

**UK PARLIAMENT SEMINAR TO COMMEMORATE THE ANFAL GENOCIDE
AGAINST THE KURDS**

16 March 2010

Statement by Kathryne Bomberger, Director-General

On behalf of the International Commission on Missing Persons, I would like to thank you for inviting me to speak here today and to honor the memory of the tens of thousands of men, women and children who were systematically killed or disappeared during the brutal campaign known as Anfal.

I would like to thank the organizers, including the UK representation for the Kurdish Regional Government for graciously allowing ICMP to discuss its work and the policy measures that we have recommended be undertaken by the government of Iraq to locate, recover and identify, not only those killed and missing from Anfal, but from the other atrocities perpetrated by the regime of Saddam Hussein.

Large numbers of missing persons are a powerful symbol of a failure to safeguard individual rights and to uphold the rule of law. They are a constant reminder of human vulnerability and exposure to tyranny. They contribute to maintaining the atmosphere of distrust that so often defines the fragility of governments in transition and they adversely affect the credibility of political, democratic and rule of law institutions. While seeking answers in each individual missing persons case is important, addressing the issue at the aggregate level of society, where it affects the credibility and prospects of political transitions, is of no less importance.

Family members have a right to information concerning the fate and whereabouts of their loved ones. This right is clearly stated in the European Convention on Human Rights, the International Covenant on Civil and Political Rights, Resolution 7/28 of the United Nations Human Rights Council, and other human rights instruments, as well as in international humanitarian law as applicable.

Accordingly, ICMP believes very strongly that it is the responsibility of the Iraqi Government to address the issue of all missing persons from armed conflict, crimes against humanity and other violations of human rights, regardless of their ethnic, religious or national origin. It is critical that Iraq demonstrates that it is capable of fostering trust between the state and victims' groups. This is particularly the case when it comes to the families of those who were killed and missing from the Anfal campaign and other atrocities where victims were chosen because of their ethnicity.

Iraq has made some progress and these steps forward should be recognized. In 2006 Iraq created a Law on Protection of Mass Graves, which provides a coherent legal mechanism for locating missing persons, conducting excavations of mortal remains and for identifications of victims exhumed from mass graves. Through this law, authority is given to the Ministry for Human Rights to lead these efforts. Iraq has also signed international agreements and is involved in bi-lateral processes aimed at locating persons who disappeared during previous armed conflicts. While the promulgation of the Law on Protection of Mass Graves and Iraq's involvement in these bi-lateral processes demonstrates Iraq's willingness to work on the issue of the missing in a manner that respects the implementation of the rule of law, there are further policy and strategic issues that need to be addressed.

First, it must be recognized that the issue of missing persons is a cross-cutting one that exceeds the ability of one ministry to command. Secondly, given the political, legal and emotional complexities of the issue and the fact that millions of citizens are affected, it is of critical importance that the issue is addressed at the highest level of government. Therefore, **if** the Ministry for Human Rights is to succeed in its efforts to lead the process, as stipulated in the Law on Protection of Mass Graves, ICMP strongly recommends that the Prime Minister of the new government forms a policy group to develop a coherent vision of how Iraq intends to deal with this highly emblematic issue, and one that will have serious consequences on its ability to create a future peaceful

and stable Iraqi state. This group could include the following relevant ministries and institutions whose work is critical to the process:

- The Ministry of Martyrs and Anfal Affairs;
- The Ministry of Health;
- The Ministry of Justice;
- The Ministry of Interior;
- The Ministry of Defense;
- The Ministry of Foreign Affairs;
- The Ministry of Environment;
- Higher Education Institutions;
- The Iraqi High Tribunal;
- As well as civil society groups and NGOs, including most importantly the relatives of the missing.

Third, while the Law on the Protection of Mass Graves provides a legal basis to conduct certain activities relevant to the missing persons process, the legislation does not sufficiently address other important issues that should be the subject of discussion and action. Besides addressing issues that have not been definitively resolved by the current legislative framework, this group should take the lead in developing a joint strategy for all agencies and institutions involved in the location, recovery and identification of missing persons. Some of these issues could include:

- A coherent and agreed upon plan for locating and excavating mass and clandestine graves of all persons missing. This is especially important for the relatives of Anfal victims and other Kurdish victims whose relatives have been hidden in locations near Mosul, Baghdad and farther south. This plan should also make proper provisions for the storage of exhumed mortal remains and for the maintenance of proper chain of custody so that mortal remains that are recovered can be properly tracked and repatriated;
- Defining and adhering to best practice procedures in the excavation of mass and clandestine graves and ensuring that the appropriate criminal judicial personnel are present to record information for future use in possible criminal trials;
- The creation of Central Records of the missing that would be the repository for all information, including historical records, witness information, site locations, as well as reconnaissance and recovery operations. The existence of Central Records would also enable the government to provide accurate and reliable information to citizens regarding the number of missing persons **and** its efforts to locate and identify them. These records could also be used to allow families of the missing to access social and economic benefits;
- The creation of a legal framework that provides rights to relatives of the missing, including the right to information regarding the fate of a missing person and the need for compensation. It is critical that such legislation include provisions to protect data and those who provide it;
- Determining the method of identification of persons recovered from mass or clandestine graves. Let me be clear here. DNA- led identifications provide the only accurate means to identify the victims of Anfal, as well as the hundreds of thousands of other mortal remains hidden across Iraq. Let me also be clear that applying DNA to such a large number of missing persons has never been done before. ICMP is applying the use of DNA identification technology in the Western Balkans where the total population of missing is under 40,000. In addition, the most critical element in the successful application of DNA identification technology requires the full participation of the relatives of the missing. Practically this means that a reference sample must be taken from multiple close relatives of the missing person in order to match it to recovered skeletal remains. In the case of Anfal, this could mean the collection of at least 300,000 reference samples and a strategic and targeted approach to locating the associated mass graves. Such an effort would require the collection, tracking and management of an unprecedented amount of genetic information.

ICMP understands that Iraq is eager to embark upon a process to use DNA identity testing, but no provisions have been made at the level of the state to properly address important concerns, including:

- Do the relatives of the missing and the victims of mass atrocities have confidence in the ability of the state to conduct DNA identity testing?
- Will the state create provisions to protect genetic information and ensure that it is only used for the purpose of identifying the victims?
- Is it possible to identify everyone? If not, can the state develop a targeted approach to identify as many persons as possible, and manage the expectations of those families who may never have identified mortal remains returned to them?

These are fundamental issues that need to be seriously addressed by the Iraqi government before any further efforts are undertaken and it is absolutely vital that the families of the missing are included in these important policy discussions. Engagement in this process also implies a long-term financial commitment. Therefore ensuring that sustainable funds are available for many decades to come must be addressed by this policy group.

ICMP opened an office in Iraq in 2008. Since then we have provided training in proper excavation techniques. We have trained 40 persons from the Ministry of Human Rights, the Ministry of Health and the Ministry of Martyrs and Anfal Campaign. We are also working with Iraqi authorities to create an Iraq specific Forensic Data Management System that would be instrumental to the creation of Central Records. In addition, we have proposed assistance in using DNA to identify victims. However, unless critical policy decisions are made by Iraqi authorities and victims groups, including those outlined above, it will be difficult for ICMP to help. In this regard, ICMP stands ready to assist Iraq in facilitating the development of a strategic approach to addressing this issue.