



Iraq

Follow-up to the Committee on Enforced Disappearance's recommendations

Alkarama Foundation – 24 July 2017

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2. Introduction

In its Concluding Observations to Iraq's first periodic report, the Committee on Enforced Disappearances (hereinafter CED) highlighted three priority recommendations and requested the State to provide follow-up information on their implementation. The Committee had prioritised, over all other concerns, the prohibition and criminalisation of enforced disappearance in line with the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter "the Convention"), putting an end to the practice of secret detention and uphold fundamental legal safeguards, and carry out investigations on the fate of the disappeared.

On 15 February 2017, Iraq submitted its follow-up report, which provided vague and inconclusive elements on the implementation of the Committee's recommendations. It is our opinion that none of these recommendations have been implemented to date.

3. Prohibition and criminalisation of enforced disappearance

*The Committee recommends that the State party adopts the legislative measures necessary to ensure that, as soon as possible: (a) Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties which take account of its extreme seriousness; (b) Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention and regardless of the date of perpetration.*¹

In Iraq's follow-up report, and mirroring what was already presented in its first periodic report to the CED,² it is argued that "the Iraqi Criminal Code No. 111 of 1969, as amended, contains no clear and straightforward definition of the offence of enforced disappearance in accordance with the definition contained in article 2 of the aforementioned Convention [...]. However, some acts incorporated in the definition of enforced disappearance, such as abduction, detention or arrest without a legal warrant by non-State entities, and the measures applicable to such acts do not differ greatly from the provisions of articles 322, 324, 421, 423, 424, 425 and 426 of the Iraqi Criminal Code and article 92 of the Code of Criminal Procedure No. 23 of 1971".³ The Iraqi authorities moreover argue that a draft law on enforced disappearance was drafted but that it has not been adopted yet for different reasons.

In light of the absence of any amendments to the Iraqi legislation pertaining to the definition and criminalisation of enforced disappearances, the arguments raised by Alkarama in its shadow report for the consideration of Iraq first periodic report by this Committee,⁴ remain valid to date. We wish to recall that, in addition to the fact that the articles listed by the Iraqi authorities do not cover acts constituting enforced disappearances *per se*, nor do they provide for appropriate penalties,⁵ none of the said articles mentions the "refusal to acknowledge the deprivation of liberty by concealment of the fate or whereabouts of the disappeared person" neither does it explicitly mentions its application to groups of persons acting with authorisation, support or acquiescence of the State, as required by article of the Convention. This last consideration is of particular concern with regard to the current situation in Iraq, where a high number of enforced disappearances are being carried out by militias affiliated to the People Mobilisation Units (hereinafter "PMU"). This is an umbrella organisation

¹ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Iraq under article 29 (1) of the Convention*, 13 October 2015, CED/C/IRQ/CO/1, para.14.

² Committee on Enforced Disappearances, *Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention, Reports of States parties due in 2012 Iraq**, CED/C/IRQ/1, 25 July 2014, para. 36.

³ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Iraq under article 29 (1) of the Convention, Addendum, Information received from Iraq on follow-up to the concluding observations**, 31 May 2017, CED/C/IRQ/CO/1/Add.1, para. 3.

⁴ Alkarama, *Iraq: Committee on Enforced Disappearances - 1st review - Alkarama's Report - Aug 2015*, 14 August 2015, p. 6, <https://www.alkarama.org/en/documents/iraq-committee-enforced-disappearances-2015-alkaramas-report-submitted-ced-review> (accessed on 10 July 2017).

⁵ For instance article 322 PC establishes that "any public official or public servant who arrests, imprisons or detains a person in circumstances other than those stipulated by law shall be liable to a penalty of up to 7 years".

comprised of 67 prevalently Shia militias officially integrated in the army since November 2016, which acts without any judicial oversight.⁶

Furthermore, Iraq's follow up report is silent on the criminalisation of enforced disappearances as crimes against humanity. We recall that the Iraq Supreme Criminal Tribunal Act defines the crime against humanity of enforced disappearance as "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time", when committed as part of a widespread or systematic attack directed against the civilian population.⁷ However, lacking any amendment to this piece of legislation, the requirement that this crime attracts the consequences provided under international law – i.e. the non-applicability of statutes of limitation, the prohibition of amnesties and the recognition of victim's right to full reparation – is still not included.

Therefore, Iraqi legislation does not fulfil the State party's obligation under article 5 of the Convention and the Committee's recommendation in this regard has not been implemented by Iraq.

4. Secret detention

*The State party should adopt all the measures necessary to ensure that no person is held in secret detention, including by guaranteeing that all persons deprived of liberty are afforded, de jure and de facto, since the outset of their deprivation of liberty all the fundamental legal safeguards provided under article 17 of the Convention and other human rights treaties to which Iraq is a party. In particular, the State party should guarantee that: (a) Deprivations of liberty are carried out only by officials authorized by law to arrest and detain persons and in strict compliance with the law; (b) Persons deprived of their liberty are held solely in officially recognized and supervised places of deprivation of liberty; (c) All persons deprived of their liberty can communicate without delay and regularly with their families, counsel or any other person of their choosing and, in the case of foreigners, with their consular authorities; (d) All deprivations of liberty, without exception, are entered in uniform registers and/or records which include, as a minimum, the information required under article 17 (3) of the Convention; (e) Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officers responsible are adequately sanctioned; (f) Any person with a legitimate interest can have prompt and easy access anywhere in the territory to at least the information listed in article 18 (1) of the Convention.*⁸

The follow up report submitted by Iraq mentions that "article 19(12) of the Iraqi Constitution contains an important provision prohibiting secret detention", adding that article 19(13) of the Iraqi Constitution requires that the preliminary investigative documents be submitted to the competent judge within a period of time of maximum 48 hours, adding that "several articles of Memorandum No. 2 of 2003 of the (dissolved) Coalition Provisional Authority on the management of prisons and detention facilities prohibited secret detention" including through recording all prisoners in prisons' files.⁹

Iraq's follow up report remains completely silent on the practical implementation of this legislation. It moreover fails to address recommendations asking for deprivations of liberty to be carried out only by officials authorised by law to arrest and detain, and on the right of detainees to communicate regularly with their family and counsel.

⁶ Alkarama, *ibid.* p. 15.

⁷ Articles 12(1) and 12(2)(g) of the Iraq Supreme Criminal Tribunal Act.

⁸ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Iraq under article 29 (1) of the Convention*, 13 October 2015, CED/C/IRQ/CO/1, para.29.

⁹ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Iraq under article 29 (1) of the Convention, Addendum, Information received from Iraq on follow-up to the concluding observations**, 31 May 2017, CED/C/IRQ/CO/1/Add.1, para. 5.

Alkarama is extremely concerned that secret and *incommunicado* detention have remained widespread in the country in the past two years, including by armed groups enjoying the State's support. For instance, Alkarama continued to document cases of abductions leading to enforced disappearances carried out by the PMU. While they do not have any legal power to arrest and detain, it is common practice that they carry out arrests and hold inmates in informal places of detention, without any judicial oversight.

This is the case for instance of **Wae Al Jabouri**,¹⁰ a 54-year-old lawyer, head of the NGO Human Rights Advisory Council, and one of the main organisers of the demonstrations against corruption in his region in the Babil Governorate,¹¹ who was abducted on 19 August 2015 after he left his house in Al Hashimia in the city of Hilla, Babil Governorate, to go to the offices of the Human Rights Advisory Council in Baghdad. He was stopped and arrested at a nearby checkpoint controlled by the Liwa Al Sadr militia, part of the PMU. Al Jabouri's family could not obtain any information on his fate and whereabouts from their inquiries at the local police. Informal accounts, however, referred that he would be detained in a military camp in the north of Babil and belonging to the Hezbollah Brigade, another militia part of the PMU.

It was moreover largely documented that the PMU have been widely using secret and *incommunicado* detention in informal facilities against individuals fleeing areas under the Islamic State (hereinafter "IS") control or combat zones. For instance, as part of the operations to retake Mosul city, the PMU routinely abducted young males, after a quick ID screening, for alleged affiliation to the IS.¹² As their families were not subsequently informed of their place of detention, fate and whereabouts, they eventually disappeared.¹³

Representatives of the PMU as well as a member of the Iraqi Council of Representatives admitted PMU-affiliated militias were arresting and detaining individuals and added that arrestees were taken to Baghdad and brought before a PMU-dedicated judge.¹⁴ A PMU court was indeed established between late 2014 and early 2015 with a judge assigned to prosecute members of PMU militias who committed abuses.¹⁵ However, going beyond its jurisdiction, in practice, the PMU judge is also *de facto* adjudicating individuals arrested by the PMU. This raises numerous concerns: indeed, not only the PMU does not hold any legal power to arrest and detain, but by bringing suspects before a military judge – as it seems to be –, it puts them at risk of being subjected to an unfair trial.

5. Investigation on the fate of the disappeared

The State party should redouble its efforts in order to ensure that all persons who were forcibly disappeared and whose fate is not yet known are searched for and located without delay and that, in the event of death, their remains are identified, respected and returned. In this sense, it should also guarantee the effective coordination and cooperation between the authorities responsible for searching for disappeared persons and identifying their remains in the event of death, and ensure that they have the necessary financial, technical and human resources to enable them to carry out their work promptly and effectively. In addition, the State party should adopt the measures necessary to ensure the swift entry into force of the amendment to the Protection of Mass Graves Act (Act No. 13 of 2015), as well as the effective implementation of the legislative framework concerning mass graves.

¹⁰ Alkarama, *Iraq: Human Rights Activist Disappeared for a Year by State Sponsored Militia*, 26 August 2016, <https://www.alkarama.org/en/articles/iraq-human-rights-activist-disappeared-year-state-sponsored-militia> (accessed on 11 July 2017).

¹¹ Alkarama, *Iraqis protest over power outages and poor services*, 3 August 2015, <http://www.aljazeera.com/news/2015/08/iraq-electricity-services-protests-150803043651896.html> (accessed on 11 July 2017).

¹² Human Rights Watch, *Iraq: Men Fleeing Mosul Held in Secret*, <https://www.hrw.org/news/2017/02/02/iraq-men-fleeing-mosul-held-secret>, 2 February 2017, (accessed on 11 July 2017).

¹³ *Ibidem*.

¹⁴ Belkis Wille, "Where are Mosul's Detainees Going?", *Human Rights Watch*, 19 March 2017, <https://www.hrw.org/news/2017/03/19/where-are-mosuls-detainees-going> (accessed on 11 July 2017).

¹⁵ *Ibidem*.

*The Committee recalls that, in the light of article 24 (6) of the Convention, the State party should ensure that investigations continue until the fate of the disappeared person has been clarified.*¹⁶

In Iraq's follow up report, it is mentioned that "the Supreme Judicial Council, represented by the Presidency of the Public Prosecution Service, is vigorously addressing all requests from relatives of disappeared persons whose fate is unknown. It receives the requests from the Human Rights Division that was established in the Presidency of the Public Prosecution Service"¹⁷ and that "[t]he Human Rights Department in the Ministry of Defence also receives through its hotlines complaints and requests from citizens for research and investigations into the fate of missing persons, which are conducted without delay in cooperation with the military sectors and in coordination with the security services in order to bring the sufferings of victims' families to an end."¹⁸

Through thorough documentation of individual cases of enforced disappearances to this Committee, and their subsequent follow up, Alkarama witnessed that the above mentioned mechanisms for investigating the fate of the disappeared are ineffective. In several cases, following the Iraqi government's request, relatives of the missing went and reported the disappearance to the offices of the Human Rights Directorate in the Ministry of Interior. However, they were met with mockery or insults and even told that, "in the past few years no disappeared person had been found". In other cases, their requests were dismissed and they were asked by the office's employees to contact other institutions. Even more concerning is the fact that in some instances, relatives of inquiring about the fate and whereabouts of the disappeared with the Iraqi authorities, including after filing claims at police stations, were also subjected to enforced disappeared, in what appears to be a clear act of retaliation.¹⁹

Given the ineffectiveness and the risks deriving from submitting requests to search for the missing at the national level, an increasingly number of families of disappeared decided to pursue action with international mechanisms, filing individual complaints to this Committee. The vast majority of cases Alkarama submitted to the CED in the past few years have not been clarified by the Iraqi authorities; the few cases in which the victim's fate was clarified, it was based on information provided by their relative, which shows that Iraq did little effort to investigate enforced disappearances.

All these elements lead us to conclude that, despite what is put forward in Iraq's follow up report, the recommendations issued by this Committee on the investigation of the disappeared have so far not been implemented.

¹⁶ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Iraq under article 29 (1) of the Convention*, 13 October 2015, CED/C/IRQ/CO/1, para.34.

¹⁷ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Iraq under article 29 (1) of the Convention, Addendum, Information received from Iraq on follow-up to the concluding observations**, 31 May 2017, CED/C/IRQ/CO/1/Add.1, para. 9.

¹⁸ *Ibid.* para. 10.

¹⁹ Alkarama, *Iraq: Enforced Disappearance of Brothers Al Janabi From Babil Governorate Since November 2016*, 31 March 2017, <https://www.alkarama.org/en/articles/iraq-enforced-disappearance-brothers-al-janabi-babil-governorate-november-2016> (accessed on 24 July 2017).