



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
1 December 2020

Original: English

Committee on Enforced Disappearances

Concluding observations on the additional information submitted by Iraq under article 29 (4) of the Convention**

Introduction

1. The Committee welcomes the additional information provided in a timely manner by Iraq under article 29 (4) of the Convention, as requested by the Committee in its concluding observations on the State party's initial report (CED/C/IRQ/CO/1). The Committee also expresses its appreciation for the cooperation of the State party throughout the procedure, including on the occasion of the constructive dialogue held with the State party's high-level delegation headed by the Minister of Justice of Iraq. In that dialogue, participants focused on the measures taken by the State party to fulfil its conventional obligations relating to (a) progress in the process of adoption of the bill on enforced disappearances; (b) the State party's development of strategies to prevent enforced disappearances, to search for disappeared persons and to investigate alleged enforced disappearances; and (c) the State party's interaction with the Committee in the context of its urgent action procedure.

A. Positive aspects

2. The Committee welcomes the efforts made by the State party to address allegations of enforced disappearances committed in the territory under its jurisdiction, including the establishment of two fact-finding committees (in 2016 and 2018), and the steps taken to draft a bill on the protection of persons from enforced disappearance in 2017 and 2019, and of a law on crimes against humanity. The Committee also welcomes the State party's willingness to strengthen its cooperation with the Committee.

B. Implementation of the recommendations of the Committee and new developments in the State party

3. The Committee, while fully aware of the numerous and serious challenges faced by the State party, deeply regrets to note that a pattern of enforced disappearance persists over much of the territory of the State party, and that impunity and revictimization prevail. The legislation in force, its implementation and the performance by the competent authorities of their functions are mostly not in compliance with the Convention. The Committee is concerned about the lack of reliable data on cases of enforced disappearance, the reduced number of convictions for this crime, and the large quantity of unidentified bodies and mass graves. Lastly, the Committee notes that the implementation of the recommendations made in its concluding observations on the State party's initial report remains limited.

* Reissued for technical reasons on 2 June 2021.

** Adopted by the Committee at its nineteenth session online (7 September–25 November 2020).



Information on enforced disappearances and progress in the process of adoption of the bill on enforced disappearances (articles 1–7)

Statistical information on enforced disappearances

4. The Committee expresses its concern at the discrepancies between the figures provided by the State party (between 13,993 and 16,000 disappeared persons since 1968), and those reported by other reliable sources (between 500,000 and 1 million disappeared persons since 2003). It regrets that the available statistical data does not include clear, accurate and disaggregated numbers of persons who have been disappeared since 1968 (art. 1).

5. The Committee recommends the State party establish a consolidated nationwide database in which all cases of disappearance in Iraq since 1968 are registered. To this effect, the information from different sources must be compiled and systematized so that it can be incorporated into the database. The database should be systematically and promptly updated so that the authorities may generate reliable statistics. The database should include at least:

- (a) **The total number and identity of all disappeared persons;**
- (b) **The sex, gender identity, age, nationality and, if applicable, the ethnic group or religious affiliation of the disappeared person;**
- (c) **The status of the search procedure and investigation, including detailed information, where applicable, on exhumation and identification procedures and autopsy results;**
- (d) **The place, date and circumstances of the disappearance, including all elements relevant to determine whether the case is an enforced disappearance.**

Definition of enforced disappearance and appropriate penalties

6. The Committee takes note of the 2019 bill on enforced disappearances that is currently before the Council of Ministers. It is, however, concerned by the delays in the adoption of the bill and the consequent lack of an explicit definition in domestic legislation of enforced disappearance as an autonomous crime, in accordance with articles 2 and 4 of the Convention. The Committee is also concerned that the bill does not include a reference to enforced disappearance as a potential crime against humanity, while the Iraqi Supreme Criminal Court Act No. 10 limits such qualification to enforced disappearances committed between 1968 and 2003. It is further concerned that the death penalty is still one of the penalties applicable to crimes invoked to deal with enforced disappearances under the Criminal Code and in the bill (arts. 2, 4, 5 and 7).

7. The Committee recommends that the State party revise the bill on enforced disappearances, in consultation with all relevant stakeholders, including specialized civil society organizations, and expedite its adoption. Such revision should ensure, inter alia, that the offence of enforced disappearance is incorporated into domestic criminal legislation as an autonomous offence in conformity with articles 2 and 4 of the Convention, and as a crime against humanity in accordance with article 5 of the Convention, regardless of the date of perpetration of the crime. The bill should also include appropriate penalties that take into due account the extremely serious nature of the crime, while avoiding the imposition of the death penalty.

Acts committed by the so-called Islamic State in Iraq and the Levant and affiliated groups

8. The Committee welcomes the efforts made by the State party to address the crimes, including abductions, perpetrated by the so-called Islamic State in Iraq and the Levant and affiliated groups between 2014 and 2017. It nonetheless expresses its concern at the limited number of investigations carried out, and regrets the lack of information on prosecutions and adopted sentences (arts. 3 and 12).

9. The Committee recommends that the State party ensure that:

(a) All acts defined in article 2 of the Convention committed without the authorization, support or acquiescence of State officials by the so-called Islamic State in Iraq and the Levant or any other group are promptly, thoroughly and impartially documented and investigated, and that those responsible are brought to justice and punished if found guilty;

(b) Any legislation adopted to address enforced disappearances includes clear provisions guaranteeing the prompt, independent and impartial investigation of cases referred to in article 3 of the Convention.

Criminal responsibility of superiors and due obedience

10. The Committee notes the reference made by the delegation to current national legislation regarding the criminal responsibility of superiors and due obedience, and welcomes the inclusion of criminal responsibility in the bill on enforced disappearances. Nonetheless, it remains concerned that the State party's current legislation and the bill do not provide for the criminal responsibility of superiors, in accordance with article 6 (1) (b) of the Convention. It is also concerned that, under article 40 of the Criminal Code, a public official or public servant who commits an enforced disappearance following an order from a superior could invoke the order to justify an enforced disappearance (due obedience). The Committee recalls that the rule enshrined in article 6 (2) of the Convention encompasses the orders given by any superior, whether civilian or military, that has de jure or de facto authority over a subordinate (art. 6).

11. The Committee urges the State party to ensure that domestic legislation explicitly prohibits the invoking of superior orders or instructions to justify an offence of enforced disappearance, and that criminal legislation provides for criminal responsibility, in accordance with article 6 (1) and (2) of the Convention.

Development by the State party of strategies to prevent enforced disappearances, to search for disappeared persons and to investigate alleged enforced disappearances (articles 8–15)

Protection of complainants and of persons participating in the investigation of an enforced disappearance

12. The Committee is deeply concerned by numerous reports of acts of intimidation and reprisals against victims of alleged enforced disappearances and their relatives after they have filed a complaint with the national authorities or have submitted a request for urgent action to the Committee. While noting the adoption of Act No. 58 of 2017, the Committee remains concerned that it does not provide for the protection of all persons mentioned in article 12 (1) (arts. 12, 24 and 30).

13. The Committee requests the State party to take all measures necessary:

(a) To prevent all acts of intimidation and reprisals and protect the persons referred to in articles 12 (1) and 30 (1) of the Convention, including by ensuring that the bill on enforced disappearances includes a provision for that purpose;

(b) To investigate all allegations of intimidation and reprisals and ensure that those responsible are prosecuted and punished appropriately.

Reporting and investigation of cases of enforced disappearance

14. The Committee welcomes the efforts made by the State party to investigate and prosecute the enforced disappearances committed between 1968 and 2003. It expresses its concern, however, at the limited scope of results. It also regrets the lack of clear information about the investigation and punishment of and reparation for enforced disappearances committed after 2003, including during the demonstrations initiated in October 2019. The Committee welcomes the project to create a "division for combating enforced disappearance" contained in the bill on enforced disappearances. Nonetheless, it remains concerned at the lack of clarity of the applicable procedure and the division of responsibilities between authorities in charge of search and investigation. The Committee also expresses its concern

at reports that threats against and intimidation of victims of enforced disappearances have resulted in the underreporting of cases, which contributes to the perpetuation of impunity (arts. 12 and 24).

15. The Committee recommends that the State party take all measures necessary to ensure that:

(a) All cases of enforced disappearance are investigated ex officio in a prompt, thorough, impartial and independent manner that takes into account the particular needs of each case, including by ensuring a systematic gender perspective, even if no formal complaint has been made;

(b) Alleged perpetrators of an enforced disappearance, including military and civilian superiors and State officials giving their authorization, support or acquiescence, are prosecuted and, if found guilty, punished with appropriate penalties, while avoiding the death penalty;

(c) The responsibilities of all authorities involved in search and investigation are clearly identified and a mechanism is established to effectively coordinate their activities;

(d) The “division for combating enforced disappearance” or other centralized body that is established to address enforced disappearances is endowed with the specialized staff and financial and technical resources necessary to carry out its work effectively;

(e) All victims of enforced disappearances receive full reparation, including rehabilitation that takes into account the particular needs of each case, including by ensuring a systematic gender perspective.

Secret detention

16. The Committee notes the assertion by the State party that there are no secret detention facilities, as prohibited by domestic law. It expresses its concern, however, at reports that secret detention is still used, including during the demonstrations initiated in October 2019. In particular, the Committee has received allegations about 420 places of secret detention, including in Camp Justice, Camp Honor, Jadriya bunker, al-Muthanna airport prison, Baghdad airport prison, and the city of Jurf al-Sakhar (art. 17).

17. The Committee urges the State party to adopt all measures necessary to ensure that no person is held in secret detention. In that context, the State party must guarantee that all persons deprived of liberty are afforded, de jure and de facto, from the outset of their deprivation of liberty, all the fundamental safeguards provided for by article 17 of the Convention. The State party should also:

(a) Carry out an urgent, independent and impartial investigation into all allegations of secret detention, including those relating to the existence of 420 secret places of detention, ensuring that all such places are officially identified; that all persons deprived of their liberty therein are released if the deprivation of liberty is not lawful; that the relatives of the said persons, or the persons of their choice, are immediately informed about their location; and that those responsible for such secret detention are brought to justice and punished in accordance with the gravity of their acts;

(b) Close any secret detention facilities or convert them into regular registered and supervised detention centres in compliance with the Convention and relevant international standards.

Fundamental legal safeguards

18. The Committee notes the adoption of the Prisoners and Detainees Reform Act in 2018. It nonetheless expresses its concern at the numerous allegations of violations of the rights of persons deprived of liberty. The reports indicate that suspects of terrorism detained under the Federal Anti-Terrorism Law No. 13 of 2005 are arrested without a warrant and are denied access to a lawyer, including during interrogation by police or other security forces, and that their relatives are not informed of their whereabouts. The Committee is also concerned at

allegations that, since the beginning of the demonstrations in October 2019, Iraqi security forces and militia have deprived thousands of demonstrators of their liberty, mostly without a warrant, and have kept them in incommunicado detention. Lastly, the Committee regrets that, according to the information provided by the delegation, the coronavirus disease (COVID-19) pandemic has obliged authorities to temporarily suspend visits to prisons (art. 17).

19. The Committee recommends that the State party take all measures necessary to ensure that:

(a) Only officials authorized by law to arrest and detain persons may deprive the said persons of their liberty, in strict compliance with the law;

(b) All persons deprived of liberty, including suspects of terrorism, have access to a lawyer from the outset of the deprivation of liberty and may communicate without delay with and be visited by their relatives, counsel or any person of their choice and, in the case of foreigners, with their consular authorities;

(c) When visits are limited by circumstances such as the COVID-19 pandemic, persons deprived of liberty are provided with the means to communicate with the persons of their choice without delay.

Registers of persons deprived of liberty

20. Although the Committee notes the existence of numerous registers of persons deprived of liberty, it is concerned that the registers are not interconnected, that they do not include all the information referred to in article 17 (3) of the Convention, and that the data they contain are often inaccurate. The Committee is concerned that neither current national legislation nor the bill on enforced disappearances guarantee that any person with a legitimate interest can have access to the information listed in article 18 (1) of the Convention. This situation greatly complicates any search for and localization of persons deprived of liberty, putting them at risk of enforced disappearance, and causing distress and suffering to their relatives (arts. 17, 18, 20 and 22).

21. The Committee recommends that the State party take all measures necessary:

(a) To centralize existing registers of persons deprived of liberty in a single register that includes at least the information required under article 17 (3) of the Convention;

(b) To ensure that all cases of deprivation of liberty are duly recorded in the centralized register, and that the information recorded is systematically updated and periodically checked;

(c) To guarantee that any person with a legitimate interest has prompt access to the information referred to in article 18 (1) of the Convention;

(d) To ensure that the types of conduct described in article 22 (b) and (c) of the Convention are investigated and adequately punished.

Search for disappeared persons and return of remains

22. The Committee welcomes the amendment of the Protection of Mass Graves Act (Act No. 13 of 2015) to include mass graves dating after 2003. It remains concerned, however, that the Act does not cover crimes allegedly committed by State agents. The Committee is also concerned at the limited progress made in the search for disappeared persons, and in the identification and return of their remains, in particular of the estimated 1 million persons buried in mass graves. It regrets the limited technical, financial and human resources of the Mass Graves Directorate to ensure adequate storage and identification of remains. The Committee also regrets the difficulties faced by victims in participating in the search for their disappeared relatives and the investigation of their disappearance (arts. 12 and 24).

23. The Committee urges the State party to redouble its efforts to search for, locate and release disappeared persons and, in the event that the said persons are found to be deceased, to ensure the dignified return of their remains. In particular, it should:

(a) **Ensure that the search for disappeared persons continues until they have been located, and that any investigation into their disappearance is pursued until the facts have been clarified and the perpetrators identified;**

(b) **Establish by law a clear and efficient process that provides relatives of disappeared persons with access to all the information relating to the search and investigation, and enables their effective participation in the process if they so wish;**

(c) **Ensure the coordination, cooperation and cross-checking of data between the authorities responsible for searching for disappeared persons and, in the event that the said persons are found to be deceased, for identifying their remains;**

(d) **Amend the Protection of Mass Graves Act (2015) to ensure that it also covers acts committed by State agents;**

(e) **Ensure that the Mass Graves Directorate has the necessary financial, technical and human resources to carry out its functions in accordance with international standards and best practices.**

Definition of victims and reparations

24. The Committee remains concerned that the definition of victim in existing national legislation and in the bill on enforced disappearances does not comply with the definition contained in article 24 (1) of the Convention. Furthermore, it regrets that the State party did not provide information on the reparations granted to victims of enforced disappearances. The Committee is also concerned that, under article 10 of the Criminal Procedure Code, providing compensation for the victims of enforced disappearance falls under the responsibility of the perpetrator, and not of the State (art. 24).

25. The Committee recommends that the State party take the measures necessary to ensure that:

(a) **The definition of victim in domestic law is fully consistent with article 24 (1) of the Convention, including for any individual who has suffered harm as the direct result of an enforced disappearance;**

(b) **A comprehensive system of reparation and compensation is provided in domestic law in accordance with article 24 (4) and (5) of the Convention, for which the State is responsible and which is applicable even if no criminal proceedings have been initiated;**

(c) **The system for awarding reparations takes into account the personal circumstances of victims, such as their sex, gender identity, age, ethnic origin, social status and disability.**

Declaration of absence

26. The Committee is concerned that, under current national legislation, in order to regularize the legal situation of a disappeared person and that of their relatives, the disappeared person must be declared dead by a court, usually two years after he or she was reported missing. It is also concerned at reports that relatives of disappeared suspected members of the so-called Islamic State in Iraq and the Levant do not have access to this procedure. As a matter of principle, a disappeared person cannot be presumed dead until his or her fate has been clarified (art. 24).

27. The Committee recommends that the State party adopt the measures necessary to ensure that, in accordance with article 24 (6) of the Convention, the legal situation of disappeared persons, including suspected members of the so-called Islamic State in Iraq and the Levant, and that of their relatives, are regularized in fields such as social welfare, family law and property rights, without the need to declare that the disappeared person is presumed dead. In this connection, the Committee recommends that the State party provide for, by law, the issuance of declarations of absence by reason of enforced disappearance.

Interaction of the State party with the Committee in the context of the Committee's urgent action procedure (article 30)

28. The Committee recalls that, under article 30, requests for urgent action may be submitted to the Committee as a matter of urgency by the relatives of a disappeared person or their legal representatives, their counsel or any person authorized by them, or any other person having a legitimate interest, without the need to exhaust domestic remedies, on the condition that the case has been reported to any of the competent bodies of the State party concerned, where such a possibility exists. The Committee notes that Iraq is currently the State party with the highest number of urgent actions registered by the Committee. It is concerned that, at the time of adoption of the present observations on additional information, 275 of the 492 registered urgent actions remain unanswered despite reiterated reminders, and that the replies received usually do not provide information about the strategies adopted or steps taken by the competent authorities to search for the disappeared persons and to investigate their disappearance (art. 30).

29. The Committee calls upon the State party to enhance its cooperation with the Committee to ensure that all requests for urgent action are immediately processed and transmitted to the authorities in charge of the case of reference; that immediate action is taken to search for disappeared persons and to investigate their disappearance; and that concrete information is provided to the Committee, throughout the procedure, about the actions taken and the progress of the case.

C. Dissemination and follow-up

30. The Committee wishes to draw attention to the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts are in full compliance with the Convention and other relevant international instruments. In particular, the Committee urges the State party to guarantee that effective investigations are conducted into all enforced disappearances and that the rights of victims as set forth in the Convention are fully upheld.

31. The State party is encouraged to disseminate widely the Convention, the additional information submitted under article 29 (4) of the Convention and the present observations, in order to raise awareness among all governmental authorities, civil society organizations and the public at large.

32. Under article 29 (4) of the Convention, the Committee requests the State party to submit, no later than 25 November 2021, specific, up-to-date information on the implementation each of the recommendations contained in the present observations and on additional information, with a particular focus on (a) progress in the review, adoption and implementation of the legislation on enforced disappearances; (b) secret detention; (c) reparation to victims; and (d) legislation and practices concerning the wrongful removal of children. The State party may also provide any other information that it considers relevant on the fulfilment of its conventional obligations. The Committee encourages the State party to promote and facilitate the participation of civil society, in particular victims' organizations, in the preparation of this information.