



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Nineteenth session

Summary record of the 334th meeting

Held via videoconference on Wednesday, 7 October 2020, at 4 p.m. Central European Summer Time

Chair: Mr. Ravenna (Vice-Chair)

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The meeting was called to order at 4 p.m.

Consideration of additional information submitted by States parties *(continued)*

Additional information received from Iraq under article 29 (4) of the Convention (continued) (CED/C/IRQ/AI/1)

1. *At the invitation of the Chair, the delegation of Iraq joined the meeting.*
2. **Mr. Abdulsattar** (Iraq) said that he wished to assure the Committee of the Government's determination to combat the crime of enforced disappearance, bring perpetrators to justice and search for victims. The Iraqi parliament always consulted with civil society on prospective legislation that had a bearing on human rights and would do so again in the case of the bill on enforced disappearance. A number of bills were currently before parliament but the one on enforced disappearance would have priority. The new section to combat enforced disappearance within the Human Rights Department at the Ministry of Justice would be financed from the Ministry's regular budget. The Ministry pursued requests for urgent action submitted by the Committee in coordination with other State institutions, although its efforts in that regard had been hindered after terrorists from Islamic State in Iraq and the Levant (ISIL) had overrun large swathes of the country. Moreover, it had been established that 71 of the missing persons concerned by the requests were themselves wanted on suspicion of involvement in terrorist offences and included members of ISIL itself.
3. **Ms. Lochbihler** (Country Rapporteur) said that she was concerned by reports that fundamental legal safeguards were not being respected. Specifically, the Committee had received reliable information that persons detained under the Anti-Terrorism Act (Act No. 13 of 2005) were often arrested without a warrant and denied access to a lawyer, and that their relatives were not informed of their whereabouts. She would be grateful if the delegation could confirm whether that was the case and, if so, explain in what circumstances such situations might arise and what measures were being taken to prevent such practices. She would also like to receive updated statistics on the total number of missing persons in Iraq since 1968 and to know how many of them had been subjected to enforced disappearance. The Committee was particularly concerned by reports that between 500,000 and 1 million persons might have been disappeared since 2003, which was far in excess of the 13,000 to 16,000 mentioned in the State party's report containing additional information (CED/C/IRQ/AI/1). It would also be useful to know how the different bodies involved in investigating cases of enforced disappearance and searching for missing persons coordinated with one another; what progress had been made in investigating offences of enforced disappearance committed between 1968 and 2003, and those committed after 2003, including offences of enforced disappearance perpetrated by ISIL; and how many cases had been prosecuted and what sentences had been handed down in that connection.
4. Iraq was currently the State in respect of which the highest number of requests for urgent action had been submitted under article 30 of the Convention – 487 as at October 2020. It was regrettable that most of the responses to urgent action requests received from the State party thus far had merely indicated that the name of the person concerned did not appear in official databases and that those responses had provided no specific information about any search and investigation strategies adopted. Could the delegation explain that dearth of information and describe the steps taken to remedy it?
5. **Mr. Ayat** (Country Rapporteur) said that the Committee was concerned by reports that the relatives, friends and representatives of disappeared persons sometimes failed to report them missing for fear of possible reprisals. Some reports even mentioned the use of threats against persons who had brought urgent action requests before the Committee. He wished to know what measures had been taken to prevent such unacceptable situations from arising and to enable victims of enforced disappearance to seek truth and justice without fear.
6. He would be interested to hear about any plans to provide greater resources to the Forensic Medicine Department and to other agencies involved in removing and identifying human remains from the country's mass graves, which were reported to contain the bodies of up to 1 million persons, including suspected victims of enforced disappearance. He welcomed the recent amendments to the Protection of Mass Graves Act (Act No. 13 of 2015),

which made it applicable not only to the period of the former regime, namely, between 1968 and 2003, but also to the period after 2003. However, the Committee was concerned that those amendments appeared to address only acts perpetrated by ISIL and other terrorist organizations post-2003, and not those committed by government forces, despite allegations that the latter had been involved in carrying out acts of punishment against Sunni Muslims and arbitrary executions of ISIL fighters. Were there plans to further amend the Act so that it also covered acts committed by government forces after 2003? Lastly, he wished to know how the State party was ensuring that investigations into cases of enforced disappearance continued during the coronavirus disease (COVID-19) pandemic, particularly those related to requests for urgent action.

The meeting was suspended at 4.25 p.m. and resumed at 4.35 p.m.

7. **Mr. Abdulsattar** (Iraq) said that Act No. 58 of 2017 envisaged fundamental safeguards against threats and intimidation for witnesses, informants and victims in cases of corruption or of terrorism.

8. **Mr. Khalifa** (Iraq) said that he wished to make it clear that criminal courts could not legally sit unless a lawyer was present to represent the accused person. In accordance with instructions issued by the Supreme Judicial Council, the Judicial Oversight Commission, the courts and the Human Rights Division in the Office of the Chief Public Prosecutor were all involved in investigating reported cases of enforced disappearance in areas of the country liberated from ISIL. In most cases, the relatives of the missing persons had reported that their loved ones had been abducted by ISIL. In other cases, intelligence reports pointed to the fact that the missing persons were themselves members of that terrorist group.

9. The Iraqi Supreme Criminal Tribunal had issued definitive rulings in six principal cases of enforced disappearance dating back to the period between 1968 and 2003. As for offences of enforced disappearance committed after 2003, many arrested terrorists had confessed to abducting both civilians and military personnel, whom they had subsequently murdered. The courts had sentenced members of ISIL and other terrorist groups for offences of enforced disappearance and for numerous other crimes. In 2019 alone, 114 cases of enforced disappearance had been resolved. Although a number of judges had contracted COVID-19, the courts were continuing to operate during the pandemic, with due regard for protective protocols. A number of prisoners had even been released as a precautionary measure against the virus.

10. **Mr. Al-Mandalawi** (Iraq) said that the Martyrs' Foundation was the government body responsible for searching for victims of enforced disappearance, excavating mass graves and providing compensation to families. The laws under which it operated were applicable to all missing persons without discrimination and took no account of whether they had gone missing before 2003 or after that date.

11. According to statistics prepared by the Foundation's Mass Graves Affairs and Protection Department, a total of 101 mass grave sites dating back to the period of the former regime had been located across the country. Of those, 80 had been excavated and 21 had not, and the remains of 4,139 persons had been exhumed. Mass grave sites holding the remains of victims of crimes perpetrated since 2003 numbered 105, of which 26 had been excavated and 79 had not, and the remains of 1,729 persons had been exhumed. Thanks to the partnership between the Martyrs' Foundation and the Forensic Medicine Department, the bodies of many of the victims had been identified and returned to their families.

12. The Foundation had only limited human and financial resources, which was affecting operations in a number of its departments. The figure of around 16,000 disappeared persons related to cases documented by the Ministry of Justice that had come to light as a result of reports from citizens. The figure of between 500,000 and 1 million referred to the possible number of victims of the former regime whose fate was still unknown.

13. **Mr. Abid Ghanim** (Iraq) said that, in addressing requests for urgent action, the Ministry of Justice had adopted a strategy that was based on the Committee's guiding principles for the search for disappeared persons. The presumption was always that the missing person was still alive. Responsibility for the search lay chiefly with the Ministry's section for missing persons, which was working to establish a single, unified database of such

persons. Most of the input to the database came from individual reports from citizens, requests for action from the Committee and the Working Group on Enforced or Involuntary Disappearances or from information received from the courts and security agencies. The section determined the veracity of the reports that it received by interviewing the missing person's relatives before referring the matter to an investigating judge. The section also had access to the database of the Forensic Medicine Department. The section's legal division then gathered all the information that it had received regarding the outcome of investigations and the fate of disappeared persons and forwarded it to the Ministry of Foreign Affairs, which transmitted it to the Committee via the Permanent Mission of Iraq in Geneva.

14. **Mr. Ali** (Iraq) said that steps had been taken to address the problems that COVID-19 had caused in prisons. The working hours of staff had been reduced by half in order to limit contact between them and inmates, and crisis units had been set up to oversee the situation in different parts of the country. Health control measures had been put in place, disinfection protocols were being followed, inmates were being given more time in the open air and family visits had been suspended. In addition, new prisons had been opened to relieve overcrowding. In all, 431 inmates, 779 prison guards and 294 administrative staff had contracted COVID-19. A total of 11 inmates, 7 prison guards and 5 administrative staff had died, and 18 inmates, 112 prison guards and 82 administrative staff were still undergoing treatment.

15. **Ms. Lochbihler** said that she had been very pleased to hear that the Ministry of Justice made use of the Committee's guiding principles for the search for disappeared persons and hoped that, in future, responses to requests for urgent action would include specific details about the search for the person concerned. She wished to know how long a person had to be missing before a declaration of absence could be issued and whether her understanding was correct that such a declaration remained valid for three years, after which a death certificate could be issued. It would also be helpful to know under what circumstances a death certificate was necessary in order for a disappeared person's relatives to be able to undertake the requisite administrative formalities. Lastly, she would welcome the delegation's comments on reports that families of disappeared persons suspected of belonging to ISIL could be refused those declarations and certificates.

16. **Mr. Ayat** said that he welcomed the update from the delegation concerning the principle of non-discrimination enshrined in the laws under which the Martyrs' Foundation operated, from which he inferred that those laws would be equally applicable to offences allegedly committed by government forces since 2003. It would, however, be preferable for that applicability to be made explicit, either in the Protection of Mass Graves Act or in a separate law. What was vital was that the State party's legal provisions – in whatever legal text they were enshrined – should be fully consistent with the Convention. The Government should not hesitate to request assistance from the international community in order to achieve that aim.

17. He wished to draw the delegation's attention to the fact that the bill on enforced disappearance used an Arabic term for "disappearance" that was not the same as the one used in the Arabic version of the Convention. Although the meaning was similar, the use of divergent terminology ought to be avoided. Furthermore, article 40 of the Criminal Code should state more explicitly that "following superior orders" could never be used as a justification for the crime of enforced disappearance.

18. **Mr. Teraya** said that he would be interested to learn more about the steps being taken to centralize and unify existing databases of victims of enforced disappearance and about how the information in those databases could be cross-referenced with other data, for example, concerning mass graves.

19. **Ms. Kolaković-Bojović** said that it would be helpful if the delegation could explain the functions of the special commission of the Supreme Judicial Council mentioned in paragraph 34 of the report containing additional information. In particular, she wished to know whether it had a mandate to investigate all cases of enforced disappearance, both those that had occurred between 1968 and 2003, and those that had occurred after 2003; what human and financial resources it had at its disposal; how many investigations it had conducted and what their outcome had been; and how it differed from the committee

established pursuant to Diwani Order No. 46 of 2018, mentioned in paragraph 35 of the report.

20. **Ms. Villa Quintana** said that she wished to know whether victims of offences of enforced disappearance committed after 2003 had been offered all the forms of reparation listed in article 24 (5) of the Convention. Were there any plans to amend the provision in the Code of Criminal Procedure whereby responsibility for compensating victims lay with the perpetrator of an offence and not with the State?

21. **Mr. Baati** said that he would like to receive confirmation from the delegation that the procedures relating to search and investigation operations were clear and conducive to preventing the recurrence of enforced disappearance in the future. It would also be helpful to know whether the committee established pursuant to Diwani Order No. 46 of 2018 dealt only with cases concerning persons in areas liberated from terrorist groups and whether it cooperated with the special commission of the Supreme Judicial Council.

22. **Mr. Abdulsattar** (Iraq) said that, under the Personal Status Act, persons who had been missing for more than three years were considered to have died. It was for the family of missing persons to take the procedural steps necessary to have them declared dead, after which they could claim all the rights and privileges to which they were entitled under Iraqi law. In cases of enforced disappearance where the victims were thought to be dead, the courts normally issued a death certificate after two years.

23. **Mr. Dawood** (Iraq) said that the Prime Minister had recently taken part in a meeting on the subject of the recent demonstrations. The issue of the disappeared demonstrators was a priority for the Government, which was taking appropriate follow-up action. Many cases had been opened and were being pursued in cooperation with national and international human rights bodies, including the Office of the United Nations High Commissioner for Human Rights (OHCHR). The Government was not shying away from the issue: it had examined numerous cases with the assistance of civil society organizations, held regular meetings with victims' families and recorded their testimonies. Searches were being conducted in the hope of finding victims alive. Despite the trying circumstances in which the authorities were working, the right of defence was respected, and investigations took place without interference.

24. **Ms. Rashid** (Iraq) said that 2,298 families of disappeared persons were covered by the Social Protection Act (Act No. 11 of 2014). The Ministry of Labour and Social Affairs had set up a special working group to conduct visits to victims' families, particularly those belonging to the Yazidi community, in order to ensure that they were receiving the social benefits to which they were entitled. According to data collected by the Ministry, upward of 1,500 persons were currently in receipt of such benefits. All the necessary precautions had been taken to ensure that those visits could continue during the local lockdowns imposed to curb the spread of COVID-19.

25. **Mr. Khalifa** (Iraq) said that the committee established pursuant to Diwani Order No. 46 of 2018, which was chaired by a judge from the Supreme Judicial Council, was composed of representatives of all government ministries. It was currently tasked with searching for missing and disappeared persons in the governorates liberated from ISIL. The judiciary, by contrast, had a mandate to investigate cases of enforced disappearance, identify victims and conduct trials, as appropriate. At a given point in time, competence for investigating offences of enforced disappearance had been transferred from the committee to the special commission. Both entities had continued to cooperate effectively during the handover; the committee had transmitted all the complaints that it had received to the special commission, which was in the process of examining their veracity and admissibility. The special commission dealt with cases of enforced disappearance that had occurred during the period between 2003 and the present day, and not only until 2013, as had been the case with the committee. Comprehensive information on the status of cases, which included the outcome of investigations, was submitted to the special commission. He wished to clarify that some of the complaints of enforced disappearance filed with the special commission actually concerned members of ISIL, whose families had withheld that information in order to prevent them from being brought to justice. The special commission's investigators worked diligently

to discover the truth about the circumstances of cases of enforced disappearance, locate the victims and communicate their findings to the victims' families.

26. **Mr. Hmud** (Iraq) said that the bill on enforced disappearance prescribed a number of penalties for perpetrators, including officials who were involved in committing the offence, whether by failing to record information, recording false information or by another means. Victims of enforced disappearance were entitled to compensation and reparation; the applicable rules were clear and aligned with relevant legal texts and the Constitution. The Iraqi Supreme Criminal Tribunal Act defined enforced disappearance as a crime against humanity. Victims of enforced disappearance also had the legal right to file a civil suit before the Iraqi courts.

27. **Mr. Mahdi** (Iraq) said that the Ministry of Defence abided by the constitutional principle according to which arrests and detentions could take place only in specified establishments. It operated one prison, namely, a pretrial detention centre located at one of the country's airports, which was administered by the military authorities. The centre was subject to routine inspection by the committee responsible for prisons within the Ministry's human rights department and received regular visits from national and international bodies, including the parliamentary committee for human rights and OHCHR. He wished to recall that the centre's administrators had received two letters from OHCHR congratulating them for having successfully fulfilled their human rights obligations. The centre was equipped with a fully fledged investigation team comprising an investigating judge, four investigators and a prosecutor, all of whom were involved in examining cases. No civilians could be held in prisons or pretrial detention centres intended for military personnel; any failure to comply with that prohibition was punishable by law.

28. Complaints of enforced disappearance were often filed via the Ministry's dedicated hotline. Between 2018 and 2019, a total of 110 such complaints had been received. After their examination, it had transpired that 48 of the alleged cases of enforced disappearance reported concerned persons wanted on terrorism charges or on suspicion of terrorism. The general measures taken by the Ministry to prevent enforced disappearance included the conduct of unannounced visits to all detention centres in Iraq and the setting up of hotlines and an email address for reporting violations. Military authorities in particular were required to provide visiting teams with a written confirmation to the effect that they were not holding persons in a place of detention other than that officially declared, and to supply an electronic copy of the register of detainees to the Ministry so that it could verify that no civilians were being held there and that the pretrial detention limit of 24 hours was being respected. All military units included a human rights officer who had a duty to record any complaints or violations.

29. **Mr. Al-Mandalawi** (Iraq) said that the period of time that had to elapse before a missing person could be considered to have died had been addressed in a decision issued by the Court of Cassation in 2018. In cases of enforced disappearance, that period of time was two years.

30. **Mr. Abid Ghanim** (Iraq) said that the section for missing persons within the Ministry of Justice received requests for action in respect of disappeared persons from the International Commission on Missing Persons and the Ministry of Foreign Affairs. Those requests were duly examined in cooperation with security and judicial bodies. As part of that process, relevant information, which included the personal data of persons located in mass graves collected by the Martyrs' Foundation and the data collected by the Forensic Medicine Department, was gathered and cross-checked against that contained in the databases of other ministries. The fact that the mass graves holding the remains of persons disappeared and killed by ISIL had only recently been uncovered had hampered the Ministry's efforts to combat enforced disappearance. Moreover, the reluctance of some of the victims' family members to give DNA samples had hindered the cross-checking of data and, as a result, the identification of remains.

31. **The Chair** said that he wished to remind the delegation that it had 48 hours within which to submit additional written responses, in English, to any questions that remained pending.

32. **Mr. Abdulsattar** (Iraq) said that the delegation was grateful for the opportunity to discuss and expand upon the additional information that it had submitted under article 29 (4) of the Convention. He wished to thank all those who, despite the setbacks experienced as a result of the COVID-19 pandemic, had made the virtual dialogue a success, and the United Nations Assistance Mission for Iraq and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant, for their cooperation. The Government of Iraq looked forward to receiving the Committee's concluding observations and would endeavour to incorporate its recommendations into the national human rights plan for the period 2020–2024.

33. **The Chair** said that the follow-up dialogue on the additional information submitted by Iraq was a significant event, since it marked the first time in the history of the treaty bodies that a dialogue with a State party had been held online. While the dialogue had been fruitful and enlightening, it was his hope that the pandemic would soon be brought under control and that in-person dialogues with States parties would be able to resume. He wished to express his gratitude to all those who had helped to organize, and to those who had taken part in, the online dialogue under such exceptional circumstances.

34. The Committee welcomed the progress made by Iraq in addressing enforced disappearance in its national territory and its willingness to take on board the Committee's observations and recommendations, particularly regarding the bill on enforced disappearance, which it trusted would be brought into full conformity with the Convention and signed into law as soon as possible. However, it was clear that, despite the State party's efforts, it needed to do more to strengthen its search and investigation activities and to provide all victims of enforced disappearance with access to truth, justice and reparation. The Committee would transmit its concluding observations to the State party in due course and, if necessary, stood ready to assist it in implementing its recommendations.

The meeting rose at 6 p.m.