



## Enforced disappearance

### A widespread challenge

to the UN Committee on Enforced Disappearances  
the 9<sup>th</sup> session 7 to 18 September 2015

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# Geneva international Centre *for* Justice

## GICJ

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*Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.*

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*GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.*

### **Work on Iraq**

*GICJ has been tackling issues of justice and accountability pertaining to Iraq since it was established. GICJ maintains a partnership with various NGOs, lawyers and a vast civil society network within Iraq. Through these channels, GICJ is able to receive documentation and evidences of human rights violations and abuses as they occur in Iraq. GICJ continues to bring this information to the attention of relevant UN bodies in order to gain justice for all victims.*



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# Iraq

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the UN Committee on Enforced disappearances

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United Nations

Geneva

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This report is submitted, in the context of the review of the initial report of Iraq, with the cooperation of the following Iraqi and other NGOs:

The Iraqi Commission on Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), Human Rights Division at the Association of Muslims Scholars in Iraq, General Federation of Iraqi Women (GFIW), Association of Iraqi Diplomats (AID), Association of Iraqi Intellectuals and Academics (ALIA), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, and The Arab Lawyers Association- UK

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## Introduction

Iraq is facing a number of challenges, mainly the increasing threat of the so-called Islamic State of Iraq and Syria (ISIS), and wide spread human rights violations. Since early August 2015, thousands of Iraqis have demonstrated against the government over the lack of basic services and the poor living conditions across the country. They urged authorities to fight widespread corruption, and for government officials to be held accountable for poor public services.

It is important to recall the wide-scale demonstrations that took place during 2013, demanding an end to the use of the death penalty and torture within prisons; the release of arbitrary detained persons and that the government provide information to the families of missing persons arrested in previous years.

Enforced disappearance is a widespread challenge in Iraq since 2003, although the government insists that it is a problem of the past and avoids admitting it is part of an ongoing, widespread and systematic practice conducted by government forces and government affiliated militias. Both government forces and affiliated militias continue to carry out campaigns of abduction and arbitrary arrests while the government refuses to acknowledge those who were abducted or arrested.

Geneva International Centre for Justice (GICJ), working closely with Iraqi NGOs and human rights activities, has gathered extensive evidence on this issue and repeatedly brought it to the attention of the United Nations Human Rights Council and other bodies. GICJ therefore welcomes the review of Iraq's report by the Committee on Enforced Disappearances. We hope that the committee is able to take all action within its power to push for an end to this continued practice within Iraq.

## Background

The issue of enforced disappearances in Iraq has been tackled in the past by investigations focused on events that occurred between 1968 and 2003. During the past decades, Iraq was subjected of three wars and a comprehensive United Nations sanction. The first war, the war between Iraq and Iran, lasted for eight years from 1980 to 1988. During this conflict, many civilians from both sides were killed in addition to those who participated in the military operations. Civilians along the borders of the two countries were heavily affected and hundreds of them were disappeared.

The second war, the so called First Gulf War, started on 17 January 1991 when American forces and a coalition of more than thirty countries launched a comprehensive attack against Iraq using the authorisation of Security Council Resolution 678. The resolution, adopted on 29 November 1990, authorised member states allied with Kuwait to take all necessary measures to secure the withdrawal of Iraqi troops from Kuwait by the 19 of January 1991. Nevertheless, the military operation was conducted beyond the interpretation of this resolution. The forces went on to attack all Iraqi cities including residential areas, public sectors, bridges, hospitals and shelters.

This resulted in a number of casualties among civilians while hundreds of people were reported as missing.

Moreover, after the ceasefire (at the end of February 1991), groups of Iran-backed militias managed to enter in Iraq territory. They benefitted from the situation and created a kind of civil disorder, especially in the southern part of Iraq. They used their power to allow for them to summarily execute state officers, civil servants and civilians. Many people still remain missing due to these acts.

GICJ conducted a series of meetings and interviews with Iraqis who witnessed that situation and they provided different accounts than the one in the government reports. Families said that some of their relatives were taken by these militia groups and were not returned back. This part of the problem is absent from the Iraqi government report, as well as, program and legislations.

In March 2003, the United States of America, together with its main ally the United Kingdom, invaded unilaterally Iraq after failing to secure a UN Security Council resolution. The war started on 18 March by the so-called Shock and Awe, which was a huge attack on the Iraqi capital Baghdad with missiles from the air and sea. The atrocities of the war continued in the following years when the US occupation forces were trying to pacify those areas which showed severe resistance to the occupation. Civilians were the main victims of the war and subsequent occupation. Hundreds of thousands of them were killed or injured while many others are still missing. The Iraqi government is totally ignoring this factor. There is nothing in its report or projects about those who went missing during the invasion and occupation.

Due to the continuing degradation of the situation, there is no comprehensive statistic about the number of missing persons in Iraq. However, there are different resources in certain periods, such as the study of the International Commission on Missing Persons (ICMP), which put the number to be between 250,000 to over one million. To give an example of the magnitude of the suffering of the civilian population and how many people went missing during military operations, the International Committee of the Red Cross reported that between 2006 and June 2007, some 20,000 bodies were deposited at the Medico-Legal Institute in Baghdad, less than half of whom have been identified. Unclaimed bodies were buried in various cemeteries around the city.<sup>1</sup>

It was estimated that more than five millions Iraqi have been forced to leave their homes. About two million of them became refugees outside the country. On November 2009, the number of Internally Displaced Persons (IDPs) was estimated to be 2.76 million and there were more than 93,500 children of the internally displaced families missing. More recently, the UN estimated the IDPs in Iraq to be more than 3 million. This also means an increase in the number of missing persons.

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<sup>1</sup> [http://www.redcross.int/en/mag/magazine2008\\_1/4-9.html](http://www.redcross.int/en/mag/magazine2008_1/4-9.html)

GICJ receives on a daily basis a large number of first hand witness accounts and testimonies from relatives or victims of the practices of detention and abduction, expressing their concern by the lack of information about the whereabouts of their loved ones and the inactivity of the authorities to assist them.

The government of Iraq has an obligation to ensure rule of law throughout its territory. Under Article 18.1 of the Convention “each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information: (a) The authority that ordered the deprivation of liberty; (b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty; (c) The authority responsible for supervising the deprivation of liberty; (d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer; (e) The date, time and place of release; (f) Elements relating to the state of health of the person deprived of liberty; (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.”<sup>2</sup> Therefore, the reality that thousands of cases persist where close family members, interested only in the whereabouts and safety of their relatives are denied access to basic information, demonstrates how the government violates its commitment under this Convention.

From the thousands of cases of enforced disappearances reviewed by GICJ, most of the victims were abducted while they were in their daily routine way to their work, school, or to shopping centres. Some were seen being picked up by police or security forces, others by uniformed militias and piled into their vehicles. A common tactic of the government forces or militias is to shoot in the air in order to prevent people from coming near the scene. The reality is that their relatives have no information about the charges, location of the detention or the conditions that their loved ones are facing. Many of those arrested were found killed with signs of torture and thrown in public areas. The fate of the rest of the abducted remains secret. Of course, these obstacles prevent families from conducting a proper search for loved ones or having any chance of assisting them.

The bimonthly UN Human Rights Report of 16 January 2007<sup>3</sup> stated: “the situation is notably grave in Baghdad where unidentified bodies killed execution-style are found in large number daily. Victims' families are all too often reluctant to claim the bodies from the six Medico-Legal Institutes (MLIs) around the country for fear of reprisals. The deceased's families are required to obtain permission from the police station which brought the body to the MLI, but many are too afraid and believe that police officers could be responsible for the disappearances and killings [...]” Under Article 12.1 of the Convention, it is explicitly detailed that “appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared

<sup>2</sup> <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

<sup>3</sup> <http://www.globalaging.org/armedconflict/countryreports/middleeast/iraq/iraqreportun.pdf>

person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.” The reality on the ground is that fear and intimidation dominate to such an extent that families are afraid even to reclaim a body let alone launch an investigation.

The combination of all the factors surrounding situations of enforced disappearance in Iraq play an effective role in the increased number of the disappeared persons during the last thirteen years. Arbitrary arrests, torture and extrajudicial or summary executions, all increase the number of victims, many of whom remain unidentified, unreported to their families or unregistered with the governmental authorities.

### **The Legal Framework of the Enforced Disappearances in Iraq**

Although Iraq has ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CED), entering into force on 23 December 2010<sup>4</sup>, the country has not provided an effective legislation to implement it. Article 4 of the Convention states that “each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.”<sup>5</sup> In the Iraqi judicial system, there is no clear criminalization of enforced disappearance, as the government itself notes repeatedly in its report submitted to the Committee in July 2014 (CED / C / IRQ / 1).<sup>6</sup>

The state’s report reiterates that although Iraqi law does not define the offense of enforced disappearance in the terms in which it is described in the Convention, the existing legislation does reflect the *spirit and letter* of the Convention. GICJ believes that to reflect the spirit of a clear and concise such as the CED is an abstract way of addressing such an important issue. A law, although explicit, usually presents problems of interpretation in the application. Therefore, if the application depends on the *spirit* of the law, this can lead to different interpretations when tackling a matter of such importance.

Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance defines enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the

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<sup>4</sup> <http://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf>

<sup>5</sup> <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

<sup>6</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fIRQ%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fIRQ%2f1&Lang=en)

disappeared person, which place such a person outside the protection of the law.” So far, we cannot find a clear interpretation to this definition in the Iraqi legislations.

Moreover, according to the Iraqi Constitution, international conventions have no legal superiority over domestic legislation which means that the Convention for the Protection of All Persons from Enforced Disappearance has the same legal force as the Iraqi laws. The practice in Iraq shows that judges, particularly in criminal justice, adhere to the Iraqi criminal law without applying the provisions contained in the international conventions ratified by Iraq. Thus, GICJ regrets that although Iraq has ratified the CED, but the Convention has no implication on the situation.

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Iraq has adopted several legislations in recent years but these legislations failed to address all the aspects of the situation of disappearances in the country. Due to the lack of political will, no proper framework was established to deal with the numerous cases of enforced disappearances that were happened after 2003. Furthermore, all the cases brought before the Courts in the past ten years were cases that related to the period before 2003.

GICJ could not find a clear regulation about disappearances in the Iraqi laws. However, there is a very vague reference to the “missing” in Act No. 20 of 2009 and GICJ wonders how this could apply to the enforced disappearances, especially when there is no law that criminalizes these practices. Furthermore, there is no measure taken in order to prevent enforced disappearances.

The Iraqi government has enacted Act No. 20 of 2009 to provide compensation to those who have sustained damages as a result of the war, military errors and acts of terrorism. The state’s report says that “this mechanism is an important way for victims and their families to obtain redress for any injury they suffered as a result of activities including abductions and enforced disappearances carried out by armed groups, terrorist bands and criminal organizations.”

When reviewing this law, GICJ found no clear reference to “enforced disappearances” though it mentions the “missing”. Furthermore, the compensation system in this law does not confer any legal privileges to the victims of enforced disappearances in the area of reparation and compensation, or rehabilitation. From the information GICJ gathered, there are a lot of obstacles in the implementation of this law from the very slow procedures to corruption and the influence of religious figures or political parties on the way and to whom the compensation should be paid.

Iraq continues to experience waves of abductions and arbitrary arrests without a proper registration by the police, government backed militias, security forces and army units despite articles 17, 18 and 19 of the CED which require that all states parties adopt proper legislation to ensure the guarantee of information. Iraq, so far, has not declared that it recognizes Article 31 of the CED, the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by the state.

## **Iraqi Governmental Organisations**

Local regulations and all the organisations and bodies that were created after 2003 were designated to look at claims of disappearances that happened before 2003. There are however significant challenges to finding out the truth about these disappearances. Most of those in power in Iraq today were in the opposition during the 1990s. At that time, they submitted information stating that “enforced disappearances” was a widespread problem in Iraq. In order to gain international condemnation of the previous government, they submitted figures which now appear to be exaggerated. However, they are trying to use all what in their power to prove that those exaggerated figures are correct which has drained a lot of efforts and resources.

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The Iraqi government must understand that it is now its obligation, not the previous government's to set priorities and to deal with the whole problem of disappearances. The government must understand the Committee is not a court, which can put on trial the previous government members. Rather, the Committee is concerned with the obligation of the contractual party of the Convention, which is the current Iraqi government at the time of consideration. Thus, the government should answer the questions about all those disappeared in Iraq during and after the US occupation as a result of abduction, arbitrary arrests and summary executions.

## **Examples of Disappearances after 2003**

### **Fallujah**

In 2004, the American army launched a huge offensive against the city of Fallujah, in the Iraqi province of Al Anbar, in April and November of that year. The offensive was seen as a collective punishment to the population because of their non-cooperation with the occupation forces staying in their city. As a result, 75 percent of the city was destroyed; hundreds of civilians were killed and at the end buried in massive graves. Hundreds others were disappeared. Their families went on to different places trying to find any information about them but without avail.

GICJ has had direct contact with many of these families and they explained how both the American occupation forces and the Iraqi authorities refused to give them information. Until now, they are waiting to see where their loved ones are and for their rights to be recognised.

Years after the invasion of the American forces on the city of Fallujah, the population continues to feel the innumerable consequences of the devastating war and bombardments. The Iraqi government should understand that it is under obligation to investigate and find answers to the families of Fallujah disappeared persons.

Under the Convention for the Protection of All Persons from Enforced Disappearance, Article 17 establishes certain guarantees regarding detentions.<sup>7</sup> In the cases followed by GICJ and by many other organisations, a pattern has emerged. Consistently, we have found that when an arrest occurs it is unclear which authority is in charge of the detention, which ministry they are operating on behalf of, where the persons are taken and of course what the charges are against those arrested. Article 17.3 of the Convention guarantees that “each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty...The information contained therein shall include, as a minimum: (a) The identity of the person deprived of liberty; (b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty; (c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty; (d) The authority responsible for supervising the deprivation of liberty; (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty; (f) Elements relating to the state of health of the person deprived of liberty; (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; (h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.”<sup>8</sup> The lack of information recorded and available about detainees shows the failure of the part of the government to its obligations under this Convention.

However, there are no proper procedures for registering detainees and no records kept in the country. This lack of due process is further compounded by the sheer number of armed security bodies present throughout the country who are legally authorized to implement orders and detentions. The multitude of forces mean that it is not always clear during an arrest which authority is in charge of the detention, which ministry they are acting on behalf of, where the persons are taken and of course what the charges brought against the detainee are. GICJ has received numerous communications detailing that in many cases those who carry out the arrests are armed, wearing uniforms and driving government vehicles indicting that they are affiliated with government security forces. However, the government denies the arrests were carried out by their forces.

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<sup>7</sup> 1. No one shall be held in secret detention. 2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation: [...] (d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law; [...] (f) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.”

<sup>8</sup> <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

In most of the cases, detainees are left without an explanation as to why they are arrested. The United Nations Assistant Mission for Iraq (UNAMI) also recorded claims by a significant number of detainees that they did not know the reasons for their arrest or detention. Some detainees also stated that their arrest was due to failure to pay bribes not criminal acts.<sup>9</sup>

Secret prisons continue to be widely used in Iraq. The number of these prisons in the country remains unknown, which makes it difficult to track down those who are detained by Iraqi Security Forces or even pro-government militias. It is shocking to know that the number of secret detention centres in Iraq is several times more than the official one. Credible information collected by GICJ proves that there are more than 420 secret prisons in Iraq. Most of the army, police, and security units have their own secret detention. On top of that, the secret prisons operated by militias must also be taken into account.

Corruption and impunity are probably the major causes of the continuation of the problem. The actions undertaken by the authorities in Iraq are a violation of the fundamental rights of detained persons according to this Convention and other human rights instruments, as well as the government obligations under the Iraqi constitution and other domestic laws.

According to Article 19-B of the Iraqi Constitution, "unlawful detention shall be prohibited [and] imprisonment or detention shall be prohibited in places not designed for these purposes, pursuant to prison laws covering health and social care, and subject to the authorities of the State."

## Who Are the Actors?

### Ministry of Defence

The Ministry of Defence has its share in the issue of enforced disappearances. During the past 10 years, the ministry has been conducting wide campaigns of arrest and detention in certain parts of Iraq. Those who were arrested are usually labelled as "terrorists". According to GICJ's information and contacts from Iraq, most of those arrested were not registered, their families were not informed and even the local authorities were not given sufficient information about them.

As an example, under the campaign officially named "Thár al-Shuhadá" or "Martyrs' Revenge", over a thousand people were arbitrarily arrested and scores killed in just a two-week period, all under the guise of combating terrorism. The first phase of the "Martyrs' Revenge" operation took place from the beginning of August 2013 to 12 August 2013, the end of the Muslim holiday Eid Al-Fitr. In line with the common official rhetoric used to justify arrests, all those arrested and killed were referred to as "terrorists". According to the official statement of 20 August 2013, the number of arrests reached 1,500.

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<sup>9</sup> See GICJ statement on rule of law: [http://www.gicj.org/NOG\\_REPORTS\\_HRC\\_22/ruleoflaw.pdf](http://www.gicj.org/NOG_REPORTS_HRC_22/ruleoflaw.pdf)

The allegation that all those arrested were terrorists was refuted by Iraqi Parliament members. On 15 August 2013, Mohammed Iqbal, a representative from Ninevah made it clear that the parliament supports efforts to detain terrorists, but stressed that those arrested in the campaigns were innocent. Iqbal pointed to the fact that the same story had been repeated time and again since the onset of the occupation—hundreds of “terrorists” are arrested only to later be found innocent— with the innocent always being the victims, attacked by both terrorists and the government.

### Ministry of Interior

In the early stages of 2003, the occupation authority (Coalition Provisional Authority-CPA) dissolved all the Iraqi Army and Security units. This created a huge security vacuum and a situation of disorder. After that, the CPA established new security forces, police and army. The key problem however remains that the newly formed security forces were comprised primarily of militia members. Those militias were not trained to behave as a rule of law protection unit. Actually, they were trained in an ungovernable environment. So, for them, they use their authority and power as a means to further their own interests and to take action against all those who they believe that represent an opposition or threat to their power.

There are extensive reports of violence against civilians, including reports by the US State Department and UN mechanisms. As cited earlier, corruption remains also a serious problem at that ministerial level, as well as the existence of an obvious lack of legal framework and competence in some of the protection forces in the Ministry of Interior.

The US State Department annual human rights report for 2013 explains, “the Iraqi Security Force consists of internal security forces administratively organized within the Interior Ministry, external security forces under the control of the Defence Ministry, and the CTS. Interior Ministry responsibilities include domestic law enforcement and maintenance of order relying on the Federal Police, Provincial Police, Facilities Protection Service, and Department of Border Enforcement. Conventional military forces under the Defence Ministry are responsible for external defence; however, they often work with elements of the Interior Ministry to carry out counterterrorism operations and internal security. The CTS reports directly to the prime minister and oversees the Counterterrorism Command, an organization that includes the three Special Operations Forces brigades.”<sup>10</sup>

The report goes on further to say: “the government rarely investigated reported human rights violations committed by Iraqi Security Force personnel and rarely punished perpetrators. There were continued accounts of torture and abuse throughout the country in Interior Ministry police stations and Defence Ministry facilities, reportedly primarily during detainee interrogations. The Interior Ministry did not release the number of officers punished during the year, and there were no known court convictions for abuse. The government did not take widespread action to reform

<sup>10</sup> <http://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm#wrapper>

security forces to improve human rights protection.”<sup>11</sup> According to this information, the Iraqi government is not respecting its commitments in order to improve the situation of the human rights in the country in the near future.

The report of the Human Rights Office of UNAMI, issued on September 8th 2005<sup>12</sup>, was very explicit, linking the campaign of detentions, torture and extra-judicial executions directly to the Interior Ministry and thus also to the US-led Multi-National Forces, who reorganised the Ministry of Interior and established the Special Police Commandos. John Pace, the former Chief of the Human Rights Office of UNAMI who left Baghdad in January 2006, told U.K. newspaper The Independent on 26 February 2006 that up to three-quarters of the corpses stacked in the city's mortuary show evidence of gunshot wounds to the head or injuries caused by drill-bits or burning cigarettes. Much of the killing, he said, was carried out by Shia Muslim militia groups under the control of the Ministry of the Interior.

Last year, the UNAMI report on the Protection of Civilians in the Non International Armed Conflict in Iraq: 5 June – 5 July 2014, pointed out cases of killings and other violations committed by security forces of the Iraqi government. This clearly indicates a continuing policy by the governmental bodies. Summary executions, absence of fair trial standards, the use of death penalty, enforced disappearances and other grave human rights violations are unfortunately realities of the Iraqi present social situation.

### Human Rights Ministry

Coalition Provisional Authority Order No. 60, given on 22 February 2004, established the Human Rights Ministry. The initial task of the ministry should be the promotion and protection of human rights. Unfortunately, the Ministry has not shown any sincere efforts in this direction. After reviewing the activities of the ministry, GICJ found that there are two main issues which dominate the ministry's activities: alleged human rights violations in Iraq prior to the invasion of 2003 and alleged violations committed by authorities after 2003.

Numerous factors influence the fact that Iraqi people continue witnessing the impunity in its country and it is essential to include here the effect of corruption in the Iraqi judicial system. Military and police officials systematically violate human rights without consequence on orders from high-ranking officials. Fair trials are impossible because many judges are controlled by the government, either by fear, threats, or bribes. The post-invasion system of corruption allows for innocent Iraqis to be punished and killed; guilty government and security officials to remain free and protected; and punishes and destroys those who attempt to hold up the law and pursue justice. Such absence of rule of law has considerable effects on the issue of enforced

<sup>11</sup> <http://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm#wrapper>

<sup>12</sup> [http://www.ohchr.org/Documents/Countries/Sep-Oct05\\_en.pdf](http://www.ohchr.org/Documents/Countries/Sep-Oct05_en.pdf)

disappearances when the legal system is incapable to deal with the circumstances of all these human rights violations.<sup>13</sup>

Nothing has been done by the Ministry of Human Rights against these violations. On the contrary, it is usually defending the violations by the militias which is not surprising as the current Minister of Human Rights, Mr. Mohammed Mahdi Al-Bayati, is a militia leader. According to his CV on the ministry's website, he serves as Secretary General of the North (of Iraq) branch in the Badr Brigade, the Iranian militia created during the Iraq-Iran War of the 1980s.<sup>14</sup>

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The problem is that the Ministry of Human Rights does not see that the militias are committing any human rights violations; on the contrary, they describe these abuses as acts of defending the Iraqi people.

### ISIS

The Islamic State of Iraq and Syria (ISIS) started committing abuses and human rights violations in Iraq in June 2014.

In the Anti ISIS Coalition, 62 countries are contributing to this fight against this terrorist group and what it is essential to highlight is that, even in a context of fight against criminals, the humanitarian law and the human rights law should always been respected by all parties.

Although this report is focusing on Iraq's responsibility as state party to the Convention for the Protection of All Persons from Enforced Disappearance, GICJ deplores the severe human rights violations committed by the so-called Islamic State of Iraq and the Levant (ISIL/ISIS), which may amount to war crimes, crimes against humanity and possibly genocide, as stated in the report of the Office of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution S-22/1 (A/HRC/28/18, para.78).

Iraq as a state party should insure that all the measures taken in the fight against ISIS should respect its human rights obligations including its obligation under the CED.

### Militias

Operating with total impunity, pro-government militias in Iraq continue to perpetrate human rights abuses and violations of international law.

The militias' rise to power in Iraq and their practices such as torture and secret detentions can be traced to 2003 and the US-led invasion. Specifically, Order 2 and 91 given during the tenure of

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<sup>13</sup> <http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-iran-gulf/iraq/113-failing-oversight-iraqs-unchecked-government.aspx>

<sup>14</sup> <http://www.sqalshiyookh.com/%D8%A7%D9%84%D8%A7%D9%82%D8%B3%D8%A7%D9%85-%D8%A7%D9%84%D8%A3%D8%AE%D8%B1%D9%89/%D9%81%D9%8A%D8%AF%D9%8A%D9%88-%D8%A7%D9%84%D9%85%D9%88%D9%82%D8%B9/item/6980-%D9%88%D8%B2%D9%8A%D8%B1-%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D8%A7%D9%86%D8%B3%D8%A7%D9%86-%D9%85%D8%AD%D9%85%D8%AF-%D9%85%D9%87%D8%AF%D9%8A-%D8%A7%D9%84%D8%A8%D9%8A%D8%A7%D8%AA%D9%8A-%D8%AA%D9%86%D8%AA%D9%87%D9%83-%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D8%A7%D9%86%D8%B3%D8%A7%D9%86>

the Coalition Provisional Authority, a transitional government put together after the invasion in 2003, had tremendous impact on the current security disarray.

Order 2, given on the 23<sup>rd</sup> of May 2003, dissolved all military, ministries, paramilitaries and other organizations.<sup>15</sup> This order given by Paul Bremer, the U.S. Administrator of Iraq under the Coalition Provisional Authority represents one of the largest failings of the United States in the occupation of Iraq.

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The role of these militias within the framework of the Iraqi security forces has grown from one of support to, in many cases, one of control.<sup>16</sup> This is despite the fact that the Iraqi Constitution prohibits militias “outside the framework of the armed forces.”<sup>17</sup> In many cases the militias are indistinguishable from the armed forces because they have been placed as part of the armed forces. Even for those militias that operate outside the armed forces, there have been no efforts on the part of the government to uphold the law prohibiting these forces. This means the problem with militias is twofold; there are the militias who have been absorbed into the armed forces committing human rights abuses as well as those independent militias who are doing the same.

There are over 50 militias in Iraq with all of them exercising the authority of arrest, detention, torture and in many cases summary executions. The largest and most brutal ones are Mahdi Army, Badr Brigades, Asa’ib Ahl al-Haq and Kata’ib Hizbullah<sup>18</sup>.

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<sup>15</sup>Those entities dissolved include: the Ministry of Defence, the Ministry of Information, the Ministry of State for Military Affairs, the Iraqi Intelligence Service, the National Security Bureau, the Directorate of National Security, the Special Security Organization, the Murafaqin and the Himaya al Khasa (Special Guard), the Army, the Airforce, the Navy, the Air Defence Force, the Republican Guard, the Special Republican Guard, the Directorate of Military Intelligence, the Al Quds Force, Emergency Forces, the paramilitaries (Saddam Fedayeen, Ba’ath Party Militia, Friends of Saddam, Saddam’s Lion Cubs), the Presidential Secretariat, the Presidential Diwan, the Revolutionary Command Council, the National Assembly, the Youth Organization, National Olympic Committee, and Revolution, Special and National Security Courts.

<sup>16</sup>Office of the United Nations High Commissioner for Human Rights, “Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups”, Human Rights Council, 28<sup>th</sup> session, Agenda item 2, UN Doc A/HRC/28/18, para 51.

<sup>17</sup>“Iraqi Constitution,” See Section 1, Article 9(b) [http://www.iraqinationality.gov.iq/attach/iraqi\\_constitution.pdf](http://www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf)

<sup>18</sup> The smaller militias are: Al A’mal al Islami militia, under command of religious leader Abd Alkareem Al Madrass; Al Mu’tamar Al Watani Militia, under command of Ahmad Al Chalabi; Hizb Al Dawa militia, under command of Ibraheem Al Ja’fari; Tajamu’ Shaheed Al Mihrab, under command of Ammar Al Hakeem; Yad Allah militia, under the command of Ahmad Al Sa’edi; Thar Allah militia, under command of Waleed Al Hilli; Hizb Al Dawa militia, Iraq branch, under command of Abdelkareem Al Enzi; Kataib Al Qassas militia, under command of Abdullah Al Lami; Tajamu Al Shabiba Al Islamiya, under command of Muntasar Al Mawssawi; Militia linked to the AalAlbayt world office, under command of Fadhil Al Kaabi; Jam’iyat Aal Albayt militia, under command of Mussa Al Hassni; Al Qassas Al’Adel militia, under command of Majed Ali Hussein; Husayniat Al Bratha militia, under command of Jalal Al Din Al Saghir; Hizbullah militia, under command of Kareem Mahood Al Muhamdaw; Harakat Hizbullah militia, under command of Hasssan Al Sary; Ghassl Al ‘Ar militia, under command of Jafar Al Raghif; Kataib Ashbal Al Sadr militia, under command of Mohammed Hussein Al Sadr; Kataib Thar Al Hussein militia, under command of Ali Ghassan Al Shahbandari; Kataib Malek Al Ashtar militia, under command of Jafar ‘Abbas; Kataib Al Dama Al Zakia militia, under command of Muayad Ali Alhakim; Jaysh Al Mukhtar militia, under command of Atta Allah Al Hussein; Hizb Al Amal Al Islami militias, under command of Sadek Ali Hussein; Al Haraka Al Mahdia militia, under the command of Muhammed Ali Al Khurassani ; Al ‘Adala militia, under command of Samir Al Sheykh Ali; Baqiyat Allah militia, under command of Mustafa Al Obadi; Lajnat Al Kawthar Li l’adatl’mar Al’otobat Al Iraqya militia, under command of the Iranian citizen Mansoo Haqiat; Al Tali’a militia, under command of Ali Al Yassiri; Al Fath militia, under command of Kadhum Al Sayyed Ali.

The year of 2014 saw the emergence, with government approval, of “Al Hashd Al Shaabi” as an umbrella of the militias in order to fight against ISIS. This militia is responsible of some of the most horrific crimes against the people living in the areas disputed to ISIS by the Iraqi government, and pursues a sectarian agenda which aims to systematically destroy entire villages and uproot their inhabitants in a widespread sectarian cleansing. This happened in Diyala, Salaheldin and Ta’imim province. Al-Hashd Al- Sha’bi has abducted and detained hundreds of civilians but, so far, nobody knows where they are.

## **UN role**

The UN has had a long presence in Iraq, and after 2003, the United Nations Assistance Mission to Iraq (UNAMI) was established by the 2003 UN Security Council Resolution 1500. One component of the mission is to promote the protection of human rights and judicial/legal reform. GICJ believes that the task of UNAMI is a huge one. Nevertheless, according to the information and assessment gathered from Iraqi activists and non-governmental organisations, UNAMI has not been allowed to tackle the issue of enforced disappearances in the proper way. It was encouraged to deal only with cases reported to have happened prior to 2003. That is mainly because the legal framework and the programmes of the Iraqi government were focusing on that period only. UNAMI, a UN representative office, was expected to insist to deal with the whole situation of enforced disappearances regardless of when the disappearances occurred.

## **Iraq’s Report**

The state report submitted by the Iraqi government to the committee was not adequate to the real situation. The state, in the introduction, says it has actively collaborated with UN mechanisms and with other tools provided by international law. Yet, in its last UPR, Iraq rejected recommendations on acceding to the Rome Statute and on abolishing the death penalty.

There is no respect of International Human Rights standards in Iraq. That is very clear when it comes to arbitrary arrests, the condition of detention, and fair trials.

Iraq in its report mentions the existence of violence against the state by religious and ethnic groups. This statement is not representative of the real situation and its legal implication. In Iraq, there is no fight between ethnic or religious groups. What we find is a complex situation of internal conflicts due to the climate of insecurity and violence created by the government itself by its practice of allowing injustices and committing human rights violations. This internal situation is becoming particularly worrying because of the participation of the militias.

As UNAMI pointed out in its report on the Protection of Civilians in the Non International Armed Conflict in Iraq: 5 June – 5 July 2014, “there is a non-international armed conflict ongoing in Iraq. Parties to this conflict are comprised of the Government of Iraq and ISF (Iraqi Army and police) as well as government affiliated militias, fighting against a variety of armed

and terrorist groups, including those operating along largely sectarian lines, most notably ISIL....”

Regarding disappearances before 2003, the issue has been tackled in depth by the Special Rapporteurs Mr. Max Van der Stoep (1991-1999) and Mr. Andreas Mavrommatis (1999-2004). During that period, members of the Iraqi authorities, who have come to power after 2003, submitted many claims and made statements that have not yet been proven.

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Iraq mentions the Article 322 of the Criminal Code, which provides “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’ rigorous or ordinary imprisonment. The penalty shall be up to 10 years’ rigorous or ordinary imprisonment if the offence is committed by a person wearing an official uniform without authority to do so, or who uses a false identity or who produces a counterfeit warrant claiming it was issued by a legitimate authority.”

They also mention Article 323 of the Code which states “any public official or public servant who knowingly violates his or her legal duty by inflicting or ordering the infliction on a convicted person of a penalty more severe than that imposed by law, or a penalty to which the person has not been sentenced, shall be liable to imprisonment.” However, people belonging to an official body of the Interior Ministry wearing the official uniform, perpetrated most of the enforced disappearances in Iraq after 2003 and no legal proceeding has been undertaken against them. The importance of the existence of these laws is that officials may be brought to justice for such violations, but we have not found cases relating to these articles passing through Iraqi courts. Article 7 of the Convention clearly states that each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.<sup>19</sup> The government has not only failed to show its commitment to this Convention but has also facilitated the creation of an environment in which government officials and security personnel enjoy a state of impunity and continue to violate human rights, free from fear of repercussions. In the state report we also find mentioned the Anti-Terrorism Law no. 13 of 2005 and Article 4 which allows the Iraqi Security Forces to arrest anyone suspected of terrorism. The bar for the amount of evidence that leads to suspicion is non-existent, so in many cases civilians are detained with no actual reason to suspect them of terrorism. Furthermore, this law is not used in any way to prevent the phenomenon of enforced disappearances. On the contrary, this law was widely used to legitimize authorities detaining thousands of people without real charges under the pretext of fighting terrorism, and most of them, disappeared without further information.

UNAMI in 2014 recommended that Iraq amend the Anti-Terrorism Law no. 13 of 2005 to ensure that its provisions comply with International Human Rights Law and the Constitution of Iraq, including with regard to rights of due process. So far, there has been no positive response to this and others recommendations aiming to reform the Iraqi judicial system.

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<sup>19</sup> <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

Article 92 of the Code Criminal Procedure, also mentioned in the report submitted by the Iraqi government, points out that “no one may be arrested or apprehended except pursuant to a warrant issued by a judge or a court and in accordance with the conditions established by law”. However, in most of the cases what GICJ finds are detentions without warrant or a late one given days after the arrest which allow the continuation of the practice of enforced disappearances, because nobody knows where these people are arrested or what condition they are in.

## Recommendations

- The Iraqi government must take urgent actions to stop all arbitrary and unlawful arrests and abductions
- The Iraqi authorities must urgently register all detainees and give access to their families, including to those in secret prisons
- The Iraqi government must ensure that there is clarity regarding the authority carried by all division of its security forces; multiple forces should not hold the authority to detain individuals
- All militias and other armed group should be criminalized and abolished
- Request the UN Working Group on Enforced or Involuntary Disappearances to focus on the disappearances in Iraq in its future reports
- The Iraqi government should accept the competence of the Committee on enforced disappearance
- Changes to the Iraqi laws should be undertaken in order to reflect the provisions of the Convention
- A comprehensive strategy should be formulated aiming to search for all those disappeared persons in Iraq, before and after 2003
- The UN should take an effective role in ensuring that the issue of enforced disappearances be handled in a way to find answers for all families of those missing persons in Iraq, regardless of date, reasons, and ethnic or religious background



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