



## **Iraq Shadow report**

**Report submitted to the Committee on Enforced Disappearances  
in the context of the review of the initial report of Iraq**

**Alkarama Foundation – 14 August 2015**

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## 2. Introduction

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The initial report of Iraq (CED/C/IRQ/1) was submitted to the Committee on Enforced Disappearances in June 2014, with a one-year delay, and will be reviewed by the Committee at its 9<sup>th</sup> session in September 2015.

Alkarama regrets that the report submitted by the authorities did not provide any concrete elements on the implementation of the obligations stemming from the Convention in the country but only cited its relevant domestic legislation. Moreover, we note with concern that the Iraqi authorities deny that enforced disappearances continue to occur in the country up until today. The national report indeed refers to the practice of enforced disappearances as being only “widely used by the dictatorial regime which ruled Iraq from 1968 to 2003”.<sup>1</sup>

Alkarama hereby submits this shadow report in which it draws a picture of the situation of enforced disappearances in Iraq, highlighting its main concerns and addressing recommendations to the State party. This report is based on first hand testimonies gathered by Alkarama through its local partners, the victims themselves, their families and lawyers. Over the last years, Alkarama has continuously received accounts of enforced disappearances at the hands of the Iraqi security services or state-affiliated militias all over the country and against all citizens, which indicates that this practice is widespread and systematic.

Our Organisation has also identified alarming patterns that constitute a breeding ground for the practice of enforced disappearances. Suspects are constantly arrested without any warrants, detained *incommunicado* for extended periods of time, in certain instances in secret facilities. Moreover, the fate of thousands of people missing for years still remain unknown, and the current instability in the country and the “fight against terrorism” as well as the Islamic State (IS) are used as a pretext to perpetrate mass arrests and secret detentions.

While we acknowledge the numerous challenges faced by Iraq, it is of outmost importance that the issue of enforced disappearances – the most serious human rights violation – is addressed as a matter of priority by the authorities. Alkarama hopes that the Committee’s constructive dialogue with the State party will allow it to tackle this issue.

## 3. Background

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### 3.2.1 General context

The deterioration of the human rights situation over the past years is a result of the effects of the United States (U.S.) occupation, the ensuing civil war and internal divisions, as well as the regional turmoil.

Following the invasion of Iraq by a U.S.-led coalition in March 2003, a Coalition Provisional Authority (CPA) aiming at ousting Saddam Hussein was established as the interim authority. The years of occupation were then marked by intense violence between the Iraqi insurgency and the Multi-National Force (MNF), composed essentially of American soldiers. Before handing over sovereignty to an interim Iraqi government in June 2004 on the basis of a UN Security Council Resolution, the CPA issued an order granting immunity for all foreign forces and contractors operating under the auspices of the MNF for any offences committed in Iraq. However, the MNF remained in the country until 2008 with the U.S. retaining significant *de facto* power.

After the election of a Transitional National Assembly in 2005 and the adoption of the new Constitution creating an Islamic federal democracy, Prime Minister Nouri Al-Maliki put together a unity government in spring 2006. However, sectarian violence continued to escalate following a bomb

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<sup>1</sup> State report, paras. 5 and 11.

attack on a Shi'a shrine in Samarra in February and continued throughout 2007, bringing the civil war to its height, with 34 000 civilians killed in 2006 alone.

In November 2008, as coalition forces started to hand over control of the territory to the Iraqi forces, the Iraqi Parliament approved the Status of Forces Agreement (SOFA) which established that U.S. troops would leave the country by the end of 2011, releasing or transferring custody of all detainees they held to the Iraqi authorities. In 2009, six years after the invasion, U.S. troops started to withdraw.

In March 2010, parliamentary elections were held and a new government was approved after nine months of political stalemate. However, the ensuing political paralysis, the failure of the executive to respond to the demands that were first discussed in Parliament and the violent response to the subsequent protest movement, which began in December 2012, favoured radicalisation over political dialogue. This tendency was further accentuated through the arrest and prosecution in December 2011 of prominent political figures who had peacefully criticised the government, as U.S. troops finished withdrawing from the country.

In 2012, attacks targeting Shi'a areas on one hand and the crushing of peaceful protests denouncing the marginalisation of Sunni Muslims on the other plunged the country back to a state of sectarian war. As a result, 2013 experienced a serious escalation of violence, which allowed armed groups to grow in strength and increase attacks on governmental and civilian institutions. Benefitting from the deterioration of the security situation, the former Al Qaeda in Iraq now referred to as "the Islamic State" (IS), reached the Al Anbar governorate in January 2014 and took over the cities of Fallujah and Ramadi, creating a grave humanitarian crisis followed by the exodus of hundreds of thousands of people.

In response to the intensification of fighting and the advance of IS in the northern and central parts of the country, including in Mosul and Tikrit, pro-government militias were mobilised by the government, kidnapping and executing hundreds of people. In August, an international coalition led by the U.S. intervened to stop the southern advance of IS by carrying out air raids, causing further civilian casualties.

Today, with the legacy of occupation, ensuing internal conflict and dictatorship, Iraq's weak institutions are unable to prevent abuse of power or hold perpetrators of serious human rights violations to account. Given the likelihood of a further deterioration of the situation, an increase in human rights violations, already generalised, is likely if sustained efforts are not made to record violations, identify perpetrators and bring them to justice.

### **3.2.2 Decades of enforced disappearances**

Today, Iraq is the country with the highest number of missing persons in the world, with figures varying from 250,000 to one million people,<sup>2</sup> depending on the source. The issue of enforced disappearances in Iraq is especially complex due to the length of time over which the practice occurred, starting from the regime that ruled Iraq from 1968 to 2003 – especially during the war with Iran in the 1980s – and continuing throughout the US-led invasion after 2003, having become a widespread practice today.

In August 1983, the Iraqi forces arrested and "disappeared" around 8000 men and boys from the Barzani clan, most likely in retaliation for the alleged Kurdish support to Iranian armed forces during the Iran-Iraq conflict. Five years later, in 1988, some estimates mention over 100,000 Kurdish civilians disappeared during the "al-Anfal Campaign" led by Saddam Hussein against the Kurdish people and other non-Arab populations in northern Iraq.

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<sup>2</sup> Figures provided by the International Commission on Missing Persons (ICMP), <http://www.ic-mp.org/where-we-work/middle-east-and-north-africa/iraq/> (accessed on 13 August 2015).

In the 1990s, disappearances were also frequent, as shown after the end of the Gulf War and following the March 1991 uprising of Shi'a Muslims in the south and Kurds in the north, when several Kuwaiti nationals, Shi'a Muslim clerics and students were disappeared. Likewise, in August 1996, after clashes between the government and the Kurds erupted, hundreds of members of opposition groups were also "disappeared".

Since the invasion of the country in 2003, tens of thousands of Iraqis were disappeared by the US-led multinational forces and the Iraqi authorities. According to a 2008 report,<sup>3</sup> the Iraqi Red Crescent Society (IRCS) registered about 70,000 cases of missing persons in Iraq since the conflict started, including 13 members of the IRCS who were kidnapped from its Baghdad offices.

Moreover, during the U.S. occupation, secret prisons were created in Iraq, adding to the already large number of secret detention facilities, estimated by a member of Iraqi parliament to have exceeded 420 in that period,<sup>4</sup> creating a breeding ground for enforced disappearances. One of the harshest secret facilities, located in the old Al Muthanna military airport, was exposed in 2010. Today, the facility is jointly run by the 54<sup>th</sup> and 56<sup>th</sup> Brigades of the Army, which are under the control of Baghdad Operation Command (BOC) – a regional security command set up by former Prime Minister Al Maliki – which reports directly to the Office of the Prime Minister as the Commander in Chief of the Armed Forces and continues to secretly hold and torture hundreds of individuals.

In 2011, the Iraqi government announced the establishment of a committee to investigate the cases of Iraqis missing since the 2003 invasion, which includes members of the Ministries of Defence, Interior, National Security, Health, Justice and Human Rights, as well as representatives of the intelligence services and anti-terrorism forces. Many of these members of ministries, however, were involved with or leading militias responsible for serious human rights violations themselves, including enforced disappearances. Moreover, with the withdrawal of U.S. troops in 2011, thousands of people were arrested in an operation launched by Iraqi security forces against members of the banned Ba'ath party. Iraqi officials introduced the operation under the pretext of a "pre-emptive strike" against an alleged plan to "overthrow the government and the whole Iraqi political order" as according to Iraqi authorities, the old party had revived its structure. Critics, however, claimed that the arrests were politically motivated.<sup>5</sup> The fates of the majority of these arrestees remain unknown to date, which shows the lack of political will to tackle the issue.

## **4. The practice of enforced disappearances**

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### **4.2 Definition, absolute prohibition and criminalisation of enforced disappearance (articles 1-8 CED)**

#### **4.2.1 The absence of a definition of enforced disappearance under Iraqi law**

The offence of "enforced disappearance" does not exist under Iraqi domestic legislation, as the authorities recognise in their national report.<sup>6</sup> Indeed, article 12(2)(g) of the Iraqi Supreme Criminal Tribunal<sup>7</sup> provides a definition for enforced disappearances as a "crime against humanity", which is then not applicable to enforced disappearances committed outside that context.

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<sup>3</sup> See: <http://www.ibnlive.com/videos/india/missing-in-iraq-285599.html> (accessed on 11 August 2015).

<sup>4</sup> The Extra-territorial violations of the United States of America - Report Submitted by The Iraqi Association Against War (IAAW) and The Indian Movement (TUPAJ AMARU), p.57  
[http://www.brusseltribunal.org/pdf/NGOs\\_FULL\\_REPORT\\_UPR.pdf](http://www.brusseltribunal.org/pdf/NGOs_FULL_REPORT_UPR.pdf) (accessed on 11 August 2015).

<sup>5</sup> See:  
[http://www.jamestown.org/programs/tm/single/?tx\\_ttnews\[tt\\_news\]=38618&cHash=f6e12de784cdfc58ad39c2e75bfd1d9](http://www.jamestown.org/programs/tm/single/?tx_ttnews[tt_news]=38618&cHash=f6e12de784cdfc58ad39c2e75bfd1d9) (accessed on 11 August 2015).

<sup>6</sup> State report, para.36.

<sup>7</sup> The Supreme Iraqi Criminal Tribunal is a body established under Iraqi national law to try Iraqi nationals or residents accused of genocide, crimes against humanity, war crimes or other serious crimes committed between 1968 and 2003. It organized the trial of Saddam Hussein and other members of his Ba'ath Party regime.

According to the Iraq Supreme Criminal Tribunal Act, enforced disappearance as a crime against humanity is defined as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”, when committed as part of a widespread or systematic attack directed against the civilian population.

In addition to this provision not being in line with Iraq’s obligations under article 5 of the Convention on Enforced Disappearances (CED), as it requests States parties to define enforced disappearance as a crime against humanity when it is committed as part of a widespread or systematic attack on a civilian population and to ensure that it attracts the consequences provided under international law – that is, the non-applicability of statutes of limitation, the prohibition of amnesties and the recognition of victim’s right to full reparation –, it does not fulfil either the State party’s obligation under article 2 CED.

Lastly, the absolute character of the crime of enforced disappearances, prescribed by article 1(2) CED, does not seem to be recognised in Iraqi legislation, as there is no legal provision specifying that no exceptional circumstance of any kind, be it a state of war or the threat of war, internal political instability or any other state of emergency, can justify the use of enforced disappearances. In a country where the deteriorating security situation is systematically used as a justification for human rights abuses, such a provision should be incorporated into the law as a matter of priority.

Even though the government is allegedly currently working on the adoption of legislation that will implement a definition of enforced disappearance into its domestic criminal law, the authorities admit that “it will take some time for such legislation to be approved”<sup>8</sup> and, in the meantime, the crime of enforced disappearance, in the absence of a definition and absolute prohibition, cannot be appropriately prevented or punished.

#### **4.2.2 The non criminalisation of enforced disappearances as such**

The Iraqi authorities argue that enforced disappearances constitute an “autonomous offence” as provisions of the Constitution and Penal Code (PC) cover “many offences that would constitute enforced disappearance”,<sup>9</sup> including “unlawful detention” and “abduction”. However, such acts do not constitute enforced disappearances *per se* nor do they provide for appropriate penalties, considering the serious character of the crime of enforced disappearances.

In particular, article 19 of the Iraqi Constitution prohibits unlawful detention and imprisonment in places not designated for that purpose, while articles 322, 323 and 324 of the Penal Code criminalise such acts.<sup>10</sup> Article 322 PC, for example, establishes that “any public official or public servant who arrests, imprisons or detains a person in circumstances other than those stipulated by law shall be liable to a penalty of up to 7 years”. This provision does not cover all requirements under article 2 CED as it only applies to State officials and does not include groups of persons acting with authorisation, support or acquiescence of the State. Therefore, unlawful detention by state-controlled militias – e.g. the Badr Brigades, run by the former Transport Minister<sup>11</sup> – which operate in the country, will not be covered by such a provision (Section 4.6 of this report). The same applies for articles 323 and 324 of the Penal Code, which also limit their application to public officials or agents.

Moreover, articles 421 to 429<sup>12</sup> of the Penal Code criminalise “abduction” but it remains unclear whether these provisions apply to offences committed by law enforcement officials, as they do not fall under the offences committed “in breach of office duties”. Article 427 of the Penal Code is also particularly alarming, as it prescribes that “if the offender mentioned in this Section then lawfully

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<sup>8</sup> State report, para.36.

<sup>9</sup> State report, para.36.

<sup>10</sup> State report, paras.37 and 39.

<sup>11</sup> Human Rights Watch, *Iraq: Pro-Government Militias’ Trail of Death*, 31 July 2014, <http://www.hrw.org/news/2014/07/31/iraq-pro-government-militias-trail-death> (accessed on 4 August 2015).

<sup>12</sup> State report, paras.41-44.

marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, the sentence will be quashed.” Therefore, this provision decriminalises *de facto* a form of enforced disappearance and opens the door for impunity and further abuses, in clear violation of the CED.

Thus, none of the above-mentioned provisions criminalising “unlawful detention” or “abduction” mentions the “refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person” prescribed by article 2 CED, which is one of the most essential aspects of enforced disappearances. Therefore, these provisions only address cases in which public officials carry out unlawful arrests or detention but the refusal to acknowledge the deprivation of liberty or concealing the fate and whereabouts of a person, which is at the core of the definition of enforced disappearance, is not criminalised in any way.

#### 4.2.3 A legal framework that fails to hold perpetrators to account

Those responsible for enforced disappearances are almost never held accountable for their crime, which favours a climate of impunity and amounts to a violation of article 6 CED. It is noteworthy that Iraq’s national report refers to one single conviction that was “obtained in one of those cases in which the persons accused were found guilty of a criminal act of enforced disappearance.”<sup>13</sup> This may be explained by the fact that although theoretically public officials can be prosecuted for “unlawful imprisonment”, this is limited by article 136(b) CCP.<sup>14</sup> This article subjects the referral to the judicial authorities of an official responsible for an enforced disappearance to the authorisation from the relevant Minister – for example, the Ministry of Interior in a case involving police –. Although the Iraqi Council of Representatives (the Iraqi Parliament) passed a law to amend this provision in 2007 and 2011, the Presidency Council never ratified the draft law, which as a result did not enter into force.<sup>15</sup> This demonstrates the lack of political will to address the issue of enforced disappearances at the highest level of the executive.

Moreover, the Iraqi Penal Code does not provide an explicit legal basis for the prosecution of superiors and maintains superior orders as a possible defence in certain circumstances. Articles 47 and 48 of Iraqi PC prescribe that those who incite the commission of an offence can be prosecuted for it, but do not explicitly address superior responsibility in any way. In addition, even in the event of an officer responsible for an “unlawful detention” facing prosecution, an order from a superior officer or a public authority may be invoked as a justification, since according to article 40(2) PC,<sup>16</sup> there is no crime if the perpetrator commits the act in performance of an order from a superior, which he is obliged to obey, or which he feels he is obliged to obey. Such a provision seriously hampers article 6 of the Convention.

Finally, none of the provisions mentioned above provide minimum sentences for the perpetrators of the crime, nor are the penalties appropriate as to take into account the extreme seriousness of the crime of enforced disappearance, as per article 7 CED. For example, article 322 PC, which criminalises unlawful detention, only prescribes a “penalty of up to 7 years”, without providing any further guidance on the minimum penalty.

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<sup>13</sup> State report, para.123.

<sup>14</sup> Article 136(b) CCP reads as follow: “With the exception of infractions punishable by the amended Traffic Code number 48 of 1971, and related statements, the transfer of the accused for trial in an offense committed during performance of an official duty, or as a consequence of performance of this duty is possible only with permission of the minister responsible, in accordance with the stipulations of other codes.”

<sup>15</sup> To understand the successive attempts to amend this provision, read: Global Justice Project: Iraq, *The many lives of article 136(b) of Criminal Procedure Code, Law 23 of 1971*, 23 May 2009, <http://gjpi.org/2009/05/23/the-many-lives-of-article-136b-criminal-procedure-code-23-of-1971/> (accessed on 10 July 2015).

<sup>16</sup> According to article 40 of the Penal Code: “There is no crime if the act is committed by a public official or agent in the following circumstances:

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

(2) If he commits the act in performance of an order from a superior which he is obliged to obey or which he feels he is obliged to obey. It must be established in these 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.”

## Recommendations:

1. Define and criminalise enforced disappearance as an autonomous offence in full compliance with the Convention and ensure that penalties are fixed in the law and commensurate with the gravity of the crime;
2. Incorporate into the Iraqi legislation a provision stating that no exceptional circumstance may be invoked as a justification of enforced disappearance.

### 4.3 The lack of jurisdiction over enforced disappearances committed by U.S. and Coalition Forces (article 9 CED)

After the invasion of Iraq by the Coalition Forces in 2003, human rights abuses by, among others, U.S. forces, were widespread and received considerable media coverage, most notoriously in Abu Ghraib. In November 2008, as coalition forces started to hand over control of the territory to the Iraqi forces, the Iraqi Parliament approved the Status of Forces Agreement (SOFA) which established that U.S. troops would leave the country by the end of 2011, releasing or transferring custody of all detainees they held to the Iraqi authorities (under article 22 SOFA).

The implementation of the agreement started on 1 January 2009, when U.S. forces were holding about 15'500 detainees, mostly without charges and in three prisons, Camp Bucca, Camp Cropper and Camp Taji.<sup>17</sup> In July 2010, the U.S. Forces transferred the last American-run detention facility – Camp Cropper, in the outskirts of Baghdad airport – to the government.<sup>18</sup> However, thousands of individuals who had been abducted and detained *incommunicado* by U.S. forces before being allegedly handed over to the Iraqi authorities are still missing.

Today, it remains unclear whether Iraq exercises jurisdiction over acts of disappearances committed by U.S. forces, as required under article 9 CED, according to which the State party must “take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance [...] committed in any territory under its jurisdiction.”

Indeed, and as mentioned by Iraq in its national report, article 11 of the Penal Code stipulates that its provisions are not applicable to “offences committed in Iraq by persons who benefit from statutory protection under the terms of international agreements or international or domestic law.”<sup>19</sup> In fact, according to the Status of Forces Agreement signed between the Coalition and U.S. forces, the nationals of the latter enjoy immunity from prosecution in Iraq. What is more, the cases in which jurisdiction is shared between Iraq and U.S. Forces are not clearly established, thus hindering the process of investigation, accountability and redress for victims of enforced disappearances, in violation of articles 12 and 24 CED.<sup>20</sup>

For example, none of the enforced disappearances below has led to the opening of an investigation and the clarification of the fate and whereabouts of the victims.

On 16 October 2005, 21-year-old **Wissam Salam Ali Al Hashimi** was supposed to meet his friend **Ali Hamid Abdul-Wahab Hamad Al Jeyali** and the latter's uncle, **Jabbar Ali Aati Al Suhayli**<sup>21</sup> at the Babylon Hotel in Karrada Street, Al-Jadria, Baghdad. However, once there,

<sup>17</sup> Amnesty International, *New Order, Same Abuses – Unlawful Detentions and Torture in Iraq*, September 2010 (MDE 14/006/2010), p.12.

<sup>18</sup> Caroline Alexander, “Last U.S.-Run Prison Handed Over to Iraqis Ahead of Withdrawal”, *Bloomberg*, 15 July 2010, <http://www.bloomberg.com/news/articles/2010-07-15/last-u-s-run-prison-handed-over-to-iraqis-ahead-of-planned-2011-pullout> (accessed on 5 August 2015).

<sup>19</sup> State report, para.74.

<sup>20</sup> Under article 12 SOFA, Iraq maintains jurisdiction over U.S. contractors and their employees but shares jurisdiction with the U.S. over U.S. forces.

<sup>21</sup> Alkarama, *Iraq: Three citizens arrested by American forces in 2005 and disappeared since*, 27 June 2014, <http://en.alkarama.org/component/k2/1246-iraq-three-citizens-arrested-by-american-forces-in-2005-and-disappeared-since?Itemid=> (accessed on 5 August 2015).

they were immediately arrested by U.S. soldiers, without any warrant and without providing an explanation. The forces took the three men to an unknown location, and they have been disappeared since.

In August 2011, former co-detainees told Wissam's father that he was detained in Camp Cropper – now known as Al Karkh Prison – a detention centre which was handed over to the Iraqi authorities in late 2010. Although Wissam's father inquired at the Green Zone of Baghdad, Camp Bucca, the Ministry of Human Rights and the Ministry of Interior, while Ali and Jabbar's relatives filed a complaint at the police station of Al Jafar and contacted the Ministry of Human Rights, they have never been informed of their relative's fate or whereabouts.

Consequently, the blurry legal regime related to the exercise of jurisdiction over acts of enforced disappearances committed by Coalition and U.S. forces on the Iraqi territory after 2003 amounts to a violation of article 9 CED, and leads to a *de facto* violation of articles 12 and 24. Last but not least, the fact that Iraq does not exercise jurisdiction over enforced disappearances committed by foreign forces on its territory breaches the principle of universal jurisdiction, enshrined in article 10 of the Convention.

### **Recommendations:**

1. Ensure that the Iraqi authorities can exercise jurisdiction over any act of enforced disappearance that has occurred on its territory and that complaint mechanisms are accessible to the victims' relatives;
2. Investigate all acts of enforced disappearances committed by Coalition forces in Iraq, and provide accountability and redress for the victims.

## **4.4 A pervasive impunity for enforced disappearances due to the absence of investigations (article 12 CED)**

Impunity prevails in Iraq for enforced disappearances, as in general very few allegations lead to the opening of an investigation in breach of article 12 CED, according to which the right to report a disappearance must be protected and that all allegations must be investigated, even if there has been no formal complaint.

The dozens of testimonies gathered by Alkarama have shown that the filing of complaints by relatives of disappeared with the relevant judicial authorities never leads to the opening of an investigation. Complaints are usually lodged with various authorities, in particular police stations, criminal courts – including the General Prosecutor of the Central Criminal Court of Iraq –, the Ministry of Human Rights, the Ministry of Justice and the Ministry of Interior, but remain systematically unanswered.

In its national report, Iraq refers to the role played by the High Commission for Human Rights (HCHR) – the Iraqi national human rights institution (NHRI), which was granted B status in March 2015 by the International Coordinating Committee for NHRIs<sup>22</sup> –, which can reportedly receive complaints of violations committed and visit prisons and detention centres without obtaining prior permission from the relevant authorities.<sup>23</sup>

However, it is concerning that the HCHR, when receiving complaints from victims, refers them to the Ministry of Interior and the Ministry of Justice for investigation, and not to the Public Prosecutor.<sup>24</sup> In fact, numerous human rights violations, including enforced disappearances, are committed by agents of the Ministry of Interior or other actors with its tacit approval. Moreover, in practice, the HCHR can

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<sup>22</sup> Alkarama, *Iraq : National Human Rights Institution Gets B Status to Mark Non-Compliance with International Standards*, 3 June 2015, <http://en.alkarama.org/iraq/1725-iraq-national-human-rights-institution-gets-b-status-to-mark-non-compliance-with-international-standards> (accessed on 10 August 2015):

<sup>23</sup> According to Article 5 of Act No. 53 of 2008. See: State report, para.85.

<sup>24</sup> UNAMI Human Rights Office, OHCHR, Report on Human Rights in Iraq, July-December 2013, June 2014, Baghdad, p. 30.

only carry out visits to detention centres with prior permission from the relevant ministry – and not the judicial authorities as per article 12(3)(b) of the CED – and under its previously set conditions.

For example, in February 2014, the Iraqi Ministry of Justice refused a request by the Commission to visit Iraqi detention centres and asked the Commission to wait for its approval.<sup>25</sup> Another emblematic case is the joint visit of members of the Commission and members of the Ministry of Interior to the Al Rusafa women's prison in Baghdad on 23 May 2013,<sup>26</sup> after more than one year since the HCHR first expressed its intention to visit it. The fact that a prison visit was conducted by the HCHR jointly with members of the Ministry of the Interior raises serious concerns as it is difficult to envisage how HCHR members would be free to access all areas of prisons where detainees may be held *incommunicado*, and constitutes a serious breach of article 12 of the Convention. Finally, the HCHR does not have access to secret places of detention, where major violations are encountered (see Section 4.5.2 of this report).

Furthermore, according to article 12(4) of the Convention, each State party is to take measures to prevent and sanction acts "that hinder the conduct of an investigation". However, Iraqi domestic law does not provide for the suspension from duties of the alleged offender during the investigation. On the contrary, the relevant provisions of the Criminal Code, State Officials Discipline Act, Army Act and Internal Security Forces Act<sup>27</sup> only refer to sanctions applied to officials once a court has issued a decision.

The only provision which provides for the suspension of the suspect at the investigation stage is article 17 of the State Officials Discipline Act, according to which "the Minister or the head of department *may* suspend an official for a period of not more than 60 days if they consider that his remaining in public service would be prejudicial to the public interest or could affect the course of investigation".<sup>28</sup> This provision falls short of the Convention's standards since there is no suspension of officials involved in enforced disappearance during the course of the investigation who may then influence its progress.

The lack of investigation into the hundreds of enforced disappearances that followed the attack on Speicher base by the Islamic State in June 2014 illustrates this issue.

In June 2014, the Islamic State executed about 1700 Iraqi air force cadets in an attack on **Camp Speicher** – officially known as Tikrit Air Academy –, while hundreds of others went missing. Witnesses and survivors of the attack have provided contradictory statements, so that the facts surrounding the massacre have still not been fully clarified.

According to survivors who managed to escape the base,<sup>29</sup> they were asked by their commanders to hand over their weapons and equipment, wear civilian clothes and take a two weeks leave. However, during the escape, some cadets were abducted by IS or local Tikrit tribes supporting it. Subsequently, the Iraqi security services carried out military operations in the area and could rescue some of the soldiers captured. However, instead of setting them free, the soldiers were transferred to Iraqi detention centres as a reprisal for having fled the base and refused to fight against IS. On the contrary, government officials have affirmed that no one was ordered to leave the base and that those who fled did it at their own risk, as no safe passage was guaranteed and further deny any claim of cases of detention

The testimonies gathered by Alkarama from the relatives of **Muntazer Amir Uday Al Tarbosh** and **Amir Abed Karim Katouf Al Bermami** have confirmed these accounts. On 12 June 2014,

<sup>25</sup> Al Monitor, *Human Rights Watch Condemns Situation in Iraq*, 7 February 2014, <http://www.almonitor.com/pulse/originals/2014/02/iraq-human-rights-situation-bad-hrw.html#> (accessed on 7 August 2015).

<sup>26</sup> UNAMI Human Rights Office, OHCHR, Report on Human Rights in Iraq, January – June 2013, August 2013, Baghdad, p. 24.

<sup>27</sup> State report, paras.87-97.

<sup>28</sup> State report, para.90.

<sup>29</sup> Suaddad al-Salhy, "Escaping an Islamic State execution in Iraq", *Al Jazeera*, 7 September 2014, <http://www.aljazeera.com/news/middleeast/2014/09/iraq-islamicstate-massacre-survivor-20149571526832983.html> (accessed on 12 August 2015).

Muntazer Amir Uday Al Tarbosh's commander told the soldiers of his unit to take 15 days off and leave the base unarmed. Later that day, Tarbosh called his family to inform them that he had been arrested by members of the Tikrit tribes who were detaining him in a facility near the Al Aqwas checkpoint, in northern Tikrit. Subsequently, Tarbosh's family was informally informed by a friend serving in the army that the Golden Division – one of the most prominent sections of the Iraqi counter-terrorism unit under the orders of the Prime Minister's Office – during an incursion in areas around Tikrit had found him and handed him over to the intelligence forces in Samarra. Worried about his fate, his family submitted several complaints to the authorities, including the office of the Ministry of Human Rights in Dhi Qar, but they received no response.

On 12 June as well, Amir Abed Karim Katouf Al Bermani called his family to inform them that the colonel of his unit had ordered his soldiers to leave the base and head back to Baghdad. Some former detainees informed his family that he and his colleagues were arrested and detained by local tribes in Tikrit. On 19 June 2014, the Salahuddin unit of the Iraqi army – a unit similar to the Baghdad Operation Command, a regional security command set up by former Prime Minister Al Maliki – liberated the area and transferred all the detained cadets to Al Taji military camp on 29 June 2014. Worried about his fate, his family submitted a complaint, among others, to the Ministry of Human Rights on 21 July 2014, which remained unanswered.

Following these events, in September 2014, relatives of missing cadets burst into the Parliament demanding accountability for those responsible and explanations on what happened to their family members. After that, the Parliament held a special meeting to discuss the circumstances of the massacre and listened to some of the relatives of the missing soldiers.

In July 2015, a report was prepared by the Parliamentary Investigation Committee on the Speicher massacre but did not lead to the opening of a proper investigation into the disappearances and secret detention by the Iraqi authorities of the cadets, whose fate and whereabouts still remain unknown.

### **Recommendations:**

1. Ensure that all cases of alleged enforced disappearance committed by State agents or by persons or groups of persons acting with their authorisation, support or acquiescence are investigated thoroughly and impartially without delay; and that those found responsible, including the commanders and civilian superiors, are punished in accordance with the gravity of their acts;
2. Adopt explicit legal provisions that expressly establish: (a) the suspension, for the duration of the investigation, of any State agents, civilian or military, suspected of having committed an offence of enforced disappearance; (b) a mechanism that ensures that law enforcement or security forces, whether civilian or military, whose members are suspected of having committed an enforced disappearance do not take part in the investigation;
3. Empower those carrying out such investigations – including the HCHR – to question officials and to be allowed unexpected independent inspection of all places of detention, including secret ones;
4. Publicly affirm at the highest level of the State before all members of the security forces that those who order, perpetrate, acquiesce or tolerate enforced disappearances will be held fully accountable and will be liable to prosecution, imprisonment and dismissal from office.

## **4.5 Prohibition of secret detention and guarantees related to the deprivation of liberty (articles 17&18 CED)**

### **4.5.1 The violations of fundamental legal safeguards related to the deprivation of liberty**

In Iraq, arrested and detained persons are rarely provided with the basic fundamental safeguards from the very outset of the deprivation of liberty, which favours the practice of secret detention, in

violation of article 17 CED. The flaws identified by Alkarama through numerous testimonies are all the more concerning as long periods of secret detention – often after the arrest and before the suspect is formally charged by the investigative judge – are designed to extract confessions under torture that will later be admitted in the course of the trial as evidence.

The public authorities with the power of arrest are the Iraqi police and the Security Forces, which, depending on the force, are under the authority of the Ministry of Interior (MoI), the Ministry of Defence (MoD) or the Prime Minister's Office. In fact, the latter exercises direct control over the Baghdad Operation Command and Counter Terrorism Unit, the 56<sup>th</sup> Brigade of the Army (the "Basra Brigade", responsible for the security in the Green Zone), the 54<sup>th</sup> Brigade of the Army (the "Al Muthanna Brigade") – services that are known for the practice of enforced disappearances –, although they fall administratively under the control of the MoD.<sup>30</sup>

These security services may arrest any person against whom a warrant has been issued by a judge or court or in other cases stipulated by the law,<sup>31</sup> the exception being the authorities under the direction of the Prime Minister's Office, who may arrest individuals prior to obtaining a warrant.<sup>32</sup> When the person is suspected of terrorism, the warrant is generally issued by the judge post arrest.<sup>33</sup> This practice is permitted under article 92 of the Criminal Code of Procedure (CCP), which provides no obligation of presentation of warrant at the time of the arrest, but only requires that the person be informed of its existence. Moreover, testimonies have shown that the security forces receiving direct orders from the Prime Minister's Office systematically carry out arrests without any warrant or legal basis, a practice that is conducive to secret detention.

Moreover, the maximum duration of custody, which is of 24 hours renewable once – according to article 19(13) of the Constitution and article 123(A) CCP<sup>34</sup> –, is never abided by and people are usually presented for the first time before a judicial authority several days or even weeks after their arrest, when they suddenly "reappear", as shown by cases documented by Alkarama and other stakeholders.<sup>35</sup>

In addition, persons deprived of liberty are systematically denied communication with their family and counsel, in violation of article 17(2)(d) CED. Indeed, although Section 30, paragraph 13 of Coalition Provisional Authority Memorandum No. 2 of 2003 theoretically prescribes that an untried prisoner may "inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them", this is almost never guaranteed in practice. Moreover, this right can be restricted if it is "in the interests of the administration of justice and of the security and good order of the institution".<sup>36</sup>

Also, despite the guarantee of the right to defence during all stages of investigation and trial enshrined in article 19(4) of the Constitution, detainees are systematically denied access to a lawyer during the investigative stage.<sup>37</sup> Cases brought to the attention of Alkarama have shown that it is common for detainees to meet their lawyer for the first time in court, once the investigative procedure conducted while in secret detention is over and that they have "reappeared" following their transfer to prisons under the control of the Ministry of Justice. Thus, in addition to the denial of access to the detainee's families, such conditions are conducive to *incommunicado* detention which is particularly

<sup>30</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.11.

<sup>31</sup> Under article 103 of the CCP, Any policeman or crime scene officer must arrest any of the following if they encounter them:

- i. Any person against whom an arrest warrant has been issued by the competent authorities;
- ii. Any person carrying arms, whether openly or concealed, violating the provisions of law;
- iii. Any person thought, based on reasonable grounds, to have deliberately committed a felony or misdemeanour and who has no particular place of residence;
- iv. Any person who impedes a member of the court or public official from carrying out his duty.

<sup>32</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.11.

<sup>33</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.12.

<sup>34</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Iraq*, 18 September 2014 (CAT/C/IRQ/1), paras.35 and 72.

<sup>35</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.12.

<sup>36</sup> State report, para.127.

<sup>37</sup> In blatant violation of article 123(C) CCP according to which the investigative judge must not question the accused until a lawyer has been appointed.

common during the investigation process, especially for persons accused of "terrorism", as confirmed by the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the High Commissioner for Human Rights (OHCHR).<sup>38</sup>

Finally, regarding the duty to compile and maintain up-to-date official registers and/or records of persons deprived of liberty enshrined in article 17(3) of the Convention, there is no obligation in Iraqi law to mention in the registry of places of detention the date, time, place and the identity of the authority that deprived the person of liberty,<sup>39</sup> which clearly fosters a climate conducive to *incommunicado* detention.

In several testimonies gathered by Alkarama, witnesses report that their disappeared relative often could not be found on any registers of places of detention, although they later found out that the disappeared person was detained there, which demonstrates the alarming absence of proper registers. It is also common for detainees to disappear for extended periods of time following transfers from one prison to another. Such a practice is illustrated by the cases of Shawki Omar, who has been repeatedly transferred to detention centres since 2011 and enforcedly disappeared as the Iraqi authorities were constantly denying his relatives information on his transfers, and the case of Mustafa Jassim Kazem Al Rubaie who is still disappeared although he was seen on video footage of a prison in Baghdad in February 2011.

**Shawki Omar**<sup>40</sup> was arrested by U.S. soldiers in October 2004 and handed over to the Iraqi authorities in July 2011, when he was transferred to Al Karkh prison. After receiving a visit from the International Committee of the Red Cross (ICRC) in May 2013, he was taken out of his cell to an unknown location. His family members and the ICRC contacted the prison authorities, but were denied further information, in particular on the location where he would be transferred.

He was reportedly later transferred several times to different detention centres. However, his lawyers and family remained devoid of any official confirmation of his transfers and unaware of his place of detention and whereabouts.

In October 2013, Omar's family learned that he was detained in Abu Ghraib, but he was again transferred to an unknown location in April 2014, a few days before the prison was closed for "security reasons". Nor his family or lawyers were informed of where he had been transferred, despite several steps taken towards the authorities to try to locate him, especially to the Ministry of Justice. It is only in March 2015 that his family learned that he was detained in Al Rusafa prison.

24-year old Iraqi student **Mustafa Jassim Kazem Al Rubaie**<sup>41</sup> was arrested in Baghdad on 26 June 2006 with his cousin Mohammad on their way to study at the library. When they approached Abu Dosheer Square, a joint patrol of seven Iraqi soldiers and police agents in official uniforms arrested them without any warrant or reasons and forced them into a military vehicle that took them to an unknown location.

Almost five years later, on 8 February 2011, Al Rubaie was seen on Al Baghdadia TV on the occasion of former Vice-President Al Hashimi's visit to Tasferat prison, smiling to another prisoner. Yet, despite this visual proof, the authorities continue to deny his detention.

After having overcome their fear of reprisals, Al Rubaie's family had already taken several steps to clarify Al Rubaie's fate and whereabouts, including the filing of complaints with the Ministry of Human Rights, the Ministry of Health, and the Ministry of Justice. Nevertheless, each affirmed that Al Rubaie was not detained in Iraqi prisons.

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<sup>38</sup> UNAMI/OHCHR, *Report on the Death Penalty in Iraq*, October 2014, p.13.

<sup>39</sup> According to Section 3 of Coalition Provisional Authority Memorandum No. 2 of 2003. See: State report, para. 116.

<sup>40</sup> Alkarama, *Iraq: UN Calls Shawki Omar's Detention "arbitrary" and Calls for his Release*, 14 November 2014, <http://en.alkarama.org/iraq/1553-iraq-un-calls-shawki-ahmad-omar-s-detention-arbitrary-and-calls-for-his-release> (accessed on 12 August 2015).

<sup>41</sup> Alkarama, *Iraq: Iraqi student, Mustafa Al Rubaie disappeared since 2006*, 25 July 2014, <http://en.alkarama.org/iraq/1465-iraq-iraqi-student-mustafa-al-rubaie-disappeared-since-2006> (accessed on 12 August 2015).

## 4.5.2 The practice of secret detention

Today, secret detention centres still exist in the country, in blatant violation of article 17(1) of the Convention. One of the most notorious secret detention centres is located in the old Al Muthanna military airport in West Baghdad. The facility does not fall under the authority of the Ministry of Defence, the Ministry of Justice or the Ministry of Interior but is instead jointly run by the 54<sup>th</sup> and 56<sup>th</sup> Brigades of the Army, which are under the control of Baghdad Operation Command (BOC) – a regional security command set up by former Prime Minister Al Maliki – which reports directly to the Office of the Prime Minister as the Commander in Chief of the Armed Forces.

The detention centre, which was exposed in April 2010, is said to have started running in September 2009, when security forces kept about 400 men in the facility after mass arrests were carried out around Mosul against individuals accused of “aiding and abetting terrorism.”<sup>42</sup> In March 2010, the Ministry of Human Rights was allowed to access the facility and found that torture was being systematically practiced in its premises with detainees reporting having been routinely beaten, electrocuted and sexually abused.<sup>43</sup> Although the authorities initially announced the opening of investigations and the immediate transfer of detainees to Al Rusafa prison, former Prime Minister Al Maliki affirmed in a televised interview that there were “no secret prisons in Iraq” and that torture allegations were “lies” and a “smear campaign”. He added that members of rival political factions had visited the prison and instructed the prisoners to give themselves scars by “rubbing matches on some of their body parts.”<sup>44</sup> While it was announced that three officers were arrested for interrogation,<sup>45</sup> no information is available as to whether they were charged and prosecuted.

Almost six years later, the facility continues to hold secretly hundreds of individuals, some of whom gave their testimony to Alkarama.

**Riad Abdel Majeed Al Obeidi**,<sup>46</sup> a 61-year-old retired Air Force Brigade pilot from Al-A'miriya, was freed on 15 April 2015 after 10 months of detention in the Al Muthanna airport. Al Obeidi was abducted on 1 June 2014 by a patrol of the 54<sup>th</sup> and 56<sup>th</sup> Brigades of the Army – also known as the “Baghdad Brigade” –, the Iraqi National Intelligence and the Military Intelligence, who forced him into a car before taking him to Al Muthanna airport’s detention facility. Four months later, in October 2014, his family was finally allowed to visit him in detention once a month.

His relatives then learned that, during the first 45 days of his secret detention, he was held in solitary confinement in a sewage room, blindfolded and with his hands tied. He was severely tortured, beaten up with sticks, whipped, and repeatedly electrocuted, including on the most sensitive parts of his body. As a consequence of the torture he suffered, he lost sight in one eye and part of his hearing.

Al Obeidi was then forced to sign confessions that were later used to indict him in two cases, including on the basis of article 4 of the 2005 Anti-Terrorism Law under which defendants face the death penalty. On 12 April 2015, the judicial authorities ordered his release. To this day, no investigation has been opened into his disappearance and subsequent torture and he was therefore unable to obtain redress.

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<sup>42</sup> See: Human Rights Watch, *Iraq – At a Crossroads – Human Rights in Iraq Eight Years after the US-Led Invasion*, February 2011 (1-56432-736-1).

<sup>43</sup> Ned Parker, “Secret prison revealed in Baghdad”, *Los Angeles Times*, 19 April 2010, <http://articles.latimes.com/2010/apr/19/world/la-fg-iraq-prison19-2010apr19> (accessed on 2 July 2015).

<sup>44</sup> Sam Dagher, “Report Details Torture at Secret Baghdad Prison”, *The New York Times*, 27 April 2010, <http://www.nytimes.com/2010/04/28/world/middleeast/28baghdad.html> (accessed on 2 July 2015).

<sup>45</sup> Khalid al-Ansary, “Iraq closes secret prison, arrests 3 officers”, *Reuters*, 23 April 2010, <http://www.reuters.com/article/2010/04/23/idUSLDE63M0W8>

<sup>46</sup> Alkarama, *Iraq: Riad Al Obeidi Set Free After 10 Months in Secret Detention Centre in Baghdad*, 16 April 2015, <http://en.alkarama.org/iraq/press-releases/1661-iraq-riad-al-obeidi-set-free-after-10-months-in-secret-detention-centre-in-baghdad> (accessed on 2 July 2015).

**Mohammed Abbas Kadhim Al Sudani**,<sup>47</sup> a 29-year-old married worker, was arrested on 20 November 2014 at around 2 am in his house in the Al Wahda neighbourhood of Baghdad by a squad of 15 members of the of the Special Weapons and Tactics (SWAT) unit. The security forces arrested him – and even mistreated his mother and sisters as well as the children who were asleep – before taking him to an unknown location. Following his disappearance, Al Sudani's family submitted a complaint to the police station of the Al Khalesa neighbourhood in Baghdad, but to no avail.

It was only on 4 May 2015, i.e. five months after Al Sudani's arrest, that his mother received a call by the authorities informing her that her son was detained in Taji prison, a detention centre located in a rural district north of Baghdad, where she was able to visit him the following day.

He told his mother that he had spent six months detained in Al Muthanna airport, where he suffered severe torture, including beatings with iron wire on different parts of his body, electrocution on his genitals and several instances of sexual assault, all acts of torture inflicted on him to make him "confess" to have poisoned his father as well as kidnapped and killed other people. He was also forced to sign documents while blindfolded.

Al Sudani reported having been tortured by "Captain Ahmad" and "Captain Osama", who both belong to the 54<sup>th</sup> Brigade, under the command of Colonel Firas Al Azerj.

### **Recommendations:**

1. Ensure that all arrestees are presented with a warrant and that they are given prompt access to their families and legal counsel from the moment of arrest, and ensure that persons are immediately taken into custody and brought before an investigative judge within 24 hours;
2. Explicitly prohibit secret and *incommunicado* detention and take the necessary measures to ensure that all secret detention centres still existing in the country are closed or regularised by moving them under the control of the justice system and under the protection of the law;
3. In accordance with article 17 CED, register information on all persons deprived of their liberty, without exception, and keep the records up to date.

## **4.6 Enforced disappearances committed by government-backed militias**

In Iraq, enforced disappearances are committed not only by the Iraqi security services, but also by government-backed militias which have long been operating in the country like regular armed forces with the acquiescence and support of the authorities, when they do not act side by side. Today, these militias are never held responsible for their crimes, nor are the enforced disappearances they commit investigated, in violation of article 6 and 12 CED.

Today, Iraq's main Shi'a militias are the Badr Brigades – the armed wing of the Islamic Supreme Council of Iraq –; the Saraya Peace Brigades – formerly the Mahdi Army, the armed wing of the Sadrist movement –; 'Asa'in Ahl al-Haq and the Kata'in Hizbullah.<sup>48</sup> Following the fall of Saddam Hussein and the dismantling of the Iraqi army in 2003, security became effectively devolved to party, tribal, and sectarian militias. As a result of sectarian warfare that reached its apex in 2006 and disastrous post-conflict reconstruction, Shi'a militias that functioned independently from the State became increasingly widespread and powerful.<sup>49</sup>

<sup>47</sup> Alkarama, *Iraq – URGENT APPEAL: Electrocuted and Sexually Abused by Army, Now at High Risk of Being Sentenced on Sole Basis of Confessions under Torture*, 28 May 2015, <http://en.alkarama.org/iraq/press-releases/1722-iraq-urgent-appeal-electrocuted-and-sexually-abused-by-army-now-at-high-risk-of-being-sentenced-on-sole-basis-of-confessions-under-torture> (accessed on 2 July 2015).

<sup>48</sup> Amnesty International, *Absolute impunity – Militia Rule in Iraq*, October 2014 (MDE 14/015/2014), p.17.

<sup>49</sup> Ranj Alaaldin, "Iraq: Growth of the Shi'a militia", *BBC*, 17 April 2015, <http://www.bbc.com/news/world-middle-east-32349379> (accessed on 9 July 2015).

After the Islamic State seized control of Mosul and other parts of the northwest in June 2014, Shi'a militias have considerably increased their power and legitimacy. Following calls from political and religious figures, the militias enrolled thousands of "volunteers" to fight against IS and have been conducting security operations with the tacit consent or full cooperation of governmental forces. In June 2014, the Iraqi Ministry of Interior eventually created a state-sponsored umbrella organisation composed of about 40 Shi'a militias called the "People's Mobilisation" or "al-Hashd al-Shaabi" led by Hadi al-Amiri, former Minister of Transport and commander of the Badr Brigades.

These militias have long taken advantage of the climate of lawlessness and impunity prevailing in the country to commit serious human rights abuses, including abductions, torture and summary executions, more recently in reprisal or revenge for IS attacks against Sunni men accused of being "terrorists".<sup>50</sup>

The cases of Abbas Fadhil Abboud Kadhim Al Batawi and Mohammed Hazza Rayes Al Aseymi are illustrative of how militias are also responsible for enforced disappearances.

20-year old Iraqi student **Abbas Fadhil Abboud Kadhim Al Batawi**<sup>51</sup> was abducted on 16 September 2006 in the city centre of al-Mada'in, in the Baghdad Governorate, by a patrol of the "Jaish al-Mahdi" or "Mahdi Brigade" – which was replaced in 2014 by "Saraya al-Salaam" or "Peace Brigades". The men were wearing civilian clothes and checked his identity before forcing him into a military vehicle that left for an unknown location.

Worried about his fate and convinced that he was being held *incommunicado* by the authorities, his relatives visited many detention centres and filed complaints with the Ministry of Human Rights. However, the authorities continued to deny his detention. Oddly, in 2007, during a visit of former Vice-President Al Hashimi to Al Rusafa prison, which was broadcasted on national television, Al Batawi was among the detainees filmed. Although he could clearly be identified in the video footage, the authorities continue to this day to deny his detention and his family does not know where he is or even whether he is still alive.

Likewise, members of an unidentified militia abducted 67-year-old farmer **Mohammed Hazza Rayes Al Aseymi**<sup>52</sup> on 8 May 2006 at his house in Baghdad. That day, after five cars surrounded his property, a group of 15 heavily armed and hooded men entered his house and arrested him before taking him to an unknown location.

His family had not heard from him for about seven years until a documentary was broadcasted on Al Rafideen TV in July 2013, showing Al Aseymi in Tasferat prison during a visit by Iraq's former Vice-President Al Hashimi. However, to date, the Iraqi authorities continue to deny his detention.

Both cases demonstrate how militias operate with the tacit consent or under the direct control of the governmental authorities, conduct abductions of individuals before transferring them to official detention facilities.

### Recommendations:

1. Take all the necessary measures to disarm and demobilise militias as a matter of priority;
2. Open prompt, thorough, transparent and independent investigations into allegations of violations, including enforced disappearances, committed by militias;
3. Ensure that reparation mechanisms are available to victims of disappearances by militias and their right holders.

<sup>50</sup> For more details, see: Amnesty International, *Absolute impunity – Militia Rule in Iraq*, October 2014 (MDE 14/015/2014).

<sup>51</sup> Alkarama: *Iraq: Authorities Deny Detention of Disappeared Student Seen on Video Footage in Iraqi Prison*, 12 August 2014, <http://en.alkarama.org/iraq/press-releases/1471-iraq-authorities-deny-detention-of-disappeared-student-seen-on-video-footage-in-iraqi-prison> (accessed on 9 July 2015).

<sup>52</sup> Alkarama, *Iraq: Authorities Deny Al Aseymi's Disappearance Despite Video Footage*, 6 October 2014, <http://en.alkarama.org/iraq/press-releases/1517-iraq-authorities-deny-al-aseymi-s-disappearance-despite-video-footage> (accessed on 9 July 2015).

## 5. Conclusion

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The current situation in Iraq is marked by a widespread and systematic practice of enforced disappearances, particularly in the context of the fight against IS. This situation is largely fostered by the general climate of impunity that prevails among security forces and state-sponsored militias and has contributed to create a sense of injustice and alienation in the population that is exploited to fuel extremism. The authorities must be reminded that considerations of national security can never justify departure from the absolute prohibition of enforced disappearance.

Alkarama hopes that the concerns raised in this report will be addressed constructively during the dialogue between the Committee on Enforced Disappearances and the representatives of the State Party in order to put an end to the practice of enforced disappearances. This, we hope, will open the way for real achievements in the Iraqi society.