

LAW ON PROTECTION OF MASS GRAVES
Including the Instructions on the Law on Protection

Aiming to contribute to spreading and strengthening of the human rights culture in Iraq, and for the purpose of increasing the awareness of all parties relevant to mass graves related rights, the Ministry of Human Rights has issued this guidebook to inform all groups and parties of the Law on Mass Graves and its instructions in Iraq.

Decision Number 8

In the name of the people

The Presidency Council

Based on the decisions passed by the Iraqi National Assembly in accordance with items A and B of the Article No. 33 of the Law of Administration for the State of Iraq for the Transitional Period; and based on the Article No. 37 of Law of Administration for the State, at its session held March 12th 2006 the Presidency Council passed the following law:

Law No. 5, year 2006
The Law on Protection of Mass Graves

Chapter One
Goals and Means

Article 1

- I) This Law aims to:
- a) Protect mass graves from disturbing, random digging and opening without an official consent by the Ministry of Human Rights;
 - b) Organize the mass grave opening process in accordance with legal regulations and humanitarian values with the aim to identify victims and establish any other legal consequences within the framework of the regulations of this Law;
 - c) Preserve and protect the evidence that can be used to identify victims;
 - d) Identify the perpetrators and assist in collecting evidence to prove their criminal responsibility for crimes committed against victims, as well as their delivery to the court of law.
- II) The Ministry of Human Rights will assume the leading role in the process of opening and indexing of mass graves, as well as documenting their contents.

Article 2

In the context of this Law, the following terms shall have meanings set forth below:

- I) Ministry – Ministry of Human Rights;
- II) Information Office – Information Office on Mass Grave Issues;
- III) Mass Grave – land or location containing the mortal remains of more than one victim, who were buried or permanently hidden with no respect to legal regulations and humanitarian values that must be taken into account during internment, and who were buried in a way to hide the evidence of the crime of genocide committed by an individual, a group or an institution; it is considered to be violation of human rights;
- IV) Victims – a group of mortal remains of victims found in mass graves.

Chapter Two Mass Grave Excavation

Article 3

The Ministry coordinates with the relevant authorities regarding the examination, investigation and excavation of mass graves.

Article 4

The Ministry believes is a mass grave site shall provide the Ministry and relevant authorities the access to the site in order for them to investigate, map, photograph the location or undertake any other necessary measures in relation to mass grave examination and excavation, following an official notice. The abovementioned measures undertaken shall not take longer than fourteen (14) days starting with the notice day.

Article 5

Should the Ministry establish existence of a mass grave at the examined and excavated location, the Ministry shall take possession of the location for a period not exceeding ninety (90) days starting with the day of taking possession, pursuant to legal regulations.

Article 6

- I) For the purpose of implementing the regulations of this Law, the Ministry shall establish a commission in the region where a mass grave is located, led by a Ministry representative and consisting of the following members:
 - a) A judge appointed by the Regional Court of Appeals President
 - b) A member of Public Prosecution appointed by the Public Prosecutors Department
 - c) A police officer appointed by the Ministry of Interior
 - d) A forensic expert appointed by the Ministry of Health
 - e) Representative of the Municipal Council appointed by the relevant governor.

- II) The Commission shall be in charge of the following:
 - a) Open mass graves and inspect them in order to identify the mortal remains found inside; as well as create records containing characteristics and details of the mass grave documented on video-tapes and compact discs;
 - b) Repatriate mortal remains to victim families and rebury the victim remains according to their customs; the State shall assume the related expenses;
 - c) Issue an identification document for all mortal remains found in the course of investigations and necessary medical and laboratory tests;
 - d) Issue decisions needed for the implementation of its assignments as prescribed by this article and lift them to the Ministry for it to start legal procedures.

- III) The Commission shall request assistance of specialized experts, who will not have the right to vote.

Article 7

- I) An identification document issued pursuant to item c), paragraph II), Article 6 of this Law is considered sufficient evidence in establishing a victim's death and identity, and it may be subject to reversal, in accordance with the Law.

- II) The victim's heirs shall have the right to file an appeal before the religious court territorially competent for the given mass grave against the Commission's decision on victim identity establishment, during ten (10) days from the day of decision notification. Verdict made by the Court may be subject to appeal before the Regional Appeal Court as a court of cassation, during fifteen (15) days from the day of notification.

Article 8

- I) The Commission shall submit to the Ministry's Information Office a copy of its victim identification decision along with the originals and related documents and any items found with the victim, e.g. money or other victim's belongings.

- II) The Information Office shall be in charge of the following:
 - a) Provide the Ministry's Missing Persons Office and other relevant authorities the copies of the victim identification decisions, as well as all required information and other documents;
 - b) Provide the victim's heirs the copies of documents as set forth in the paragraph I) of this Article and the item a) of this paragraph, as well as victim's money and belongings;
 - c) Forward the document on victim identification as well as any other required information and other documents to the religious court or the Court of Personal Status, depending on competence, should it be needed for the purpose of issuing a death certificate for mortal remains found in the mass grave, according to the Law;
 - d) Undertake required procedures for issuing a social status card to victim's heirs.

Article 9

It is the duty of any person who knows that a mass grave exists on his/her land or elsewhere to inform the relevant authorities in no longer than thirty (30) days from the day of the enactment of this Law.

Penalty Regulations

Article 10

Any person who disturbs a mass grave or opens it with no authorization from the Ministry or relevant authorities shall be imprisoned for a period of not more than 3 (three) years and fined in the amount between five hundred thousand (500,000) dinars and a million (1,000,000) dinars. The imprisonment penalty applies if the person's actions led to loss of victim identification evidence or to wiping out of crime evidence.

Article 11

Any person who interferes with the work of relevant authorities during their mission of mass grave examination and excavation or who fails to make possible the mission of relevant authorities, shall be either imprisoned for a period of not more than three (3) years and fined in the amount between one hundred fifty thousand (150,000) dinars and three hundred thousand (300,000) dinars, or punished by any of the two.

Article 12

Any person who breaches the regulations set forth in the Article 9 of this Law shall be imprisoned to a period of not more than 2 (two) years and fined in the amount between one hundred thousand (100,000) dinars and two hundred and fifty thousand (250,000) dinars.

Article 13

It shall be considered as a legal extenuating excuse for a criminal should he or she report to the Ministry or the relevant authorities the mass grave location, or information on its victims or perpetrators of crimes against the victims.

Chapter 2 General and Closing Rules

Article 14

In order to implement the goals of this Law, and to document the procedures undertaken in accordance with this Law and its results on national and international levels, the Ministry shall request assistance of relevant authorities as well as local and international human rights organizations.

Article 15

The president and members of the Commission – which is tasked with examination and excavation of mass graves and described in the paragraph I), Article 6 of this Law – shall be granted the powers of investigator as defined in the criminal procedure ordinance, No 23, issued 1971, to investigate crimes described in this Law.

Article 16

Mass grave guard and the monitor tasked with monitoring and controlling mass grave guards shall to the effect of this Law have the court police authority as defined by the criminal procedure ordinance.

Article 17

International agreements and conventions ratified by Iraq shall be applied to any cases that the Law failed to define in specific terms.

Article 18

The Minister shall issue the instructions and declarations to facilitate the implementation of regulations of this Law.

Article 19

This Law shall enter into force on the day when published in the Official Gazette.

Ghazi Ajil al-Yawer, Vice President of Iraq
Adil Abdul-Mahdi, Vice President of Iraq
Jalal Talabani, President of Iraq

The Rationale

This law is passed in an effort to facilitate the mission of searching for mass graves that resulted from crimes committed by the past regime; and in an effort to repatriate the victims' mortal remains to their relatives in a manner that matches their sacrifice; and in an effort to facilitate opening of mass graves in compliance with legal regulations and humanitarian values; and in an effort to protect mass graves from disturbing, as well as haphazard excavation and digging; and in an effort to identify victims buried in the graves and preserve criminal evidence to be forwarded to the Court to facilitate the establishment of responsibility of criminals for the crimes of genocide, illegal burial, as well as other crimes committed against the victims.

Based on the regulations set forth in the Article 18 of the Law on Protection of Mass Graves, No. 5, year 2006, we have issued the following instructions:

No 1, year 2007

Instructions

Facilitation of the Implementation of the Law on Protection of Mass Graves

No 5, year 2006

Article 1

The Ministry of Human Rights shall assume the leading role in the process of opening and indexing of mass graves, as well as documenting their contents. The Ministry shall be considered the relevant technical authority in charge of the implementation of tasks of examination, investigation and excavation of mass graves, as well as victim identification with the assistance of modern scientific methods. In order to realize its goals, the Ministry shall make use of local experiences, international organizations and other relevant parties.

Article 2

A central database shall be established at the Mass Grave Department in order to:

- I) Record mass grave sites in Iraq as well as grave sites of Iraqis outside of Iraq;
- II) Provide ante-mortem and post-mortem information on victims;
- III) Collect results of mortal remains laboratory examinations and victim family information;
- IV) Collect information on matches as well as the numbers of identified and unidentified victims.

Article 3

The Information Office defined in the paragraph II), Article 2 of the Law on Protection of Mass Graves, No. 5, year 2006, shall be linked to the Mass Grave Department and shall be in charge of implementation of duties defined in the paragraph II) of Article 8 of the Law.

Article 4

- I) A commission shall be formed in the governorate where a grave site exists or is discovered; it shall be led by a representative of the Ministry of Human Rights with at least the title of director and its members shall include representatives of the following parties:
 - a) Relevant Directorate of Land Registration;
 - b) Directorate of municipalities in the governorate;
 - c) Directorate of Antiquities;
 - d) Directorate of Agriculture;
 - e) Directorate of State Properties;
 - f) Department of Urban Planning;
 - g) Directorate of Religious Endowments (awqaf);
 - h) Police Directorate in the governorate;
 - j) A representative of the party that owns the land where the grave was found.
- II) The Commission defined in the paragraph I) of this article shall be in charge of the following tasks related to locating mass grave sites:
 - 1) To examine and photograph mass grave site and prepare certified drawings and maps within a legal deadline of fourteen (14) days from the day when the owner or occupant of the land is officially notified by the Ministry;

- 2) In case of inability of making an official notification, the Ministry shall request a permission from the territorially relevant first-instance court for the land to undertake procedures defined in the item 1) of this paragraph. The Court shall look into the request in an urgent manner;
- 3) Prepare a detailed report that includes documents, maps and drawings that shall be delivered to the Minister of Human Rights with a recommendation that the subject location is indeed a mass grave.

Article 5

- I) The Human Rights Department shall be the relevant party for receiving information on existence of mass grave.
- II) If it is impossible for the informer to report the mass grave location to the Department – defined in the paragraph I) of this Article, the informer may file a report at the nearest investigative court. The court shall notify the Department through confidential correspondence containing the information reported and the informer's identity.
- III) The Human Rights Department shall undertake precaution measures to maintain the confidentiality of the informer and the information reported.

Article 6

In order to protect the mass grave site and on the basis of Commission's recommendation, as defined in the paragraph I) of Article 4 of these Instructions, the Minister shall decide the following:

- I) Proclaim the site a mass grave under protection pursuant to regulations of the Law on Protection of Mass Graves, No 5. year 2006.
- II) Notify the relevant parties of proclamation of grave site protection; if necessary, the Minister shall undertake confidential protection procedures.
- III) Undertake practical protection procedures by appointing mass grave security and fencing it wherever possible.
- IV) Notify the commission, formed in accordance with Article 6 of the Law, of the decision to protect the grave and shall instruct it to undertake required procedures for opening the grave; the Minister shall – on the basis of Commission's decision on inability of completion of digging and excavation works during the legal deadline of ninety (90) days since the day of taking the grave site in possession – undertake required procedures for site appropriation or renting, in accordance with the Law.

Article 7

The Commission defined in the paragraph I) of the Article 6 of the Law shall be in charge of:

- I) Keeping, protecting and documenting evidence that may be used to establish the identity of victims and perpetrators; verifying the lists of this evidence and forwarding thereof to relevant courts.
- II) The Commission shall pass its decisions by majority of votes; in case of an equality of votes the side that the President voted in favor of shall prevail.

Article 8

The implementation of these Instructions shall start on the day of publishing in the Official Gazette.