



Security Council

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Implementation of resolution [2697 \(2023\)](#)

Report of the Secretary-General

I. Introduction

1. In its resolution [2379 \(2017\)](#), the Security Council requested the Secretary-General to establish an Investigative Team, headed by a Special Adviser, to support domestic efforts to hold Islamic State in Iraq and the Levant (ISIL), also known as Da'esh, accountable by collecting, preserving and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity or genocide committed by the terrorist group ISIL (Da'esh) in Iraq. The team established pursuant to that request is known by the designation of United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD). The Council welcomed the letter dated 14 August 2017 from the Government of Iraq addressed to the President of the Security Council, in which the Government called for the assistance of the international community to ensure that members of ISIL (Da'esh) are held accountable for their crimes in Iraq, including where those may amount to crimes against humanity ([S/2017/710](#)).

2. The Security Council also requested that the Secretary-General submit to the Council, for its approval, within 60 days, terms of reference that would be acceptable to the Government of Iraq, in order to ensure that the Investigative Team could fulfil its mandate, and that were consistent with resolution [2379 \(2017\)](#), regarding the operation of the Investigative Team in Iraq.

3. The Security Council underscored in its resolution [2379 \(2017\)](#) that the Investigative Team would operate with full respect for the sovereignty of Iraq and its jurisdiction over crimes committed in its territory, and it further emphasized that the Team should be impartial, independent and credible and should act consistent with the terms of reference which set out the framework in which the Team will operate, the Charter of the United Nations and United Nations best practice, and relevant international law, including international human rights law.

4. In the light of the request made by the Security Council, the Secretariat engaged in discussions with the Government of Iraq in order to prepare the terms of reference of the Investigative Team. After obtaining the acceptance of the Government of Iraq regarding the final text of the terms of reference, the Secretary-General, in a letter dated 9 February 2018, submitted to the Security Council the terms of reference of the Investigative Team ([S/2018/118](#), annex), which were approved by the Security Council on 13 February 2018 ([S/2018/119](#)).



5. On 15 August 2018, the Secretary-General informed the Security Council that he had appointed the Special Adviser of the Investigative Team on 13 July 2018, after consultation with the Government of Iraq, and that the Team would begin its work on 20 August 2018 (S/2018/773).

6. In its resolutions 2490 (2019) of 20 September 2019, 2544 (2020) of 18 September 2020, 2597 (2021) of 17 September 2021, 2651 (2022) of 15 September 2022 and 2697 (2023) of 15 September 2023, the Security Council extended the mandate of the Special Adviser and the Investigative Team for consecutive one-year terms, at the request of the Government of Iraq.

7. In its resolution 2697 (2023), the Security Council took note of the request from the Government of Iraq for the Investigative Team to promote national accountability in Iraq for members of ISIL (Da'esh) and those who provided assistance and financing to this terrorist organization by providing the evidence it has to the Government of Iraq within the next year and requested the Secretary-General to submit, no later than 15 January 2024, a report setting out recommendations for implementing this request with full respect for the sovereignty of Iraq.¹

8. The Secretary-General prepared the present report in coordination with the Special Adviser of the Investigative Team, which is mandated by the Security Council to be the entity responsible for matters relating to the use of the evidence it has collected, preserved and stored. The annex to the present report was prepared by the Special Adviser and contains his contribution, including recommendations for implementing the above-mentioned request, in line with his distinct role and independent mandate.

9. Moreover, in the light of the request from the Government of Iraq and the decision of the Security Council to extend the mandate of the Special Adviser and the Team until 17 September 2024 only, and the request from the Government of Iraq for the Investigative Team to provide the evidence it has to the Government of Iraq within the next year, the present report also addresses the future responsibilities of the Secretariat with respect to the storage and preservation of the materials of the Investigative Team upon the conclusion of its mandate and to the provision of access to evidence so that efforts to ensure accountability can continue thereafter.

II. Framework of operation of the Investigative Team

10. Within the parameters established by the Security Council in its resolution 2379 (2017), the terms of reference set out the general framework for the operation of the Investigative Team, which were prepared in line with United Nations rules, regulations, policies and best practice, as applicable to this specific mandate. Specific internal procedures and practice to implement the UNITAD terms of reference were elaborated by the Investigative Team and implemented in coordination with competent Iraqi authorities, as appropriate, in the light of its independent status, as indicated in paragraph 6 of resolution 2379 (2017). In particular, the Investigative Team has developed detailed requirements for the sharing of information with competent judicial authorities, including with Iraqi authorities, the primary intended recipient.

11. In accordance with resolution 2379 (2017), it is specified in the UNITAD terms of reference that the Investigative Team shall operate with full respect for the

¹ See also the letter dated 28 December 2023 from the Chargé d'affaires a.i. of the Permanent Mission of Iraq to the United Nations addressed to the Secretary-General, in which the Government of Iraq reiterated those requests (S/2024/53).

sovereignty of Iraq and its jurisdiction over crimes committed in its territory. It is also recalled that:

The competent Iraqi authorities shall be the primary intended recipient of the evidence collected, preserved and stored by the Investigative Team. In carrying out its functions, the Investigative Team will act with full respect for the Iraqi Constitution and Iraqi relevant laws and Iraq's right to exercise jurisdiction over crimes committed on its territory, including in ongoing proceedings.

To that end, in paragraph 27 of the terms of reference it is stipulated that "the Investigative Team shall share the evidence with the competent Iraqi authorities in accordance with the present terms of reference and with the modalities to be agreed pursuant to paragraph 45". In paragraph 45 of the terms of reference, it is further stipulated that the Investigative Team "shall liaise with the coordinating or steering committee and/or competent Iraqi authorities on modalities for the eventual use, in fair and independent criminal proceedings, of evidence of crimes collected and stored by the Team in Iraq, in accordance with the present terms of reference".

12. The terms of reference contain a number of other provisions that are of particular relevance to the sharing of evidence. In this regard, it is important to recall that among the standards and procedural requirements for the collection, preservation and storage of evidence, the terms of reference refer specifically to the informed consent of those providing information to the Investigative Team, in line with the well-established practice of the United Nations, and provide that "[t]he Investigative Team shall seek to obtain from witnesses and other sources their informed consent for the Investigative Team to share evidence with Iraqi and other domestic investigative, prosecutorial and judicial authorities, and with any other competent authorities as determined in agreement with the Government of Iraq". Moreover, in paragraph 21 of the terms of reference it is clarified that "[t]he Investigative Team shall take appropriate measures to respect and ensure respect for the privacy, interests and personal circumstances of victims, in the light of their age, sex, sexual orientation, gender and health, and taking into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children". The consent provided by the information providers must be respected, in particular to protect those who have provided information to the Investigative Team and whose security could be endangered.

13. Regarding the confidentiality of the information of the Investigative Team, the terms of reference provide that the Investigative Team shall "determine and record the confidentiality classification of all evidence obtained or produced by the Investigative Team, including its work products and analyses, in line with the United Nations policies on information sensitivity, classification and handling". In this context, the Secretary-General's bulletin on information sensitivity, classification and handling ([ST/SGB/2007/6](#)) clarifies the conditions for the classification and secure handling of confidential information entrusted to or originating from the United Nations, which include documents received by the United Nations from third parties under an expectation of confidentiality and documents the disclosure of which is likely to endanger the safety or security of any individual, violate his or her rights or invade his or her privacy. In addition, the principles on personal data protection and privacy set out a basic framework for the processing of personal data by the United Nations with the aim of ensuring respect for the human rights and fundamental freedoms of individuals, in particular the right to privacy, among other considerations. The application of these general United Nations policies in the context of the collection, processing and sharing of evidence by the Investigative Team is further elaborated upon in the annex to the present report.

14. With respect to the use of evidence, in its resolution [2379 \(2017\)](#), the Security Council underscored that evidence of crimes collected and stored by the Team in Iraq

should be for eventual use in fair and independent criminal proceedings, consistent with applicable international law, conducted by competent national-level courts, with the relevant Iraqi authorities as the primary intended recipient as specified in the terms of reference, and with any other uses to be determined in agreement with the Government of Iraq on a case-by-case basis. The terms of reference further provide that the Investigative Team shall share the evidence in accordance with United Nations policies and best practice and relevant international law, including international human rights law, rules and standards.

15. In this regard, the general United Nations policy and best practice against the sharing of evidence by United Nations accountability mechanisms for use in criminal proceedings in which capital punishment could be imposed or carried out is applicable.² During the negotiations over the terms of reference, the Secretariat specifically engaged with the Government of Iraq on the application of that policy and best practice by the Investigative Team, as referred to in the letters from the Secretary-General to the President of the Security Council of 20 November 2017, 13 December 2017, 21 December 2017 and 19 January 2018.³ The application of that policy and best practice by the Investigative Team is reflected in the annex to the present report.

16. It is important to recall that United Nations policies and best practice and relevant international law, rules and standards regarding the sharing of evidence will remain applicable upon the conclusion of the mandate of the Investigative Team.

17. More generally, regarding the materials of the Investigative Team, which include the evidence of the Investigative Team, the terms of reference recall that the Investigative Team, its personnel, records, archives, property and assets shall enjoy the privileges and immunities, exemptions and facilities provided for in the Convention on the Privileges and Immunities of the United Nations of 13 February 1946. The terms of reference also provide that upon conclusion of the Investigative Team's mandate, the United Nations and the Government of Iraq shall agree upon arrangements regarding the custody of original versions of the evidence and materials collected, preserved and stored by the Investigative Team in Iraq, as well as any materials and analyses produced by the Investigative Team. In the light of those provisions and those of resolution 2697 (2023), it is essential to anticipate and address at this stage the question of the management of the materials of the Investigative Team upon the conclusion of its mandate.

III. Preservation and management of the evidence collected by the Investigative Team upon the conclusion of its mandate

18. In its resolution 2697 (2023), the Security Council took note of the request from the Government of Iraq for a non-extendable one-year extension of the mandate of the Special Adviser and the Team, contained in its letter dated 5 September 2023 (S/2023/654), and decided to extend the mandate of the Special Adviser and the Team until 17 September 2024 only. The Security Council also took note of the request from the Government of Iraq for the Investigative Team to "provid[e] the evidence it has to the Government of Iraq within the next year".

19. The request from the Government of Iraq and the decision of the Security Council raise a critical question with respect to the preservation and management of the evidence of the Investigative Team upon the conclusion of its mandate to provide

² The policy was recalled in the reports of the Secretary-General on strengthening and coordinating United Nations rule of law activities (A/73/253, para. 79; A/74/139, para. 89; A/75/284, para. 74).

³ S/2017/989, S/2017/1072, S/2017/1122 and S/2018/63.

evidence for use in fair and independent criminal proceedings conducted by competent domestic courts in Iraq and in third States. The question of the preservation and management of the evidence of the Investigative Team relates more fundamentally to the call for accountability from Iraq and other Member States, as well as from survivors and civil society organizations. They have all stressed the need to ensure continued access to the evidence of the Investigative Team in future for accountability purposes, including judicial proceedings. In this regard, it is important to recall that the Investigative Team was established to ensure that members of ISIL (Da'esh) are held accountable for the crimes they committed in Iraq. That objective will remain upon the conclusion of the mandate of the Investigative Team.

20. The Government of Iraq has conveyed, since the establishment of the Investigative Team, and also during the consultations for the present report, the importance of ensuring, ultimately, that members of ISIL (Da'esh) are held accountable for their crimes committed in Iraq. The Government of Iraq also noted that the Investigative Team was an unprecedented example of international cooperation between States and international organizations to achieve criminal accountability for the most serious crimes at the international level, and highlighted the importance of achieving accountability at the national level.⁴

21. Civil society organizations and survivors' representatives have conveyed their concerns regarding the future efforts to ensure accountability for ISIL (Da'esh) perpetrators upon the conclusion of the Investigative Team's mandate and the future access to the evidence collected by the Investigative Team. They strongly expressed the view that the evidence should remain accessible in the future in a manner that would allow its use for purposes of ensuring accountability. They also referred to the importance of avoiding the re-traumatization of survivors, in particular children, women and victims of conflict-related sexual violence, who already provided their testimonies to UNITAD. It was also recalled that the evidence collected by UNITAD must be preserved and stored in a manner that ensures the security of the evidence, full respect for the consent of information providers and in accordance with United Nations policies. A variety of suggestions were conveyed, ranging from an enhanced archiving facility within the United Nations, with sufficient resources to respond to future requests to access the evidence, to the establishment of a hybrid tribunal in Iraq for the international crimes committed by ISIL (Da'esh). Reference was also made to the possibility of establishing an independent entity (a residual mechanism), mandated to store and preserve the evidence of the Investigative Team and to support accountability processes in Iraq and in other jurisdictions through the sharing of information. It was suggested that such an entity could be further mandated to receive and store new evidence and/or to continue to analyse the information already collected by the Investigative Team.

22. Upon the conclusion of the Investigative Team's mandate and in line with well-established practice when closing United Nations operations, and unless the Security Council decides otherwise, the Secretariat would be responsible for the preservation and management of its materials, which would include evidence of the Investigative Team. In line with existing mandates and authorities, the materials of the Investigative Team would be transferred to the Secretariat for preservation as archives of the United Nations. The Secretariat would not be in a position to guarantee, within existing resources, that the evidence is preserved as active or "live" archives and in accordance with international criminal law standards. The Secretariat currently has no appropriate structure or capacity to manage and provide access to archives of digital evidence in accordance with such standards. Therefore, it is unlikely that the evidence of the

⁴ See S/2024/53.

Investigative Team would be accessible and that it could be used in the future for evidentiary purposes.

23. The possibility of using the materials of the Investigative Team, upon the conclusion of its mandate, in fair and independent proceedings, would require that these materials be maintained in a specific manner, which would include ensuring that highly confidential and sensitive information remains protected, and that the evidence is catalogued and preserved in accordance with international criminal law standards. In particular, the evidence would have to be managed as active archives, in a secure database system, which guarantees uninterrupted chain of custody, integrity and reliability of the data and includes access restrictions. The preservation and management of the material in this manner would require an appropriate mandate and additional resources to, for example, acquire the necessary technological tools to adequately store, manage and retrieve the evidence and to hire personnel to handle the repository of digital evidence. A proposal for resources would therefore have to be presented to the General Assembly in line with the budgetary procedures.

24. Access to the evidence would be provided in line with existing United Nations rules, policies, regulations and practice. Access would also be subject to the conditions applicable to the relevant categories of the evidence of the Investigative Team, which include the confidentiality conditions identified by information providers when providing evidence to the Investigative Team. The response to future requests to access the evidence would depend on the resources made available for that purpose, including technical expertise to ensure the capacity to search the databases of the repository of evidence for relevant information, if and when requested. For instance, expertise on the subject matter and language expertise would be needed, as well as capacity to seek consent from information providers to share evidence on a case-by-case basis and as required.

25. In addition, and if mandated to do so, the entity entrusted with the management of the evidence could continue to analyse the evidence collected by the Investigative Team, using new technology and machine learning tools to improve the evidence retrieval process, including for the purpose of cataloguing the evidence in order to facilitate an effective and swift response to subsequent requests to use the evidence. Other functions could be considered, including that the repository of evidence be an active recipient of evidence collected by others and/or proactively approaching competent authorities, as appropriate.

26. In any event and for the purposes of ensuring the security of its materials, the Investigative Team would prepare its records for handover to the entity entrusted with the preservation and management of its materials, including the evidence.

IV. Observations and recommendations

27. Recalling the request by the Government of Iraq that the Investigative Team provide to the Government of Iraq the evidence that it has within the next year, I note the future steps and recommendations made by the Special Adviser of the Investigative Team, as set out in the annex to the present report, in line with his distinct role and independent mandate, in particular regarding the next steps of the Investigative Team for the provision of evidence to the competent Iraqi authorities.

28. I urge the Investigative Team to provide to the competent Iraqi authorities the evidence that was received from the competent Iraqi authorities, as digitalized and managed. Further, I urge the Investigative Team to proceed to provide to the competent Iraqi authorities, which are the primary intended recipient of the evidence of the Investigative Team, any other evidence that it is in a position to share. In this

regard, as underscored by the Security Council in its resolution 2697 (2023), I should emphasize that any sharing of evidence should be consistent with the Investigative Team's terms of reference, which were agreed with Iraq and approved by the Security Council. The terms of reference have allowed and will continue to allow the Investigative Team to implement its mandate in accordance with United Nations policies and best practice and relevant international law, including international human rights law, rules and standards.

29. I also recall that, in carrying out its functions, the Investigative Team shall operate with full respect for the sovereignty of Iraq.

30. I note that full respect for the conditions on the use of evidence collected by the Investigative Team, as specified by information providers, is essential at all times, in particular with regard to their consent to share the information provided to the Investigative Team with third parties. This is a general rule applicable to all United Nations operations, and such respect is of utmost importance to protect those who decide to provide information to the United Nations and who may be putting their security and safety at risk.

31. I also recommend that the Investigative Team continue to provide capacity-building to the Government of Iraq during the remainder of its mandate, in accordance with its terms of reference, in particular to ensure the use by the competent Iraqi authorities of the databases and the provided evidence, as digitalized and managed by the Investigative Team.

32. I note that the mandate of the Investigative Team was extended until 17 September 2024 only. The Investigative Team was established following the call from the Government of Iraq for the assistance of the international community to ensure that members of ISIL (Da'esh) are held accountable for the crimes that they committed in Iraq. Considerable resources have been invested in the Investigative Team over the past six years, and its material could still be used in the future and be of assistance in responding to calls for continued accountability from Iraq and other Member States, survivors and civil society organizations, as these calls will remain upon the conclusion of the mandate of the Investigative Team.

33. The question of the preservation and management of the evidence of the Investigative Team upon the conclusion of its mandate should be addressed at this stage. If appropriate steps are not taken in advance, upon the conclusion of the mandate of the Investigative Team, the evidence will be stored in the United Nations archives and it is unlikely that it would be possible to use it in the future for evidentiary purposes. In this regard, I recommend that the Secretariat establish a repository of evidence so as to ensure that highly confidential and sensitive information remains protected and that the evidence is preserved and managed in accordance with international criminal law standards, and could thereby be of assistance in responding to the calls for continued accountability from Iraq and other Member States, survivors and civil society organizations. I further note that the establishment of such a repository of evidence could enhance United Nations archives capabilities more generally. If this recommendation is endorsed, I will submit proposals for additional resources in line with the budgetary procedures.

34. The Secretariat stands ready, in accordance with paragraph 10 of the terms of reference, to discuss with the Government of Iraq the arrangements regarding the custody of original versions of the evidence and materials collected, preserved and stored by the Investigative Team in Iraq, as well as any materials and analyses produced by the Investigative Team. The Secretariat is also prepared to explore, with the Government of Iraq, avenues to continue to support domestic efforts to hold ISIL (Da'esh) accountable in Iraq.

Annex

Note by the Special Adviser of the Investigative Team

I. Introduction

1. Pursuant to paragraph 4 of Security Council resolution [2697 \(2023\)](#), the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD) hereby provides its recommendations for the report of the Secretary-General.

II. Overview of the Team's mandate pertaining to the collection and provision of evidence

2. In line with paragraph 5 of its terms of reference ([S/2018/118](#)), UNITAD collects evidence and information pertaining to acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL (Da'esh) in Iraq. The Investigative Team collects evidence and information from the following information providers and sources: relevant Iraqi and third State authorities; witnesses, victims and survivors; international organizations; non-governmental and civil society organizations; and various online and other open sources.

3. Pursuant to paragraph 20 of its terms of reference, the collection of evidence and information by UNITAD is a consent-driven process. In its procedures and practice, the Investigative Team has sought to obtain the free, prior and informed consent of all information providers with respect to the collection and eventual sharing of their information and evidence.

4. According to UNITAD internal procedures, consent is considered to be free, prior and informed when: (a) it is voluntarily given, without any coercion, inducement, undue promise, duress or threat, torture or any other form of cruel, inhuman or degrading treatment or punishment; (b) in relation to clearly specified actions (e.g. collection of evidence by UNITAD investigators; sharing of evidence by UNITAD with specific domestic or international judicial authorities for the purpose of prosecuting international crimes); and (c) with knowledge of the confidentiality rules applicable to the preservation and storage of the evidence, the intended use of the evidence and any applicable protective measures for the information provider. Consent must also be clearly affirmed and duly recorded.

5. This definition reflects and combines the international standards for personal data protection and for the collection of information for the investigation of core international crimes, as well as established practice for the collection of information on human rights violation in other contexts.¹ The Investigative Team adheres to this definition to ensure the broadest possible usability and admissibility of evidence before national courts and by national investigative and prosecutorial authorities, as set out in paragraph 19 of its terms of reference.

¹ See the principles on personal data protection and privacy, adopted by the High-level Committee on Management on 11 October 2018; article 55 of the Rome Statute of the International Criminal Court (17 July 1998); rule 95 of the Rules of Procedure and Evidence of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (IT/32/Rev. 50, 8 July 2015); rule 42 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (2 June 2020); Office of the United Nations High Commissioner for Human Rights, Manual on Human Rights Monitoring (HR/P/PT/7/Rev.1, 2011).

6. In addition to the above considerations and depending on the category of information provider, specific guarantees may apply to the collection of evidence and information. UNITAD collects evidence and information from competent Iraqi authorities based on individual requests for assistance, focusing mainly on specific lines of investigation. In accordance with paragraphs 32 to 34 of its terms of reference, UNITAD collects evidence and information from competent authorities of third States based on individual requests for assistance focusing on broader investigative lines or on specific persons of interest. Further to paragraph 38 of its terms of reference, UNITAD collects evidence and information from intergovernmental or regional organizations as well as non-governmental organizations on the basis of individual requests for assistance or cooperation agreements, focusing on specific lines of investigation. In all cases outlined above, the Investigative Team ensures that any non-disclosure conditions imposed by the information provider are duly respected.

7. In line with paragraphs 21 to 23 of its terms of reference, the Investigative Team takes appropriate measures to ensure the security, safety, privacy and well-being of witnesses, victims and survivors who give their witness accounts to UNITAD. Such measures include procedures to ensure the confidentiality of details related to any witness interview, explanations provided to the witness regarding the confidentiality of information and the voluntariness of the process, psychosocial assessment and related support during the interview process, trauma-informed interviewing techniques and special measures applicable to vulnerable witnesses. The Investigative Team ensures that the consent of each witness to provide evidence and information is duly documented either in writing (by signature) or by audio recording. Concomitantly, the Investigative Team duly records the consent or lack thereof of the witness with respect to sharing the evidence provided or his or her identifying information.

8. As a result of UNITAD collection efforts, its current evidentiary holdings amount approximately to 39 TB of collected data in its unprocessed state, as received, and to 27 TB of processed data in its document review system. It includes the following main categories of material: (a) records collected from Iraqi (mostly judicial) authorities; (b) statements and other material collected from individuals, mostly witnesses; (c) material collected from non-governmental and civil society organizations; (d) material collected from the media and other online open sources; (e) records provided by authorities of third States; and (f) reports and statistics generated by UNITAD.

9. These materials are preserved and stored in accordance with international standards, including United Nations policies on information sensitivity, classification and handling, and in a manner that documents chain of custody and ensures forensic integrity. Internal procedures set out the applicable conditions regarding the physical and digital preservation, internal retrieval, copying, transfer and other use as well as the deletion or destruction of such materials.

10. In accordance with the last sentence of paragraph 20 of the terms of reference, Iraqi and other competent domestic authorities retain the right to collect evidence on their own, according to applicable domestic laws.

11. UNITAD shares evidence in line with Security Council resolution [2379 \(2017\)](#) and its terms of reference. The conditions for the sharing of evidence set out in the terms of reference are applied by the Investigative Team in relation to any jurisdiction, including competent Iraqi and third State authorities, the competent Iraqi authorities being the primary intended recipient of the evidence collected, preserved and stored by UNITAD.

12. Pursuant to paragraphs 2 and 5 of Security Council resolution [2379 \(2017\)](#) and paragraph 2 of its terms of reference, UNITAD examines whether the requesting

national authority has the jurisdiction and competence to hold ISIL (Da'esh) accountable for acts that may amount to war crimes, crimes against humanity or genocide committed by ISIL (Da'esh) in Iraq.

13. UNITAD ascertains the jurisdiction and competence of the requesting national authority on a case-by-case basis. In particular, the national authority in question must be competent by law to investigate or prosecute these acts. Competent authorities may include investigative, prosecutorial and judicial authorities of Iraq or any third State.

14. Pursuant to paragraph 20 of its terms of reference, UNITAD ascertains whether the provider of the specific evidence has consented to the sharing of such evidence with the requesting national authority. When ascertaining the existence of such consent, UNITAD applies the definition of the term set out in paragraph 4 above. When the information provider has indicated their consent to sharing evidence on a case-by-case basis, UNITAD reverts to the information provider to obtain the consent or record the lack thereof.

15. UNITAD is an investigative mechanism that collects evidence based on the voluntary cooperation of information providers. As a corollary to such voluntary provision of information or evidence, UNITAD can only share that information or evidence if the relevant information provider so consents. This condition is at the core of UNITAD work.

16. The mandatory nature of the consent requirement is apparent in the wording of paragraph 20 of the terms of reference, according to which UNITAD “shall seek to obtain [...] informed consent” and that “[t]he consent, or lack thereof, must be duly recorded”.

17. Finally, it is important to note that the issue of consent by information providers was raised by a range of national civil society organizations during their independent consultations, which were convened in Erbil on 21 November 2023. The Special Adviser and Head of UNITAD took part in a portion of those consultations and reaffirmed the points outlined above. He provided assurances that with respect to any evidence collected, including witness statements and information provided by civil society organizations, the Team, in accordance with its term of reference, was bound to respect the consent or lack thereof with regard to the sharing of such statements or information with any competent judicial authorities. On 17 December 2023, UNITAD held further consultations with civil society organizations during the sixth biannual plenary round table of the UNITAD-NGO Dialogue Forum. Discussions included how to engage with Iraqi investigative judges to ensure better understanding of a trauma-informed approach to investigations and of how to avoid retraumatizing witnesses. UNITAD proposed that, with the consent of witnesses, some competent Iraqi investigative judges be given the opportunity to participate in witness interviews conducted by the Team, as a practical way to share best practices in implementing trauma-informed methodologies.

18. Pursuant to paragraph 5 of Security Council resolution [2379 \(2017\)](#) and paragraphs 19 and 26 of its terms of reference, UNITAD assesses whether the evidence to be shared with the requesting national authority would be used in fair and independent criminal proceedings by competent judicial authorities. This requirement builds on the fundamental human right to a fair trial, as enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, several other international and regional conventions, customary international law, statutes of international criminal tribunals and domestic legislation.²

² See for example: articles 6, 7, 8, 10 and 11 of the Universal Declaration of Human Rights (10 December 1948); articles 14 and 16 of the International Covenant on Civil and Political

19. In ascertaining this requirement, the Investigative Team reviews the applicability and manner of enforcement of the following components of the right to a fair trial: (a) the right to a competent, independent and impartial tribunal established by law; (b) the right to a public hearing; (c) the presumption of innocence; (d) the accused's privilege against self-incrimination and the right to remain silent, which include the prohibition of the use of any unlawful means to obtain a confession; (e) the right to be informed promptly and in detail in a language that one understands of the nature and cause of charges; (f) the right to be tried in one's presence; (g) the right to counsel of choice; (h) the right to adequate time and facilities to prepare one's case; (i) the right to call and examine witnesses; (j) the right to trial without undue delay; (k) the right to appeal before a higher tribunal established by law; and (l) the right to effective remedy, including against complaints or allegations of ill-treatment or torture during detention.

20. In reviewing the applicability and manner of enforcement of these components, UNITAD consults the State's national legislation, the status of the State's ratification of relevant international human rights instruments and its track record.

21. In line with paragraph 28 of its terms of reference, UNITAD is required to share evidence in accordance with, inter alia, United Nations policies and best practice. The Secretary-General has articulated and reiterated a policy against the sharing of evidence by United Nations accountability mechanisms for use in criminal proceedings in which the death penalty could be imposed or carried out,³ which UNITAD must take necessary measures to comply with while sharing evidence with competent authorities of Iraq or a third State.

III. Use of evidence in Iraq: modalities for the provision of evidence

22. UNITAD works continuously towards supporting the Government of Iraq, all relevant Iraqi institutions and other global efforts to ensure that ISIL (Da'esh) perpetrators can be held accountable for acts that may amount to war crimes, crimes against humanity or genocide committed in Iraq.

23. In accordance with paragraph 5 of Security Council resolution [2379 \(2017\)](#) and paragraph 19 of the UNITAD terms of reference, UNITAD duly notes that the competent Iraqi authorities are the primary intended recipients of the evidence collected by the Investigative Team.

24. Pursuant to paragraph 2 of Security Council resolution [2379 \(2017\)](#) and paragraphs 2, 19 and 26 of the UNITAD terms of reference, the evidence shall be for

Rights (16 December 1966); article 13 of the Arab Charter on Human Rights (2004); article 19 of the Cairo Declaration on Human Rights in Islam (5 August 1990); articles 3, 7 and 26 of the African Charter on Human and Peoples' Rights (June 1981); articles 5, 6 and 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (4 November 1950); articles 3, 8, 9 and 10 of the American Convention on Human Rights (22 November 1969); articles 20 (1) and 21 (2) of the statute of the International Tribunal for the Former Yugoslavia, as amended in September 2009; articles 64 (2) and 67 (1) of the Rome Statute of the International Criminal Court (17 July 1998).

³ See the reports of the Secretary-General on strengthening and coordinating United Nations rule of law activities ([A/73/253](#), para. 79; and [A/74/139](#), para. 89. See also [A/75/284](#), para. 74: "[...] the United Nations will continue to provide rule of law assistance and support whenever needed and in accordance with human rights standards [...]. This includes opposing the application of the death penalty in all circumstances. Consequently, evidence collected by United Nations accountability mechanisms should only be shared for use in criminal proceedings where the death penalty cannot be imposed."

use in fair and independent criminal proceedings conducted by competent national-level authorities.

25. For this reason, in anticipation of sharing evidence with Iraqi judicial authorities, the Investigative Team has developed and implemented several modalities for the provision of evidence, while noting that such information has not been tailored to specific prosecutions or judicial proceedings regarding individual suspects in Iraq.

A. Past and ongoing provision of information, including evidence, to the Iraqi authorities

26. Information shared so far includes but is not limited to several case briefs or reports containing an interim analysis of evidentiary material and the formulation of preliminary factual, forensic and/or legal findings in relation to specific investigations or joint case-building efforts. Such information was primarily shared with the Iraqi judiciary, and also with other relevant Iraqi authorities. In particular, UNITAD has so far shared the following information:

(a) One case brief on the financial dimension of ISIL (Da'esh) crimes – with two competent Iraqi judges;

(b) Updated lists of names of victims killed by ISIL (Da'esh) – with the Mass Graves Directorate of the Martyrs Foundation and the Medico-Legal Directorate of the Ministry of Health of Iraq;

(c) Files on the mapping of the Bir Alu Antar site – with the Medico-Legal Directorate;

(d) A Camp Speicher report containing geolocation data – with two competent Iraqi judges;

(e) A case assessment report on the development and use of chemical weapons by ISIL (Da'esh) in Tazah Khurmatu and elsewhere, shared with the Supreme Judicial Council;

(f) A comprehensive report on crimes perpetrated by ISIL (Da'esh) against women and children from all affected communities.

27. In addition, UNITAD is preparing to share the following information in the upcoming months:

(a) A case brief on the ISIL(Da'esh) treasury department (Diwan Bayt al-Mal), which will be shared in January 2024;

(b) A comprehensive analytical report on crimes perpetrated by ISIL (Da'esh) against Tikrit Air Academy personnel (Camp Speicher), which will be ready for sharing in January–February 2024;

(c) A case brief regarding crimes perpetrated by ISIL (Da'esh) against Shia Turkmen women, which will be ready in the first quarter of 2024;

(d) A series of forensic analytical reports detailing the crime scenes of ISIL (Da'esh) activities in Badush, Camp Speicher, Kuju, Mantiqah, Qani, Hardan Junction and other areas.

28. Furthermore, the Forensic Sciences Unit of UNITAD formulated a joint strategic forensic programme with the Mass Graves Directorate and the Medico-Legal Directorate setting out several joint forensic projects, involving procedures for the scientific identification of victims who died as a result of ISIL (Da'esh) crimes, the determination of the cause of death of those victims and the integrated analyses of all

physical and contextual evidence recovered from mass graves and other crime scenes. UNITAD detects mass graves using its integrated analytical approach and supports the capacity-building of the competent Iraqi authorities in scientific recovery and identification methods in this regard. The Investigative Team supports competent Iraqi experts in leveraging the value of holistic analyses of all physical and contextual information recovered from mass graves and other crime scenes and in the modern exploitation of evidence recovered therein. Since 2018, UNITAD has assisted Iraqi authorities in 65 mass grave excavations, 16 of which were conducted in 2023.

29. It should also be noted that, over the past number of years, and at the request of Iraq, UNITAD has provided support in anticipation of the adoption in Iraq of legislation that would incorporate and define, in domestic law, war crimes, crimes against humanity or genocide.

30. Moreover, UNITAD has been working closely with the Iraqi judiciary to prepare joint case files on perpetrators residing abroad, which include evidence and information contributed by both the Investigative Team and the competent Iraqi courts. This work has been coordinated with the Supreme Judicial Council and was welcomed by the judges, as it ensures that ISIL (Da'esh) perpetrators and foreign terrorist fighters, who fled Iraq, do not find safe haven in third States. The first joint case file, a common work product of UNITAD and the Iraqi judiciary, was handed over to the concerned third State in November 2023.

31. Together with the Iraqi judiciary and other relevant authorities, UNITAD stands ready to continue to discuss and develop enhanced modalities for the provision of evidence.

B. Future steps and recommendations for the provision of evidence to Iraqi authorities

32. In the context of its efforts to digitalize the evidence provided to UNITAD by competent Iraqi authorities, and to provide them with accessible and searchable digitalized evidence, UNITAD considers that it is ready to proceed with the provision of most of the evidence it currently holds, as digitalized evidence. Specific figures will be conveyed in the UNITAD road map, to be developed by 15 March 2024. This evidence refers in particular to the records collected from respective Iraqi (mostly judicial) authorities, as digitalized and organized, and any associated, shareable UNITAD work product. UNITAD will support the capacity-building of competent Iraqi authorities in storing this evidence on a secure digital database that ensures searchability and preserves chain-of-custody of evidence, in line with international criminal law standards.

33. In addition to the evidence referred to in paragraph 32 above, UNITAD has identified categories of evidence to be shared with the Iraqi judiciary in accordance with the UNITAD terms of reference, as further developed by the Investigative Team. Such categories would entail:

(a) Copies of statements and other material collected from witnesses, where consent is provided for the sharing of the evidence, and with any redactions, such as the withholding of identifying information, where this is required by the witness, as well as the withholding of other information, stemming from applicable non-disclosure conditions;

(b) Copies of records provided by authorities of third States or international organizations, where consent is provided for the sharing of such records, and with any redactions stemming from applicable non-disclosure conditions;

(c) Copies of material collected from non-governmental and civil society organizations, where consent is provided for the sharing of the material, and with any redactions stemming from applicable non-disclosure conditions;

(d) Material collected from the media and other online open sources;

(e) Copies of reports and statistics generated by UNITAD, with any redactions stemming from applicable non-disclosure conditions.

34. UNITAD recommends the launching of an evidence-sharing process with the Iraqi judiciary. The Iraqi judiciary and UNITAD, with the coordination of the National Coordinating Committee, would set up a Joint Committee for Evidence Management to facilitate:

(a) The establishment of procedures for the preservation, storage (including digitalization) and provision of the evidence;

(b) The capacity-building among the relevant investigative authorities with regard to the management of evidence databases in order to document chain of custody and ensure forensic integrity, and to effectively manage and exploit the processed and enriched information that UNITAD provides to the Government of Iraq;

(c) The establishment of procedures for the provision of, and conditions for future use of, evidence.

35. Once the Joint Committee has facilitated the above-mentioned procedures, UNITAD could begin the provision of evidence through the Joint Committee. In this process, UNITAD stands ready to provide capacity-building, in line with the UNITAD terms of reference, with a view to assisting the competent Iraqi authorities in ensuring that the evidence provided is preserved, stored and used in accordance with international standards. That approach is in line with the view conveyed by the Chair of the National Coordinating Committee that the capacity-building and support the Team is providing to Iraqi authorities must not only continue, but must also be intensified so as to ensure that national capacities remain sustainable and operational over the long term. The competent Iraqi authorities would retain authority to decide on the future use within Iraq of the evidence shared with them in line with the conditions for future use of evidence agreed on within the Joint Committee.

36. Until the end of its mandate, UNITAD would retain and preserve its complete evidentiary holdings and continue to share evidence with third States through the modalities agreed upon with the Government of Iraq, following the request from the Security Council in its resolution [2697 \(2023\)](#), and in line with the UNITAD terms of reference.

37. As a next practical step, the Investigative Team intends to incorporate and elaborate on these practical steps in the road map, to be developed by 15 March 2024, in consultation with the Government of Iraq as requested by the Security Council in its resolution [2697 \(2023\)](#).

38. Moving forward, the Investigative Team aims to ensure that the evidence holdings remain integral, accessible and usable for continued accountability, including judicial proceedings. The Investigative Team will continue to provide capacity-building to support national capacities in Iraq towards that goal.