

International Convention for the Protection of All Persons from Enforced Disappearance (CED)

Submitted to: Committee on Convention for the Protection of All Persons from Enforced Disappearance (CED) –18th session (30 March – 9 April 2020)

on Iraq's periodic reports.

Submitted by:

1. Iraqi Al-Amal Association¹ (with advisory status in the UN's Economic and Social Council)
2. Al-Namaa Center for Human Rights² (a group of human rights defenders from all Iraqi governorates)

Date of submission: Mar 2020

Country: Iraq

About us

Iraqi Al-Amal Association (IAA) is a non-political, non-sectarian association of volunteers actively engaged in projects for the benefit and wellbeing of the Iraqi population regardless of race, gender and political or religious affiliation. Al-Amal was established in 1992. In May 2003, the head office of Al-Amal was opened in Baghdad. Its activities and services are now provided throughout Iraq.

IAA has been registered in Iraq³. Its mission is for rehabilitation and raising social consciousness among Iraqi citizens to contribute to the building a democratic state in Iraq. IAA has been working to support human rights and fundamental freedoms in Iraq for many years. Recently, a network of 550 human rights defenders has been established, which expanded through social media to more than 210,000 members throughout Iraq.⁴ Hence IAA has found an urgent need to submit this report to the Committee on the Elimination of Racial Discrimination, and the need to consider its comments and inputs on the state report.

Al-Namaa Center for Human Rights⁵ aiming to provide accurate information about Human Rights situation in Iraq. This report as part of the continues efforts and commitment to improve Human Rights situation by promoting the respect for human rights and reduce serious human rights violations cases, all the information gathered and verified by working closely with a group of 36 trusted Iraqi young Human Rights defenders⁶ representing all Iraqi Governorates.

<http://www.iraqi-alamal.org/default.aspx> ¹

Email: baghdad@iraqi-alamal.org \ cell: 00964 7901919285

<http://alnamaa.org/> ²

Email: info@alnamaa.org \ cell: 00964 7726166801

³ IAA has been registered at the NGO's Directorate under # 1Z687

On Facebook: "Iraqi Human Rights Defenders and Activist forum".⁴

one of IAA strategic long term programs , established by Iraqi Al Amal Association 2013 and funded by European Union.⁵

Please see annex 2 name of all HRDS group.⁶

Introduction:

The series of crises and political and social conflicts have produced a dangerous pattern of human rights violations and enforced disappearance has become a law enforcement method.

Despite Iraq's approval of the Convention, the Iraqi government did not commit to applying its most important articles by legislating laws to criminalize disappearance or reinforce protection from this violation and preserve the dignity of persons from being subjected to it.

This report focuses on the legislations that pose a blatant and clear violation of the Convention and contradict its articles⁷, to the point that Iraqi legislations have no legal article criminalizing enforced disappearance, in addition to collecting statements regarding the subject. And shed light on its many patterns indicating an approach that is similar despite the difference in time and place, moreover the methods, strategies, number of missing people, and actors responsible for enforced disappearance to show the government's inadequacy and inaction to enforce the articles of the Convention whether to adopt laws or actual enforcement of the legal articles.

The Report Writing Team has noticed a variety in enforced disappearance cases regarding methods and circumstances, some victims were arrested at their own homes and others from the streets or goes as far as making places of protection their abduction point such as the case in checkpoints and security barriers or city entrances, it went further to include cases of enforced disappearance in displacement camps targeting specific people or with their parents to be mass enforced disappearance such as arresting 730 persons from a single area to be forcibly disappeared.

The government's negligence and failure towards protecting people from this violation has made Iraq the country with the most enforced disappearance cases in the world, to reach a million and 250 thousands since 1980⁸ of which seven thousands only in 2016, 2017, and 2018⁹ in addition to the existence of many graves which are discovered once in a while like the one found in Anbar in 2014.

The Center expresses its deep concern regarding the increasing number of armed groups in Iraq and the absence of government authority in holding them accountable and even talking their side in executing their orders and that poses a violation of article 17 of the

⁷ Article 6 and article 17 of the Convention

⁸ International Committee of the Red Cross

⁹ A statement by Head of Enforced Disappearance Committee in the Commission for Human Rights

Convention which results in an inability to hold officials accountable for enforced disappearance cases due to the multitude of armed actors violating this right.

What makes us write such a report is a sure feeling that large number of people lost their lives and parents unknowing of their children's fate with a clear underestimation by the Iraqi government about the numbers of people who were subjected to disappearance and marginalization of their parents feelings and needs, this will be clear by the end of this report when the lack of Iraqi legislations and prevalent administrative system of a clear mechanism to collect information about the missing persons or the existence of a real database for all detained persons is revealed, furthermore the absence of legal or executive mechanisms of compensation and reparations except for missing persons from 1968 to 2003¹⁰ who have the same rights as in the Mass Graves Law and we are sorry for the lack of same treatment for individuals affected by mass graves post 2003 which is a discriminatory violation despite the large number of missing persons since 2003 to this day.

National legislations:

The classification of the law for conventions and international treaties in Iraq puts equally with internal laws, i.e. they are legislatively lower than the Constitution and article 19 of 2005 of the Iraqi Constitution which states (No crime nor punishment without a provision) and enforced disappearance was not included in the current Iraqi laws as an independent crime which is a clear violation of article 6 of the Convention, it must be noted that the Iraqi government is not serious about implementing art.17 para.2 (d) of the Convention, entailing determining the security actors and bodies legally authorized to arrest and detain people which make investigating their fate harder, knowing their places, and information relating to them. In addition to the lack of enforceable legal legislation that makes the government provide a database for all detainees in detention centers or prisons.

We would like to note that there is a draft bill criminalizing enforced disappearance which had its first reading in 2014. But it was stalled by the Iraqi Parliament and has not been approved to this day.

The Iraqi legislations does not grant any legal privileges or support for the victims of enforced disappearance regarding compensation, reparations, and rehabilitation which goes against article 24 of the Convention.

In addition to article 19 of chapter XIII which entails showing the investigation papers to a specialized judge during a period not exceeding 24 hours, this ensures an important guarantee to implement art.7 para. (d) But the actual implementation lost this guarantee

¹⁰ Mass Graves Protection Law no. 5 of 2006

where constant squandering of detention periods us noticed along with increasing chances of deprivation of legal protection for the detained persons, this is a result of a constant increase in the number of detainees and the limited number of judges.

Patterns:

1- Mass Disappearance cases:

The enforced disappearance of 730 persons near the Federal Police who did not act to protect them.

On 3 July 2016, Kata'ib Hezbollah/ Iraq¹¹ militia arrested them and transported them in government vehicles (Cars for Transporting Delegations)¹² in al Bo akasha area, Saqlawiyah sub district, and Anbar governorate and led them to multiple places until their whereabouts and fate became unknown. Monitors of Al Namaa Center for Human Rights have a list of their names. Indicating the use of mass pattern of enforced disappearance by security forces and armed militias in light of statements by some surviving eyewitnesses.

Also in Al Bo Ta'ma village, Al Hjjaj¹³ sub district, on 27 July 2015 after midnight an armed group wearing Iraqi military uniform raided the area and arrested 28 persons including (H.BM) who is a minor (14 years old) their parents filed a legal complaint and called upon high ranking government officials but their fates are still unknown to the date of writing this report.

2- The Multiple Disappearance Pattern of Family Members:

Asa'ib Ahl al-Haq militia have arrested (A.A.W), (M.C.T), and (A.B.F) from their houses on 5 March 2015 in Al Jlam, Samraa district and led them to an unknown destination after shelling the sides of their house with tank shells to intimidate them, searching the whole house, and confiscating their own two vehicles and their fate is still unknown to this day.

The armed groups have gone far in their arrests without warrant a enforced disappearance to include many categories including non-adults, old women, and men disabled from birth, this is what happened on 6 March 2015 in Al Jlam, Samraa where Kata'ib Hezbollah/ Iraq raided the house of (H.B.L) who is 17 years old and his mother (N.B.Y) along with(A.S.D) a disabled elderly, they left the woman in an uninhabited place after two hours, the fate of the child and disable old person remained unknown for a whole

¹¹ One of Iraqi Popular Mobilization Forces factions

¹² A transportation Company, one of the formations in the Iraqi Ministry of Transportations

¹³ Baiji District in Saladin Governorate

year upon which their bodies were found dead after great difficulty in identifying their true identity by DNA analysis.

At the time when the Iraqi Government should be a source of peace for Iraqis and a reason for them live peacefully especially displaced persons but the what happened was the opposite and a force from Hezbollah arrest the displaced young man (Gh.B.F) on 13 March 2015 who is 31 years old in (Al Boawathi) displacement camp, his fate is still unknown to the time of writing this report.

The Center's monitors documented in one of Samraa district areas, Saladin Governorate. The disappearance of the two brothers (A.M) and (H.M) and their nephew (A.K) in similar circumstances and consecutive in time, when (A.M) and his nephew were arrested on 14 October 2014 by an armed force wearing formal military uniform one of the streets in his area near his house.

On 22 November 2014 (H.M) was arrested inside his house in Samaraa district by an armed force wearing formal military uniform. After they raided his home at 10.45 pm, the victim was led in a military vehicle to an unknown destination and his parents didn't get any information regarding the victim's whereabouts

On 13 November 2014, the victim (T.J.H) disappeared from (Al Awisat)¹⁴ farmland. An informal armed force wearing military uniform arrested the victim. He was commuting to his work with his wife who was released at the time and was told that they're a force affiliated to Ministry of Defense, it was later revealed that the forces were a part affiliated to Kata'ib Hezbollah/ Iraq militia, after 6 months his son (A.T.S) disappeared after the wife of the disappeared victim received a call requesting (\$20000) in exchange for the release of her husband under the condition that the money should be sent by his son, after hours from the son's departure with the sum of money to Jurf Al Sakher his phone was shut down and he too disappeared and their fate is still unknown. The above cases indicate that the armed groups supported by the government take an approach of special pattern to abduct specific persons from the same families, amidst government silence without taking any tangible legal procedures to deter those groups who do the enforced disappearance.

¹⁴ An area situated between Jurf Al- Sakher affiliated to Babel Governorate and Amryat Al Fallujah affiliated to Anbar Governorate

3 Disappearance in checkpoints pattern

The Center have monitored three cases in joint checkpoints (Federal Police Forces and Saraya Al Salam Militia) in the entrances of Samraa district, Saladin Governorate entailing arrests and disappearances of multiple people including the cases that were monitored:

On 6 August 2014 (A.N.Sh) was arrested by Saraya Al Salam militia in (Al Dor) checkpoint at Samraa entrance. And despite his parents doing all the legal procedures, it did not help them to find their son. This proves that the authorities were not serious in revealing the fate of the victim.

And on 28 August 2014 (H.B.L) disappeared in the same checkpoint and armed group but Saraya Al Salam denied they have him and his fate is unknown to this day.

In a similar incident, (S.L.D) was arrested in Samraa southern entrance checkpoint on 14 January 2016 after Saraya Al Salam militia told him to call his parents to get his security bail¹⁵ and they abducted him, a group of people notified the victim's wife that he was detained in specific prisons but disappeared and his real location remains unknown to this day.

The Razaza checkpoint in Anbar controlled by (Kataib Hezboallah/ Iraq militia), according to a statement by Popular Mobilization Forces at the time¹⁶, have witnessed many cases of enforced disappearance of unarmed citizens, our Center has documented multiple cases:

According to one of the disappeared victim's son (A.A.M) he lost contact with his father who was working as a truck driver on Hila- Khaldia Road in September 2015, he disappeared after that last call with his mother at noon when he and other group of drivers entered the checkpoint. No legal measure was taken by their parents since they were worried about the victim's well being whose fate is still unknown.

The underage (W.A.M) disappeared on 1 February 2016 after his displacement from Het district with his friend towards Baghdad and when they reached Razaza checkpoint their IDs were requested for security vetting, after that the victim was arrested and disappeared , his fate is still unknown this day.

It is worth noting that all checkpoints are established and subjected under the control of the Commander in-Chief of the armed forces.

¹⁵ Security Bail: is a security measurement regarding internally displaced persons proving that the holder isn't wanted by any security body.

¹⁶ The statement from Popular Mobilization Forces Committee

4- Human Rights Defenders and CSOs Activist

The methods of taking revenge and punishing activists and defenders of human rights are varied as a result of their participation and support for the popular peaceful demonstrations since 1 October 2019 to this day. The main methods of vendetta against them is enforced disappearance of activists, supporters, and organizers so we have suspicions about then involvement of government actors or working under the cover of government. Reinforcing our suspicion is government negligence to manage the enforced disappeared persons case, we hold the Iraqi government the full responsibility of their wellbeing and disappearance, since the beginning of October the Center documented kidnappings and enforced disappearances for a limited period then releasing the missing people after being tortured and blackmailed not to participate.

On 26/8/2016 at 9.00 pm the activist (A.M.M) was kidnapped by an unknown armed actor riding a white Nissan Navara with no registration plate, they obstructed his way when he exited the designated protesting area in Najaf and led him to an unknown destination. He was then tortured during his disappearance (12 days) and no one knew his whereabouts until after he was released on 8/9/2016.

A member of security forces in Baghdad wearing civilian clothes kidnapped the activist (Ali Hashim) and led him to an unknown area on 7 November 2019, he was released on the 13th of same month¹⁷.

In Maysan Governorate, southern Iraq, one of Popular Mobilization Forces factions lured and kidnapped the activist lawyer (Ali Jasib) and led him to an unknown destination on 8 October 2019, his fate is still unknown¹⁸.

The activist (Maythem Mohammed Al-Hlo) was kidnapped and subjected to enforced disappearance by unknown armed men¹⁹ during his leave from his place of work in Baghdad. His brother has affirmed according to a phone call he received from

¹⁷ <https://ultrairaq.ultrasawt.com/%D8%A8%D9%8A%D8%A7%D9%86-%D8%AF%D9%88%D9%84%D9%8A-%D9%8A%D9%88%D8%AB%D9%82-%D8%A7%D9%86%D8%AA%D9%87%D8%A7%D9%83%D8%A7%D8%AA-%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A9-%D8%B6%D8%AF-%D8%A7%D9%84%D8%A7%D8%AD%D8%AA%D8%AC%D8%A7%D8%AC%D8%A7%D8%AA-%D9%81%D9%8A-%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82-%D9%82%D8%AA%D9%84-%D9%88%D8%A7%D8%AD%D8%AA%D8%AC%D8%A7%D8%B2-%D8%AC%D8%AB%D8%AB/%D8%A7%D9%84%D8%AA%D8%B1%D8%A7-%D8%B9%D8%B1%D8%A7%D9%82/%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9>

¹⁸ <https://www.amnesty.org/ar/latest/news/2019/10/iraq-stop-security-forces-from-threatening-forcibly-disappearing-and-abusing-activists/>

¹⁹ <https://www.amnesty.org/ar/latest/news/2019/10/iraq-stop-security-forces-from-threatening-forcibly-disappearing-and-abusing-activists/>

anonymous persons that his brother is being detained at the Iraqi authorities. They did not say which security facility arrested and forcibly disappeared him²⁰.

The activist in the popular protests (Faraj Al Bderi) was forcibly disappeared on 8 May 2018 when a car driven by masked men²¹ obstructed his way near the Police Station in Al-Fadhliya sub district, Suq Al Shiokh District/ Nasiryah Governorate.

On 15 November 2019 the activist (S.K.G) was forcibly disappeared by three masked and armed men driving a black Tahoe in Karada, center of Baghdad, in the recent October protests that Iraq has witnessed, he was transported to unknown location for 3 days, and he was released on the third day.

Saba Al Mehadwi is civil society activist who also disappeared on 24 November 2019 by unknown armed men at the entrance of Al-Baiya' checkpoint in Baghdad²² during its return to her home from Tahrir Square. She was released later after she was tortured.

Upon his calls to demonstrate against corruption, (Jalal Al-Shahmani) was subjected to enforced disappearance by masked men wearing military uniform and driving four wheel drive vehicles with no registration plate in Al-Waziriya, middle of Baghdad on 22 September 2015, heading to an unknown location and his fate is still unknown²³.

There are other cases of Activists and medics who were subjected to enforced disappearance and torture as a result of their participation in the 1 October demonstrations.

²⁰ <https://www.nasnews.com/%D8%B4%D9%82%D9%8A%D9%82-%D9%85%D9%8A%D8%AB%D9%85-%D8%A7%D9%84%D8%AD%D9%84%D9%88-%D9%8A%D9%83%D8%B3%D8%B1-%D8%A7%D9%84%D8%B5%D9%85%D8%AA-%D8%A7%D9%84%D8%AC%D9%85%D9%8A%D8%B9-%D9%8A%D8%B1%D9%81%D8%B6/>

²¹ <https://www.youtube.com/watch?v=A7K0VPK5KQM>

²² <https://www.youtube.com/watch?v=f2ilChXt8C4>

<https://ultrairaq.ultrasawt.com/%D8%A8%D9%8A%D8%A7%D9%86-%D8%AF%D9%88%D9%84%D9%8A-%D9%8A%D9%88%D8%AB%D9%82-%D8%A7%D9%86%D8%AA%D9%87%D8%A7%D9%83%D8%A7%D8%AA-%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A9-%D8%B6%D8%AF-%D8%A7%D9%84%D8%A7%D8%AD%D8%AA%D8%AC%D8%A7%D8%AC%D8%A7%D8%AA-%D9%81%D9%8A-%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82-%D9%82%D8%AA%D9%84-%D9%88%D8%A7%D8%AD%D8%AA%D8%AC%D8%A7%D8%B2-%D8%AC%D8%AB%D8%AB/%D8%A7%D9%84%D8%AA%D8%B1%D8%A7-%D8%B9%D8%B1%D8%A7%D9%82/%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9>

²³ <https://www.alkarama.org/ar/articles/alraq-akhtfa-nasht-hqwqy-ly-yd-ahdy-mlyshyat-alhshd-alshby-mndh-sbtmbr-2015>

5- Other Cases

(M.A.M) was arrested in his houses in Samaraa, on 2 November 2016 by an unidentified armed force. After which they severely beat him and led him to unknown location. After exhausting all legal procedures by his parents, he remains missing and his fate still unknown.

Recommendations:

Recommendations to government bodies:

1. The legislative authorities should approve a law criminalizing enforced disappearance ensuring the application of article 6 of the agreement.
2. Inviting the Special Rapporteur on Enforced disappearance to visit Iraq.
3. Joining Rome Statute of International Criminal Court.
4. Acknowledging the specialization of Enforced Disappearance Committee entailed in the articles 31-32 of the Convention.
5. Approving the request submitted by the Enforced Disappearance Team on 1 July 1995 which is still under consideration by successive governments.
6. Forming an independent committee concerned with following up on enforced disappearance cases and establishing a specialized unit to investigate enforced disappearance cases.
7. The specialized security authorities must conduct serious and transparent investigations about enforced disappearance cases and explore the fate of victims according to specific period.
8. The legislative authority must amend the Inmates Reform Law no.14 of the year 2018 art.45 (para.4) which will allow visitors to prisons without prior permission, and acknowledging clearly of civil society organizations as one of the oversight institutions over prisons.
9. The High Commission for Human Rights must activate the role of its affiliated Enforced Disappearance Team.
10. The immediate stop of arrests without judicial orders and limit its implementation to law enforcement members.
11. The Ministry of Interior establishing an extensive unified database to include all the information about forcibly disappeared individuals.
12. Acknowledging the role of human rights defenders and passing a law to protect them.

13. The legislative authority should amend article 40 of the Iraqi Criminal Code so that the direct Heads would be criminally responsible according to article 6 (para.1) (b) of the Convention to ban invocation by orders or instructions from the direct Heads to justify committing the crime of enforced disappearance according to article 6 (para.2) of the Convention.
14. Taking necessary measures to guarantee the process of the legal situation for the forcibly disappeared and their parents in social care, financial matters, and ownership rights without the need to declare the death of the disappeared person.
15. Providing programs for psychological support for the victims of enforced disappearance.
16. Finding means and practice programs for security forces and law enforcement employees to identify the concepts of enforced disappearance and respect human rights.

[1] The Report of the International Commission for Missing Persons in Iraq, available on <http://imcp.org.mx/>

[2] The Report of Human Rights Watch is available on <https://www.hrw.org/ar/report/2018/09/27/322867>.

3 <https://ultrairaq.ultrasawt.com/%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D8%A5%D9%86%D8%B3%D8%A7%D9%86-%D8%AA%D9%83%D8%B4%D9%81-%D8%B9%D9%86-%D8%A3%D8%B1%D9%82%D8%A7%D9%85-%D9%85%D8%B1%D8%B9%D8%A8%D8%A9-%D8%A8%D8%B4%D8%A3%D9%86-%D8%A7%D9%84%D9%85%D8%AE%D8%AA%D9%81%D9%8A%D9%86-%D9%82%D8%B3%D8%B1%D9%8B%D8%A7-%D9%81%D9%8A-%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82/%D8%A7%D9%84%D8%AA%D8%B1%D8%A7-%D8%B9%D8%B1%D8%A7%D9%82/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1>

[4] The Report of United Nations High Commissioner for Refugees in Iraq, is available on <https://www.ohchr.org/AR/Countries/MENARegion/Pages/IQOHCHR.aspx>.

[5] Anas Akram, Officer of Enforced Disappearance in the High Commission for Human Rights in Iraq.