



SHADOW REPORT

**Evaluation Report on Iraq's Compliance with the
International Convention for the Protection of All
Persons from Enforced Disappearance**

Baghdad - 2020

Iraqi High Commission for Human Rights



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Introduction

The Iraqi High Commission for Human Rights (IHCHR) was established by Law No. (53) for the year 2008 amended, in accordance with Article (102) of the Iraqi Constitution of 2005. The Commission's members were selected and voted in the Parliament on April 9, 2012 to be the first national human rights institution in the history of Iraq. The law has entrusted the Commission with several competencies, the most important of which is to ensure respect and promotion of human rights stipulated in the Constitution, laws and international treaties ratified by Iraq. Also the law has obliged the Commission to receive complaints from individuals, groups and civil society organizations regarding violations before and after the passing of this law, to conduct initial investigations over human rights violations and move claims then refer them to the prosecution

Since its inception, the IHCHR has devoted a file for enforced disappearance matters in Iraq, as Iraq has acceded the International Convention for the Protection of All Persons from Enforced Disappearance, and ratified it by Law No. (17) of 2009.

The IHCHR expresses its thanks to the CED, believing the importance of this mechanism, the IHCHR submits its report that includes its most important observations and views on the extent of implementation of the International Convention for the Protection of All Persons from Enforced Disappearance in Iraq in accordance with the concluding observations issued by the Committee, and specific and updated information on that the measures taken in response to the recommendations, knowing that the IHCHR had previously submitted two reports to the Committee during the first round of the Board of Commissioners (shadow report on CPED and report on the CED's Lols replies)⁽¹⁾.

1) for the IHCHR's reports, see;

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=IRQ&Lang=AR



First: General Information:

Individuals and inter-State Communications (Articles 31-32)

The IHCHR noted that the Iraqi government had made no reservations to any of the articles of the International Convention for the Protection of All Persons from Enforced Disappearance upon ratification, which presupposes the acceptance of the Committee's competence to receive and consider individual and other communications on cases of enforced disappearance, however, the IHCHR has observed that the government still has not made a declaration recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction, in accordance with Articles 31 and 32 of the Convention.

Recommendations

- Prompt the Iraqi government to make a declaration recognizing the acceptance of the Committee to receive and consider communications from or on behalf of individuals.

Second: Definition and Criminalization of Enforced Disappearance (Articles 1-7):

Statistics on Persons Subjected to Enforced Disappearance (Arts. 1, 3, 12 and 24)

Despite some of the procedures and measures taken by the government regarding responding to the claims of families of forcibly disappeared persons, including with regard to forming a committee, under Governmental Order (46) of 2018, with tasks of; (considering vexatious claims) for detainees, kidnapped, missing and those who are held in custody as a precautionary measure in the governorates liberated from **ISIS** terrorist gangs and receiving claims from citizens and their families who are covered by the committee's competence for consideration, however the IHCHR has noted that the work of the committee is limited to receiving complaints and referring them to the Supreme Judicial Council, and after following its work, the IHCHR has observed that it does not have an integrated database on the people who are alleged to have been subjected to enforced disappearance, as there is no system in Iraq to centralize information related to people who are allegedly forcibly disappeared due to the presence of several parties and authorities that are empowered by law to execute orders to arrest and detain people, as well as that the information system of security agencies in the Kurdistan region is not linked to the Federal Government, while any information related to the fate of the people whose relatives claim their enforced disappearance requires an organized and considerable effort to communicate with the relevant parties (with the families of those who are allegedly forcibly disappeared) and this is not easy to do without adopting an integrated program built upon the guidelines for the search for enforced disappeared persons within the



framework of public policies based on standards for an effective investigation into cases of enforced disappearance.

Recommendations

1. Prompt the government to create a database for persons to whom the description of enforced disappeared, disaggregated by sex, age, ethnic and religious affiliation, location and date of the disappearance and the party or entity alleged to have hidden the person, and to be updated periodically, by creating a coordination mechanism between the federation government and Kurdistan Region Interior, Justice and Defense ministries and the judicial authorities responsible for receiving and unifying reports on those persons in order to establish accurate statistics on them and disclose their fate, for documenting all the measures taken by the competent authorities to identify their fate and the entities and people responsible for their enforced disappearance, with stating the remedies and compensation provided to the direct and indirect victims.
2. That data and information (which is updated periodically) be exchanged between the aforementioned entities and a copy of it is delivered to the IHCHR as a NHRI according its mission, receive complaints and reports on human rights violations, including allegations of enforced disappearance.

The Offence of Enforced Disappearance (Arts. 2,4,5,6 and 7)

The Iraqi legal system does not give the international convention a higher legal value than national legislation, and this is derived from the provisions of the effective Iraqi Constitution that does not give international conventions and treaties any superiority to the provisions of domestic legislation, which leads us to say that the law of ratification on the International Convention for the Protection of All Persons from Enforced Disappearance is a part of the national legislation and has a modified effect of legal provisions preceded its enforcement, but this matter is right in theory only as the national judge in Iraq, especially in the criminal courts, literally adheres to the provisions of the Iraqi criminal law does not consider other texts mentioned in the international conventions ratified by Iraq; on this basis, enforced disappearance is not considered a crime under the Iraqi Penal Code in force in the accurate meaning of the definition of the crime of enforced disappearance contained in Article (2) of the Convention, except in the event of issuing a law harmonizes the national texts with the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance, and it is not possible to rely on punitive provisions that criminalized kidnappings and the restriction of freedom because they do not cover the crime of enforced disappearance according to the Article (2) referred to.



Although the IHCHR has constantly prompted the government on the necessity of maturing and adopting (the draft law on the protection of all persons from enforced disappearance), the government still has not submitted the draft law. As a result of the determined efforts by the IHCHR with the relevant members of the CoR\ Parliamentary Human Rights Committee and Parliamentary Legal Committee, a bill on the protection of persons from enforced disappearance was included in the agenda of the Iraqi Parliament in its session no. (29) on June 29, 2019 for its first reading and the IHCHR is still following the process of maturing and enacting the law to ensure its compatibility with the provisions of the Convention.

Regarding the practice of enforced disappearance as a crime against humanity, the Iraqi legal system does not include any legal definition or description of this offence, except for the reference, in Article (12) the Iraqi High Criminal Court Law No. (10) of 2005, stating the description as (a crime against humanity) over the practice of enforced disappearance only for the period between (17 July 1968 to 1 May 2003), which is the period specified by the aforementioned court law, and this text does not cover crimes committed after this date, which highlights the need to explicit text considering the practice of enforced disappearance a crime against humanity in the national legislation and in the draft law on the protection of all persons from enforced disappearance, thus the IHCHR confirms that Article (5) of the Convention is not currently implemented in Iraq.

Our IHCHR's teams have monitored many practices that support the non-enjoyment of legal protection for accused detainees who are not sentenced and may therefore amount to be indicators of enforced disappearances, including:⁽²⁾

1. The arrest of some people without arrest warrants issued by the judiciary.
2. The Ministry of Defense, the Anti-Terrorism Service and other security formations have run prisons and pre-trial detention facilities in violation of the law.
3. Not to inform families of detainees with their place of detention immediately, only after the completion of the preliminary and long-time investigations.
4. Not to allow lawyers to meet with their clients and attend the preliminary investigation sessions.
5. Prevent family visits during the preliminary investigation period.
6. Not to allow the IHCHR's teams to visit some prisons and pre-trial detention facilities except after obtaining the approval of the competent authorities and providing them with lists of names in violation of the provisions of Article (6) of the IHCHR's law.
7. The detainees are not brought before the judiciary during the periods specified by law.
8. Failure of all administrations of the pre-trial detention facilities to keep classified, numbered and printed records, and some of them only keep records that lack the

2) Report of the IHCHR's criminal justice team, see the annual report on the situation of human rights in Iraq for the year 2018, issued by the Board of Commissioners under Article (4 \ paragraph 8) of Law No. 53 of 2008, p. 30. published on the official website of the Commission: <http://ihchr.iq/upload/upfile/ar/77.pdf>



controls or others use electronic registration of information related to each prisoner, arrested or inmate.

9. The delay in resolving the cases of detainees in detention centers and prisons and the increase in overcrowding cases there.

Recommendations

1. Prompt the Iraqi parliament to expedite the reading of the (bill on protecting people from enforced disappearance) in a manner that ensures that enforced disappearance is an independent crime in the Iraqi legal system, in accordance with Article (2) of the Convention.
2. Prompt the government and parliament to consider the view of the IHCHR in the draft law to ensure the inclusion of international standards stipulated in the International Convention for the Protection of All Persons from Enforced Disappearance.

Criminal Responsibility of Superior Officials and due Obedience (Article 6)

The IHCHR has noted that; the national legislation in force is still inconsistent with the Convention regarding the responsibility of superior officials and is not fully in line with the obligation arising under (Article 6) of the Convention, the provision of Article (40) of the Iraqi Penal Code No. (111) of 1969 that states “an act is not an offence if a public official or public servant... commits the act in implementation of an order from a superior which they are obliged or feel obliged to obey”⁽³⁾ is still in effect, and the public servant or an associate in the security forces are not bring to justice in the event of committing a crime punishable by law during the performance of his assigned duty, except in the case of approval of his direct superior in accordance with instructions issued by those security agencies.

The IHCHR considers that the provisions of criminal responsibility referred to in Article (6) of the Convention have no scope for their application in Iraq in the absence of the legal text that criminalizes the practice of enforced disappearance, and thus the criminal responsibility is specified in the acts of kidnapping and the restriction of freedom in accordance with what is stipulated in the Iraqi Penal Code.

Recommendations

1. Prompt the CoR to amend the provision of Article (40) of the Iraqi Penal Code in line with the provisions of Article (6) of the Convention.
2. Prompt the CoR to include a clear provision in the draft Law on the Protection of Persons from Enforced Disappearance prohibiting and punishing the invocation of any

3) see Article (40) of the Iraq Penal Code no. (111) of 1969 amended.



orders or instructions from direct or indirect superiors to justify the crime of enforced disappearance, in a manner consistent with the provisions of Article (6) of the Convention.

Third: Criminal Responsibility and Judicial Cooperation in relation to Enforced Disappearance (Arts. 8-15)

Jurisdiction (Article 9)

The IHCHR has observed, according to what was indicated to in the second paragraph of the present report, that the crime of enforced disappearance is still not defined by Iraqi national laws and legislation in line with Article (2) of the Convention, and therefore the national courts couldn't to impose appropriate penalties on the perpetrators of the crime of enforced disappearance in application of the Article (19 \ Second) of the Iraqi Constitution, which states (No crime and no punishment except by law)⁴.

According to the above constitutional text, the IHCHR confirms that the competencies of the Iraqi national courts are still inadequate to consider and rule on allegations of enforced disappearance.

Recommendations

1. Prompt the Iraqi Council of Representatives to include an explicit text in the bill (protecting people from enforced disappearance) that defines and specifies the crime of enforced disappearance and imposes penalties commensurate with the gravity of the crime.
2. Prompt the Supreme Judicial Council to activation the role of human rights courts in each appeal court in Baghdad and the provinces to consider allegations and complaints of enforced disappearance according to Article (5) of IHCHR's Law No. (53) of 2008.

Allegations of Cases of Enforced Disappearance (Arts. 1, 12 and 24)

The IHCHR confirms the lack of a national database on enforced disappearances, whether allegations or confirmed cases of enforced disappearance of persons. The IHCHR notes that the multiple security services and agencies that implement arrest and detention orders has directly led to the difficulty of detecting the fate of arrested and detained persons and knowing their places of detention or any information related to them to those who care about them, such as family members or those who represent them in accordance with the law. Although the IHCHR

4) see Article (19) of the Iraqi Constitution of 2005.



has approached the relevant executive authorities to the necessity of developing a unified database on the people held in all prisons in Iraq, it has not received any positive cooperation in this regard, therefore; the lack of a unified system or database for all detainees in detention centers or prisons has made it difficult to search for people whose families claim their enforced disappearance.

We note that the IHCHR receives complaints under Article (5 \ IV) of its Law No. (53) of 2008⁽⁵⁾. The IHCHR has observed the missing of many civilians during and after operations to liberate their cities from ISIS terrorist gangs based on the claims made by the people in those areas. In Anbar governorate, the number of missing and forcibly disappeared detainees has reached (1774) cases whom their relatives claimed that government security authorities arrested them and their fate is not known until the writing period of this report⁽⁶⁾, including (210) missing persons according to the claims of the people in Al-Saada camp and (401) missing persons according to allegations of the people in Al-Bashaer camp \ Al-Sijar district in Anbar governorate, and at that time an investigation committee⁽⁷⁾ was set up to investigate the facts about the events of al-Saqlawiyah and al-Sijar districts based on the claims of Anbar Province represented by (the Governor of Anbar) and members of the Provincial Council over the presence of security breaches that accompanied the liberation of Fallujah district, especially in the areas of (al-Sijar and al-Saqlawiyah), where these allegations indicated the presence of (643) missing cases from al-Saqlawiyah district and (87) missing cases from al-Sijar district, as the investigative committee held more than ten meetings, and it turned out that the number of those who claimed to have missing persons had reached (873) cases and after checking the names of those missing it was found that (166) of them are wanted by the security services and judicial arrest warrants issued against them in accordance with Article (4 \ A) of the Anti-Terrorism Law No. (13) of 2005, by reviewing the minutes of the committee's meetings, it was found that most of its procedures were limited to preparing a form for missing persons and filling them by their relatives in addition to some investigative procedures related to the

5) Article (1) of the IHCHR's Law no. (53) of 2008, states that "The Commission shall: **First:** Receive complaints from individuals, groups and civil society organizations regarding violations before and after the passing of this law while maintaining absolute confidentiality of names of those submitting the complaints. **Second:** Conduct initial investigations regarding human rights violations based on information. **Third:** Verify the correctness of the complaints received by the Commission and conduct initial investigations if necessary. **Fourth:** Move claims of human rights violations and refer them to the prosecution to take legal action and notify the Commission of the results. **Fifth:** Visit prisons, social reform centers, detain places and all other places without prior permission from the mentioned entities, meet with convicted persons and detainees, document cases of human rights violations and notify the competent authorities to take appropriate legal measures.

6) According to the Anbar Governorate letter ref. (3314) dated (19 Feb. 2019) and its enclosures including lists of the names of the detainees and missing persons registered.

The committee was formed based on the allegations and based on the directives of the Prime Minister (Commander-in-Chief of the Armed Forces) and according to the Prime Minister's letter number (M.W.C / 1229 on June 5 2016).

7) The committee was formed based on the allegations and under to the directives of the Prime Minister (Commander-in-Chief of the Armed Forces) according to the Prime Minister's letter ref. (M.W.C\ 1229 on 5 Jun.2016).



summoning of witnesses and testifying in light of severe fears of being exposed to threats. According to the final recommendations of the investigative committee, it stated that it had not reached results related to identifying the fate of the missing persons, and the government did not take any additional measures to reveal their fate.

As for Salahddin Governorate, the number of missing persons, according to what was reported by the Provincial Council, reached (2070) missing cases⁽⁸⁾. Whereas the cases of detention by the security services for the years (2017-2018-2019) in Ninevah governorate and their fate is unknown until the writing period of this report reached (838) detainees in 2018 as follows: (781 men, 3 women, 54 juveniles), and the number of missing persons reached (121) cases as follows: (85 men, one woman, 35 juveniles) whose fate and the ones causing their loss are unknown. In 2019 (during the period from 2 Jan. to 25 Aug. 2019), the number of people arrested by the security forces and their fate is unknown according to their relatives' claims is (296) detainees, including (264 men, 32 juveniles), and the number of missing persons reached (102) cases (86 men, 2 women, 14 juveniles) whose fate and the ones causing their loss are unknown⁽⁹⁾. The IHCHR noted here that the deaths of detainees in Ninevah Intelligence Directorate, Anti-Terrorist Directorate and Security Directorate during the year 2018 amounted to (192) deaths⁽¹⁰⁾.

The IHCHR has followed the reality of the allegations made by the families of missing and disappeared persons and noted that the Council of Ministers has formed a committee according to the Governmental Order (46) of 2018, as the committee shall consider malicious claims of detainees, kidnapped, missing persons, and those held in custody in the governorates liberated from ISIS terrorist gangs and to receive claims from citizens and their families who are covered by the committee's work to consider it according to the law ..

Although the terms of reference of the committee do not cover all of Iraq's lands and are limited to the provinces that were under the control of ISIS terrorist gangs (Ninevah, Salahddin, Anbar, Kirkuk, Diyala, Babil), however, the IHCHR, through its follow-up to the work of the committee, its recommendations, and its demands to the Governors' Offices in the governorates to provide it with the claims of citizens and their relatives covered by the competence of the committee, observed that the work of the committee is limited to routine procedures and has not started its work in the governorates (Babil, Ninevah, Kirkuk and Salahddin), and noticed that the committee was not formed in Anbar province, but just a circular letter was issued from the Office of Governor of Anbar in light of the work of the committee (46) and an information form was provided by the district authorities and administrators in the governorate, then (3,166) claims were received regarding cases of missing

8) Based on Salahddin Provincial Council letter ref. (1\5183) on 16 Oct. 2019 and its enclosures including lists of the names of detainees and missing persons registered.

9) Under the letter of IHCHR- Ninevah Office, ref. (1190) on 26 Aug. 2019.

10) Under the letter of IHCHR – Ninevah Office, ref. (546) on 23 May 2019 and its enclosures including the letter of the Iraqi National Security Service – Ninevah Security Directorate, with ref. (q7\4933) on 19 Feb. 2019.



and enforced disappearance from their families, which had been referred to the Supreme Judicial Council⁽¹¹⁾. The IHCHR has no detailed information on the reasons for the missing of those who most of them are believed to be lost during the control of ISIS terrorist gangs on Anbar province. The IHCHR also observed that the formation of the committee came after the deadline of the State's submission of its report on the extent of commitment to implementing the recommendations issued by the CED got closer, while there was a great need to form this committee immediately after the liberation operations from ISIS terrorist gangs. On the other hand, the **IHCHR sees** the committee did not include competent members of the criminal investigators, did not has the powers and influence sufficient to access the information and its role was limited to receiving claims from the families of the missing.

With regard to the number of complaints submitted to the IHCHR, it received complaints that included allegations of disappearances on a large scale during and after the liberation operations from ISIS terrorist gangs; many of them can be described as enforced disappearances. The number of complaints and claims received by our Commission regarding cases of people whose relatives are unaware of their whereabouts reached (4,899) cases in 2018, which include people whom some of their relatives claimed kidnapped by ISIS gangs, while others claimed that the official security forces arrested them without knowing where they were being held. According to the statistics below, we note that the total number of complaints for the years (2017 and 2018) amounted to (6752), and for the year 2019 amounted to (1129) complaints classified as follows: (845) allegations of enforced disappearance, (218) allegations of missing, and (66) claims against ISIS terrorist gangs, and the IHCHR has subsequently approached the security authorities responsible for detention centers or who are alleged to be holding the detained persons according to the complainant's statement, which are each of the (Ministry of Justice\ Iraqi Reform Department, Ministry of Defense, Ministry of Interior, National Intelligence Service, National Security Advisory, Popular Mobilization Authority and the security services in the Kurdistan Region through the Representation of Kurdistan Region in Baghdad), and the IHCHR has also approached the committee with Governmental Order ref. (46) of 2018. During the year 2018, the number of complaints, over those who had been found, reached (96) cases, and those allegations which were referred to the Public Prosecution amounted to (780) ones, after the IHCHR received the responses of the authorities responsible for the aforementioned detention centers by not being in their detention centers. As for the number of complaints that are in the process of being implemented for the year 2018 reached (5876) cases.

During the year 2019, the IHCHR received (1129) complaints from the families of the disappeared and missing persons, which include allegations that they were arrested by official security agencies, (38) of them were found at the authorities responsible for the placement, as

11) Based on the letter of Anbar Governorate- Human Rights Department ref. (159239) on 15 Jul. 2019 and its enclosures including CD on lists of the names of missing and kidnapped persons sent to the Supreme Judicial Council – Judge Office of the Central Investigation Court.



well as (131) complaints were referred to the Presidency of the Public Prosecution after receiving the responses of the security authorities over the lack of information about them, and (974) complaints are still awaiting answers from the authorities that were approached, noting that the IHCHR addressed the Kurdistan Region's Representation about complaints that include allegations of enforced disappearance and that the number of letters addressed to the Kurdistan Region for the years (2017, 2018, 2019) reached (346) cases of missing and disappearance.

Statistics of complaints regarding cases of people whose families are unaware of their whereabouts for the years (2017 and 2018)

Total	resolved complaints: the persons found	complaints referred to the Public Prosecution	Under implementation
6752	96	780	5876

Statistics of complaints regarding cases of people whose families are unaware of their whereabouts in 2019

received complaints	resolved complaints: the persons found	complaints referred to the Public Prosecution	Under implementation
1129	(38) ones including (14) cases accused of belonging to ISIS	131	974

Given the large number of these complaints and claims received by the IHCHR regarding persons arrested by official bodies and their relatives are unaware of places of detention and consequently the possibility of being deprived of legal protection, accordingly our Commission expresses its great concern about this.

Recommendations

1. Prompt the government and its security forces to adopt real plans and policies to protect all persons and reduce the disappearances to which they are exposed.
2. Prompt the government and its security services to cooperate with IHCHR as an independent national institution to work on the preparation of a unified database that includes detainees' names in Iraq, their personal data and places, dates of detention. The families of detainees, arrested or their legal representatives, oversight bodies and NGOs shall have access to these names and data. This procedure undoubtedly provides assured guarantees to detained individuals and provides them with access to legal protection in line with the implementation of article (24) of the Convention.



3. Take the necessary measures for reparation and rehabilitation of victims in accordance with the provisions of Article (3) of the Convention for the Protection of All Persons from Enforced Disappearance. As well as prompt the government to activate and accelerate the work procedures of Governmental Order Committee No. (46) of 2011 and at the level of all governorates covered by the above-mentioned resolution.
4. Prompt the judiciary and the public prosecution to cooperate with IHCHR to expedite the consideration of complaints submitted to the IHCHR and its resolution.
5. Prompt the government to activate the work of the Governmental Order Committee No. (46) of 2018 in the provinces liberated from ISIS terrorist gangs to receive citizens' complaints on missing persons and resolve them urgently.
6. Encourage the government to cooperate with the UN Working Group on Enforced Disappearance and its mission in Iraq.
7. Cooperate with the International IHCHR on Enforced Disappearances and recognize its competency to receive and consider communications submitted by individuals and states under articles (31, 32) of the Convention with a view to strengthen the framework for protection against enforced disappearances. Noting that Iraq has no reservation to these provisions.

Acts Committed by ISIS and Affiliated Groups (Article 3)

ISIS terrorist gangs committed the crimes of killings, torture, kidnapping and rape as well as recruitment of children, use of civilians as human shields. ISIS also practiced systematic violations against certain groups of population on ethnic, religious and sectarian grounds, including murder, forced displacement, destruction of cultural and historical heritage and other grave violations.

The IHCHR noted the loss of (1700) person from AL-Qaim district in Anbar governorate at the hand of ISIS terrorist gangs during their control over the province where they were taken to an unknown destination and their fate is still unknown until the preparation of the report, noting that most of them are members of security institutions (army and police) and other civilian institutions in the governorate. The IHCHR also documented the violations committed by these gangs, and the terrorist gangs published lists of names in Forensic Department in Mosul, including (2070) victims from Ninevah province, who were killed for various reasons, such as their opposition to the approach taken by ISIS in the city.

The statistics of Yezidis⁽¹²⁾ who have been targeted by ISIS until 3/6/2018, indicated that the number of those killed as a result of ISIS targeting reached (1293) victim, and the total number of kidnapped reached (6417) person: (3548 woman and 2896 man), the number of mass graves (68) cemetery, note that the total number of people who have been freed (3200): (1150

12) Based on IHCHR visit / Ninevah office to the Directorate of Yezidis Affairs in Erbil on 30/7/2018.



woman, 337 man) and (946 female child, 867 male child), and the people who are still abducted and their fate are unknown reached (3117) person: (1452 woman and 1665 man) .

The IHCHR also monitored the violations against **Turkmen** component, where ISIS terrorist gangs killed more than (820) person, kidnapped (600) Turkmen woman and (200) child whose fate is still unknown. ISIS killed (124) **Shabak** citizens and abducted (126) others, including (27) **Shabak** woman. IHCHR also reported the killing of (38) person from Kakai component. In 2018, two **Kakais** were kidnapped from the village of **Tubzawa** and injured (3) persons, as well as the abduction of (1) woman and killing (2) women from the same family. ISIS also committed genocide against inmates in **Badoush** prison (over 500 people), members of security forces at the **Speicher Military Base** (1700 person, the remains of 1237 people were found and 883 were identified)⁽¹³⁾, and the premeditated murder of members of Al-Bonmer , Al-Jabour, Al-Liheeb , Al-Obaidi, Al-Azaa tribes in Anbar, Diyala, Salahaddin, Kirkuk - Hawija and Ninevah provinces⁽¹⁴⁾.

The IHCHR noted that despite the Federal Government and the Kurdistan Regional Government have taken a number of measures to hold ISIS members gangs accountable, and the issuance of the Iraqi Council of Ministers Resolution No. (92) of 2014, which includes the approval to consider what was exposed by the components of Iraqi people such as **Yazidis**, Turkmen, Christians and **Shabak** at the hands of ISIS terrorist gangs as a crime of genocide , the decision of the Iraqi Council of Representatives No. (43) of 2016, which includes taking the necessary measures by the government to free the female **Yazidi** abductees and reconstruction of Sinjar district, and the formation of UN Investigation Team (UNITAD) to promote accountability for crimes committed by ISIS . The IHCHR stresses that the measures taken to hold those responsible for crimes committed by ISIS gangs do not live up to the level and scale of these criminal acts where the procedures and measures taken to search persons who are missed during ISIS control are still very shy, and many people remain unaccounted for at the time of preparing the report.

Recommendations

1. Prompt the government to follow up the work of the investigative committees formed for the purpose of searching the missing and forced disappeared persons to ascertain the validity of this information, whether the cases are a case of "Missing" or "enforced disappearance".

13) Based on IHCHR visit to the Forensic - Ministry of Health on 1/12/2019.

14) According to IHCHR report submitted to the Committee on the Convention against All Forms of Racial Discrimination 2018



2. Prompt the government and parliament to legislate a national law that considers the crimes committed by **ISIS** terrorist gangs, especially the crimes of mass graves as genocide and crimes against humanity.

Protection of Persons participating in an Investigation (Art. 12)

The IHCHR has indicated the issuing of the Law on the Protection of Witnesses, Experts, Informants and Victims No. (58) of 2017, according to which the state is obligated to provide protection to anyone who provides testimony, experience, or assistance to get at criminals in various crimes in general, especially terrorism and corruption crimes, and the law also includes granting financial rewards to provide this information, in line with the provision of Article (1/12) of the Convention, the IHCHR considers that the issuance of this law is a progress made towards the implementation of Iraq's international obligations and considered a safety valve for witness protection, but the IHCHR has indicated a delay in issuing law enforcement system that determines Criminal lawsuits covered by this law, which is supposed to be issued by the Council of Ministers no later than six months from the date of entry into force of the law.

Recommendations

1. Prompt the government (Cabinet) to issue instructions on the implementation of Law No. (57) of 2017 for the protection of witness and including an explicit provision that covers claims of enforced disappearance in accordance with the provision of Article (2) of the above law.
2. Prompt the government to expedite the establishment of a special unit to protect witnesses and other persons involved in investigations of persons forcibly disappeared under Article (10) of the above law. .

Fourth: Measures to Prevent Enforced Disappearances (Arts. 16-23)

Non-refoulement

The government report submitted to the CED referred to the Residence of Foreigners Law No. (76 of 2017) as progress towards implementing state's obligations in accordance with the convention; but the IHCHR notes that the Residence Directorate of the General Nationality Directorate in the Ministry of Interior deals with cases that are in breach of the Residence Law exclusively, and the current Iraqi legislation does not include an explicit provision dealing with expulsions or deportation for a person believed to be subject to enforced disappearance.

Recommendations

Prompt the Iraqi government and parliament to include an explicit provision prohibiting the extradition, expulsion, deportation or returning a person to his origin country if there are reasons to believe that there is a risk of his being subjected to enforced disappearance.



Secret Detention (Arts. 17, 18 and 22)

The Article (19/12-b) of the Iraqi constitution prohibits to detain or arrest anyone in places not designated for , the IHCHR has observed that the Prison Administration and Detention Centers are run by several bodies: the Ministry of Justice represented by the Iraqi Correctional Service and the Juvenile Correction Department , the Ministry of Defense in Baghdad and the general governorates except Kurdistan Region , which has its own security system and its own detention centers, in addition to the Ministry of Interior under the new law [Act to Reform Inmates and Detainees No. (14) of 2018 which in turn abolished the Prison Administration Law No. (2) of 2003] runs a number of prisons and temporary detention facilities and gave legitimacy to its administration of those facilities, noting that the Ministry of Interior is concerned with implementing judicial decisions relating to arrest and conduct investigations, while the ministry concerned with investigation is concerned with the placement, and it is noticed that many of those convicted adults and juveniles who deprived of their liberty are still held in the Ministry of Interior prisons , due to the weak capacity of the Iraqi Reform Department prisons that led to overcrowding cases, and the IHCHR indicates its assurance that the Ministry of Justice should carry out its legal duties in receiving the large numbers of adults and juveniles convicts from the Ministry of Interior prisons pursuant to the provisions of the law.

The IHCHR has indicated that the prison administrations do not adhere to the provision of Article (5 / Fifth) of IHCHR's Law No. (53) of 2008, which stipulates (Visit prisons, social reform centers, detain places and all other places without prior permission from the mentioned entities, meet with convicted persons and detainees, document cases of human rights violations and notify the competent authorities to take appropriate legal measures), and the provision of this article was not implemented except within a very limited frame, as the IHCHR teams monitored the commitment of prison administrations to keep the various records referred to in Article (8 /fourth) of the Inmates and Detainees Reform Act , where it was noted that there are records prepared by the administration of those prisons, which often contain (basic record, inmates' names record, daily record , record of sending detainees, medical examination record, family visits, food record, charge record, etc.) These records often electronic in addition to paper records, but the IHCHR noted that the records of most prisons, pre-trial detention facilities and juvenile reform houses are often numbered and manually classified; which is not consistent with the provision of the law, as these records with manual entry are subject to data manipulation through *erasures* and change the numbers, where these registries and records represent the most fundamental guarantees that contribute to prevent administrative detention cases (illegal), secret detention, enforced disappearances and denial of the protection of the law.

The IHCHR notes that the full implementation of Article (17) of the convention faces several obstacles in Iraq represented by the multiplicity of security agencies and bodies authorized by law to implement orders to arrest and detain people, making it difficult to verify the fate and identify the whereabouts of detained persons or any information related to them and whoever cares about such as members of the family or their representatives according to the law.



The new law still does not provide unified system or database for all detainees in detention centers and prisons. The IHCHR has asked more than once to provide it with a database of detainees and those deprived of their liberty in order to be able to search for forcibly disappeared persons through cross-check information, and to ensure that there are no secret detention centers or persons held secretly in those prisons and detention centers, but it has been rejected by the National Security Advisory and the authorities concerned with detention⁽¹⁵⁾, while this procedure was in place with the Ministry of Human Rights (canceled).

The IHCHR also indicated that many relatives of detainees, who were arrested by the security authorities during the liberation of governorates from **ISIS** terrorist gangs, were not notified, for example, the IHCHR received many complaints in Ninevah governorate regarding the arrest of people whose fate is unknown and after addressing the official authorities concerned with detention, in cooperation with the investigation court specialized in terrorism issues in Ninevah, the fate of (59) people was known, including those who were informed of their place of detention after being transferred to other prisons, some of them were released before receiving the response about his fate, some of them were executed. Noting that among the above cases, it was found the deaths of two detainees, one of them in Al-Hamdania detention center and the second in hospital affiliated to Doctors without Borders Organization.

Recommendations

1. IHCHR confirms the recommendation (1 and 2) within the second paragraph mentioned above.
2. Prompt the government to oblige the concerned authorities to manage detention and arrest centers to implement the provision of article (5 / Fifth) of IHCHR law no. (53) of 2008 regarding allowing IHCHR monitoring teams to visit detention places without prior permission.
3. Prompt the government to direct and obligate the concerned authorities to implement arrest warrants for accused persons who have not been sentenced and the necessity to inform their families or legal representatives of their detention places within a period not exceeding 24 hours.
4. Amend the Act to Reform Inmates and Detainees no. (14) of 2018 to ensure that the Ministry of the Interior and other security bodies do not exercise the power of placement where the Ministry of Interior is concerned with implementing the judicial decisions to arrest and conduct investigations, while we find that the same ministry and investigation authorities are concerned with placement.
5. Prompt the Council of Representative to repeal any text in the Iraqi Criminal Procedure Law No. (23) of 1971 year which allowing non-judicial authorities to exercise the power of investigation.

15) Based on Ministry of Justice's response\ the Minister's office - letter ref. (S / 1800) dated 28/7/2015 and the letter of the National Security Council - National Security Advisory ref. (5/1/614) dated 14/5/2014



Fifth: Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

The right to receive reparation and prompt, fair and adequate compensation (art. 24)

The IHCHR notes that the Iraqi laws do not grant any legal privileges to victims of enforced disappearance in the area of reparation, compensation or rehabilitation, as the general provisions for compensation do not provide the ability to obtain compensation quickly, rehabilitation or guarantees of non-repetition, and the reparation provided by Transitional Institutions Justice in Iraq was limited to the victims before 9/4/2003 without extending to the victims after this date. The claim for compensation for material and moral damages resulting from any crime, including the crime of enforced disappearance, is related to the claim of the victim or his legal representative for compensation at any stage of the investigation or trial except the stage of appeal against the Cassation Court discussion under the provisions of article (10) of the Criminal Procedure Code no. (23) of 1971 year, and no financial obligation will be required on the state because the award of compensation will be imposed on the one who committed the crime, and the IHCHR considers that this system doesn't provide speed, victim rehabilitation or guarantees of non-repetition.

Recommendations

1. Prompt the government and parliament to adopt legal provisions for compensation and reparation consistent with the nature and gravity of enforced disappearance crime and in line with the provisions of (article 24) of the Convention.
2. Prompt the government to include a draft law to protect persons from enforced disappearance and ensure the compensation of victims of enforced disappearance, establish physical and psychological rehabilitation institutions and centers, integrate victims into society and the state should bear the costs.

The Search for Disappeared Persons (Art. 24)

The IHCHR noted that the adoption of a general policy to search for persons forcibly disappeared and the preparation of a database on them requires efforts in the field of uncovering the fate of missing persons and following available technical methods, especially in the field of mass graves, despite the amendment of the Protection of Mass Graves Act (No. 5 of 2006) and its applied on the crimes committed after 2003, the IHCHR noted the delay in the procedures of opening mass graves and identifying the victims.

The IHCHR observed through its report on mass graves identified by the competent authorities that many of those graves were not opened where the detection works, in the last three years, were very few due to the lack of financial allocation to the Department of Mass Graves Affairs



and below statistics related to mass graves show that the number of an opened graves are (194) , noting that the opened sites are (99) where each site contains more than mass grave.

Total sites	296
Opened sites	99
Remained sites	197
Opened sites	194
The number of remains raised	5145

The IHCHR has followed the work of search teams that are not limited to open graves and exhumation, but also establish a database for missing persons, and this data includes an information form to be filled out by the relatives of the missing that will help in the investigation and identification of the missing. Through its insight into the work of the authorities concerned with establishing this database, the IHCHR indicated the delay in launching the national campaign to fill information before their missing and collect blood samples, noting that this campaign had already been launched in 2012, but it stopped in mid-2014, and the Department of Mass Graves Affairs and Forensic began a campaign to collect information in Sinjar in 2 phases, but there are still a large number of relatives of the missing persons did not provide information about the missing due to their presence in the camps and the difficulty of their communicating with the relevant committees, which requires the concerned authorities to take the initiative to communicate and go to families as a kind of moral compensation and to alleviate their burdens , where the available capabilities of the forensic medicine department and its carrying out other large tasks resulting from the victims of explosions, traffic accidents, criminal cases, drugs and others, making the identification process slow and inconsistent, in addition to the incomplete information database before the missing.

Below is a table showing the numbers of persons who gave blood sample⁽¹⁶⁾ and families of the missing persons who filled out the form:

No. of persons who gave blood sample for all mass graves	22578	This number can be increased as a result of the electronic modernization process
No. of missing persons for all mass graves whose information was provided by their families	14649	
No. of persons who gave blood sample for Sinjar	1150	

16) People of missing persons who gave a blood sample in order to identify their sons after matching DNA samples in all mass graves.



mass graves		
Missing persons in Sinjar whose information was provided by their families	1280	

The IHCHR has noted the absence of unified mechanisms to report cases of missing and disappearance with the multiplicity of institutions dealing with the file of missing persons and laws, which negatively affected the lack of accurate statistics regarding missing persons and the inconsistency of data in various state institutions, which constitutes a stress factor for the families of missing persons.

Recommendations

1. Prompt the government to adopt a general policy aimed at searching for missing and disappeared persons according to complaints submitted to the IHCHR and other bodies that receive claims from families of missing persons and families of persons allegedly forcibly disappeared, and to take the search policy in the light of the following consideration (for example, not specific) :
 - Conduct a search for a disappeared person under the assumption that he\she is alive.
 - The main objective of general policy is to be the prevention, protection and the provision of comprehensive support to victims and those close to them.
 - The general policy should be clear, transparent, consistent and comprehensive.
 - The general policy should enhance cooperation and complementarity among all state agencies in the search for disappeared persons.
 - The competent authorities shall launch initiative to search for the disappeared person according to a comprehensive search strategy in which the activities to be carried out are determined in an integrated manner.
 - The relevant laws shall ensure the beginning of the investigative procedures in search the fate of missing persons whose families claim their enforced disappearance without delay and identify their whereabouts as quickly as possible.
 - The lack of information from family members or accused persons who have not been sentenced cannot be invoked to justify the failure to launch activities to search for disappeared person, identify his whereabouts or take a decision to suspend or close the investigations, and the allegations made by the families of persons that subjected to disappearance cannot be judged as cases of missing unless confirmed.
 - The general policy shall ensure a great deal of interest in searching for the criminal and ensuring that there is no impunity.
 - The bodies responsible for the research should have the necessary human and professional resources, and providing adequate vocational training and modern logistical, technical and scientific resources.



- That general policy shall be based on a database and links of genetic data that make it possible to obtain results quickly during the research.
 - The general policy should cover all the lands of the Iraqi state, including the Kurdistan Region of Iraq.
 - The search process shall be centralized within the framework of IHCHR in cooperation with the Independent Commission for Human Rights in the Kurdistan Region, to ensure effective coordination with all other entities whose cooperation is necessary for the research to be effective, comprehensive and immediate.
 - The search for the disappeared person continues until his fate and / or his whereabouts are determined with certainty, and under no circumstances may the search for the disappeared person be terminated as a reason to suspend or end the investigation of the crime of enforced disappearance.
 - Respect the dignity of victims should be the guiding principle at every stage of the search for the disappeared person.
2. Calls the government to establish a national center for missing and disappeared persons that works as a body that gathers all the specializations and the concerned authorities, starting with the announcement, reporting of missing cases, search, investigation, opening of cemeteries, verification of identity, handover of remains, fair trial, reparation , and until the rehabilitation of victims' families.

High Commission for Human Rights – Iraq (IHCHR)
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