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Implementation of paragraph 4 of Security Council resolution 2107 (2013)

Thirty-ninth report of the Secretary-General

I. Introduction

1. The present report, submitted pursuant to paragraph 4 of Security Council resolution 2107 (2013), covers developments pertaining to missing Kuwaiti and third-country nationals and missing Kuwaiti property, including the national archives, since my previous report, dated 26 September 2023 (S/2023/698).

II. Recent activities with regard to the repatriation and return of all Kuwaiti and third-country nationals or their remains

2. The United Nations Assistance Mission for Iraq (UNAMI) attended, in its observer capacity, the 127th and 128th meetings of the Technical Subcommittee of the Tripartite Commission, which were held in Baghdad on 10 and 11 October 2023 and in Kuwait City on 12 December 2023, respectively. On 14 December, UNAMI attended the fifty-sixth meeting of the Tripartite Commission in Kuwait City, at which the role of UNAMI as an observer of the Commission was renewed. At the meetings, the members of the Tripartite Commission provided updates on their efforts to identify and explore potential burial sites of interest. Those efforts continue to rely on voluntary witness testimony and analysis of satellite and aerial imagery, as well as field missions.

3. During the reporting period, the International Committee of the Red Cross (ICRC) and the Ministry of Defence of Iraq continued their efforts to conduct joint analysis of available commercial satellite imagery and aerial imagery provided by the United States of America for the identification of four potential burial sites in Iraq, including in Samawah (Tall al-Shaykhiyah and Faydat al-Azayir), Karbala' and Khamisiyah, and of available imagery of four sites in Kuwait based on coordinates provided by the United States and the United Kingdom of Great Britain and Northern Ireland. The United States stated that it was still looking into the request for new imagery for the four sites in Iraq. Kuwait requested support from the United States in reviewing the available information from a visit to Faydat al-Azayir conducted by the United States Army and a technical team from Kuwait in 2003 on the basis of witness testimony or any data that could assist in locating the remaining burial site in the area. The United States expressed its commitment to gathering additional information on the potential burial site.



4. Regarding the sites in Kuwait, ICRC and Iraq continued to analyse available satellite and aerial imagery provided by the United States. At the 127th meeting of the Technical Subcommittee, the United States reiterated its commitment to providing additional imagery, exploring the possibility of expanding the call for witnesses among United States veterans and giving ICRC access to its archives.

5. As no additional information on the naval base in Kuwait was available, it was agreed at the 128th meeting of the Technical Subcommittee that the item would be removed from the agenda of subsequent meetings until new information was obtained.

6. At the 127th meeting of the Technical Subcommittee, Iraq reported that the security committee, which had been established by the Prime Minister of Iraq to support efforts to locate missing Kuwaiti and third-country nationals or their remains, had interviewed the main witness of the potential burial site in Samawah (Tall al-Shaykhiyah). On the basis of the main witness's testimony and the available imagery analysis, the Ministry of Defence of Iraq stated its intention to visit the presumed location of the fourth burial site in Samawah with a view to assessing whether to conduct an invasive or non-invasive survey of the site. ICRC expressed its intention to participate in the visit, contingent upon an assessment of weapon contamination in the area and the security situation. At the 128th meeting of the Technical Subcommittee, Kuwait expressed concern that progress in locating the presumed fourth burial site in Samawah had been stalled. Kuwait reiterated that the Governor of Muthanna was believed to have information on the location of the presumed site and called for greater efforts to follow up with him and seek additional witnesses without further delay. Kuwait recommended that timelines be set for such activities as collecting witness testimonies, conducting field surveys and requesting satellite imagery.

7. With regard to the Karbala' site, Iraq continued to search for potential witnesses, including persons who had previously worked with the main witness, who was deceased. Kuwait reiterated the importance of expanding the search for additional witnesses to Governorates such as Basrah, particularly for the identification of former security officers who might have information about potential detention and execution sites.

8. With regard to the Khamisiyah site, Iraq has continued its efforts with the Danish authorities to locate the witness, previously reported to be in Denmark, who had voluntarily contacted ICRC stating that he had no information on the site. Iraq, through its security committee, continued to seek the assistance of a relative of this witness to encourage them to provide information they might have. At the 128th meeting of the Technical Subcommittee, ICRC reported that a witness, an Iraqi national who had been engaging with the Technical Subcommittee since 2005, had changed their original statement and now denied that the witness reported to be in Denmark had any information about the burial site. Kuwait expressed disappointment over the recantation of the witness's original statement, noting that the 18-year search effort for the potential Khamisiyah site had relied significantly on information provided by that key witness. Kuwait further noted that the recantation raised serious questions about the witness's credibility and, accordingly, requested a re-examination of all information provided to date by the witness. Iraq acknowledged the concerns expressed by Kuwait and noted that the security committee would meet again with the witness and re-examine the entirety of the information provided to the Technical Subcommittee since 2005. Iraq and ICRC also agreed to continue to search for other individuals who might possess additional information on the potential site.

9. On the subject of the Mahawil site, it was agreed that the Ministry of Defence of Iraq would conduct its excavation works in area 1 with ICRC in February 2024.

10. On 8 October, following extended discussions, Iraq transferred to Kuwait, through ICRC, 22 genetic profiles of human remains that were discovered in Najaf in

April 2022 in the electropherogram with data points format requested by Kuwait. On 9 October, a technical consultation was held prior to the 127th meeting of the Technical Subcommittee to address technical issues relating to the transfer of the genetic profiles. The Technical Subcommittee adopted the general recommendations presented by ICRC for the sharing of genetic data under the framework of the Tripartite Commission. During the 128th meeting of the Technical Subcommittee, Kuwait acknowledged the completion of the process of identifying the 22 genetic profiles, which had yielded no positive matches. Kuwait provided technical information on the process to ICRC and encouraged Iraq to promptly share any additional DNA profiles in accordance with the arrangements adopted by the Technical Subcommittee at its 127th meeting.

11. Regarding the Muradiyah site in Diyala Governorate, ICRC reported that the topographic map previously produced by Iraq was not sufficiently detailed to help analyse the site. It was agreed that Iraq, with support from ICRC, would develop a new topographic map and pursue additional technical avenues with a view to gathering more information on the site.

12. Regarding the case of a missing Saudi national alleged to be held in Nasiriyah prison in Iraq, Saudi Arabia is still considering a proposal by Iraq to facilitate a visit by a witness to Nasiriyah prison.

13. The members of the Technical Subcommittee decided to cross-check witness testimony with information provided by United Kingdom authorities in relation to the case of an Iraqi national under investigation by the Metropolitan Police Service of London for having allegedly ordered the execution of 35 Kuwaitis in 1990, who were reportedly buried in the Jahra' area in Kuwait. The case had been reported by *The Sun* newspaper. At the request of Kuwait, ICRC indicated that it would pursue contact with a potential witness who might have information on the case.

14. During the reporting period, there were no developments on the Salman Pak site (the cemetery). Following a joint visit in July 2023, ICRC and Iraq agreed to discuss the recommendations by ICRC to develop a topographic map of the cemetery and seek more credible information on the site from local authorities and witnesses.

15. Iraq reported to the Technical Subcommittee that witnesses had overcome their reluctance to provide information on the site in Tuwithah, Baghdad Governorate, and that the national authorities had conducted joint visits to the site with ICRC in August and November. Iraq stated that additional fieldwork would be necessary to determine whether a burial site existed at that location.

16. The Ministry of Defence of Iraq continued to issue calls for witnesses through its official website and had started to regularly broadcast calls through radio networks. Iraq reiterated its commitment to providing financial rewards and immunity from prosecution to any person who could provide information on burial sites. ICRC stated that it would consider a proposal by Kuwait to explore the possibility of broadcasting international calls for witnesses outside Iraq.

17. In line with the road map for the implementation of the review project recommendations, at the 128th meeting of the Technical Subcommittee, ICRC presented a standard operating procedure to guide various stages of fieldwork activities. Kuwait requested an exemption from Iraqi law to allow for the direct transfer to Kuwait of human remains believed to be Kuwaiti nationals. Iraq agreed to seek advice from the Supreme Judicial Council on the matter. ICRC agreed to work further with Iraq and Kuwait to finalize the procedure.

18. As part of the implementation of the review project recommendations, at the 128th meeting of the Technical Subcommittee, ICRC presented a web-based platform for managing information on missing persons, including Kuwaiti and third-country

nationals, which would be made accessible to all members of the tripartite mechanism.

19. At the fifty-sixth session of the Tripartite Commission, Kuwait announced a donation to ICRC to review available technologies and to determine those that were most appropriate for the search for burial sites containing the remains of Kuwaiti and third-country nationals and for searches within identified sites.

20. On 29 October, the Special Representative of the Secretary-General for Iraq met in Kuwait with the Minister for Foreign Affairs of Kuwait and other government officials, with whom she discussed the most recent developments regarding the issue of missing Kuwaiti and third-country nationals and property and reiterated the support of UNAMI for that important issue.

21. On 2 November, the Deputy Special Representative for Political Affairs and Electoral Assistance of UNAMI met with the Adviser to the Prime Minister of Iraq on Foreign Relations. The discussion focused on the efforts made by Iraq, with continuous support from UNAMI, in relation to the repatriation of all Kuwaiti and third-country nationals or their remains and the return of Kuwaiti property, including the national archives.

22. On 12 September and 5 December, the Deputy Special Representative met with the Ambassador of Kuwait to Iraq to discuss the various efforts under way to make progress in several cases of missing persons and advance the work on the return of missing property.

23. On 6 December, the Deputy Special Representative met with the Director of the Human Rights Directorate of the Legal Department of the Ministry of Defence of Iraq. The discussion focused on developments relating to missing Kuwaiti and third-country nationals, including the identification of witnesses for potential burial sites.

24. The Deputy Special Representative participated in the 127th and 128th meetings of the Technical Subcommittee, on 10 and 11 October in Baghdad and on 12 December in Kuwait City, respectively. On 13 December, he met with the Deputy Minister for Foreign Affairs and the Assistant Minister for Foreign Affairs for Prisoners of War and Missing Persons Affairs of Kuwait. On 14 December, he participated in the fifty-sixth meeting of the Tripartite Commission in Kuwait City. The discussions focused on ways to overcome obstacles and speed up the work for the identification and repatriation of additional missing persons and for the retrieval of missing Kuwaiti property.

III. Recent activities with regard to the return of Kuwaiti property

25. During the reporting period, there were no new developments regarding the return of Kuwaiti property, including the national archives.

IV. Observations

26. I welcome the continued efforts by the members of the Tripartite Commission under the leadership of ICRC to search for, identify and return additional remains of missing Kuwaiti and third-country nationals. Their sustained efforts remain important to achieving results on this important issue.

27. I welcome the technical arrangements between Iraq and Kuwait on the sharing of DNA data and the additional technological advances made by Kuwait and ICRC to

further aid the search for missing persons. It is critical that when human remains are recovered, the related families are informed of any DNA matches as soon as possible.

28. I commend the commitment of the Government of Iraq, specifically the Ministries of Defence and Foreign Affairs, in pursuing witness testimony and carrying out other activities to identify potential burial sites. The broadcast of calls for witnesses to come forward and other measures to encourage witnesses to share information are important initiatives. At the same time, I urge the Government of Iraq to redouble its efforts, in particular those aimed at identifying the location of the fourth burial site in Samawah and re-examining witness information on the Khamisiyah site, where many missing persons are believed to be buried.

29. I also reiterate my call upon the Government of Iraq to continue its search for the remaining missing Kuwaiti property, including the national archives. Further steps to make tangible progress in locating and returning such property are much needed.

30. The leadership of ICRC and its assistance to all parties of the Tripartite Commission continues to be essential for making progress with regard to this important humanitarian file. I thank the members of the Tripartite Commission for the satellite imagery already provided and encourage them to promptly share the additional imagery required to assist the search for potential burial sites.

31. My Special Representative for Iraq, my Deputy Special Representative for Political Affairs and Electoral Assistance and UNAMI staff remain strongly committed to supporting the efforts of the Governments of Iraq and Kuwait, the Tripartite Commission and other partners in advancing the work of this important mandate.
