

In the name of the people, the Presidential Council, based on the provisions of clause (first) of article (61) and clause (third) of article (73) of the constitution,

The following law has been promulgated:

No. () for the year 2019

Law on the Protection of Persons from Enforced Disappearance

Article 1:

Definitions:

Enforced Disappearance: Any act of arrest, abduction or any form of deprivation of liberty by agents of the State officials or by persons or groups of persons acting with the authorization, support, knowledge or consent of the State and resulting in the deprivation of liberty of a person or the concealment of his fate or whereabouts.

Article 2: The provisions of this law shall apply to:

Anyone who has been arrested, detained and forcibly disappeared and whose fate cannot be identified, and anyone who has disappeared persons forcibly using his official status and didn't try to know their fate in the Republic of Iraq.

Article 3: This law aims to:

Firstly: Protect persons from enforced disappearance and protect their right to a fair compensation.

Secondly: Criminalize the perpetrators of enforced disappearance and strengthen the confidence of citizens in the rule of law.

Thirdly: Promote and protect human rights and human dignity.

Article 4

All relevant governmental and judicial authorities shall commit to establishing a database containing the names of all detainees and convicts and to periodically update it.

Article 5

All government agencies, in cooperation with the High Commission for Human Rights, should monitor and collect information, establish a database, locate forcibly disappeared persons, and submit such information to judicial bodies whilst having regard for the confidentiality and importance of such information.

Article 6

Cases of enforced disappearance shall be handled by the competent courts regardless of the status and function of the parties to the proceedings, including the military or members of the internal security forces.

Article 7

Firstly: Government and judicial authorities should take the necessary measures to ensure that the parties to the enforced disappearance, as well as the investigators, are protected from any mistreatment or threat caused by the complaint or any testimony submitted with regard to it.

Secondly: The Public Prosecution Service should initiate cases of enforced disappearance before the competent courts.

Article 8

No orders or instructions issued by an official body may be invoked as a defense in any circumstances, should it be normal or exceptional.

Article 9

All acts of arbitrary arrest, detention or deprivation of liberty that lead to the crime of enforced disappearance are prohibited.

Penalties

Article 10

Firstly: Whoever commits the crime of enforced disappearance or contributes to it shall be liable to imprisonment for fifteen (15) years and a fine of not less than 25 million and not more than 50 million dinars.

Secondly: The punishment of imprisonment for a period of not less than seven years or a fine not less than (10) ten million dinars and not more than (15) fifteen million applies to anyone who:

1. Deliberately refrained from informing the official authorities and was aware that one of his subordinates acting under his effective responsibility and control had committed the crime of enforced disappearance.

Article 11

The following cases are considered to be aggravating circumstances:

Firstly: Whoever uses his official capacity to commit or contribute to the crime of enforced disappearance shall be liable to life imprisonment and a fine not less than (50) fifty million dinars and not more than (200) two hundred million dinars.

Secondly: The death penalty shall be imposed if the crime leads to the death of the disappeared person.

Article 12

It shall be considered a mitigating circumstance when any person who, despite his involvement in the crime of enforced disappearance, has contributed to the return of alive persons who have been forcibly disappeared or provided information that would reveal the fate of the enforced disappeared persons or the perpetrators of the enforced disappearances.

Article 13:

Compensation claims for material or moral damages by persons who disappeared as a result of the crime of enforced disappearance shall be reviewed by the civil courts.

Applicability

Article 14

The statute of limitations shall not apply to crimes stipulated in this Law.

Final provisions

Article 15

The provisions of the Iraqi Penal Code No. (111) of 1969 and the Procedural Procedure Law No. (23), 1971 shall apply to all matters not provided for in this Law.

Article 16

The Council of Ministers shall issue the necessary regulations and instructions to facilitate the implementation of the provisions of this Law within a period not exceeding three months from the date of its entry into force.

Article 17

This law shall enter into force from the date of its publication in the Official Gazette.

Rationale

To combat the crime of enforced disappearance, to prevent impunity and to harmonize national legislation with the provisions of the International Convention on Enforced Disappearance in order to promote the protection of human rights in Iraq, this law was enacted.

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