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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

**Joint written statement* submitted by the International
Organization for the Elimination of All Forms of Racial
Discrimination (EAFORD), Association Ma'onah for Human
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International-Lawyers.Org, Union of Arab Jurists, United
Towns Agency for North-South Cooperation, non-
governmental organizations in special consultative status,
International Educational Development, Inc., World Peace
Council, non-governmental organizations on the roster**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2020]

* Issued as received, in the language(s) of submission only.



The persisting situation of Enforced Disappearances in Iraq

This is a joint written statement about the persistence of enforced disappearances for the 43rd Session of the Human Rights Council. Individuals are abducted each day in every part of the world. The stories of those who, during their daily routine, are taken and forced into vans by men in uniform are heart-breaking. It is even more troubling when such a crime is committed by a government agency. The very same government whose legitimacy derives from its duty to protect every individual under its sovereign control. The elimination of acts of enforced disappearances is crucial to the promotion of international human rights, and lies at the core of this Council's mission to protect the victims of abuses.

Introduction

United Nations (UN) Secretary-General's message on the International Day of the Victims of Enforced Disappearances on 30 August 2019 was welcomed news. In his statement the Secretary-General called on states to prevent enforced disappearances and bring those responsible to justice. He further called for increased cooperation with UN mechanisms, and urged all states to sign, ratify, and accede to the International Convention for the Protection of All Persons from Enforced Disappearance (CED). The Secretary-General particularly stressed one crucial element: that the international community should not treat enforced disappearances as an issue of the past. Such cases are in fact on the rise.

This message has no better application than in the case of Iraq, where enforced disappearances occur on a massive and widespread scale since the United States of America (U.S) invasion in 2003.

Although Iraq has ratified the CED, entered into force on 23 December 2010, it has not yet provided any effective legislation to implement it. We cannot even find a clear definition of "disappearance" in Iraqi law.

The situation in Iraq is admittedly complex and the eradication of enforced disappearances will be a long-term challenge. But such an endeavour must start with the fight against corruption and impunity that has been plaguing the country for decades. The government of Iraq must cooperate with UN Human Rights mechanisms if it ever hopes to one day finally find a permanent peace.

Corruption and impunity at the core of Enforced Disappearances

We have pointed out on several occasions the dangerous levels of corruption in the country. This environment breeds a general culture of indifference towards accountability and compromises the rule of law.

In most cases followed by the organizations joining in this statement, a common trend has emerged and has been identified: when the arrest and the detention occur, the identity of the authority in charge of said arrest and detention was unknown, nor was it clear which ministry it answered to. It is therefore impossible to know where the arrested individual has been taken. Unsurprisingly, no one is informed of the charges filed, and no proper records are registered.

Most notably, the government's increased reliance and support for militias has exacerbated the problem. In 2014, the world witnessed the emergence, with government approval, of Al-Hashad al-Shaabi, or Popular Mobilization Forces, as an umbrella entity of the existing brutal militias under the pretext of fighting ISIS. These militias were responsible for some of the most horrific crimes against the people living in the areas dominated by ISIS and by the Iraqi government. As of 24 February 2016, Al-Hashad al-Shaabi has been incorporated into the Iraqi security forces as an independent military formation by the Prime Minister. Through this incorporation, the government did not intent to reign in the militias, but rather to give them legitimacy and power, allowing them greater latitude in which to manoeuvre.

The two aspects of Enforced Disappearances in Iraq

There are two identifiable aspects to enforced disappearances in Iraq. First, they follow the arrests of protesters and activists who are simply expressing legitimate claims, such as an end to an aggressive anti-terrorism law and corruption. These claims embody fundamental rights that are at the core of this Council's mission. Through intimidation and extra-judicial actions, the Iraqi government is unambiguously laughing in the face of this Council, all the while claiming to participate in good faith in the promotion of its Mission.

The second aspect is more complex yet very much sinister. As mentioned previously, government aided militias have been responsible for crimes of the most horrific nature against the people living in the areas taken back from ISIS by the Iraqi government. They also pursued a sectarian agenda which aimed at systematically destroying entire villages and uprooting their inhabitants through widespread sectarian cleansing. This happened in Diyala, Salaheldin and Ta'mim provinces. Al-Hashad al-Shaabi abducted and detained hundreds of civilians but, so far, nobody knows where they are.

On 22 May 2016, Iraqi security forces, backed by hundreds of militias launched an attack against Fallujah, which predictably proved to be a pretext for sectarian violence. During the fighting in Saqlawiya, 20 km west of Fallujah, over 1,000 civilians had fled the city and had sought the assistance and help of al-Hashad al-Shaabi militias. Of these, hundreds had been executed, or had died because of the severe torture practices, while others, and precisely 643 of them, simply disappeared. Families had not been informed of their whereabouts or even the reason for their detention. This was confirmed by Mr. Ján Kubiš, Special Representative of the UN Secretary-General and Head of the UN Assistance Mission for Iraq, in a briefing of the Security Council held on 15 July 2016.

The list of those who have disappeared in Saqlawiya highlights one important pattern: the victims of the militias' abductions are mostly members of the same families. This is clear and convincing evidence that, behind the involuntary disappearances, there was an intent to target individuals based on their sect or ethnic origins, namely the Sunni community.

Secret prisons also continue to be widely used in Iraq. It is shocking to find out that the number of secret detention centres in Iraq is several times higher than that of official prisons. Credible information collected in 2015 indicated that there were more than 420 secret prisons in Iraq. There is reason to believe that this number has increased since then.

We wish at this point to remind this Council and the international community of the consequences of wasting any more time on the issue. History has shown that inaction and procrastination has only ever served to amplify crimes against Humanity. If we wait any longer to act, all that will be left to do will be to punish the criminals and add another sinister chapter to humanity's History books. In such a scenario there are no winners, only losers.

Systematic evasion of the question

We deplore the fact that the Iraqi Government is stubbornly trying to hide these crimes, or at best is conveniently ignoring them. It would rather we believed that enforced disappearances are a phenomenon of the past -attributable to the former government between 1968 and 2003- or divert attention to atrocities solely committed by ISIS. Iraqi authorities are overtly engaging in the familiar tactic of pushing the blame onto others.

The Iraqi government will point to criminal laws enacted in the past, proposed bills, or administrative and judicial reforms to convince us of their good faith. The truth is that past enacted laws have proven to be futile, that the proposed bills have yet to be enacted and demonstrate deficiencies as to their application to enforced disappearances, and that administrative and judicial reforms, on their face, lack any credible guarantee of efficiency.

To conclude, it is very unlikely that the Iraqi government will change course on its own. Corruption at all levels is not just an obstacle but a steel wall in front of progress. The interest and well-being of the Iraqi people is not even a secondary consideration. External pressure and oversight seem to be the only realistic option. This Council is fortunate to pursue a

dialogue with the Iraqi government. While we commend the Council's efforts, we believe that a change of approach may well be the solution.

Recommendations

This situation cannot be allowed to continue. To this end, the authors of this joint written statement recommend that this Council:

- take a more direct discourse concerning enforced disappearances directly attributable to the Iraqi Government
- follow more closely the application and effectiveness of Iraqi laws on the matter
- continue to pressure the government of Iraq into complying with its international obligations, and into recognizing the competence of the Committee on Enforced Disappearances to receive and consider communication from victims and their families
- establish a mandate for a Special Rapporteur for violations of Human Rights in Iraq, particularly with regards to enforced disappearances

Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.