



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 333rd meeting*

Held via videoconference on Monday, 5 October 2020, at 12.30 p.m. Central European Summer Time

Chair: Mr. Ravenna (Vice-Chair)

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* No summary records were issued for the 331st and 332nd meetings.

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The meeting was called to order at 12.30 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. Turki** (Iraq) said that he wished to thank the Committee for having agreed to postpone the interactive dialogue from its scheduled date after certain members of the government delegation had tested positive for the coronavirus disease (COVID-19) and that he had been surprised at statements made by certain organizations criticizing that decision. The report containing the additional information had been drafted by a committee led by the Human Rights Department at the Ministry of Justice, which included representatives from Kurdistan Region.
3. Despite the security situation in the country and the ongoing fight against terrorism, Iraq had made great efforts to act on the recommendations contained in the concluding observations that it had received from the Committee following the review of its initial report in 2015 (CED/C/IRQ/CO/1). A bill on enforced disappearance had been drafted, which took account of those recommendations and of the country's obligations under the Convention. Iraq always acted promptly on requests for urgent action submitted to it by the Committee and made every effort to discover the whereabouts of the persons concerned and to provide the Committee with updated information in that regard. In the same connection, the authorities also cooperated on a regular basis with the Working Group on Enforced or Involuntary Disappearances. Also in line with the recommendations contained in the Committee's previous concluding observations, a department within the Ministry of Justice was in the process of producing updated statistics on forcibly disappeared persons. In addition, the Ministry was coordinating with judicial bodies, the security forces and the Human Rights Office of the United Nations Assistance Mission for Iraq to pursue alleged cases of enforced disappearance reported during recent demonstrations in the country. The Prime Minister, who had placed the restoration of the rule of law at the top of the list of government priorities, was concerning himself directly with that matter.
4. Iraqi law included stringent provisions to prevent any kind of interference in investigations of cases of enforced disappearance. Training in the Convention and other human rights treaties was provided to the police and security forces, the military, judges and prison officials. The fight against enforced disappearance was an important part of the national human rights plan for the period 2020–2024, which would take due account of any future recommendations made by the Committee. The Prisoner and Detainees Reform Act (Act No. 14 of 2018) provided a legal framework for the supervision of prisons and other places of deprivation of liberty, which was conducted in accordance with the highest human rights standards. Iraq was continuing its efforts to locate and protect mass grave sites and to remove and identify human remains there, particularly those associated with the crimes of Islamic State in Iraq and the Levant (ISIL).
5. **Mr. Zebari** (Kurdistan Regional Government, Iraq) said that hundreds of thousands of people in Kurdistan Region had fallen victim to atrocious crimes perpetrated both by the former regime and, subsequently, by ISIL. Those crimes included ethnic cleansing and genocide, and the fate of many victims still remained unknown. A special committee had been set up to gather information about missing persons and, as at September 2020, 3,537 disappeared persons had been located, while 2,880 remained unaccounted for. Another committee had been tasked with gathering information to document the crimes perpetrated by ISIL against Yazidi women, and with ensuring that victims received the support that they needed in order to reintegrate into society. Efforts were also being made to have the actions of ISIL defined as genocide. At the same time, the Kurdistan Regional Government was working to restore order and stability, and to return displaced persons to their homes.
6. Between 2014 and 2017, 3,361 persons had been detained in Kurdistan Region on suspicion of involvement in terror offences. They included 260 women, who were held in separate facilities from men. Forty-one of the women in question had since been released. Any children arrested in that connection were always treated as victims. All detainees enjoyed full legal rights and safeguards. The remains of around 2,800 victims had been exhumed from 300 mass graves that dated back to the period of the former regime. In

addition, 83 mass graves holding the remains of victims of ISIL had been located and exhumation work was continuing in coordination with the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant.

7. **Ms. Lochbihler** (Country Rapporteur) said that she wished to know what steps were being taken to ensure that the bill on enforced disappearance was compliant with the Convention vis-à-vis clarity of procedures, the right of victims to reparation and protection for persons involved in investigating cases of enforced disappearance and in searching for disappeared persons. She was concerned that the bill seemed to impose a time limit for submitting complaints of enforced disappearance and that it still envisaged the application of the death penalty in cases where the offence was accompanied by aggravating circumstances. Furthermore, the bill lacked clear provisions on the responsibility of superior officers and due obedience to orders. It was her understanding that, although the Iraqi Supreme Criminal Tribunal Act defined enforced disappearance as a crime against humanity, that definition was only applicable in respect of offences committed between 1968 and 2003. She wished to know whether the bill defined the widespread and systematic practice of enforced disappearance as a crime against humanity, in line with the Convention.

8. **Mr. Ayat** (Country Rapporteur), noting that it was taking a long time to sign the bill on enforced disappearance into law, said that he would be grateful if the delegation could explain what challenges the authorities were facing in that regard. He would also be interested to know whether civil society had been consulted during the process of drafting the bill. The Committee was pleased to note that the bill defined enforced disappearance in a manner that was largely consistent with the Convention; however, the State party's domestic legislation would remain deficient unless it fully and consistently reflected all of the Convention's provisions. For example, it appeared that the bill did not envisage criminal liability for superior officers who issued unlawful orders or for subordinates who claimed that they were following those orders. In fact, the justification of "superior orders" seemed to be enshrined in article 40 of the Criminal Code. Lastly, he would like to know how the bill made the distinction – enshrined in the Convention – between offences of enforced disappearance committed by agents of the State and those committed by non-State actors.

The meeting was suspended at 1 p.m. and resumed at 1.10 p.m.

9. **Mr. Turki** (Iraq) said that, although article 40 of the Criminal Code stated that subordinates would not face criminal prosecution for acts that they committed while under orders that they were "obliged or felt obliged" to obey, it also required subordinates to have a duly founded belief in the legitimacy of the act that they were being ordered to perform, which they had to carry out with due circumspection. The same matter was covered in greater detail in the Internal Security Forces Act and the Military Criminal Code. The application of the death penalty in Iraq, which had been a subject of discussion with other treaty bodies in the past, was surrounded by legal safeguards and was fully consistent with applicable international norms. Although the views of the legal experts who had drafted the bill on enforced disappearance did not necessarily coincide with those of Committee members, the authorities were nonetheless very willing to take account of any observations or recommendations that the Committee wished to make.

10. **Mr. Hmud** (Iraq) said that the role of the State Council was to examine prospective legislation in consultation with other institutional stakeholders in order to ensure its conformity with the Constitution of Iraq and the country's international obligations. In that connection, it had received the bill on enforced disappearance from the Secretariat of the Council of Ministers in 2019 and had found it to be consistent with the country's international human rights commitments. The bill included a very comprehensive definition of enforced disappearance, which was in line with the Convention. The bill also included provision for the creation of a special section to combat enforced disappearance within the Ministry of Justice and set down the procedures that ought to be followed when reporting a crime of enforced disappearance. Moreover, the penalties envisaged in the bill were applicable not just to perpetrators, but also to persons who ordered an enforced disappearance and to officials who failed to register an associated complaint. The Martyrs' Foundation and the Political Prisoners' Foundation applied the established legal rules for protecting the rights of victims, including the right to compensation and rehabilitation.

11. **Mr. Mahdi** (Iraq) said that the justification of “invoking superior orders” did not exist in any institution answerable to the Ministry of Defence. The Military Criminal Code made it clear that responsibility for any offence committed in compliance with a military order lay principally with the party who had issued it. Subordinates could also incur criminal responsibility if they overstepped the limits of an order received or if they were aware that the act that they had been ordered to carry out constituted an offence.

12. **Mr. Abdulilah** (Iraq) said that the right to life and freedom was enshrined in the Constitution and could only be restricted in accordance with the law. Enforced disappearance, in the sense of abduction by security forces, was not permissible under the regulations of the Ministry of the Interior, which required all detentions to be justified by a judicial warrant and to be monitored by the courts. Detained persons could be held for a maximum of 24 hours before being charged. Penalties were envisaged for anyone who violated those provisions. As was the case for military personnel, responsibility for actions perpetrated while acting under orders was held to lie principally with the party who had issued them.

13. **Mr. Zebari** (Kurdistan Regional Government, Iraq) said that Kurdistan Region did not have a law that explicitly addressed enforced disappearance. Cases were dealt with under the Criminal Code and perpetrators could face terms of imprisonment of up to 15 years. Persons could be detained only under a court order and all detention facilities were open for inspection by competent international bodies. There were no secret detention centres in Kurdistan. The Peshmerga and other security forces operating in areas liberated from ISIL had been issued with guidelines on how to deal with cases involving disappeared persons, as well as guidelines on freedom of movement, protection of private property, lawful arrest procedures and respect for human rights and humanitarian law. In accordance with article 132 of the Constitution, the Iraqi Supreme Criminal Tribunal had awarded compensation to victims of the Anfal campaign and other crimes committed by the former regime. The death penalty had not been carried out in Kurdistan Region since 2008.

14. **Mr. Turki** (Iraq) said that the law afforded protection to persons – such as judicial officials, forensic medical experts and witnesses – involved in investigating cases of enforced disappearance and in searching for victims. The bill on enforced disappearance drew on other Iraqi laws which, it could not be denied, were perhaps not consistent with the Convention in every detail. For that reason, his delegation was looking forward to receiving the observations and recommendations of the Committee which, it hoped, could be used as a basis for further legislative advances.

15. **Ms. Lochbihler** said that she wished to know whether the 2017 draft of the bill on enforced disappearance had been fully superseded by the 2019 draft. She was concerned that the latter did not appear to include provision for a declaration of absence and would like to receive clarification from the delegation in that regard.

16. **Mr. Ayat** said that he was concerned that the safeguards established in article 40 of the Criminal Code presupposed that subordinates had the capacity to discriminate between the legality or illegality of an order imparted to them, which might not necessarily be the case. Moreover, the Committee had been told that, in the military sphere, subordinates could not choose to disobey an order issued by a superior officer. It was important for the domestic law of States parties to reflect the definition of enforced disappearance as a crime against humanity, in line with article 5 of the Convention.

17. Despite the State party’s claim that it had no secret detention facilities, the Committee had received numerous reports that such facilities did, in fact, exist and had been used to hold participants in recent demonstrations, who had allegedly been deprived of basic rights such as family visits and access to a lawyer. Could the delegation comment on those reports and inform the Committee about any steps taken to prevent similar abuses in the future? The bill on enforced disappearance, unlike the Convention, did not use the word “victim”. Moreover, although the bill did concede certain rights to the “family and relatives” of disappeared persons, that categorization was not as broad as the Convention’s “any individual who has suffered harm as the direct result of an enforced disappearance”. In the light of that fact, he wished to know whether the Government had any intention of incorporating the definition of a victim contained in the Convention into the bill on enforced disappearance and into other laws regarding entitlement to reparations.

18. **Mr. de Frouville**, referring to specific provisions of the bill on enforced disappearance, said that it would be useful to know what powers of inquiry would be granted to the special section to combat enforced disappearance that was to be set up within the Ministry of Justice and how its independence would be guaranteed. Similarly, he would be interested to know whether decisions to refuse access to information on disappeared persons could be challenged before the courts, in keeping with article 20 of the Convention.

19. **Mr. Teraya** asked whether the delegation considered the bill on enforced disappearance and the mechanisms established in it to be fully compliant with the Convention principles related to access to information on persons deprived of their liberty and to the prevention of incommunicado detention.

20. **Ms. Villa Quintana** said that she too would like the delegation to comment on the veracity of the reports concerning the widespread detention of participants in recent demonstrations and the use of incommunicado detention in that context. If those reports were accurate, she would like to receive information on any remedial and/or preventive action taken in that connection. The delegation might also explain how the principle enshrined in article 1 of the Convention, according to which no exceptional circumstances whatsoever might be invoked as a justification for enforced disappearance, was reflected in the bill in question.

21. **Mr. Baati** said that it would be helpful to learn when the special section to combat enforced disappearance might be set up, what the composition of its membership would be, whether it would have its own budget and whether its members would have a special status.

22. **Ms. Kolaković-Bojović** said that the Committee had likewise been informed that the records of persons deprived of their liberty were not duly maintained. If that was indeed the case, she would like to learn about the measures taken by the State party to correct that oversight and to ensure that such records contained all the details mentioned in article 17 of the Convention. She also wished to hear more about the specific information on detainees and convicts that would be stored in the database provided for in the bill on enforced disappearance, and about who would have access to that information.

23. **Mr. Turki** (Iraq) said that the provisions of the bill defining the circumstances in which the crime of enforced disappearance constituted a crime against humanity largely mirrored those of the Rome Statute of the International Criminal Court. However, since the elements of the crime contained in the Convention differed from those contained in the Rome Statute, the bill would have to be further amended.

24. **Mr. Hmud** (Iraq) said that the bill on enforced disappearance of 2020, which contained a number of amendments and was in line with relevant international conventions and treaties, had effectively replaced that of 2017. The new bill specifically dealt with the question of declarations of absence under the provisions relating to the reporting of suspected cases of enforced disappearance. A victim of enforced disappearance could be an individual or a group of individuals. Access to information on disappeared persons could be refused if the information in question was considered to be confidential or if its disclosure might hamper the progress of an ongoing investigation. Any decision to refuse access to such information could indeed be challenged before the courts. All relevant entities were required to provide information on disappeared persons if and when requested to do so.

25. **Mr. Ashour** (Iraq) said that the instructions given and the decisions taken at the start of the demonstrations had subsequently been reviewed. The Prime Minister had tasked the secretariat responsible for State security with conducting the necessary follow-up. Consultations had taken place between the Supreme Judicial Council, the secretariat responsible for State security and counter-terrorism forces. The measures taken as part of investigations conducted in Baghdad and other areas had been explained at that juncture. Thanks to the perseverance of the relevant stakeholders, the investigations in question had yielded some positive results. The Supreme Judicial Council had announced that further meetings would be held to ensure the success of those investigations and that, where appropriate, cases would be referred to special tribunals and that penalties would be imposed on any member of the Iraqi security forces who was found to have committed an offence. Investigations had also been conducted into members of the Iraqi security forces who were alleged not to have followed the applicable regulations on the treatment of demonstrators and/or the applicable regulations on the treatment of persons arrested or detained over the course of the demonstrations.

26. **Mr. Khalifa** (Iraq) said that Iraqi law accorded specific rights to anyone who was the victim of a crime, including the right to file a complaint with a view to having their violated rights restored by judicial means. Under the Criminal Code, complaints filed by victims of a crime were to be examined by an investigating magistrate or by a police investigator.

27. He wished to clarify that, at the beginning of the demonstrations, clear instructions had been given to release, with immediate effect, any demonstrators who had been detained, provided that they had not committed any ordinary offence under Iraqi law. At that time, no demonstrators were being held in detention for the mere fact of having participated in a demonstration. The judges of the Public Prosecution Service conducted regular visits to places of detention. The cases of all detainees had been duly considered and appropriate decisions had been taken concerning them. He would be grateful if Committee members who were in possession of reliable information about the existence of secret places of detention in Iraq could forward it to the authorities so that those allegations could be investigated and, if such places of detention were found to exist, that those responsible for operating them could be brought to justice.

28. **Mr. Ali** (Iraq) said that the matter of legal safeguards for detainees was dealt with in a number of legal texts, including the Constitution and the Criminal Code. Act No. 14 of 2018, which addressed, inter alia, sentence enforcement, prohibited prison services from holding persons in detention in the absence of a committal order from a judge. It was likewise prohibited to hold persons in detention without legal grounds. Only persons who were mandated to carry out arrests could do so. Iraqi prison law had been aligned with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and with applicable international human rights standards.

29. Persons who had been detained as a result of a committal order were informed of their rights in accordance with the law, regardless of the reason for their detention. Upon admission to their designated place of detention, detainees underwent a medical examination, a record of which was certified by the treating physician and kept in their file, and their family was contacted. Detainees were normally permitted to receive visits from family members, but such visits had been suspended on account of the COVID-19 pandemic. There were no secret places of detention in Iraq. Inspectors from the Ministry of Justice conducted regular visits to prisons, which were subject to the oversight of judicial bodies and the country's national human rights institution. Act No. 14 of 2018 established the obligation for prison services to keep appropriate records on detainees. There was a database containing information such as the date of and grounds for arrest, the place of detention and the court that had ordered the imprisonment. The aforementioned Act also stipulated that places of detention must be equipped with communication facilities, such as telephones, to enable detainees to communicate with their family at least once a week. There were no cases of arbitrary detention; all detainees were included in the relevant prison register, had complete case files and appeared in the aforementioned database.

30. **Mr. Al-Mandalawi** (Iraq) said that, since he and members of his family had been subjected to enforced disappearance, he understood all too well the importance of effectively implementing the Convention. The Martyrs' Foundation was a government body tasked with investigating cases of enforced disappearance and dealing with issues relating to martyrs' compensation. In 2015, Act No. 20 of 2009 had been amended to ensure that any person who had been disappeared or abducted was considered a martyr and that his or her salary was still paid until such time as a death certificate was issued. Pursuant to a cabinet decision taken in 2020, the Martyrs' Foundation had developed an online form that could be filled in by the relatives of persons who had disappeared during the demonstrations to ensure the continued payment of their salaries.

31. **Mr. Zebari** (Kurdistan Regional Government, Iraq) said he wished to clarify that, in Kurdistan Region, demonstrators had been arrested on the basis of a court-issued arrest warrant. In one province, the security forces had arrested demonstrators who were armed and intent on causing a public disturbance. The courts had likewise issued arrest warrants in respect of persons who, in violation of local and national regulations designed to curb the spread of COVID-19, had called for a demonstration to take place. Under the Criminal Code, after the courts had ordered an arrest, the person was to be detained and the appropriate legal action was to be taken pursuant to the Code of Criminal Procedure. The executive authorities were not empowered to carry out arrests without a court-issued arrest

warrant. Detained persons were granted access to a lawyer from the time of their arrest and, if necessary, until the completion of their trial.

32. **The Chair** said that he wished to remind the delegation that it could submit written responses to any questions that remained pending prior to the resumption of the dialogue on Wednesday, 7 October 2020.

The meeting rose at 2.35 p.m.