

General Allegation

132nd Session (29 January to 2 February 2024)

Iraq

The Working Group received information from the sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, ‘the Declaration’) in Iraq.

1. The Working Group received allegations concerning the draft law on missing persons (hereafter, ‘the draft law’) shared by the Office of the Iraqi Prime Minister to the Iraqi House of Representatives in 2023. According to the information received, the draft law fails to codify enforced disappearances as an autonomous crime, which is the responsibility of Iraq under the International Convention for the Protection of All Persons from Enforced Disappearances (hereafter, ‘the Convention’), ratified by Iraq in 2010.
2. Sources informed the Working Group that the draft law defines missing persons as someone who went missing, with whom contact is lost, and whose fate is unknown. Thus, the draft law does not implement the definition of enforced disappearances as provided in the Declaration and in Article 2 of the Convention. The Committee on Enforced Disappearances (hereafter, ‘the Committee’) has already previously recommended the Iraqi authorities to incorporate the offense of enforced disappearances into domestic criminal legislation as an autonomous offence ([CED/C/IRQ/OAI/1](#)).
3. According to the unofficial translation of the draft law provided to the Working Group, the aims of the draft law mentioned in Article 4 are of a purely humanitarian nature, i.e. to; (1) reduce the number of missing persons, (2) provide assistance for missing persons, (3) facilitate procedures establishing the truth of missing persons, (4) simplify the procedures of receiving reports and disclosing information, and (5) enhance awareness, assisting families in submitting reports, as well as setting up mechanisms to provide redress. While the Working Group supports such efforts, in case the persons went missing as the result of an enforced disappearance, State authorities are also under obligations to prevent these violations, conduct an investigation, prosecute perpetrators, and provide reparation to victims.
4. The draft law foresees the establishment of a Supreme National Commission on Missing Persons (hereafter, ‘the Commission’). However, there are several shortcomings in the design of the Commission, including:
 - a. its independence and confidentiality are not sufficiently as secured, which is of crucial importance to protect victims and the information provided by them,
 - b. it does not have investigative powers,
 - c. it is unclear how the Commission will interact with law enforcement, other Government and international agencies, and the judiciary,
 - d. participation of victims in the Commission’s work and procedures is not secured.

5. Sources have informed the Working Group that the draft law has not been adopted yet, but there is confusion around its status, even within the House of Representatives. This affects the families of missing and forcibly disappeared persons negatively, as they do not know what to expect. Importantly, families should be included in the design of the law, as well as in its implementation, so that their needs can be addressed.
6. As such, the draft law as reported to the Working Group by sources is in blatant contradiction with the recommendations received by Iraq from the, which conducted a visit to Iraq in November 2022 ([CED/C/IRQ/VR/1](#)). Among the priority recommendations were establishing and implementing the basis for effective searches and investigations (paras. 3-22) and measures to eradicate impunity (paras, 23-36).
7. The Working Group is further concerned by statements of governmental officials in the process. According to information received, in August 2023, the Human Rights Advisor to the Prime Minister announced at the Dialogue Forum on Disappearances in the House of Representatives that there was not a single case of enforced disappearance in the country. However, there are currently 16,428¹ unresolved cases concerning Iraqi authorities that the Working Group is dealing with under its humanitarian mandate, as well as 575² unresolved cases by the Committee. This is only the number of disappearances that were brought to the attention of the Working Group and the Committee – the actual number of enforced disappearances is most likely much higher.
8. The Working Group would like to bring to the Government’s attention the following provisions of the Declaration, which are directly related to the present allegation:

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. *All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.*
2. (...)

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 13

1. *Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly*

¹ See [A/HRC/54/22](#)

² See [A/78/56](#)

refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.

2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

9. Moreover, the Working Group would like to bring to the attention of your Excellency's Government the [Guiding Principles for the Search for Disappeared Persons](#) and, in particular, in Principle 5 (the search should respect the right to participation), Principle 13 (the search and the criminal investigation should be interrelated) and Principle 15 (the search should be independent and impartial).

10. The Working Group would be grateful for your Excellency's Government cooperation and observations on the following questions:

- a. Please provide any additional information, any comment you may have on the above-mentioned allegations, as well as information on the official status of the draft law.
- a. Please provide information on any legislative initiative or practical measures that would lead to investigations and to prosecution of perpetrators of enforced disappearances.
- b. Please provide information on steps taken to ensure the families right to participation, as well as the involvement of victims' associations in the process of drafting laws and procedures addressing missing persons and enforced disappearances, including in the draft law.
- c. Please provide information on initiatives leading to providing redress and compensation to victims of enforced disappearance.

d. Please provide information on how the authorities plan to incorporate the autonomous crime of enforced disappearance into domestic law.

11. The Working Group requests your Excellency's Government to provide a response to the above questions within 60 days. The text of the general allegation will be published along with the Working Group's post-session report and on its website, where also any response received by your Government will be uploaded.