

**ALTERNATIVE REPORT TO THE COMMITTEE ON ENFORCED
DISAPPEARANCES (CED), 18th SESSION, 30 MARCH - 9 APRIL 2020**

REVIEW OF THE PERIODIC REPORT OF IRAQ

CEASEFIRE CENTRE FOR CIVILIAN RIGHTS



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I. BACKGROUND

A) Introduction

1. The practice of enforced disappearances has a longstanding history in Iraq. In 1994, the UN Special Rapporteur on Iraq reported that the total number of enforced disappearances between 1984-1994 had reached 10,570 cases, as conveyed to the Working Group on Enforced or Involuntary Disappearances.¹ The majority of disappearances during this time were state led, attributed to Iraqi ‘security forces.’²
2. Post-2003 Iraq has seen further waves of enforced disappearances, often with ambiguity surrounding the identities of the perpetrators, with state authorities failing to take serious action to prevent and punish enforced disappearances carried out by members of armed groups. Cases of enforced disappearances documented by the Ceasefire Centre for Civilian Rights (henceforth ‘Ceasefire’) between March 2019 and February 2020 reflect this reality.
3. Demonstrations across Iraq demanding a crackdown on government corruption and provision of basic services have been taking place since 1 October 2019 and are still ongoing. Demonstrators have since been subject to an array of violations including killings, arbitrary detention, and enforced disappearances, according to the UN Assistance Mission for Iraq (UNAMI)’s 2019 report.³ As of January 2020, the death toll of demonstrators had exceeded 600.⁴

B) Constitution and Legal Framework

4. Iraq’s constitution, in place since 2005, states that ‘unlawful detention shall be prohibited’ and that ‘imprisonment or detention shall be prohibited in places not designed for these purposes.’⁵ Iraq’s Penal Code no. 111 of 1969 (amended) criminalizes the offences of murder⁶ and unlawful seizure, kidnapping and detention⁷ but does not specifically touch upon the crime of enforced disappearances. The 2005 Anti-Terrorism Law punishes by death the kidnapping or prohibition of freedom of individuals or their detention either for “financial blackmailing for political, sectarian, national, religious or racially beneficial purposes that threaten security and national unity and promote terrorism.”⁸
5. Since the above-mentioned provisions do not fully capture the nature of enforced disappearances, further legislation is needed to ensure that enforced disappearances are

¹ ‘Report on the situation of human rights in Iraq, submitted by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1993/74,’ UN Commission on Human Rights, fiftieth session, E/CN.4/1994/58, 25 February 1994, p.12.

² Ibid.

³ United Nations Assistance Mission for Iraq, *Demonstrations in Iraq*, Human Rights Special Report, 22 October 2019, available at: http://www.uniraq.com/index.php?option=com_k2&view=item&task=download&id=3310_de924d58a1d3f15bea53ac6ad9de30fd&lang=en.

⁴ Amnesty International, ‘Iraq: Protest death toll surges as security forces resume brutal repression,’ January 2020, available at: <https://www.amnesty.org/en/latest/news/2020/01/iraq-protest-death-toll-surges-as-security-forces-resume-brutal-repression/>

⁵ Constitution of Iraq, 2005, Article 12.

⁶ Iraqi Penal Code no. 111 of 1969 (amended), articles 405-409.

⁷ Ibid., articles 421-425.

⁸ Anti-Terrorism Law No. 13 (2005) art 4.

prosecutable by the law and that victims are accorded their full rights. In 2010, Iraq acceded to the International Convention for the Protection of All Persons from Enforced Disappearance (henceforth 'the Convention') by virtue of Law no. 17, which was published in the official gazette. Article 4 of the Convention requires Iraq to enact implementing legislation that would make enforced disappearance an offence under its domestic criminal law.

6. In 2017, Ceasefire obtained a copy of a draft law on enforced disappearances that had been drawn up by a member of Iraq's parliament. The draft was loosely based on the provisions of the Convention, though with significant gaps. Following several rounds of revisions, including input by Ceasefire and other human rights organizations, the draft law was submitted by the Human Rights Committee for a first reading in parliament. After the first reading, further amendments and significant redactions to the text were made.
7. Ceasefire is concerned that the draft law, if passed in its current form, would lead to serious shortcomings in the protection of persons from enforced disappearances. The definition of enforced disappearances adopted does not mention the 'refusal to acknowledge the deprivation of liberty,' a constituent element of the internationally accepted definition. The draft law also does not make any mention of enforced disappearances carried out by non-state actors, or recognize the responsibility of the state to deter and punish offenses in this category. The preventive measures specified in Article 17 of the Convention are not adequately incorporated into the draft law, and the issue of training officials and other relevant personnel set out in Article 23 of the Convention is absent.
8. The draft law does not designate an independent body to investigate cases of enforced disappearances, instead delegating this responsibility to 'competent courts' without specifying which courts those might be. This does not rule out the possibility that enforced disappearances cases could be heard in military courts. Moreover, the law does not touch upon the obligation of the state to search for, locate and release disappeared persons (and in the event of death, to locate, respect and return their remains), which should be independent of the obligation to investigate.
9. The draft law contains only one, vaguely worded provision referring to the right of victims to claim compensation for 'material or moral damages.' It does not make any provision for providing victims with the full range of reparations they are due under the Convention, which include measures such as restitution, rehabilitation, satisfaction, and guarantees of non-recognition in addition to compensation. Furthermore, the draft law is completely silent on the right to truth, neglecting the significant psychological turmoil that families of the disappeared are put through as a result of the concealment of the victim's fate.
10. Lastly, in prescribing the death penalty in cases of enforced disappearances that result in the death of the victim, the law contravenes international human rights standards, which require states to move towards the progressive abolition of the death penalty.
11. At the time of writing, the draft law on enforced disappearances had still not been enacted into law. As a result, Iraq continues to fall short of its obligations under the Convention in this regard. The period of political instability following the resignation

of Prime Minister Adel Abdul Mahdi on 29 November 2019 created further delays in the legislative agenda, and it is not clear when the law will ultimately be passed.

II. HUMAN RIGHTS VIOLATIONS

A) **Enforced disappearances and the conflict with ISIS**

12. While Iraq readily acknowledges the enforced disappearances carried out during the Saddam Hussein era and has taken measures to bring justice and reparations to victims and their families, it has failed to accept the same responsibility for the huge numbers of enforced disappearances that have been carried out since 2003 and continue to be committed with impunity to this day. Perpetrators of enforced disappearances since 2003 have included state security forces (the Iraqi Security Forces, Asayish, and Peshmerga) as well as a variety of non-state armed groups. Armed groups include those cooperating directly with the state (such as the Popular Mobilisation Units) and those acting without state acquiescence (such as ISIS).
13. Since the last review of Iraq, there have been thousands of new cases of enforced disappearances, many tied to the conflict with ISIS that lasted from 2014-2017. Iraqi security forces, and Popular Mobilization Units (PMU) aligned with them, carried out scores of enforced disappearances, primarily against Sunni Arab men they accused of having ties to the terrorist group.⁹ Large numbers of men and boys were disappeared as part of the military campaigns to retake major cities, such as Fallujah and Mosul, from ISIS control. Victims were taken from checkpoints or homes and held incommunicado in unofficial detention places – even though the PMU has no legal mandate to detain persons.¹⁰
14. ISIS abducted thousands of people during this period as a means of entrenching its control over the civilian population and discouraging resistance. Minorities were particularly affected, and 3,000 Yazidis still remain missing.¹¹ Assyrian Christians in Mosul have also reported 30 people missing from their community.¹² Hundreds of Shia Turkmen women were also abducted from areas under ISIS control.
15. Despite the conclusion of the war with ISIS, disappearances have continued to occur in large numbers. According to a July 2019 statement from the Iraqi High Commission for Human Rights (IHCHR), a total of 7,663 people had been forcibly disappeared in the preceding three years.¹³

B) **Systematic kidnapping and disappearance of demonstrators**

⁹ Human Rights Watch, “*Life Without a Father is Meaningless: Arbitrary Arrests and Enforced Disappearances in Iraq 2014-2017*,” 27 September 2018, available at: <https://www.hrw.org/report/2018/09/27/life-without-father-meaningless/arbitrary-arrests-and-enforced-disappearances-iraq>

¹⁰ Ibid.

¹¹ Ceasefire Centre for Civilian Rights and Minority Rights Group International, *Mosul after the Battle: Reparations for civilian harm and the future of Ninewa*, January 2020, p.22, available at: https://www.ceasefire.org/wp-content/uploads/2020/01/Mosul-after-the-Battle_Ceasefire-report-Jan20.pdf.

¹² Ibid.

¹³ Adnan Abu Zeed, ‘Iraq’s ever-increasing enforced disappearances,’ Al-Monitor, 8 August 2019, available at: <https://www.al-monitor.com/pulse/originals/2019/08/iraq-disappearance-abduction-human-rights.html#ixzz6GPV9jXH4>.

16. There has been a spike in enforced disappearances since popular demonstrations began in October 2019. Civilian demonstrators, including women and children, have been kidnapped, detained, arrested, and abducted by anonymous individuals belonging to various armed groups. From state security forces, Popular Mobilization Units¹⁴, and other unknown ‘armed groups,’ perpetrators have reportedly subjected their victims to physical, verbal, and psychological abuse.¹⁵
17. The specific targeting of peaceful demonstrators raises questions around the identity of those armed groups whose actions are seemingly in line with the government’s stance on demonstrators. Furthermore, the selective legislative framework that only addresses cases of enforced disappearances between 1968 and 2003 fails to uphold Iraq’s responsibility to address cases from 2003 until present.
18. Ceasefire runs an online, civilian-led monitoring tool enabling Iraqi activists to securely report human rights violations, including enforced disappearances. According to data from the tool, at least 6 cases of enforced disappearances between March 2019 and February 2020 were reported to local Iraqi authorities to no avail. As a result, many families and friends have resorted to traditional media and social media campaigns in the hopes of finding their loved ones.
19. Once such case is of a young man who was kidnapped on his way to Tahrir Square (‘Freedom Square’) in Baghdad. He had been providing first aid to demonstrators on the front lines, where tear gas, hand grenades and live ammunition were active. The victim’s family and friends resorted to social media campaigns following an apathetic response from local authorities.¹⁶
20. University students participating in demonstrations are at high risk of enforced disappearance. One mother reported the disappearance of her son, a law student, who actively participated in demonstrations.¹⁷ The mother reported her son as missing to the relevant authorities but to no avail. Another reported case was of a university student who was kidnapped and tortured for participating in demonstrations in Baghdad.¹⁸ The student was eventually released but was admitted into hospital because of injuries sustained through torture.

C) Targeting of media and journalists

21. In a case reported 23 July 2019, Iraqi Security Forces detained Sumaria TV staff without a court order.¹⁹ The staff included a reporter, cameraman, and third staff member who were subjected to physical and verbal abuse including death threats. The victims included a reporter, cameraman, and third staff member who were covering the country-wide demonstrations. Following a few hours of detention, they were eventually

¹⁴ Amnesty International, ‘Human Rights in the Middle East and North Africa, Review of 2019,’ Amnesty International, 2020, pp.27-28, available at: https://www.amnesty.org/download/Documents/MDE0113572020_ENGLISH.PDF

¹⁵ The Ceasefire Iraq reporting tool can be accessed at <https://iraq.ceasefire.org/>.

¹⁶ Ceasefire Iraq reporting tool, <https://iraq.ceasefire.org/>.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

released. Sumaria TV had been covering demonstrations and demonstrators' demands sympathetically.

22. Demonstrators who are journalists by profession and their family members are also at risk of enforced disappearance. In another case reported to Ceasefire, a female journalist was warned by an armed group not to attend demonstrations with her son. A few days later, her son was kidnapped and is still missing, despite his case being reported to the authorities. In more extreme cases, victims are abducted and killed for participating in demonstrations. In another case reported to Ceasefire, one journalist, activist and father of three was abducted, killed and then thrown into the streets by an armed group.²⁰
23. Arrest and detention without a viable court order or warrant are violations as described in articles 102 and 103 of Iraq's Code of Criminal Procedure; this is by the admission of Iraq in its reply to the list of issues put forward by the Committee of Enforced Disappearances (henceforth 'the Committee') ninth session in 2015.²¹

D) **Women and children**

24. Women and children have also been subject to enforced disappearances in recent months. In its last review of Iraq, the Committee highlighted the 'particularly cruel effect' of enforced disappearances on women and children, urging Iraq to take the relevant preventative measures.²²
25. Iraq has failed to take these measures. In reports submitted to Ceasefire between March 2019 and February 2020, four cases reflect a direct violation of the Convention.²³ In one such case, two civil rights activist sisters were abducted by armed groups for participating in demonstrations and providing logistical assistance to demonstrators in Baghdad.²⁴ They were beaten, threatened with death, and forced to sign documents stating they would not participate in any further demonstrations. In another case, a university student providing first aid to injured demonstrators was abducted by an armed group and held in detention for ten days.²⁵ She was threatened with death if seen to be participating in any future demonstrations.
26. In parallel, children have also been subject to enforced disappearance. In a case communicated in late November 2019, a mother reported that her 16-year-old son had gone missing a week after graffitiing on his school wall 'for the people', a direct message of solidarity with demonstrators.²⁶ The mother reported her son as missing to all the relevant authorities and was in a fragile emotional and psychological state. Similarly, another high school student went missing on her way to sit a school exam in August 2019. The student had no quarrels with anyone, and her family was not contacted by any party following her disappearance.

²⁰ Ibid.

²¹ UN Committee on Enforced Disappearances, 'List of issues in relation to the report submitted by Iraq under article 29, paragraph 1, of the Convention, Addendum 1, Replies of Iraq to the list of issues,' 18 June 2015, CED/C/IRQ/Q/1/Add.1, p.12.

²² Ibid., p.8.

²³ Ceasefire Iraq reporting tool, <https://iraq.ceasefire.org/>.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

III. RECOMMENDATIONS

To the Government of Iraq:

- Without further delay, pass a law criminalizing enforced disappearances, ensuring that the law is fully compliant with the Convention for the Protection of All Persons from Enforced Disappearance and other human rights treaties;
- Establish an independent, central institution for receiving and investigating cases of enforced disappearances, and raise awareness of the mechanism of reporting among the general public;
- Fairly prosecute all perpetrators of enforced disappearances in accordance with the law, whether they are affiliated with the state or non-state groups;
- Take measures to determine the whereabouts of all currently disappeared persons, and inform families of their fate;
- Produce a list of all places of detention in the country, and cease the practice of holding persons in unofficial detention centres;
- Mandate that all security forces adhere to the detention procedure set out in the Iraqi Criminal Procedure Code, including by ensuring all detainees have access to a lawyer and are brought before an investigative judge within 24 hours of arrest;
- Provide victims of enforced disappearances, and their families, with access to the full range of reparations to which they are entitled, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
- Ensure that security forces are trained in the legal detention process and treatment of detainees as per domestic law and international human rights standards.