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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Human rights situations that require the Council's attention

**Joint written statement* submitted by the International
Organization for the Elimination of All Forms of Racial
Discrimination (EAFORD), Association Ma'onah for Human
Rights and Immigration, Indian Movement "Tupaj Amaru",
International-Lawyers.Org, United Towns Agency for North-
South Cooperation, non-governmental organizations in
special consultative status, International Educational
Development, Inc., World Peace Council, non-governmental
organizations on the roster**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language(s) of submission only.



Enforced disappearance in Iraq: retribution and domestic terrorism

Introduction

The problem of enforced disappearance has been recognized as a global problem for several decades. In 1992, the severity of the problem led the UN General Assembly to adopt a resolution declaring that all persons should be protected from enforced disappearance.¹ This declaration was followed about fifteen years later by a legally binding treaty on the subject: International Convention for the Protection of All Persons from Enforced Disappearance. Unfortunately, this convention has only 60 state parties and 49 signatories to date, while 88 countries have taken no action at all toward the convention.²

The Republic of Iraq became a party to the Convention in 2010. The government of Iraq had been reinstated in 2005 and was responsible for rebuilding both the governing structure and physical infrastructure of the country. However, instead of using the national oil income (USD 100 billion yearly) and the overwhelming support of United Nations bodies and the international community, the past 16 years has shown the total failure of the government to provide even the basic services to the population. In that time, the country has been ravaged by the rise of numerous militia groups vying for control and a central government preoccupied with corrupt schemes and the enrichment of top officials. The subsequent rise of ISIL in 2014 was a direct result of the government's failure to empower state institutions and establish the rule of law. Rather, it used the pretext of fighting terrorists to allow the creation of more militias, like the al-Hashd al-Sha'bi militias, which has only exacerbated Iraq's problems by entrenching the power of militias and weakening state institutions.

Lawlessness and Militias

In this context, it should be no surprise that in Iraq today the rule of law is not a consistent basis for government activity. The official promise of observing and upholding the rule of law has become mere words, uttered as a platitude because it is the appropriate thing to say. Unfortunately, as many human rights mechanisms well know, the reality is that with militias now in control of critical government functions, legal proceedings are commonly subject to outside meddling by political interests including militias, and, as a result, the institution of the judiciary is not independent. This means that the legal safeguards against many types of human rights violations, including enforced disappearance, are effectively non-existent.

Understanding this situation requires appreciating how militias have become a law unto themselves. By claiming to have protected the country from ISIS, militias have installed themselves into important political positions. Their leaders now serve as members of parliament and in key roles in political parties and coalitions. However, in spite of gaining political power, militias have not changed their practice of using violence to accomplish their goals. Rather than becoming true implementers of the law, militias have simply taken over important government infrastructure and services and continued their ongoing use of violence; only now, they have a veneer of legitimacy.

For example, the Asa'ib, Badr, and Iraqi Hezbollah militias now have government-sanctioned control of airports, security checkpoints, and border checkpoints around the country. With this control, these militias engage in arrests and extortion of payments for political and sectarian purposes, violating the human rights against arbitrary arrest and

¹ Declaration on the Protection of All Persons from Enforced Disappearance, UN Doc. No. A/RES/47/133 (18 Dec. 1992).

² *Status of Ratification Interactive Dashboard*, UN Human Rights, <http://indicators.ohchr.org/> (last updated 13 Aug. 2019).

detention of countless individuals which often leads to the disappearance, or worse, of many of the victims.

The practice of enforced disappearance

Enforced disappearance is a shockingly common practice in Iraq, but one that the government avoids admitting or even discussing. Since the 2003 invasion, countless thousands of Iraqi people have been seeking the whereabouts of family members who went missing as a result of the invasion and its subsequent strife, the later fight against ISIL and the current empowerment of militias across the country. The number of missing persons in Iraq ranges from hundreds of thousands up to one million according to different public sources. Many people go missing after being stopped at checkpoints, with uniformed militias having been seen piling people into vehicles on the street. Today, after the fight against ISIL, unchecked militia control of internal security and critical infrastructure has resulted in a proliferation of arbitrary arrests and subsequent disappearance.

Disappearances in Iraq are often targeted toward certain groups or families, which is apparent from the shared family names of many of the victims. Since 2006, these acts have mostly targeted Sunni Arabs in areas across the country including the capital Baghdad, the city of Jurf al-Sakhar (forcibly evacuated in 2014 when the Badr militia, Iraqi Hezbollah and Asaib Ahl al-Haq arrested hundreds of Sunnis), Diyala province, the cities of al-Dur and Samarra in Salah al-Din province, and the cities of Fallujah, Ramadi and Khalidiya in Anbar province. Unfortunately, there is often little, if any, effort on the part of the government to investigate these situations contrary to Iraq's international obligations.

Hiding the evidence of enforced disappearance

Although some hope remains for the return of the many people who have disappeared, the situation is dire. An unknown number of disappeared people are being held in the hundreds of notorious secret prisons operated by militias and government agencies across the country. Tens of thousands of unidentified bodies have been delivered to morgues, and recent mass graves continue to be found in various parts of the country. The government continues to blame the pre-2003 government for these graves while evidence shows that most are of recent origin.

There has been recent international political pressure to reduce the presence and role of militias in Iraq, especially those backed by the Islamic Republic of Iran to carry out sectarian killings in the Syrian Arab Republic and Iraq. Consequently, militias are now getting rid of the evidence of their activities – their detainees – through extrajudicial executions and covert, illegal mass burials. This is a very serious violation that can be characterized as a war crime and crime against humanity in accordance with international criminal law.

Information has recently come to light about the illegal burials of nearly 300 bodies that were transferred to a supposed non-governmental organization for burial. This information confirms that Iraqi authorities have begun, through its militias, to dispose of the bodies of hundreds of victims likely to have been forcibly disappeared for years in secret Iraqi militia detention camps. Worse yet, the latest evidence shows that the group now burying the bodies is not simply a non-governmental organization but actually a group belonging to a militia accused of attempts to induce demographic change and of keeping more than 7000 Iraqis in secret prisons in their main bases in Jurf al-Sakhar.

We believe that this irregular procedure is a very serious matter that confirms the improper intentions of the Iraqi authorities, which is allowing the burial of the bodies without taking the necessary legal steps to identify the victims and return the bodies to the victims' families. This process of disposing of bodies is part of a recurring effort by the successive authorities in Iraq since 2003 to obscure and distort facts, depriving the families of victims of enforced disappearance of the truth about their loved ones and their legal right to seek fair punishment from the perpetrators of these crimes.

Conclusion

Numerous organizations have documented the unbelievably widespread and systematic use of enforced disappearance throughout Iraq. For example, several NGO reports submitted to the UN Committee on Enforced Disappearances described the situation in detail in 2015.³ In addition, documentation of the role of militias in enforced disappearance and other human rights violations has been provided to the UN High Commissioner for Human Rights and other human rights mechanisms over many years. However, we believe that sufficient attention has not been given to this issue.

The people of Iraq need protection from the arbitrary and self-interested acts of the militias and have called on the government to re-establish the rule of law fully across the country. Urgent action is needed by the international community. We note that UN Assistance Mission for Iraq (UNAMI) has not published a human rights report on Iraq since the end of 2017. Also, the Working Group on Enforced or Involuntary Disappearances has not yet made a country visit to Iraq. Given the situation of Iraq following the defeat of ISIL in 2017 and the rise to power of militias in the country, we believe it is critical that UNAMI examine this issue and that the Working Group include Iraq on its list of future country visits.

Recommendations

We recommend that:

- Iraq government fulfil its legal obligation to properly investigate disappearances and the many cases of arbitrary detention that often lead to disappearances.
- Iraq stop the illegal mass burials of unidentified bodies, especially by militias and other related non-governmental groups.
- The Iraq government disband the militias and shift responsibilities for internal security to forces that have been properly trained in security techniques and human rights.
- The Human Rights Council appoint a special rapporteur for Iraq to, among other functions, investigate and monitor cases of enforced disappearance
- The UN Working Group on Enforced Disappearances include Iraq on its list of future country visits.
- An international independent commission be sent to Iraq to investigate all violations.

Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.

³ See, e.g., Geneva International Centre for Justice, *Iraq: Enforced Disappearance: A Widespread Challenge*, Shadow Report Submitted to the UN Committee on Enforced Disappearances, 9th session (2015). This and other reports can be found at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=973&Lang=en.