LEGAL FRAMEWORK RELATIVE TO THE ISSUE OF MISSING PERSONS IN IRAQ

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Legal Framework Relative to the Issue of Missing Persons in Iraq has been made possible with the generous support of the European Union and the Government of the Netherlands.
FOREWORD

Hundreds of thousands of persons are missing from decades of conflict in Iraq. Families do not know the fate of their loved ones, and communities entertain different and often conflicting accounts of the truth, which undermines efforts to ensure peace, security and reconciliation. Many surviving family members are unable to access their rights, due to administrative, political and legal hurdles.

An important first step in addressing these hurdles is extensive understanding of the legal framework relative to the issue of the missing in Iraq. This detailed and extensive study conducted by the International Commission on Missing Persons (ICMP), with the support of the Ministry of Foreign Affairs of the Netherlands, offers a comprehensive analysis of the legal framework and fills the gap in this crucial and under-researched topic.

In Iraq, the issue of missing persons is governed by a mosaic of laws, policies and customs with a number of entities and institutions involved, both in Federal Iraq and the Kurdistan Region of Iraq. This means that families of the missing must navigate a complex and continuously challenging legal landscape in order to access their rights.

ICMP’s study outlines the legal and institutional framework, including international human rights instruments, procedures on how to report a missing person, criminal investigations (including mass graves investigations) and the rights of families (such as reparations and specifically). The study also examines a number of legal and structural challenges that affect families. With its well-researched use of sources in English and Arabic, this study will be a valuable resource for national and international legal scholars, practitioners, and decision-makers. By addressing in a clear and focused way the missing persons issue and its challenges in Iraq, it represents an important contribution to academic research, legal practice and policymaking.

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NOTE: Information contained in the document is current as of 11 March 2021.

I. INTRODUCTION

1. Iraq is affected by a high number of missing persons. Iraqi authorities estimate from 250,000 to more than a million persons missing from decades of conflict and human rights abuse, including those missing in the context of the Ba’ath regime, wars, tribal conflicts, and Da’esh, and as a result of enforced disappearance. The issue has significant consequences for society and security in Iraq today. Tens of thousands of families suffer the anguish of uncertainty regarding the fate of their relatives, and communities entertain different and often conflicting accounts of the truth. Further, many surviving family members are unable to secure their rights, due to administrative, political and legal hurdles.

2. People continue to go missing, yet few measures have been taken to end impunity for enforced disappearance and other crimes that lead to disappearance. Laws, policies and customs concerning missing persons are not consistent and often excessively categorize missing persons according to group characteristics or the presumed circumstances of their disappearance.

3. As a result of these inconsistencies, the work of multiple agencies and institutions that deal with the issue of missing persons has developed in an ad hoc manner. The existing process cannot adequately safeguard the rights of survivors, including families of the missing, and does not comply with international obligations to search for and locate missing persons. Such characteristics often occur in countries in transition. However, they have been particularly acute in Iraq because of the lack of central coordination and the extremely large number of persons who have gone missing over the past decades.

4. The International Commission on Missing Persons (ICMP) has worked with the authorities in Iraq since 2005 to contribute to the development of a structured approach based on the rule of law. Iraqi policymakers have taken some steps by establishing institutions and developing legislation, particularly the Law on Protection of Mass Graves (2006), amended in 2015 to the Law on Mass Graves Affairs to include persons missing as a result of Da’esh-related atrocities. Other relevant laws are the 2006 Law of the Ministry of Martyrs and Anfal Affairs (MoMMA) of the Kurdistan Region of Iraq (KRI), and the Forensic Medicine Law of 2013. In 2006 the Martyrs’ Foundation (MF) was established to oversee support for and reparations to the families of martyrs. In 2010 Iraq signed the International Convention on the Protection of All Persons from Enforced Disappearance (ICPPED).

5. Initially, the Ministry for Human Rights was given the lead responsibility for the missing persons issue, but its mandate ended with the dissolution of the Ministry in 2015 and the lead responsibility for mass graves passed to the MF, while other competencies were passed to the Ministry of Justice and the Iraqi High Commission for Human Rights. In the Kurdistan region, the MoMMA has the responsibility for mass graves and for supporting the families of victims. In 2007 the Law on Rights and Privileges of Families of the Martyrs and Anfal Victims was passed, defining the benefits and entitlements of surviving family members.

6. In parallel with institutional and legislative developments, civil society became more involved in the missing persons process. However, despite these efforts the number of missing persons has continued to grow. Mass graves are being discovered regularly as areas of Iraq have been liberated from Da’esh control and the testimony of those escaping from Da’esh suggests that more graves may be discovered in the future. According to the MF, over 156 mass or clandestine
graves have been excavated by the relevant government agencies; however, continued conflict has resulted in increasing numbers of missing persons and increasing numbers of mass and clandestine graves.

7. This overview of the current legal framework relative to the issue of missing persons in Iraq, including relevant legislative initiatives, has been prepared by ICMP with funding from the European Union and the Ministry of Foreign Affairs of the Netherlands. ICMP hopes that the overview will clarify the legal framework on missing persons, facilitate continued dialogue on legislative and institutional improvements, and contribute to the foundations of a sustainable missing person process in Iraq through increased central coordination.

II. MISSING PERSONS AND HUMAN RIGHTS

8. The obligation to conduct comprehensive and effective investigations of human rights abuses lies with the State, regardless of who committed violations and abuses. Failure to investigate the fate and whereabouts of missing persons in an effective way, including the circumstances of their disappearance, can constitute a continuing breach of fundamental human rights of both the missing persons and their family members.

9. Iraq is a state party to the major human rights instruments and as such is obliged to apply or incorporate those standards and obligations within its domestic legal system. The most relevant instruments include the Universal Declaration on Human Rights (Article 3 – Right to life, Article 12 – Right to privacy), in the International Covenant on Civil and Political Rights (ICCPR) (Article 6 – Right to life, Article 7 – Prohibition against torture, Article 17 – Right to privacy), in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in the Convention on the Rights of the Child (Article 16 – Right to privacy).

10. Accordingly, the situation of persons going missing can involve multiple human rights abuses in respect of the persons themselves and in respect of the families of the missing. In the absence of effective and official investigations, disappearances concurrently represent grave abuses of the rights of relatives and others, including violations of due process, the prohibition of torture, inhuman and degrading treatment, and violation of the right to a family life and the right to recognition as a person before the law.

11. In addition, certain missing persons cases are classified as a separate offense by international instruments. The ICPPED provides a definition of enforced disappearance in cases involving state actors. It also mandates state parties to investigate all acts of disappearance committed with or without involvement of state actors. The Statute of the International Criminal Court provides for the crime of enforced disappearance as a crime against humanity. These legal instruments enshrine states’ obligations to conduct effective investigations regarding missing persons. The right to life in particular rests on the procedural guarantee that abuses will be officially investigated irrespective of whether such abuses are considered attributable to actions or inaction of the State.

12. Guarantees of effective investigations have been detailed by international human rights bodies, and should be considered also in the context of formulating policy on the missing persons issue in Iraq. According to the European Court of Human Rights (ECtHR), and also under the jurisprudence of the Inter-American Court of Human Rights, an effective investigation must be official, transparent, independent, impartial, and capable of establishing the circumstances in a given case. The European Court has also made it clear that “the procedural obligation to
investigate under Article 2 where there has been an unlawful or suspicious death is triggered by, in most cases, the discovery of the body or the occurrence of death. Where disappearances in life-threatening circumstances are concerned, the procedural obligation to investigate can hardly come to an end on discovery of the body or the presumption of death; this merely casts light on one aspect of the fate of the missing person. An obligation to account for the disappearance and death, and to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain.” [Varnava and others v Turkey, Grand Chamber, 2009]

III. **THE INSTITUTIONAL FRAMEWORK IN IRAQ**

13. Over the last decade, the authorities in Iraq have created institutions tasked with addressing the issue of the missing. These institutions either deal with social and economic issues relevant to the needs of surviving family members, or were tasked with locating and identifying the missing. The institutions include:

- **Martyrs’ Foundation (MF)/ Mass Graves Directorate (MGD), Government of Iraq (GoI)**
  The MGD currently is the technical lead organization for conducting mass graves excavations in accordance with the Law on Mass Graves Affairs. It is part of the Committee established under Article 6 of the law (Committee 6), which oversees exhumation and investigation of mass graves in Iraq. The MF more broadly is also responsible for the implementation of Compensation Law No. 20, which includes missing persons as a separate category, and for the implementation of the Martyrs’ Foundation Law, which provides benefits to martyrs;

- **Ministry of Health in Federal Iraq through** its Medico Legal Directorate in Baghdad (MLD) and Departments in provinces. The MLD in Baghdad has responsibility for identifications of mortal remains including the use of DNA testing. It has its respective provincial facilities - Medico-Legal Departments;

- **Ministry of Martyrs and Anfal Affairs (MoMAA), Kurdistan Regional Government (KRG)**
  The MoMAA has a specialized Mass Graves Directorate and is also a member of the above-mentioned Committee 6. The MoMAA’s other tasks include the disbursement of reparations to the families of the victims of the Anfal campaign. It has jurisdiction exclusively in the KRG;

- **Commission of Investigation and Gathering Evidence (Genocide Center or CIGE)**
  The CIGE is the lead government agency of the Kurdistan Region of Iraq tasked to investigate and collect evidence of crimes committed by the Islamic State of Iraq and Levant (Da’esh/ISIL) against ethnic and religious groups in Sinjar and the Nineveh plains. Its jurisdiction is also exclusive to the KRG;

- **Iraqi High Commission for Human Rights (IHCHR)**
  The IHCHR is Iraq’s National Human Rights Monitoring Institution (NHRI) with a mandate to guarantee, protect and promote respect for human rights. The IHCHR receives complaints of human rights violations, including cases of enforced disappearance, and conducts preliminary investigations into the complaints. Finally, the IHCHR is a Committee 6 member under the Law on Mass Graves Affairs;
• **Ministry of Justice (MoJ)**
  The MoJ through its Human Rights Directorate ensures Iraq’s implementation of its obligations under international law, including the ICPPED. The MoJ also has a Directorate of Corrections, which oversees correctional facilities, and a Minors Care Directorate, which is involved in the management of assets and property of missing persons. Finally, the MoJ has a Missing Persons Department, which handles missing persons requests for those in detention facilities and those reported missing persons through the Office of the High Commissioner for Human Rights;

• **Ministry of Interior (MoI)**
  As a criminal offense, disappearance is reported first to the police, which is part of the MoI. The MoI is also a member of the Committee established under Article 6 of the Law on Mass Graves Affairs. The MoI also has its own DNA lab. The MoI in the KRI conducts DNA profiling and matching for missing persons;

• **Ministry of Defense (MoD)**
  The MoD has primary responsibility for securing mass gravesites and ensuring that they are free of mines and other explosives. The MoD or the MoI also declares as missing members of the armed forces and internal security;

• **Ministry of Labour and Social Affairs**
  The Ministry is involved in providing assistance to those that live below the poverty line, including wives of the missing. Also, a Directorate on Yezidi Female Survivors Affairs, linked to this Ministry, will be established to ensure the implementation of the Law on Yezidi Female Survivors. In addition to facilitating and providing various forms of reparations, the Directorate’s responsibilities will include search, in coordination with the competent authorities, for kidnapped Yezidi, Turkmen, Christian and Shabak men, women and children whose fate is still unknown as well as coordination of mass graves investigations with MGD;

• **Provincial Authorities**
  Provincial authorities are members of the Committee established under Article 6 of the Law on Mass Graves Affairs to oversee exhumations. Moreover, they control local access and are a primary source of security advice. Authorities at the level of provinces include those in legitimate control (Governor, Head of Provincial Council, etc.) and military units in effective control.

14. In addition, Iraq’s justice and related agencies address missing persons issues including:

• Personal Status Courts;
• Investigative and Trial Courts;
• Central Criminal Court of Iraq;
• Representatives of the National Security Services, reporting directly to the Prime Minister.

15. These state entities in some instances work together and in other instances in parallel with each other in their attempts to establish the fate of a missing person in Iraq, to address civil matters that arise as a result of disappearance and to hold perpetrators accountable.
IV. IRAQI LEGISLATION RELATIVE TO MISSING PERSONS: OVERVIEW

16. Iraq does not address the issue of missing persons in one piece of legislation. Rather, various provisions from different laws create a legislative mosaic that regulates areas related to the issue of missing persons.

17. The following Iraqi federal and regional laws, instructions, orders and legislative drafts relate to missing persons and their families. They cover a period of more than 70 years of legislative developments that partially address the issue of missing persons in Iraq.

- **Constitutional and Criminal**
  - **The Constitution of Iraq of 2005** addresses fundamental rights that are central to missing persons investigations and rights of families.
  - **Penal Code No. 111 of 1969** as amended in 2010 criminalizes unlawful seizure, kidnapping and detention.
  - **Criminal Procedure Code No. 23 of 1971** stipulates how to report, investigate and try a criminal offense in Court.
  - **Counter-terrorism Law No. 13 of 2005** provides definitions of and penalties for acts of terrorism.
  - **General Prosecution Act No. 49 of 2017** stipulates the structure of the Public Prosecution Service and defines the tasks and authority of prosecutors, including attendance at criminal subject matter committees, such as the committee on the investigation of mass graves.
  - **Law of the Supreme Iraqi Criminal Tribunal No. 10 of 2005** established an ad hoc tribunal with temporal jurisdiction to prosecute genocide, crimes against humanity and war crimes committed between 1968 and 2003.
  - **Coalition Provisional Authority Order No. 13 of 2004** established the Central Criminal Court in Baghdad, which continues to serve as the main court for terrorism and complex crimes.
  - **Mass Graves Protection Law No. 5 of 2005** as amended in 2015 into **Law of Mass Graves Affairs**
    - **No. 13 of 2015** regulates the processes of protecting, locating, excavating and investigating mass graves in Iraq. Pursuant to this law the following decree has been passed:
      - **Instructions No. 1 of 2019** on Facilitating the Enforcement of the Law on Mass Graves Affairs and Protection No. 5 of 2006 provide for the establishment a central database containing information on mass graves and victims.
  - **Forensic Medicine Act No. 37 of 2013** defines the nature of forensic medicine in Iraq and the structure of relevant departments. Pursuant to this law the following decrees have been passed:
    - **Instructions No. 2 of 2016** on Facilitating the Implementation of the Forensic

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1 Also referred to by the national authorities as the Law on Mass Graves Affairs and Protection.
Medicine Act No. 37 of 2013 set out the type and nature of forensic examinations performed in Iraq;
- Instructions No. 3 of 2016 on Formations and Tasks of the Medico-Legal Directorate based in Baghdad clarify the duties of various departments within the MLD of the Ministry of Health in Iraq.

- **Forensic Law in Kurdistan Region No. 16 of 2001** regulates forensic medicine in the KRI.

**Civil and family**

- **Civil Code No 40 of 1951** regulates contractual obligations, tortious acts, and matters of property and ownership; it is relevant to the issue of the missing because it contains first mention and definition of a “missing person” in contemporary Iraqi law.

- **Civil Procedure Code No. 83 of 1969** is relevant to the missing persons issue because it grants Personal Status Courts jurisdiction over the missing and related issues as well as jurisdiction over confirmation of death.

- **Birth and Death Registration Act No. 148 of 1971** as amended in 1982 regulates the process of registering births and deaths, and addresses all related matters.

- **Minors Care Law No. 78 of 1980** and its amendments regulate the duties of the Department of Minors Care and its cooperation with the relevant Courts regarding minors, fetuses, and persons whom a court has deemed to be partially or totally lacking capacity and has therefore placed under guardianship, as well as absent and missing persons; it also stipulates how the property and assets of such persons are to be managed.

- **Personal Status Law No. 188 of 1959** with amendments\(^2\) regulates matters of marriage, divorce, separation, custody and inheritance in accordance with Islamic law.

**Other**

- **Law on the Iraqi High Commission for Human Rights No. 53 of 2008** mandates the creation of the Commission and sets out its functions and composition.

- **Martyrs’ Foundation Law No. 3 of 2006** as amended in 2015 establishes the Martyrs’ Foundation and defines its structure and functions; it also lists rights and privileges of martyrs and their families.

- **Law on the Ministry of Martyrs and Anfal Affairs of the Kurdistan Region of Iraq No. 8 of 2006** regulates the structure and responsibilities of the Ministry including assistance to the families of martyrs and missing persons.

- **Law on the Rights and Privileges of the Families of Martyrs and Anfal Victims No. 11 of 2007** sets out rights and privileges of the families of martyrs and Anfal victims in the

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\(^2\) This Personal Status Law applies to Muslims only, while Mosaic Denominations Act No. 32 of 1947 applies to Christians and Jews.
Kurdistan Region of Iraq.

- **Law on Missing Persons from the Genocide campaign against Iraqi Kurds No. 3 of 1999** of the KRI incorporates some provisions of Federal Iraq from the Minors Care Act on the missing persons process for the victims of the Genocide campaign against Iraqi Kurds.

- **Law on the Rights and Privileges of Sole Survivors of the Anfal Campaign No. 14 of 2015** of the Kurdistan Region of Iraq extends the application of benefits and privileges of the KRI Law on the Rights and Privileges of the Families of Martyrs and Anfal Victims No. 11 of 2007 to the sole survivors of the Anfal campaign.

- **Law No. 37 of 2007** on the Fund to Assist the Families of Victims of the Anfal campaign and the Genocide of the KRI created the fund and set out its main purposes.

- **Law on Privileges of Political Prisoners No. 20 of 2011** with amendments of the KRI provides a definition of political prisoners and lists the benefits and privileges to which political prisoners are entitled.

- **Law on Compensation of Victims of Military Operations, Military Mistakes and Terrorist Actions No. 20 of 2009 and No. 57 of 2015** legislates the reparations system for victims of military and terrorist actions. Pursuant to this law the following decree has been passed:
  - Instructions no. 4 of 2018 on facilitating the implementation of the Law on Compensation of Victims of Military Operations, Military Mistakes and Terrorist Actions clarify the application process for compensation under the law.

- **Law on the Rights of the Martyrs of the Crime Committed in Pilot Majid Al-Tamimi Air Base (Camp Speicher) No. 12 of 2019** sets out the rights of victims of the Speicher massacre.

- **Law on Yezidi Female Survivors of 2021** sets out a framework for reparations for Yezidi, Christian, Turkmen and Shabak women, children and men survivors and victims of ISIL. The Law recognizes ISIL crimes against Yezidis and other minority groups as acts of genocide and crimes against humanity. It also emphasizes the need to prosecute the perpetrators of these crimes.

- **Social Protection Act No. 11 of 2014** provides social protection assistance to families and individuals that live below the poverty line, including wives of the missing.

- **Law of Non-governmental Organizations No. 12 of 2010** regulates the establishment of NGOs in Federal Iraq and contains some provisions that protect the right to participation in Iraq.

- **Non-Governmental Organizations Law in the Iraqi Kurdistan Region No. 1 of 2011** regulates the establishment of NGOs in the KRI and contains certain provisions that protect the right to participation and the right to assembly in the KRI.

V. **DEFINITION OF A MISSING PERSON IN IRAQI LAW**

18. Article 36 of Iraq's Civil Code of 1951 defines a missing person as follows: “anyone who is absent
and it is not known if he is alive or dead will be ruled by a court to be missing upon a request from a concerned party and that the Personal Status Law shall regulate matters related to missing persons.”

19. With the exception of a provision on separation, Iraq’s Personal Status Law, which was introduced a few years after the Civil Code, in 1959, does not regulate the missing persons issue. Instead, Minors Care Act No. 78 of 1980 includes missing persons, 3 regardless of their age, in the group of persons to whom the law applies. It is therefore one of the most important laws concerning the rights of families of the missing in Iraq.

20. Article 3 of the Minors Care Acts provides that:

1. “This Act shall apply to:
   a. Minors who have not reached the age of majority, which is set at 18 years except in the case of persons over 15 years of age who, having married with the permission of a court, are deemed to possess full legal capacity,
   b. Fetuses,
   c. Persons whom a court has deemed to be partially or totally lacking in legal capacity and has therefore placed under guardianship;
   d. Absent and missing persons;

2. For the purposes of this Act, ‘minor’ shall mean a child, a fetus, anyone whom a court has deemed to be partially or totally lacking in legal capacity and an absent or missing person, unless otherwise indicated by the context.”

21. The Minors Care Act contains a sub-section on missing persons providing a definition of “missing” or “absent” persons as follows:

“Article 85:
Absent is the person who has left Iraq or whose whereabouts are unknown for more than one year and of whom there are no news [...].

Article 86:
A missing person is an absent person of whom, in the absence of news, it is not known whether the person is alive or dead.”

VI. PROCEDURES TO REPORT A MISSING PERSON

22. There is no specific provision in Iraqi law on how and to which entity to report a missing person. Given the lack of provision(s) on reporting procedure and, in light of multiple agencies, institutions and courts that are involved in the missing persons process, reporting requirements have developed in an ad hoc manner. It is common practice to report missing persons to authorities including the police and the investigative court, and the Personal Status Courts, as explained below.

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3 Under Shari’a law missing persons are considered to lack decision-making capacity similarly to minors.
6.1. Report to the Police and Investigative Court

23. As disappearance cases often involve criminal activity, such as enforced disappearance or other forms of kidnapping, they are reported in line with the Criminal Procedure Code (CPC) at the police station.

24. Article 47 of the CPC contains general procedures on notification of offenses. It provides that “any person against whom an offense is committed and any person who learns that an offense has been committed in respect of which proceedings have been instituted without a complaint being submitted, or who learns that a suspicious death has occurred, may inform the investigative judge or the [judicial] investigator or the Public Prosecution or any police station.”

25. Pursuant to this provision, an offense is generally first reported to the police, which comes under the competency of the Ministry of Interior. A police officer prepares the report with written statements and sends it to an investigative judge, pursuant to Article 49, which provides: “Any police officer in charge of a police station receiving information that a felony or misdemeanor has been committed shall immediately record the informant’s statement in writing and require the informant to append his /[her] signature. He shall then send a report of the matter to the investigative judge or [judicial] investigator." As per the Criminal Procedure Code, investigative judges lead criminal investigations into the circumstances of the disappearance in Iraq.

6.1.1. Security Clearance Certificate

21. Investigative judges, before proceeding with an investigative file on a missing person, require families to obtain security clearance from Iraqi National Intelligence or National Security Services. In order to obtain security clearance, an individual must submit their name to either of the two intelligence services offices in their area. Intelligence services check the name against the list of individuals with suspected links to ISIL.

22. There are consistent reports of international observers on the excessively broad application of the security clearance requirement. Perceived affiliation with ISIL can be a consequence of merely living in an area previously controlled by ISIL. Reports of the inability of investigative judges to proceed with the investigative file on a missing person without a security clearance certificate are concerning.

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8 Ibid and supra 5.

9 Ibid.

10 The HRW report (supra note 5) refers to a number of lawyers working in Mosul who state that judges often refuse to open initial files for cases of suspected ISIS members. Civil society organizations with which ICMP works in Iraq have confirmed that this requirement is in effect. At the time of writing, no legislative provision was identified to confirm the legal requirement to obtain security clearance in order to report a missing person. This requirement is understood to be current practice in Iraq.
23. Security clearance is a requirement for many official reporting mechanisms, including those for compensation under Law No. 20. It raises considerable concerns as regards to the administration of justice and the rights of families of the missing to truth, justice and reparation.

6.1.2. Investigation conducted by Investigative Judges

24. As stated above, investigative judges lead criminal investigations in Iraq. In accordance with Articles 58-68 of the CPC, during criminal investigations, including those of missing persons, the complainant is called by an investigative judge to confirm their statement. Article 59 of the CPC also provides that investigative judges may summon two witnesses either by means of a writ of summons or verbally to ascertain the veracity of the missing person report.

25. In order to ascertain the whereabouts of the missing person, the missing person report is generally sent to other police stations, to the border control authorities, civil registry office and to the Directorate of Corrections\(^\text{11}\) in the Ministry of Justice in order to search for and determine if a missing person is in state custody or has been registered with either authorities.

26. Therefore, in terms of substance, investigation conducted by investigative judges takes the form of an administrative search. Additionally, according to Article 130 of the Criminal Procedure Code, if the perpetrator is unknown, an investigative judge may rule to close the case temporarily (see section X. Prosecution).

6.2. Announcement of Missing

27. Furthermore, an announcement in two nationally circulated newspapers\(^\text{12}\) signed by the judge\(^\text{13}\), which contains a photo of the missing person and asks anyone with information about the missing to come forward must be published.\(^\text{14}\)

28. The Minors Care Act provides that a competent Court in Iraq has the authority to declare a person missing. Article 87 stipulates that “The case of the missing person shall be declared in a decision issued by a court. In the case of members of the armed forces and the internal security forces, the decision shall be issued by the Minister of Defense or the Minister of Interior. Such decision shall be annulled if the missing person is proved to be alive.”

6.3. Personal Status Court

29. Given that, under Iraq’s Civil Procedure Code of 1969,\(^\text{15}\) jurisdiction over missing persons and related matters lies with Personal Status Courts, which handle family matters, families of missing

\(^{11}\) Unearthing Atrocities: Mass Graves in Territory Formerly Controlled by ISIL, 6 November 2018, UNAMI/OHCHR https://www.ohchr.org/Documents/Countries/IQ/UNAMI_Report_on_Mass_Graves4Nov2018_EN.pdf, p. 15 (The UNAMI report’s reference to it as an “Iraqi Reform Directorate” is understood as a translation error. The word إصلاح can be translated as “reform,” but in this context stands for “correction”, meaning Directorate of Corrections, and Instruction No. 4 of 2018 on Facilitating the Law on Compensation.

\(^{12}\) As reported by Human Rights Watch, supra 6; UNAMI, supra 9; and CIVIC, supra 2.

\(^{13}\) Announcement of missing can be signed by both investigative judges and judges of Personal Status Courts.

\(^{14}\) While the announcement is signed by a judge, reports (ibid) indicate that families have to pay for it.

\(^{15}\) Article 300 of the Civil Procedure Code.
persons may also take the matter to a Personal Status Court.\textsuperscript{16} Personal Status Courts require a copy of the investigative file stamped by the police or the investigative judge, so report of a missing person to the Personal Status Court logically follows the report to the police and investigative court.

6.3.2. **Deed of Guardianship**

30. After the families approach the Personal Status Court, it issues a deed of guardianship\textsuperscript{17} for the management of assets and property of the missing. While the deed of guardianship facilitates access to some rights\textsuperscript{18} of the families of the missing, a death certificate or a declaration of death is needed in order to access the broader range of rights under the martyr category in Iraq.

6.3.3. **Declaration of Death**

31. The Personal Status Court, upon request from the families, can declare a missing person dead after either four or two year.

32. For the purposes of determining the fate of a missing person,\textsuperscript{19} the Minors Care Act stipulates under Article 92 that: “The absence shall terminate on the extinguishment of its case, on the death of the missing person or when a competent court decides to declare the person dead.”

33. The Minors Care Act does not specify which court has competency to declare a missing person dead. However, as stated above, Iraq’s Civil Procedure Code of 1969\textsuperscript{20} grants competency over matters related to missing persons, including declaration of death, to Personal Status Courts. The Code, however, does not contain any provisions on the missing persons process in Personal Status Courts.

34. According to Article 93 of the Minors Care Act the Court may decide that the missing person is dead in one of the following cases:

1. “If conclusive evidence of his death is discovered;
2. If four years have passed since he was reported missing;
3. If he went missing in circumstances, in which he can reasonably be presumed to have perished and if two years passed since he was reported missing.”

35. Recently, pursuant to Article 93.3, the Courts of Iraq began declaring persons who were missing for two years dead, in cases where they disappeared as a result of terrorist actions.\textsuperscript{21} Additionally, if proof of presumed death, for example photographs of a destroyed site where the

\textsuperscript{16} A copy of the Personal Status Court file is a requirement to apply for compensation under Compensation Law No. 20 and 57 as noted in Article 2.1 of Instructions No. 4 of 2018 to the law.

\textsuperscript{17} Article 78 and 90 of the Minors Care Act.

\textsuperscript{18} Compensation in the form of a pension in the category of missing and kidnapped under Compensation Law No. 20.

\textsuperscript{19} In the KRI, the Law on Missing Persons from the Genocide campaign against Iraqi Kurds No. 3 of 1999 incorporates these provisions from the Minors Care Act in reference to Iraqi Kurds who are missing as a result of the Genocide campaign of the 1980s.

\textsuperscript{20} Article 300 of the Civil Procedure Code.

missing person was present, are furnished, Courts declare the missing dead after two years.

36. Reported practice in Iraq and some case law of the Court of Cassation\textsuperscript{22} state that the date of the issuance of the deed of guardianship is considered to be the date from which the count of four or two years for the declaration of death start.

37. However, according to another decision of the Federal\textsuperscript{23} Court of Cassation\textsuperscript{24} and other reports from practicing lawyers the date of the publication of the announcement of missing in the newspaper is considered to be the date that triggers the count of four or two years for the declaration of death.

38. The date when the court declares the person dead is the effective date from which a missing person is deemed to be dead in line with Article 95, which reads: "The date of the missing person’s death shall be the date on which he is declared dead." Pursuant to Article 309 of the Civil Procedures Code, the declaration of death has to be confirmed by the Court of Cassation.

39. Article 17 of the Birth and Death Registration Act No. 148 of 1971, as amended in 1982, provides that the declaration of death issued by a competent court should include a person’s name, gender, name of parents and grandparents, religion, date and place of [presumed] death, registration page of the civil identity document, personal status registration number and name of the province [where the documents were issued], nationality, address and cause of death.

40. Additionally, if remains of the missing person have been identified, a relevant entity, such as Committee Six (see section 8.2.2 below) can issue an identification document confirming the death of the missing person.

6.4. Registration of Death

41. While the authority to declare a missing person, whose remains have not been identified, dead lies with the Personal Status Courts, pursuant to Birth and Death Registration No. 148 of 1971 as amended in 1982, the Directorate of Birth and Death of the Ministry of Health is responsible for recording deaths in the civil records.\textsuperscript{25} Article 16 of the Birth and Registration Act provides that "the competent health authority registers birth and deaths without a certificate, based on a ruling by a Personal Status Court".

6.5 Report to the Iraqi High Commission for Human Rights

42. A human rights complaint\textsuperscript{26} concerning disappearance can be lodged with the National Human Rights Institution (NHRI) – the Iraqi High Commission for Human Rights (IHCHR). The High Commission for Human Rights Act does not place a time limitation on the receipt and investigation of human rights complaints. As such, complaints to the IHCHR can be lodged prior to the exhaustion of judicial remedies or in sub judices (currently under consideration) cases. Article 5 of the High Commission for Human Rights Act sets forth its responsibilities, which include:

\textsuperscript{22} Decision of the Court of Cassation on 25/08/2011 No. 1042, Sequence 1060.
\textsuperscript{23} KRI has its own Court of Cassation and it is not clear if this judgement applies in the KRG.
\textsuperscript{24} Judgement No 49/ Case of Missing/ 2009 https://www.hjc.iq/qview.1018/
\textsuperscript{25} Article 2 of the Birth and Death Registration Act No. 148 of 1971 as amended in 1982.
\textsuperscript{26} IHCHR shared with ICMP the official statistic of 7,005 persons reported missing to the IHCHR in 2017-2019.
1. “Receive complaints from individuals, groups and civil society organizations on violations committed before and after the entry into force of this Act while maintaining complete confidentiality as to the names of complainants;
2. Conduct initial investigations into human rights violations on the basis of available information;
3.Ascertain the veracity of complaints received by the Commission and conduct initial investigations as necessary;
4. Initiate lawsuits related to violations and refer them to Public Prosecutor’s Office to take necessary legal action and notify the IHCHR of the outcomes;
5. Visit prisons, social reform centers, places of detention and all places of the deprivation of liberty without prior permission from these entities; meet with convicts and detainees; document cases of human rights violations and notify the competent authorities to take appropriate legal measures.”

43. As per Article 5, the IHCHR, upon receipt of a complaint, can conduct its own preliminary investigation. In joint meetings with ICMP the IHCHR clarified that these investigations take the form of official letters to relevant authorities. Depending on the circumstances of the disappearance, the IHCHR sends letters to the MoI, MoD or MoJ.

44. Regarding the resolution of complaints, the Act states only that the IHCHR must “initiate lawsuits related to violations and refer them to Public Prosecutor’s Office to take necessary legal action and notify the IHCHR of the outcomes.” The law does not provide remedies that are available for complainants when legal action is not available or where the Public Prosecutor determines that legal action is not required. Pursuant to Article 5, the IHCHR have been receiving missing persons complaints and referring them to the Prosecutor’s Office. Following its assessment, the Public Prosecutor’s Office can refer these complaints to courts.

6.6. Report to MGD and MLD

45. Additionally, if remains of the missing persons can be presumed to be in a mass grave, families should visit the MF/MGD and the Ministry of Health/MLD offices. In the MF/MGD office families must complete a missing person form and follow up on search results of mass graves. In the MLD office, families should provide blood samples to facilitate DNA matching with mortal remains found in mass graves.

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27 Article 5.8 of General Prosecution Act No. 49 of 2017 provides that the General Prosecution is responsible for “reviewing people’s complaints, which are referred to the General Prosecution by the relevant authorities or the competent authorities, and direct them to the specialized judicial reference. In addition, the General Prosecution does the follow-up with these complaints and comments on them.”

28 Article 5(4) of the IHCHR Act.


30 The MGD confirmed to ICMP that it previously carried out campaigns to reach families in order to collect information and blood samples. Due to budget cuts, the MGD is now asking families to visit its offices. ICMP is currently working together with MGD and MLD on outreach campaigns targeted to collect relevant information from the families.

31 Provided earlier by ICMP.

32 In a November 2020 meeting with ICMP, the Director General of the MLD indicated that families can also submit their blood samples to a Medico-Legal Department in Mosul. However, the MGD is located in Baghdad and the blood sample collection should go together with the collection of information by the MGD. It is also not certain if blood samples can be submitted anywhere else in Iraq, but to the MLD in Baghdad or the...
VII. RIGHTS OF THE FAMILIES OF THE MISSING

46. There is no single piece of legislation that regulates the rights of families of the missing. As a result, a series of laws, policies, traditions and customs categorize missing persons according to the circumstances of their disappearance. Families of the missing may access different rights depending on the category of their missing relative.

7.1. Management of Assets and Estate of Missing Persons

47. The Minors Care Act contains provisions on the management of assets of missing persons. Assets of missing persons are managed differently prior to and after the date a missing person is declared dead by the court.

48. Article 90 of the Minors Care Act contains the following procedures that regulate how the assets are managed by a guardian prior to the court’s declaration of death:

1. “The assets of a missing or absent person shall be released on the appointment of a trustee and shall be managed in the same way as the assets of a minor.
2. If a court appoints a guardian to manage the assets of a missing or absent person the guardian shall act under the supervision of the Directorate of Minors Care.
3. In the absence of a guardian, the Directorate of Minors Care shall be responsible for the management of assets of a missing person in accordance with the provisions of this Act.”

49. Furthermore, Article 91 specifies circumstances in which assets of a missing or absent person can be sold or purchased:

1. “Moveable assets of a missing or absent person may be sold only if they are perishable or require disposal or maintenance.
2. An asset may be purchased on behalf of a missing or absent person only if it is needed for the preservation or management of his other assets.”

50. A missing person’s estate can, in line with Article 96 of the same law, be divided among his surviving heirs at the time when the court declares him dead.

51. The division of assets is further elaborated in Article 97 providing that “The assets of an absent or missing person shall be returned to him if he subsequently presents himself, or shall be given into possession of his heir subject to proof of his actual or legally declared death, in accordance with the provisions of Article 5933 hereof.”

7.2. Separation from a Missing Person

52. Wives of missing persons can also seek separation, pursuant to the Personal Status Law.34

Medico-Legal Department in Mosul. This complicates the requirement to visit the MGD and the MLD/Medico-Legal Department in Mosul offices for families that do not reside in the vicinity of these offices.

33 Article 59 of the Minors Care Act stipulates the handover of assets from the Minors Care Directorate to the minor, when the minor reaches the age of majority.

34 Given that the Personal Status Law applies to Muslims only, this provision equally applies to the Muslim population of Iraq.
Article 43.3 of the Personal Status Law stipulates that:

A- “The wife of a person who has been officially declared as missing has the right to seek separation from her husband through the court four years after he is declared as missing. The court shall verify the fact that the husband is still missing in the same way it initially verified that he was missing and then it may render the judgment of separation.

B- After acquiring the judgment of separation, the wife of the missing person shall observe a waiting period (iddat) of four months and ten days.”

7.3. Reparations

53. Access of the families of the missing to reparations, namely compensation, restitution, rehabilitation, satisfaction and memorialization, in Federal Iraq and the KRI is generally contingent on the legal designation of the missing person as a “martyr”, in accordance with Iraq’s Constitution. Article 132 of the Constitution reads:

“1. The State shall guarantee care for the families of the martyrs, political prisoners, and victims of the oppressive practices of the defunct dictatorial regime.

2. The State shall guarantee compensation to the families of the martyrs and the injured as a result of terrorist acts. [...]”

54. As explained below, there is no single definition of a “martyr,” rather, different laws regulate different rights of the families depending on the categories of the missing. Moreover, the definition of a martyr under various laws regulating the rights of families of the missing is not consistent, as indicated below. Another compounding factor is that certain categories of the missing are not categorized as martyrs. And certain categories of persons are expressly excluded in the law: for example, members of the Ba’ath party and its various agencies, as well as anyone deemed to be affiliated with a terrorist group. Further, those missing due to other causes, including certain human rights abuses, natural or man-made disasters or migration, fall outside this legal framework. As such, for instance, mass graves containing remains of these individuals would not fall within the legal provisions of the Law on Mass Graves Affairs, nor would family members of these missing persons be eligible to receive compensation through the “martyr” system.

55. Two separate laws – in Federal Iraq, the Martyrs’ Foundation Law and in the KRI the Law on the Rights and Privileges of the Families of Martyrs and Anfal Victims – provide definitions of a “martyr.” Both of these laws initially focused on victims of the Ba’ath party regime and the Anfal campaign. The Federal law on the MF was amended in 2015 to extend its application to non-civilian members of the armed forces and paramilitaries in the post-2014 period.

56. The following definition of “martyr” and “kin” from the Martyrs’ Foundation Law regulates access to reparations within the martyrs’ framework in Federal Iraq.

57. According to Article 1 of the Martyrs’ Foundation Law:

“A martyr is:
A - An Iraqi citizen, or any other person residing in Iraq, who sacrificed his life, or lost it directly as a result of crimes committed by the defunct Baath party, including [...] those who were considered missing or found in the mass graves [...].

B - Any Iraqi citizen who lost his/her life in reply to the call of the Nation and the Supreme Religious Authority starting from 11 June 2014. [...]

And the martyr’s relatives are:
A - Parents and children.
B - Wives, even if they are not Iraqi citizens.
C - Brothers and sisters.
D - Nephews and nieces.”

58. According to Articles 5 and 9 of the law, an official Committee grants martyr status following its review of a request from families.

59. Once martyr status has been granted, Articles 11, 13, 17 and 20 provide that relatives of martyrs are entitled to the following benefits and privileges:

- Pension;
- Wife and children are entitled to a housing unit or a plot of residential land, and parents are entitled to a plot of residential land, with an allocated grant to build on the land; families can opt to receive a cash payment equivalent to the value of the housing unit or the plot of land;
- Medal of honor;
- Exemption from tax on inheritance of the martyr;
- Priority for employment in the government sector;
- Cost of travel inside and outside of Iraq for the purpose of medical treatment or education;
- Access to higher education by means of designated quotas;
- The cost of higher education;
- Assistance in making the Hajj;
- Priority in consideration by government review committee, which determines whether patients should be sent for treatment outside of Iraq.

7.3.1. Compensation Law No. 20

60. Furthermore, in Federal Iraq, compensation is offered through Law No. 20 on Compensating Victims of Military Mistakes, Military Operations and Terrorist Actions and its amendments35 (Law No. 20). This Law corresponds to Article 132.2 of Iraq’s Constitution36. It applies to a broader group, which includes civilian victims of both the former Ba’ath party regime and the

35 Law No. 20 of 2009, its 2015 amendment No. 57 and 2020 amendment No. 2 have not been harmonized into one cohesive piece of legislation. They exist in the form of three separate laws, which must be read in conjunction.
36 Additionally, a draft law to redress specific harm suffered by female Yezidi survivors was presented in Parliament by the Presidency on 28 March 2019 (available at: http://www.ina.iq/eng/4289/yazidi-female-survivors-law-details). The law includes provisions on compensation, rehabilitation, restitution and satisfaction, as well as legal redress for children born of sexual violence. However, its narrow application focuses on Yezidi women, excluding other ethnic groups, men and boys.
post-2003 period, including those of Da’esh.\textsuperscript{37}

61. The aim of Law No. 20 as stipulated in Article 1 is to “compensate every natural or legal Iraqi person who has been harmed by military operations, military mistakes and terrorist operations and wounded members of Al-Hashd Al-Sha'abi and Peshmerga […].”

62. In line with Article 10 of the Law a martyr’s family is defined as parents, sons, daughters, husband or wives, brothers and sisters.

63. Article 2.1 of the Law provides that the “compensation provided for in this Law includes the following damages: […] Martyrdom, missing, abduction or injury. […]”

64. This Law provides a package of benefits and privileges similar to that of the Martyrs’ Foundation Law. Articles 9-13 of Law 20 provide the following:

- Families of martyrs are entitled to compensation in the amount of 5 million IRQ;
- Families of martyrs, missing and kidnapped are entitled to a pension, which will vary depending on the degree of relation and the circumstances in which the harm was suffered;
- Families are entitled to a housing unit or a piece of land; they can opt for a payment of 50 million IRQ in lieu;
- Students who had to discontinue their studies can be reinstated in accordance with the rules determined by relevant authorities;
- Persons who had to leave their employment will be reinstated in their role or a similar role and salaries for the period of unemployment will be repaid;
- Families are exempt from government transportation fees inside and outside Iraq for one annual trip for the purpose of medical treatment;
- Families receive a martyrdom medal;
- Preferential employment in the government sector;
- Access to higher education by means of designated quotas of academic seats in post-secondary institutions;
- Assistance with making the Hajj.

65. Article 8 of Law No. 20 provides that the benefits received under this law cannot be combined with compensation under another law.

\textbf{7.3.2. Law on the Rights of the Martyrs of the Crime Committed in Pilot Majid Al-Tamimi Base}

66. Additionally, in 2019, Iraq passed the Law on the Rights of the Martyrs of the Crime Committed in Pilot Majid Al-Tamimi Air Base (Camp Speicher) No. 12 of 2019. The victims of the Air Base massacre are characterized as martyrs by virtue of this law and are accorded rights given to martyrs under Military Service and Retirement Law No. 3 of 2010 or the rights or privileges stipulated in Compensation Law No. 20. Families are given the right to choose the compensation scheme under either of these laws.

\textsuperscript{37} In the KRI, an intention to expand the definition of martyrdom and the existing reparations framework to victims of Da’esh was expressed in 2018 by one of the parties. See media statement https://www.pukmedia.com/en/EN_Direje.aspx?Jimare=44579
7.3.3. Law on Yezidi Female Survivors

67. Furthermore, in March 2021 Iraq adopted the Law on Yezidi Female Survivors. Despite its title, Article 2 of the Law stipulates that the Law applies to the following categories:

“1. Every Yezidi [female] survivor kidnapped by Da’esh and freed afterwards.
2. Women and girls from the (Tukrmen, Christian, Shabak) communities who were subjected to the same crimes [...].
3. Yezidi children survivors who were under the age of eighteen at the time of their kidnapping.
4. Yezidi, Turkmen, Christian and Shabak survivors from the mass killings and mass elimination carried out by ISIS in their areas.”

68. Article 6 provides the following benefits to those covered by the provision of the law:

- Monthly pension;
- Residential plot of land with a real estate loan;
- Right to return to study, and exemption from the age requirement;
- Priority in public employment at a rate of 2 percent.

69. A new Directorate of Yezidi Female Survivors Affairs, which is to be linked to the Ministry of Labor and Social Affairs, is responsible to “provide the necessary care” for those covered by the Law. Specifically, Article 5 lists, among other things, the opening of “health and psychological rehabilitation centers” and “health clinics inside and outside of Iraq”. The Directorate is also delegated to provide education and employment opportunities for the survivors.

7.3.4. Social Protection Act

70. In addition to the laws on compensation and reparations, Social Protection Act No. 11 of 2014 specifically includes wives of the missing as beneficiaries of the social welfare pension. The law applies to those who live below the poverty line. As such, the amount of pension depends on the level of income and number of dependents.

71. It is understood that the wives of the missing can apply for pension under this law once they obtain the deed of guardianship from the Personal Status Court (see section 6.3.2 above). They will continue receiving the social welfare pension until the missing husband is declared dead.

7.3.5. Laws in the KRI

72. In the KRI, the Law on the Rights and Privileges of the Families of Martyrs and Anfal Victims mirrors the Martyrs’ Foundation Law of Federal Iraq. It provides benefits for the following groups of persons:

- “Anfal: whoever lost their lives or were harmed or went missing in one of the crimes of genocide against Kurds.

- Martyrs: whoever lost their lives on the battlefield, or in political struggles to protect the Kurdish freedom movement against the regime or who lost their lives as a result of the mass killing or war crimes. They are classified as the following:
  - Rebel martyrs: whoever lost their lives during armed or political struggles against the succession of dictatorship regimes that ruled Iraq to protect the
Kurdish freedom movement they sacrificed their lives;
- Genocide victims: whoever was martyred or lost their lives as a consequence of Genocide crimes, Anfal campaigns, the Barzani and Faili mass killing, or as a result of using chemical weapons;
- Civilian martyrs: whoever was martyred as a result of war or terrorist attacks, or lost their lives during Kurdish revolutions and the Great Exodus of Kurds in 1991;
- Family of casualties and Anfal: husbands or wives, sons, daughters, father mother, sisters, brothers of genocide victims.”

73. Articles 5 and 7 of the same law provide for the following benefits to the families of victims:

- A monthly pension;
- Residential land;
- Dowries for children;
- Cost of children’s education in schools and universities within the region in accordance with established eligibility requirements;
- Cost of transporting remains of the martyrs from outside the region;
- Exemption from inheritance tax;
- Free health care within the KRI;
- Scholarships for children of martyrs outside the KRI.

74. Additionally, the Kurdistan Regional Government (KRG) established a fund to support and assist the families of martyrs and victims of the Anfal campaign and the genocide. The Federal and Kurdistan government, international and national human rights organizations and private persons can contribute to the fund. The fund assists heirs and relatives of victims of the Anfal campaign; substantively it supports those who plan to marry, through a lump sum grant to help them start a family.

75. Law on Rights and Privileges of Sole Survivors of the Anfal Campaign No. 14 of 2015 extended benefits and privileges accorded to the families of martyrs in the Law on the Rights and Privileges of the Families of Martyrs and Anfal Victims to the survivors of the genocide against the Kurds. The Law grants deceased survivors the status of martyrs and bequeaths rights and privileges to their families. Additionally, Article 2 stipulates that the sole survivors of genocide are issued with a special identification card and a medal to recognize and honor them. Finally, Article 3 provides that those who serve in the military will not be deployed to the battlefield.

76. Furthermore, Kurdistan’s Law No. 20/2011 on Privileges of Political Prisoners provides a similar group of benefits to persons who were detained or arrested prior to 2003, based on their opposition to the former regime without official court order (Article 1). In case of the death of former political prisoners, these benefits pass on to their family members (Article 6).

7.3.6. Memorialization

77. Overall, given the special status of martyrs in Iraq, the laws of Federal Iraq and the KRI contain

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39 Article 2 and 3 of the Law No. 37 of 2007 of the KRG.
40 Article 3 of the Law No. 37 of 2007 of the KRG.
provisions that protect the right of martyrs to memorialization. In Federal Iraq, Article 3 of the Martyrs’ Foundation Law includes memorialization as one of the main goals of the law and the rights that martyrs have in Iraq. In Kurdistan, the Law on the Ministry for Martyrs and Anfal Affairs lists in Article 2 commemoration of martyrs through special events as one of the responsibilities of the Ministry. Additionally, Articles 6.6 and 6.3 of the Mass Graves Affairs Law protect the right to memorialization by guaranteeing that edifices and tombstones for mass graves are erected by the authorities and that, as appropriate for victims, ceremonies to deliver the remains to families are observed.

78. Furthermore, Article 6 of the Law on Rights of the Victims of the Speicher Massacre provides that:

“1: The Ministry of Culture, the Mayoralty of Baghdad, all governorates, and other competent entities shall take the required measures to pay tribute to the martyrs of the airbase and to condemn the crime through building memorials, naming schools and streets after them, as well as other acts that memorialize the incident.

2: The Governorate of Salahuddin, in coordination with the Ministry of Culture and the authorities concerned, shall construct a proper monument for the martyrs fallen in the airbase crime. The monument shall demonstrate their names, dates of birth and home governorates, and the anniversary shall be marked annually through various activities that demonstrate the heinous nature of the crime.”

79. Finally, the Law on Yezidi Female Survivors marks 3 August as the national day to commemorate crimes committed by ISIL. It also delegates the Ministry of Culture to “take necessary measures to immortalize the Yezidi victims and others and to build monuments, statues and exhibitions on this occasion.”

7.4. Participation

80. The right to participation is related to the right to report a missing person, but it extends to other forms of participation by families of the missing. The Law on Mass Graves Affairs accommodates participation of families in the excavations and identification processes, which is carried out by Committee 6. Article 6.2. provides that “The martyrs’ first of kin shall have priority in the representation at the committee. [...]”. This inclusion is significant as it indicates an opportunity for families of the missing to participate in the process of locating and identifying their missing relatives.

81. The right to participation also refers to cooperation between civil society representing interests of the families and the authorities. Article 14 of the Law on Mass Graves Affairs allows for the involvement of relevant national organizations, for example as observers in the processes of excavation, at the request of the national authorities. Article 14 reads:

“The Ministry may ask the help of the competent authorities and national and

41 Article 8 of the Law on Yezidi Female Survivors.
42 Interpretation and implementation of this provision, however, presents a number of challenges. Article 6 of the Law enumerates an exhaustive list of the Committee’s representatives. The Committee consists of representatives of Iraq’s government from various entities. In view of the list, which is limited to government officials, giving priority to martyrs’ next of kin in the representation within the committee is problematic in practice.
international organizations which are concerned with 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."

76. Furthermore, laws on non-governmental organizations were passed in both Federal Iraq and the KRI. In Federal Iraq this is the Law on Non-Governmental Organizations No. 12 of 2010 and in the KRI this is the Non-Governmental Organizations Law in the Iraqi Kurdistan Region No. 1 of 2011. They mainly regulate registration and administration of non-governmental organizations in the country. With regard to the right to participation, Article 2 of the Federal Law on Non-Governmental Organizations states that one of the goals of the law is “to promote the freedom of citizens to establish and join NGOs.” Additionally, Article 11.3 of the same law provides that “any person has the right to be a member of several NGOs [...]”. In parallel, KRI’s law is more extensive in protecting the right to participation. Article IX of the law provides that “the [non-governmental] organization, in accordance with the laws in force and within its area of competence, shall [...] organize gatherings, meetings, demonstrations, strikes, conferences, workshops, and all other civil activities.[...].”

77. As such, these laws on NGOs provide a framework for the establishment of NGOs as legal entities in Iraq, which, in turn, can enter into partnerships with international organizations. Families, therefore, have a right to associate freely in the NGOs and represent their interests.

VIII. CRIMINAL INVESTIGATIONS

8.1. Iraqi criminal justice system and investigation

78. Iraq’s justice system follows the Egyptian model, which is in turn based on Shari’a law and the Napoleonic code, introduced during Napoleon Bonaparte’s occupation of Egypt in 1798. As a result, Iraq has a civil law legal system, where the judiciary leads the investigative process.

79. According to the CPC, investigative judges lead criminal investigations in Iraq. Given the limited role of prosecutors in Iraq, investigative judges are the central figures in criminal investigation processes, who also lead the process of gathering evidence. They assess the value of evidence and determine whether the case should be sent for trial in court.

80. Article 94 of the Minors Care Law, read in conjunction with Article 17 of the Birth and Registration Act and Article 300 of the Civil Procedure Code, mandates Personal Status Courts to investigate the fate of missing persons before declaring them dead. However, the function of this investigation is solely to determine whether a person is alive or dead. It does not engage a

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43 An Overview of the Egyptian Legal System and Legal Research, Dr. Mohammed Abdel-Wahab https://www.nyulawglobal.org/globalex/Egypt1.html# The_Egyptian_Legal
44 Article 52 of the CPC. Following legal reform introduced by the US-led Coalition Provisional Authority, the role of the prosecutors changed in Iraq. The Section on the Public Prosecution Service in the CPC was repealed and General Prosecution Act No. 47 of 2017 was introduced. Pursuant to Article 5 of the Act, the main duties of Prosecutors include instituting proceedings related to the public right, financial and administrative corruption; monitoring investigative and trial stages of a case; reviewing people’s complaints referred to the Prosecutor’s office by relevant authorities and directing them to relevant judicial authorities; inspecting detention facilities and challenging the constitutionality of legislation before the Supreme Court. Article 5 also provides that prosecutors can act in the capacity of investigating magistrates, where one is not available.
more comprehensive investigation into accountability that will result in or connect with the prosecution of perpetrators. Information provided by the Supreme Judicial Council specifies that in missing persons cases Personal Status Courts require families to submit an investigative file opened by investigative judges to ascertain that the person is in fact missing.\footnote{Interviews with judges of Personal Status Courts by the Media Center of the Supreme Judicial Council https://hjc.iq/view.2697/} However, as mentioned above, investigation conducted by investigative judges takes the form of an administrative search.

8.2. Investigation of Mass Graves

78. Iraq’s measures to deal with the issue of large numbers of missing persons were formalized with the adoption of the Law on the Protection of Mass Graves,\footnote{Given the scope of the law, it only addresses the issue of missing persons with regard to the missing whose remains are recovered from mass graves.} which sought to:

- Protect mass graves from disturbance;
- Organize the investigation of mass graves with the aim of identifying victims;
- Preserve and protect evidence;
- Identify possible perpetrators and assist in collecting evidence to prove their criminal responsibility.

79. When the Law on the Protection of Mass Graves was first drafted, the presently dissolved Ministry of Human Rights (MoHR) was responsible for implementing the law. Changes to the law in 2015, now the Law on Mass Graves Affairs, extended the portfolio of the search for and identification of missing persons from those missing or disappeared during Saddam Hussein’s Ba’athist regime (up to 2003) to include those missing as a result of atrocities committed by Da’esh (from 2014).

80. Immediately following the passage of the amendments to the Law on Mass Graves Affairs, the Ministry of Human Rights was dissolved. Upon this dissolution, the “Directorate of Mass Graves Affairs and Protection” of the MoHR was transferred to the federally-based Martyrs’ Foundation, as per Article 24 of the Martyrs’ Foundation Law, which was also amended in 2015. Additionally, the general authority on mass graves was transferred from the MoHR to the MF via Amendment 15 bis in the Law on Mass Graves Affairs: “This law shall be brought into force by the Martyrs’ Foundation after the completion of the Ministry’s work or its abrogation.”

81. According to Article 1 of the Law on Mass Graves Affairs (2015, as amended), a mass grave is “the land housing the remains of more than one of the martyrs who have been buried or concealed permanently without observing the Shari’ā-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.”

82. The Mass Graves Affairs Law mandates the creation of an inter-governmental Committee, when a mass grave is found, to lead the investigation of the content of mass graves. Article 6 of the law lists the entities that form the Committee that should “be set up in each area where a mass grave is found:

A. “A judge nominated by the Supreme Judicial Council as the chairman;
B. A representative of the Ministry of Human Rights holding the position of Director General as member and vice chairman;
C. A member of the Prosecutor General’s office designated by the head of the Prosecutor General’s office as a member;
D. A police officer holding the rank of at least a Lieutenant Colonel designated by the Ministry of Interior as a member;
E. A forensic doctor designated by the Ministry of Health as a member;
F. A representative of the Martyrs’ Foundation holding the degree of Director General as a member;
G. A representative of the Ministry of Martyrs and Anfal Victims Affairs in Kurdistan region as a member;
H. A representative of the Iraqi High Commission for Human Rights as a member; and
I. A member of the District Council of the area to be designated by the head of the provincial council as a member.”

83. This Committee is often referred to as “Committee Six.” Pursuant to Article 6.3 of the law, the Committee has the following responsibilities:

a) “Issuing decisions to open mass graves;
b) Delivering remains to victims’ next-of-kin according to ceremonies that befit the victim [...] ;
c) Issuing identity verification document for mortal remains following investigation and necessary medical tests;
d) Taking custody of items related to mortal remains, such as clothes, artefacts, supplies and objects;
e) Providing the Mass Graves Affairs Directorate [...] with a copy of the decision verifying the victim’s identity with the original transaction package and related documents.”

84. Article 15 of the law grants a representative of the MGD, a police officer and a representative of the MoMMA the status and authority of investigators in accordance with the CPC.

85. The MGD and MLD de facto lead the work of Committee 6. They are the national authorities that are mainly responsible for implementing provisions of the Mass Graves Affairs Law. In particular, the work of the MGD and MLD within Committee 6 is focused on protecting and excavating mass graves and identifying mortal remains found in mass graves. The MGD also collects other forensic evidence found in mass graves.

8.2.1. Responsibilities of the MGD

86. The MGD was established by Article 3 of the Mass Graves Affairs Law. It is a Directorate of the Martyrs’ Foundation with the competency to undertake protection, search for, inspection and investigation of mass graves in coordination with the relevant authorities.

87. Its work is further elaborated under Article 1 of Instructions No. 1 of 2019 on Facilitating the Implementation of the Law on Mass Graves Affairs and Protection that provides that it shall:

“Undertake the process of excavating the mass graves, taking stock of their numbers and documenting their contents. It shall be the technical entity entrusted with implementing the obligations of protection, search for, investigation and excavation of mass grave sites.”
88. The MGD is the entity that is supposed to receive information about the existence of a mass grave. The Instructions also permit notifying the nearest investigative court if an informant is not able to reach the MF or its provincial directorate. In such a case the court will notify the MF in a confidential letter accordingly. Furthermore, the MGD is charged with responsibility to protect mass grave sites until excavation becomes possible by notifying the competent court to take the necessary action.

89. According to Article 3.1 of the Instructions, prior to opening a mass grave, a competent technical committee at the MGD will be formed to undertake:

   a) “Testing and taking photos of the mass grave sites as well as preparing the necessary layouts and recording statements of witnesses;
   b) Preparing a detailed report on the number of site ID as confirmed by documents, drawings, coordinates and statements to be brought to the attention of the Foundation’s chairman with recommendation whether the site can be considered a mass grave.”

90. Once the site has been designated as a mass grave and after Committee Six has issued a decision to open it, the MGD steps in to excavate the grave, inspect its location and identify the mortal remains found in it and is responsible for documenting its work (Article 8 of the law and Article 6 of the Instructions).

8.2.2. Responsibilities of the MLD

91. The MLD was established by Article 9 of the Forensic Medicine Act. It is a Directorate within the Ministry of Health. The MLD supports the work of the MGD by providing autopsy reports for and DNA testing and matching of mortal remains recovered from mass graves.

92. Article 6.5 of the Mass Graves Affairs Law grants the MLD of the Ministry of Health authority to “conduct dissection test of the remains and take samples from them and from their next of kin and preserve them, check the genetic print 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’ next of kin, and provide support in coordination with the [MF].” This provision is consistent with the Forensic Medicine Law of Federal Iraq, which grants the MLD authority to conduct DNA tests.

93. The above competencies are further detailed in the implementing instructions to the Forensic Medicine Law. Instructions No. 2 of 2016 on Facilitating the Implementation of Forensic Medicine Law No. 37 of 2013 specifies in Article 2.2 that the MLD in Baghdad, following examinations regarding the identification process of mortal remains from mass graves, has a responsibility to:

   • Examine remains found in mass graves, issue relevant anthropological test reports and take specimens for DNA testing;
   • Examine DNA of families of the missing and match them against unidentified bodies.

94. Additionally, Article 10 of Instructions No.3 of 2016 on the Formations and Tasks of the

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49 Article 5 of the Instructions.
50 Article 5 of the Forensic Medicine Law of Federal Iraq.
Medico-Legal Directorate based in Baghdad lists the following responsibilities of the Mass Graves Department in the MLD:

“Article 10.1: Mass Graves Department shall undertake the following tasks:

a. Recover remains from gravesites and transport them to the directorate.
b. Supervise the upkeep and examination of remains and the determination of gender, age, height and their distinctive features.
c. Take specimens required for DNA examination.
d. Match DNA of mass graves victims with blood specimens taken from families and deliver human remains to the respective authorities.

Second: the department shall carry out its tasks through the following sections:

a. Technical affairs.
b. Laboratories and DNA.
c. Follow-up.”

95. The Instructions also provide for a Missing Persons Department in the MLD, which exists separately from the Mass Graves Department, and has different tasks. Article 9 grants the following responsibilities to the Missing Persons Department:

“Article 9.1: Department of the Missing shall carry out the following tasks:

a. Recover fingerprints of the unidentified bodies.
b. Prepare a statistical form on the unidentified bodies.
c. Follow up on handover process of unidentified bodies to their families following recognition through pictures and information collected from relatives, and issue death certificates.
d. Follow up on procedures related to bodies, which are unidentified.

Second: the department shall carry out its tasks through the following sections:

a. Missing and unidentified persons.
b. Personal belongings.
c. Follow-up.”

8.2.3. Recovery and use of evidence from mass graves

96. The Preamble of the Mass Graves Affairs Law lists preservation of criminal evidence as one of the main objectives of the law. To that end, the law also sets forth the provisions that prohibit tampering with mass graves and criminalizes unauthorized interference with mass grave sites.

97. The preamble furthermore refers to submission of criminal evidence collected from mass graves to the judiciary in order to facilitate the process of holding perpetrators responsible for crimes of genocide, illegal burial and other crimes committed against victims. However, evidence collected from mass graves has rarely been used in criminal investigations and prosecutions of perpetrators. Staff of the MGD and MLD in meetings with ICMP and other international partners\(^5\) noted that they have been engaged only once in criminal judicial proceedings related to mass graves.

\(^5\) Supra 9, p. 12.
98. The CPC grants the investigative judge discretionary authority to appoint experts to offer opinions to and testimonies in court. According to Article 69 of the CPC:

A. “The [investigative] judge or [judicial] investigator may, of his own accord or based on the request of the parties, appoint one or more experts to offer opinions on matters connected to the office being investigated.

B. The investigative judge or [judicial] investigator may ask the expert to attend when called.”

99. In practice, an example of attempted use of expert witness testimony in judicial proceedings pursuant to this provision, involved investigations of the Camp Speicher massacre. The investigative judge who led the Camp Speicher investigation asked the MGD to prepare a report on its findings in the case of the Camp Speicher mass graves excavations. The staff of the MGD, however, did not testify in any legal proceedings.52

100. Furthermore, following the identification of human remains recovered from the mass grave, the document issued by Committee Six is used as evidence confirming the death and identity of victims whose remains were found in mass graves, according to Article 7 of the Mass Graves Affairs Law.

101. The Mass Graves Affairs Law provides a mechanism to appeal Committee Six decisions regarding a victim’s identity. According to Article 7 of the Law, the family of a victim may contest the Committee’s decision in a Personal Status Court, which has jurisdiction over mass graves, within 10 days of the date when the family was notified of the decision. The decision of the Personal Status Court may be contested in the Court of Appeal within 15 days of the date when the family was notified of the decision of the first-instance court.

IX. PRIVACY AND THE PROCESSING OF PERSONAL DATA

102. All investigations by authorities must conform to human rights provisions, including right to privacy, in order to gain the participation and trust of persons who are affected by them or who participate in them. Personal data, consequently, must be protected against all forms of unauthorized processing. The right to privacy is enshrined in the Universal Declaration of Human Rights (Article 12). It is included in various international and regional human rights instruments including the ICCPR (Article 17). The right of persons to control their data, including sharing it with others for purposes the data subject has freely approved, is a core element of human dignity. In its General Comment 16 on Article 17 (Right to Privacy) of the ICCPR, the United Nations (UN) Human Rights Council stated that every individual should be able to ascertain which public authorities or private individuals or agencies control or may control his or her data.

103. Also, pursuant to Article 19 of the ICPPED, states are obliged to ensure inter alia that the collection, processing, use and storage of personal information, including medical and genetic data, does not infringe or have the effect of infringing the human rights, fundamental freedoms or the human dignity of an individual. Furthermore, personal information collected as part of missing persons investigations shall not be used or made available for other purposes, albeit without prejudice to the use of such information in criminal proceedings concerning enforced disappearance or reparations.

104. The modalities of data processing on missing persons in Iraq are broadly defined under its

\[52\] Ibid.
domestic law.

105. Article 17 of Iraq’s Constitution defines an individual’s right to privacy as a qualified right “so long as it does not contradict rights of others and public morals.”

106. On 1 July 2019, the MF adopted instructions No. 1 of 2019 on facilitating the enforcement of the Law on Mass Graves Affairs. Article 2 of the Instructions mandates the establishment of a central database within the MGD, which will contain information on the following:

- Sites of mass graves in Iraq and sites of mass graves of Iraqi citizens outside Iraq;
- Results of laboratory tests of remains of victims and their families;
- Results of DNA matching and number of identified and unidentified victims;
- Information related to victims before and after their death.

107. In 2018, representatives of Iraqi ministries and members of parliament on the occasion of a Working Group Meeting convened by ICMP prepared draft amendments to the Mass Graves Affairs Law to strengthen personal data protections as follows:

“Government institutions and public officials thereof contributing to missing persons cases shall observe the following when carrying out their respective tasks:

A. Personal information, including medical and genetic data collected and/or transmitted in connection with the search for a missing person, may not be used or made available for purposes other than the search for the missing person. This shall be without prejudice to the use of such information in criminal proceedings relating to the offense of enforced disappearance or other offenses or the exercise of the right to compensation.

B. The collection, processing, use and retention of personal information, including medical and genetic data, may not be in violation of or resulting in a violation of human rights, fundamental freedoms and human dignity.”

X. PROSECUTION

108. Under the CPC once the initial police investigation has been completed, the investigative judge decides if there is sufficient evidence to send the case for trial.

109. Article 130 of the CPC prescribes the following in relation to the decisions of the judge after the end of the investigation:

a) “If the investigative judge finds that the action is not punishable by law or that the complainant has withdrawn the complaint, or that the offense is one over which he has no authority without reference to the judge, or that the accused is not legally responsible because he is a minor, he issues a decision rejecting the complaint and closing the case file definitively;

b) If the act is punishable by law and the investigative judge finds that there is sufficient evidence for trial, a decision is issued to transfer the accused to the appropriate court. If there is insufficient evidence he is not transferred, an order is issued for his discharge and the case file is closed temporarily, with a statement containing the
110. Since enforced disappearance has not been categorized as a criminal offense under Iraqi law, crimes that have led to the disappearance of persons can and have been prosecuted in Iraq under the Penal Code and the Counter-terrorism Law. In addition to the counter-terrorism trials, crimes of the Ba’ath Party regime that led to disappearances were prosecuted by an ad hoc Supreme Iraqi Criminal Tribunal.

10.1. Offense of Unlawful Seizure, Kidnapping and Detention under the Penal Code

111. Missing persons cases can be prosecuted as kidnapping. Iraq’s Penal Code contains a section on unlawful seizure, kidnapping and detention. Amended articles 421-425 stipulate that the penalty is death for “any person who seizes, detains or deprives a person of his liberty in any way without an order from a competent authority [...].”

112. Pursuant to the definition of the Penal Code, unlawful seizure, kidnapping and detention is a felony offense. According to Article 25 of the Penal Code, a felony offense is punishable by death, life imprisonment or 5 to 15 years of imprisonment. Article 138 of the CPC grants the jurisdiction to rule on felony cases to felony courts.

10.2. Counter-terrorism Law

113. The vast majority of recent crimes that have led to the disappearance of people in Iraq are prosecuted under Counter-terrorism Law No. 13 of 2005.

114. The Counter-terrorism Law provides a broad definition of terrorism, which includes any criminal act aimed at disturbing the peace, stability and national unity or terrorizing people. 

115. Article 2 further lists acts that are considered to be acts of terrorism. The long list includes kidnapping or impeding the freedoms of individuals or detaining them either for financial blackmail or for political, sectarian, national religious or racially beneficial purposes that threaten security and national unity and promote terrorism.

116. Furthermore, Article 4 of the Law does not distinguish between organizing, inciting and funding terrorist acts, applying the death penalty indiscriminately to all. Furthermore, persons who intentionally conceal a terrorist act or harbor a terrorist are sentenced to life imprisonment.

117. Terrorist suspects are tried in local felony/criminal courts and the Central Criminal Court of Iraq based in Baghdad.

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53 Prior to amendments, articles provided different penalties depending on the circumstances of the offense and the victim. The amendments have unified the penalties to that of the death sentence.

54 Article 1 of the Counter-terrorism Law defines an act of terrorism as every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public and private properties, with the aim of disturbing the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.
118. The Central Criminal Court (CCCI) was established by the US-led Coalition Provisional Authority in 2004 pursuant to Order No. 13. The CCCI consists of two chambers – the Investigative Court and the Felony Court.\textsuperscript{55}

119. Section 18 of the Order grants the CCCI discretionary jurisdiction over all criminal violations with a focus on several categories, including terrorism. Article 18 on jurisdiction reads as follows:

1. “The CCCI shall have nationwide discretionary investigative and trial jurisdiction over any and all criminal violations, regardless of where those offenses occurred. Its jurisdiction shall extend to all matters that could be heard by any local felony, or misdemeanor court."

2. In exercising its discretionary jurisdiction, the CCCI should concentrate its resources on cases related to:
   a. Terrorism,
   b. Organized crime,
   c. Governmental corruption,
   d. Acts intended to destabilize democratic institutions or processes,
   e. Violence based on race, nationality, ethnicity or religion; and
   f. Instances in which a criminal defendant may not [be] able to obtain a fair trial in a local court.

[...].”

120. The CCCI also has broad powers, with authority to take over an ongoing judicial proceeding at the investigative or trial stages.\textsuperscript{56} It therefore functions as the main court for terrorism and complex crimes in Iraq.

121. The CCCI and local criminal courts in Iraq have been prosecuting terrorist suspects and ISIS fighters of both Iraqi and foreign origin. A number of international observers have raised concerns regarding the administration of justice in the prosecution of terrorist suspects.\textsuperscript{57}

\section{10.3. Supreme Iraqi Criminal Tribunal}

122. Crimes committed by the Ba’ath Party regime (many of which led to disappearances) were prosecuted by an ad hoc tribunal. In 2005 Iraq’s Parliament adopted the Law of the Supreme Iraqi Criminal Tribunal. The tribunal had a temporal jurisdiction over crimes committed between 1968 and 2003. The Law of the Supreme Iraqi Criminal Tribunal provides definitions of genocide, crimes against humanity, war crimes and other serious crimes, which are consistent verbatim with the Rome Statute of the International Criminal Court. Article 12 of the law defines enforced disappearance as a crime against humanity.

\textsuperscript{55} Section 1.2 of Order No. 13.
\textsuperscript{56} Section 18.5-6 of the Order.
\textsuperscript{57} A Strategic Review of Criminal Investigations in Iraq, January 2014, Kirsch-Wood, A., p. 18; Flawed Justice, Accountability for ISIS Crimes in Iraq, Human Rights Watch, December 2017. https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq | In March 2019 HRW noted improvements in ISIS trial procedures; however, the changes were limited to a geographic area and larger legislative concerns persisted https://www.hrw.org/news/2019/03/13/iraq-key-courts-improve-isis-trial-procedures).
123. The US Department of Justice signed an agreement with the Iraqi Supreme Tribunal to excavate mass graves and investigate crimes committed by the Ba’ath Party regime. A number of mass graves were excavated and evidence was used to prosecute Saddam Hussein and others for Anfal crimes. Significant due process concerns were raised with regard to the trial proceedings of this Tribunal.

124. Iraqi authorities prepared a draft law on the Iraqi Criminal Tribunal for Crimes Committed by ISIL. This draft law is essentially an amended version of the Law on of the Supreme Iraqi Criminal Tribunal with jurisdiction over crimes committed by ISIL in Iraq and elsewhere. Provisions of the draft law defining genocide, crimes against humanity and war crimes are similarly in line with the Rome Statute. Article 12 of this draft law is identical to Article 12 of the Law on the Supreme Iraqi Criminal Tribunal. It defines enforced disappearance as a crime against humanity.

XI. INTERNATIONAL COOPERATION

125. The issue of missing persons does not respect borders: it often has an international dimension – cooperation between States and with international institutions is an indispensable element in effective measures to account for the missing. There are a number of international cooperation frameworks that are relevant to missing persons work in Iraq.

126. The ICPPED, to which Iraq is a State Party, provides, inter alia, for the States Parties to cooperate with one another and afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains (Articles 15 and 25 in respect of children in particular). In addition, Iraq as a State Party shall cooperate with the Committee on Enforced Disappearance to fulfill its function under the Convention (except Article 31, individual complaint procedure, which Iraq has not accepted).

127. Under International Humanitarian Law (IHL), parties to armed conflicts are required to search for missing persons and to collect the dead. For instance, the Protocol Additional to the Geneva Conventions of 1977 “requires each party to the conflict to search for persons who have been reported missing by the adverse party.” It also requires that parties to a conflict facilitate enquiries about individuals missing as a result of hostilities. These provisions are complementary to the universal guarantees anchored in human rights.

128. Among international organizations, the International Committee of the Red Cross (ICRC) is working with the Iraqi authorities to help them meet their obligations to clarify the fate of people missing as result of the Iran-Iraq conflict and the 1990-1991 Gulf War. Since 2003, the ICRC has also helped the Iraqi MLI to deal with the identification of human remains and the management of the dead through the provision of training and equipment.

60 Ibid, p. 17.
129. The United Nations through its agencies, missions and mechanisms assists the national authorities in their efforts to fulfill Iraq’s obligations under international law.

130. In 2017, the Investigative Team to support domestic efforts to hold Islamic State in Iraq and the Levant (Da’esh) accountable for acts that may amount to war crimes, crimes against humanity and genocide committed in Iraq (UNITAD) was established by Security Council Resolution 2379 (2017). UNITAD supports domestic efforts to hold perpetrators to account by collecting, preserving, and storing evidence of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist group. UNITAD contributes to mass graves investigations, and it concluded a cooperation agreement with ICMP in January 2019 for that purpose. An implementation plan detailing modalities and substantive focus areas for coordination is being developed.

131. The United Nations Assistance Mission for Iraq (UNAMI) under its mandate, inter alia, promotes accountability and the protection of human rights, and judicial and legal reform, in order to strengthen the rule of law in Iraq, in addition to supporting the work of UNITAD.

132. More specifically, UNAMI’s Human Rights Office works with the Government of Iraq, regional and local governments, national human rights institutions, and members of Iraqi civil society to promote human rights throughout Iraq in an impartial manner. It also provides capacity-building and promotional activities to strengthen the capacities of these actors on human rights principles, UN human rights mechanisms, and Iraq’s human rights obligations under international law. The Human Rights Office also represents the United Nations High Commissioner for Human Rights (OHCHR) in Iraq and works closely with other UN agencies, funds and programs to ensure that the basic rights of all Iraqis are at the core of their work.

133. Furthermore, in the area of justice and accountability, the Human Rights Office is, among other things, engaged in efforts to resolve the fate of missing persons. In 2018, the Office continued to promote accountability for ISIL crimes, including by monitoring the judicial hearings of alleged ISIL defendants.

134. OHCHR assists UNAMI in implementing its mandate on the promotion and protection of human rights in Iraq. To that end, a number of technical assistance activities have been undertaken in several areas such as the rule of law, including due process and fair trial standards, reconciliation, support to the Iraq High Commission for Human rights, and accountability for international crimes.

135. Among the issues identified through those activities is that of the death penalty, which was
reintroduced in 2004.\textsuperscript{67} Iraq is not a State Party to the Second Optional Protocol to the International Covenant on Civil and Political Rights. In such situations international human rights law requires as a minimum full compliance with the clear restrictions prescribed in particular in Article 6 of the ICCPR (to which Iraq has been a State Party since 1971). The UN has repeatedly called upon the government of Iraq to impose a moratorium on the implementation of the death penalty, with a view to its final abolition.\textsuperscript{68}

136. The International Organization for Migration (IOM) has been present in Iraq since 2003 and has been working in cooperation with the Government of Iraq to provide support across all of Iraq’s 18 governorates. Its activities are focused on addressing humanitarian needs, supporting the reintegration of returning internally displaced persons, and promoting stabilization of communities. To reduce risks and vulnerabilities of displaced and host communities in Iraq, IOM integrates humanitarian and development approaches and addresses the link between security and development using area-based, tailored approaches founded on strong data analysis.\textsuperscript{69} Its migration management program (including anti-trafficking) is of particular relevance to efforts to strengthen the missing persons process in Iraq as persons go missing due to migration and trafficking in human beings, an issue that Iraq is also facing.

137. Iraq is not a party to the Agreement on the Status and Function of the International Commission on Missing Persons (15 December 2014\textsuperscript{70}, hereinafter the “ICMP Agreement”), that established ICMP as an international organization headquartered in The Hague. However, Iraq has entered into various bilateral agreements with ICMP over the last 10 years, under which extensive policy and technical cooperation has taken place. In the future, it is anticipated that Iraq will accede to the ICMP Agreement. In this regard, it is worth noting that the ICMP Agreement does not create any new international obligations, but provides for an international cooperation framework to advance state cooperation and capacities to locate the missing. The ICMP Agreement is open for accession by all States.

138. Cooperation between ICMP and the Iraqi authorities is underpinned by a policy strategy including the following:

- Developing comprehensive strategies that can identify gaps in the current institutional and legislative landscape and propose solutions through a continuous dialogue and participatory processes;
- The establishment of a system of central records of all missing persons from Iraq’s recent past, as well as enhancing data processing and protection mechanisms and instituting centralized data processing systems connecting responsible authorities and institutions;
- Formation of an institutional and legislative framework to secure rights to justice, truth and reparations and corresponding procedural and administrative rights, with a particular focus on ensuring that the specific rights of women survivors are upheld;
- Developing a coordinated strategy for locating and recovering missing persons, based on impartial and transparent evidence-based criteria, and additionally, developing forensic quality assurance standards in laboratories and at crime scenes to permit effective utility


\textsuperscript{68} Report of the Secretary-General pursuant to resolution 2367 (2017), S/2017/881, 19 October 2017: http://www.uniraq.com/images/SGReports/S21017881_N1731949EN.pdf

\textsuperscript{69} IOM in Iraq page: https://iraq.iom.int/iom-iraq

\textsuperscript{70} Treaty database: https://treatydatabase.overheid.nl/en/Verdrag/Details/010972
in justice proceedings; and

- Strengthening the capacity of civil society organizations in their work with families of the missing and in building bridges with government authorities.