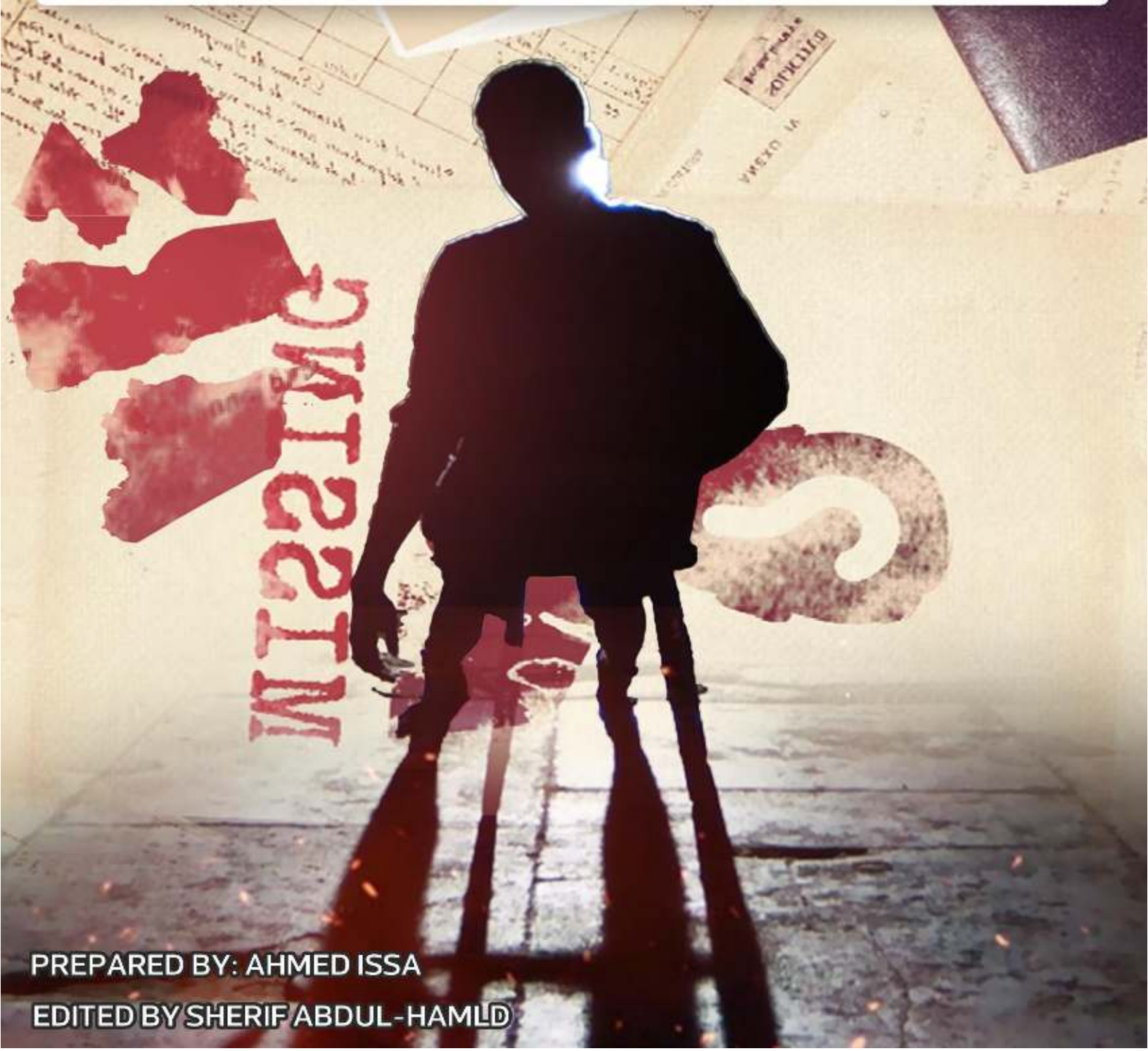


ENFORCED DISAPPEARANCES

BY NON-STATE ACTORS AND ARMED GROUPS IN THE
MIDDLE EAST REGION (YEMEN - SYRIA - IRAQ - LIBYA)



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Introduction:

On the 30th of August every year, all countries celebrate the International Day of the Victims of Enforced Disappearances. This anniversary aims to draw the world's attention to the fate of those imprisoned in poor conditions and places unknown to their families or legal representatives. The current human rights status in many countries indicates that enforced disappearance has become a global problem and is no longer for a specific region. Enforced disappearance occurs at present under many complex circumstances, especially in the context of international and non-international armed conflicts and civil wars. Moreover, it can be used as a tool of repression and intimidation to muzzle dissent and up pressure on the opposition, under the veil of fighting crime or terrorism.

The Declaration on the Protection of All Persons from Enforced Disappearance and the International Convention for the Protection of All Persons from Enforced Disappearance defined Enforced disappearance as “the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state.” or by an organized group, or by persons or groups of individuals acting with the permission, support or approval of the state. This is followed by a refusal to acknowledge the deprivation of liberty or the concealment of the fate or whereabouts of the disappeared person, which deprives him of the protection guaranteed by law”.

Although enforced disappearance is strictly prohibited by international human rights law under all circumstances and situations. It is currently widely practiced, whether by official state authorities or by some armed groups and non-state actors. This constitutes an explicit threat to a wide range of individual civil and political rights including the right to life, liberty and security of person, the right to recognition as a legal personality, the right to identity, the right to a fair trial and judicial guarantees, the right to the truth about the circumstances of the disappearance, the right to Not to be subjected to torture or any other form of cruel, inhuman or degrading treatment or punishment.

Although enforced disappearance is strictly prohibited under international human rights law in all circumstances and situations, it is currently widely practiced by official state authorities or by some armed groups and non-state actors. That constitutes an explicit threat to individual civil and political rights, including the right to life, liberty, security of person, recognition as a legal personality, identity, a fair trial and judicial guarantees, and

truth about the circumstances of the disappearance, as well as the right not to be subjected to torture or any other form of cruel, inhuman, or degrading treatment or punishment.

Hence, enforced disappearance is a human rights crime that entails many other grave human rights violations, including torture and other ill-treatment, sexual and gender-based violence, and extrajudicial executions. Enforced disappearance is a common practice pursued by governments against political opposition and human rights defenders, including lawyers and journalists, as an intimidating policy to terrorize society. Maat for Peace, Development and Human Rights has recently noticed a surging trend in the practice of enforced disappearance by armed groups and non-state actors against political opposition and human rights defenders in many countries in the Middle East that are witnessing non-international armed conflicts and civil wars, as is the case in the practices of enforced disappearances committed by the Houthi group in Yemen, the Syrian Democratic Forces in Syria, and armed militias and terrorist organizations in Libya and Iraq.

In light of the above, **Maat for Peace, Development, and Human Rights** seeks in this report, coinciding with the International Day to Commemorate the Victims of Enforced Disappearances, to draw the world's attention to the crimes of enforced disappearance committed by armed groups and non-state actors against civilians, especially political opposition and human rights defenders in the areas of conflict in the Middle East, with a particular focus on the violations committed by the Houthi group in Yemen, armed opposition groups, terrorist groups in Syria, and armed militias in Libya and Iraq, which we will discuss with some detail as follows:

International Law Framework for the Protection of Persons from Enforced Disappearance

The rules of public international law, including the rules of international human rights law, the rules of international humanitarian law, and the rules of international criminal law, criminalize the phenomenon of enforced disappearance and all practices and actions that involve the enforced disappearance and detention of individuals in places unknown to their relatives and legal representatives. In this regard, the rules of international human rights law are applied at all times and situations, including situations of armed conflict. These rules have criminalized acts of enforced disappearance in a wide range of international and regional human rights instruments, declarations, and conventions, including the Universal Declaration of Human Rights, the International

Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Enforced Disappearance, and the International Convention for the Protection of All Persons from Enforced Disappearance.

Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights did not explicitly provide for protecting persons from enforced disappearance. However, they contain many civil rights ruling against enforced disappearance, including the right to life, the right to protection from torture or cruel punishment, the right to liberty and security of person, and the right of detainees to humane treatment and respect for their dignity.

The Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly in December 1992 by Resolution No. 47/133, is the first international legal document explicitly stating that all persons must be protected from enforced disappearances. In addition, it is the first international document that explicitly addresses the crime of enforced disappearance as a crime against human dignity. It constitutes a violation of human rights and fundamental freedoms stated in the Universal Declaration of Human Rights and reaffirmed and developed by the international instruments issued in this regard. The Declaration considered that any act of enforced disappearance constitutes a violation of the rules of international law that guarantee the right to be recognized as a person under the law, liberty, and security, not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment. And it violates an individual's right to life or poses a serious threat¹.

In addition, the Declaration prohibited enforced disappearances in all cases and circumstances, including war, international and non-international armed conflicts, and internal political tensions. The Declaration also referred to the right to a prompt and effective judicial remedy as a means of determining the whereabouts of persons deprived of their liberty. The Declaration called on states to maintain an official record that is constantly updated with all person names deprived of their liberty in all places of detention in the state. And the need to investigate all cases of alleged disappearance, prosecute those responsible for acts of disappearance, and take measures to ensure that they do not go unpunished².

¹ المادة الاولى من الإعلان المتعلق بحماية جميع الأشخاص من الاختفاء القسري، للاطلاع على كامل مواد الإعلان، انظر الرابط التالي: <https://bit.ly/3JPrQdX>

² المواد 7-10 من الإعلان المتعلق بحماية جميع الأشخاص من الاختفاء القسري، مرجع سابق.

While the Declaration on the Protection of Persons from Enforced Disappearance is the first international document that stipulates the obligation to protect persons from enforced disappearances, the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly by Resolution 47/133 in December 2006, is the first binding international legal document in this regard. The Convention obligates state parties to protect all persons within their jurisdiction from enforced disappearances. It stressed that no one should be subjected to enforced disappearance, and that enforced disappearances constitute a grave violation of human rights, including the right to life, liberty, and security of person. These crimes may fall under the scope of crimes against humanity if they are committed on a large scale.

Furthermore, the International Convention for the Protection of All Persons from Enforced Disappearance reaffirmed that enforced disappearance is strictly prohibited in all circumstances and situations. It stipulates that no exceptional circumstance, whether a state of war or a threat of war, internal political instability, or any other exceptional case, may be invoked to justify resorting to any act of enforced disappearance. In addition, the Convention stipulates that no one may be detained in an unknown location. And it obligates state parties to ensure minimum legal standards around the deprivation of liberty, including keeping official records of persons deprived of liberty and allowing them to contact their families, lawyers, or any other person of their choice for free³.

On a related level, the Rome Statute of the International Criminal Court, which entered into force in July 2002, criminalizes acts of enforced disappearance, considering these acts to fall within the scope of crimes against humanity. In this regard, Article VII of the Rome Statute stipulates that enforced disappearance is a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population. Although international humanitarian law is applicable in times of international and non-international armed conflicts, it does not explicitly criminalize acts of enforced disappearance. However, the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 declared the principle of humane treatment according to the conflicting parties refrain from committing inhumane transactions, including the crimes of enforced disappearance⁴.

³ الاتفاقية الدولية لحماية جميع الأشخاص من الاختفاء القسري، للاطلاع على كامل مواد الاتفاقية انظر الرابط التالي: <https://bit.ly/3zXYBRw>

⁴ محمد، محمد جاسم، المفهوم القانوني لجريمة الاختفاء القسري في القانون الدولي الإنساني، مجلة الجامعة العراقية - مركز البحوث والدراسات الإسلامية، ع43،

ج1 (2019)، ص418 - 432، الرابط: <https://bit.ly/3QJsA6s>

The rules of public international law, including the rules of international human rights law, the rules of international humanitarian law, and the rules of international criminal law have clearly and explicitly criminalized all acts that involve the crime of enforced disappearance. It obligated states and governments to work to protect all persons from being subjected to enforced disappearance.

Practices of enforced disappearances by non-state actors and armed groups

In situations of non-international armed conflict and internal political unrest and tensions, all conflicting parties, including governments, armed opposition groups, and non-state actors, are obligated to apply the rules of international humanitarian law and international human rights law, including those that criminalize the use of enforced disappearance in all circumstances and cases. That is fully applicable to the cases of non-international armed conflicts in many countries in the Middle East, such as Yemen, Libya, and Syria. And in cases of tensions and political turmoil that control other countries in the same region, as is in the state of Iraq. Hence, it can be said that governments, armed opposition groups, non-state armed militias, extremist groups that own organizations and communications, and other non-state actors are obligated to comply with all rules of international humanitarian law and international human rights law. Those rules completely prohibit acts of enforced disappearance in all circumstances and cases and consider them an outrageous humanitarian crime.

Acts of enforced disappearance are strictly prohibited by all parties in all circumstances and situations under the rules of international law. But Maat has noted the exacerbation of enforced disappearances committed by armed groups and non-state actors in many countries experiencing non-international armed conflicts and interior unrest in the Middle East. In Yemen, for example, Maat reviewed dozens of credible human rights reports implicating the Houthi group and some other armed groups in committing hundreds of enforced disappearances over the past years. In this regard, local reports confirmed by Maat indicated that the Houthi group was involved in committing a total of 353 cases of enforced disappearance against political opponents and human rights defenders, including journalists, lawyers, and human rights activists, during the period between May 2016 and April 2020 in Sana'a governorates. Ibb, Amran, Raymah, Dhamar,

and parts of the governorates of Taiz, Al-Bayda, Hajjah, Al-Hodeidah, Saada, and Al-Dhalea⁵. Another local report documented the involvement of the Houthi group in committing about 62 cases of the enforced disappearance of civilians during the year 2021 alone⁶.

Among the most prominent incidents of enforced disappearance committed by the Houthi group in this regard is the disappearance of the Yemeni relief worker Yasser Junaid. He has been forcibly disappeared since he was taken in February 2017 by the security official of the Houthi group in Hodeidah Governorate. Then the Houthi group informed his family of his death and that His body is in a hospital in July 2022⁷. In May 2021, the disappearance of A.H.A., a 21-year-old soldier who was a victim of enforced disappearance while traveling from Taiz to his village in Sharaab Al-Runa. The gunmen affiliated with the Houthi group arrested him after stopping the car he was in, according to those who were with him in the car testimony. Although his family members searched for him in all Houthi prisons, including Al-Saleh prison, Houthi officials told them; that he was not with them⁸.

In Syria, armed opposition groups, terrorist organizations, groups, and other non-state actors active in the Syrian arena since the start of the Syrian events in March 2011 have committed thousands of enforced disappearances against political opponents, human rights defenders, and activists. In this regard, Maat verified local reports indicated that more than 2,567 people, including 237 children and 446 women. They are still subject to enforced disappearance from the various armed opposition factions, including the National Army, from 2011 until now. In addition, more than 8,648 people have been forcibly disappeared by ISIS, including 319 children and 255 women, and more than 2,064, including 13 children and 28 women, have been forcibly disappeared by Hay'at Tahrir al-Sham since the start of the Syrian crisis in March 2011 until August 2021⁹.

Among the most prominent forcibly disappeared persons at the hands of terrorist organizations and armed opposition groups in Syria is Farhad Imam Mahmoud Hussein. He is a young man from Aleppo Governorate who was arrested by members of the terrorist organization ISIS in February 2014 and is still missing until now. In April 2021, HTS members

⁵ في العتمة. وقائع الاختفاء القسري والاحتجاز التعسفي والتعذيب في مراكز الاحتجاز غير الرسمية في اليمن مايو 2016-أبريل 2020، مواطنة، يونيو 2020، الرابط: <https://bit.ly/3dqnlde>

⁶ أمهات على أبواب العدالة، رابطة أمهات المختطفين، 2022، الرابط: <https://bit.ly/3zUVvhk>

⁷ اليمن: ياسر جنيد ضحية اختفاء قسري توفي تحت التعذيب، الكرامة، 21 يوليو 2022، الرابط: <https://bit.ly/3w0gYUD>

⁸ أمهات على أبواب العدالة، مرجع سابق.

⁹ التقرير السنوي العاشر عن الاختفاء القسري في سوريا في اليوم الدولي لضحايا الاختفاء القسري، سنوات طويلة من الألم والفقد اللحظي، الشبكة السورية لحقوق الإنسان، 30 أغسطس 2021، الرابط: <https://bit.ly/3w4WGch>

arrested Khaled Fawaz Husseino, a media activist from the Hama governorate. When he was near a gas station on the road leading to the village of Kafr Lusin in the northern countryside of Idlib governorate; HTS arrested him, and he is still missing. And Aziz al-Bakr, a farmer from the Afrin area in the north countryside of Aleppo governorate, was arrested by the National Army forces in February 2021 while working on his land in the village of Hazra, and he is still hidden in an unknown location until now¹⁰.

In Libya, militias and armed groups are committing enforced disappearances of political opponents and human rights defenders. Although, no specific estimates indicate the number of enforced disappearances in Libya since the Libyan crisis in October 2011. However, Maat reviewed dozens of reliable local and international reports indicating the exacerbation of enforced disappearances committed by armed militias and other non-state actors in Libya. Since the Libyan uprising in 2011. One of the most prominent cases of enforced disappearance in this regard is the disappearance of a Member of Parliament, a lawyer, and a women's rights defender Siham Sergewa. She was kidnapped from her home in Benghazi on July 17, 2019, and taken by an armed group to an unknown destination after they shot her husband with two bullets in the leg. Despite the passage of nearly three years since her abduction, Siham Sergewa's fate is still unknown, and she is still subject to enforced disappearance. On 25 September 2016, the disappearance of human rights defender and women's rights activist Jaber Zain was taken from a café in Tripoli by an unknown armed group to an unknown location and has been subject to enforced disappearance since that date¹¹.

In Iraq, numerous militias and armed groups operating outside state control continued to commit hundreds of enforced disappearances. Although, there are no accurate estimates of the number of individuals forcibly disappeared by armed groups, militias, and other non-state actors in Iraq. However, Maat has seen many reliable international reports that indicate the exacerbation of the phenomenon of enforced disappearance at the hands of armed militias and non-state actors in Iraq. In this regard, Maat indicated in an international report that more than 643 men and children are still subject to enforced disappearance since the Popular Mobilization Forces kidnapped them during the military operations to retake Fallujah and the surrounding areas from ISIS

¹⁰ المرجع السابق نفسه.

¹¹ تقرير البعثة المستقلة لتقصي الحقائق في ليبيا، الدورة الخمسون لمجلس حقوق الإنسان، يوليو 2022، الرابط: <https://bit.ly/3bWauYi>

control in June 2016¹². In addition, more than 20 activists and protesters are still forcibly disappearing since unknown and non-state armed elements kidnapped them during the popular protests and demonstrations that erupted in Iraq in October 2019¹³.

Conclusion and recommendations:

In conclusion, acts of enforced disappearance are prohibited under all circumstances, regardless of the parties involved, according to the rules of international law, including international human rights law, international humanitarian law, and international criminal law. However, Maat notes an alarming rise in enforced disappearances committed by armed groups, militias, and other non-state actors in many countries of the Middle East region experiencing non-international armed conflicts and internal unrest. In light of the above, Maat for Peace, Development and Human Rights presents its recommendations to governments, armed groups, and militias in the concerned countries as follows:

- Conducting effective, prompt, thorough, impartial, independent, transparent, and genuine investigations into all allegations of enforced disappearances of dissidents, human rights defenders, and activists at the hands of armed groups and militias.
- Releasing all forcibly disappeared dissidents, human rights defenders, and activists unconditionally.
- Making more efforts to ensure that victims of enforced disappearance have access to effective remedies and redress.
- Providing full legal assistance to victims of enforced disappearance to ensure their access to prompt justice and take measures to remove obstacles in front of victims and protect their privacy.
- Bringing the perpetrators of enforced disappearance from armed groups and militias to justice and ensure they do not evade punishment.

¹² العراق: أفصحوا عن مكان وجود 643 رجلاً وصبيّاً اختفوا منذ خمس سنوات، منظمة العفو الدولية، 3 يونيو 2021، الرابط: <https://bit.ly/3QJ2dNZ>
¹³ تحديث حول المساءلة في العراق.. تقدم محدود نحو تحقيق العدالة بشأن انتهاكات وتجاوزات حقوق الإنسان من قبل عناصر مسلحة مجهولة الهوية، بعثة الأمم المتحدة لمساعدة العراق، يونيو 2022، الرابط:

file:///C:/Users/asa/Downloads/OHCHR%20UNAMI%20Update%20on%20Accountability%20in%20Iraq_-ARB.pdf