

Mass Graves Affairs Law no 5 for 2006 as amended

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Mass Graves Affairs Law no 5 for 2006 as amended, in Federal Crimes and Penalties

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Summary:

With a view to facilitating the task of locating the mass graves whose crimes were committed by the defunct regime, to return their remains to their first of kin with ceremonies befitting their sacrifices, to regulate the process of opening them according to the Sharia-based rules and humanitarian values, to protect them against loitering, exhumation , and random exploration, to identify the identities of the victims buried therein, to preserve the criminal evidence and submit them to the judiciary to facilitate their task in proving the responsibility of the perpetrators for the genocide crimes, and illegal burial and other crimes perpetrated against the victims, this law has been promulgated.

Resolution no 8

In the Name of the People

The Presidency Council

Based on what has been approved by the Iraqi National Assembly according to paragraphs a and B of Article 33 of the Law on the Administration of the Iraqi State for the transitional stage and as per Article 37 of the State Administration Law, the Presidency Council decided in its session dated 12/3/2006 to issue the following law:

The title of the law has been modified as per Article 1 of Law no 13 for 2015 which stipulated (The name “ Mass Graves Affairs Law” shall replace the name “ Mass Graves Protection Law” contained in the Mass Graves Protection Law no 5 for 2006.

The title of Chapter One has been amended as per Article 2 of the Law on the First Amendment to Law no 5 of 2006 no 13 for 2015

Chapter One

Goals, Means and Validity

Article 1

First – for purposes of this law, the following expressions shall have the meanings indicated against each of them:

- A- Ministry: Ministry of Human Rights
- B- Mass Grave; the land housing the remains of more than one martyrs who have been buried or concealed permanently without observing the Sharia-based rules and humanitarian values that must be observed when the dead are buried and in a manner that is intended to conceal the evidence of the genocide crime committed by an individual, group or commission and which constitutes a violation of human rights.
- C- Victims: a group of martyrs who are found in the mass graves

Second: The provisions of this law shall apply to the mass grave crimes committed under the defunct Ba’thist dictatorship regime and the crimes committed by the terrorist and Ba’thist gangs before and after 2003.

Chapter Two

Exploring the mass graves

This Article has been amended as per Article 3 of Law no 13 for 2015

Article 3

First- there shall be created a directorate in the Ministry of Human Rights named (Directorate of Mass Graves Affairs and Protection) to undertake protecting, looking for, investigating and exploring the mass graves in coordination with the relevant authorities

Second: The directorate stipulated in Item First of this Article shall be managed by an employee holding the title of Director General with at least a university degree, and who must be experienced and specialized.

This Article has been amended as per Article 4 of Law no 13 for 2015

Article 4

The holder, occupant or owner of the place which the Ministry sees that it contains a mass grave shall be committed to permit it and the competent authorities to enter it to examine it, draw its map, photograph it or take any measure necessary for searching and exploring the mass grave after being notified officially of that provided that the period of conducting the said procedures does not exceed 30 (Thirty) days from the date of notification.

This Article has been amended as per Article 5 of Law no 13 for 2015

Article 5

First: When establishing that there is a mass grave in a specific location, the Ministry, by a decision issued by the judiciary, shall take seisin of it and conduct search and exploration in it until the procedures have been completed within one year, renewable once.

Second: If it has been established that there is a mass grave owned by a natural or juridical person, the Ministry must indemnify the owner for missing the benefit, and compensate him when searching and opening the mass grave at the location by a court order.

This Article has been amended as per Article 6 of Law no 13 for 2015

Article 6

First- A committee shall be set up in each area in which a mass grave is found, grouping:

- a- A judge nominated by the Supreme Judicial Council as the chairman
- b- A representative of the Ministry of Human Rights holding the degree of Director General as member and vice chairman
- c- a member of the Prosecutor general designated by the head of the Prosecutor general as member
- d- A police Officer holding the rank of at least a Lieutenant Colonel designated by the Ministry of interior as member
- e- A forensic doctor designated by the Ministry of Health as member
- f- A representative of the Martyrs Foundation holding the degree of Director General as member
- g- A representative of the Ministry of Martyrs and Anfal Victims Affairs in Kurdistan region as member
- h- A representative of the High Commission of Human Rights as member
- i- A member of the District Council of the area to be designated by the head of the provincial council as member

Second: The martyrs' first of kin shall have priority in the representation at the committee set up as per Paragraph (First) of this Article

Third: The committee stipulated in Paragraph (First) of this article shall be charged with:

- a- Issuing the decision of opening the mass grave from the competent technical teams
- b- delivering the remains to the victim's first of kin according to ceremonies befitting him conducted by the Ministry
- c- Issuing an identity verification document for the remains found in the light of the investigations and necessary medical and laboratory tests
- d- Taking control of whatever is related to the remains, including clothes, artifacts, supplies and objects
- e- Providing the Mass Grave Affairs Directorate of the Ministry with a copy of the decision on verification of the victim's identity with the original transaction packages and related documents.

Fourth-The committee chairman may ask the help of specialists without them having the voting right. Their remuneration shall be reimbursed according to the law.

Fifth- The Forensic Medicine Institute of the Ministry of Health shall conduct dissecting test of the remains and take samples from them and from their first of kin and preserve them, check the genetic rprint and match them and preserve the samples taken from them and from the remains to be taken out in addition to the blood samples taken from the victims' first of kin, and provide the support in coordination with the Ministry.

Sixth- The Ministry of Human Rights, in coordination with the Martyrs Foundation, must build and construct edifices and tombstones for the mass graves

Seventh- The federal government must allocate sufficient funds to open the mass graves and bury the martyrs' remains, through the Ministry.

Article 7

First- The identity document issued according to Item (C) of Paragraph "Second" of Article 6 of this law shall be considered as an evidence enough to prove the death and victim's identity, and can prove the contrary as per the law.

Second- The victim's heirs may contest the committee's decision on investigating the victim's identity at the Personal Status Court within whose spacial jurisdiction the location of the mass grave falls, within 10 (Ten) days from the date of being notified of the decision. The court's verdict shall be contestable at the area's court of appeal in its cassation capacity within 15 (fifteen) days from the date of notifying it.

This Article has been amended as per Article 7 of Law no 13 for 2015

Article 8

First- The relevant technical teams shall start opening the mass grave by conducting an inspection of the grave locations to identify the identities of the remains and prepare a proper statement containing the landmarks and details of the mass grave as documented by films and CDs.

Second- The Ministries must reimburse risk allowance of 50% of the basic salary of the employees working on the technical teams specialized in opening mass graves

This Article has been amended as per Article 8 of Law no 13 for 2015

Article 9

First – Whoever knows of the existence of a mass grave in a certain place must inform the competent authorities of its location

Second- A financial reward of 3-5 million Dinars shall be granted to the person mentioned in Paragraph First of this Article of this law with giving him the option of identifying him on the grave tombstone.

Third- Whoever denies a mass grave crime committed according to this law or humiliates the victims shall be punishable by imprisonment for at least 3 years and deprivation of assuming any executive post or relief from such posts and also deprivation of nomination for any elections.

Chapter Three

Penal provisions

Article 10

Whoever tampers with or opens a mass grave without having a license from the Ministry of relevant authorities shall be meted out a penalty of imprisonment for a period not exceeding 3 years and a fine no less than 500000 (five hundred thousand Dinars and no more than 1000000 (one million) Dinars. The prison penalty will be meted out if his act has led to a loss of evidence identifying the victims or the perpetrators or obliteration of the crime evidence

Article 11

Whoever hampers the work of the relevant authorities while they are performing their task of searching and exhumation of the mass graves or has refrained from enabling them to perform their task, shall be meted out the penalty of imprisonment for a period not to exceed 3 years and a fine of 150000 (one hundred fifty thousand) Dinars and no less than 300000 (three hundred thousand) Dinars or one of these two penalties.

Article 12

Whoever violates the provisions of Article 9 of this law shall be meted out imprisonment term of no more than 2 years and a fine of no less than 100000 (one hundred thousand) Dinars and no more than 250000 (two hundred fifty thousand) Dinars.

It shall be an alleviating legal excuse if one of the perpetrators has offered to inform the Ministry of the competent authorities of the location of the mass grave or victims or perpetrators of crimes against the victims.

Chapter Four

General and final provisions

Article 14

The Ministry may ask the help of the competent authorities and national and international organizations which are concerned with the human rights in order to achieve the objectives of this law, and document the actions taken accordingly and their results at both the national and international levels.

This Article has been amended as per Article 9 of Law no 13 for 2015

Article 15

The members of the committee referred to in Items B, D and G of Paragraph First of Article 6 of this law shall have the powers bestowed on the investigator which are stipulated in the Law of Penal Code Fundamentals no 23 of 1971 when conducting the investigation in the cases set forth in this law.

This article has been added as per Article 10 of Law no 13 of 2015

Article 15 bis

This law shall be brought into force by the Martyrs Foundation after the completion of the Ministry's work or abrogating it.

Article 16

The mass grave guard and the monitor entrusted with monitoring and following up on the mass grave guards, for purposes of this law, shall have the judicial discipline power stipulated in the Penal Code Fundamentals.

Article 17

The texts of provisions of international agreements and treaties which have been approved by Iraq shall apply if no special stipulation is included in this law.

Article 18

The Minister may issue instructions and statements to facilitate bringing the provisions of this law into effect.

Article 19

This law shall be valid as of the date of publication in the official gazette.

Jalal Talabani

Adel Abdul Mehdi

Ghazi Ajeel Iliawer

President of the Republic

Vice-President

Vice-President

Justifying reasons

With a view to facilitating the task of locating the mass graves whose crimes were committed by the defunct regime, to return their remains to their first of kin with ceremonies befitting their sacrifices, to regulate the process of opening them according to the Sharia-based rules and humanitarian values, to protect them against loitering, exhumation , and random exploration, to identify the identities of the victims buried therein, to preserve the criminal evidence and submit them to the judiciary to facilitate their task in proving the responsibility of the perpetrators for the genocide crimes, and illegal burial and other crimes perpetrated against the victims, this law has been promulgated.

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