

**Iraqi HCHR Report about
Implementation of the International
Convention
(Protection of All persons from Enforced
Disappearance)**

August, 2015

Iraqi High Commission for Human Rights was established in Iraq under Law No. (53) of 2008 amended, implementing to the article no. (102) of Iraqi Constitution of 2005, its members had been chosen by voting on them in the Iraqi Council of Representatives on 09/04/2012 to be the first national institution for human rights in Iraq history.

The Law mandated the Commission many tasks, the most important of them are; to ensure respect and promotion of human rights that stated in Iraqi Constitution , laws and international treaties ratified by Iraq . Under this law HCHR became committed to receive complaints from individuals, groups and civil society organizations over the previous and subsequent violations, giving the commission authority to carry out initial investigations related to human rights violations and initiating proceedings then referred them to the public prosecutor.

IHCHR has allocated, since its establishing, a file related to enforced disappearance in Iraq, especially that Iraq has joined the International Convention for the Protection of All Persons from Enforced Disappearances, and approved by the Law No. (17) of 2010.

HCHR presents the most important notes and views on the extent of implementing the International Convention for the protection of persons from enforced disappearances in Iraq as the following:

- 1. International Convention and national legislation:** International Convention is not higher than the national legislation under the legal system in Iraq, this principle is derived from the provisions of the Iraqi constitution into force; which does not give international conventions and treaties any superiority on the provisions of internal legislation, and this leads us to say that the ratification law on International Convention for the protection of persons from enforced disappearance is a part of the national legislation and has the impact in amending the legal provisions preceding its entry into force, but it is true theoretically only, because the national judge in Iraq, particularly in the criminal courts, adhere literally by Iraqi criminal law provisions and does not consider the other provisions contained in international conventions ratified by Iraq.

IHCHR considers that the issuance of legislation related to implement the Convention could to be have the impact in amending the previous laws, where its issuance will guarantee virtually solution for the implementation of provisions of the Convention.

2. Database and information on the number of people who supposed to be subjected to enforced disappearance: There is no system in Iraq to centralized information on the number of people who are supposed to be subjected to enforced disappearance because of, the views and several parties empowered by law the authority of the implementation of the arrest warrants and detention of persons, as well as, the situation in Kurdistan region refers to the presence of information system not linked by federal government , and it is not easy to access to that information from related parties.

3. Draft law on the implementation of the Convention: IHCHR liked to record that the commission was not invited to engage in discussions or preparations for this project, although the Commission Law No. (53) of 2008 has been awarded the commission this jurisdiction under article (4)

4. Crimes and violations committed by terrorist groups (Da'ash): the commission has been mentioned the difficulty to practice investigation procedures concerning crimes committed by these gangs , because the areas which had witnessed these crimes are still areas of military operations which are dangerous and the security situation is unstable , as well as the collapse of the criminal justice system. commission has received (5) complaints in the year (2014) and (15) in the year (2015) where the claim those people were subjected to enforced disappearances, commission has followed the legal proceedings and referred the complaints to the public prosecutor, commission has faced difficulties in identifying the real criminals and partners.

5. IHCHR has received complaints related to enforced disappearance cases and detail according to the following:

Year	No. of complaints	Gender	Age
2014	12	Males	20-40 years
2015	29	males	20-40 years

According to the powers granted by the Commission under Article (5) of the Commission Law No. (53) of 2008, initial investigations and collect information have been conducted from ministries of interior and defense. The commission addressed the public prosecutor and the answer were (3) cases placed in prison in 2014 for investigative purposes under Article (4) of the Anti-terrorism Law No. (13) of 2005, Commission is following the results of these complaints with the public prosecutor, here HCHR recorded the necessary needs in adoption programs to build the capacity of its staff working in the field of investigation and complaints programs, as well as legal support campaigns to raise awareness in how to apply the individuals legal protection of judicial bodies and others in Iraq.

6. Prisons and penal institutions: Iraqi high commission for Human Rights carries out visits periodically and regularly to the prisons and penal institutions in Iraq, and issued its observations and recommendations to the competent authorities, as well as published periodic and annual reports. The commission did not have recorded any complaint on the existence of secret prisons in Iraq.

As for considering the practice of enforced disappearance a crime against humanity, the Iraqi legal system does not define this crime by any legal description, but only in the Supreme Iraqi Criminal Court Act No. 10 of 2005 article (12), where the practice of enforced disappearance could be considered as (a crime against humanity) just in the period between 17/7/1968 until 1/5/2003, this period determined by the court law as mentioned above , this description does not cover crimes committed after that date, which highlights the need to legislate provision explicitly considering the practice of enforced disappearance is a crime against humanity in national legislation.

7. IHCHR considers that the provisions of the criminal responsibility referred to in article (6) of the Convention is not possible to apply in Iraq currently in the absence of a legal provision which, criminalizes the practice of enforced disappearances, and thus the criminal responsibility that stipulated in Iraqi Penal Code No. (111) of 1969 determined by kidnapping acts and illegal restriction of liberty

The above-mentioned speech applies to article (7) of the Convention where it is impossible to impose appropriate penalties on the crime of enforced disappearances in application of the constitutional text **(no crime and no punishment except by law)** the 2nd item/article (19) of the Iraqi constitution .

8. **IHCHR considers** that the full implementation of Article 17 of the Convention is facing many obstacles in Iraq represented by the multiplicity of authorities and security agencies legally authorized to implement the orders of arrest and detention of persons accordingly, leading to the difficulty of ascertaining the fate of detained persons and to know whereabouts them or any information relating to them and if the memorandum of the Coalition Provisional Authority No. 2 of 2003 has provided guarantees in this field , but at the same time it does not provide unified system or a database of all detainees in detention centers or prisons, and here the Commission calls for the adoption of a unified database containing the names of detainees in Iraq , their personal data , the dates , whereabouts and these data must be available to detainee's family or his legal representative , no doubt that this procedure provides a definite guarantees and legal protection for detainees in line with the implementation of article 24 of the Convention

The Commission would like to mention here that the issuance of the decree no (57) on 2/01/2014 did not lead to establish a unified database of all detained persons, and those who arrested in which covers all Iraqi provinces and be accessible by stakeholders.

9 . The State's obligation to know and uncover the truth of all those who inflict harm from the crime of enforced disappearance , requires doing efforts to reveal the fate of missing persons and to follow available scientific methods , particularly in the field of mass graves, for this purpose Iraq has enacted law of mass graves protection No. 5 of 2006 , Iraqi Council of Representatives did well when enacted amendment of this law where expand legal protection to the mass graves that formed after the April 9, 2003, in particular as experienced by Iraq of terrorist

crimes peaked after the invasion of terrorist Da'ash gangs the provinces of Nineveh, Salahuddin and Anbar on June 10, 2014 which led to a large increase in the number of mass graves.

IHCHR points out in this regard the urgent needs to provide support technical and material resources for cadres working in the field of mass graves as well as , the provision of specialized laboratories in the field of criminal evidence and DNA examination where IHCHR noticed a severe lack in numbers ,laboratories and staff experience which affecting negatively in this field to uncover the truth and identify the fate of thousands of missing.

10 :Measures for reparation and compensation

Iraqi legal system does not granted any legal privileges to the victims of enforced disappearances concerning reparation, compensation, restoration of dignity. General provisions for compensation does not provide the possibility of obtaining compensation , restoration of dignity rehabilitation, and guarantees of non-repetition rapidly , IHCHR is demanding the adoption of legal provisions for compensation and reparation consistent with the nature and seriousness of this in line with the provisions of article (24) of the Convention, and the reparation submitted by the transitional justice institutions in Iraq was limited to victims before 9/4/2003 without covering victims after this date.

The claim for compensation of the damages resulting from any crime, including the crime of enforced disappearance, is linked to the claim of victim or his legal representative in compensation in any stage of the investigation or trial except the stage of appealing the cassation under the provisions of article (10) of the Criminal Procedure Code No. (23) of 1971 amended.

This does not consequent any financial obligation to the state because the compensation is obliged on those who committed the crime, IHCHR considers this system is a late one and doesn't provide rehabilitation of a victim or restoration of dignity or guarantees of non-repetition.