

**Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

REFERENCE:  
AL IRQ 2/2020

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Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 36/6, 42/22, 35/15, 35/11, 34/6, 40/10, 40/16, 34/19 and 36/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the cases of 432 Camp Speicher cadets reported missing from Tikrit since 12 June 2014**. These cadets were reportedly abducted by government forces while more than a thousand of their fellow trainees were captured by the Islamic State in Iraq and the Levant (ISIL) after leaving Camp Speicher.

**The information received indicates that the steps taken by your Excellency's Government to investigate all cases of enforced disappearances linked to the Camp Speicher events and to prosecute all those responsible have failed to guarantee effective remedy and redress for the victims and their families. Additional allegations are made as to violation of the obligation of due process and the absence of sufficient measures and guarantees of non-repetition and prevention of human rights violation by the security sector, particularly in the context of the fight against ISIL.**

According to the information received:

*Context in which the violations occurred*

On 12 June 2014, as ISIL began to advance toward the city of Tikrit, approximately 3,000 cadets training at Camp Speicher military base were

reportedly instructed by chief officers to change into civilian clothes and head towards their respective homes to take leave for 15 days.

As the cadets left the military base, many were captured by ISIL forces. Others were later captured near the University of Tikrit. The ISIL fighters distinguished between those perceived to belong to the Sunni minority, who were let go, and the Shia and non-Muslims, some of whom were executed on the spot while others were taken to various locations in Tikrit. ISIL fighters reportedly killed<sup>1</sup> them and disposed of their bodies.

It is estimated that a total of 1,700 individuals were executed by ISIL on 12 June 2014. Some cadets were reportedly driven to two trenches in a field about 100 meters north of the Water Palace in Tikrit. They were forced to lie face down in the trenches, their hands were tied behind their backs and they were shot by the ISIL fighters. It is estimated that there were four rounds of executions, with about 235 to 285 men executed. Another group of men was executed on the north side of Saladdin Al Ayubi building, within Tikrit's presidential palace compound. Footage released by ISIL and satellite imagery, suggests that between 250 and 400 men were executed there. Another site of executions was uncovered at the Water Police building next to the Route 24 Bridge where approximately 30 men were executed.

*Allegations of human rights violations committed by the Iraqi forces against Camp Speicher Cadets*

On 12 June 2014, more than 400 cadets belonging to the Sunni minority, who were among the group of Cadets ordered to leave Camp Speicher and go home for a 15-day break, were reportedly arrested by government forces who accused them of having deserted their military duties. Following their arrest they disappeared. A few of the cadets who had been initially arrested by ISIL, were later secretly detained by government forces in the course of their fight against ISIL. Several witnesses reportedly testified that they had seen Camp Speicher cadets in government secret detention facilities. Of the known 432 cadets reportedly taken by government forces, 220 cadets were from Babil Governorate in Central Iraq and 212 cadets from Dhi Qhar Governorate in Southern Iraq.

*Absence of measures to implement the right to remedy and effective investigation in relation to the disappearance of Camp Speicher cadets*

In the weeks following the Camp Speicher massacres, families of the cadets requested an investigation and additional information from the Ministry of Defence, Ministry of Interior, Iraqi Parliament, the Central Criminal Court in Baghdad, as well as the Provincial Councils of Baghdad, Babil, Dhi Qar, Basra,

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<sup>1</sup> [https://www.ohchr.org/Documents/Countries/IQ/UNAMI\\_Report\\_on\\_Mass\\_Graves4Nov2018\\_EN.pdf](https://www.ohchr.org/Documents/Countries/IQ/UNAMI_Report_on_Mass_Graves4Nov2018_EN.pdf)

Karbala, Najaf, and Al Duwaniya. However, the Iraqi authorities did not immediately provide any positive and comprehensive response nor take steps to ensure an effective remedy. The families did not receive any response to their requests for an investigation or information from the Iraqi authorities.

As an illustration of the lack of effective search and investigation with respect to disappearances of Camp Speicher cadets, it was reported that in 2015, three families submitted the cases of enforced disappearance of three cadets to the UN Committee on Enforced Disappearance under its urgent action procedure. In the two responses provided by the Iraqi authorities to these cases there was no clear or substantiated information to clarify the victims' fates or whereabouts. More generally, the UN Committee noted in its 2019 report<sup>2</sup> to the UN General Assembly that "When replies have been sent by the State party, the Committee is concerned by their content because of the following issues: (a) the State party does not provide any information on the activities undertaken to search for the disappeared persons or to investigate their disappearance; (b) the State party has at times provided information that does not relate to the events described in the urgent actions in question; and (c) in one urgent action, the State party asserted that the disappeared person had been located, whereas the family members and representatives reported that the person was still missing."

According to the allegations received, the absence of investigation, particularly in cases in which Governments forces were involved, is linked to the climate of impunity in Iraq. Despite evidence of violations of International Human Rights Law and International Humanitarian Law committed by the Iraqi forces and militias involved in counter terrorism operations, including those falling under the Popular Mobilisation Forces (PMF), the Iraqi authorities have continued to focus their prosecution efforts solely on ISIL fighters and their associates.<sup>3</sup>

The Iraqi legal framework reportedly does not cover crimes allegedly committed by government forces despite reports of acts of punishment against civilians of the Sunni minority faith. In Iraq, only abuses committed by certain non-State actors are recognized by law, excluding violations committed by State and non-state actors engaged in counter-terrorism operations. Therefore, the victims of security forces, and by extension their families, are excluded from the scope of the law. This context has not allowed victims to have a restored confidence in the institutions of the State. As such, the 432 cadets from Camp Speicher reportedly missing at the hand of government forces and their families have not been provided with effective remedies nor guarantees of non-recurrence.

This situation is said to be the consequence of the lack of independence of the judiciary from the executive and the undue interference in judicial processes by

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<sup>2</sup> Report of the Committee on Enforced Disappearances, A/74/56, para. 37

<sup>3</sup> UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, 20 June 2018. UN Doc. A/HRC/38/44/Add.1, para. 31

both the executive and other actors, including from the public.<sup>4</sup> For example, defence lawyers – particularly those working on ISIL cases – have faced intimidation and harassment.<sup>5</sup> In 2017, arrest warrants were issued against at least 15 of them and charges brought against them for supposed affiliation with the group on the basis of “guilt by association”.<sup>6</sup>

The Iraqi authorities have reportedly failed to take any steps to reform the judiciary and hold its own troops or paramilitaries to account.

Moreover, it is reported that the identified mass grave sites near Tikrit are devoid of the necessary protections to ensure the integrity of bodies for forensic and other evidence collection and to maintain the dignity of the deceased despite the provisions of Law No. 5 of 2006 on the protection of mass graves (as amended in 2015). Mass graves are reportedly exposed to the elements and are subject to uncontrolled excavations. Although, approximately 800 human remains linked to the Camp Speicher killings have already been identified and returned to families, it is reported that the excavation of mass graves has generally been hampered because the Iraqi Mass Graves Directorate lacks both the necessary human and material resources to carry out its work. Limitations include insufficient storage space, lack of the basic equipment necessary for carrying out excavations such as gloves and masks, outdated equipment and only 43 staff members. As a result of chronic shortages, the Medico-Legal Institute had estimated that it would take professionals working on mass grave excavation in Iraq 800 years to complete their tasks<sup>7</sup>. There is also a high risk of tampering with criminal evidence during excavations due to the lack of effective and reliable evidentiary and scientific standards.

*Inadequacy of the ‘Speicher Law’ to promote the right to truth, redress and remedy*

On 29 April 2019, the Parliamentary Legal Committee and the Committee for Martyrs, Victims and Political Prisoners proposed a bill to address the events at Camp Speicher, titled “The rights of the martyrs of the crime of Airbase ‘Speicher’” (Speicher Law). The Speicher Law was adopted on 5 August 2019. Reportedly, however, it does not provide victims and their families adequate remedy.

Article 1 of the Speicher Law defines all victims of the camp as martyrs, whether or not their remains have been found. Article 7 stipulates that the Ministry of

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<sup>4</sup> *Ibidem*.

<sup>5</sup> *Ibidem*.

<sup>6</sup> *Ibidem*.

<sup>7</sup> UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, 20 June 2018. UN Doc. A/HRC/38/44/Add.1, para. 78.



Culture, the Baghdad Municipality and other competent authorities must take defined and required procedures to commemorate the Camp Speicher martyrs through creating a memorial and other works in their memory. The law fails to define “martyr” and assumes *prima facie* that all Speicher cadets have been executed by ISIL, thus dismissing allegations pointing to the fact that some cadets were arrested by Government forces, and may remain in its custody in secret detention. The law identifies ISIL as the only perpetrators of crimes against the Camp Speicher cadets. While recognizing and confirming the importance of accountability for systemic acts of violence and terror by non-state actor groups the experts remind the State of its own specific and defined obligations under international law. The Speicher Law does not account for crimes perpetrated by Iraqi government forces or pro-government militias reportedly responsible for the enforced disappearances of 432 cadets.

Article 4 of the Speicher Law provides that the competent authorities must complete the procedures of excavating mass graves and return victims’ remains to their families within a period of six months. However, it does not address the limitations linked to the lack of resources of the Mass Graves Directorate, and does not specify any procedures to be taken if victims’ remains are not found or cannot be identified.

Article 9 orders the competent authorities to provide moral and economic support to the Camp Speicher victims. In addition, it provides that the Ministry of Housing and Buildings, Municipalities and General Work must distribute plots of land to victims’ families, as well as provide them with loans in order to build on them. However, it does not specify the scope of these obligations, the authorities responsible to deliver services or the steps to be taken by victims in order to access compensation. It also fails to effectively provide compensation for physical and mental harm, material damage, such as loss of earnings, as well as costs required for legal or expert assistance and, medical, psychological and social services.

#### *Allegations of violations of due process rights*

On 21 August 2016 and 23 January 2017, 46 suspected ISIL members were executed for their alleged involvement in crimes committed at Camp Speicher. In the 2016 mass trial, the men were convicted after a one-day court hearing. In 2017, the death sentences were handed down following summary trials, during which the sole source of evidence were confessions allegedly extracted under torture. United Nations Assistance Mission for Iraq, which monitors the hearings found that the trials “fell short of international fair trial standards,” due to the “lack of an effective defence for the accused and failure to investigate allegations

of torture.”<sup>8</sup> The sentences were based on the Anti-Terrorism Law which imposes a mandatory death sentence on anyone who perpetrates, participates or covers up a terrorist act.

During these prosecutions, Iraqi authorities failed to determine the fate and whereabouts of the Camp Speicher cadets as well as many others captured or killed by ISIL. Iraqi authorities have focused their prosecuting efforts solely on ISIL fighters and their associates despite allegations of violations committed by the Iraqi forces and state sponsored militias. The hasty prosecutions, convictions and executions of the accused has seriously undermined prospects for truth regarding the fate and whereabouts of the disappeared cadets.

Without prejudging the accuracy of the information received, we express our concerns at the lack of information provided to relatives about the victims’ fates or whereabouts despite repeated requests for such information, and given the allegations that some of the cadets involved may continue to be held in secret detention. Moreover, we are concerned that the 432 of the missing cadets were targeted or persecuted based on their religious identity since they all belonged to the Sunni minority faith. We are also concerned about the allegations that the Government has not taken adequate measures in order to determine the fate and whereabouts of the disappeared, to bring all perpetrators to justice, to provide victims and their families with effective remedy and reparations, and to fulfil the right to truth for victims and society as a whole as required under international law. We further express concern that the Speicher Law reportedly does not provide effective remedy for all the victims and their families and has not led to the effective compensation for physical and mental harm as well as material damage. The exclusive reference to ISIL forces in the law, as the sole perpetrators of crimes against the Camp Speicher cadets, represents is a legal obstacle to the adequate investigation and prosecution of government forces and government affiliated militias that may have been responsible for enforced disappearances, secret detention and other grave violations. In addition, the inadequacy of the measures taken to secure the mass grave sites and the insufficient resources provided to the relevant institutions to perform the excavation work, is an additional obstacle to fulfil the right to truth.

If these allegations are accurate, the facts related would contravene critical provisions of the International Covenant on Civil and Political Rights (ICCPR), and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which guarantee the right to life, the right to be under the protection of the law, the right to be free from torture and other inhuman and degrading treatment, the right to have access to effective remedies in reporting cases of enforced disappearance, the right to effective investigation as well as the right to truth, justice and reparation without discrimination.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter.

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<sup>8</sup> Security Council, Third report of the Secretary-General pursuant to paragraph 7 of resolution 2233 (2015), 27 April 2016, S/2016/396, para. 51.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the allegations that there continues to be a number of cadets of Camp Speicher held in secret detention. If the allegations are accurate, please provide a detailed account of the number and identities of these persons, their precise place of detention, and the factual and legal base as well as any other justification for their continued detention in these places. In the absence of any legal charges against them they should be immediately released.
3. Please provide detailed information about the measures taken by the Government to guarantee the right to an effective remedy. The fulfilment of this right include thorough impartial, independent and effective criminal investigations in order to determine the fate and whereabouts of all Camp Speicher victims, to identify the perpetrators of the crimes committed, and ensure their accountability according to international standards for fairness.
4. Please provide information about mechanisms in place to allow families of the disappeared cadets to lodge complaints, and have access to legal counselling and regular updated information concerning the investigations into the enforced disappearance of their disappeared members.
5. Please provide information regarding measures in place to facilitate the access of families to compensation schemes as provided by the law.
6. Please provide information regarding measures taken vis-à-vis officials alleged to have participated to human rights violations at Camp Speicher pending full investigation, as well as those suspected to have compromised the fairness of the trials of alleged perpetrators.
7. Please provide detailed information about the measures taken to safeguard the mass and other grave sites related to Camp Speicher, as well as the obstacles encountered by your Government to ensure proper and effective exhumations and identification of remains.
8. Please provide information about existing laws, procedures and their implementation to ensure due process and fair trial guarantees to individuals faced with terrorism related criminal charges, including their right not to be compelled to testify against themselves, and their right to access legal counsel, as well as other due process guarantees. Please

include information on what measures are being taken to ensure that defence lawyers, particularly those working on ISIL cases, can undertake their duties without interference and harassment.

9. Please provide detailed information about measures taken to revise counter terrorism and security related legislation to bring them in line with international human rights standards, in particular with articles 9 and 14 of the ICCPR.
10. Kindly indicate whether Iraq has developed a non-discriminatory and inclusive transitional justice strategy, inclusive of all persons regardless of their ethnic or religious backgrounds such as members of the Sunni minority, and consisting of identifying priorities and mechanisms of investigation, prosecution and reparation as well as “truth-telling and truth-seeking processes and institutions to address violations committed by all sides to the conflict as recommended in June 2018 by the Special Rapporteur on extrajudicial, summary or arbitrary executions following her visit to Iraq.

We would like to inform your Excellency’s Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and the regular procedure.

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Luciano Hazan  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers



Fernand de Varennes  
Special Rapporteur on minority issues

Ahmed Shaheed  
Special Rapporteur on freedom of religion or belief

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental  
freedoms while countering terrorism

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

Fabian Salvioli  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-  
recurrence

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq on 25 January 1971 and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), acceded by Iraq on 23 November 2010, as well as other relevant international legal provisions cited hereafter.

Article 12 of the ICPPED requires States Parties to guarantee that 'any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.' Article 17 stipulates that no one shall be held in secret detention while Article 18 requires that States must guarantee access to information regarding persons deprived of liberty to anyone with a legitimate interest such as relatives, their representatives or counsel. Article 6 provides that States shall take all necessary measures to hold criminally responsible any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance (Article 1.2) and appropriate measures must be taken to investigate acts of enforced 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 (Article 3).

Under article 24 of 'ICPPED', victims of enforced disappearance, which include the persons disappeared as well as all those who have suffered harm as a direct result of the enforced disappearance have the right to know the truth regarding the circumstances of the enforced disappearance, the progress and result of investigations. States have an obligation to search for, locate and release disappeared persons or locate respect and return remains in the event of death. Victims are entitled to the right to obtain reparation as well as prompt, fair and adequate compensation including: restitution, rehabilitation, satisfaction including restoration of dignity and reputations well as guarantees of non-repetition.

Article 2 (1) of the International Covenant on Civil and Political Rights ("ICCPR") requires that "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as [...] religion [...]." Article 5 (1) of the ICCPR further stresses that no State, group or person has any right to engage in any activity or perform any act aimed at the destruction of any of the

rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the ICCPR. Moreover, Article 26 provides that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion [...]”

In Article 2 (3) of the ICCPR, it also requires that victims have access to effective remedy administered by competent judicial, administrative or legislative authorities.

Article 6 (1) of the ICCPR, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. Additionally, in its General Comment No. 31, the Human Rights Committee recalls the responsibility of State parties to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by non- state actors (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). A failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 15)

We would like to recall that, as established by the Human Rights Committee in its General Comment No. 31 (paragraph 18) States have an obligation to investigate and punish serious human rights violations, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties.

Victims and their families have a right to know the truth about past events concerning the perpetration of heinous crimes as established by principles 2 and 4 of the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.

In addition, Article 2.3.a. of the Covenant on Civil and Political Rights (CCPR) underscores that persons whose rights or freedoms recognized in the Covenant are violated shall have an effective remedy. In this regard, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law establish the right of victims to receive adequate, effective and prompt reparation for the harm suffered, and to have access to relevant information on reparation mechanisms (principles 10, 11 and 15).

These allegations appear to constitute, *prima facie*, a violation of articles 9 and 14 of the ICCPR, which guarantee the universally-recognized rights not to be deprived arbitrarily of liberty and to due process and fair trial. International human rights law allows State to limit the full exercise of derogable rights provided by ICCPR when a country is faced with emergency challenges. However, it requires that, even during an armed conflict, measures derogating from ICCPR are only allowed if and to the extent

that the situation constitutes a fundamental threat to the State. An essential requirement for measures derogating from ICCPR is that they be limited to the extent strictly required by the exigencies of the situation. The obligation to limit derogations to those strictly required by the exigencies of the situation reflects the principles of legitimacy, proportionality and necessity.

The Anti-Terrorism law under which the ISIL members were sentenced also violates due process. The law includes a mandatory death penalty punishment and fails to meaningfully differentiate the degree of culpability between a person who perpetrates, participates or covers up a terrorist act. In failing to adhere to the obligations of due process, your Excellency's Government has also violated the rights of the victims and their families to effective judicial remedy as protected under article 2 of the ICCPR and article 20 of the ICPPED.

Article 5 of the United Nations Safeguards protecting the rights of those facing the death penalty (1984) provides that capital punishment may only be carried out pursuant to legal procedures which guarantee all necessary safeguards to ensure a fair trial, which must be at least equivalent to those contained in Article 14 of the ICCPR. The alleged inadequate defence provided and your Excellency's Government's failure to investigate allegations of torture resulting in forced confessions represent violations of due process.