## Maat for Peace’ submission on “study to mark the 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance”

* Permeable:

The phenomenon of enforced disappearance has worsened over the past decades in almost most countries of the world, which drew the attention of the international community, including states, governmental and non-governmental organizations and civil society organizations in order to discuss ways to confront this worsening phenomenon and put an end to it. The international consultations at the end of the 80s and early 90s led the General Assembly of the United Nations to the adoption of the first international declaration aimed at protecting all persons from enforced disappearance in its resolution No. 47/133 issued in 1992. This declaration contributed significantly to the progress of international law on enforced disappearance, as it was the starting point for all International efforts to adopt the International Convention for the Protection of All Persons from Enforced Disappearance, which was entered into force in 2010 after it was adopted by the United Nations General Assembly in 2006. This declaration also laid the basis for many regional conventions that were signed within the framework of regional organizations among many parties of the international community over the past years. Despite the existence of an international legal framework at the present time established to eliminate the phenomenon of enforced disappearance which is rampant in most countries of the world, which is reflected in the presence of many international and regional conventions and instruments that prohibit the enforced disappearance of individuals, including the Convention for the Protection of All Persons from Enforced Disappearance. However, many countries, especially the countries of the Middle East, are still neither a party nor a signatory to these conventions, especially the Convention for the Protection of Persons from Enforced Disappearance. At the invitation of the Working Group on Enforced or Involuntary Disappearances to Member States, all individuals and organizations interested in issues relating to enforced disappearance, including national human rights institutions, intergovernmental organizations, regional human rights mechanisms, representatives of civil society organizations, experts and academics, to submit contributions to the preparation of the expected study in light of the special initiative to celebrate the 30th anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance, **Maat for Peace, Development and Human Rights** presents its interventions focusing on the Middle East countries of interest as follows:

* Key progress in international law and practice on enforced disappearance since the adoption of the Declaration:

The Declaration on the Protection of All Persons from Enforced Disappearance issued by the United Nations General Assembly in 1992, which represents the first international document to directly discuss the crime of enforced disappearance, has greatly contributed to the progress of international law on enforced disappearance, as it considered for the first time that every act of enforced disappearance is considered a crime against humanity. Moreover, it serves as the basis for international efforts to adopt the International Convention for the Protection of All Persons from Enforced Disappearance, which entered into force in 2010 after it was adopted by the United Nations General Assembly in 2006. This convention is the first international legal document that defines Enforced disappearance as “the arrest, detention, abduction or other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of freedom or concealment of the fate or whereabouts of the disappeared person, making this person outside the protection of the law.” In addition, the declaration forms the basis for the provisions of Article (7-1/i) of the Rome Statute of the International Criminal Court adopted in July 1998. This article indicates that for the purpose of this Statute, the enforced disappearance of persons constitutes, among other things, a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, and aware of the attack.[[1]](#footnote-1)

At the regional level, the Declaration on the Protection of All Persons from Enforced Disappearance is the mainstay of many regional conventions against enforced disappearance that were signed within the framework of regional organizations between many parties to the international community over the past years. In this regard, the Declaration was the basis for the American Convention on the Enforced Disappearance of Persons, which was signed between the members of the Organization of American States and entered into force on March 28, 1996. In addition, the Declaration served as the basis for the work of many international and regional mechanisms specialized in the protection of persons from disappearance, including the United Nations Committee on Enforced Disappearances, the European Court of Human Rights, which dealt with many cases of enforced disappearance, considering that the crimes of enforced disappearance are among the grave violations of human rights that the Court was established in order to avoid their occurrence, as well as the American Court of Human Rights, which is mandated by the American Convention on the Enforced Disappearance of Persons to address cases of enforced disappearance that is among the signatory countries to the Convention. The number of cases related to enforced disappearance that were brought before the American Court of Human Rights until September 19, 2018, reached 12,428 cases, in addition to the African Commission on Human Rights, which, together with the African Court, has examined many cases of enforced disappearance, including the case of the Malawi League and others v. Mauritania in 2000, the case of the Burkinabe Movement for Human and Peoples’ Rights v. Burkina Faso in 2001, and the case of Lisbeth Ziegfeld and Moss Ephrem v. Eritrea in 2003, in which the Committee recognized, on the basis of the Declaration and other relevant state covenants, that enforced disappearance constitutes a violation blatant right to life.[[2]](#footnote-2)

* **Impact of the Declaration on domestic legislation and case-law:**

Maat for Peace regrets that many countries in the Middle East, especially Qatar, Turkey, Iran, Bahrain, Saudi Arabia and Egypt, have neither ratified the International Convention for the Protection of All Persons from Enforced Disappearance, nor prohibited the crime of enforced disappearance in their local legislation and criminal regulations. The domestic legislation of the aforementioned countries of the Middle East does not criminalize the deprivation of liberty by the security authorities, which is at the heart of the definition of enforced disappearance as stated in the Declaration on the Protection of All Persons from Enforced Disappearance and the International Convention for the Protection of All Persons from Enforced Disappearance. Hence, enforced disappearances are not considered criminal offenses under the penal code in these countries, and an individual cannot invoke his enforced disappearance before the national courts in these countries to seek compensation for the period of his disappearance. Moreover, Maat did not note that the provisions of the declaration were invoked before the courts, or that any of the case law in these countries, as local courts referred to the declaration of protection of all persons are subject to enforced disappearance in its provisions.

Although the impact of the Declaration on the Protection of All Persons from Enforced Disappearance on domestic legislation in the majority of countries in the Middle East was not at the desired level, as was evident in the lack of explicit criminalization of enforced disappearance practices in the domestic legislation and laws of these countries, however, the Declaration It has contributed, in one way or another, to the development of some local legislation that has greatly helped to reduce the practice of enforced disappearance in some countries in the Middle East. In Egypt, for example, the Declaration on the Protection of All Persons from Enforced Disappearance contributed to the development of Articles 54 and 55 of the amended Egyptian Constitution of 2014, which provided a kind of protection from enforced disappearance by stipulating in Article 54 that “personal freedom is a natural right, and it is inviolable. With the exception of the case of flagrante delicto, no one may be arrested, searched, imprisoned, or restrained.” Anyone whose freedom is restricted must be immediately informed of the reasons for that, be informed of his rights in writing, enable him to contact his family and his lawyer immediately, and be submitted to the investigation authority within twenty-four hours from the time of restricting his freedom. Interrogation with him except in the presence of his lawyer, and if he does not have a lawyer, a lawyer shall be delegated for him, while providing the necessary assistance to people with disabilities, in accordance with the procedures established by law. In Article 55 that “everyone who is arrested, imprisoned, or has his freedom restricted must be treated in a manner that preserves his dignity, and that his detention or imprisonment may only be in places designated for that.” Hence, these two articles have provided the minimum necessary protection for persons from enforced disappearance by providing for the right to personal liberty and the right to detention in recognized places of detention.[[3]](#footnote-3)

* Major obstacles and challenges to the implementation of the Declaration:

There are many legal and practical obstacles that prevent the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance in the countries of the Middle East region. The most prominent legal challenges and obstacles that prevent the implementation of the declaration in the Middle East are the local legislations’ lack of explicit legal texts criminalizing enforced disappearance and condemning its perpetrators, whether they are government agencies or non-state actors. The practical challenges and obstacles that hinder the implementation of the Declaration in the countries of the Middle East are topped by the prevalence of enforced disappearance practices that are widely practiced in these countries by parties both governmental and non-state actors, and in this regard, it should be noted that the majority of political systems in the countries in the Middle East in focus, enforced disappearances as a systematic policy against political opposition.

In Turkey, for example, the Turkish authorities have consistently practiced enforced disappearance as a systematic policy against their political opposition. Hundreds of people have reportedly been forcibly disappeared in Turkey since the 2016 coup attempt, at the hands of people who presented themselves as members of the Turkish security establishment. Most of those targeted were followers of the Fethullah Gulen movement that Ankara accuses of orchestrating the coup as well as members of the Peoples’ Democratic Party (HDP), as well as journalists, human rights defenders and activists affiliated with Marxist groups. In this regard, according to local Turkish reports, since the attempted coup in July 2016, there have been 969 cases of enforced disappearance in Turkey.[[4]](#footnote-4) Nearly 100 Turks were kidnapped by the Turkish intelligence service abroad and forcibly returned to Turkey, and then they were unofficially hidden under the pretext of combating terrorism and protecting national security, which was practiced in accordance with secret agreements concluded between the Turkish government and the governments of a number of countries, including the government of Afghanistan, Albania, Azerbaijan, Cambodia, Gabon, Kazakhstan, Kenya, Lebanon, Malaysia, Pakistan, Panama, Uzbekistan, Kyrgyzstan and Kosovo[[5]](#footnote-5). Among the enforced disappearances carried out by the Turkish authorities against opposition over the past years are the enforced disappearances of 7 persons in 2019; namely, Salem Zebek, Erkan Ermak, Yasin Ogan. , Ozgur Kaya, Mustafa Yilmaz, Gökhan Turkman and Yusef Bilge Tunç who is still missing at the time of writing this report.[[6]](#footnote-6) In addition, on December 29, 2020 Hüseyin Galip Küçükçeit, a former government employee in Ankara who was forcibly disappeared until July 14, 2021, as the authorities informed his family that he is being held in pretrial detention[[7]](#footnote-7), not to mention the forcible disappearance and kidnapping of Wahran Inandi, a school principal, on May 31, 2021 by intelligence Turkish.[[8]](#footnote-8)

Moreover, some non-state actors have been implicated in committing numerous enforced disappearances in countries in the Middle East over the past years. In Iraq, for example, armed militias operating outside the control of the state were responsible for the enforced disappearances of human rights defenders and activists. In this regard, human rights reports revealed, at the beginning of the year 2019, that the number of civilians detained by armed groups and militias operating outside the control of the state in Iraq has reached about 2,800 detainees in Salah al-Din Governorate alone, some of whom are being arrested for 4 years now without knowing who is holding them, despite the official and oral communications conducted by the local government in Salah al-Din with several parties, including the United Nations Mission in Iraq.[[9]](#footnote-9)

* **Awareness of the contents of the Declaration and activities to increase its dissemination:**

Since many of the countries in the Middle East under focus are from Arab countries such as Egypt, Iraq, Bahrain and the UAE, the content of the declaration is widely spread in these countries due to the fact that Arabic is one of the six official languages ​​of the United Nations. However, Maat has noted the lack of efforts to translate the declaration into Local languages, other than the six languages ​​of the United Nations, which are spread in many countries in the Middle East. Some countries in the Middle East have limited efforts to translate the Declaration to the official languages ​​recognized within the country without considering its translation into other local languages spoken by minorities. In this regard, Maat found that countries such as Iran and Turkey have limited efforts to translate the declaration to the Persian[[10]](#footnote-10) and Turkish languages[[11]](#footnote-11) only, without considering its translation into other local languages spoken by minorities in these countries, especially the Kurdish language.

Maat for Peace also noted the lack of efforts made to promote the Declaration on the Protection of All Persons from Enforced Disappearance in most countries of the Middle East, including the training programs targeting authorities and civil society organizations. No training sessions have been noted in this regard except for one training program held in Egypt from March 9 to April 1, 2021 for members of the Technical Secretariat of the Permanent Supreme Committee for Human Rights on various topics aimed at familiarizing themselves with some specialized topics in the field of human rights such as enforced disappearance and the international legal frameworks governing it, including the Declaration on the Protection of All persons from enforced disappearance[[12]](#footnote-12), in addition to the training program organized in Iraq in November 2021 by the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), which aimed to train Iraqi judicial, security and law enforcement officials on the basis of cooperation with the United Nations human rights system on the Prevention and Protection of Enforced Disappearances, and International Legal Frameworks for Protection from Enforced Disappearances, including the Declaration on the Protection of Enforced Disappearance All persons from enforced disappearance.[[13]](#footnote-13)

* **Conclusion & Recommendation:**

In conclusion, it can be said that the Declaration on the Protection of All Persons from Enforced Disappearance has greatly contributed to the advancement of international law on enforced disappearance, as it served as the basis for many international and regional agreements that were signed over the past years with the aim of eliminating the phenomenon of enforced disappearance. However, the impact of the declaration on local legislation and case-law in many countries in the Middle East didn’t amount to the hoped-for level. The domestic legislation in these countries still does not explicitly criminalize enforced disappearance, and none of the national courts in these countries have been based on the Declaration on the Protection of All Persons from Enforced Disappearance in handling any of its cases. Moreover, the protection of all persons from enforced disappearance continued to face many practical and legal challenges and obstacles that impede its implementation in these countries. In light of the foregoing, Maat for Peace and Development presents and human rights recommends the countries of the Middle East as follows:

* The need to abide by the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance.
* The need to ratify the Convention for the Protection of All Persons from Enforced Disappearance and the Rome Convention of the International Criminal Court, which deal directly with the obligations of States with regard to the crime of enforced disappearance.
* The practice of enforced disappearance should be explicitly criminalized in domestic legislation and laws, making enforced disappearances amount to criminal offences under the country's Penal Code.
* The need for an immediate cessation of practices of enforced disappearance against dissents, political opposition and human rights defenders.
* The need for the immediate release of all enforced disappeared persons and for the provision of effective remedies, including adequate compensation for the time they have been subjected to disappearance.
* The Declaration on the Protection of All Persons from Enforced Disappearance should be widely disseminated through translation into various local languages and educational seminars and training courses for authorities and civil society organizations.

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3. علاء عبد المنصف، قضايا حقوق الإنسان: الاختفاء القسري، المعهد المصري للدراسات، 16 مايو 2018، الرابط: <https://bit.ly/3qTmUgo> [↑](#footnote-ref-3)
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