherence to these conventions obliges it to harmonize its legislation accordingly to ensure effective human rights protection (Hosni, 2005). In conclusion, the legislative and international framework for human rights protection in Iraq is based on the interaction between domestic legal provisions and international standards, forming an integrated system aimed at safeguarding rights and freedoms. However, the success of this system depends not only on the existence of these texts but also on their practical implementation, the strengthening of judicial oversight, and the cultivation of a culture of human rights respect in society. Globally, especially after World War II, there has been a qualitative shift in attention to human rights, as states recognized that violations are not solely domestic matters but have repercussions for the international community as a whole. This led to the establishment of a comprehensive international human rights system, beginning with the Universal Declaration of Human Rights in 1948, which laid the normative and legal foundation for these rights, followed by binding international treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and other conventions addressing specific areas like the prohibition of torture, anti-discrimination, and the protection of children and women.

5. Judicial Applications of Iraqi Courts in Protecting Human Rights

Iraq has undergone significant political and constitutional transformations over past decades, most notably the promulgation of the Constitution of the Republic of Iraq in 2005, which enshrined a wide range of fundamental rights and freedoms, including civil, political, social, and economic rights. With these constitutional achievements, the Iraqi judiciary became the entity responsible for ensuring the implementation of these rights and protecting them from violations by executive or legislative authorities, as well as individuals. Thus, the judiciary has evolved from merely resolving disputes to serving as a principal guarantor of rights and freedoms (Hosni, 2005). The significance of this research lies in focusing on the practical applications of Iraqi courts in protecting human rights. Protection of rights is

not limited to legal texts but heavily depends on their implementation in practice. Rights acquired constitutionally and legally remain vulnerable unless effective judicial mechanisms exist to ensure their respect. Therefore, studying and analyzing court rulings serves as a tool to understand the extent to which the Iraqi judiciary effectively safeguards these rights. The study raises several central questions representing the research problem, most importantly: To what extent are Iraqi courts whether the Federal Supreme Court, criminal and civil courts, or administrative judiciary capable of protecting fundamental rights and freedoms? Do these judicial applications exhibit independence, impartiality, and objectivity sufficient to preserve rights from violations? And what obstacles do courts face in performing this role? The research relies on the analytical method, which focuses on the study of relevant legal and constitutional texts, in addition to the applied method, which highlights models of judicial rulings issued by Iraqi courts concerning civil, political, economic, and social rights. The study also draws, to a limited extent, on the comparative method by examining some judicial decisions in light of other Arab judicial experiences, thereby enhancing the researcher's ability to extract practical lessons and recommendations (Mustafa, 2011).

6. The Role of the Federal Supreme Court in Protecting Rights and Freedoms

The role of the Federal Supreme Court in protecting rights and freedoms in Iraq represents a practical embodiment of the supremacy of the Constitution and the assurance of its respect. The Court exercises a supervisory and interpretative function, acting as the true guardian of constitutional rights by linking constitutional provisions to judicial practice. Article (92/First) of the Constitution of the Republic of Iraq (2005) states:

"The Federal Supreme Court is an independent judicial body financially and administratively."

This independence forms the cornerstone for enabling the Court to fulfill its role in protecting rights and freedoms, free from the influence of the legislative and executive branches (Abdulbaset, 2013). Article (93) of the Constitution delineates the Court's competencies, which constitute the direct legal framework for its role, stating that its jurisdiction includes:

- Reviewing the constitutionality of laws and regulations in force;
- Interpreting constitutional provisions;
- Resolving disputes between authorities.

These competencies provide the essential mechanisms through which the Court can safeguard rights and freedoms, as constitutional review ensures that no legislation infringes upon fundamental rights.

The Court's work is closely linked to the principle of constitutional supremacy articulated in Article (13/First):

"This Constitution is the supreme and highest law in Iraq, binding in all its parts. No law may be enacted that conflicts with it."

This principle is reinforced in Article (2/First/C), which stipulates:

"No law may be enacted that contradicts the fundamental rights and freedoms guaranteed by this Constitution."

Thus, the Court exercises its role by annulling or ruling the unconstitutionality of any law that violates these rights, making it an effective instrument for safeguarding freedoms (Al-Tamawi, 2007). Moreover, the Court plays a vital role in interpreting constitutional provisions, particularly those relating to public freedoms, such as Article (38), which guarantees freedom of expression, assembly, and peaceful demonstration. The Court interprets these rights in a manner that ensures their exercise without arbitrariness while preserving public order and the essence of the rights.

The Court also plays a central role in protecting the principle of equality enshrined in Article (14), which states:

"All Iraqis are equal before the law without discrimination..."

It intervenes to annul any legislation or measures involving unlawful discrimination, thereby reinforcing justice and citizenship (Jassim, 2016). The Court's role extends to protecting fundamental individual rights, such as the right to life, liberty, and security under Article (15), the guarantees of a fair trial under Article (19), and the prohibition of torture and inhuman treatment under Article (37/First/C). The Court monitors the compliance of laws and procedures with these guarantees and addresses any violations.

Regarding the limitation of rights, the Court relies on Article (46), which provides:

"The exercise of any right or freedom may only be restricted by law or pursuant to it, provided that such limitation does not affect the essence

of the right or freedom."

Here, the Court's role is clearly evident in ensuring the legality of restrictions imposed on rights, preventing arbitrary use of authority, and balancing societal interests with individual rights. Decisions of the Federal Supreme Court are particularly significant, as they are final and binding on all authorities, making the Court a decisive instrument for enforcing respect for rights and freedoms and consolidating the rule of law (Jassim, 2016).

In summary, the Federal Supreme Court constitutes the highest judicial guarantor of rights and freedoms in Iraq, through its constitutional review, interpretation of constitutional provisions, and practical application of the principle of constitutional supremacy. This affirms that genuine human rights protection is achieved not merely through legal texts but through their activation via an independent and effective constitutional judiciary.

The Federal Supreme Court of Iraq is the highest judicial body responsible for reviewing the constitutionality of laws and regulations in force, as well as interpreting constitutional provisions and resolving disputes arising between federal authorities or between the federal government and the regions. The Constitution grants the Court a distinguished position, enabling it to perform a pivotal role in protecting rights and freedoms by ensuring that no legislation or decision conflicts with constitutional provisions (Al-Tamawi, 2007).

7. The Role of Ordinary and Administrative Judiciary in Protecting Human Rights

The protection of human rights is not limited to the Federal Supreme Court; it extends to the ordinary judiciary (civil and criminal) and the administrative judiciary. The role of ordinary and administrative courts in protecting human rights represents a practical manifestation of the rule of law, as constitutional and legislative protection of rights and freedoms is incomplete without an independent judiciary that ensures their respect and restores them when violated. The Iraqi Constitution guarantees this role through several provisions affirming judicial independence and empowering the judiciary to protect individuals from the arbitrariness of both private actors and the administration (Alwan, 2013).

Article (87) of the Constitution of the Republic of Iraq (2005) provides:

"The judiciary is independent and is exercised by

courts of all types and degrees."

Article (88) further asserts:

"Judges are independent and are subject in their rulings only to the law."

This independence is the cornerstone that enables the judiciary to protect human rights without interference or influence. Within the framework of the ordinary judiciary, criminal and civil courts play a central role in safeguarding rights. Criminal courts enforce the amended Penal Code No. (111) of 1969, which criminalizes violations of fundamental rights. Article (333) criminalizes the torture of an accused, witness, or expert to extract a confession, directly applying the principle of the absolute prohibition of torture. Articles (405–410) address homicide, and Articles (412 and following) address bodily harm, thereby contributing to the protection of the right to life and physical integrity (Al-Alwani, 2011). The ordinary judiciary also plays a fundamental role in ensuring fair trials, in implementation of Article (19) of the Constitution, which enshrines essential principles such as the presumption of innocence and the right to defense. Article (19/Third) provides that:

"Litigation is a protected and guaranteed right for all."

This is further reinforced by the provisions of the amended Code of Criminal Procedure No. (23) of 1971, wherein Article (92) stipulates that no person may be arrested except by judicial order, and Article (127) prohibits the use of coercion and torture, thereby obliging the judiciary to reject any evidence obtained through unlawful means. In the civil domain, the judiciary provides protection for rights by adjudicating disputes related to ownership and obligations, and awarding compensation for damages in accordance with the rules of civil liability. This ensures reparation and safeguards private rights (Abdulrahman, 2014). Conversely, the administrative judiciary plays a critical role as the guarantor of individual rights vis-à-vis public administration. It supervises the legality of administrative decisions under the amended State Council Law No. (65) of 1979, with the power to annul decisions issued unlawfully or that involve abuse of authority. This role is rooted in the principle of legality affirmed in Article (5) of the Constitution:

"Sovereignty belongs to the law, and the people are the source of authority."

This implies that all state authorities, including the administration, are subject to the law. The administrative judiciary's role extends beyond

annulment to include awarding compensation for damages incurred by individuals due to unlawful administrative decisions, providing an additional safeguard for rights and freedoms (Abdulrahman, 2014). There is a notable complementarity between the ordinary and administrative judiciary: the former protects human rights within private relationships and imposes sanctions on offenders, while the latter safeguards individuals against abuse of public authority. Both operate in accordance with constitutional principles, notably Article (14) on equality before the law, Article (15) guaranteeing the right to life and liberty, and Article (46), which provides:

"The exercise of any right or freedom may only be restricted by law, provided that such restriction does not affect the essence of the right or freedom (Al-Dreini, 2006)".

In conclusion, the ordinary and administrative judiciary together constitute a fundamental and effective guarantee for the protection of human rights in Iraq, through the enforcement of legal provisions, annulment of unlawful decisions, assurance of fair trials, and compensation for victims. However, the effectiveness of this role depends on the enhancement of judicial independence, prompt adjudication of cases, and the consolidation of a culture of legal respect, ensuring the practical protection of rights and freedoms. The role of the judiciary, both ordinary and administrative, has been further strengthened in light of modern constitutional developments, which emphasized judicial independence and neutrality, recognizing it as a self-standing authority. Moreover, Iraq's accession to international human rights treaties has expanded the scope of protection, guiding the judiciary to refer to international standards when interpreting domestic legal texts, thus enhancing the effectiveness of safeguarding rights and freedoms.

8. Conclusion

The study titled "The Approach of Iraqi Courts in Protecting Human Rights" demonstrates that the Iraqi judiciary, in its various forms (constitutional, ordinary, and administrative), has played a pivotal role in consolidating human rights principles and translating them from constitutional and legislative texts into tangible practice. The courts have contributed to establishing fair trial guarantees, protecting public freedoms, and addressing violations committed by individuals or public authorities,

based on the provisions of the 2005 Constitution of the Republic of Iraq, relevant laws in force, and the international treaties to which Iraq is a party. This approach reveals that the Iraqi judiciary does not merely implement legal texts literally but often interprets them to achieve justice and enhance human dignity, reflecting a notable evolution in judicial thought toward adopting international human rights standards. The constitutional review by the Federal Supreme Court, the administrative judiciary's annulment of unlawful decisions, and the ordinary judiciary's protection of individual rights together constitute an integrated system for human rights protection.

1. Iraq possesses an integrated constitutional and legislative framework ensuring human rights protection in line with international standards.
2. The Federal Supreme Court has played a prominent role in safeguarding rights through constitutional review and interpretation of constitutional provisions.
3. The ordinary judiciary has contributed to protecting rights and freedoms by applying criminal and civil laws and ensuring fair trials.
4. The administrative judiciary has effectively protected individuals from administrative arbitrariness by annulling un-

lawful administrative decisions.

5. Iraqi courts have been influenced by international human rights standards, particularly regarding the prohibition of torture and fair trial guarantees.
6. A relative gap remains between legal texts and practical implementation in some cases.
7. Recommendations
8. Effectively strengthen judicial independence and prevent interference from any party.
9. Enhance judges' capabilities through continuous training in human rights and international standards.
10. Activate judicial oversight over administrative actions and facilitate appeals before administrative courts.
11. Align national legislation with the international treaties ratified by Iraq.
12. Promote legal and human rights awareness among society to empower individuals to claim their rights.
13. Accelerate litigation procedures to minimize delays that may adversely affect justice.
14. Support the High Commission for Human Rights and strengthen its cooperation with the judiciary.

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