



STATEMENT OF THE UN COMMITTEE ON ENFORCED DISAPPEARANCES UPON THE CONCLUSION OF ITS VISIT TO IRAQ:

Today, 24 November 2022, the Committee on Enforced Disappearances concludes its visit to Iraq. This is the second visit of the Committee to a country under article 33 of the International Convention for the Protection of All Persons from Enforced Disappearance. Under this disposition, "If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State party concerned, request one or more of its members to undertake a visit and report back to it without delay".

The Committee is a collegiate body composed of 10 independent experts, appointed by the States party to the Convention for the Protection of all Persons from Enforced Disappearances. Its role is to monitor the implementation of this treaty.

For the purpose of its visit, the Committee appointed three of its members: Barbara Lochbihler and Mohammed Ayat, both Country Rapporteurs for Iraq and vice-chairs, and Carmen Rosa Villa Quintana, Chair of the Committee. The Delegation was accompanied by the Executive Secretary of the Committee: Albane Prophette-Pallasco and was supported by UNAMI. On behalf of the Committee, the Delegation wishes to thank UNAMI for the extent and quality of their support for the organization and development of the visit.

The Committee underlines the importance of Iraq's acceptance of this visit in November 2021. This is a clear expression of the State's openness to international scrutiny and support before a situation of high concern.

Before anything else, the Delegation underlines that it is fully conscious of the serious challenges faced by the State party due to the various waves of atrocities, including disappearances and enforced disappearances suffered by all the Iraqi people.

We express our gratitude for the cooperation and facilities provided by the State party before and during the visit, which has allowed us to meet with authorities related to the issue of enforced disappearances, both at the federal and regional levels, including the Kurdistan Region of Iraq. In this context, we visited Anbar, Baghdad, Erbil, Mosul and Sinjar. We held 24 meetings with more than 60 authorities, with four delegations of the High Commission for Human Rights in the visited governorates, and had seven meetings with 171 victims, and civil society organisations from Anbar, Baghdad, Kirkuk, Diyala, Erbil, Ninewa and Sallah Al Din governorates. We accompanied an exhumation and visited a provisional centre of DNA identification in Sinjar. We also visited the Medico Legal Directorate and four places of deprivation of liberty. The delegation also held consultative

meetings with the United Nations presence in Iraq and representatives of member States, as well as the International Organizations involved in the fight against disappearances.

The full report of the visit will be discussed and adopted by the plenary of the Committee during its 24th session, which will take place in Geneva from 13 to 25 March 2023. This statement presents the preliminary findings of our visit from 12 to 24 November 2022, without prejudice to the future adoption of the Committee's report.

The Delegation further recalls that this visit constitutes a new step in the Committee's interaction with Iraq. Through the procedures contained in the Convention, the Committee already transmitted specific recommendations to the State party as to the measures it should take to implement the Convention. Firstly, on the occasion of the examination of the reports of the State and their respective follow-up in 2015, 2016, 2020 and 2022. Secondly, through the procedure of Urgent Actions under which, as of today, the Committee has registered 555 individual cases of disappeared persons and has requested the State party to adopt immediate measures to search for them and to investigate their alleged enforced disappearance.

Throughout these processes, the State party has demonstrated its willingness to interact and work with the Committee. Positive steps have been taken, such as the formation of the Inter-ministerial Committee led by the Human Rights Directorate of the Ministry of Justice to gather information related to disappeared persons, particularly those who have been reported through the Urgent Action procedure of the Committee, and the adoption of the Yezidi Survivors' Law. Unfortunately, as of today, the level of implementation of our recommendations remains deficient, and the State party's replies to the Committee's urgent actions is unsatisfactory.

In that context, the Delegation regrets that throughout the visit, its exchanges have demonstrated a prevailing lack of clarity within its interlocutors as to the notion of enforced disappearance. As highlighted by the Committee in 2015, 2020 and 2022, the absence of an explicit definition of enforced disappearance as an autonomous crime in domestic legislation is of high concern.

Indeed, whatever the modalities and objectives of the actions developed, to work on a crime that does not exist in the national legal framework is illusory.

The current normative silence creates high level of confusion. In that connection, the Delegation notes for example that the majority of its interlocutors referred to the term "missing". While enforced disappearance is indeed included in this notion, it also covers situations ranging from cases of disappearance caused by natural disasters to cases of disappearance amounting to crime against humanity. In the meantime, the term "disappearance" always refers to acts committed by human beings, while "enforced disappearances" only refer to the cases committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State.

Consequently, under the notion of "missing", the cases of enforced disappearance cannot be clearly identified, and the authorities do not count with the necessary information to establish adapted strategies to eradicate and prevent this crime.

The Delegation thanks the State party for the reiterated references it has made to the 555 Urgent Actions registered under article 30 of the Convention when requested to provide specific figures of cases of enforced disappearances. However, the Delegation highlights that these cases cannot be considered as a comprehensive reflection of the reality. The Delegation recalls that the UN Working Group on Enforced and Involuntary Disappearances has transmitted a total of 16575 cases to Iraq from 1980 to 2013. It also wishes to underline the hundreds of allegations of enforced disappearances received from different governorates during its visit.

The Delegation takes note of the last amendments that have been included in the draft bill on enforced disappearances. However, it is concerned that the actors who should be consulted on such amendments are usually confused as to the version to be discussed. This confusion is aggravated by the existence of other related bills such as the bill on missing and the project of reform of the criminal code.

The State party must urgently determine the way it wishes to proceed to ensure this legislative reform, and to ensure its full compliance with the Convention for the Protection of all Persons from Enforced Disappearances.¹ This process cannot be further postponed: it constitutes a conventional obligation of the State party, and it is a preliminary condition for the effectiveness and efficiency of any future strategies and policies related to enforced disappearances.

As of today, the information available about enforced disappearances remains unprecise and unreliable. Figures officially transmitted by the State party suggest that the total of “missing people” amount to 250,000 to 1,000,000 since 1968. These figures do not enable the identification of the cases that could amount to enforced disappearances.

The Delegation takes note of the databases that exist in the visited institutions. Nonetheless, these do not always include specific entries related to enforced disappearances, or to existing crimes that could be considered as “tantamount to enforced disappearances”. In addition, these registers are not interconnected.

In this context, it is urgent that the State party establish a centralized interconnected register of disappeared persons. The Delegation welcomes projects currently under discussion that go in this direction. Such register shall indeed allow the interconnection of available information between all responsible authorities and institutions; and it shall enable the identification of all alleged and confirmed cases of enforced disappearances, as well as existing patterns.

For the time being, the Delegation takes note of the division usually presented by its interlocutors between the disappearances perpetrated in the Ba’ath era in the Federal Iraq and the Kurdistan Region (1968-2003); during the 2003 to pre-ISIL period; during the ISIL occupation and military operations against ISIL (2014-2017); and on the occasion of the 2019 Anti-Government demonstrations and the aftermath. Additionally, the Delegation has received worrying information about patterns of disappearances and alleged enforced disappearances that currently occur in different governorates, which operate

¹ In that regard, the Delegation particularly calls the attention of the State party to paragraphs 6, 7, 9(b), 10, 11 and 15 of its 2020 concluding observations ([CED/C/IRQ/OAI](#)).

simultaneously and sometimes demonstrate scenarios of collusion between State agents and non-State actors. These include:

- Alleged enforced disappearance of children, especially of Yezidi origin, who were born following the rape of their mother by Daesh: the Delegation was informed about cases in which, after their return to Iraq, the mothers had to leave their children in orphanages on a temporary basis with the intention to get them back. When they return to the orphanage, the mothers are told that their child was “given” (sold) to another family, allegedly with the direct involvement of State agents.
- Cases of disappearances following the trafficking of persons, especially women and girls, including by networks involving some State agents.
- Alleged enforced disappearances of individuals following their illegal detention, or their detention in unknown places. In these cases, a person is usually detained without an arrest warrant, and his or her family thereafter does not get any reply when enquiring about his or her whereabouts.

As regards the issue of alleged disappearances in places of detention, the Delegation underlines the urgent need for the State party to establish a central register of all places of deprivation of liberty existing on the national territory, regardless of the institution to which they belong.²

The Delegation also considers that the State party should immediately establish an independent task force in charge of cross-checking in a systematic way the registers of all places of deprivation of liberty with the names of all detainees. This way, the task force could ensure that all persons present in places of detention are indeed registered, and that their respective families or relatives are aware of their whereabouts.

Additionally, the Delegation wishes to refer to the persistent allegations related to the existence of secret places of detention. As of today, no entity has been able to verify these allegations. In view thereof, and taking into account the rejection of such allegations by the State party, the Delegation reiterates the recommendation contained in its 2020 concluding observations as to the need to “carry out an urgent, independent and impartial investigation into all allegations of secret detention [...]”.³ Taking into account the challenges to locate and access such places, the Delegation invites the State party to develop an investigation carried out by an impartial and independent commission that could gather national and international experts. Such commission could develop a fact-finding mission to verify the existence of secret places of detention in the zones where they allegedly exist, using all relevant technical means, such as satellite pictures and drones.

Whatever the patterns, profile of the victims, timeframe and alleged place of occurrence of the alleged enforced disappearances, the Delegation requested the State party to provide information about the number of judicial complaints received, of adopted sentences, and

² Currently, Iraqi places of detention depend on the Ministry of Interior, Ministry of Justice, Ministry of Defence, or on the Prime Minister (Counter terrorism, National Security Services and Iraqi National Intelligence services).

³ [CED/C/IRQ/OAI](#), paras. 16, 17

about the categories of adopted sanctions. It regrets that the State party still has not provided this information but trusts that it will do so shortly.

This information is essential to analyse the progress and challenges related to the investigation and prosecution of alleged enforced disappearances. In that connection, the Delegation recalls the preamble of the Convention in which the States parties highlight their determination “to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance”. This common objective requires the daily commitment of all actors to counter existing factors of impunity.

In this way, when the family or relatives of a disappeared person decide to submit a complaint, they confront a very complex legal and institutional framework that is under the competence of more than 13 institutions, both in Federal Iraq and the Kurdistan Region of Iraq. This complex institutional framework creates a serious overlapping of competencies that affects the accessibility and efficiency of the system. Furthermore, the legal framework does not clarify the situation as it does not specify how and to which entity to report a disappearance.

Additionally, the interinstitutional cooperation and coordination of the institutions involved in issues related to disappearances still needs to be improved. Their communication is usually done through postal correspondence that can take days to weeks. Many requests for information, support, or cooperation remain without reply. This thoroughly affects the smooth and effective development of the procedures.

The institutional framework’s current structure also promotes impunity: the competence of each institution is highly limited, and its literal interpretation promotes a dynamic of work in silos. As a result, the different institutions have adopted a fragmented approach of the processes. For example, the preamble of the Mass Graves Affairs Law refers to the submission of criminal evidence collected from mass graves to the judiciary to facilitate the process of holding perpetrators responsible for crimes of genocide, illegal burial and other crimes committed against victims. However, evidence collected from mass graves has rarely been used in criminal investigations and prosecutions of perpetrators.

Impunity is further fuelled by the lack of adequately trained human resources, and the limited allocation of the required financial support to the authorities involved in the processes related to disappearances. For example, the recently created Yezidi Survivors’ directorate still does not count with the budget and human resources it requires to fulfil its mandate. The human and financial resources assigned to the Mass Grave Directorate and to the Medico Legal Institute are also insufficient. Various interlocutors highlighted the importance to strengthen the national capacity to carry out the exhumation of all identified mass grave sites. The Delegation shares this concern, especially as other sites may be discovered, and each of them may contain various mass graves, with multiple remains. Urgent priority must be given to the consolidation of the national capacity, with the promotion of specialized training programmes and the assignments of the necessary material and financial resources. International support in that regard must be further strengthened.

Other institutions see their action limited by procedural blockage. The current situation of the Iraqi High Commission for Human Rights is particularly revealing in that regard: it has

been a year since the Commission does not have a Board of commissioners. The Delegation considers that the State party must expedite the appointment of a new Board so that the Commission can fully comply with its mandate, including as relates to alleged enforced disappearances.

In such a complex institutional framework, victims are the first affected. They are confronted with very demanding administrative requirements to claim their rights. This way, the Delegation is concerned that the families of disappeared persons must first obtain a death certificate before initiating the procedures under the martyrs' category, even when they still hope that their loved ones are alive. Additionally, most of the victims highlighted the difficulties they face to pay for the required certificate while they usually live in very precarious situations.

In the same way, the Delegation is concerned that a security screening remains necessary to request for the search of a disappeared person or to access the broader range of rights under the martyr category. If the disappeared person is on one of the "wanted list", the family and relatives lose all entitlements. Such practice fuels feelings of discrimination and revenge.

An overall feeling of discrimination also results from the absence of a unified legislation to regulate the rights of the families of disappeared persons. Instead, disappeared persons are categorized in a series of laws, policies, traditions and customs according to the circumstances of their disappearance. Their families are entitled to different rights depending on the category of their disappeared relatives.

The Delegation is also concerned about the revictimization that results from the system. The victims of an alleged enforced disappearance must address their case to an average of seven institutions to initiate the basic procedures. In each of these institutions, they must complete a different format and provide specific documentation, converting the reporting process into an administrative hurdle and source of additional suffering. As the mother of three disappeared men mentioned: "Every-time I explain the disappearance of my sons to the authorities, I get very bad. I shake, I cry, I cannot sleep anymore. I have lost all hope. And now, I am very sick. Papers, papers and nothing else happens. We have no support".

Many victims have also referred to the tremendous re-victimization they suffer because of widespread practices of extortion. Following a disappearance, the families are frequently contacted by individuals who request them to pay large sums of money in exchange of information, photos, or videos of their loved ones. And despite these pieces of evidence, the disappearance continues.

Other victims described how they have been requested to pay high amounts of money in exchange for the release of their disappeared loved one. In some cases, the disappeared person is indeed released. Other times, the money is taken but the loved one never appears. These practices of extortion seem to be widespread and are of particular concern. They require immediate investigation and sanction.

The revictimization also results from the threats, reprisals and intimidations suffered by victims. All this generates an inhibiting effect and a culture of non-reporting, which contributes to the invisibility of many disappearances, and to their impunity.

In this sense, it is imperative to adopt measures of attention and integral reparation for the victims, with a gender and multicultural approach. It is also a priority to consider the aggravated impact of this overall situation on the children of the disappeared persons.

Reprisals and intimidations are also suffered by human rights defenders, lawyers, civil society organizations and other individual who actively participate in the search and investigation process. In that regard, the Delegation regrets that the project of witness protection bill that was under consideration in 2015 has not been further developed. The State party must urgently implement a protection programme, with a concrete and realistic action plan, and adequate human and financial resources.

We further recall that no one who has provided information or participated in the exchanges with the Committee shall be subject to reprisals.

The challenge is immense, we recognise it. No system or mechanism can succeed without political will, effective participation of victims, sufficient financial resources and qualified and committed staff to carry out the search for disappeared persons and the required investigations.

We hereby restate that our guiding goal is not only to document the situation, but to identify ways of working with the authorities, victims and other actors to eradicate and prevent enforced disappearances.

The Committee reiterates its unwavering commitment to continue to support all victims of enforced disappearance, while urging the State to comply with its obligations under the Convention. We trust that the recommendations the Committee will adopt in March 2023 will be duly implemented and that they will contribute to solving the devastating crime of enforced disappearances in Iraq.

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