

“Unearthing Atrocities: Mass Graves in territory formerly controlled by ISIL”

UNAMI/OHCHR

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Uncovering a victim of the Camp Speicher massacre in June 2014, Tikrit, Salah al-Din. (Mass Graves Directorate, © 2016)



United Nations Assistance Mission for Iraq
بعثة الأمم المتحدة لمساعدة العراق



OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
مكتب المفوضية السامية لحقوق الإنسان

1. Introduction

Between June 2014 and December 2017, the 'Islamic State of Iraq and the Levant' (ISIL) seized large areas of Iraq as part of its so-called Caliphate, leading a campaign of widespread violence and systematic violations of international human rights and humanitarian law – acts that may amount to war crimes, crimes against humanity, and possibly genocide under international criminal law.¹ To-date, over two hundred mass graves, a legacy of ISIL's terror, have been discovered in areas formerly controlled by ISIL. They contain the remains of thousands of victims, the majority of whom may never be identified. These large-scale crime scenes are sites of harrowing human loss, profound suffering and shocking cruelty.

Prepared by the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR),² this report highlights the challenges faced by Iraqi authorities in conducting exhumations, investigations, and identifying human remains, as well as the challenges faced by relatives seeking to obtain information on the fate and whereabouts of their missing family members, and, if dead, their mortal remains. In addition, this report highlights international law and standards relating to Iraq's obligations to investigate and prosecute the mass killings that occurred in the context of this conflict and best practices relating to the protection and examination of mass grave sites, including forensic investigation of mass graves in support of criminal processes.

At the time of publication, based on information from Iraqi authorities, UNAMI/OHCHR had documented 202 mass graves sites, the largest numbers located in the governorates of Ninewa (95), Kirkuk (37) Salah al-Din (36) and Anbar (24). Current estimates provided to UNAMI/OHCHR range from 6,000 to more than 12,000 victims buried in these sites.³ Victims include women, children, elderly and persons with disabilities, members and former members of the Iraqi armed forces and police, and

¹ See "Accountability and reconciliation key to heal Iraq's ISIL wounds," press statement by High Commissioner for Human Rights (11 July 2017); *Report on the Protection of Civilians in the context of the Ninewa Operations and the retaking of Mosul city, 17 October 2016 – 10 July 2017*, jointly issued in November 2017 by OHCHR and the UNAMI; *Report of the Office of the United Nations High Commissioner for Human Rights to the Human Rights Council on the human rights situation in Iraq in the light of the abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*, UN Doc., A/HRC/28/18 submitted to the Human Rights Council on 13 March 2015.

² Security Council Resolution 2421 (2018) mandates UNAMI to "promote 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 the investigative team established in resolution 2379 (2017)."

³ This includes only those mass graves where estimates were available. The overall number of victims cannot be determined until all remains are officially exhumed.

some foreign workers. To date, 28 mass graves have been excavated by the Mass Graves Directorate, with four in Diyala, one in Ninewa and 23 excavations in Salah al-Din. In total, the remains of 1,258 bodies have been exhumed from these sites by the Mass Graves Directorate.

Any contamination and disturbance of mass grave sites could compromise their evidential value thereby undermining attempts to ensure justice and accountability. It is critical that the integrity of mass grave sites be maintained as they potentially contain significant sources of evidence which can be used for criminal prosecutions.

Determining the circumstances surrounding the significant loss of life will be an important step both in the mourning process for families and their journey to secure justice. Undertaking all appropriate measures regarding excavation, exhumation and identification, based on best practices and standards, including the meaningful protection of these sites, will serve the broader obligation of the Government of Iraq to ensure the rights to truth, justice and reparations for the families of the dead and missing, and for all affected communities. This report provides recommendations on measures necessary to achieve these objectives in an effective manner.

2. Methodology

While there is no definition of the term '*mass grave*' in international law, it is commonly understood to refer to a site containing a multitude of buried human remains.⁴ Under Iraqi national law, '*mass grave*' is defined as "*land or location containing the mortal remains of more than one victim, who were buried or hidden.*"⁵

This report concerns those mass graves found in territory formerly controlled by ISIL and reported to UNAMI/OHCHR by a number of sources including: the Mass Graves Directorate of the Martyrs Foundation, the lead Iraqi entity responsible for mass graves, the Ministry of Defence and the Ministry of Interior of Iraq, the Kurdistan Regional Ministry of Martyrs and Anfal Affairs, local authorities at governorate and district level, the International Commission on Missing Persons (ICMP), and information based on UNAMI/OHCHR's network of contacts across Iraq. Incidences of killings where

⁴ For instance, international humanitarian law refers to 'grave,' 'gravesite,' 'other locations of the remains of persons' or 'collective graves.' See Articles 130 of the Geneva Convention relative to the protection of civilian persons in time of war of 13 August 1949 ("Geneva Convention IV"), 34 (2) of Additional Protocol I of 1977 to the Geneva Conventions of 12 August 1949 ("Additional Protocol I"), and Rules 115 and 116, International Committee of the Red Cross, Customary International Humanitarian Law.

⁵ See Article 2, Law No. 13 of 2015, Affairs and Protection of Mass Graves Law, amending Law No. 5 of 2006, Protection of Mass Graves.

remains were discovered in houses and elsewhere, and the bodies subsequently not buried are not included in this report.

3. Background

Although this report focuses on mass graves resulting from atrocities perpetrated from 2014-17, mass graves have been present in Iraq since before the rise of ISIL in 2014. In the 1980s and 1990s, Kurdish parties in the north and Shiites in the south challenged then-President Saddam Hussein's authority and were met with brutal violence. Tens of thousands were killed with many buried in dozens of mass graves spread throughout Iraq.⁶ Following the overthrow of Saddam Hussein, hundreds of mass grave sites were discovered, and continue to be found.⁷ Additionally, a total of 371 individuals (Kuwaiti and third-country nationals) remain missing from the first Gulf War, believed to be buried in the southern parts of Iraq.⁸

From the beginning of 2014 until the end 2017, UNAMI/OHCHR recorded almost 30,000 civilians killed and 55,150 injured in Iraq as a result of the conflict with ISIL. These figures should be considered an absolute minimum. United Nations human rights reporting during this period found that ISIL had committed systematic and widespread violence and abuses of international human rights law, and violations international humanitarian law, acts that may amount to war crimes, crimes against humanity, and possibly genocide.⁹

In areas controlled by ISIL, thousands of civilians were killed and abducted, often in a systematic and targeted manner. Victims include those who were perceived to be opposed to ISIL's ideology and rule; individuals affiliated or deemed to have been previously affiliated with the Government of Iraq, such as former public officials and electoral workers; professionals, such as doctors and lawyers; journalists; tribal and religious leaders; and female political candidates. Others were abducted and/or killed on the pretext of aiding or providing information to Government security forces or for their perceived sexual orientation. Many people were subjected to adjudication by ISIL's self-proclaimed 'courts' which ordered the killing of countless people and imposed other illegal punishments. There are

⁶ Eric Stover, Miranda Sissons, Phuong Pham and Patrick Vinck, "Justice on hold: accountability and social reconstruction in Iraq" Volume 90 Number 869 International Review of the Red Cross March 2008, 5. See p. 10.

⁷ According to the Iraqi Mass Graves Directorate, the most recent discovery of a Saddam Hussein-era mass grave was on 27 April 2018 in Ali-al Garbi in Missan Governorate.

⁸ Iraq-Kuwait Tripartite Mechanism: Review Project 2017. See p. 6. Despite continued search efforts, no human remains have been recovered since 2004.

⁹ See note 1.

numerous examples of public killings by ISIL, including by shooting, beheading, bulldozing, burning alive and throwing persons off the top of buildings. Many people remain missing, some are presumed dead, others are believed to remain in ISIL captivity or to have been trafficked out of Iraq.

ISIL also pursued a campaign of violence against members of ethnic and religious communities, including Christians and in particular the Yazidi community.¹⁰ In areas under its control, ISIL engaged in mass killings, rapes, kidnappings, detentions and mass abductions, torture and forced conversions, and the enslavement and sex trafficking of women and girls from minority religious communities. At the time of publication, the Directorate of Yazidi Affairs within the Kurdistan Region Ministry of Endowment and Religious Affairs reported to UNAMI/OHCHR that some 3,117 Yazidis were believed to remain in ISIL captivity (1,452 women, including girls and 1,665 men, including boys).

4. Legal Framework

International law and standards

The existence of mass graves gives rise to several obligations upon the Government of Iraq derived from international human rights law and international humanitarian law—both treaty and customary international law, as well as international criminal law.¹¹ These obligations include, inter alia, a duty (a) to investigate, prosecute and punish those accused of serious rights violations; (b) to search for and identify the dead; (c) to reveal to victims and society at large all known facts and circumstances of past violations and abuses; (d) to provide victims with appropriate reparations, including measures for restitution, compensation, rehabilitation and satisfaction; and (e) to ensure repetition of such violations and abuses is prevented.

¹⁰ See *Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of the abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*, UN Doc., A/HRC/28/18 submitted to the Human Rights Council in March 2015. Sources estimate that between 2,000 and 5,500 Yazidi have been killed by ISIL since 3 August 2014. According to a local authority, approximately 6,386 Yazidi were abducted by ISIL members on or after 3 August 2014 (3,537 females and 2,859 males). By mid-May 2016, 2,587 Yazidi had reportedly managed to escape ISIL captivity (934 women; 325 men; 658 girls; and 670 boys).

¹¹ Iraq is a State party to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on Enforced Disappearances and the four Geneva Conventions of 1949 (including Geneva Convention IV).

The four Geneva Conventions of 1949 and their Additional Protocols of 1977 contain specific provisions specifically on dealing with mortal remains and graves.¹² Parties to the conflict are obliged to respect international humanitarian law, including customary law applicable to non-international armed conflicts. Such norms, among others, prohibit outrages upon personal dignity;¹³ the prohibition of cruel and inhuman treatment;¹⁴ the prohibition against enforced disappearance;¹⁵ and the prohibition of collective punishment.¹⁶ International humanitarian law also underlines the obligation of parties to the conflict to search for those who may be missing or dead during or after a conflict, to facilitate the reunification of families, and to inform individuals of the fate of their relatives.

The ICRC has issued guiding principles and a model law on the missing, that outline principles for the protection of mass graves, placing the burden on the State to provide the necessary information to families about those presumed missing or dead.¹⁷ The *International Convention for the Protection of All Persons from Enforced Disappearance*¹⁸ references the right to truth, and related requirements of sustained investigation into acts of enforced disappearance and the prosecution and punishment of such acts. It also stipulates that States that are parties to the Convention must inform victims of the ‘*truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the date of the disappeared person*’ and provide reparation.¹⁹

Similarly, in 2006, the United Nations General Assembly adopted the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.²⁰ The resolution states that victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization, and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law, and to learn

¹² Iraq is not a signatory to Additional Protocols I and II of 1977, to the Geneva Conventions of 12 August 1949, (“Additional Protocol I” and “Additional Protocol II”) though ICRC considers many of its provisions customary international rules.

¹³ Geneva Conventions 1949 I-IV, Article 3 (1) (c), and Additional Protocol II, Article 4(2)(e) and Rule 90, ICRC, Customary International Humanitarian Law.

¹⁴ Geneva Conventions 1949 I-IV, Article 3 (1), and Additional Protocol II, Article 4(1).

¹⁵ Rule 98, ICRC, Customary International Humanitarian Law.

¹⁶ See, for instance, Additional Protocol II, Article 4(2)(b) and Rule 103, ICRC Customary International Humanitarian Law.

¹⁷ See ICRC, Advisory Service on International Humanitarian Law, “Guiding Principles/Model Law on the Missing,” International Committee of the Red Cross (2009).

¹⁸ G.A. res. 61/177, A/RES/61/177, (20 December 2006). The International Convention for the Protection of All Persons from Enforced Disappearance entered into force for Iraq on 23 December 2010.

¹⁹ See Article 24 (2) and (5).

²⁰ UN Doc., A/RES/60/147 (21 March 2006).

the truth with regard to these violations and abuses. This resolution defined ‘victims’ as including the immediate families of the missing.²¹

National law

In 2006, Iraq enacted *Law No. 5 On the Protection of Mass Graves*, which is dedicated to the protection of mass graves ‘that resulted from crimes committed by the past regime.’ It aimed at protecting such sites from unauthorized disturbance; to provide for investigations; to preserve and protect evidence so as to identify victims; and, to identify perpetrators. In 2015, this law was amended to expand the temporal jurisdiction to crimes committed after 2003 and to specify what the ‘*protection, inspection and investigation*’ of mass graves entails.²²

In 2007, instructions were enacted to establish, under the authority of the Mass Graves Directorate, a database to record mass grave sites and gather information on victims.²³ The Mass Graves Directorate, charged with overseeing the preservation, protection and documentation of mass graves, fell under the authority of the Ministry of Human Rights until that ministry was abolished in 2015. Later in 2015, the Mass Graves Directorate was placed under the authority of the Martyrs Foundation, which was established to provide support, financial and social, to those individuals designated by the Foundation as martyrs of the Saddam Hussein regime. Victims of ISIL, including those killed or injured or who suffered damage from ISIL, as well as their families, are also entitled to compensation under Iraqi law.²⁴

5. Mass Graves in Iraq

At the time of publication, UNAMI/OHCHR compiled information from various sources, including Iraqi authorities, and documented reports of 202 mass graves sites, with the largest number located in the governorates of Ninewa (95), followed by Kirkuk (37), Salah al-Din (36) and then Anbar (24), with

²¹“Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.” See para. 8, *Ibid*.

²² Law No. 13 of 2015, Affairs and Protection of Mass Graves, amending the Law on the Protection of Mass Graves (2006).

²³ Law No. 1 of 2007, Instructions on the Facilitation of the Implementation of the Law on the Protection of Mass Graves (2006).

²⁴ See the Law on Compensation of the Victims of Military Operations, Military Mistakes and Terrorist Actions No. 20 of 2009 as amended in 2016 by Law No. 57 of 2015, Articles 1-11.

others found in Babil and Baghdad governorates. The overwhelming majority of these graves are reported to contain the remains of victims of crimes perpetrated by ISIL. These figures should not be considered exhaustive as mass graves may continue to be discovered. The Mass Graves Directorate of the Martyrs Foundation informed UNAMI/OHCHR that, to date, exhumations have led to the recovery of 1,283 remains.

The first mass grave containing alleged victims of ISIL was discovered on 9 September 2014 in the village of Bardi in Ninewa Governorate, on the road to the Mosul Dam. It contained the bodies of 14 civilians believed to be Yazidi (10 men, three children and one woman). Over the course of the following three years, and with the retreat and eventual defeat of ISIL, mass graves containing the remains of an increasingly high number of victims would be discovered. Based on information available to UNAMI/OHCHR, the majority of these sites have not yet been excavated; some are secured by the presence of Iraqi armed forces; some have been enclosed by fencing; and some are contaminated by the presence of explosive devices.

Ninewa Governorate

As noted, the vast majority of mass grave sites and victims were discovered in Ninewa Governorate, where ISIL maintained its longest presence, and which was the scene of some of the fiercest fighting. As at the time of publication, 95 mass grave sites have been found in Ninewa Governorate, containing an estimated number of victims, ranging from 4,000 to 10,500.²⁵ The majority of the sites are in close proximity to Mosul, the largest city to be controlled by ISIL until 2017, and in the area of Sinjar district, which is predominately inhabited by members of the Yazidi community. The smallest mass grave was discovered on 24 January 2018 in west Mosul, containing the bodies of eight civilians. The largest is believed to be the “*Khasfa* sinkhole” in al-Khasfa, south of Mosul, discovered on 24 February 2017. Government authorities believe that up to 4,000 persons have been killed and disposed of at this site.

On 13 April 2017, it was reported to UNAMI/OHCHR that between 450 and 550 victims had been found in two locations in the same area in Hamman al-Alil sub-district. Some of the victims are believed to be from the Iraqi Security Forces (ISF). A combined total of 800 detainees of the Badoush Prison were also killed and discovered in two mass graves, one found on 22 November 2014 and another on 25 August 2017. The circumstances surrounding these killings were set out in a 2015 United Nations report, which explained that after the prison guard fled the area, “*prisoners were separated into*

²⁵ This range emanates from sources within the national and local governments, as well as non-government organizations.

groups according to their ethnic or religious affiliation. Sunnis were freed, while others, mainly Shi'a, were loaded on trucks, driven to a nearby ravine and shot."²⁶ Sunnis who were affiliated with the ISF or the 'Awakening Councils were also executed.²⁷

UNAMI/OHCHR received reports that mass graves had been discovered across Sinjar district, as well as in areas of Tel Afar and Mosul districts of Ninewa Governorate. The geographic locations of these mass graves reflect areas populated by the Yazidi in Ninewa and areas to which they fled as ISIL advanced, waging a systematic campaign to destroy the Yazidi population. ISIL referred to the Yazidi as *mushirkin* – 'those who commit the sin of idolatry/paganism (*shirk*).'²⁸ Sites containing mass graves in these areas have been found in the following villages: Zummar, north-west of Mosul, Al-Jadaa, a neighborhood of Mosul, in the Solagh area, east of Sinjar city, Hardan, in Sinjar district, in Kocho, also in Sinjar district, and Qene Ruke, south-west of Sinjar city.

To-date, Ninewa is the only governorate where a mass grave was found containing foreign workers. On 18 June 2014, in Mosul, 39 foreign workers from India were abducted by ISIL. On 28 December 2017, a mass grave was discovered in west Mosul. On 19 March 2018, following an investigation by the Mass Graves Directorate, the Government of India confirmed the DNA of 38 bodies found in the mass grave to be those of the missing Indian workers. On 29 April 2018, the Mass Graves Directorate informed UNAMI/OHCHR that the thirty-ninth body had been identified through DNA analysis.

Kirkuk Governorate

Thirty-seven mass graves have been identified in Kirkuk Governorate, including 27 located in the al-Bakarh area in Hawija district and discovered on 30 October 2017 following the liberation of the district. To date no excavations have taken place in this area. Additionally, a series of mass graves were discovered in early October 2017, in and around Hawija city, west of Kirkuk, and are believed to contain approximately 400 bodies.

²⁶ See "Accountability and reconciliation key to heal Iraq's ISIL wounds," press statement by High Commissioner for Human Rights (11 July 2017); *Report on the Protection of Civilians in the context of the Ninewa Operations and the retaking of Mosul City, 17 October 2016 – 10 July 2017*, jointly issued in November 2017 by OHCHR and UNAMI; *Report of the Office of the United Nations High Commissioner for Human Rights to the Human Rights Council on the human rights situation in Iraq in the light of the abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*, UN Doc., A/HRC/28/18 submitted to the Human Rights Council on March 13, 2015.

²⁷ Ibid.

²⁸ See *A Call for Accountability and Protection: Yazidi Survivors of Atrocities committed by ISIL*, OHCHR/UNAMI, August 2016.

Salah al-Din Governorate

To-date, 36 mass graves have been found in Salah al-Din Governorate containing thousands of victims. On 12 June 2014, on the grounds of the former Presidential Palace of Saddam Hussein in Tikrit, ISIL killed approximately 1,700 members of the Iraqi Security Forces and army cadets. These killings became known as the “Camp Speicher massacres.” Between 2015 and 2017, victims were discovered in 15 mass graves in areas around the former Presidential Palace. According to the Medico-Legal Directorate, 1,153 bodies have been recovered and over 704 victims identified. On 21 March 2018, the 16th mass grave was discovered on the grounds of the former palace. On 2 April 2018, 159 bodies were exhumed from that site. According to authorities most of the victims appeared to be wearing civilian clothing and are believed to be army cadets.

The Government of Iraq has devoted a considerable amount of human and financial resources to the excavation and exhumation of the mass graves at Camp Speicher and to the identification of the victims. Information gathered at these sites formed the basis for the investigation, prosecution and conviction of a large number of defendants in 2016 and 2017, resulting in at least 91 death sentences and 35 executions carried out.²⁹ More trials are expected to take place in relation to the Camp Speicher massacres.

Elsewhere in Salah al-Din Governorate other mass graves sites were discovered between 2014 and 2017, many of which have not yet been excavated. This includes the discovery of two old water wells, located in the village of Ethribbean, north of Tikrit, which according to authorities contains the remains of an undetermined number of victims allegedly killed and then dumped into the wells by ISIL in 2015 while they controlled the area.

Anbar Governorate

To-date, 24 mass graves have been found in Anbar Governorate, many containing both civilians and ISF personnel. It is estimated that these graves may contain up to 628 victims. On 20 October 2014, members of the Iraqi army discovered a mass grave near Fallujah containing the bodies of 19 civilians, believed to be between 17 and 18 years of age. Three mass graves believed to contain the bodies of more than 200 members of the Albu Nimr tribe, a Sunni tribe that refused to cooperate with ISIL, were

²⁹ See UNAMI/OHCHR reports: *Human Rights in Iraq: January–June 2016*; *Report on Human Rights in Iraq July to December 2016*; and *Report on Human Rights in Iraq July to December 2017*. On the question of the death penalty, see UN Secretary-General report (A/HRC/39/19).

discovered on 30 October 2014 north of Ramadi.³⁰ On 19 April 2016, ISF reportedly discovered 3 mass graves south of Ramadi containing the remains of civilians, ISF personnel and ISIL fighters.

Other governorates

In Diyala, 4 mass graves have been excavated leading to the identification of 14 victims. In the Governorate of Babil 5 mass graves have been found thus far and are believed to contain up to 65 victims (men, women and children). The largest grave was found in the Jurf al-Sakhr, in the northern part of the governorate. In Baghdad, 1 mass grave was found in 2015 in the al-Fahama district, believed to contain 14 male victims.

6. United Nations Guidance and Best Practices

The United Nations has considerable experience investigating mass graves in Bosnia and Herzegovina, Kosovo, Timor Leste and Rwanda, where United Nations teams were fielded often under the authority of a chief prosecutor. Additionally, OHCHR has also been involved in examining mass graves in Afghanistan, Liberia and the Democratic Republic of the Congo. In some instances, exhumations were performed in cooperation with other entities including Physicians for Human Rights, the International Commission for Missing Persons and the Equipo Argentino de Antropología Forense. In Bosnia and Herzegovina and Rwanda, the expertise included teams of pathologists, anthropologists, archeologists and scene of crime officers.

At The Missing: International Conference of Governmental and Non-Governmental Experts held in 2003,³¹ participants, including the ICRC and OHCHR, adopted by consensus a series of observations and recommendations with respect to missing persons. The recommendations regarding the management of human remains and of information on the dead, emphasized that before beginning a process of exhumation and identification, a framework should be agreed upon by all those concerned ensuring: the establishment of protocols for exhumation, post-mortem data collection, autopsies and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and which have been previously adopted by the scientific community; appropriate means of associating the communities and the

³⁰ The Albu Nimr may also have been targeted because their tribesmen joined the army and police since 2003.

³¹ See https://www.icrc.org/eng/assets/files/other/themissing_conf_03.2003_en_90.pdf (date accessed: 2 September 2018).

families in the exhumation, autopsy and identification procedures; and procedures for handing over the human remains to the family.³²

In 2010, the Advisory Committee of the United Nations Human Rights Council released a report on best practices on the issue of missing persons,³³ providing guidance on exhumation, collection, transportation, storage and burial of the dead as well as mapping and preserving burial sites. Additional lessons from various field experiences suggest a critical requirement is the need to appoint a person or entity to be in overall charge of the exhumation, including the collection and examination of all evidence relating to the commission of crimes and the identification of victims.³⁴ The primary goal of this person or entity should be to design and implement a fair and competent system for investigating mass grave sites.³⁵ A flawed system could risk undermining subsequent efforts to effectively investigate related crimes and prosecute and punish perpetrators.

The core tasks at these sites would be site assessment, survey, excavation, collection of evidence and post-mortem examinations.³⁶ Core expertise would include, as relevant, forensic anthropologists, forensic archaeologists, crime scene managers/investigators, forensic dentists, evidence officers, forensic pathologists, photographers, security personnel, surveyors and explosives experts.³⁷ In addition to the forensic team, and subject to local legal practice, investigating judges, prosecutors and police may also be present during evidence gathering at sites. Investigators should also be trained in pre and post-mortem data collection techniques and in engaging with families of the missing and affected communities.

7. Practices Followed by Iraqi Authorities

Implementation of *Law No. 5 On the Protection of Mass Graves (2006)* is facilitated through the creation of a commission, led by government officials, judicial actors (a judge, a public prosecutor, and a police officer), forensic experts, representatives of the Martyrs Foundation, and a representative

³² Ibid., p. 63.

³³ Progress Report of the Human Rights Council Advisory Committee on best practices on the issue of missing persons, UN Doc. A/HRC/14/42 (22 March 2010).

³⁴ See Mark Skinner and Jon Sterenberg, *Turf Wars: Authority and responsibility for the investigation of mass graves* (2005) 151 *Forensic Science International*, 221, 222; Mark Skinner, Djordje Alempijevic and Marija Djuric-Srejec, *Guidelines for International Forensic Bio-archaeology Monitors of Mass Grave Exhumations* (2003) 134 *Forensic Science International*.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

from each of the Ministry of Martyrs, Anfal Affairs in the Kurdistan Region of Iraq, and the Iraqi High Commission for Human Rights.³⁸ This commission is tasked with issuing decisions to open mass graves; returning identified remains to family members; and collecting forensic evidence.

Once it has been decided to investigate a mass grave, the Mass Graves Directorate is charged with opening, inspecting, and identifying mortal remains and documenting what was found. The Mass Graves Directorate will then develop a map of the area, followed by the opening of a file that contains background information on the site, witness testimony, if any, photographs and a record of the location through GPS grid referencing. The Mass Graves Directorate has a technical team that is assigned to a scene, which is overseen by a crime scene manager, and joined by a forensic expert, an archaeologist, a photographer, and an expert in IT (database manager). The Mass Graves Directorate is supported by the Medico-Legal Directorate, which provides expert services relating to anthropology, autopsies and DNA testing of victims/remains recovered from mass graves.

In meetings with UNAMI/OHCHR, the Mass Graves Directorate noted they only had 43 staff including 11 administrative support staff, which they consider insufficient to address the current scale of needs. Other limitations to its work were also highlighted: insufficient storage space for the human remains; considerable risks due to insecurity in some areas and the presence of unexploded ordnance; dated and insufficient equipment (notably excavation machinery); and lack of essential materials (e.g. gloves, masks, and other protective equipment) to excavate grave sites.

In its meetings with UNAMI/OHCHR, staff of the Mass Graves Directorate noted that it has only engaged in criminal judicial processes in one case. In the Camp Speicher investigations, the investigative judge requested that the Mass Graves Directorate prepare a file on its findings. However, its personnel did not testify in any legal proceedings. The Mass Graves Directorate is unaware of any other mass grave site that is the subject of a criminal investigation though they consider all discovered mass grave sites to be crime scenes.

Given their limited capacities and security considerations, both the Mass Graves Directorate and Medico-Legal Directorate are prioritizing the examination of mass grave sites found in Sinjar, Badoush and Camp Speicher, which contain high numbers of victims and can be accessed more easily than other sites given the security situation in these areas. Of particular concern to these two entities is how to undertake the excavation and exhumation of large, complex sites such as the "*Khasfa*

³⁸ These are called "Committee 6" committees.

sinkhole”, discovered in February 2017. The Medico-Legal Directorate informed UNAMI/OHCHR there may be up to 4,000 victims dumped in the sinkhole, with other entities reporting even more victims. There is limited technical understanding regarding how to remove such a significant number of bodies, particularly given the fact it is suspected that the site is heavily booby-trapped.

Regarding Sinjar, the Mass Graves Directorate has stated that 67 mass grave sites have been identified. Of these, two sites will be explored from November 2018. The Mass Graves Directorate, conscious of the demands of families of the missing is determined to ensure that they are kept informed of developments including when excavation, exhumation and identification processes are launched.

8. Challenges in Iraq

Excavating the mass grave sites in Iraq will pose significant challenges: humanitarian, forensic and security-related.

A primary challenge to exhuming mass graves remains the prevailing security situation in many parts of Iraq. In several areas where ISIL remains active—particularly in Anbar, Ninewa and Salah al-Din governorates—their continued presence may inhibit the ability of investigators to access sites and to carry out their work unhindered. Additional security may be required to carry out long-term investigations of mass graves. It may not be possible to investigate some sites.

Based on experiences from similar settings as Iraq, an important consideration during the excavation of suspected mass graves is the presence of explosive hazards. According to the United Nations Mine Action Service (UNMAS), given the extensive use of improvised explosive devices by ISIL in Iraq, and experiences from other countries, it is likely that some of the mass grave sites are contaminated with explosive hazards requiring clearance. Based on known ISIL practice, UNMAS believes that pressure-activated devices, possibly fitted with anti-lift devices and connected to a main charge of 10-20 kilos of homemade explosives contained in metal or plastic containers, may contaminate mass graves. Improvised explosive devices would be expected to be hidden underground thus requiring the use of metal detectors. Yet, according to UNMAS, the use of metal detectors would be challenging as such sites are expected to have medium to high metal contamination from items previously worn by the individuals in the graves. Furthermore, human remains have been located in Mosul that are fitted with suicide belts and vests, including bodies that have the appearance of women and/or children.

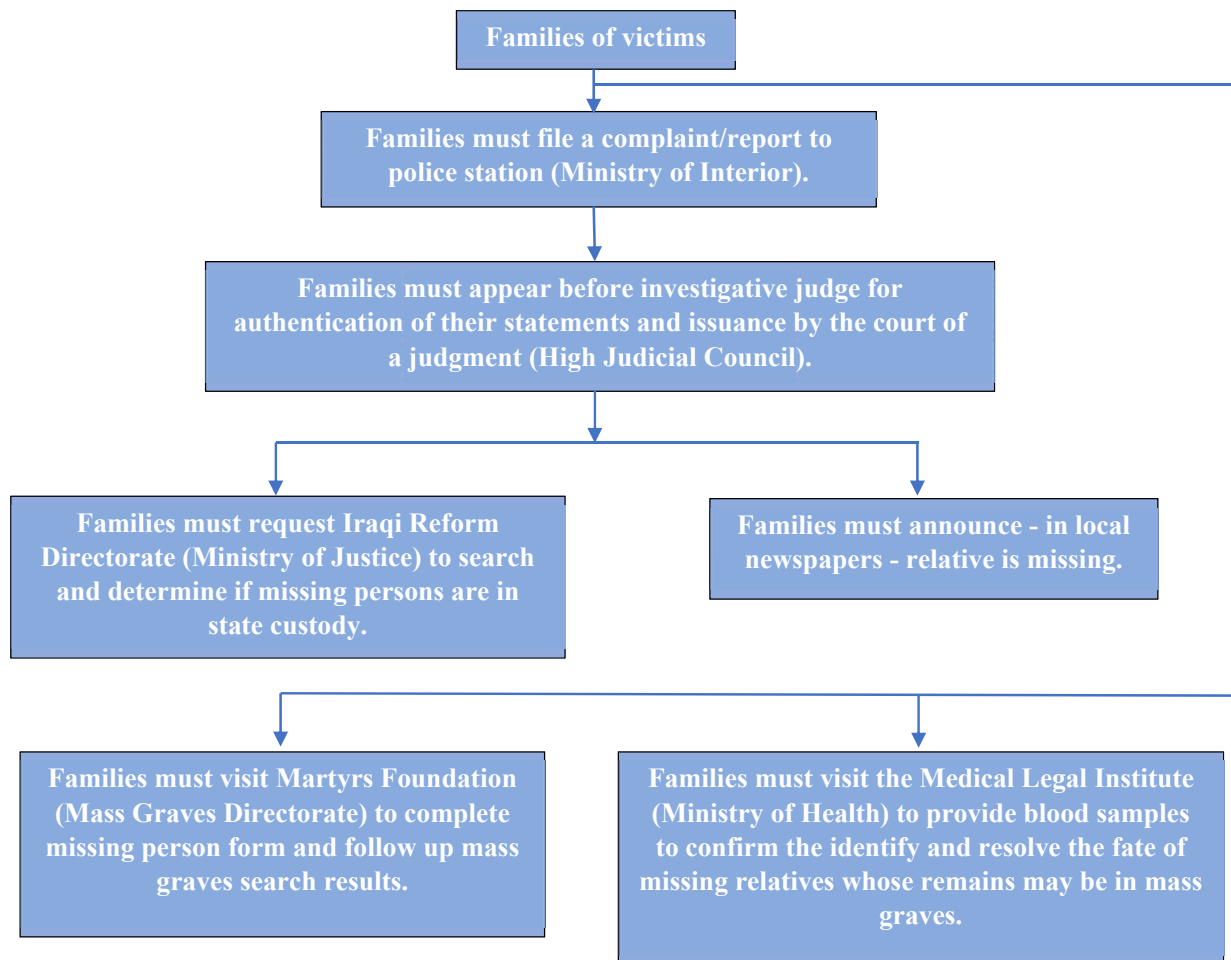
Exhumation of such sites will require the presence of explosive hazard management experts to prevent accidents, and, where necessary, conduct clearance.

Identifying individuals in the mass graves will be paramount for a criminal investigation and to return the remains to families. Successful identifications will most likely rely on DNA from victims and relatives, as well as clothing and documentation such as medical records (dental and health). In some cases, there will be no known DNA available for testing. One challenge in this regard is the fact that, over time, crime scenes change. The circumstances in place at the time of death could be different from when a mass grave is discovered and investigated. The passage of time could transform the appearance of the site and degrade its contents – factors to bear in mind include the season, the temperature, and the presence of scavengers (human or animal) or perpetrators removing or destroying evidential material. In addition, family members may try, in good faith, to retrieve the remains of their loved ones, thereby inadvertently tampering with the sites and interfering with evidence.

Still, mass graves may contain an enormous amount of data that has forensic significance. For example, the number of bodies; the sex, age and ethnicity of victims; the type of wounds and the nature of the killing; the number of shell casings or other relevant objects; whether the site contains civilians only or executed prisoners, ISIL fighters, members of the security forces or multiple types of victims; and what type of clothing was discovered, to name a few. Such insights could provide investigators with the “big picture” of what occurred at the scene including whether the victims were killed on-site.

A significant challenge for families of the missing is the multiplicity of entities they must report to in order to get relevant departments to take action. The following chart, provided by the Mass Graves Directorate, highlights the various actors that families of victims must report to in order to; a) notify government that their relatives are missing, and b) try to determine their fate.³⁹

³⁹ Communication from Mass Graves Directorate to UNAMI Human Rights Office, 11 October 2018.



Based on the above chart, families of victims must report to more than five State entities to complete the legal requirements to establish the fate of a missing person. They include law enforcement, the judiciary, the ministries of justice and health and the Martyrs Foundation. Numerous forms have to be filled in, three sources of DNA need to be obtained per missing person and relevant police stations and courts have to be approached to ensure missing persons are not in custody. According to the Mass Graves Directorate, this process is both time consuming and a great source of frustration for families who have already been severely traumatised by their loss. The current system places an onerous burden on families who may already be severely traumatized and under considerable stress.

Another challenge, faced by staff working in the field of research, excavation, crime scene management and forensic photography, is that under the current system they operate in silos with little access to information or knowledge of international best practices, including from countries with similar experiences to Iraq. This is compounded by financial constraints.

One central body to handle all issues concerning missing persons could address some of these challenges, removing the burden currently placed on families and expedite the entire process.

9. Conclusions

Meaningful truth and justice for the victims of the conflict with ISIL and their families requires, among many other aspects, the appropriate preservation, excavation and exhumation of mass graves sites and the identification of the remains of the many victims and their return to the families. This report has highlighted that at least 202 reported mass grave sites have been discovered since 2014 in territory formerly controlled by ISIL and it is anticipated that more graves may be discovered in the coming months and, perhaps, years.

Mass grave sites could potentially contain critical forensic material that may not only assist in the identification of victims' remains, but also build an understanding around the scale of abuses and violations that occurred and support the process of determining whether the acts that led to these mass graves amount to war crimes, crimes against humanity or genocide. The evidence gathered from these sites will be central to ensuring credible investigations, prosecutions and convictions, in accordance with international due process standards. Exhumations not in line with international standards and best practice could lead to the destruction or loss of critical evidence and complicate the identification of bodies, thereby extending the grief of affected families and undermining their right to truth, justice and reparations.

As highlighted in this report, Iraqi authorities have faced profound challenges in undertaking excavations, exhumations and identifications. Given the number and size of mass graves discovered to date, the task ahead is daunting. Support from the international community in terms of expertise, particularly on dealing with explosive devices, as well as technical capacity support and appropriate streamlining of funding, will be essential.

Criminal investigations and prosecutions will play only one part in telling the whole story of the atrocities that led to these mass graves. These crime scenes raise broader justice dynamics, including the need to ensure a historical record of what occurred in these locations, memorialize these sites, and, where feasible, identify victims. The promotion of truth, justice and reparation with guarantees of non-recurrence will be critical to ensuring a full reckoning for ISIL atrocities. This in turn could contribute to lasting peace. Victims and their families deserve nothing less.

10. Recommendations

UNAMI/OHCHR recommends that the Government of Iraq:

Preserve and Protect Mass Grave Sites

- a. Undertake a multidisciplinary approach to recovery operations with the participation, as necessary, of experienced specialists including weapons contamination and explosives experts, geographic information system and mapping specialists, archaeologists, anthropologists, photographers, crime scene investigators and evidence officers.
- b. Establish an efficient centralized information portal to analyze and safeguard all available data and information within a secured and searchable platform.
- c. Ensure training on recovery operations including identification, excavation, exhumation and investigation of mass graves.
- d. Provide risk education to all those involved in recovery operations in order to increase the possibility of early detection and reporting of suspected explosive hazards.

Ensure a victim-centered approach

- a. Undertake all appropriate measures to address the rights of victims to truth, justice and reparations, including by:
 - i. Ensuring information gathered as a result of mass grave investigations is expeditiously made available to judicial investigating authorities to facilitate prosecutions in accordance with international standards.
 - ii. Establishing a public, centralized registry of missing persons that family and community members can both contribute to and refer to for information.
 - iii. Establishing a federal Office of Missing Persons, headed by a senior official, tasked with determining the status of all missing persons in Iraq.
 - iv. Pending the establishment of such an office, ensuring mechanisms are in place to ensure family members are informed about the measures taken within the investigation to establish the fate and whereabouts of their relatives, to identify the remains and to return them to the family.
- b. Given what these mass grave sites represent, once investigations are complete, consider the creation of a public historical record of what occurred, when and, where feasible, naming the victims. These could take the form of memorials at the actual sites of mass graves.
- c. Strengthen the legal and institutional framework for reparations for victims, their relatives and loved ones.

- d. Establish, by law, a central body for all work related to missing persons to provide a more efficient and less bureaucratic process for victims' families.
- e. Establish transitional justice processes in consultation with civil society, groups representing victims, and reflecting Iraq's diverse religious and ethnic groups.
- f. In order to meaningfully implement all the above recommendations on victim-centered justice, invite the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to Iraq to provide advice on developing a comprehensive approach.

UNAMI/OHCHR recommends that the international community:

Provide capacity-building and technical support

- a. Support Iraqi efforts related to the exhumation, collection, transportation, storage and return of human remains to their families as well as their identification.

This requires:

- i. Provision of resources to the Mass Graves Directorate to enable it to efficiently carry out its work in accordance with international standards and best practices.
- ii. Support for public awareness and education campaigns on the process and action required to determine the fate and whereabouts of missing persons.
- iii. Support to strengthen the capacities of all officials involved in determining the fate of missing persons, including staff of the Mass Graves Directorate, in accordance with international best practices.
- iv. Technical support to develop:
 - an efficient centralized information portal to analyze and safeguard all available data and information within a secured and searchable platform.
 - a public, centralized registry of missing persons that family and community members can both contribute to and refer to for information.
- b. Support Iraq to establish a comprehensive transitional justice process that is accepted by, and established in consultation with, Iraqis, particularly those from affected communities, including through sharing best practices from other countries.
- c. Ensure the provision of appropriate legal assistance and technical capacity-building support to relevant State institutions in order to strengthen Iraqi courts and the judicial system for the investigation of the mass grave sites and prosecutions that are in accordance with international due process standards.