

MISSING PERSONS IN IRAQ

SHORT GUIDE FOR FAMILIES OF THE MISSING



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Ministerie van Buitenlandse Zaken

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OF THE MISSING**

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SUMMARY AND CONTEXT

Many Iraqis are affected by the missing persons issue – many have a relative or a friend or colleague who has disappeared as a result of conflict, other forms of violence and political upheaval over the last 50 years. This Guide outlines the process that Iraq is undertaking to account for the missing and explains the steps that families can take to secure their rights to truth, justice and reparations.

The authorities in Iraq have registered a large number of people who are missing in the country. include persons missing from the defunct Ba'ath regime, the Iran-Iraq war, and the Gulf Wars, as well as those who have disappeared since 2003, including as a consequence of atrocities committed by Da'esh. Finding such a large number of missing persons and securing the rights of their families is an enormous undertaking that requires cooperation among multiple institutions, purpose-specific legislation to secure the rights of families and the use scientific methods, including DNA analysis, to locate and identify the missing.

States are responsible for accounting for all missing persons. This responsibility and the inclusion of families of the missing and civil society are the most important components of a successful missing persons process. This Guide is designed to help Iraqi families of the missing and other members of Iraqi Civil Society better understand how the missing persons process in Iraq works. It will be followed by a series of short publications that will focus on specific aspects of the missing persons process in Iraq.



WHO IS MISSING IN IRAQ?

A missing person is anyone whose whereabouts are not known to their families or others close to them. Missing persons include civilians and members of the armed forces. All religious, ethnic, and social groups are affected. Missing persons may be alive or deceased; they may have emigrated or they may have been taken out of the country involuntarily. Deceased missing persons may have been buried in clandestine graves or under the debris of destroyed buildings, or their remains may have been recovered but not identified.

MARTYRS AND MISSING PERSONS

Under Iraqi law, some individuals who have been killed or have gone missing may be recognized as martyrs and all military service personnel who have been killed or have gone are considered martyrs. While not all those who have disappeared in Iraq are considered martyrs, under Iraqi and international law all disappeared and their families are entitled to equal justice, truth and reparations.



STATE RESPONSIBILITY TO ACCOUNT FOR MISSING PERSONS

If a person goes missing, his or her life, security and liberty may be at risk. The rights of family members may also be compromised, including the right not to be subjected to torture or inhumane treatment, the right to a family life, and the right to recognition as a person before the law. A disappearance triggers the obligation of the State to conduct an effective investigation. Under Iraqi law, a person is defined as missing only after an official search and investigation has been initiated.

Article 15 of the Constitution of Iraq

“Every individual has the right to enjoy life, security and liberty.”

For a missing persons investigation and search to be considered effective, it must be carried out officially by the competent authorities, it must be transparent, and it must seek to establish facts about how the person disappeared. The right to an effective investigation means that State authorities assume responsibility for the investigations and take all reasonable steps to locate, identify and return victims to their families, to determine how the disappearance took place and who should be held to account for the disappearance.

The role of international actors, such as ICMP, is to help State authorities enhance their capacity to conduct effective investigations. Civil society organizations can also support official investigations through collaboration: sharing information, monitoring investigations and fostering political will.

A number of Iraqi authorities participate in fulfilling the obligation of the State to account for missing persons. These authorities include:

- The Martyrs' Foundation, Mass Grave Affairs and Protection Directorate (MGD)
- The Medico-Legal Directorate of the Ministry of Health and Environment
- The Prime Minister's Office and the National Security Services
- The Ministry of Interior, including the Police Department
- The Ministry of Justice
- The Ministry of Defense;

- The High Commission for Human Rights
- The Prosecutor General's Office
- Investigative Judge;

In the Kurdistan region of Iraq:

- The Kurdistan Ministry of Martyrs and Anfal Affairs (MoMAA)
- The Ministry of Interior including the Police Department

REPORTING A MISSING PERSON

Families of the missing have a right to report their missing relatives. Reporting a missing person to the authorities is important because:

- The information provided by families can help to find the missing person;
- Reports can be used to create a comprehensive record of all missing persons, ensuring that the State understands and responds to the scale of the problem;
- A copy of the missing persons report issued by the police or by an investigative judge will help families to resolve certain legal and civil matters, including allowing them to access assistance and benefits they may be entitled to.



In Iraq, missing persons can be reported to a number of institutions, depending on where the disappearance took place:

- Missing persons can first be reported, in person, at the police station of the incident jurisdiction (township – Qaimmqaamah). The police will take statements and will forward the report to an investigative judge;
- In some cases, the investigative judge requires security clearance from the Intelligence or National Security Services to confirm that the missing person is not on the suspected terrorist list and may proceed with the file only after the security clearance is issued;
- For civil matters, families should contact the Personal Status court to obtain a Deed of Guardianship/Custody and Curatorship;
- If families wish to ascertain the whereabouts of a missing relative, but are hesitant about contacting the police, they can file a complaint with the Iraqi High Commission for Human Rights;

When families report a missing person, they will be asked to provide:

- Personal information about the missing person: name, age, sex, and stature, and any identifying markers (such as injuries, medical conditions, physical characteristics, and other markers) and a photo if available;
- Information about the disappearance such as when and where the person was last seen and any other known information about the circumstances of;
- Information about the person making the report, such as name and contact details. Formal proof of identification and residence may be required by the authorities;
- At least two witnesses may be required to ascertain the facts provided by the family members (According to Article 59 of the Criminal Procedure Code No. 23 of 1971 as amended). In exceptional cases, if there are no witnesses available, the case may be referred to the Personal Status Court.

PROVIDING GENETIC REFERENCE INFORMATION

In addition to reporting a missing person, families of the missing may be asked to provide genetic reference information, through biological reference samples. Reference samples are collected, by trained forensic staff, either from a droplet of blood taken from the finger of the donor, or through a buccal swab. The material collected by families is taken to a laboratory where it is analyzed to create numeric tables that represent the unique genetic profile (DNA profile) of the donor. The DNA profile of families will be compared to the genetic information of victims to determine whether there is a family relationship, which in turn assists in generating scientifically-based identifications.

WHAT CAN FAMILIES DO TO PROVIDE REFERENCE INFORMATION?

If it is likely that the remains of a missing relative are in a mass grave, families should contact the nearest office of the Mass Graves Directorate (MGD) to fill out a missing persons form. Families will then be asked to provide a reference sample at the Medico-Legal Directorate (MLD). The MGD and MLD also conduct reference sample campaigns close to places where families live.

When families provide a reference sample they will also be asked for the following information:

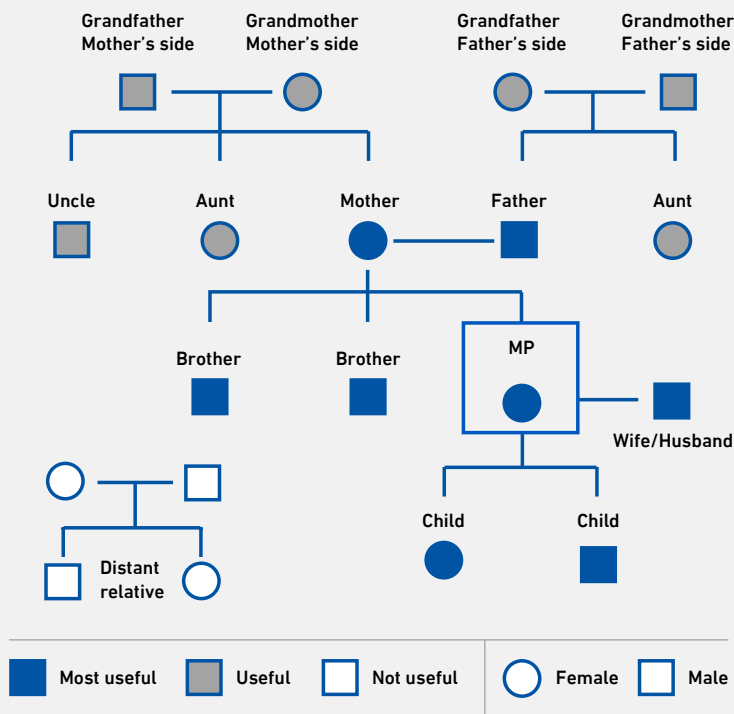
- Their legal or biological relationship to the missing person – spouse, parent, child, sibling, cousin, etc.;
- Contact details of other relatives who may also be able to provide reference information.

RIGHT TO PRIVACY

The Right to Privacy is a fundamental human right recognized in the Universal Declaration of Human Rights, which underpins human dignity, personhood, autonomy and liberty. It refers to the right of every person to determine what information is communicated to others. For families of the missing to decide whether or not to share personal information, they need to be informed about who will receive the information they provide, how the information will be used, and for what purpose, how the information is protected, and what rights exist to correct or withdraw the information once it has been provided.

The Right to Privacy also includes protections to ensure that personal data, including family relationships, will only be accessible to those who need to see it for the purposes for which the data was collected.

DNA inherited from both parents



Most useful

- Parents;
- Brothers and sisters;
- Daughters and sons of the missing person;
- The husband or wife can also be useful, if samples of children of the missing person are available.

Useful

- Both sets of grandparents;
- Aunts and uncles related by blood (not through marriage);
- Cousins (male or female) of the missing person;

Not useful

Anyone not related by blood (with the exception of the spouse) to the missing person, e.g. parents and other relatives of the spouse, friends of the family.

Participation of families of the missing is essential for identification. A reference sample from at least one close relative (parent or child) is needed but usually it is better to have reference samples from two or more close relatives. Spouses can also provide reference samples, which can be useful if their children also provide reference samples. Reference samples from more distant relatives may also be helpful if there are no close relatives. The more relatives provide reference samples the higher the chance of identifying the remains of a missing person, especially when there is more than one person missing from the same family. Generally, a family member needs to provide his or her reference sample only once. A reference sample can be preserved for decades.

The provision of reference genetic samples for missing persons investigations must always be based on the free, informed and express consent of the family member providing such a sample. The consent of the family member must be expressed in writing through a "consent form." In this form, or as part of a separate "information sheet", family members will be informed about how their personal data will be used and how they can correct, amend or withdraw it.

In Iraq, the MLD is the entity responsible for collecting, storing and analyzing biological reference samples from persons with family members who have gone missing.

LOCATING MISSING PERSONS WHO ARE NO LONGER ALIVE AND RECOVERING THEIR REMAINS

Victims of terrorism, repressive policies, dictatorship (the defunct Ba'ath regime), armed conflict and violence, executions and other circumstances may be found in locations throughout the country. Locating victims' remains is part of the investigative effort that ensures they are identified and returned to their families and that justice can take place. Victims are often found in mass graves. These graves may be known to the public or may be hidden.



The Mass Graves Affairs Law (formerly the Law on Mass Graves Protection) regulates how Iraqi authorities investigate a mass grave. First, the authorities must be given full access to the site by a judicial order. The authorities will examine the site, taking photographs and drawing up maps. After this initial analysis, a decision to open the mass grave will be taken by a committee of authorities established under Article 6 of the Mass Graves Affairs Law.

A technical team composed of Iraqi authorities will conduct excavations, which have the purpose of recovering human remains and objects and information from the site. All human remains and evidence will be carefully documented to enable reconstruction of the events that led to the unlawful killing and disposal of bodies.

Often authorities will be able to complete the excavations in a matter of days, but sometimes the work can take weeks or even months.

Locations where victims may be found, such as mass graves, are legally protected. Those with information about such locations should inform the authorities. To report a site, according to the implementing Instruction of the Mass Graves Affairs Law, anyone with information should contact the Martyrs' Foundation or its provincial directorates. If these cannot be reached, then the nearest investigative court can receive this information.

No one should attempt to recover human remains or objects from such locations, which is forbidden by law and can destroy evidence. In Iraq, entering, disturbing or tampering with sites is punishable by prison and fines.

ANALYSIS OF HUMAN REMAINS AT THE MORTUARY

The remains of victims recovered from mass graves and other locations are taken to mortuaries for examination. Mortuaries are administered by the MLD of the Ministry of Health and Environment. Every province in Iraq has a principal mortuary facility that examines the deceased. However, the offices in Baghdad have a specialized unit that deals with the examination of human remains recovered from mass graves.

At the MLD in Baghdad, a specialist examines the remains to assess their physical characteristics, which may contribute to their identification, and to establish the cause and manner of death, as well as the circumstances of disappearance.

All unidentified human remains are placed under the care and custody of the MLD until they are identified and can be returned to the next of kin.

THE RIGHT TO THE TRUTH

Families of the missing have the right to receive information about the investigations that are being conducted. Also, in cases where the missing person is deceased, families have the right to receive a report that explains the circumstances of disappearance, including the cause and manner of death.

DNA-BASED IDENTIFICATIONS

DNA testing is an essential step in identifying the remains of missing persons. Every human being has a unique DNA profile. One half of this profile is composed of DNA that was passed to the person by his or her father, and the other half by his or her mother. Anyone who is related by blood shares some DNA with his or her relatives, because they also share ancestors. The family relationships that DNA reveals are used to identify missing persons. **The process follows these steps:**

- **Sampling:** At the MLD mortuary, an expert will take a bone sample that will be used to generate a genetic profile of the remains for identification by DNA testing;
- **DNA Laboratory:** At the MLD DNA laboratory the sample will be processed to extract the DNA. The process results in a DNA profile. Every person has a unique DNA profile;
- **Matching:** The DNA profile of the remains will be compared with the DNA profile of family members. Specialized computer programs (software) and mathematical calculations will be used to determine if the victim and the donors of reference samples are related to each other. This comparison is called DNA matching;
- **Identification:** If there is a DNA match, the MLD informs the Martyrs' Foundation MGD which will contact the families to arrange the return of the remains. A death certificate will be issued by the Ministry of Health and Environment.



Families of the missing do not have to pay at any stage of the identification process.

RIGHT OF FAMILIES OF THE MISSING TO LEGAL PROTECTION



If the missing person has been found dead, the MLD or its Departments (Ministry of Health and Environment) issue an identification report and a Death Certificate.

If their missing loved ones have not been found, families of the missing can exercise legal rights to manage the property of a missing person, access pensions and benefits, and clarify or change their civil status. To do that, families have to publish an Announcement of Missing signed by a Judge in two locally circulated newspapers and obtain a Deed of Guardianship/ Custody Deed and Curatorship from the Personal Status Court. Following these steps, the missing person can be officially declared deceased after 2-4 years of the report of their disappearance. The Personal Status Court issues a Declaration of Death stipulating that the missing person is presumed dead. Subsequent to this Declaration, the Birth and Registration Directorate or its Departments (Ministry of Health and Environment) will issue a ratified copy of the Death Certificate.

RIGHT TO REPARATIONS

Reparations are measures by the State to redress mental, physical or economic harm caused by the disappearance of a person. Reparations may include restoration of property, employment, or any other benefit that existed before the disappearance. They can also enable rehabilitation through, for example, medical and social services. They may strive to provide satisfaction and they may acknowledge – through apologies, memorials, sanctions and initiatives – the harm that has been caused. They may include financial compensation, and they may take the form of measures, such as specific policies and reforms, to ensure non-repetition.



In Iraq there are several laws under which families can receive compensation through administrative programs. The benefits vary depending on where the disappearance took place, the context of the disappearance, and whether the disappeared has martyr status. Spouses, children, siblings and parents receive various degrees of compensation.

Law No. 20 of 2009 as amended on Compensation of Victims of Military Operations, Military Mistakes and Terrorist Actions legislates a compensation system for civilian victims of armed conflict and terrorism. Compensation under this law is administered by the Martyrs' Foundation (Directorate for Compensating Victims of Military Operations, Military Mistakes and Terrorist Operations) and the General Secretariat of the Council of Ministers, Central Committee and Sub-committees.

The recently adopted Law on Yazidi Female Survivors provides reparations for Yazidi, Christian, Turkmen and Shabak survivors of ISIL. The law is administered by a new Directorate based in the Nineveh Governorate that is linked to the Ministry of Labour and Social Affairs.

In addition to the laws on compensation and reparations under the Social Protection Act No. 11 of 2014, wives of the missing, who live below the poverty line, qualify for a monthly pension. The amount of the pension depends on the income level and the number of dependents.

OTHER RIGHTS OF FAMILIES OF THE MISSING



A number of rights of families of the missing have been mentioned throughout this guide. Other rights of families of the missing include:

- To use their right to participation and assembly to form organizations and associations of families of the missing to gather and share information with the authorities and with other families and organizations;
- To make use of their right to freedom of expression to generate awareness about the issue of missing persons and to commemorate and remember their missing relatives.

KEY LEGISLATION COVERING THE ISSUE OF MISSING PERSONS

In Iraq, the rights of families of the missing and the responsibilities of the authorities are provided for in numerous pieces of key legislation, including the following:

- The Constitution of Iraq addresses fundamental rights that are central to missing persons investigations and the rights of families;
- The Mass Graves Affairs Law aims to protect mass graves from disturbance, unregulated excavation and excavation without permission, as well as to establish a mechanism to excavate and investigate mass graves and facilitate prosecutions;
- The Martyrs' Foundation Law establishes the Martyrs' Foundation and defines its structure and functions; this law also gives family members of martyrs certain benefits, including pensions, housing, tax benefits, scholarships, and other forms of assistance;
- The Law of the MoMAA of the Kurdistan Region of Iraq regulates the structure and responsibilities of the Ministry including assistance to the families of martyrs and missing persons;
- The Minors Care Law provides definitions of absent and missing persons and stipulates how their property and assets are to be managed;
- Law 20 on Compensation of Victims of Military Operations, Military Mistakes and Terrorist Actions provides a compensation mechanism for civilians victims of armed conflict and terrorism;
- Law on Yazidi Female Survivors;
- In 2010, Iraq ratified the International Convention for the Protection of All Persons from Enforced Disappearance.

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THE MARTYRS' FOUNDATION, MASS GRAVE AFFAIRS AND PROTECTION DIRECTORATE

Established by Iraq's Council of Ministers in 2005, the Martyrs' Foundation has general responsibility over martyrs' affairs and is responsible for compensation programs for martyrs' families. Through its Directorate of Mass Grave Affairs and Protection, the MF is the technical lead government entity responsible for conducting mass graves investigations in accordance with the Law on Mass Graves Affairs and has overall responsibility for the implementation of the Law. The Martyrs' Foundation constitutes the Commission established under Article 6 of this Law to oversee exhumations wherever they occur throughout Iraq.

Phone number: 07835715725

Email: massgraves.alshuhadaa.iq@gmail.com

Address: Baghdad/Al-Nidal street, Al-Andalus square opposite the Ministry of Agriculture

FB: دائرة شؤون وحماية المقابر الجماعية

Website: alshuhadaa.info



THE MEDICO-LEGAL DIRECTORATE (MLD) OF THE MINISTRY OF HEALTH AND ENVIRONMENT

The MLD in Baghdad and its provincial departments across all governorates in Iraq have responsibility for identifications of mortal remains including the use of DNA testing.

Phone number: MLD\Data Unit 07702520422 - 07807171201

FB: دائره الطب العدلي

Email: mli_bag41@yahoo.com



THE INTERNATIONAL COMMISSION ON MISSING PERSONS (ICMP)

ICMP is a treaty-based intergovernmental organization that seeks to ensure the cooperation of governments and others in locating missing persons from conflict, human rights abuses, disasters, organized crime, migration, and other causes, and to assist them in doing so. ICMP also supports the work of other organizations in their efforts, encourages public involvement in its activities and contributes to the development of appropriate expressions of commemoration and tribute to the missing.

Missing Persons in Iraq: A Short Guide for Families of the Missing is set to be followed by a series of short publications that will highlight various aspects of the missing persons process in Iraq.

Official Website and Social Media Accounts

www.icmp.int

www.facebook.com/ICMPArabic

twitter.com/TheICMP

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