

REPARATIONS FOR VICTIMS OF ISIL CREATED CONFLICT IN IRAQ

A FOLLOW-UP REPORT TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE ON IMPLEMENTATION OF
RECOMMENDATIONS ON CONFLICT-RELATED SEXUAL VIOLENCE

SUBMITTED BY:

JIYAN FOUNDATION FOR HUMAN RIGHTS

&

COALITION FOR JUST REPARATIONS

ERBIL, IRAQ ON 26TH JUNE 2023

The Jiyan Foundation for Human Rights is a non-profit organization promoting the mental well-being, physical rehabilitation, and social reintegration of survivors of violence, torture and trauma in Iraq. Today the Jiyan Foundation runs a network of eleven trauma rehabilitation centers across northern Iraq, including special departments for traumatized women and children and a clinic for Yazidi women who survived ISIS captivity. Clients receive free-of-charge psychotherapeutic treatment, medical care and socio-legal counselling regardless of ethnicity, religion, gender or political affiliation. In addition, the Jiyan Foundation seeks to protect survivors of human rights violations and prevent future acts of abuse through professional training, human rights education, public awareness-raising and political advocacy.

Coalition for Just Reparations (C4JR) is an alliance of Iraqi NGOs calling for comprehensive reparations for civilian victims of atrocity crimes perpetrated during the ISIL conflict in Iraq. C4JR uses Iraqi law and international human rights law to support reparation claims of survivors and encourage Iraqi authorities to meet their obligation to provide reparations.

Introduction

In its Concluding observations¹ on the second periodic report of Iraq the Committee against Torture requested from Iraq to, by May 13 2023, report back and indicate the measures taken to implement recommendations dealing with, inter alia, conflict-related sexual violence (CRSV). The said recommendations on CRSV are as follows:

21. **The State party should strengthen its efforts to rescue the victims still in Da'esh captivity and investigate and prosecute all acts of conflict-related sexual violence. It should ensure that victims are able to effectively and expeditiously claim and receive all relevant forms of redress, which include comprehensive, inclusive and survivor-centred rehabilitation programmes and guarantees of non-repetition. To that end, the State party should ensure the effective and timely implementation of the Yazidi Survivors Law by: (a) allocating sufficient funds; (b) enhancing the processing of claims; (c) ensuring the active participation of women from conflict-affected communities in its implementation, for example, through consultation or inclusion as staff; and (d) conducting regular capacity-building for all staff working on its implementation, including on ethical and trauma-informed engagement with victims. The State party should also guarantee the victims' right to participate in criminal proceedings effectively, accompanied by safeguards to avoid stigmatization and retraumatization, and ensure that specialized rehabilitation services are promptly made available to all survivors.**

As Iraq up until the present moment, to the best of our knowledge, did not provide requested information to the CAT, C4JR in good faith provides information at its disposal to inform CAT members on the state of implementation of its recommendations to Iraq concerning CRSV.

Context

The armed conflict that spread across Iraq with the advent of the self-declared Islamic State in Iraq and the Levant (ISIL) at the beginning of 2014 accelerated the already existing spiral of violence to an unprecedented level.²⁰ Gross violations of International Human Rights Law, International Humanitarian Law, and International Criminal Law were well documented by the UN Assistance Mission for Iraq (UNAMI) as well as other actors such as Human Rights Watch, Amnesty International, and Minority Rights Group. The Yazidi community, together with other minorities (Christians, Shabak, Turkmen), were especially targeted by ISIL.

The passing of the Yazidi [Female] Survivors Law (YSL)² by the Government of Iraq (GoI) on March 1, 2021 marked an important milestone in Iraq's post-conflict recovery period, as it promises to deliver long-awaited relief not only to Yazidi, Shabak, Turkmen and Christian women that ISIL subjected to conflict-related sexual violence (CRSV)³, but also, to men and women from these communities that survived mass killings⁴ as well as captured Yazidi children.⁵ It is also one of the very few precedents of states taking deliberative action to specifically address the rights and needs of survivors of CRSV. The YSL mandates a number of critical state-sponsored reparative measures including financial support⁶; medical and

¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/329/44/PDF/G1932944.pdf?OpenElement>

² Yazidi [Female] Survivors Law, No.8. March 1, 2021. Available at: <https://c4jr.org/ysl>

³ Indicated beneficiaries are defined as women and girls who survived "sexual violence, kidnapping, sexual slavery, selling her in slavery markets, separating her from her family, forcing her to change her religion, forced marriage, pregnancy and forced abortion or inflicting physical and psychological harm to her by ISIS since the date 3.8.2014 and was freed afterwards" YSL, Art. 1, Art. 2 Para 1, Art. 2, Para2.

⁴ YSL, Art. 2, Para 4.

⁵ YSL, Art. 2, Para 3.

⁶ Amount not less than 800.000 IQD which amounts to approximately 570 EUR, YSL, Art. 6, Para 1.

psychological care⁷; the provision of land, housing, education and a quota in public sector employment. Moreover, it officially recognizes that ISIL committed genocide and crimes against humanity against Yazidi, Christian, Turkmen and Shabak minority groups,⁸ and mandates memorialization,⁹ the search for those still in captivity, opening of mass graves, identification of remains and their return to the families¹⁰ and calls Iraqi institutions to ensure that perpetrators of genocide and crimes against humanity are held accountable¹¹. In addition, the associated bylaws expanded these obligations even further, including, for instance, an obligation for government agencies to develop specialized curricula on the ISIL conflict designed to promote peaceful coexistence and the renunciation of violence. Finally, the YSL explicitly stipulates an objective to, inter alia, prevent the recurrence of the violations that occurred against the indicated minorities.¹²

Two bodies, both established under the auspices of the Federal Ministry of Labour and Social Affairs (MoLSA), are envisaged to implement the YSL: General Directorate for Survivors Affairs (GDSA) and the Committee authorized to review and decide on applications and appeals. Whereas GDSA is mandated to coordinate outreach, application, and verification processes as well as the distribution of services,¹³ the Committee is tasked with verifying the submitted applications within 90 days from the moment of the submission¹⁴ and determining the amount of the monthly salary according to the material or moral damage suffered by the eligible survivor.¹⁵

1. Efforts to rescue the victims still in ISIL captivity

Only sporadic rescue missions to return ISIL captives were conducted, with poor communication with the families and affected communities.

Though several actions have been made to identify and safely return survivors during the past year,¹⁶ there are still more than 2500 missing predominately from the Yazidi community. Families of the missing are not systematically involved and briefed on the search and rescue efforts. There are allegations that some family members realized that their missing relatives were rescued and brought to safety via social media posts.

Recommendation: Intensify efforts to locate, rescue, safely return and reunite missing persons with their families. Regularly consult and brief survivors on efforts taken to that end.

2. Impediments to accountability for International Crimes Committed by ISIL members

Lack of an appropriate legal framework to try international crimes impedes efforts to end impunity for ISIL committed atrocities in Iraq. It follows that no criminal accountability mechanism for international crimes committed by ISIL in Iraq is in sight. The Alliance of Iraqi NGOs proposes concrete measures enabling the effective participation of survivors in the forthcoming criminal proceedings.

National legislation incorporating international crimes into Iraq's legal system which would enable criminal prosecutions of ISIL members for atrocity crimes has, as of yet, not been enacted, despite continuous engagement¹⁷ of the UN Investigative Team to Promote Accountability for Crimes Committed by ISIL (UNITAD) with competent Iraqi authorities. Due to indicated lack of appropriate legal framework, concerns about the fairness of criminal proceedings and the fact that Iraq still adheres to the death penalty,

⁷ YSL, Art. 4. Para. 2 and Art. 5. Para. 6.

⁸ YSL, Art. 7.

⁹ YSL, Art. 8.

¹⁰ YSL, Art. 5. Para. 8.

¹¹ YSL, Art. 9. Para. 1.

¹² YSL, Art. 4. Para. 2.

¹³ YSL, Art. 5; YSL bylaws, Art. 2-3.

¹⁴ YSL, Art. 10. Para. 2.

¹⁵ YSL bylaws, Art. 8. Para. 5.

¹⁶ <https://www.rudaw.net/english/kurdistan/030620231>

¹⁷ https://www.unitad.un.org/sites/www.unitad.un.org/files/general/unitad_10th_report_to_the_unsc-eng.pdf

UNITAD refrains from sharing evidence regarding potential violations of international criminal law with Iraq's authorities. Finally, it follows that no accountability avenue or mechanism for ISIL's international crimes in Iraq has been established. A group of Iraqi NGOs allied into the Coalition for Just Reparations (C4JR)¹⁸ developed a Position Paper on an ISIL Accountability Mechanism in Iraq¹⁹ outlining basic legal, policy and practical contours of a mechanism to bring ISIL members responsible for genocide, war crimes and crimes against humanity to justice. This Position Paper was the outcome of ten months of intensive discussions between C4JR members, survivors and experts aimed at identifying principles on which the long overdue criminal accountability mechanism for ISIL should be based. For the C4JR enabling effective participation of survivors in any accountability process, their safety and well-being is of paramount importance.

Recommendation: Enact appropriate legal framework on international crimes, incorporate survivor friendly features into the prospective criminal proceedings against ISIL members, conduct fair trials, and ensure that the capital punishment cannot be rendered.

3. Rehabilitation services

Despite the advances in making available a provisional MHPSS referral system, more effort is needed to adequately meet the rehabilitation needs of ISIL survivors. Psychological and medical services are not enough, as survivors require holistic support consisting of specialist psychological, medical, social, educational, vocational and legal rehabilitation components to rebuild their lives.

C4JR commends signing of an Agreement of Cooperation between the GDSA and eight Iraqi NGOs on March 26, 2023 on the establishment and activation of a formal referral system through which YSL beneficiaries can receive referrals for mental health and psychosocial support (MHPSS) services in their areas of residence. This referral system will function as the main framework through which beneficiaries of YSL can access MHPSS services, until the official MHPSS institutional framework is properly equipped and effective. It is our understanding that GDSA will establish collaboration with the Ministry of Health in order to set up a specialized psychological and psychiatric facility for YSL beneficiaries.²⁰ However, rehabilitation as reparation must be specialist and holistic to meet the range of rehabilitation needs of survivors. Therefore, rehabilitation for survivors should include specialist psychological, medical, social, educational, vocational and legal rehabilitation components. Currently, NGOs and international organizations are offering a patchwork of services, mostly some aspects of psychosocial and legal support. This is, however, insufficient, uncoordinated and depending on funding availability (not sustainable). According to the UN Committee Against Torture: "Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society".²¹ It goes without saying that this cannot be achieved through MHPSS services alone.

Recommendation: Intensify efforts to set up a viable state-sponsored system for providing quality medical, psychological and other rehabilitation services in line with best practices and within reach of survivors and their families.

¹⁸ <https://c4jr.org/news-and-updates>

¹⁹ https://c4jr.org/wp-content/uploads/2022/08/Final-position-paper-ISIL-mechanism-ENG_FINAL_Hyperlinks.pdf

²⁰ <https://iraq.iom.int/news/toward-comprehensive-rehabilitation-mental-health-service-referral-system-launched-genocide-survivors-iraq>

²¹ Committee against Torture, General comment No. 3 (2012), Implementation of article 14 by States parties, para. 11.

4. Collaboration between federal and regional authorities in Iraq on YSL implementation

Lack of effective collaboration between KRG and GoI is impeding the swift and survivor-centric implementation of the YSL. Effective implementation of such a complex and far-reaching legislation requires continuous commitment and putting survivors rights beyond the current political discourse.

In addition to the application process, setting up holistic rehabilitation services and payment of financial compensation, proper YSL implementation necessitates providing access to education, job opportunities, land and housing, memorialization, search for those still missing etc. This requires close collaboration between the Government of Iraq (GoI) and Kurdistan Regional Government (KRG). Although both GoI and KRG respectively, voiced their unwavering commitment to YSL implementation, it appears that collaboration between the KRG and GoI has not been satisfactory in that they failed to establish effective collaboration pathways aimed at sharing investigative documents and collected DNA samples. Moreover, GDSA sub-office in Duhok is still not established, despite the fact that the majority of eligible Yazidi survivor reside in the vicinity. It is paramount that all Iraqi authorities work together to propel the application and verification process as well as access to services, without putting an undue burden on survivors.

Recommendation: KRG and GoI should enhance cooperation by, for example, establishing GDSA sub-office in Dohuk, sharing and mutually recognizing court documents and collected DNA samples to facilitate swift access to application, verification and distribution of reparative services;

5. Adequate and sustainable funding for effective and timely implementation of the YSL

In more than two years since the YSL was passed, the financial resources required to establish the GDSA and deliver benefits to survivors have been allocated on an emergency basis and in a non-transparent manner. Funds provided to date are not sufficient to sustain administrative costs as well as long-term reparation measures.

On June 8, 2022 the Iraqi parliament passed the Emergency Law for Food Security and Development (Emergency Law) which allows the government to use public funds for urgent food security and development needs.²² 25 billion IQD was allocated for financing the implementation of the YSL.²³ Minister of Labour and Social Affairs on February 11, 2023 indicated that 16 billion IQD, allocated via the Emergency Law, is deposited at the MoLSA bank account awaiting to be distributed for salaries of survivors.²⁴ After protracted negotiations Budget Law for 2023-2025 has been passed in the Iraqi parliament on June 12, 2023. It is at this point not clear whether a budget line dedicated to YSL funding withstood the negotiation process and whether and in what form was it included in the final version of the Budget Law. Information on a concrete amount of funds envisaged is also not available. One needs to budget not only the costs of monthly payments, but also a range of administrative costs as well costs related to the delivery of other YSL envisaged reparative measures (rehabilitation, land, housing, education etc.)

Recommendation: Secure regular and adequate financing of YSL implementation through annual budgetary allocations based on a realistic calculation of costs for the upcoming financial year.

²² Iraqi parliament passes urgent food security bill, Al-Monitor, June 2022. Available at: <https://www.al-monitor.com/originals/2022/06/iraqi-parliament-passes-urgent-food-security-bill#ixzz7WBXdEHQI>

²³ Yazidi survivors and the displaced issue are at the core of our interests, KDP Spokesperson, Shafaq News, June 2022. Available at: <https://shafaq.com/en/Kurdistan/Yazidi-survivors-and-the-displaced-issue-are-at-the-core-of-our-interests-KDP-Spokesperson>

²⁴ Baghdad Today News, February 11, 2023. Available at: <https://baghdadtoday.news/212599-يكشف-العمل-وزير-الإيزيديات-التأجيات-منحة-صرف-تفاصيل>

6. Restricted access to the YSL application process

Despite the tangible progress in the YSL application process, thousands remain unable to realize their rights due to a new requirement which pressures survivors to file criminal complaints and submit investigation documents with their applications. The introduction of this extra-legal requirement is not in line with the letter and spirit of the YSL, international standards and best practices.

Two years into the YSL implementation C4JR welcomes that application process was officially launched on September 7, 2022²⁵ It is also encouraging that, as of June 2023, several thousands of survivors applied whereas more than 620 applications have been approved. These survivors have received master cards through which they can withdraw their monthly compensations instalments. However, despite the initial indications that the Committee authorized to decide on applications will adopt a relaxed evidentiary standard where official court documents, though accorded due evidentiary weight, will not be considered a prerequisite for a positive decision,²⁶ the practice of the Committee proved otherwise. Namely, two months into the application process, survivors started being asked to first file a criminal complaint with an anti-terrorism court in Federal Iraq and submit relevant investigation documents together with their YSL application. The applications of survivors who do not submit investigation documents will be rejected, regardless of the plethora of pre-existing evidence collected by official bodies and NGOs and the possibility for the Committee to interview survivors. This requirement is not in line with both the letter or the spirit of the YSL²⁷ and international standards and best practices.²⁸ It may also effectively prevent thousands of eligible survivors from accessing their rights under the YSL due to fear of stigma, personal safety, and risk of self-incrimination (Yazidi children forcibly conscripted by ISIL). Such requirements are also prohibitive for thousands of eligible survivors residing outside of Iraq.

Recommendation: Stop the practice of asking survivors to submit investigation documents together with their YSL application and evaluate applications submitted against the standard laid out in the YSL and its bylaws.

7. Effective participation of women from conflict-affected communities in YSL implementation

In spite of limited collaboration and exchange between survivors and conflict affected communities on the one side and competent authorities on the other, there is a lack of formal structures and practices conducted to that effect.

Whereas it is commendable that GDSA Director General is, as envisaged by the YSL, a Yazidi women, and that survivors are being invited to participate at GDSA organized events, C4JR is aware neither of a formal consultation process with survivors nor of inclusion of women from conflict-affected communities in its implementation.

Recommendation: Regularly consult and, to the extent possible, hire as GDSA staff survivors from all four communities during all stages of YSL implementation process;

²⁵ See an official notification on launch of the YSL application process at the website of the General Secretariat for the Council of Ministers. Available at <https://cabinet.iq/ArticleShow.aspx?id=12399&lang=E>

²⁶ Sherizaan Minwalla, In Iraq, Minority Survivors of ISIS Genocide Cautiously Anticipate Reparations, WMC, Women Under Siege, August 26, 2022. Available at: <https://womensmediacenter.com/women-under-siege/eight-years-after-the-genocide-survivors-in-iraq-cautiously-anticipate-reparations>

²⁷ <https://c4jr.org/0604202327288>

²⁸ <https://static1.squarespace.com/static/5ff7d9f4dd4cdc650b24f9a4/t/6437ce07f3422c64d3942be5/1681378826224/YSL+Statement+13.04.2023.pdf?fbclid=IwAR1dV3vm0zsNtj292x8KZIdB3TXDxdnM-n4xDMfVlloUyv76hulKjKmCqXg>

8. Capacity-building for staff working on YSL implementation

Aside from IOM led efforts to facilitate outreach and capacity building, no systematic and structured capacity building for GDSA staff has been established

IOM-Iraq, in addition to playing an important role in the adoption and implementation of the YSL, has, since 2021, been providing capacity building to NGOs on how to conduct YSL awareness raising sessions. By mid 2022, the focus of the trainings shifted to the YSL application process and how to effectively assist survivors in that regard. By the end of 2022, IOM-Iraq had trained 22 NGOs whereas the total number of individuals trained was 53. Likewise, IOM-Iraq has also trained GDSA staff on the YSL, implementing regulations, and the application process, as well as survivor-centred approaches to dealing with survivors.²⁹ Following the capacity building, GDSA, with the support of IOM-Iraq and local CSOs, conducted more than a dozen YSL awareness raising sessions in the field (IDP camps, Sinjar, Tal Afar, Bashiqa, Dohuk). In some of these events, members of Survivors Voices Network (local association of survivors) participated by presenting the YSL to the target audience.³⁰ This being said, C4JR is of the opinion that regular mandatory training on ethical and trauma informed engagement with survivors, including basic trauma understanding and awareness, confidentiality requirements, do-no- harm, and informed consent is necessary for all GDSA staff that regularly come or may come in contact with survivors or their case files.

Recommendation: Conduct regular mandatory training on ethical and trauma informed engagement with survivors, including basic trauma understanding and awareness, confidentiality requirements, do-no- harm, and informed consent for all staff working on YSL;

²⁹ <https://womensmediacenter.com/women-under-siege/eight-years-after-the-genocide-survivors-in-iraq-cautiously-anticipate-reparations>

³⁰ See Bojan Gavrilovic, More than “Ink on Paper”: Taking Stock two Years After the Adoption of the Yazidi [Female] Survivors Law, p.23, available at: <https://c4jr.org/wp-content/uploads/2023/03/More-than-Ink-on-Paper-two-years-after-YSL-adoption-report-FIN-ENG.pdf>