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NO IMPUNITY FOR ENFORCED DISAPPEARANCES IRAQ'S OBLIGATIONS PURSUANT TO THE ENFORCED DISAPPEARANCE CONVENTION

Amnesty International, the International Commission on Missing Persons and TRIAL (*Swiss Association against Impunity*) welcome recent steps taken by the government of Iraq to begin the process of implementing the *International Convention for the Protection of All Persons from Enforced Disappearance* (hereinafter: the Convention).

The Convention is now in force, following Iraq's accession to the Convention on 23 November 2010. Iraq became the 20th State party to the treaty. Its accession was a significant step, which sent a clear signal of Iraq's commitment to tackle the practice and crime of enforced disappearance.

The September 2012 conference hosted by the Iraqi Ministry of Human Rights in partnership with the International Commission on Missing Persons is an encouraging sign of increasing dialogue between relevant Ministries and State institutions in Iraq, including the Kurdistan Region, concerning the implementation of the provisions of the Convention. The conference also set the ground for the preparation of Iraq's report to the Committee on Enforced Disappearances.

The outcome of the conference may serve as a useful basis to enhance access to justice, truth and full reparation for victims of enforced disappearance. In particular, the commitment to review the domestic legislative framework to ensure compliance and consistency with the Convention is encouraging and should be carried forward as soon as possible.

However, Iraq has not recognized the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-state communications pursuant to Articles 31 and 32 of the Convention.

Iraq is encouraged to implement additional measures to ensure the effective prevention and redress of the crime of enforced disappearance. These include:

- Taking decisive steps to end the practice of enforced disappearance, fully investigate unresolved cases, and provide victims and their families with access to justice, truth and full reparation;
- Recognize the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-state communications pursuant to Articles 31 and 32 of the Convention by making the required declarations;
- Ensure that Iraqi law (pursuant to Article 24 of the Convention) defines "victims of enforced disappearance" as including the disappeared person, and any individual who has suffered harm as the direct result of an enforced disappearance;
- Ensure that Iraqi law guarantees victims the right to obtain full reparation (including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition);
- Ensure the effective implementation of the Convention by ensuring that all relevant criminal, civil and family legislation, as well as policies and practices are consistent with the numerous obligations undertaken by Iraq when it acceded to the Convention, including, among others, by codifying enforced disappearance as a separate and autonomous crime under domestic criminal

- legislation;
- Ensure that ordinary criminal courts have jurisdiction over the crime of enforced disappearance – either as a crime under international law and as a crime against humanity;
 - Ensure that its legislative framework recognizes in the context of the crime of enforced disappearance, among others, the legal principle relating to: (i) the obligation to extradite or prosecute (*aut dedere aut judicare*); (ii) universal jurisdiction; (iii) the non-applicability of statute of limitations;
 - Ensure that persons alleged to have committed the offence of enforced disappearance are not tried before military courts;
 - Ensure the legislative prescription of appropriate criminal sanctions for the crime of enforced disappearance, which reflect the extreme seriousness of the offence, but excluding the death penalty;
 - Ensure that no authority or public official has the power to grant amnesties or similar measures that have the effect of exempting an alleged perpetrator from responsibility for the crime of enforced disappearance. Similarly, Iraq should ensure that there shall be no immunity or special exemptions from investigation and prosecution for this crime;
 - Ratify the 1968 Convention on the non-applicability of statutes of limitation to war crimes and crimes against humanity without making any prohibited reservation in order to bring Iraq into full compliance with the imprescriptibility of enforced disappearance as a crime against humanity.

The undersigned organizations look forward to acts that show continuing determination of Iraq to eradicate enforced disappearances. In the meantime, our organizations remain available for constructive dialogue and to offer necessary support to assist Iraq in meeting its international obligations and combating enforced disappearances.

Amnesty International has presented the government of Iraq with a Checklist¹ for domestic implementation of the Convention. The undersigned hope that this tool, available in Arabic,² will provide the government with useful guidance on how to implement, in law and practice, Iraq's obligations under the Convention and related international law and standards.

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Amnesty International

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¹ Amnesty International, *No Impunity for enforced disappearances: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance*, (Index: IOR51/006/2011, November 2011) available at: <http://www.amnesty.org/en/library/info/IO51/006/2011/en>, presented to Iraqi officials in Baghdad during the conference “No Impunity for Enforced Disappearances” on 16-17 September 2012.

² See: <http://www.amnesty.org/en/library/asset/IO51/006/2011/en/f3126fae-4cd1-4070-8833-d4e3ea717339/ior510062011ar.pdf>.