



Ref/418/20

Date: 27/11/2020

The Permanent Mission of the Republic of Iraq to the United Nations Office and other International Organization in Geneva presents its compliments to the Office of High Commissioner for Human Rights, and with reference to the Office Note Verbal dated 26<sup>th</sup> November 2020, concerning the advance unedited version of the Observations of the additional information submitted by Iraq under Article 29 (4) of the convention adopted by the Committee on Enforced Disappearances at its 336 meeting, held online on the occasion of its 19<sup>th</sup> session, with regard to the additional information submitted by Iraq (CED/C/IRQ/AI/1) under article 4 of the International Convention for the protection of all Persons from Enforced Disappearance on 1<sup>st</sup> August 2019, has the honour to inform the Office of comments of the Republic of Iraq on the unedited version of the Observations, as follows:

1. Iraq strongly rejects to use of a language in some of paragraphs of the observations by the Committee on Enforced Disappearances, that does not reflect the good level of cooperation of the Government of Iraq with the Committee in compliance with article (30) of the International Convention for the Protection of all Persons from Enforced Disappearance, as previously stated by the Committee throughout the dialogue.
2. **On the introduction section:** Iraq requests the Committee to use the common practice in welcoming and appreciating the High-Level Delegation headed by the H.E the Minister of the Justice of the Republic of Iraq.
3. **Article (3):** Iraq disagrees using of the term "pattern" when identifying the enforced disappearance in Iraq as there is no reference in any United Nations documents supporting this claim, therefore Iraq asks the Committee to delete "pattern" from this paragraph, also requests to rephrase the strong language in a way to reflect the Government of Iraq cooperation and the investigations conducted by the competent Iraqi authorities.
4. **Article (10):** During the dialogue, the Iraqi delegation clarified the legal interpretation of Article (40) of the Iraqi Penal Code (1969), which was wrongfully interpreted by the Committee, as





Article (40) must be read entirely, not partially, in order to communicate the correct interpretation of the Iraqi legislator, and as follows:

Article (40): There is no crime if the act is committed by a public official or agent in the following circumstances:

(1) If he/she commits the act in good faith in the performance of his legal duty or if he/she considers that carrying it out is within his jurisdiction.

(2) If he/she commits the act in performance of an order from a superior which he/she is obliged to obey or which he feels he/she is obliged to obey.

It must be established in these two circumstances that the belief of the offender in the legitimacy of the act is reasonable and that he committed the act only after taking suitable precautions. Moreover, there is no penalty in the second instance if the Code does not afford the official an opportunity to question the order issued to him.

5. **Articles (12) and (14):** The recommendations contradicts what has been discussed during the dialogue between the Delegation of the Government of Iraq and the Committee, as the Iraqi delegation provided detailed clarifications concerning the guarantees for the protection of complainants and persons participating in the investigation of an enforced disappearance.
6. **Article (16):** Unfortunately the clarification provided by the Iraqi Delegation during the dialogue with the Committee on the subject of **non-existence of secret detentions in Iraq** has not been reflected in this paragraph and its recommendation.
7. **Articles (18) and (19):** Guarantees of the deprivation of liberty are stipulated in Iraqi laws, and are already in practice, therefore, there is no justification for its mentioning that way. Regarding visit suspension for those deprived of their liberty, the Iraqi delegation **made it clear that this is a temporary measure to restrict the spread of the COVID-19 pandemic, and were temporarily replaced** by phone calls between those deprived of their liberty and their families.





8. **Article (28):** Iraq strongly emphasises the need to have all recommendations in compliance with the articles of the International Convention for the Protection of all Persons from Enforced Disappearance, hence Iraq requests the deletion of the sentence “**without the need to exhaust domestic remedies**” as it does not comply with the article (30, 2C) of the Convention.

The Permanent Mission of Iraq kindly requests the Committee on Enforced Disappearances to reflect all comments provided by the Government of Iraq in the "Observations of the additional information submitted by Iraq under Article 29 (4) of the convention", before publicly poste it on the OHCHR website.

The Permanent Mission of the Republic of Iraq avails itself of this opportunity to renew to the Office of High Commissioner for Human Rights, the assurances of highest consideration.



Geneva 27 November 2020

Office of High Commissioner for Human Rights

