

The  
CENTER for  
VICTIMS of  
TORTURE

Restoring the Dignity of  
the Human Spirit

# Enforced Disappearances:

Ambiguity Haunts the Families of Iraq's Missing

## INTRODUCTION

Since the fall of the Saddam Hussein regime in 2003, disappearances in Iraq have remained largely off the radar in human rights reporting. However, the violation has not stopped under the fog of war and may be on the rise with the control of various militias in cities and towns across the country. With the increase in the number of Iraqi refugees and displaced since 2014, stories of disappearance are slowly emerging.

The disappeared are a specific sub-category of persons who are missing. State-enforced disappearance is a human rights violation and the widespread practice—by state or non-state actors—amounts to a crime against humanity. This is a type of ambiguous loss, a category of loss for which there is no closure or verification of the loss. The absence of certainty or possibility of closure “can traumatize and immobilize grief and coping processes, and prevent individuals and families from moving forward with their lives.”<sup>1</sup>

About 81 of 310 individuals from Iraq who sought rehabilitative care from the Center for Victims of Torture™ (CVT) in Jordan in 2016 report a missing family member. Missing persons are those unaccounted for as a result of conflict or violence.<sup>2</sup> Not all of these missing family members are disappeared. Clients’ family members may be missing for a wide range of reasons, such as generalized violence or inability to communicate with family in refuge or displacement, but interviews with several of these individuals indicated

that some of the missing may have been disappeared.

The ambiguity associated with disappearance can be particularly grave for family members. Unlike other forms of ambiguous loss, disappearance involves the specific targeting of individuals or groups for detention and the refusal of state or controlling authorities to provide any information about the missing person. The disappearance therefore “confronts those impacted by it with the power of perpetrators; power to not only deny life but to deny even confirmation of death.” This power is thus manifested in the disappeared and lives on “in the minds and bodies of their families through trauma and somatization.”<sup>3</sup> It can affect their whole lives, long after conflict or mass atrocities are over. A key component of psychological healing from grief is to work through the closure.

To understand the perspective of those who have experienced the disappearance of a family member, we conducted interviews with seven former CVT clients in May 2016. These individuals were invited to participate because they had reported missing family members and those family members were likely disappeared based on criteria provided to clinicians. Their psychosocial counselors also identified that these individuals had shown significant improvements in their group participation and may feel comfortable sharing their experiences for public reporting.<sup>4</sup> Interviews with several of these individuals reveal

that many of the missing may in fact be victims of enforced disappearance by various militias that exert control in regions across the country and carry out disappearances with impunity. Although the sample size of refugees interviewed for this paper is relatively small, the interviewees shed light on what may be a larger scale phenomenon across the country.

The difficulty of tracking and retaining data on human rights abuses in Iraq has left disappearances vastly underreported. As operations to drive out the self-proclaimed Islamic State (ISIS) ramp up and the Iraqi government or militias attempt to re-assert authority, the possibility of arbitrary detention and enforced

disappearance increases. This paper provides a glimpse into the situation of disappearances in Iraq after the fall of Saddam Hussein's regime.

As the Iraqi government has made some strides in addressing the widespread phenomenon of disappearances under the previous regime, it must begin to grapple with disappearances that took place after its fall. The emotional and practical consequences of disappearances on family and loved ones of the disappeared must be addressed not only in Iraq, but by refugee host countries, the UN High Commissioner for Refugees and countries of resettlement, as well.

## THE INTERNATIONAL PROHIBITION AGAINST ENFORCED DISAPPEARANCE

The International Convention for the Protection of All Persons from Enforced Disappearance, commonly referred to as CED, defines an enforced disappearance as "arrest, detention, abduction or any 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 liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."<sup>5</sup> States are, therefore, prohibited from engaging in or acquiescing to enforced disappearances. Breaches of this prohibition violate the state's obligation to protect fundamental human rights.

Furthermore, enforced disappearance is an international crime for which a perpetrator may be punished under international criminal law. The Rome Statute of the International Criminal Court criminalizes disappearance as a crime against humanity when it is part of a "widespread or systematic attack" on the civilian population.<sup>6</sup> It largely follows the definition provided in the CED and expands the potential actors to states or political organizations.<sup>7</sup> Disappearances are further prohibited under the customary laws of war and may be tried as war crimes when committed in the context of armed conflicts.<sup>8</sup>

**Enforced disappearance is an international crime for which a perpetrator may be punished under international criminal law.**



## DISAPPEARANCES IN IRAQ

Despite all of the international prohibitions, the International Committee of the Red Cross (ICRC) has open reports of disappearances in 70 countries and territories around the world.<sup>9</sup> Iraq, whose accession to the CED in 2010 brought the treaty's entry into force, has a long history of disappearances under the regime of Saddam Hussein.<sup>10</sup> At that time, security forces were often cited as the perpetrators, and stifling dissent in the face of popular uprisings or external armed conflicts was the primary reason for the large-scale disappearances. UN experts received reports of tens of thousands of cases of disappeared men, women and children from various ethnic and religious communities in the 1980s and 1990s.<sup>11</sup>

After the fall of the former regime, Iraq acknowledged its history as a state with "one of the highest rates of enforced disappearances"<sup>12</sup> and moved to bring justice for the families of the disappeared. Under the Iraqi law used to try crimes committed between 1968 and 2003, systematic disappearances are crimes against humanity, and members of the former regime have been prosecuted under this law.<sup>13</sup> In its report to the committee that monitors implementation of the CED (Committee on Enforced Disappearances) in 2015, Iraq discussed the steps being taken to fulfill its obligation with regard to disappearances perpetrated by the former regime, including the protection and excavation of mass graves.<sup>14</sup> However, this phenomenon has not ended with the regime's fall, and relevant Iraqi law

should be bolstered and enforced to compensate and bring justice for the victims of this ongoing violation.<sup>15</sup>

Increasingly since 2014, media outlets are reporting disappearances perpetrated by militias and, in some cases, Iraqi forces as they fight to drive ISIS out of territory in Iraq.<sup>16</sup> CVT's own experience providing mental health support to individuals who have fled violence in Iraq since 2014 demonstrates that these disappearances are not limited to previously ISIS-held territories, but have popped up all over the country.

Current Iraqi law criminalizes all unlawful detentions and contains criminal sanctions against the deprivation of liberty without judicial decision and abduction;<sup>17</sup> it does not specifically define and criminalize disappearances in accordance with the CED and international law.<sup>18</sup> The deliberate withholding of information or refusal to investigate associated with enforced disappearance, therefore, is not punishable. Furthermore, since 2009, Iraqi law provides for the "compensation of those who have sustained damages as a result of the war, military errors and acts of terrorism" covering any such injury after March 2003.<sup>19</sup> The Iraqi government acknowledged that under this law, families may "obtain redress for any injury they suffered as a result of activities including abductions and enforced disappearances carried out by armed groups, terrorist bands and criminal organizations."<sup>20</sup> To the extent that any of these laws apply to enforced

disappearances, their enforcement has been entirely ambiguous. Other mechanisms, such as the High Commission for Human Rights, which is supposed to receive complaints concerning human rights violations in Iraq,<sup>21</sup> is ineffectual<sup>22</sup> and insufficiently utilized in the documentation and investigation of disappearances.

Across the country, militias—some allied with the government, others fighting against it and some unaffiliated criminal gangs—perpetrate disappearances with complete impunity. Victims include rowdy children who raise the militia members' ire, men from minority ethnic or religious groups in that region, and in one case a young girl who happened to be home when the militia's targets—her brothers—fled. Victims say the goal is to sow fear and assert power. In each case identified by CVT, the government failed to provide even a semblance of investigation.

*When four militia members came knocking on the door of **Amal's**<sup>23</sup> parents' house in Kirkuk, her brothers knew they were coming for them and fled from rooftop to rooftop until they escaped. Amal, only eleven years old at the time, seemed to be an improbable target. They grabbed the young girl anyway, after searching for the sons and looting the house. Amal's mother<sup>24</sup> describes her reactions to the whole situation: "I was deaf and blind from fear when this happened. I went to the street and screamed and cried. No one did anything. Everyone is scared. The gangs are the police and the government is in their hands." Amal was one of the lucky few who were eventually released, but thoughts of what may have happened to her during her capture still haunt her parents.*

## STATE (IN)ACTION

Families and loved ones of the victims have a right to know the truth about what happened to disappeared individuals; this is a basic principle that undergirds the prohibition against disappearance in all of its forms. Under the Rome Statute, a disappearance is characterized by the perpetrator's "refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons" and their intention to "remov[e] them from the protection of law[.]"<sup>25</sup> According to the UN Human Rights Committee, the state must investigate, prosecute those responsible and ensure that victims or relatives receive "fair and adequate compensation."<sup>26</sup> The third article to the CED requires state parties to "take appropriate measures to investigate acts [of disappearance] committed by persons or groups of persons acting

without the authorization, support or acquiescence of the State and to bring those responsible to justice."<sup>27</sup> Regardless of the perpetrator, the state, therefore, has the obligation to investigate and bring perpetrators to justice in fulfillment of the family's right to truth.

In a seminal case on disappearances, the European Court of Human Rights noted that determining whether a family member of a disappeared person is also a victim depends "on the existence of special factors" that set apart suffering over disappearances in a "dimension and character distinct from the emotional distress [...] inevitably caused to relatives of a victim of a serious human-rights violation." The key factors articulated by the court are the attempts of the family member to obtain information and the response of the authorities



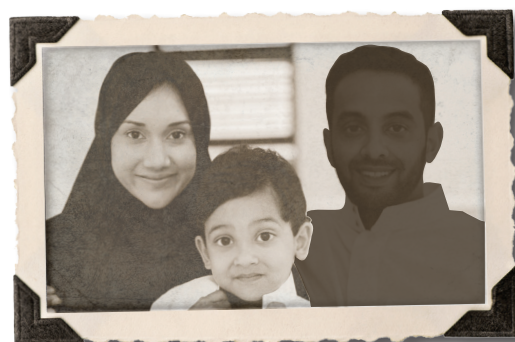
to such inquiries. This is so, the court notes, because the violation “does not so much lie in the fact of the ‘disappearance’ of the family member but rather in the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that the relative may claim directly to be a victim of the authorities’ conduct.”<sup>28</sup> It is thus the lack of action of the state that exacerbates the suffering of the family and triggers the legal prohibition against enforced disappearances.

This indeed was the cause of suffering for many individuals interviewed by CVT. They pointed out that their neighbors could hear their screams, but no one did anything to help. At this time period, they describe how everything changed and they couldn’t tell who was an enemy and who was a friend, compounding the feeling that there’s no protection and that there is no appreciation for human life. These feelings of helplessness, isolation and degradation from the authorities and from their own community can exacerbate the emotional and psychological problems related to the loss, thus increasing the suffering related to disappearances.

In Iraq, the governing authorities have routinely denied the right to truth to the families of the disappeared, and the compensation required under international law is elusive, at best. Some individuals cite an inability by local authorities to investigate the disappearance situation because of the strength of the militia. Others point to collusion between Iraqi authorities and the perpetrating militias. In either scenario, the ultimate result is a family left suffering in limbo, denied the right to truth.

**"The country that doesn't keep its citizens safe, is not a country."**

**Salah's**<sup>29</sup> uncle disappeared from his home in Diyala province in 2007. Salah, his father and his brother made multiple attempts to find him through the local government and the courts. Finally, the most useful advice they received came from a police officer who said to Salah's father, "You look like a nice man, so I want to advise you: If you value your life, the lawsuit you submitted about your [missing] brother, you should withdraw it. If you continue on with it, you will end up dead." It is thus no surprise that when Salah's father and brother disappeared within days of one another in 2015, he had little faith in the local governments, both in Diyala and Baghdad—to which the rest of the family had escaped—to find them. Salah said, "In Diyala, there were no authorities. The checkpoints are right near us. This incident happened right in front of their eyes. They saw everything. Cars of armed groups come to the area; it's not possible for them not to see what happened. We had tried to go to them when my uncle was taken. And my father was threatened by armed men on motorcycles. [...] In [Baghdad] there are militias out in the open in the street with their weapons. There is no government there. They rule everything; they are the judges and the executioners. [...] The country that doesn't keep its citizens safe, is not a country. The home country is one that considers you a human. The country is like a mother. It doesn't have to birth the child to be the mother; it just has to take care of him."



## THE ONGOING NATURE OF THE VIOLATION AND SUFFERING

An enforced disappearance is one of the few violations of international law in which the violation itself does not end and remains ongoing until it is investigated and the fate and whereabouts of the individual are revealed.<sup>30</sup> As the international bodies have noted, enforced disappearances are often indicative of violations of a series of rights that remain unknown until more information is revealed.<sup>31</sup> In addition to the disappearance itself, missing individuals may be “deprived of all their rights and are at the mercy of their captors” who may subject them to torture or extrajudicial killing and violate their rights to liberty, security, a fair trial and an identity.<sup>32</sup>

With all evidence supporting a negative outcome, family and friends are left to ruminate over the possibility that their loved one may be enduring horrible treatment during their disappearance. Often, there is little support for those left behind, and environmental, financial and interpersonal community pressures compound this struggle and often force families to either move on with their lives or wait for their loved ones.<sup>33</sup>

The denial of the right to know the fate or whereabouts of the disappeared individual causes levels of suffering on the family and loved ones that may amount to cruel and inhuman treatment or torture. International law has long recognized the severity of this suffering. The European Court of Human Rights and the Inter-American Court of Human Rights both note that the mental anguish and distress associated with not knowing the fate of family members is a breach of the prohibition against torture and cruel, inhuman or degrading treatment.<sup>34</sup> Similarly, the UN Human Rights Committee has held that enforced disappearance is a

violation of the prohibition against torture and cruel, inhuman or degrading treatment for the family.<sup>35</sup>

This recognition of the multiple layers of violations disappeared individuals may be facing is reflected in the worry and suffering of their family and loved ones. It is precisely because loved ones are left to wonder and ruminate over what happened or what may have happened to the disappeared individual, without support or investigation from the authorities entrusted with protection, that the violation is ongoing. The impacts of disappearance can be long lasting on the individuals, their families and even the wider community. If left untreated, the mental health effects of treatment during detention may lead to posttraumatic stress disorder (PTSD), depression and other mental illnesses for the individuals. Families suffering from this ambiguous loss may exhibit similar effects. Furthermore, the stigma of what may have happened during a disappearance may follow both the individuals and families around for a lifetime.

*“I wish they had taken the boys and not the girl. People will talk about what happened when she was taken away. What if she wants to get engaged when she is 20? They will keep talking about her time in capture. We don’t know what happened to her in that time. She is not very aware. This incident changed our whole life.”*

— **Amal’s** mother regarding the stigma of sexual violence during her capture.

*"When my husband was killed, I saw him with my own eyes. But my daughter, she's only 17 years old. I went searching through the streets. I told the government, I complained. I told the police. I complained to the government of Basra. Is it possible for a government to look and not find any clue for a year? What kind of government is that? Is it sleeping? My kids told me I have to accept she's dead. 'If you keep looking, they'll kill you,' they said. They even hid her things from me, so I could move on. But I want to report [her disappearance] to organizations that have decency and humanity. I looked through corpses. I looked at hospitals and in mental institutions. I even went to*

*Baghdad looking for her. I thought maybe they raped her and took her away somewhere. I wish I had found her dead. I would be relieved. I see her in front of me. I hear her voice screaming for me. [...] I keep talking to myself. I ask her if it's possible that she could find an escape and come back to me. Is it possible that they killed her? I don't know. I accepted my husband's death because I saw him, but now I am being tortured. If I see her body, I will know that she is dead. But before that, there is hope that she is still alive."*

— **Naima**<sup>36</sup>, on the disappearance of her daughter, who was taken by militia members in Basra from her home.

## MIRRORS OF AMBIGUITY IN THE REFUGEE CONTEXT

The ambiguity of the loss and the ongoing nature of the violations are often mirrored in—and exacerbated by—the tenuous life in refuge. For Iraqi refugees in Jordan, finding a steady means of support for their families proves nearly impossible. Unlike some other refugee and immigrant groups, Iraqis who do not hold a Jordanian residency permit are prohibited from working in Jordan. Over 56,000 Iraqi refugees are registered with UNHCR in Jordan as of August 2016.<sup>37</sup> Because there are no camps for Iraqis, they primarily live in urban areas, mainly in the Jordanian capital, Amman, and subsist on international assistance or sporadic illegal work opportunities. The lack of a consistent routine and an unstructured lifestyle may feel unsafe and out of control, exacerbating the fear many already have from having a lack of control over their situation with missing loved ones. Idleness and lack of opportunities can make room for cyclical worrying about past losses and potentially being re-victimized themselves.

**Jabir**,<sup>38</sup> a farmer from southern Iraq, was himself kidnapped and tortured by a militia after 2003. He was eventually released when his sons paid a hefty ransom. His family quickly fled afterwards, first to Syria and later to Jordan. In 2010, while still in Syria, his eldest sons could no longer sit idly by without work and went back to Iraq. Only ten days after they arrived in Iraq, Jabir received a call from one son's phone number, but on the other line was a strange voice that asked for a significant ransom. "I begged and told them I don't have that kind of money. After a few days, I called the number again and it was disconnected. I have not heard anything from my sons since." Jabir fled to Jordan shortly after. He says of the militias, "They have friends everywhere. They blend in with the civilians; you don't know who it could be." This has affected even his life in Jordan, where, he believes, the militias may still be able to find him if they found his sons all of these years later. He describes only leaving his house with his face covered to avoid recognition or asking his wife to do all external chores because she can more readily cover her face without arousing suspicion.

Others wait months and even years to hear anything from international organizations such as UNHCR, or foreign governments, about their resettlement or humanitarian parole cases, which may emphasize the ongoing nature of the violations. The typical lack of communication and uncertainty about their future in the refugee context may seem parallel to the refusal of the authorities to give information about disappearances. Perceived (or actual) corruption in the humanitarian aid and resettlement systems may reinforce the notion that authority figures are not dependable and cannot be trusted.

In addition to these struggles that plague many refugees, families of the disappeared face additional concerns. When a parent is missing, families often struggle with what to tell their young children, who ask when their father or mother is coming home. Spouses have to navigate cultural and community pressures when deciding whether or not to remarry or leave the Middle East.<sup>39</sup> Women whose husbands have disappeared often face additional legal hurdles to already complex processes to relocate to third countries—whether through refugee resettlement programs or humanitarian parole.

**Her young sons understand, in theory, that their father is missing, but she says “They don’t really understand what that means. If someone asks, they say that their father is missing, and they don’t ask me about him, but they ask why we came to Jordan without him. They wonder why he didn’t come with us.”**

**Karima’s**<sup>40</sup> husband walked to work in Baghdad one day in 2012 and never got there. Karima reported it to the police who “mocked me and told me maybe he married someone else. They don’t do anything. They don’t care about these things. The souls of people are worthless to them.” This incident came after her son was shot and killed by militias months earlier, and her family had received a series of sectarian threats from local militias. She fled Iraq for Jordan, where she had the possibility of being paroled or resettled to another country. However, due to Jordanian law that restricts a mother’s ability to travel with her children when the father is missing, and grants custody to the nearest male relative, she had to get permission from her husband’s brother to leave Jordan with her own children. She noted how restricting this was, saying “I’m their mother.” She has been unable to work, and delays in the resettlement process have left her in limbo for months without any communication from UNHCR. “I just want stability. I’m a woman alone, under threat.” Her young sons understand, in theory, that their father is missing, but she says “They don’t really understand what that means. If someone asks, they say that their father is missing, and they don’t ask me about him, but they ask why we came to Jordan without him. They wonder why he didn’t come with us.”

These daily concerns only compound the difficulty of grappling with an ambiguous loss. Individuals and families struggle with whether they should move on or continue to pursue any possibility of finding their loved ones. Such ambiguity can inhibit an individual’s healing process. CVT counselors have identified specialized healing strategies for families of the disappeared to deal with ambiguity. Legal actors and policymakers must likewise address the particularized concerns and vulnerabilities of the families of the disappeared and ensure their protection.





## RECOMMENDATIONS

### IRAQ:

- Make a declaration under articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearance accepting the Committee's competence to hear individual communications and state communications, respectively.
- Pass legislation specifically criminalizing any incident of enforced disappearance and categorizing "widespread and systematic" enforced disappearances as a crime against humanity, in accordance with international law, including disappearances perpetrated by non-state armed groups, in fulfillment of obligations under article 4 of the Convention for the Protection of All Persons from Enforced Disappearance.
  - › To ensure successful investigation and punishment of enforced disappearance, Iraq should create mechanisms of implementation that center on the advice and needs of the affected families and civil society.
  - › Investigate disappearances in line with the Convention, including disappearances by non-state armed actors aligned with and opposed to the government. In particular, ensure that the investigation and excavation of mass graves is carried out in line with international standards and protects the dignity of the individuals and their families.
  - › The national government's investigation and punishment should include systematic tracking and reporting of disappearances in a centralized fashion.
- Clarify Act No. 20 of 2009 on victims of terrorism to include all non-state armed actors, and allow for compensation of victims of enforced disappearance regardless of the identity of the perpetrator group. Reparations and compensation to the victims should including provision of mental health and psychosocial services.
- Continue to make progress on investigating the fate and whereabouts of individuals disappeared under the former regime of Saddam Hussein, in line with recommendations and conclusions made by the UN Committee on Enforced Disappearances in 2015.
- A truly national project for the advancement of peace and the carrying out of justice in Iraq must uphold the dignity of all who suffered. Upon the establishment of relative peace in Iraq, a reckoning with past violence, whether in the form of truth commission or otherwise, should include a mandate to address violence for much longer than January 2014, including the disappearances and other crimes against humanity, war crimes and human rights violations under the former regime, as well as those since its fall, not limited by certain perpetrators.
- Utilize the national High Commission on Human Rights to carry out its work and document instances of disappearances. All cases of disappearances that are locally reported should be referred to this commission, and it should be empowered to carry out investigations across the country, including through local affiliates. The work of this commission should be informed by consultation with civil society.

## TO U.S. CONGRESS AND ADMINISTRATION:

- In any legislation passed, ensure that calls for access to justice cover all victims of serious human rights violations, crimes against humanity and war crimes in Iraq, to prevent against prioritizing suffering of some over others and fostering sectarianism. Legislation that covers accountability should include accountability for perpetrators across Iraq.
- Increase funding for mental health and psychosocial services to survivors of trauma, particularly in regions and localities that faced prolonged violence and those hosting refugees and internally displaced persons.
- Fund research and tracking of human rights abuses in Iraq with a view to national accountability and enhancing local justice and accountability mechanisms, including judicial mechanisms.
- Under international guidelines, women at risk are a priority resettlement group, including women whose husbands are missing. Ensure that family members of disappeared persons are not prevented from accessing safe resettlement in the United States.



## TO U.S. AND INTERNATIONAL FORCES SUPPORTING IRAQI MILITARY

- U.S. government agencies providing training and equipment to the Iraqi army should ensure that those in whose hands its equipment and training fall do not commit grave violations of human rights, including disappearances. In the instances of credible reports of disappearance, in accordance with U.S. laws prohibiting the transfer of weapons and equipment to such units, the United States Secretary of State and Secretary of Defense should cut off funding until credible steps are taken towards justice.



## ACKNOWLEDGEMENTS

CVT would like to thank the courageous individuals who were interviewed for and profiled in this paper.

- <sup>1</sup> Judith Twala, Center for Victims of Torture Healing and Human Rights Blog, "Supporting Survivors Through Ambiguous Loss," Aug. 31, 2015, <http://www.cvt.org/blog/healing-and-human-rights/supporting-survivors-through-ambiguous-loss>.
- <sup>2</sup> Simon Robins, *Families of the Missing: A Test for Contemporary Approaches to Transitional Justice* (Routledge: 2014) at 4 [hereinafter Robins].
- <sup>3</sup> Robins, *supra* note 2, at 4-5.
- <sup>4</sup> The process for identifying former clients to potentially participate in interviews was to first identify the full number of clients reporting missing family members. Clinicians were then advised on the definition of disappearances and identified the individual clients within that group who may have a disappeared relative and whose recovery process may allow them to discuss their experiences. Clinicians contacted several clients and explained the interview process to them and reiterated that the interview would be voluntary and would not affect their relationship with the Center for Victims of Torture. Finally, individuals who agreed to an interview participated in a process of informed consent carried out by CVT's Policy Council. Interviews were conducted in English, with translation, by Marie Soueid in CVT's Amman office. Interviews lasted on average one hour. They were semi-structured. Participants were then invited to return for a second interview in which they discussed the information they had previously provided and reviewed if they were willing to have specific pieces of their information on record. All seven individuals who provided an initial interview returned for the second interview and had an opportunity to review or retract their information. In this report, all names are changed. Other identifying information has been left out as requested by the participants, such as specific towns or villages and names of family members. All specific details of individual stories represented in this report have been approved by the participants.
- <sup>5</sup> International Convention for the Protection of All Persons from Enforced Disappearance, art. 2, G.A. Res. 61/177 (2007), entered into force Dec. 23, 2010 [hereinafter CED].
- <sup>6</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, art. 7(1)(i), [hereinafter Rome Statute].
- <sup>7</sup> *Id.* art. 7(2)(i), ("Enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.")
- <sup>8</sup> International Committee of the Red Cross, "Customary IHL: Practice Relating to Rule 98: Enforce Disappearance," [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_cha\\_chapter32\\_rule98](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cha_chapter32_rule98); Brian Finucane, "Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War," 35 YALE J. OF INT. L. 171 available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1427062](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1427062).
- <sup>9</sup> "Day of the Disappeared: The Missing Around the World," International Committee of the Red Cross: Intercross Blog, Aug. 30, 2016, <http://intercrossblog.icrc.org/blog/day-of-the-disappeared-the-missing-around-the-world>.
- <sup>10</sup> See e.g., Economic and Social Council, E/CN.4/1994/58, 25 Feb. 1994, Commission on Human Rights, 50th Session; Report on the situation of human rights in Iraq submitted by Mr. Max van der Soel, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1993/74, ¶ 26-33 available at [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=220](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=220).
- <sup>11</sup> *Id.* ¶ 26-33.
- <sup>12</sup> Committee on Enforced Disappearances, CED/C/IRQ/1, 25 July 2014, Consideration of Reports of States Parties, Iraq, ¶ 10, (more than 16,400 cases were recorded in Iraq, mostly prior to 2003) available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CED/C/IRQ/1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED/C/IRQ/1&Lang=en) [hereinafter Iraq CED Report 2014].
- <sup>13</sup> *Id.* ¶ 11.
- <sup>14</sup> *Id.* ("In 2012, the Iraqi Government formed a committee to look into these cases and provide documentary evidence to the Working Group); ¶ 20-21 (on the protection and excavation of mass graves.)
- <sup>15</sup> Office of the High Commissioner for Human Rights, Committee on Enforced Disappearances reviews report of Iraq, Sep. 8, 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16395&LangID=E>.
- <sup>16</sup> Ned Parker and Jonathan Landay, Special Report: Massacre Reports Show U.S. Inability to Curb Iraqi Militias," Reuters, Aug. 23, 2016, <http://www.reuters.com/article/us-iraq-massacres-falluja-special-report-idUSKCN10Y1VD>; Jason Ditz, "Disappearances Grow as Iraqi Troops Detain Fleeing Fallujah Civilians," Antiwar.com, Jun. 14, 2015, <http://news.antiwar.com/2016/06/14/disappearances-grow-as-iraqi-troops-detain-fleeing-fallujah-civilians/>.
- <sup>17</sup> Iraq CED Report 2014, *supra* note 12, ¶ 37 – 41.
- <sup>18</sup> *Id.* ¶ 36; CED, *supra* note 5, art. 4 ("Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.") CED List of Issues in relation to the report submitted



by Iraq, Mar. 16, 2015, ¶ 7 *available at* [http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/IRQ/CED\\_C\\_IRQ\\_Q\\_1\\_19557\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/IRQ/CED_C_IRQ_Q_1_19557_E.pdf).

<sup>19</sup> Iraq CED Report 2014, *supra* note 12, ¶ 25-26.

<sup>20</sup> *Id.* ¶ 26.

<sup>21</sup> Iraq CED Report 2014, *supra* note 12, ¶ 85.

<sup>22</sup> Iraq High Commission for Human Rights: Before the International Coordinating Committee of NHRIs, Dec. 19, 2014, *available at* [http://en.alkarama.org/documents/Alk\\_IRQ\\_NHRI\\_19122014\\_EN\\_Final.pdf](http://en.alkarama.org/documents/Alk_IRQ_NHRI_19122014_EN_Final.pdf).

<sup>23</sup> Interviewed in October 2015 in Amman, Jordan. All names have been changed to protect victims' identities.

<sup>24</sup> Mother interviewed in May 2016, in Amman, Jordan.

<sup>25</sup> Rome Statute, *supra* note 6, art. 7(1)(i).

<sup>26</sup> International Committee of the Red Cross, "Customary IHL: Practice Relating to Rule 98: Enforce Disappearance," Concluding Observations of UN Human Rights Committee on Honduras (2006) [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_cha\\_chapter32\\_rule98](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cha_chapter32_rule98).

<sup>27</sup> CED, *supra* note 5, art. 3.

<sup>28</sup> International Committee of the Red Cross, "Customary IHL: Practice Relating to Rule 98: Enforce Disappearance," European Court of Human Rights, Cyprus Case (2001) [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_cha\\_chapter32\\_rule98](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cha_chapter32_rule98).

<sup>29</sup> Interviewed in May 2016 in Amman, Jordan.

<sup>30</sup> UN Working Group on Enforced or Involuntary Disappearances, "General Comment on Enforced Disappearance as a Continuous Crime," *available at* <http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf>.

<sup>31</sup> Inter-American Court of Human Rights, *Velázquez Rodríguez* Case (1988) ¶ 157 ("The practice of enforced disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life."); UN Human Rights Committee, *Sarma v. Sri Lanka* (2003) ¶ 9.3 ("Any act of such disappearance constitutes a violation of many of the rights enshrined in the [ICCPR], including the right to liberty and security of person (article 9) the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (article 10). It also violates or constitutes a grave threat to the right to life (article 6).")

<sup>32</sup> United Nations, "International Day of the Victims of Enforced Disappearance: August 30," <http://www.un.org/en/events/>

[disappearancesday/background.shtml](http://disappearancesday/background.shtml).

<sup>33</sup> Veronica Laveta, Center for Victims of Torture Healing and Human Rights Blog, "Jordan Counseling Group Session 7: Grief and Loss/Reconnecting with Memories of Lost Loved Ones," Oct. 23, 2015, <http://www.cvt.org/blog/healing-and-human-rights/jordan-counseling-group-session-7-grief-and-lossreconnecting-memories>.

<sup>34</sup> European Court of Human Rights (ECtHR), *Orhan v. Turkey* (2002) ¶ 358-360 ("[T]he uncertainty and apprehension suffered by the applicant over a prolonged and continuing period [...] has clearly caused him severe mental distress and anguish constituting inhuman treatment[.]"); ECtHR, *Kurt v. Turkey* (1998) (holding that because the mother has been left in anguish of knowing that her son is detained without more information as to his fate, her rights in the convention under Art. 3 have been violated); Inter-American Court of Human Rights, *Godínez Cruz* Case, Compensatory Damages, (Ser. C) No. 8 (1990) ¶ 48-49 (finding that the disappearance of the head of the family caused harmful psychological impacts on his family that entitled them to moral damages).

<sup>35</sup> UN Human Rights Committee, *Quinteros v. Uruguay* (1983) (acknowledging that the anguish and stress caused to the mother by disappearance of her daughter including by the continuing uncertainty of her fate and whereabouts make the mother a victim of the violations under Article 7 of the ICCPR).

<sup>36</sup> Interviewed in May 2016 in Amman, Jordan.

<sup>37</sup> UN High Commissioner for Refugees, Jordan UNHCR Operational Update: August 2016, <http://reporting.unhcr.org/sites/default/files/UNHCR%20Jordan%20Operational%20Update%20-%20August%202016.pdf>.

<sup>38</sup> Interviewed in May 2016 in Amman, Jordan.

<sup>39</sup> Judith Twala, Center for Victims of Torture Healing and Human Rights Blog, "Supporting Survivors Through Ambiguous Loss," Aug. 31, 2015, <http://www.cvt.org/blog/healing-and-human-rights/supporting-survivors-through-ambiguous-loss>.

<sup>40</sup> Interviewed in May 2016 in Amman, Jordan.

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