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Joint Submission of the International Bar Association's Human Rights Institute, Free Yezidi Foundation, Yazda, the Sinjar Academy, and the Coalition for Genocide Response and the Coalition for Genocide Response to the 48th session of the Human Rights Council's Universal Periodic Review Working Group

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I. Introduction

1. This report, produced by the International Bar Association's Human Rights Institute (IBAHRI), Free Yezidi Foundation, Yazda, the Sinjar Academy, and the Coalition for Genocide Response, focuses on the atrocities perpetrated against the Yazidis in Iraq and their ongoing struggle for recognition, justice and accountability.

2. Established in 1947, the International Bar Association (IBA) is the world's leading international organisation of legal practitioners, bar associations and law societies. The IBAHRI works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

3. The Free Yezidi Foundation (FYF) was established in August 2014 in response to Daesh's genocide against the Yazidi community in Iraq. FYF is an apolitical, Yazidi-led, and women-led nonprofit organisation dedicated to supporting the Yazidi and other religious and ethnic minority communities through advocacy, justice, mental health and psychosocial support, legal aid, education, and livelihood programs. The organisation places a particular emphasis on aiding women, girls, and survivors of sexual and gender-based violence (SGBV). FYF began its mission in 2015 by establishing a Women's Centre and Children's Centre in Khanke Internally Displaced Persons (IDPs) camp in Duhok, Iraq. Since then, FYF has provided vital programs for women, youth, and survivors. These initiatives include opening and operating an Enterprise and Training Centre (ETC) and bakery, assisting survivors in accessing reparations under the Yazidi Survivors Law (YSL), and advocating for justice for victims of genocide and conflict-related sexual violence. FYF's humanitarian and development efforts are grounded in the principles of empowerment and dignity, aiming to equip beneficiaries with the tools they need to sustainably improve their lives and secure a brighter future.

4. Yazda is a global community-led non-profit organisation which was established three weeks after Daesh started its genocidal campaign against the Yazidi community in Sinjar, Iraq. Since then, Yazda has worked to prevent future genocides against the Yazidi and other minority groups and to support the recovery of communities affected by the 2014 genocide committed by Daesh. To achieve these goals, Yazda employs a range of humanitarian, sustainable development, justice, advocacy, and cultural preservation initiatives and projects. Through these efforts, Yazda aims to protect vulnerable communities from harm and to help survivors rebuild their lives with dignity and respect.

5. Sinjar Academy is a modern academy in northern Iraq providing state-of-the-art educational services to the population.

6. The Coalition for Genocide Response is a UK-based charity that works towards a comprehensive response to genocide and other international crimes, engaging the UK, regional and international actors.

II. Genocide against the Yazidis

7. On 3 August 2014, Daesh (also known as ISIS, ISIL, or IS) launched a devastating attack on Sinjar, inflicting widespread atrocities on the Yazidi community. The terror group killed thousands, predominantly targeting men and elderly women, while abducting boys to forcibly conscript them as child soldiers. Thousands of women and girls were kidnapped and subjected to sexual slavery and violence. To this day, over 2,600 Yazidi women and children remain unaccounted for.

8. Daesh's crimes included murder, enslavement, deportation, and forced displacement. The group systematically imprisoned, tortured, abducted, exploited, abused, raped, and coerced women into marriages across the region. In the days following the Sinjar assault, Daesh expanded its campaign of terror to other communities in the Nineveh Plains, causing 120,000 people to flee in the dead of night in a desperate bid to save their lives.

9. The atrocities perpetrated by Daesh against the Yazidis, Christians, and other religious and ethnic minority communities have been recognised as meeting the legal definition of genocide by the United Nations and several countries (both governments and parliaments). In January 2016, the Parliamentary Assembly of the Council of Europe (PACE) passed a resolution making this determination in relation to the Yazidis, Christians and other religious or belief minorities.[i] This was followed by a similar recognition by the European Parliament in February 2016.[ii] In March 2016, the US State Department announced the conclusion of its assessment and recognised the atrocities as genocide.[iii] In April 2016, the UK House of Commons unanimously recognised the atrocities against the Yazidis and other religious and ethnic minority communities as genocide.[iv] Similarly, over a dozen Parliaments have made this determination, in addition to the governments of Canada and the Netherlands. In March 2021, Iraq enacted the Yazidi Survivors Law,[v] which included the same critical determination in Article 7. In August 2021, UNITAD (United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL) officially recognised the genocide against the Yazidi people committed by Daesh. This recognition was based on extensive investigations and the collection of evidence by UNITAD. In August 2023, the UK Government formally recognised the atrocities against the Yazidis as genocide, following the findings of genocide by German criminal courts.

10. While most regions previously occupied by Daesh have now been liberated, over 2,600 Yazidi women and children remain enslaved. Despite knowing the locations of many of these individuals, efforts to rescue them have been limited. Consequently, the genocide against the Yazidis is considered as ongoing.

Missing Yazidi Women and Children

11. To this day, over 2,600 Yazidi women and children remain missing following their abduction in August 2014. Those who are still alive are assumed to have been enslaved and subjected to numerous abuses at various locations in Syria, Iraq, Turkey, and elsewhere.

12. Apart from private and individual attempts to locate and rescue those missing and the efforts of the Kurdistan Regional Government Office of Kidnapped, there has been no international effort to rescue them.

13. In June 2023, the UN General Assembly adopted a resolution establishing an Independent Institution on Missing Persons in Syria (IIMP).[vi] Because many Yazidis are believed to be held captive in Syria, several Yazidi-focused NGOs, including Yazda and FYF, made submissions to include this issue in their scope of work. However, a dedicated mechanism for the search and rescue of missing Yazidis in Iraq, including cross-border efforts, has yet to be established. Survivors and civil society organisations (CSOs) have long called for such a mechanism.

III. Justice and Accountability

14. To date, it has not been possible to pursue criminal accountability of Daesh fighters for genocide or other international crimes in Iraq, because the Iraqi penal code does not criminalise these crimes. However, there have been a large number of trials of Daesh fighters for terrorism-related offences. For instance, from January 2018 to October 2019, the Iraqi judiciary processed over 20,000 terrorism-related cases, with thousands more pending.[vii] According to reports, only one trial of Daesh members was for rape.[viii]

15. It was reported that there is difficulty in bringing prosecutions and additional prosecutions against those who have already been prosecuted for terrorism-related offences, for several reasons:

    - Iraq applies the death penalty for terrorism crimes. The UN is unable to be involved in cases where the death penalty is possible, even if there is a moratorium (as in Kurdistan), on policy grounds. Thus, evidence collected by UNITAD cannot be supplied for cases of those already prosecuted to bring additional prosecutions for rape, sexual violence and other atrocities against the Yazidis, whether in Iraqi or Kurdish courts. While according to media reports and reports from UNITAD, some evidence has been submitted to Iraq, it is unclear how the evidence, if at all, will be used in the Iraqi courts.

    - Victims/survivors in-country do not feel safe to come forward for fear of repercussions for speaking out. (Some survivors continue to be concerned about Daesh members. Some have family members who are still enslaved and are concerned about the consequences they may face. They are also afraid that the evidence they have submitted might be politicised, used to further worsen tribal

tensions or be leaked, among others).[ix]

- Many victims/survivors abroad do not feel safe, or not in a position, to return to the country to testify (or even to process their applications under the Yazidi Survivors Law).

Trials for Terror-Related Offences

16. In Iraq, all trials of Daesh members, apart from one reported in the news, have been for terror-related offences. This is problematic for several reasons.

17. Limiting Daesh prosecutions to terror-related offences excludes victims/survivors and witnesses from participating in these trials. As a result, their voices and stories remain unheard, hindering their paths to justice and their efforts to rebuild trust in state authorities. Terror-related charges fail to capture the full extent and gravity of the atrocities endured by survivor communities.

18. Reportedly, in Iraq, there has been only one prosecution and conviction of a Daesh member for rape. Ashwaq Haji Hamid Talo, a 20-year-old Yazidi woman, testified against Mohammed Rashid Sahab, who was ultimately found guilty of participating in a terrorist organisation and in the rape and abduction of Yazidi women.[x] He was given the death penalty - this is because he was also convicted of terror-related offences. According to official statements, the hope was that this conviction would encourage other survivors to come forward.[xi] However, several survivors have raised the issue that they have testified to law enforcement and are willing to testify in court, but there has been no progress with their cases. As long as terror trials are being seen as 'quicker' or 'easier' and carry the death penalty, which is a higher sentence than for rape and sexual violence, prosecutors will continue to rely on terror-related offences. Prosecution for terror-related offences only does not address the nature and scale of the crimes, and the specific targeting of the Yazidis, or women and girls.

19. To this date, the Iraqi penal code does not criminalise genocide. Several sources indicate that the proposed Iraqi legislation to criminalise international crimes is pending State Council approval and subsequent parliamentary procedures for adoption. Iraq has still not clarified publicly when it intends to pass this legislation. Even with the passage of such legislation, survivors will need guarantees, such as witness protection and assistance, and confidentiality, among others, and Iraq has not currently taken any concrete steps in that direction.

20. Prosecutions of Daesh fighters are based on the Iraqi anti-terrorism legal framework, which provides an overly broad and vague definition of terrorism and related offences, focused on 'association' with or 'membership' in a terrorist organisation, without sufficiently distinguishing between those who participated in violence and those who joined Daesh for survival and/or through coercion.[xii]

21. Furthermore, under the Iraqi anti-terrorism laws, the death penalty is mandatory for a wide range of acts that do not meet the 'most serious crimes' threshold. The death penalty is the very reason why the UN and several states cannot support Iraqi courts in prosecuting Daesh fighters. Furthermore, when individuals receive the death penalty and are executed shortly afterwards, even if there is sufficient evidence for prosecuting other crimes such as rape and sexual violence, it often becomes impractical or impossible to do so. Consequently, victims/survivors are effectively denied their opportunity to seek justice in court.

Specialised Ad-Hoc Tribunal for Daesh

22. Currently, there is no specialised ad-hoc tribunal for the crimes of Daesh in Iraq. In 2014, the Kurdistan Regional Government (KRG) established the High Committee for the Recognition against Yazidi and other Ethnic and Religious Nationalities (the High Committee).[xiii] The High Committee, recognised as a 'sub-committee' of the KRG Genocide Committee (similar to UNITAD), has sought to collect evidence in relation to crimes committed in Northern Iraq by Daesh.[xiv] The High Committee has also sought to assist the local government in providing justice for 'grave crimes,' via proposals for a new law and the establishment of a KRG criminal tribunal.[xv]

23. In April 2021, the Council of Ministers of the KRG announced its approval of a new criminal court to prosecute members of Daesh for international crimes.[xvi] However, in June 2021, the Iraqi Federal Supreme Court declared that a KRG draft law to establish a criminal tribunal for Daesh crimes in the Kurdistan Region of Iraq could not move forward on constitutional grounds. Reportedly, this is as the proposed draft law from the KRG included the *'authority to appoint non-Iraqi judges and prosecutors and the authority to impose the death penalty in addition to its jurisdiction over Iraqi citizens and foreigners.*'[xvii] While the KRG draft law criminalising international crimes and establishing a mechanism for their prosecution has been struck down, the Iraqi government has so far not acted to provide an alternative criminal accountability mechanism despite multiple calls from survivors and Iraqi-based CSOs.[xviii]

24. As confirmed in the 2022 PACE report, there is a proposal for a *'hybrid tribunal within Iraqi national courts with assistance from international experts, (...) but this has not yet received the necessary political support from the Iraqi authorities.'*[xix] It is crucial to consider this option, as it could significantly strengthen the efforts to ensure justice and accountability for the most egregious crimes perpetrated by Daesh.

25. It is noteworthy that, with respect to crimes committed in the Saddam Hussein era, Law No. 10 of 2005, adopted on 18 October 2005, established the Supreme Iraqi Criminal Tribunal with jurisdiction over genocide, crimes against humanity, war crimes and other serious crimes committed between 1968 and 2003. The Tribunal has its own Statute and

Rules of Procedure and Evidence. A similar tribunal could be established for the Daesh crimes in Iraq.

The Closure of UNITAD

26. In 2017, the UN Security Council unanimously adopted resolution 2379 (2017), which established UNITAD. UNITAD has been collecting evidence and conducting investigations into Daesh's crimes in Iraq since 2018. UNITAD has gathered a significant amount of data, including testimonies, forensic evidence from mass grave sites, and digital data extracted from Daesh's hard drives. Investigators have also completed an initial case brief identifying individuals and companies that provided financial services to Daesh.[xx] UNITAD has been working with investigators in at least 14 countries to ensure effective prosecutions of perpetrators (based on the principle of universal jurisdiction).

27. In September 2023, news circulated about the plans to close down UNITAD. The Yazidi community, the community most affected by the atrocities of Daesh, and other targeted religious and ethnic minority communities, were not consulted in relation to this decision.[xxi]

28. The Iraqi Government's motives behind the plans to terminate UNITAD's work remain unclear. In September 2023, Iraq raised several concerns, particularly regarding the sharing of evidence. However, this issue is not novel. It has been understood since UNITAD's inception that, as a UN-established mechanism, it cannot share evidence with countries that retain the death penalty. Despite this knowledge, Iraq has taken little action over the past five years to conform to UNITAD's Terms of Reference which state that UNITAD *'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.'*[xxii]

29. In addition, September 2023 brought reports of a newly proposed law in Iraq that aims to grant amnesty to numerous detainees. While the law is promoted as a means to release innocent individuals from prison, there is significant concern within communities that it could also lead to the release of Daesh members and others. This is a critical issue that demands further scrutiny and attention.

30. The legal achievements made in recent years will vanish once UNITAD concludes its operations. The international community must acknowledge UNITAD's crucial role in collecting and preserving evidence and its contribution to judicial proceedings globally. Therefore, the closure of UNITAD cannot be seen as the final chapter. If UNITAD cannot continue with Iraq's consent, it should transform into a different mechanism, prioritising the needs of victims and survivors above anything else.

31. Furthermore, and crucially, the UNITAD's closure does not only raise questions on the continuation of access to the evidence but also on the imminent halting of exhumation,

identification and return of remains processes in Iraq. Since its establishment, UNITAD has supported Iraq with this process. According to statistics obtained by Yazda from the Iraqi Mass Graves Directorate, there are 94 mass graves and 49 individual graves in different areas of Sinjar. So far, 61 mass graves have been exhumed and the remains of 696 people, including children, women, and men were uncovered. Out of 696, only 243 victims have been identified so far and 33 mass graves have not yet been excavated. With the closure of UNITAD, it is unclear who will support the Iraq Technical Team, the Mass Graves Directorate and the Medico-Legal Team, to continue this long and complex process.

32. The IBAHRI has been advocating for establishing a new mechanism to take over from UNITAD. Such a mechanism would be established by the UN General Assembly. The proposal is in **Annex B.**

Yazidi Survivors Law

33. In March 2021, the Iraqi Council of Representatives voted to adopt the Yazidi [Female] Survivor Law (YSL).[xxiii] This law aims at providing assistance to survivors of the Daesh atrocities by introducing a system of reparations for female survivors of Daesh campaigns who were subject to sexual violence and other forms of abuse.[xxiv] The law stipulates benefits in the form of monthly stipends and a piece of residential land with a mortgage or a free housing unit for female survivors, while it provides for special education and employment opportunities, and medical and psychological support for both the children and female survivors. The law is momentous because it explicitly recognised that the crimes committed against the Yazidis and other communities constituted not only crimes against humanity but also genocide.[xxv]

34. Unfortunately, to this day the law is not fully implemented. As indicated in a recent report:

> Survivors are required to file a criminal complaint to access reparations, a step that presents barriers. The process often fails to utilise existing evidence provided by survivors, and the eligibility criteria are narrowly interpreted. This narrow interpretation excludes children born during captivity to mothers who were pregnant at the time of their abduction, thereby denying them their right to reparations. Moreover, the absence of a Directorate branch in the Kurdistan Region of Iraq (KRI) creates serious accessibility issues for displaced Yazidi survivors. Lack of information dissemination to survivors and civil society further exacerbates the problem, leading to potential misinformation and misunderstanding of developments related to the YSL.[xxvi]

IV. Ongoing Humanitarian Issues and the Future of the Community

35. The future for Yazidis means different things to different people including justice and accountability, security and assurances that Yazidis will not face future genocides, restoration of their lives and communities after the genocide, or migration to a safe country, among others.

36. For the Yazidi community to thrive after the genocide several key steps should be taken to restore the trust of the community in the state institutions and the overall situation. Since the genocide, assessments suggest that over 120,000 Yazidis have left Iraq, which accounts for more than 25% of the Yazidi population in Iraq. Tens of thousands of the Yazidis seek opportunities to leave Iraq both legally and illegally. If no serious steps are taken, Yazidis will lose the resilience factor in a few decades and Iraq will no longer be a viable option for Yazidis' existence as a distinct group.

37. The safety of the Yazidi community and assurances that they will not face new systemic persecution must be a top priority. This includes the need for sustainable and effective security and the provision of functioning governance in the Yazidi areas.

38. Minority areas are mostly disputed between Baghdad and Erbil. For these areas to be protected and stable, disputes should be settled, and security and administrative issues should not be tied to political disputes.

The Closure of IDP camps

39. In January 2024, the Iraqi Ministry of Migration and Displacement announced the plans to close the IDP camps in the KRI by 30 July. According to the KRGs Interior Minister, across KRI, there are 23 camps hosting over 157,000 IDPs from Sinjar. In addition, close to 200,000 displaced Sinjaris live outside of these camps. To encourage returns, the Iraqi Ministry of Migration and Displacement announced a package of aid including a payment of 4 million Iraqi dinars (equivalent to approximately US$2350) per family as a one-off payment. However, as Sinjar remains unsafe and lacks adequate social services to ensure economic, social, and cultural rights, the return of those displaced is impossible. According to reports, the Ministry of Migration and Displaced has publicly threatened to reduce the support to 1.5 million Iraqi Dinars (US$900) if IDPs do not register for return by their unrealistic camp closure date. This requires further attention.

40. Reportedly, Erbil has refused to forcibly close the camps. As a result, in June 2024, media reported that Iraqi Minister of Migration and Displaced Evan Faeq Jabro filed a lawsuit ordering the KRG to implement the decision of the Iraqi Council of Ministers to close camps in the region. The federal government is to cease all aid for IDPs[xxvii] and is threatening to close the IDP camps along with all federal services provided to them, including access to education and healthcare. If these threats are acted upon, among others, tens of thousands of students will be cut from their education.

41. In June 2024, around 1,000 IDPs from Sharia and Khanke camps (Duhok province) returned to Sinjar. However, many families are reluctant to return because of the security situation in the region, lack of reconstruction and investment in the infrastructure, and lack of basic services. While no data are available, many families return to KRI after receiving support packages because of the lack of jobs, and services, as well as uncertainty related to security and administrative aspects of Sinjar.

42. Compelling Yazidis to return to a homeland lacking job opportunities, clean water, safety, security, and basic resources is unsustainable. Many Yazidis are unwilling to return to Sinjar, particularly the younger generation and women and girls. Displacement has provided many women and girls with empowerment, agency, and decision-making authority. They fear the prospect of giving up these newfound rights upon return to Sinjar.

43. Many women have established careers and found job opportunities that would not be available to them upon return to Sinjar. The lack of economic prospects in Sinjar could result in these women being confined to their homes, without employment, and deprived of their autonomy and decision-making power. Furthermore, for women who are caregivers and heads of households, the absence of stable housing and support networks in Sinjar presents a significant obstacle. Returning to a region where they lack basic necessities and support systems raises serious concerns about their ability to provide for their families and ensure their well-being.

44. Therefore, a blanket mandate for all Yazidis to return to Sinjar is not a reasonable solution. The region remains full of challenges, including toxic gender dynamics and the persistent threat of militia control, alongside looming dangers from external actors such as Turkey.

45. The issue of the IDPs' return to Sinjar is politicised and has been strongly tied to the political disagreement between various internal and external actors. This process needs to be depoliticised and carried out in steps, with concrete milestones which need to be implemented by both governments and monitored by the international community.

Assistance Inequalities and Discrimination

46. Many Yazidis, both IDPs and returnees, struggle to find stable employment. The lack of economic opportunities exacerbates their vulnerability and hinders their ability to rebuild their lives. Sustainable livelihood programs are urgently needed to provide financial stability and foster economic independence.

47. Access to education is limited, particularly for children and young adults. Many schools in Sinjar remain damaged or destroyed, and displaced Yazidi children often face barriers to enrolment and attendance in host communities. Investing in education is crucial for the future of Yazidi youth, enabling them to break the cycle of poverty and trauma. The Iraqi

government announced it would build a public university in Sinjar, a step Yazidi organisations welcome and hope the university will be built in the near future.

48. Thousands of Yazidis still live in temporary shelters or makeshift camps, enduring harsh living conditions. The reconstruction of homes and infrastructure in Sinjar is slow, and there is an urgent need for safe and permanent housing solutions for both returnees and those still in displacement.

49. The trauma inflicted during the genocide has left deep scars on the Yazidi community. Many survivors, particularly those who endured captivity and SGBV, suffer from severe mental health issues, including post-traumatic stress disorder (PTSD), depression, and anxiety. The community grapples with collective trauma, compounded by the loss of loved ones, the uncertainty of those still missing, the destruction of their homes and livelihoods, and protracted displacement. Mental health services are often inadequate and inconsistent, thus revealing a critical need for culturally sensitive and sustainable psychosocial support to aid in the healing process.

50. Yazidis and minorities in the area continue to struggle economically. Infrastructure, such as access to the internet, electricity, and clean water, impede development in these regions.

51. Reportedly, the people of Sinjar have submitted over 14,000 applications for property reparation to the central government, a programme implemented across Iraq in areas destroyed by Daesh. However, unlike other areas of Iraq where large portions of reparations have been made, less than one per cent of these funds have been delivered.

Lack of Political Representation

52. Political representation is a fundamental human right that ensures fair competition and safety for all segments of society. Iraq employs a quota system in its federal parliament to facilitate minority political representation, including Christians, Yezidis, Feyli Kurds, Shabak, and Mandaeans.[xxviii] However, the effectiveness of this system is questionable, as many religious and ethnic minority communities remain unrepresented or severely underrepresented.[xxix] For instance, in the national parliament in Baghdad, despite their significant population, Yazidis typically have only one or two members. This is inadequate for their effective political representation.[xxx] Moreover, Yazidis in the Kurdistan Region, where many reside in IDP camps post-genocide, face further challenges with no specific minority seats allocated to them.

53. Recently, the decision by the Federal Iraq government to nullify all 11 quota seats in the Kurdistan Region just before the 2024 parliamentary elections sparked significant controversy. This move, deemed unconstitutional, threatened religious and ethnic minority communities' political inclusion and engagement. Despite a subsequent compromise allocating five seats to minorities, criticisms remain that the new distribution

fails to accurately reflect regional demographics and has disrupted the electoral process.[xxxi]

54. While the quota system provides some representation, large political parties and militias continue to manipulate the electoral system and hence, hijack true minority representation. The minority seats require fewer votes which makes them easy to be grabbed by the larger parties and militias.

Hate Speech Against the Community

55. In 2023, reports suggested an increase in hate speech and rhetoric against the Yazidi community in Iraq. The uptick in hate speech corresponded to the concerns expressed by Yazidis regarding the return of suspected Daesh-affiliated families to Sinjar. Some groups are said to have falsely claimed that Yazidis had attacked and set fire to a mosque. Yazidi leaders, Nineva security authorities, and others confirmed that no such attack occurred. Despite these clarifications, thousands of inflammatory and hate-mongering statements were made on social media, including inciting hatred against the community and expressing support for Daesh such as '[Daesh] *was right about what they did to Yezidis'* and '*We should kill Yazidis. They are devil-worshippers.*'[xxxii]

56. To exacerbate matters further, many local clerics in the Kurdistan Region began spewing hatred against the Yazidis during their Friday prayers.[xxxiii] Videos posted on social media show the Mullahs describing Yazidis as 'infidels' and 'devil-worshippers' and calling for their immediate arrest.[xxxiv]

57. Such hate speech and rhetoric have spread across Iraq and sent waves of fear among the Yazidi communities.[xxxv] More needs to be done to counter such hateful narratives, including investigating and prosecuting the perpetrators.

Security

58. The paramount concern facing religious minorities and all Iraqi citizens today is security.[xxxvi] In regions where people feel safe, other challenges can be addressed more effectively. A critical case in point is Sinjar, the ancestral homeland of the Yazidis, from which hundreds of thousands were displaced during the 2014 genocide. Despite the 2020 Sinjar Agreement's objective to implement robust security measures and stabilise the region for the safe return of displaced communities, the establishment of local security forces in Sinjar has become deeply politicised. This process seems less focused on ensuring people's safety and more on dividing security authority among Iraq's influential political factions.

59. Iraq and the international community should work together to prevent Turkish airstrikes.[xxxvii] During one of the attacks, on 17 August 2021, the Turkish air force hit a civilian hospital, Sikeniye Medical Clinic in Sinjar, killing eight civilians and seriously injuring over 15 others.[xxxviii] To this day, there have been no formal investigations into the

airstrikes, or accountability for the killing and serious injury to civilians resulting. Air strikes by the Turkish air force in Sinjar are ongoing, resulting in continuing insecurity in the region and hampering the return of survivors of the Yazidi genocide to their homeland.

VI. Recommendations

60. In view of the above, IBAHRI, the Free Yezidi Foundation, Yazda, the Sinjar Academy, and the Coalition for Genocide Response recommend the following to the Government of Iraq:

- To ensure that Iraq halts trials for terror-related offences which do not follow due process;
- To ensure that the Iraqi criminal law is amended, in consultation with survivors, Iraqi CSOs and legal experts to criminalise genocide and other international crimes;
- To ensure that the atrocities against the Yazidis are investigated and prosecuted for genocide and other international crimes;
- To ensure that the law includes clear protections and assistance for victims/survivors and witnesses of atrocity crimes;
- To ensure that evidence collected by UNITAD remains accessible to third states willing to prosecute Daesh members for international crimes;
- To ensure that Iraq complies with UNITAD's terms of reference to be able to use the collected evidence;
- To ensure that Iraq works with the international community to establish a specialised ad hoc tribunal to prosecute Daesh crimes;
- To ensure the establishment of a task force dedicated to Yazidi search and rescues, which would help streamline efforts, allocate resources more efficiently, and ensure that different organisations work collaboratively rather than in isolation;
- To ensure that exhumations in Iraq continue with international assistance until all graves are uncovered and all remains are identified and returned to the families for dignified burials;
- To ensure that all provisions of the Yazidis Survivors Law, not only the monthly compensation, are implemented in a survivor-centred manner;
- To ensure that the closure of the IDP camps is depoliticised and carried out in phases, with clear milestones including guarantees of security and availability of basic services;

- To ensure that any laws that are discriminatory against the Yazidis and other religious or ethnic minority communities are repealed;

- To ensure the creation of a mechanism to establish truth on gross human rights violations against the Yazidi community, and memorialise the findings to ensure that these are used as an educational and preventive tool;

- To ensure that the community is provided with holistic and sustainable assistance that would enable them to re-establish their lives outside of camps, whether they wish to remain in displacement or return to their areas of origin.

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[ii] European Parliament resolution of 4 February 2016 on the systematic mass murder of religious minorities by the so-called 'ISIS/Daesh' (2016/2529(RSP). Available at: https://www.europarl.europa.eu/doceo/document/TA-8-2016-0051_EN.html.

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[iv] House of Commons, Daesh: Genocide of Minorities, 20 April 2016. Available at: https://hansard.parliament.uk/Commons/2016-04-20/division/2EB7838E-4BC5-4D43-A479-C85DDA177CDD/DaeshGenocideOfMinorities?outputType=Names.

[v] Law available here: https://c4jr.org/wp-content/uploads/2022/01/Yazidi-Female-Survivors-Law-March-24-2021.pdf.

[vi] See: https://press.un.org/en/2023/ga12514.doc.htm.

[vii] United Nations Assistance Mission for Iraq and the Office of the United Nations High Commissioner for Human Rights, Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL, (2020) iv. Available at: https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf.

[viii] Alissa Rubin, 'She Faced Her ISIS Rapist in Court, Then Watched Him Sentenced to Death' New York Times (2 March 2020). Available at: https://www.nytimes.com/2020/03/02/world/middleeast/isis-iraq-trial.html.

[ix] See: Coalition for Just Reparations Report 'Iraqi Civil Society and Survivor Networks Position on the Request of Iraq to Terminate UNITAD's Mandate in September 2024' (March 2024). Available at: https://c4jr.org/1203202428508 (See also: Annex A)

[x] Alissa Rubin, 'She Faced Her ISIS Rapist in Court, Then Watched Him Sentenced to Death' New York Times (2 March 2020). Available at: https://www.nytimes.com/2020/03/02/world/middleeast/isis-iraq-trial.html.

[xi] Ibid.

[xii] Ibid.

[xiii] International Federation for Human Rights, 'Iraq Sexual and Gender-Based Crimes against the Yazidi Community: The Role of ISIL Foreign Fighters'.

[xiv] Bojan Gavrilovic and Stephanie Schweininger, 'Criminal Tribunal and a Wide-Ranging Reparation Programme Is Necessary for the Victims of Sexual Violence and Torture in Iraq' (2019) 29 Torture Journal: Journal on Rehabilitation of Torture Victims and Prevention of Torture 110, 120.

[xv] Ibid., 119.

[xvi] UNITAD, 'Sixth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Daesh/Islamic State in Iraq and the Levant' (2021) S/2021/419.

[xvii] Khazan Jangiz, 'Iraq Rejects Kurdish Attempts to Establish Court for ISIS Crimes' Rudaw.net. Available at: https://www.rudaw.net/english/kurdistan/270620212.

[xviii] Position Paper on Daesh Accountability in Iraq (August 2022), Available at: https://c4jr.org/wp-content/uploads/2022/08/Final-position-paper-ISIL-mechanism-ENG_FINAL_Hyperlinks.pdf (See: Annex C).

[xix] PACE, Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe Resolution 2475 (2023). Available at:

https://pace.coe.int/en/files/31550/html.
[xx] UN News, 'ISIL Crimes against Yazidis Constitute Genocide, UN Investigation Team Finds' (10 May 2021).
[xxi] See: https://www.yazda.org/concerns-about-the-non-renewal-of-unitads-mandate-in-iraq.
[xxii] See: UNITAD. Terms of Reference. Available at: https://www.unitad.un.org/sites/www.unitad.un.org/files/general/tor_1.pdf.
[xxiii] Dr Ewelina U Ochab, 'Iraq Adopts New Law to Assist Survivors Of The Daesh Genocide' Forbes. Available at: https://www.forbes.com/sites/ewelinaochab/2021/03/04/iraq-adopts-new-law-to-assist-survivors-of-the-daesh-genocide/. This law was enacted following significant support from several international organisations, including the Coalition for Just Reparations. see: 'C4JR Delegation Presented C4JR Draft Law on Reparations for CRSV Survivors at the Iraqi Parliament – C4JR' (1 December 2020). See: https://c4jr.org/011220202471.
[xxiv] Philip Loft and Nigel Walker, 'UK House of Commons Library: Atrocities against the Yazidi Religious Community' (2022) CDP-0027 (2022) 3.
[xxv] Tatiana Rouhana, 'Is Criminal Justice Enough to Address the Yazidi Genocide?' The Tahrir Institute for Middle East Policy (2022). Available at: https://timep.org/commentary/analysis/is-criminal-justice-enough-to-address-the-yazidi-genocide/.
[xxvi] See: FYF, 'Status on the Implementation of the Yezidi Survivors Law' (2024). Available at: https://freeyezidi.org/wp-content/uploads/2020/07/FYF_YSLJulyReport.pdf. See also: Annex G.
[xxvii] See: https://www.rudaw.net/english/kurdistan/300620242.
[xxviii] Al Sharq Research, 'Political Representation of Iraq's Minorities: Tool for Dominant Parties?' (2022). Available at: https://research.sharqforum.org/2022/03/18/political-representation-of-iraq/. There is currently an effort to remove the Yazidi quota seat from the Iraq Parliament, see Rudaw, 'Top Iraqi court revokes Yazidi parliamentary representation' (February 2022). Available at: https://www.rudaw.net/english/middleeast/iraq/220220222.
[xxix] See: https://www.heartlandalliance.org/wp-content/uploads/2016/01/HumanRightsViolationsReport-English.pdf.
[xxx] See: https://kirkuknow.com/en/news/62182.
[xxxi] ISPI, 'Deferred Democracy: The Impact of Election Delays in Iraqi Kurdistan' (June 2024).
[xxxii] See: https://freeyezidi.org/news-updates/fyf-statements/condemnation-of-anti-yezidi-rhetoric/.
[xxxiii] See: https://freeyezidi.org/news-updates/fyf-statements/condemnation-of-anti-yezidi-rhetoric/#:~:text=To%20exacerbate%20matters%20further%2C%20many,calling%20for%20their%20immediate%20arrest. See also: https://www.kurdistan24.net/en/story/31355-France-condemns-hate-speech-against-Yezidi-community.
[xxxiv] Ibid.
[xxxv] See also: Annex D: Overview of Recent Hate Speech Spread Against the Yazidi Community (Yazda, 2023).
[xxxvi] See also: Annex E: Collapsed security threatens the future of Yazidis & minorities in Sinjar (Yazda, 2022).
[xxxvii] See: https://www.doughtystreet.co.uk/news/un-human-rights-committee-complaint-against-turkiye-regarding-airstrikes-against-yazidi.
[xxxviii] Ibid.

COALITION FOR JUST REPARATIONS

Iraqi Civil Society and Survivor Networks Position on the Request of Iraq to Terminate UNITAD's Mandate in September 2024

"Once UNITAD is out of Iraq, what will happen to us? Will ISIL members be held accountable? Many of us survivors provided the Iraqi Government with names of ISIL members and testified, but the Iraqi Government did nothing to support us or hold them accountable. The presence of UNITAD gave us, the victims and families of victims, hope. However, the Iraqi Government is now ending this hope. We have no trust whatsoever in the Iraqi Government to continue this process by itself."

Yazidi Female Survivor[1]

1 Online consultations conducted with survivors in December 2023.

1. Background

Following Iraq's request to the UN Security Council (UNSC) to renew the mandate of the Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) until September 2024 **only**, the UNSC requested:[2] (1) the UN Secretary-General (UNSG) to submit a report by 15 January 2024 setting out recommendations for implementing Iraq's request to receive the evidence collected by UNITAD;[3] (2) UNITAD to present a completion roadmap by 15 March 2024; and (3) Iraq and UNITAD to determine the modalities for evidence sharing with third states.

We, the undersigned Iraqi and international civil society organisations as well as survivor networks working with the communities affected by the crimes carried out by ISIL in Iraq, believe it is essential that the United Nations as well as the Government of Iraq consult meaningfully with civil society and survivors directly affected before issuing recommendations and ways forward that will have major implications for our communities. To that end, we came together and published a statement in September 2023 which was endorsed by 50 NGOs and survivor groups. The statement highlighted our concerns on the premature closing of UNITAD, and its large endorsement illustrated the consensus within civil society, despite representing different communities, areas of expertise and geographical locations. We then urgently prepared consultations, including an in-person meeting in Iraq. We also regard essential that input be sought from survivors, and therefore actively consulted three networks: Hope Givers,[4] the Survivors' Voices Network (SVN)[5] and the Yazidi Survivors Network (YSN)[6] as well as families of victims of the Speicher massacre committed by ISIL. Their input was incorporated into this report in the form of direct quotes so that their views are expressed fully and accurately.

The present document provides an overview of our main observations (section 2) and recommendations following these consultations (section 3).



C4JR hold Consultations on Accountability Pathways and Sharing of Evidence Following Termination of UNITAD´s Mandate in Erbil on Nov 21st

2 UNSC resolution 2697/2023.
3 The UN Secretary-General's report was published on 19 January 2024 and is available here. C4JR also issued a press release following the publication of the report: UN Secretary-General Marks the Way Forward Towards Utilizing Evidence of ISIL crimes in Iraq.
4 Hope Givers is composed of male Yazidi survivors.
5 Survivors Voice Network (SVN) is composed of female Shabak and Yazidi survivors.
6 Yazidi Survivors Network (YSN) is composed of female Yazidi survivors and is supported by the NGO Yazda.

2. Observations

2.1. Expectations of survivors and Iraqi CSOs were raised

"I experienced a significant shock upon hearing this news. The first question that came to my mind was what would happen to the investigations and evidence that UNITAD had gathered. Who would continue the work UNITAD had initiated?"

Yazidi Female Survivor[7]

We, the members of C4JR and networks of survivors, were dismayed and disappointed to see the Iraqi Government's request to end UNITAD's mandate after September 2024. We supported the establishment of UNITAD in 2017 and have engaged through the UNITAD-NGO Dialogue Forum. Some of us have also submitted information, including testimonies to UNITAD or have cooperated with it in different aspects of its work. UNITAD's work has given hope to thousands of survivors across different communities and raised expectations that justice will result.

UNITAD was established at the request of the Iraqi Government, which called for the assistance of the international community to ensure that members of ISIL are held accountable for their crimes in Iraq, a goal we strongly share. This decision is creating confusion amongst civil society actors in relation to the motives for Iraqi Government request for UNITAD's mandate closure. Whilst there may have been some divergences of expectations between UNITAD and the Iraqi Government, these can and should be addressed in the interests of achieving the common goal of justice, and urge that they are not allowed to get in the way of pursuing this goal in the best interests of survivors.

The C4JR is also gravely concerned at the negative signal closing down UNITAD will send to survivors and affected communities, who may feel neglected and may question the Iraqi Government's commitment to justice and accountability for atrocity crimes. Civil society is particularly concerned that neither the Security Council resolution and plan to close UNITAD early, nor next steps, have been communicated to survivors and affected communities.

2.2. Iraq Is not ready to start prosecution of core international crimes for which the UNITAD collected evidence is intended

"ISIL members are tried based on the [Iraqi Antiterrorism Law] ***and not according to*** [adequate laws]***. The current law cannot cover the magnitude of crimes and genocide committed by ISIL. We need a more comprehensive law to achieve true justice."***

Yazidi Male Survivor[8]

It was always envisaged that the primary intended recipient of the evidence UNITAD collects would be the relevant Iraqi authorities, to support domestic efforts to hold ISIL accountable; that UNITAD would operate with full respect for the sovereignty of Iraq and its jurisdiction over crimes committed in its territory and would work alongside Iraqi investigative judges and other criminal experts; and that upon conclusion of its mandate, arrangements would be agreed with the Iraqi Government regarding the custody of the evidence and materials it collected.[9] We support all these goals.

However, UNITAD was established to carry out a task that is far from completed. This includes: liaising and cooperating with States, regional and intergovernmental bodies, and the UN; to provide legal assistance and capacity building to the Government of Iraq in order to "strengthen its courts and judicial system"; to "help build capacity in investigations, prosecutions and the judiciary in Iraq" and to "assist the Government of Iraq in developing and implementing relevant legislation".[10] In other words, UNITAD's aim is to help prepare the relevant Iraqi authorities as well as authorities in third countries to investigate and prosecute ISIL crimes. We are hopeful that Iraq will enact legislation to criminalize atrocity crimes, including genocide, crimes against humanity and war crimes as also described in Iraq's recent

7 YSN, online consultations conducted in December 2023.
8 Hope Givers, online consultations conducted in December 2023.
9 UNSC Resolution 2379(2017), paragraphs 2 and 5, and UNITAD Terms of Reference, S/2018/118, available online here, paragraph 10.
10 UNITAD Terms of Reference, paragraphs 39 and 41.

communication to the UN Secretary-General,[11] but we are concerned that this process is taking too long and that even once such a law is passed, Iraq will need support to actually carry out prosecutions in a survivor-centered manner.

For the reasons set out below, we have serious concerns that Iraq is not yet fully ready to take on responsibilities to be handed over by UNITAD. This is illustrated by the fact that, almost ten years after ISIL attacks on Iraq, still no legislation has been adopted to criminalize international core crimes in Iraq. Furthermore, recent national prosecutions have solely been limited to membership of terrorist organization, which remain highly criticized by international observers and are not perceived as meaningful justice by survivors because they completely disregard the crimes committed against them and do not apply fair trial rights. Therefore, UNITAD's premature closure would have a significant impact on the prospects for meaningful accountability for ISIL's crimes.

2.3. Iraq has yet to comply with international law and UN principles[12]

"[Without guarantees]***, we categorically refuse to share our name or the name of our organisation with any party other than UNITAD because we know that we will be subjected to persecution from the government as well as from tribes."***

Families of victims of the Speicher massacre[13]

As a consequence of Iraq's lack of preparedness, there is a possibility that if UNITAD is forced to close imminently it would not be able to hand over to Iraq much of the evidence it has collected. This is because its Terms of Reference provide that evidence collected by UNITAD shall solely be for use in fair and independent criminal proceedings, consistent with applicable international law.[14] We note that Iraq has not yet aligned its law and practice with such standards and survivors' networks have expressed concerns about the evidence being politicised and used wrongly, especially to protect tribal interests.

Further, UNITAD may only share evidence in accordance with UN policies and best practices and relevant international law, including international human rights law, rules and standards, which would include respecting the confidentiality of the information, the consent expressed by sources and any protection concerns.[15] Indeed, UNITAD is explicitly required to seek to obtain the informed consent of witnesses and other sources to share evidence they have provided.[16] The applicability of these principles is confirmed both by the UN Secretary-General and UNITAD in the January 2024 report.[17] This may present a major obstacle to UNITAD in sharing evidence with Iraq, since witnesses and third parties who have shared information with UNITAD may not have explicitly consented to their information being shared with the Iraqi Government. As one survivor told us, *"I don't want the evidence I have given to UNITAD to be given to Iraq."* [18]

In this regard, millions spent by the international community on UNITAD's work to support accountability of ISIL in Iraq will largely go to waste and the impunity gap will remain if the evidence it has produced cannot be used for that purpose and is solely archived by the UN, a risk highlighted by the UN Secretary-General in his report.[19]

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11 UNSC, S/2024/53: 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: *"The competent committee in the Office of the Prime Minister has completed a draft act on countering international crime. The draft was sent to the Council of State, which will review it and then return it to the Cabinet for a vote before it is sent to the Council of Representatives of Iraq for enactment."*

12 We have set out below what we consider Iraq needs to do to comply: see recommendation 1. See also Coalition for Just Reparations Position Paper on an ISIL Accountability Mechanism in Iraq.

13 Families of victims of Speicher massacre, online consultations of December 2023.

14 UNITAD Terms of Reference, paragraphs 7, 26, 28 and 45.

15 See for example Terms of Reference of the Independent Investigative Mechanism for Myanmar, UN General Assembly A/73/716 of 21 January 2019, paragraph 20.

16 UNITAD Terms of Reference, paragraph 20.

17 The UN Secretary-General's report was published on 19 January 2024 and is available here.

18 YSN, online consultations of December 2023.

19 See January UNSG 2024 report paragraph 22: *"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 Investigative Team would be accessible and that it could be used in the future for evidentiary purposes."*** [emphasis added]. See also paragraph 33.

2.4. UNITAD has not completed its work:

"UNITAD is really important here because a lot of evidence has not been collected yet. We want this evidence to be collected. Will Iraq do the same? There are many unresolved issues; we still have unexhumed mass graves, and there are numerous abducted individuals who, upon their return, will possess critical information. It raises the question of who will collect this evidence. Moreover, there are many witnesses with valuable information whose statements have not been taken yet."

Yazidi Female Survivor[20]

Iraqi civil society and survivors' networks fear that in the absence of UNITAD or a similar body, there is a serious risk that some evidence will go uncollected; that investigations, including excavations and exhumations at mass grave sites will proceed more slowly and be of lower quality; and that Iraqi authorities will suffer from the lack of legal basis and institutional structures to pursue accountability effectively.

Only UNITAD itself is able to provide details on its progress towards achieving its mandate. However, we believe much important work remains to be done including at least the following:

- Completing structured investigations in line with UNITAD's detailed implementation strategy, and publishing briefs that can be used to support prosecutions worldwide. *"The families of the Speicher victims are disturbed by the delay in supporting the Speicher case. We have not seen anything on the ground, but despite that, we need the presence of UNITAD to continue and to work in Iraq. For our part, we are ready to provide all the necessary information and evidence to UNITAD."*[21]
- Building a roadmap for using the evidence it has collected, including securing a framework and pathways with prosecutors in Iraq and elsewhere to support prosecutions: *"We want a mixed court between Iraq and the international community. There are hundreds of courts now in Iraq and they are still not able to provide me with the justice I need. So another one created by Iraq alone will be as useless."*[22]
- Many mass graves remain to be excavated and many crime scenes have yet to be documented: *"Day after day, we discover mass graves, and we do not know how many [are left]. UNITAD needs to work at least until all graves are exhumed, and remains are identified."*[23]
- Much remains to be done to provide legal assistance and capacity building to strengthen Iraq's courts and judicial system,[24] including to assist Iraq in developing and implementing legislation incorporating war crimes, crimes against humanity and genocide into Iraqi law as well as other areas such as developing evidence digitisation systems and following survivor-centered processes to ensure survivors wellbeing: ***"The judiciary here in Iraq doesn't know how to treat survivors, how to manage these cases. Once I went to a court in Iraq and I felt very uncomfortable. The judge didn't seem to believe me and told me 'You are an ISIL member'."***[25]
- While it has submitted regular reports to the Security Council, UNITAD has yet to provide a comprehensive report on the crimes committed by ISIL in Iraq, to enable the Security Council to characterise the crimes and recognize the genocide committed by ISIL against the targeted communities.

20 SVN, online consultations conducted in December 2023.
21 Families of victims of Speicher massacre, online consultations of December 2023.
22 SVN, online consultations conducted in December 2023.
23 Hope Givers, online consultations conducted in December 2023.
24 UNITAD Terms of Reference, paragraphs 39-41.
25 SVN, online consultations of December 2023.



Engaging in crucial discussions: Participants delve into topics of handing over and sharing evidence collected by UNITAD with the Iraqi authorities and third parties at the C4JR event in Erbil.

2.5. Preventing evidence sharing with third states will hinder the only justice avenue currently available to survivors

"As everyone knows, ISIL members were not only of Iraqi nationality but also nationals of other countries. When will an international court be established to try ISIL foreign fighters? Prosecuting ISIL members in Iraq is not sufficient to achieve justice for all ISIL members, as Iraqi law does not apply to other countries and [to individuals of] ***foreign nationalities."***

Families of victims of the Speicher massacre [26]

ISIL members came from over 80 countries, and many have returned or will return to their countries of nationality. Others will try to present themselves as refugees despite being war criminals. Suspects who are at large and living close to and among affected communities may continue to escape justice, thereby prolonging the sense of insecurity and mistrust in justice on displaced populations, preventing them from returning to their homelands.

We are pleased to note that the Iraqi Government and UNITAD have now agreed on clear modalities for sharing evidence with third states. We also welcome Iraq's position that *"it would like to share evidence with all States after UNITAD has shut down operations in Iraq by the end of 2024."*[27] The UN Secretary-General also highlighted in his January 2024 report the importance of allowing requests to be received and processed after the end of UNITAD's mandate, pending necessary resources. This will allow the evidence to continue being used to support investigations and prosecutions abroad as they still remain the only justice avenue available to survivors and should complement prospective prosecutions in Iraq. The possibility to prosecute ISIL members wherever they are is vital to ending impunity globally.

26 Families of victims of Speicher massacre, online consultations of December 2023.

27 See UNSC, S/2024/53: 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.

2.6. Specific concerns on the sharing of evidence collected by UNITAD with the Iraqi authorities

"We have a tribal society [in Iraq]***. According to our experiences, the Iraqi Government has a history of highly confidential documents and information being leaked to the public. Suppose we share our evidence against ISIL criminals with the Iraqi Government; in that case, there is a great possibility that this information will be leaked to ISIL members who are still free or to their families or to the tribes to which they belong. Thus, our lives and the lives of the victims' families are exposed to a real threat. We have strong evidence and documents and do not wish to share information with the Iraqi Government. Our message to the UN is that if the Iraqi Government leads a court, its consequences will be dire, as the judges may be from ISIL*** [affiliated] ***tribes and will sympathise with the terrorists and not try them fairly."***

Families of victims of the Speicher massacre[28]

We, as Iraqi civil society organisations and networks of survivors, deeply wish to see criminal prosecutions of ISIL in Iraq, rooted in the Iraqi Constitution, applicable laws, and respecting Iraqi sovereignty. We have been pleased to see efforts made by the Government of Iraq to bring about accountability for ISIL crimes in Iraq. Along with enactment of the Yazidi Survivors Law No. 8 of 2021, we regard the Government's request to the international community for support and its request to establish UNITAD as important manifestations of such willingness. We also appreciate that Iraq has committed itself to uphold fair trial and other internationally recognized human rights, through ratification of international human rights treaties.

At the same time, we have serious concerns about the unconditional handover of UNITAD's evidence and information to the Iraqi authorities under current conditions. These include inadequate safeguards to ensure evidence is stored, preserved and managed in a confidential manner and to prevent it falling into the wrong hands, or be used to pursue political interests. We are aware that sensitive information is regularly leaked in Iraq, whether intentionally or negligently. This could result in exposing survivors to stigma or reprisals, especially victims of sexual violence or those exploited as child soldiers. In a worst-case scenario, it could result in evidence falling into the hands of ISIL members who will take reprisals.

Further, survivors who shared information with UNITAD may not have explicitly consented to their information being shared with the Iraqi Government. Some survivors have told us they only felt comfortable sharing information with UNITAD on the basis it will not be shared with the Iraqi Government. Due to inadequate legal protections for vulnerable groups, some of those who shared evidence might themselves be at risk of prosecution, such as children associated with armed forces or groups: *"As a survivor, I do not feel safe in Iraq, including the Kurdistan Region. Meanwhile, the perpetrators of these crimes enjoy the freedom and security that I, as a survivor, am supposed to feel."*[29]

28 Families of victims of Speicher massacre, online consultations of December 2023.
29 SVN, online consultations of December 2023.

3. Recommendations

"We need to do advocacy as much as needed with survivors, local and international organizations to push for UNITAD to stay."

Yazidi Female Survivor[30]

In light of the above, we call upon the United Nations and Iraq to implement the following recommendations:

Recommendation 1: Establish benchmarks that must be reached before UNITAD closes

"UNITAD needs to work until there are actual trials of ISIL criminals. The mandate will be completed once all graves are exhumed, the remains are identified, the displaced have left the [IDP] ***camps, the fate of the missing is known and stories and evidence have been documented."***

Yazidi Male Survivor[31]

Instead of setting an arbitrary date for UNITAD to close (September 2024), we propose a different approach: All parties involved in decision making, including UNITAD, to agree on milestones or benchmarks that must be met before UNITAD's closure. These should include at a minimum:

- **Adequate legal framework and fair trial rights guaranteed:** Iraq must enact legislation to incorporate genocide, crimes against humanity and war crimes into its national law, to ensure that crimes committed by ISIL can be prosecuted in Iraq. Iraq must enact other domestic legislation and/or implement measures necessary to guarantee fair and independent criminal proceedings for ISIL crimes, conducted in a survivor-centred manner and in accordance with international law, including adequate witness protection, victim participation, and public trials.[32] Adequate protections for vulnerable groups such as children associated with armed forces or groups should be integrated in legislation.
- **UNITAD must have completed work set out in an agreed:** Such road map should cover the different communities affected by ISIL crimes in Iraq. It should also, as specified in Resolution 2379(2017), detail how UNITAD will work alongside and on an equal footing with Iraqi investigative judges and other criminal experts and share knowledge and technical assistance with Iraq. The roadmap should also set out how UNITAD will work transparently with survivors "to ensure their interests in achieving accountability for ISIL are fully recognized".[33]
- **UNITAD must publish a comprehensive report on the crimes committed by ISIL in Iraq**, to stand as a record and enable the Security Council to characterise crimes as genocide. This would contribute significantly to truth-finding and justice in the eyes of survivors and affected communities.
- **A joint transition plan must be put in place** for designated Iraqi bodies to take over investigations and to prepare prosecutions, and arrangements must be made for the handover of evidence and materials to safeguard their storage, preservation and management (see further below).

Recommendation 2: Clear conditions should govern handing over of evidence collected by UNITAD to the Iraqi authorities

"We certainly need a court but without the intervention of the United Nations or other countries, we are confident that the Iraqi Government will not try perpetrators fairly. Another critical point is that protection of witnesses must be guaranteed, and their testimony kept anonymous, and they must be protected from the court or the concerned authorities. If a competent court, similar to international courts is not established, we feel that genocide will happen to us again."

Yazidi Male Survivor[34]

30 YSN, online consultations conducted in December 2023.
31 Hope Givers, online consultations conducted in December 2023.
32 See again Coalition for Just Reparations Position Paper on an ISIL Accountability Mechanism in Iraq.
33 UNSC Resolution 2379(2017), paragraph 3.
34 Hope Givers, online consultations conducted in December 2023.

Creation of an independent body: We recommend the creation of a special working group or body in Iraq, to be mandated with overseeing the receipt, preservation and storage of evidence handed over by UNITAD and with power to allow information to be shared only if conditions outlined by the UNITAD Terms of Reference are met and ensuring that relevant consents have been obtained. Such working group could be composed of members of relevant Iraqi institutions, including the Supreme Judicial Council, the General Directorate of Survivors, the National Human Rights Commission and representatives of civil society. We would prefer that at least for a transitional period, the working group would include, or would consult with representatives of the UN (possibly represented by UNAMI).

The evidence collected by UNITAD should be held and shared according to terms and conditions set out in an Memorandum of understanding (MoU) to be agreed between the UN Security Council and the Iraqi Government:

- Evidence collected by UNITAD must only be used in fair and independent criminal proceedings for genocide, war crimes and crimes against humanity in accordance with UN policies and best practices and relevant international law, including international human rights law, rules and standards. This means, *inter alia*, that evidence shall not be obtained under torture or other ill-treatment and observance of victims' rights to participation and reparation.
- Evidence must not be used for prosecuting children associated with armed forces or groups – in accordance with the UN Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict, to which Iraq is signatory – or other vulnerable groups who lack protection under Iraqi law.
- Trials should be public, independent monitoring should be permitted, and there should be regular outreach and public information to keep survivors and affected communities informed of the progress of investigations and prosecutions.
- There must be a robust capacity to protect those who are at risk as a result of investigations and prosecution, including effective witness protection and respect for the rights, privacy and dignity of all survivors and witnesses.
- Evidence must only be shared once the informed consent of its providers has been obtained. UNITAD must check that previously obtained consents from survivors includes sharing with Iraqi authorities and if not, must contact the interviewees and obtain explicit consent.
- Protocols should be developed and agreed for safe storage, preservation and management of the evidence and other materials, and responsibility given to a competent body with adequate training and resources, which continuously respects confidentiality of all evidentiary materials obtained and produced in line with UN policies.[35]

Recommendation 3: Continue the sharing of evidence collected by UNITAD with third states or with international courts and other bodies, and cooperation between Iraq and others to achieve accountability for ISIL crimes

"Most male and female survivors do not trust the government. Survivors do not want to share evidence and give their testimonies to Iraqi courts without the presence of international courts and bodies."

Yazidi Male Survivor[36]

We call on the Iraqi Government and the UN, as part of their arrangements regarding the future of UNITAD's legacy, to agree on a clear legal framework that will enable evidence to be shared with third states upon request. Information should be shared following rigorous standards, as described above. Internal procedure must be developed consider requests for information from third states, as well as from other bodies, such as the International, Impartial, and Independent Mechanism (IIIM) or the International Criminal Court (ICC).

ISIL presented, and still presents, a global threat, and both victims and perpetrators are now dispersed across many countries. Bringing ISIL members to justice is therefore a

35 UNITAD Terms of Reference, paragraph 24.
36 Hope Givers, online consultations conducted in December 2023.

shared endeavour. Sharing evidence with third states as well as with Iraq was part of UNITAD's original mandate and purpose.[37] Domestic prosecutions and investigations which are taking place in countries such as Germany, the Netherlands, and Sweden are extremely important to survivors. Such proceedings build hope that justice can be achieved, in particular in relation to judicial findings of genocide.

We call on interested states to engage with the Iraqi Government and UNITAD to negotiate a clear and transparent legal framework – such as a Joint Investigative Team (JIT) or Working Group – to agree on cooperation and evidence sharing aimed at bringing ISIL to justice for crimes committed in Iraq and against Iraqi nationals. This could be achieved by expanding the scope of the existing JIT established in 2021 by France and Sweden, created with the goal of examining atrocities committed against the Yazidi in Syria and Iraq. This system, now counting with the Netherlands and Belgium, could be expanded to include Iraq, as well as other states and international bodies, such as UNITAD, the IIIM and the ICC.

Such entity could also serve to ensure that national proceedings can resort to means for cooperation and assistance from other states when necessary, such as securing evidence from abroad, location, arrest, detention, and surrender of accused persons.

Whether UNITAD closes after one year or has its mandate extended further, when the time comes for it to close, we further recommend the following.

Recommendation 4: When UNITAD closes, a residual mechanism should be established within the UN system that will hold a full copy of all the evidence and materials collected by UNITAD and in accordance with UN policies on information sensitivity, classification and handling.[38]

"ISIL is not only an issue in Iraq, but also an international one. Therefore, we cannot do anything without [other states]***".***

Yazidi Female Survivor[39]

As noted above, it may not be possible for UNITAD to hand over certain evidence to the Iraqi authorities, either due to lack of the consent from the provider, either due to lack of observance of UN's principles and standards. The UN should, in any case, retain full copies of all materials in the interest of preservation and security. In this regard, experience from Iraq and elsewhere shows that records, whether electronic or physical are vulnerable. The residual mechanism could also serve to coordinate support from different UN bodies for accountability efforts in Iraq, monitor progress and report to the Security Council.

Recommendation 5: UNITAD should take all possible steps to ensure the evidence it has collected can be used to benefit survivors in ways other than criminal proceedings

Beyond criminal accountability, survivors and affected communities need full support to access their rights in Iraq. To advance this, UNITAD could issue certificates that would be recognized to support an applicant status of survivor, to help them obtain reparations under the Yazidi Survivors Law and other reparations mechanisms. UNITAD could also support in sharing information on missing persons or those killed on mass graves to help facilitate identification of victims and exhumations (where all relevant consents are in place). Finally, UNITAD could publish briefs or reports (with any necessary redactions) relevant for truth telling purposes and memorialisation.

37 UNITAD Terms of Reference, paragraphs 2, 7, 26.

38 While UNSC Resolution 2697/2023 states that UNITAD will "provide" the evidence it has collected to the Iraqi Government, and UNITAD's Terms of Reference state that upon conclusion of its mandate, the UN and the Iraqi Government shall agree arrangements regarding the custody of original versions of evidence and materials collected, as well as any materials and analyses produced by UNITAD (paragraph 10, UNITAD TOR), and nowhere is it stated that duplicates could not be made or that the UN must surrender the only versions or give up access.

39 YSN, online consultations conducted in December 2023.

Undersigned organizations:

1. ASUDA
2. Banan Foundation for Sustainable Development
3. Better World Organization for Community Development (BWO)
4. CAPNI for Humanitarian Aid in Iraq
5. Center for Victims of Torture (CVT)
6. Central Council of Ezidis in Germany (ZÊD)
7. Civil Development Organization (CDO)
8. Çiya Press Agency
9. DAK Organization for Ezidi Women Development
10. EMMA Organization for Human Development
11. Eyzidi Organization for Documentation
12. Ezidi Millennium Organization for Development (EMOD)
13. Farida Global Organization
14. Fight for Humanity
15. Free Yezidi Foundation (FYF)
16. Genocide Watch
17. Global Center for the Responsibility to Protect
18. Global Survivors Fund
19. Hammurabi Human Rights Organization
20. Harikar NGO
21. HAWAR.help
22. Hope Givers
23. House of Coexistence
24. International Rehabilitation Council for Torture Victims (IRCT)
25. Iraqi Institution for Development (IID)
26. Jiyan Foundation for Human Rights
27. Justice Organization for Minority Rights (JOMR)
28. Kaniya Foundation for Culture and Media
29. Methra Organization
30. Nadia's Initiative
31. National Center for Human Rights
32. Nisha Organization
33. NL Helpt Yezidis
34. Peace and Freedom Organization (PFO)
35. Petrichor Organization for Human Rights
36. Progress in Peace Organization for Relief and Development
37. Religious Freedom Institute
38. Sanabel Future
39. SEED Foundation
40. Sinjar Academy
41. Sinjar Heart Organization for Relief and Development
42. Survivors Voice Network (SVN)
43. TAJDID
44. The Iraqi Educators League
45. The Lotus Flower
46. The Observer Human Rights Center (OHRC)
47. The Zovighian Partnership
48. To Reconcile Organization (TRO)
49. Turkmen Rescue Fund (TRF)
50. Warjin Media Foundation
51. We Are With You
52. Women Legal Assistance Organization (WOLA)
53. Yazda
54. Yazidi Legal Network
55. Yazidi Survivors Network (YSN)
56. Youth Bridge Organization



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United Nations A/xxxx

General Assembly

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Agenda item x

Resolution adopted by the General Assembly on DD MMMM 202x

NN. International and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for Daesh Crimes since 2014

The General Assembly,

Guided by the Charter of the United Nations,

Reaffirming its commitment to the sovereignty of Iraq,

Recalling the relevant resolutions of the General Assembly, the Security Council and the Human Rights Council, in particular Security Council resolution 2379 of 21 September 2017 that established the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD),

Welcoming the work carried out by UNITAD, and recalling its reports and the recommendations contained therein,

Recalling that ISIL/Da'esh constitutes a global threat to international peace and security through its terrorist acts, its violent extremist ideology, its continued gross, systematic and widespread attacks directed against civilians, its violations of international humanitarian law and abuses of human rights, particularly those committed against women and children, and including those motivated by religious or ethnic grounds, and its recruitment and training of foreign terrorist fighters whose threat affects all regions and Member States,

Condemning the commission of acts by ISIL/Da'esh involving murder, kidnapping, hostage-taking, suicide bombings, enslavement, sale into or otherwise forced marriage, trafficking in persons, rape, sexual slavery and other forms of sexual violence, recruitment and use of children, attacks on critical infrastructure, as well as forced displacement,

destruction of cultural heritage, including archaeological sites, and trafficking of cultural property,

Recalling that the crimes of ISIL/Da'esh are ongoing, with over 2,700 Yazidi women and children still missing, and many of them presumed to be enslaved,

Recognizing that the commission of such acts which may amount to war crimes, crimes against humanity or genocide, is part of the ideology and strategic objectives of ISIL/Da'esh, and used by ISIL/Da'esh as a tactic of terrorism, and that holding ISIL/Da'esh members accountable, particularly those who bear the greatest responsibility, including in terms of leadership, which can include regional or mid-level commanders, and the ordering and commission of crimes, will further expose this, and could assist in countering terrorism and violent extremism which can be conducive to terrorism, including by stemming financing and the continued flow of international recruits to the terrorist group ISIL/Da'esh,

Welcoming the efforts of the Government of Iraq to defeat ISIL/Da'esh, and recalling its letter to the Secretary-General and Security Council dated 9 August 2017 calling 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),

Recognizing the work of Iraqi and international civil society actors in documenting violations of international humanitarian law and violations and abuses of human rights law perpetrated by ISIL/Da'esh,

Noting with concern the impunity for serious violations of international humanitarian law and violations and abuses of human rights law committed by ISIL/Da'esh, which has provided a fertile ground for further violations and abuses,

Underscoring the need to ensure that the evidence of the Daesh crime continues to be collected and preserved and used to bring to justice members of ISIL/Da'esh for their involvement in international crimes.

1. *Emphasizes* the need to ensure accountability for crimes involving violations of international law, in particular of international humanitarian law and international human rights law, some of which may constitute war crimes, crimes against humanity, or genocide, committed by ISIL/Da'esh through appropriate, fair and independent investigations and prosecutions at the domestic or international level, and stresses the need to pursue practical steps towards this goal to ensure justice for all victims and to contribute to the prevention of future violations;
2. *Welcomes* the efforts by States to investigate and prosecute crimes within their jurisdiction committed by ISIL/Da'esh, in accordance with their national legislation and international law, and encourages other States to consider doing the same and to share relevant information to that end with other States;
3. *Decides* to establish the International Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Daesh Crimes under International Law Committed since 2014 under the auspices of the United Nations to undertake from UNITAD to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law;
4. *Requests* the Secretary-General, in this regard, to develop, within 20 working days of the adoption of the present resolution, the terms of reference of the International Independent Mechanism for Daesh, with the support of the Office of the United Nations High Commissioner for Human Rights, and also

requests that the Secretary-General undertake, without delay, the steps, measures and arrangements necessary for the speedy establishment and full functioning of the Mechanism, initially funded by voluntary contributions, in coordination with UNITAD and building on existing capacities, including recruiting or allocating impartial and experienced staff with relevant skills and expertise in accordance with the terms of reference;

5. *Calls upon* all States, UNITAD, as well as civil society to cooperate fully with the International Independent Mechanism for Daesh to effectively fulfil their respective mandates and, in particular, to provide them with any information and documentation they may possess, as well as any other forms of assistance pertaining to their respective mandates;
6. *Requests* UNITAD and the United Nations system as a whole to fully cooperate with the International Independent Mechanism for Daesh and to promptly respond to any request, including access to all information and documentation, and decides that the Mechanism shall closely cooperate with UNITAD in all aspects of its work until UNITAD formally concludes its work;
7. *Requests* the Secretary-General to report on the implementation of the present resolution within 45 days of its adoption, and decides to revisit the question of funding of the International Independent Mechanism for Daesh and to promptly respond to any request, including access to all information as soon as possible.



POSITION PAPER ON AN ISIL ACCOUNTABILITY MECHANISM IN IRAQ

AUGUST 2022

“Iraq is where the terror started for us, Yazidis; It is from where most ISIL leaders are from; It is where we were killed or abducted from.

If ISIL members are not persecuted in Iraq, then where will they be prosecuted?

It is important that this justice takes place in Iraq, only then will we be able to trust our country again. We have been waiting for this for eight years, until when will we need to wait?”

The Yazidi Survivors Network

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INTRODUCTION AND BACKGROUND

The Coalition for Just Reparations (C4JR) presents this paper with the aim of bringing fresh momentum to the pursuit of criminal accountability in Iraq for international crimes committed by the so-called Islamic State in Syria and the Levant (ISIL) also known *as Da'esh*, eight years after the genocide. The goal of establishing a path to justice for these crimes, a high priority for survivors and one that Iraq has committed itself to, has so far proved challenging to deliver.

C4JR is an alliance of Iraqi NGOs who came together to call for comprehensive reparations for survivors of atrocity crimes perpetrated during the ISIL conflict in Iraq. C4JR seeks to provide a collaborative and safe space where grievances of survivors belonging to all affected groups (Yazidi, Turkmen, Shabak, Kakai, Christians, Shia, Sunnis, and others) are adequately addressed. C4JR also strives to make available access to good practices, refer to international standards, and learn from the mistakes and successes of other post-conflict initiatives.

This Position Paper was initiated by Yazda in response to the lack of action and consultation with the Iraqi civil society on ISIL accountability mechanisms and the rejection of the Kurdistan Region of Iraq (KRI) draft law to establish an ISIL tribunal in KRI. It is an outcome of yearlong intensive discussions between C4JR members that took place both online and in person.

The Position Paper aims at identifying principles on which the long overdue criminal accountability mechanism for ISIL should be based. The discussion was informed by the views of survivors and by past experiences of accountability processes for atrocity rimes in Iraq and was grounded in Iraqi as well as international law and best practices. For the Coalition, involvement of survivors in any accountability process is the guiding principle.

The Coalition recognizes that Iraq has different options for establishing an accountability mechanism to bring ISIL members responsible for genocide, war crimes and crimes against humanity to justice for their crimes, and that doing so is a complex undertaking. In this paper, we do not seek to set out a comprehensive blueprint, but the following represents the consensus of the involved Coalition members on what should be the basic legal, policy and practical contours of a criminal accountability mechanism for ISIL that complies with international human rights standards.[1]

The undersigned organizations remain available to meet the relevant members of the Iraqi government once it is established to discuss this important issue. Survivors working with these organizations have also on numerous occasions expressed a wish to attend such a meeting and move this topic forward.

1. BASIC DEMAND

The Iraqi authorities should act immediately to:

1. Incorporate genocide, crimes against humanity and war crimes into national law;
2. Establish a survivor-friendly criminal accountability mechanism meeting international standards with jurisdiction over international crimes committed by ISIL.

These actions are necessary to support and contribute to a robust transitional justice mechanism for the following reasons:

1. In order for Iraq to comply with its international obligations to exercise criminal jurisdiction over those responsible for international crimes including genocide, crimes against humanity and war crimes;
2. To demonstrate Iraq's commitment to accountability, redress and justice for survivors;

[1] The focus of this paper is the criminal responsibility of individuals and legal persons; the Coalition is aware that steps are also needed to ensure the accountability of relevant states for their role in ISIL crimes. This is addressed for instance in the recent report of the Yazidi Justice Committee, State Responsibility and the Genocide of the Yazidis.

3. To accurately capture the nature and extent of the crimes committed by ISIL from 2014 until 2017, including sexual violence and crimes against children: while German courts have convicted two ISIL members on genocide charges, including an Iraqi national[2], an Iraqi court has yet to do so;
4. To promote a survivor-centred justice approach where victims' voices can be heard to facilitate healing;
5. To mitigate and deter future human rights abuses.

There has been a recognition and actions towards incorporating international crimes in domestic Iraqi legislation and establishing mechanisms to investigate and prosecute ISIL for these crimes. In July 2021, Iraq adopted a five year Human Rights National Action Plan that includes both elements.[3] In March 2021 the Iraqi Government enacted the Yazidi Survivors Law which in Article 7 declared crimes committed by ISIL against Yazidi and other groups to be genocide and crimes against humanity and committed to initiate criminal proceedings against the perpetrators. In response to a 2017 Iraqi call for international assistance in ensuring those responsible are held accountable, the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) has been conducting investigations into ISIL crimes in Iraq since 2018 and is in the process of building case files in support of Iraqi efforts to hold ISIL accountable. When renewing the mandate of the UN Assistance Mission for Iraq (UNAMI) in May 2021, the UN Security Council reiterated the need to hold perpetrators of conflict-related sexual and gender-based violence accountable.

The Iraqi Federal Supreme Court has declared that a KRI draft law to establish a criminal tribunal for ISIL crimes in the Kurdistan Region of Iraq could not move forward on constitutional grounds. So far, the Iraqi government has not acted to provide an alternative criminal accountability mechanism with jurisdiction over genocide, crimes against humanity and war crimes. The Iraqi authorities and the international community must therefore now urgently identify another way to comprehensively provide justice for victims of these crimes, in a way that meets international standards. Any other way can only provide a partial solution: countries prosecuting on the basis of universal jurisdiction can only pursue those few who come within their jurisdiction, and the International Criminal Court (ICC) would only prosecute a very few top leaders. A coordinated national and international strategy to prosecute these crimes is therefore needed.

The Iraqi government must also codify international crimes in its national law, without which it will not have a basis to prosecute these crimes in relation to ISIL. In doing so, it will be necessary to consider the principle of legality. Like many legal systems, Iraq's Constitution prohibits the application of substantive criminal law retroactively; no one should be punished for an act that the law had not criminalised at the time it was committed. Many international and national criminal courts since the Nuremberg Tribunal have nevertheless put people on trial for genocide, crimes against humanity and war crimes for past acts, finding that prosecuting acts as crimes under international law did not offend the principle of legality.[4]

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[2] Yazda, *German court hands down first genocide conviction against ISIS member, 30 November 2022;* Yazda, *German court hands down second genocide conviction against ISIS member following enslavement and abuse of Yazidi woman in Syria,* 27 July 2022.

[3] Iraq National Human Rights Plan 2020-2024. Branch 7 includes legislating to hold perpetrators of sexual violence accountable. Branch 10 includes enacting a law prohibiting international crimes including genocide, war crimes and crimes against humanity. The plan lists, at page 62, "working with international partners, such as the United Nations investigations team, to strengthen accountability for crimes committed by the terrorist ISIS organization, with a view to bringing charges against those who have committed genocide crimes, war crimes and crimes against humanity."

[4] Many national courts with similar constitutional provisions to Iraq's have decided that the acts in question were already considered criminal offences under international law at the time they were committed, and as such did not offend the non-retroactivity principle. Among other things, courts have relied on Article 15 of the International Covenant on Civil and Political Rights, which states the principle of non-retroactivity but provides that this should not prevent prosecution for "any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

2. PURPOSE AND RELATIONSHIP WITH OTHER TRANSITIONAL JUSTICE PROCESSES

A criminal mechanism is just one element of what should be a comprehensive transitional justice response to ISIL crimes in Iraq, and its relationship to any other justice processes, including the Yazidi Survivors Law, should be defined. When the mechanism is established, its wider purposes should be clearly spelled out, and should include achieving justice for ISIL crimes, uncovering the truth, contributing to institutional reform by strengthening the Iraqi justice system and fair trial rights, and meeting international standards for prosecuting international crimes. Promoting reconciliation between different groups in Iraq and avoiding future atrocities should also be a stated aim. It should be a stated objective to satisfy the rights of victims and take a survivor-centred approach.

It is important to explicitly define how a criminal mechanism established in the aftermath of mass atrocities relates to other responses such as truth telling, reparation and institutional reform. Experience from other contexts shows the importance of considering how different transitional justice processes relate to each other rather than setting them up in isolation, which can lead to legal uncertainties later on. It will also be important to clarify the basis on which a person already tried in Iraqi courts for acts such as membership in a terrorist organisation could also be tried in the tribunal for other acts amounting to international crimes.

Setting out the purposes of a mechanism in the founding legislation helps ensure that those purposes continue to guide interpretation going forward.

3. HOW SHOULD A CRIMINAL MECHANISM BE ESTABLISHED?

The Iraqi government must enact legislation to establish a jurisdiction to prosecute ISIL for genocide, crimes against humanity and war crimes, applying Iraqi law insofar as it is consistent with international standards of human rights and fair trial principles. There are several possible ways Iraq could do this within the current legal structure or establishing a tailored mechanism. As a first step, the Iraqi government must request cooperation from the United Nations. A mechanism established without international involvement will not attract the cooperation and support of the international community that will be essential for its success.

The Iraqi government will need to identify a means of establishing a jurisdiction that is compatible with both the Iraqi Constitution and international law. There have been several examples where either the UN Security Council or the General Assembly have formed an agreement to set up a hybrid tribunal upon the request of the relevant national government. These include the Special Court for Sierra Leone, the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia.

While the Iraqi Supreme Court has indicated that aspects of the KRG draft law would contravene the Iraqi Constitution, Iraqi legal experts should consider whether it would be possible for the Iraqi government to establish a hybrid mechanism with international cooperation, just as it already sought international assistance to take the first step in the process of ensuring criminal accountability for ISIL crimes, conducting investigations, which was achieved through the establishment of UNITAD. Since 2016, the Iraqi government has expressed its commitment to cooperate with the United Nations in ensuring accountability for sexual violence through strengthening the capacity of national and regional authorities to investigate and prosecute such crimes. The trials before the Iraqi High Tribunal, as well as more recently before the Iraqi anti-terrorism courts, have both been viewed by the international community as flouting fair trial standards. Only a mechanism that is objective and legitimate will be perceived by survivors as satisfactory and able to contribute to healing in society.

4. WHO SHOULD BE CONSULTED?

Involve survivors, civil society and Iraqi and international experts in the process of designing and implementing a draft law establishing the accountability mechanism and related documents. This must include survivors' and women's associations representing affected communities.

Involving survivors and civil society in all stages of creating and implementing a criminal accountability mechanism is considered an essential precondition for any successful effort to provide justice for genocide and other mass atrocity crimes.

5. JURISDICTION: SCOPE OF AN ACCOUNTABILITY MECHANISM

5.1 SCOPE OF CRIMES: WHAT CRIMES SHOULD BE PROSECUTED?

The criminal accountability mechanism should have jurisdiction over genocide, war crimes and crimes against humanity, as defined in the Rome Statute of the ICC. It should include, at a minimum, all crimes of sexual and gender-based violence as well as crimes against children included in the Rome Statute.

The ICC Rome Statute is widely considered to reflect the current state of international law as regards defining the international crimes of genocide, crimes against humanity and war crimes. Iraq can incorporate and prosecute those crimes even though it is not a member state of the ICC. The Rome Statute codifies a wider range of sexual and gender-based crimes than any previous international treaty including rape, sexual slavery, forced pregnancy and other forms of sexual violence. Even though Iraq is not a State Party to the ICC statute, its national law can use the same definitions especially since they are considered to reflect international law.

The vast body of evidence collected by UNITAD, civil society and others demonstrates clearly that atrocities committed by ISIL amount to Rome Statute crimes. UNITAD has announced that there is clear and convincing evidence that the crimes against the Yazidi constituted genocide and that crimes committed against predominantly Shia unarmed cadets and personnel from the Tikrit Air Academy constituted war crimes. Prosecuting them as crimes such as membership of a terrorist organisation falls far short of recognizing their true extent, nature and the impact on their victims. It also sets a flawed legal precedent and contributes to inaccuracies in historical recording.

Moreover, German courts have already convicted two ISIL members for genocide and other ISIL members for war crimes and crimes against humanity. Expert organizations such as the Genocide Network and a network of European investigators and prosecutors have also called for cumulative prosecution of ISIL members for core international crimes and terrorism-related offences.

5.2 TEMPORAL JURISDICTION: WHAT TIME FRAME SHOULD BE COVERED?

The mechanism should have jurisdiction over all crimes committed by ISIL, at the very least covering the period starting from 9 June 2014 when ISIL effectively controlled part of Iraqi territory. This is also consistent with the period covered by UNITAD's investigations. Individuals taken captive during the indicated period, subsequently trafficked in or outside of Iraq and still not released shall be recognized as survivors as well.

The temporal jurisdiction of the mechanism should be defined in relation to the period of the ISIL campaign against Iraqi minorities. This campaign started in June 2014 when ISIL launched an offensive on Mosul and Tikrit, beginning a period of effective control over part of Iraqi territory. The Yazidi Survivors Law mentions a starting date of 3 August 2014, but this excludes some violations amounting to international crimes committed before that date, notably against members of the Turkmen minority.

For the avoidance of doubt, it is necessary to specify that crimes involving persons taken captive during the campaign but trafficked and/or released after that period of effective control ended or still not released should be included.

5.3 TERRITORIAL AND PERSONAL JURISDICTION: WHO SHOULD BE PROSECUTED?

The mechanism should have jurisdiction over crimes committed by ISIL in Iraq or outside of Iraq against Iraqi nationals or non-Iraqi nationals residing in Iraq.

This provision is consistent with established jurisdictional principles and is appropriate to the nature of ISIL crimes. Many crimes committed by ISIL against the Yazidi and other members of Iraqi minority communities were committed partially on the territory of other states, particularly Syria. For instance, women and girls were abducted in Iraq and taken to Syria where they were held captive and subjected to sexual violence and other forms of torture and ill-treatment. Some victims of ISIL crimes were not Iraqi nationals but were nationals of other states or stateless persons residing in Iraq at the time, including as refugees. This is consistent with Iraqi law which provides, in Article 6 of the Penal Code, for a broad basis of criminal jurisdiction.

The mechanism should have jurisdiction over natural persons who were aged 18 or over at the time the crimes were committed and over legal persons in accordance with Iraqi law. Due regard should be given to international child rights standards and protections that should be afforded children associated with armed groups. In recognition of the fact that serious crimes were also committed by persons aged under 18, other measures in line with international standards should be taken to address such crimes.

While the age of criminal responsibility varies under domestic law, the ICC and most international or hybrid criminal tribunals have not prosecuted children, meaning those under the age of 18 at the time the crime was committed. They have largely treated children as victims, and prosecuted adults who recruit children to fight in armed groups. Because of the strong protections for children in criminal justice systems under international human rights law, including the possibility to prosecute children aged under 18 as adults would jeopardise international support for the tribunal. Additionally, UNITAD is not collecting evidence and building case files against perpetrators under the age of 18.

The Iraqi Penal Law provides for criminal liability of legal persons including corporate bodies, providing a ground to include this basis of liability. This would be consistent with current trends in international law and practice towards greater accountability for corporations. Examples are the Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council in 2011, and the current criminal prosecution of the French company Lafarge in a French court for complicity in crimes against humanity in relation to payments to ISIL and other armed groups in Syria. While there are advantages and disadvantages to the tribunal taking on such a complex element with relatively little international precedent, it will be for the tribunal to decide whether to prioritise legal persons based on the available evidence. The fact that UNITAD is investigating the financing of ISIL crimes is likely to be a relevant factor.

As is usual in criminal law including in the Iraqi legal system, it is not only those who commit crimes directly who can be held criminally responsible, but also those who are complicit in different ways such as by ordering, aiding and abetting or otherwise contributing to the commission of the crimes.[5] *This might include, for example, those involved in human trafficking of those taken captive by ISIL.*

6. HOW SHOULD SURVIVORS PARTICIPATE IN PROCEEDINGS?

Reflecting international trends towards greater involvement of victims in international criminal tribunals, survivors should be legally represented, and the mechanism's founding legislation should affirm their right to choose their legal representative and to play an active role as complainants and civil parties. As civil parties they should be equipped with the equivalent rights like the other parties, prosecution and defence. Iraq is a civil law country and provides this role to victims who join criminal proceedings. In particular, they should be entitled to join as civil parties during the pre-trial phase, have

[5] See for instance Article 25 of the ICC Rome Statute, and Section 5 of the Iraqi Penal Code.

access to the case file, submit investigative requests, question witnesses, experts and the accused and submit evidence. Funds should be made available for legal aid so survivors participating as complainants or civil parties can be provided with legal representation free of charge. Survivors should be made aware of their rights.

Iraqi criminal procedure allows victims to be legally represented and provides them with rights as complainants and civil plaintiffs, but these rights should also be clearly set out in the governing statute and rules of procedure and evidence of the mechanism, so as to provide a legal basis for victims to claim their rights since the tribunal would be applying international law. Survivors will only agree to cooperate with a mechanism, by, for instance, providing evidence, if they trust the process and feel empowered by it.

As survivors and their communities cannot be expected to have the means to pay legal fees, a legal aid scheme should be set up to cover legal fees and ensure quality legal representation for survivors.

7. WHAT ABOUT REPARATIONS FOR SURVIVORS?

The mechanism should be empowered to award individual or collective reparation to victims and their families. Reparation should be defined according to international standards for these types of crimes. A Trust Fund or Compensation Fund should be established to complement reparations awards ordered by the mechanism where those convicted do not have sufficient means to make full reparation to the survivors. Reparation should be coordinated with the implementation of the Yazidi Survivors Law and other applicable legislation in Iraq.

While a criminal tribunal can only order reparation to repair harm caused by those crimes it finds defendants guilty of after a trial, and cannot therefore bring about a comprehensive approach to victim reparation for ISIL crimes, it can establish legal principles on reparations that can be useful for all survivors. The experience of the ICC has shown that it is possible for a criminal tribunal to deal with reparation even where there are large numbers of survivors, and to establish the liability of those found guilty of crimes even where some perpetrators have limited assets.

The YSL establishes a scheme to repair harms inflicted on certain categories of survivors, but it does not recognize all ISIL survivors as beneficiaries. Nor does it provide a means whereby those responsible for serious violations of international law can be ordered to make reparation. As it is not sufficient only to acknowledge enormous harm and suffering of the victims, one must also recognize the right to reparation for these crimes as called for under international law. According to 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, reparation includes restitution, rehabilitation, satisfaction and guarantees of non-repetition in addition to compensation.

In recognition of the fact that many of those convicted by the tribunal will not have sufficient assets to make full reparation to the survivors, or it will not be possible to obtain assets, a Fund should be established equivalent to the ICC Trust Fund for Victims, to which the Iraqi government and other states and donors could contribute.

8. WHAT ABOUT SAFETY, WELL-BEING, DIGNITY AND PRIVACY OF SURVIVORS?

All parts of the mechanism must be obliged to respect the safety, physical and psychological well-being, dignity and privacy of survivors and a 'best interests' approach should be incorporated into all tribunal proceedings. Survivors who participate or testify as witnesses should have psycho-social support if needed. In line with international practice, confidentiality and other protection measures should be available where necessary before, during and after trials. A specialized Survivor Protection Unit with expertise in crimes of sexual violence should be established within the tribunal and codified

in the tribunal statute to safeguard these rights, building on existing Iraqi law as well as experiences and best practices from elsewhere.

There is considerable experience from international, regional and national criminal tribunals dealing with serious crimes on how to enable survivors to take part in proceedings, whether as witnesses, complainants or civil plaintiffs, in a safe and dignified manner. This includes providing physical and psychological support and protection when needed, as well as advising the tribunal on measures that should be taken throughout the process, from investigation to tribunal hearings and beyond. Since this requires specialized staff, including those with expertise in trauma related to crimes of sexual violence, a special unit should be established within the mechanism.

9. HOW SHOULD THE INTERNATIONAL COMMUNITY SUPPORT PROCEEDINGS IN IRAQ?

The Iraqi government already committed itself, in the Yazidi Survivors Law, to cooperate and coordinate with international entities to investigate and prosecute ISIL crimes. Iraq must now deploy diplomatic efforts to secure the necessary international cooperation for an accountability mechanism to prosecute ISIL for international crimes, including to secure evidence and extradition of suspects and related procedures such as searching for the missing. Cooperation between the Government of Iraq and the Kurdistan Regional Government will be essential.

Due to the cross-border nature of ISIL crimes, international cooperation will be essential, to conduct investigations and obtain evidence, execute arrest warrants including by securing extradition of suspects, protect victims and witnesses and conduct outreach to affected communities. This is already envisaged in the Yazidi Survivors Law, which (in Article 7.3) provides that the Ministry of Foreign Affairs will seek cooperation for the extradition of suspects to be tried before competent courts.

10. HOW SHOULD JUDGES AND OTHER PERSONNEL BE SELECTED AND SUPPORTED?

All judges, prosecutors, attorneys and other personnel should be vetted for high moral character, should demonstrate that they will act independently and impartially and should have the appropriate experience and expertise. Specialised training should be organized for all judges and other personnel of the mechanism, as well as lawyers representing the accused and victims, based on the needs. In appointing judges and other personnel, measures must be taken to ensure appointment based on competence, and due consideration should be given to fair representation of women and of different minority groups in Iraq. In the interests of continuity and to benefit from their experience and expertise, UNITAD should be part of the prosecution section of the mechanism.

It is crucial to provide confidence, to the international community, survivors and all Iraqis, that the accountability mechanism will be fair, impartial, independent and guided by international standards and best practices. Some survivors have already expressed their strong wish for international involvement in the operations of the mechanism. There is hope that international support and involvement could encourage needed justice reforms in Iraq.

Prosecuting, defending and judging international crimes requires specialist knowledge and experience acquired through practice, which domestic judges and lawyers would not have obtained as part of their regular training or practice. There will be a need to develop the capacity of Iraqi judges, prosecutors and lawyers to prosecute international crimes and defend international human rights. While experience in the relevant international law and practice, and experience from other contexts, is important, experience from other tribunals shows that it is also essential that any international personnel as far as possible have familiarity with the languages and law of the country concerned, or at least of similar legal systems.

Appointment of all judges and other personnel should be on the basis of merit, and specialist training should be provided both when they come on board and through continuing education programmes. Efforts should be made to identify qualified female judges and judges from minority communities, wherever possible. There is precedent for including specific procedures for ensuring fair representation of female and male judges, and judges with different types of experience and from different types of legal system, in the ICC's Rome Statute (Article 36).

11. HOW TO ENSURE FAIR TRIAL RIGHTS?

The mechanism must respect international standards of human rights and conduct proceedings fairly and impartially. Fair and impartial trials are also essential to enable revelation of the truth and perceived legitimacy that will contribute to breaking cycles of violence. This must include fully respecting all the rights of defendants accorded under international law. Legal aid should be provided where accused persons do not have the means to pay for legal counsel. Innovative ways of protecting the rights of those who interact with the mechanism should be explored, such as the establishment of an Ombudsperson. The relevant Iraqi authorities must be obliged to apply and implement decisions of the mechanism.

Fair and impartial trials are fundamental to the legitimacy of international criminal justice, and form an important part of institutional reform that is a core aspect of transitional justice following mass atrocity crimes. UNITAD and other entities in possession of evidence such as national war crimes units will not be able to cooperate with a mechanism that does not respect fair trial standards. The Kosovo Specialist Chambers offers an interesting model for protecting the human rights of all who interact with the institution; it established an Ombudsperson Office as an independent function to monitor, defend and protect the fundamental rights of all those who interact with it.

The mechanism will be reliant on Iraqi national law enforcement and other agencies for its operational effectiveness. Fairness and impartiality must extend to those agencies also, and they should be obliged to implement decisions of the mechanism.

12. WHAT PENALTIES SHOULD BE APPLIED?

The mechanism should not be able to impose the death penalty. Measures should be taken to mitigate the risks involved in keeping those deprived of their liberty while awaiting and undergoing trial and those convicted by the tribunal in detention in Iraq, including seeking international assistance.

Consistent with Article 9.1 of the Yazidi Survivors Law, no general amnesty or commutation of sentence should be applied.

Many in the international community consider the death penalty to be inconsistent with international human rights standards and will not support an accountability mechanism that imposes. It follows that keeping the death penalty would rule out international cooperation and involvement, either in supporting the trials themselves or contributing to any eventual compensation fund for survivors. UNITAD and other entities in possession of evidence will not cooperate with a mechanism that imposes the death penalty.

The prospect of ISIL detainees serving long periods in detention, both pre-trial and serving sentences of imprisonment, creates significant risks that will need to be addressed. Allegations of torture and ill-treatment are frequent in Iraqi detention centres. Enhanced oversight of detention centres should be put in place including rehabilitation programmes and enhanced security measures.

13. HOW SHOULD THESE ACTIONS BE FUNDED?

The Iraqi authorities together with the international community should ensure that the mechanism has the necessary funds required to carry out its functions, and to guarantee fair, survivor-centred, efficient, and secure proceedings.

A criminal accountability mechanism dealing with genocide, crimes against humanity, and war crimes will require significant resources, far greater than courts prosecuting regular crimes. For example, the mechanism will require specialist evidence management and court management systems, expert witnesses and the capacity to seek cooperation from foreign jurisdictions. Defendants will require legal counsel with adequate resources to conduct their defence. Victim participants will require support and legal representation, and outreach to survivors and affected communities will be crucial. Other essential elements include security for judges and other personnel, victim and witness protection and translation. It will be important to ensure that funding sources are sustainable, to avoid the tribunal running short of funds during the course of its work.

A hybrid tribunal established with the cooperation of the United Nations with strong international elements is much more likely to receive funding from the international community than a purely national one.

CONCLUSION

At this point in time, remaining passive is the least favourable option for Iraq. Without taking swift action to incorporate international crimes within its legal framework and establish an accountability mechanism in line with international standards to bring those responsible to justice, Iraq will not only be letting down survivors and reneging on its own previous commitments. It will also be disregarding concluding observations of the UN Human Rights Treaty Bodies (concluding observations of the Human Rights Committee and the Committee Against Torture) and increase the risk of being held responsible before the International Court of Justice for not abiding by its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.

[C4JR member organizations and partners endorsing the Position Paper on an ISIL Accountability Mechanism in Iraq]

1. ASUDA
2. Better World Organization for Community Development (BWO)
3. CAPNI for Humanitarian Aids in Iraq
4. Civil Development Organization "CDO"
5. Dak Organization
6. Emma
7. Eyzidi Organization for Documentation
8. Ghasin Alzaiton
9. Hammurabi Human Rights Organization (HHRO)
10. Harikar
11. HÁWAR. Help
12. Iraqi Educational Association AL Basra
13. Iraqi Institution for Development (IID)
14. Jinda Organization
15. Justice Organization for Minority Rights (JOMR)
16. Methra Organization
17. National Centre for Human Rights (NHCR)
18. Nisha Organization
19. Peace and Freedom Organization
20. TAJDID Iraq
21. The Jiyan Foundation for Human Rights
22. The Observer Human Rights Center OHRC
23. Women Leadership Institute (WLI)
24. Women Legal Assistance Organization (WOLA)
25. Yazda

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Overview of Recent Hate Speech Spread Against the Yazidi Community

16 May 2023

Introduction

This document provides an overview of the recent spate of hate speech spread, including online, against the Yazidi community in the Kurdistan Region of Iraq (KRI) and Federal Iraq. It also provides recommendations to the Kurdish Regional Government (KRG), the Iraqi Government, and the international community to ensure Yazidis and other minorities can live safely and free from fear of persecution.

Overview of recent events

On 27 April 2023, 25 Sunni Arab families returned to the Sinjar District. Many Yazidis in the area demonstrated against their return when a Yazidi survivor reportedly recognised one of the returnees as being a member of the Islamic State of Iraq and Syria (ISIS), prompting security forces to arrest him. The Director of the Sinuni sub-district, which is located north of Sinjar, Khidida Jouqi, explained: "The security forces returned these families without the permission of the other groups that live in Sinjar, which led the people of Sinjar to take to the streets to protest against this action, chanting slogans rejecting the return of these families to the district."[1] During the protests, some Yazidi youth reportedly threw stones at the Rahman Mosque site in Sinjar.[2] This claim was found to be unsubstantiated by the Yazidi Spiritual Council after carrying out an independent investigation. This was also confirmed by Major General, Atheer Hamza, the Commander of the 20th Regiment of the Iraqi Army, stating that there was no attempt to destroy Abdul Rahman Mosque during protests that broke out in the center of Sinjar.[3]

As a result, from 27 April onwards, more than ten religious' clerks (Mullahs) in the KRI accused the Yazidis of burning the mosque using non-verified sources or no sources at all. Some Mullahs labelled Yazidis as "Godless, devil-worshipers, and infidels."[4] Additional inflammatory speech includes:

[1] "Yazidi Council rejects the return of Sunni Arab families to Sinjar over IS ties", *shafaq.com*, April 29, 2023. Link to the article. (accessed May 3, 2023).
[2] "Sinjar events and attempts to change the facts", *pukmedia.com*, April 30, 2023. Link to the article. (accessed May 3, 2023).
[3] "Iraqi forces dismiss reports of Mosque attack in mainly Yazidi Sinjar city", *ekurd.net*, May 1, 2023. Link to the article. (accessed May 15, 2023).
[4] The video and its translation can be found here. Many hate comments toward Yazidis can be found on the same Mullah's Facebook page, as well.
[5] *polytheists*
[6] The video can be found here. The quote is from 02:02 to 02:17. Translation by Yazda.

- "In a city like Sinjar, the capital of Infidels and *mushrikens*[5], Muslims build a mosque."[6]
- "If we did what the Yazidis did with the mosque all their places would be burned, but we have not done that. Also, they are few, so they are standing against 2 billion Muslims, by doing this Yazidis are digging their own graves." [7]

These speeches were recorded and widely shared on social media, resulting in many hateful and discriminatory comments, including on some Mullahs' social media pages.[8] This further exacerbated the rhetoric. Comments include: "Yazidis, the grandchildren of the devil. We only verbally said we will conduct the 75th genocide[9] on you but if we fought, we would fry you all."[10]

Between 27 April and 2 May, the hashtag #اعوذ_بالله_من_الشيطان_الرجيم, meaning "I_seek_refuge_in_Allah_from_the_accursed_Satan,"[11] went viral.

This hate speech runs the risk of inciting violence against a community that has already experienced extreme discrimination and violence, including genocide. It has contributed to threats of actual violence with some young people calling for an attack on the Yazidi camps in the KRI between 28 and 30 April 2023.[12]

Since the liberation of Sinjar in 2016-2017, Yazidis have lived peacefully side-by-side in the region with Sunni residents, and there are no reports of them had threatened to damage or destroy mosques, including mosques like Rahman, that are known to have been used by ISIS to gather and distribute Yazidi captives.

Local condemnation

From 29 April to 2 May, several individuals and organisations from various political and religious backgrounds condemned the events, including:

- Yazidi religious counsels;
- Qawals (a group of Yazidi religious people);
- Emir of the Yazidis;[13]
- The Cultural and Social Center at Lalish Temple;[14]
- Kurdistan Democratic Party (KDP) in Sinjar[15]; and
- The Iraqi Sunni Endowment.[16]

[5] *polytheists*
[6] The video can be found here. The quote is from 02:02 to 02:17. Translation by Yazda.
[7] The video can be found here. The quote is from 03:34 to 03:56. Translation by Yazda.
[8] Hate comments toward Yazidis on the Mullah's Facebook page.
[9] There were reportedly 74 genocides committed against the Yazidis, including the one by ISIS.
[10] The screenshot of the comment can be found here.
[11] *Instagram*, April 28, 2023. The hashtag can be found here. (accessed May 3, 2023).
[12] The video and its translation can be found here.
[13] *Kurdistan24.net*, April 28, 2023. Link to the article. (accessed May 3, 2023).
[14] "Yazidis say alleged mosque attack stokes tension in Shingal", *rudaw.net*, April 28, 2023. Link to the article. (accessed May 4, 2023).
[15] "Iraqi Sunni Endowment confirms no mosques were attacked in Sinjar", *Kurdistan24.net*, April 30, 2023. Link to the article. (accessed May 5, 2023).
[16] *Kurdistan24.net*, April 29, 2023. Link to the article. (accessed May 4, 2023).

To date, there has not been sufficient condemnation of the hate speeches by responsible duty-bearers within the KRI and Federal Iraqi governments. Swift and robust action is needed to address the hate speech and prevent further violence from being perpetrated against the Yazidi community.

International condemnation

- French Embassy in Iraq;[17]
- Refugees International.[18]

Our calls

Yazda welcomes the condemnation of the hate speeches and calls for further action to ensure Yazidis and other communities can live free from fear and safely in the KRI and Iraq. To this end, Yazda:

1. **Calls on the domestic governmental authorities** to fulfil their obligations under domestic and international law. This includes protecting minorities, investigating these events, and holding people who use hate speech to incite violence against minority groups accountable.

1.1. Obligations under domestic law

- **Iraqi Constitution:** under Article 14, all Iraqis are equal before the law without discrimination based on race, ethnicity, religion, and other characteristics. In addition, Article 38 protects freedom of expression except when it violates public order and morality.[19] Calls to attack Yazidi IDP camps arguably violates public order and morality.

- **Law Number (5) of 2015 to Protect Rights of Minorities in the Kurdistan Region of Iraq[20]:** Article 3 of the law prohibits discrimination against minorities and "any kind of media campaigns whether political or religious which may instigate violence, hatred, and marginalization based on ethnic, racial, and religious biases."[21]

- **Yazidis Survivors Law (YSL)[22]:** In March 2021, the Iraqi Parliament has adopted the YSL, but little has been done so far to implement the law[23], especially the provisions below need to be urgently enforced to address the issue at stake:

[17] Twitter account to the French Embassy in Iraq, May 2, 2023. Link to the press release. (accessed May 2, 2023).
[18] "Refugees International Condemns the Renewed Hate Speech and the Targeting of the Yazidi Community in Sinjar, Northern Iraq", *reliefweb.int*, May 8, 2023. Link to the article. (accessed May 15, 2023).
[19] "Iraq's Constitution 2005, *constituteproject.org*, January 27, 2023. Link to the webpage. (accessed May 5, 2023).
[20] "A reading for the Law of Protecting Components in Kurdistan", *Peace and Freedom Organization and Al-Mesalla Organization for Human Recourses Development*, July 2015. Link to the reading. (accessed May 5, 2023).
[21] Law number (5) for 2015 to protect Rights of Minorities at Kurdistan Region of Iraq. Link to the law. (accessed May 5, 2023).
[22] "Yazidi (Female) Survivors' Law", *c4jr.org*. Link to the webpage. (accessed May 6, 2023).
[23] "More than "Ink on Paper": Taking Stock two Years After the Adoption of the Yazidi [Female] Survivors Law", *Coalition for Just Reparations* statement on the 2-year anniversary of the adoption of the YSL, March 1, 2023. The link to the statement can be found here. (accessed May 15, 2023).

- Article 7.1 of the law recognises that crimes committed by ISIS against the Yazidis and certain other minorities are crimes of genocide and crimes against humanity.[24] However, no trial for international crimes has taken place in Iraq so far. Such trials are crucial not only to provide justice to individual survivors but also to raise awareness and set a historical record on the long-time persecution of Yazidis in Iraq. Building on this article, Iraq also must ensure that international crimes such as genocide are incorporated into domestic law and there is a dedicated mechanism to prosecute such crimes according to international standards.

- Article 8 of the law also provides that the 3rd of August of each year shall be considered a national day to reveal the crimes committed against the Yazidis and other components and media shall provide all programs for this date and clarify the abuse, kidnapping, sexual violence, captivity, and displacement committed by Daesh. Additionally, the law states that the Ministry of Culture, Baghdad Municipality, and the concerned authorities shall take the necessary measures to immortalize the Yazidi victims and other components and to build monuments, statues, and exhibitions on this occasion. Such measures would allow educating the Iraqi society about the Yazidi religion and culture to dispel myths, as well as the genocide and its impact so that minorities are not vulnerable to hate speech, discrimination, and genocide.

- **Security clearance by the intelligence and Iraqi national security for the returnees in Sinjar:** before allowing people to return to the area, it is crucial that they undergo a detailed investigation to be cleared. Yazidis and other leaders should participate in this process to avoid further escalation.

- **Additional transitional justice measures:** beyond the YSL**, Iraq has to adopt other mechanisms** to end impunity for the persecution of minorities; foster reconciliation, harmony, and peace between communities; ensure minorities can live safely and free from fear of persecution. This includes but is not limited to:
  - Appropriate remedies.
  - Moreover, the issue around the administration of Sinjar, including the implementation of the Sinjar Agreement in consultation with the Yazidis should be addressed.
  - The Ministry of Education to design school curriculums that accurately represent the beliefs of minorities.
  - Sectors such as security, justice, and religion should commit to training and awareness of the rights of minorities, and violations of those rights should receive appropriate remedies.

1.2. Obligations under International Law

- **International Covenant on Civil and Political Rights (ICCPR):** Article 19 (2) of the ICCPR enshrines states' obligation to protect freedom of expression. However, this right can also be limited, for example, under Article 20 (2) which notes that: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."[25]

- **International Convention on the Elimination of All Forms of Racial Discrimination (CERD):** the CERD imposes positive obligations on state parties to address discrimination and hate speech, including against minorities. Article 4 (a) of the ICERD obliges states to "Declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin…" In addition, pursuant to Article 4 (b), states "Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offense punishable by law."

2. **Calls on all relevant actors, including the international community**, to condemn hate speech and incitement to violence against the Yazidi community, as well as its spread online. Further calls on all actors to closely monitor developments and take necessary action to protect and support the Yazidi community. The international community should also support Iraq in implementing the YSL and additional transitional justice measures aimed at the protection of minorities.

3. **Calls on social media platforms** to remove videos that incite violence against a particular group. This includes having staff at these social media organisations who can speak different Kurdish dialects so hate speech in these languages can be easily detected and removed.

[25] "The *International Covenant on Civil and Political Rights* (ICCPR)", Link to the webpage. (accessed May 6, 2023).



Yazda

WE CANNOT RETURN

Part 1: Collapsed security threatens the future of Yazidis & minorities in Sinjar

September 21, 2022

THE ZOVIGHIAN PARTNERSHIP

Wilson Center | Middle East Program

“We cannot return to our homeland,” declared Yazidi survivor, human rights activist, and Yazda Yazidi Survivors Network member Zena Haji at the Seventh Annual Commemoration of the Yazidi Genocide on August 3, 2021.

An elderly man – and survivor of *Da’esh* – walks past a destroyed home in his hometown in the village of Hardan in the north of Sinjar on June 30, 2021. The home was occupied and taken over by *Da’esh* as their headquarters in the center of the village. It was later bombed and destroyed in an air raid by the Turkish Air Forces.

Photo credit © 2021 by Yazda Organization

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Glossary of terms

GoI: Government of Iraq

HPE: Protection Force of Êzîdxan

IDP: Internally Displaced Person

KDP: Kurdistan Democratic Party

KRG: Kurdistan Regional Government

KRI: Kurdistan Region of Iraq

PKK: Kurdistan Workers' Party

PMF: People's Mobilization Forces

PUK: Patriotic Union of Kurdistan

UNAMI: United Nations Assistance Mission for Iraq

UNITAD: Investigative Team to Promote Accountability for Crimes Committed by *Da'esh* / ISIL

YBS: Sinjar Resistance Units

YPJ: Women's Protection Units

YSN: Yazidi Survivor Network



About Yazda

www.yazda.org

Yazda is a global community-led institution that protects and champions all religious and ethnic minority communities, including Assyrians, Chaldeans, Kakais, Shabak, Yazidis, other ethno-religious minorities in Iraq, the Kurdistan Region of Iraq, and Syria. Yazda was founded in 2014 at the onset of the Yazidi Genocide and crimes against humanity towards minority groups perpetuated by *Da'esh*.

Yazda is the lead advocacy organization for Yazidi and minority communities in Iraq and the Kurdistan Region of Iraq (KRI). Advocacy commitments include legally advocating for survivors to achieve justice in courts of law; documenting community-led evidence of genocide; driving genocide awareness and recognition through the Yazidi Survivor Network (YSN); and ending child militarization. The organization serves as the conveners of the official annual commemoration efforts of the Yazidi Genocide, with the patronage of Iraqi Prime Minister Mustafa al-Kadhimi in 2021 and Iraqi President Barham Salih in 2020.

Yazda leads a portfolio of strategic humanitarian and community development projects for minority groups in Dohuk, Sinjar, and the Nineveh Plains, as well as global Yazidi diaspora hubs. Commitments include mobile health clinics; intangible cultural assets preservation; sustainable livelihood development; and securing safe and sustainable return to Sinjar.

The Yazda teams work together with global partners, including United Nations Assistance Mission in Iraq (UNAMI), Investigative Team to Promote Accountability for Crimes Committed by *Da'esh* / ISIL (UNITAD), International Organization for Migration (IOM), donor governments, the Iraqi and Kurdistan Regional Governments, and community-based organizations.

Letter to readers

September 21, 2022

Dear friends of the Yazidi Cause and minorities in Sinjar,

Minority communities in Sinjar are still living every day the pervasive long-term effects of genocide and war crimes committed by *Da'esh* in Sinjar, with the breakdown of security, threatened sovereignty, and fragile rule of law blocking any return home.

This position paper represents a two-part policy paper series detailing critical challenges that require urgent multi-stakeholder action. The featured priorities and recommendations have been written to serve as an actionable policy manual during the formation period of the new Government of Iraq and the Kurdistan Regional Government under Prime Minister Masrour Barzani. The Parliament of Iraq and the Parliament of Kurdistan both have the critical responsibility of enabling rule and enforcement of law. The international community, especially humanitarian agencies and donor partners to communities in Sinjar, are necessary drivers to bring accountability to policy and action. To ensure transparent self-determination and diverse representation of all communities that call Sinjar home, it is instrumental that any new policies, legislation, and actionable decisions be made with the direct and regular consultation of all minority groups.

Specifically, this paper presents and recommends immediate solutions to strengthening security in Sinjar. Until security is resolved, socio-economic recovery and development in Sinjar is significantly challenged. Minority communities continue to serve their life terms in internally displaced person (IDP) camps with hundreds of others who have quit on both Iraq and the Kurdistan Region. Sinjar is being left behind.

We count on the goodwill and agility of all friends of minorities and communities to close this insecure chapter for Sinjar together.

With our deepest respects,

Ahmed Khudida Burjus
Director
Yazda Organization

Lynn Zovighian
Co-founder & Managing Director
The Zovighian Partnership



Photo credit © 2021 by Yazda Organization

Background

On August 3, 2014, *Da'esh* attacked Sinjar, launching a campaign of genocide and crimes against humanity against minority communities in the Kurdistan Region and Iraq, murdering 1,298 Yazidis on the first day of their invasion.[1] 6,417 Yazidis were kidnapped.[2] Women and girls were sold into sexual slavery. Young Yazidi boys were captured and forced into re-education camps and ideological schooling.[3] *Da'esh* militants also targeted Assyrians, Chaldeans, Shabak, Syriacs, and other ethno-religious minorities with rape, murder, torture, forced conversion, and mass displacement.[4] Villages were pillaged and 6,000 houses were burned and/or destroyed.[5] More than eight years later, and 200,000 Yazidis remain internally displaced.[6] Hundreds of thousands of people across all minority communities have left, seeking asylum around the world. 2,760 Yazidi women and children are still missing and unaccounted for.[7] All are unable to return to their ancestral lands in Sinjar.[8]

Rates of Yazidis returning to Sinjar have varied over the past few years, but have significantly dropped most recently. The International Organization for Migration (IOM) Displacement Tracking Matrix reported that 8,488 families returned to Sinjar and Al-Ba'aj districts between June 8, 2020 and January 3, 2021.[9] However, 472 families have been re-displaced and have returned to the IDP camps in July 2021 alone, citing the inability to live in a destabilized and insecure environment with neither access to trusted services and housing, nor perceived prospects for a better future.[10]

Safety and stability remain dangerously compromised due to the chronic and growing presence of armed groups and militias. The threat of *Da'esh* cells and continued fundamentalist ideology in Sinjar remains pervasive.[11] Today, there are at least 11 armed groups representing different internal and external entities that control different areas of Sinjar.[12] These include the Iraqi army, Iraqi police, Peshmerga of the Kurdistan Democratic Party (KDP), the KDP-aligned HPE of Haider Shesho, the Iranian-backed Popular Mobilization Forces (PMF; also referred to as the PMU), as well as two Kurdistan Workers' Party (PKK)-aligned groups comprised of Yazidis, Sinjar Resistance Units (YBS), and the Exidxan Asayish. The United Nations Mine Action Service (UNMAS) also continues to

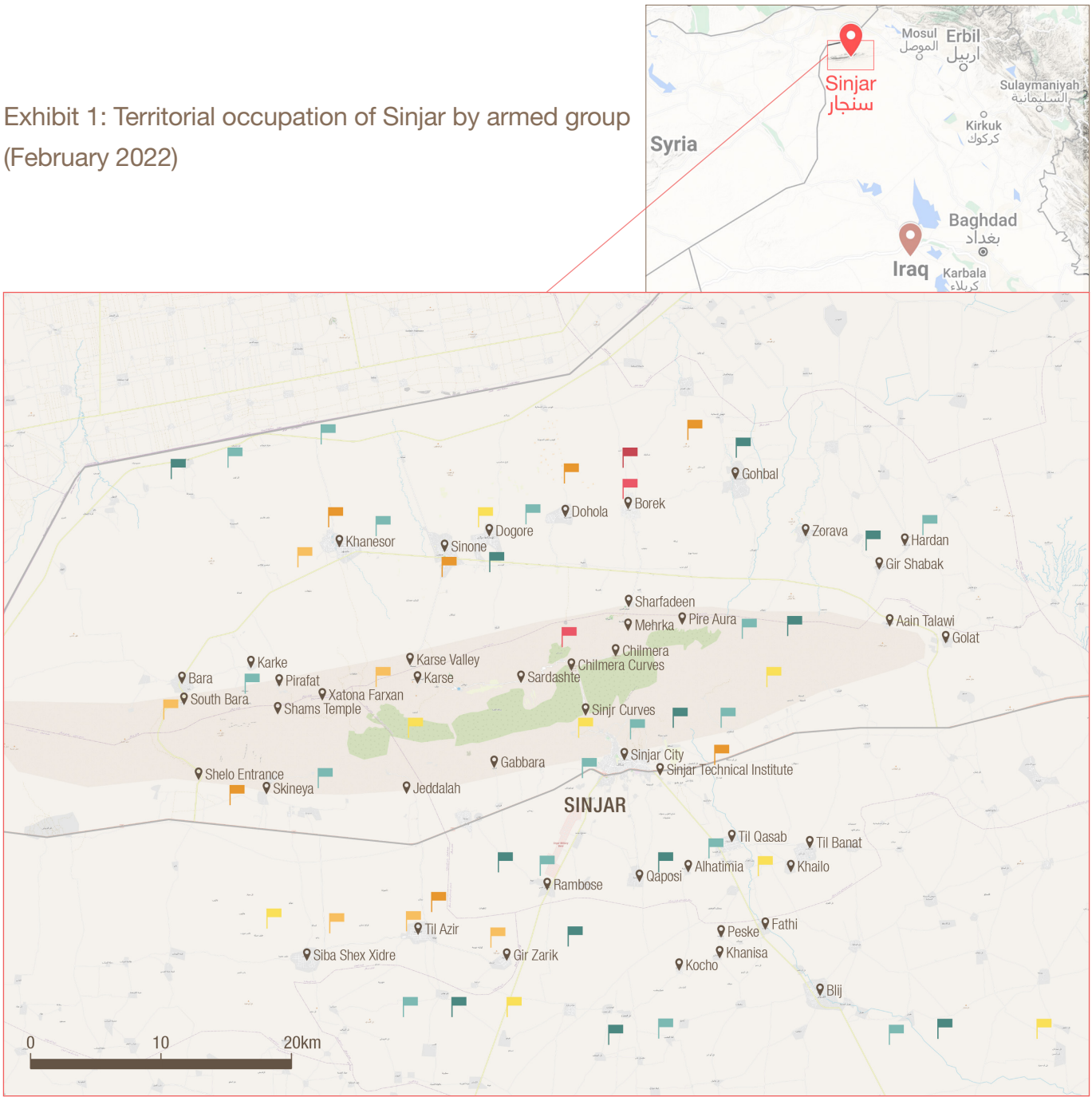
carry out demining operations in Sinjar, as explosive remnants of war (ERW) still pose a threat to Sinjaris.[13]

The Kurdistan Workers' Party (PKK) became a prominent player in Sinjar through the fight against *Da'esh*, and integrated Yazidi fighters under the YBS. The Government of Iraq provides financial support to the YBS, covering the salaries of several of their effectives. Often portrayed as a tool of the PKK, the YBS denies any ongoing affiliation.[14] The membership of Yazidis from Sinjar in the YBS makes their departure from the region implausible, given their strong socio-political support from residents of Sinjar.

Turkish President Recep Tayyip Erdogan justified Turkish airstrikes and threatened a ground offensive when he publicly stated that he will not allow Sinjar to become a "new Qandil," or area controlled by the PKK.[15] Turkey regularly enters Iraqi air space and bombs Sinjar, citing the threat of the PKK. Turkish Air Forces conducted eight strikes in 2020 and claimed to hit 81 targets in a single day.[16] In February 2022, the Turkey conducted over 20 airstrikes in Sinjar, targeting five YBS positions.[17] It is estimated that 60% of these persistent attacks from Turkey resulted in civilian casualties.[18] In June, one of these strikes in Sinjar killed a 12-year-old Yazidi boy and wounded his brothers while in their father's shop. Another strike at a tourist resort in Zakho in July killed at least eight civilians and wounded twenty more, causing diplomatic tension between Iraq and Turkey and drawing international condemnation.[19] Villages and infrastructure have been seriously damaged with no budgets and plans for reconstruction. These incidents only contribute towards sowing increasing fear and insecurity among traumatized Yazidi civilians and members of other minority communities.

Sinjar is among 14 disputed territories claimed by Iraq and the Kurdistan Regional of Iraq. On October 9, 2020, the GoI and KRG signed the Sinjar Agreement under the supervision of the United Nations Assistance Mission for Iraq (UNAMI) to address the complicated situation in Sinjar.[20] The Agreement includes the selection of a new mayor, the removal of all non-state armed factions, the appointment of 2,500 Sinjar community members to the Internal Security Forces, and an end to all PKK presence in the area. Minority groups from Sinjar were neither consulted in the drafting nor signing of the Agreement.[21] Implementation of the Sinjar Agreement has so far not been activated. Comprehensive and trusted security is a key pre-requisite to any socio-economic recovery in Sinjar.

Exhibit 1: Territorial occupation of Sinjar by armed group (February 2022)



Sources: *The coming Sinjar war*; Murad Ismael cartographic analysis

Legend

- Villages, towns, & community landmarks
- Mountains
- Vegetation areas
- Highways
- Roads
- District borders
- Iraqi army & Iraqi National Security Services
- Iraqi police
- PMF (Popular Mobilisation Forces)
- YBS (Sinjar Resistance Units)
- *Exidxan Asayish*
- *Qasim Shesho Peshmarga*
- *HPÊ of Haider Shesho*

Key policy priorities & recommendations: Strengthen security in Sinjar

Albeit the loss of widespread territorial holdings of *Da'esh* by end of 2017, Sinjar continues to be a militarized conflict zone. As such, it is premature for policies, rule of law reforms, and socio-economic recovery and development plans to treat Sinjar as a post-conflict environment.

The chronic absence of basic security is not just a significant detriment to the safe and sustainable return of displaced families. The deprived state of security and consequential fragile rule of law critically endangers the lives of families who have risked returning to Sinjar, has forced many to be re-displaced back to IDP camps, and offers little foundational basis for any deliberations on the future of over 250,000 citizens still displaced in abhorrent camp conditions. In other words, Sinjar is still gravely dangerous more than seven years since the genocide and acts against humanity by *Da'esh* began on August 3, 2014.

...it is premature for policies, rule of law reforms, and socio-economic recovery and development plans to treat Sinjar as a post-conflict environment.

Today, security threats and destabilization by armed groups are affecting local populations and inhibiting any means for rebuilding and recovery. Especially, the multiplicity of independently funded and motivated non-state actors taking rule of law into their own hands means:

On humanitarian response:

- Humanitarian actors, service providers, social workers, and program coordinators in humanitarian, development, and conflict resolution programs cannot safely and consistently serve communities with the highest standards and practices;

- Humanitarian goods cannot be safely sourced, distributed, and stored;

- Mobile medical clinics and medical professionals cannot move freely and consistently serve their patients;

Today, security threats and destabilization by armed groups are affecting local populations and inhibiting any means for rebuilding and recovery.

On justice:

- Mass graves cannot be safely exhumed in a protected and controlled forensic environment;

- Genocide evidence gathering and documentation cannot be collected safely in a controlled environment to ensure full data validity;

On law enforcement and government affairs:

- Local police and law enforcement forces cannot assume untampered and comprehensive control and oversight over all areas of Sinjar;

- Local government bodies like municipalities and localized public administration services cannot enable organized civil life and order for citizens;

- The Government of Iraq and the Kurdistan Regional Government cannot assuredly earmark and disburse strategic public budgets to Sinjar for reconstruction, recovery, and re-development;

On infrastructure:

- Roads, highways, and bridges cannot be deemed safe and dependable for travel;

- De-mining operations cannot be comprehensively planned for and funded;

On strategic development:

- Villages and towns cannot be rebuilt with incentives and services to encourage historic residents to return and rebuild their lives in Sinjar;

- Villages and towns cannot establish a baseline for socio-economic development opportunities nor even ascertain basic local trade with the safe movement of goods for local populations to grow and thrive;

- Agricultural plots cannot be invested in for land preparation, harvest, and domestic socio-economic development, nor can agricultural produce and goods be guaranteed safe transport and storage;

- Investors, philanthropists, and institutional donors cannot be galvanized and encouraged to strategically and sustainably support and invest in Sinjar;

On geopolitics:

- Turkey may continue to conduct airstrikes on local towns and villages with the geopolitical excuse that the presence of armed bodies compromises geopolitical and border safety; and

- Sovereignty remains critically compromised, affording political stakeholders the cover to not commit to Sinjar and the many communities that call Sinjar home.

Securing security in Sinjar is indispensable and must be treated with sensitivity, urgency, and multi-stakeholder accountability. Until security is enabled and institutionalized in Sinjar as a basic human right and dependable service the local population can count on, families have no – indeed, no – mechanisms for a safe and sustainable return to their ancestral homes.

As such, the below recommendations are addressed to the Government of Iraq, Kurdistan Regional Government, and international diplomats and agencies to re-establish security, and ensure rule of law, safety, and the enablement of Sinjar. They require the high participation and deep inclusion of all communities to assure self-determination and survivor-centricity in all decisions, mandates, and actions:

1. Re-visit the tenets of the Sinjar Agreement and set clear deadlines to strengthen its proposed mechanisms for sovereignty, security, and safety and comprehensively implement an authoritative and trusted community-inclusive security mandate with no further delay;

2. Allocate long-term budgets and activate programing for the capacity-building of local law enforcement bodies under the governmental mandates of the Government of Iraq and Kurdistan Regional Government, with recruiting mechanisms for local communities, including

women, to serve and receive training;

3 Close all non-state checkpoints, establish official state checkpoints only, and deploy trained and long-term funded local law enforcers to guarantee the safe and trusted movement of goods, aid, humanitarian workers, public servants, and communities;

4 Establish and fund a multi-stakeholder taskforce for Sinjar with seats allocated to community-appointed representatives for every local affected community, and the Government of Iraq, the Kurdistan Regional Government, with an independent mediator and secretariat to ensure that security monitoring, decisions, and geopolitical stakeholder engagement include the equal voices of all;

5 Establish and fund a local communities-led grassroots independent monitoring and oversight body to track, study, document, and address direct and indirect consequences of the breakdown of security and rule of law on the welfare of local inhabitants, such as but not limited to, fueling discrimination, inciting of local and collective violence, and entitling other forms of persecution; and

6 Study, reform, and introduce legislation to ensure the constitutional right to safety and protection of citizens in Sinjar ascertained in the laws, policies, and strategic commitments of all stakeholders.

Securing security in Sinjar is indispensable and must be treated with sensitivity, urgency, and multi-stakeholder accountability.

All direct and indirect stakeholders have a time-critical responsibility towards Sinjar and its local people. Current development and diplomacy efforts must be bolstered and swiftly shifted to building strategic capacity and scale. Without agile and measurable action, Sinjar will not be given voice, and therefore, not get to meaningfully participate in the long-term recovery and future of Iraq. That scenario is dire and rapidly becoming a reality, leaving no opportunity for all minorities to live freely and safely. The recent events of *Da'esh* in Syria and inability to curtail terrorism and violence in the region make Sinjar even more vulnerable to being forgotten and its people left behind. Community members, global activists and thought leaders, diplomats, international and local NGOs and agencies, and friends of the communities of Sinjar are ready to play a constructive leadership role. They must be empowered – without further delay – to take charge, set the agenda, invite all to the table, and make Sinjar a priority for all. ◀

Methodology

This paper brings together the very diverse views and perspectives of Yazidi community leaders and members, as well as key international and local stakeholders championing the Yazidi Cause. These voices were documented during a dedicated moderated consultative session and a community-wide leadership roundtable, as well as two annual commemorations on the Yazidi Genocide, between August 2020 and January 2022, all held on Zoom. Contributions and speeches were consulted from a total of 83 unique participants and speakers, including seven Yazidi women survivors, 18 Yazidi community leaders, 13 Iraqi and KRI government officials, 22 international officials and diplomats, eight representatives from international agencies, and 15 activists for minority communities. 41% represent female voices and 59% represent male voices. A literature review of verified and grounded grassroots, local, and international investigative reporting was also conducted. Community and journalistic accounts from the ground during the latest events in Sinjar in between February and June 2022 were also mapped and integrated.

To honor high participatory and community-centered self-determination research design, all raw data was collected using meticulous methodological notetaking, memoing, transcribing, and translating protocols in the English, Arabic, and Kurmanji languages. Open, selective, and axial coding was conducted following the Boyatzis thematic analysis method of qualitative analysis and coding to ensure a comprehensive capture of voice and the diversity of voices. All data collected and coded was presented in a proprietary collected raw data compilation to facilitate strategic analysis.

The insights and analysis presented in this paper examine key findings from a multi-stakeholder perspective, mindful of the urgencies, sensitivities, and extreme need for deep listening and deep collaboration at this time for Sinjar and its people. The writers and contributors engaged in a policy definition process to identify critical policy problematics, priorities, and recommendations that are featured in this paper.

This methodology applies to all papers in this policy series.

Notes

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[3] *Legacy of Terror: The Plight of Yezidi Child Survivors of ISIS* (London: Amnesty International, 2020), https://www.justice.gov/eoir/page/file/1299511/download.

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THE ZOVIGHIAN
PARTNERSHIP

About The Zovighian Partnership

www.zovighianpartnership.com

The Zovighian Partnership is a family-owned social investment platform, established by father and daughter in 2013. Deeply invested in R&D, the venture is committed to delivering ethical, inclusive, and innovative design, research, and prototypes. All commissioned research is scientific with customized deep-listening methodologies that safeguard strong participation and self-determination, all to deliver meaningful and ethical data. The team of researchers, strategists, and analysts serve communities, nation-builders, organizations, and governments, enabling early-stage ideas to already-established impact initiatives, programs, and ventures.

The team and family are re-investing financial, political, and intellectual capital into the ZP Public Office, a growing peace-building impact portfolio for communities and cities in crisis. The ZP Public Office is committed to delivering grounded self-determination methodology, sound governance, and rigorous strategic design to sustainable peace and socio-economic enablement efforts.



About Wilson Center

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The Wilson Center, chartered by Congress in 1968 as the official memorial to President Woodrow Wilson, is the nation's key non-partisan policy forum for tackling global issues through independent research and open dialogue to inform actionable ideas for the policy community. The Wilson Center's Middle East Program serves as a crucial resource for the policymaking community and beyond, providing analyses and research that helps inform U.S. foreign policymaking, stimulates public debate, and expands knowledge about issues in the wider Middle East and North Africa (MENA) region.

The main branch of Yazda is registered in the United States as a non-profit organization conducting charitable activities outside the United States under Article 501(c)(3). Yazda is also registered in Iraq, the Kurdistan Region of Iraq, Germany, Sweden, the United Kingdom, and Australia.

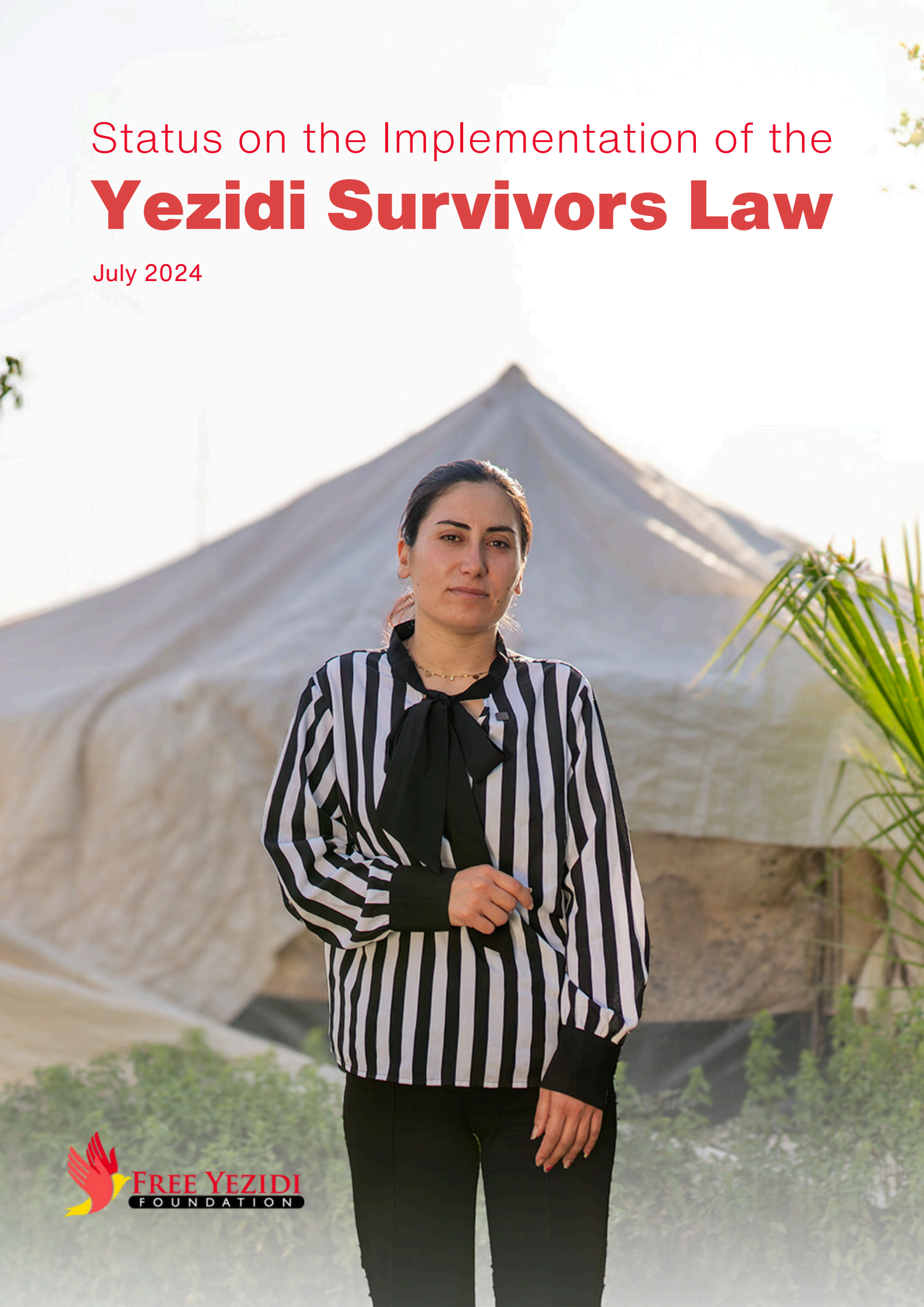


www.yazda.org

Status on the Implementation of the

Yezidi Survivors Law

July 2024



FREE YEZIDI FOUNDATION

Status on the Implementation of the Yezidi Survivors Law

July 2024

Publisher: Free Yezidi Foundation USA Inc. (FYF)
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Cover Photo: Hadia, Yezidi Survivior and YSL beneficiary

About the Free Yezidi Foundation

The Free Yezidi Foundation (FYF) is a non-partisan, Yezidi women-led nonprofit organization established in response to the 2014 Yezidi Genocide. FYF is dedicated to the empowerment and support of the Yezidi community through the provision of comprehensive advocacy, justice, mental healthcare, psychosocial support, education, and livelihood services. With a special focus on women, girls, and survivors of SGBV, FYF's initiatives aim to enable those most vulnerable to rebuild their lives with dignity and resilience.

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List of Acronyms

ISIL	Islamic State of Iraq and the Levant
SGBV	Sexual and Gender-Based Violence
IDP	Internally Displaced Persons
FYF	Free Yezidi Foundation
YSL	Yezidi Female Survivors Law
GDSA	General Directorate for Survivors' Affairs
REM	Religious and Ethnic Minority
GOI	Government of Iraq
KRG	Kurdistan Regional Government
CRSV	Conflict-Related Sexual Violence
KRI	Kurdistan Region of Iraq
CSOs	Civil Society Organizations
MHPSS	Mental Health and Psychosocial Support
C4JR	Coalition for Just Reparations
IOM	International Organization for Migration

2014 Yezidi Genocide

On August 3, 2014, the Islamic State of Iraq and the Levant (ISIL) launched a genocidal campaign against the Yezidi ethno-religious minority. This campaign involved ethnic cleansing through mass executions, forced conversions, forced displacement, kidnappings, and widespread sexual and gender-based violence (SGBV). These atrocities led to the massacre of Yezidi men and older women, enslavement of over 6,000 Yezidi women and children, and the displacement of more than 400,000 Yezidis to Internally Displaced Persons (IDP) camps. Other religious and ethnic minority communities also faced displacement and endured crimes perpetrated by ISIL.

A decade later, the Yezidi community remains profoundly impacted, with half of its population still internally displaced. Survivors continue to endure significant trauma, compounded by inadequate support for their healing and recovery.



Executive Summary

The Yezidi Female Survivors Law (YSL), passed by the Iraqi Parliament on March 1, 2021, represents a significant step towards providing comprehensive reparations for survivors of ISIL atrocities among Yezidi, Turkmen, Shabak, and Christian communities. This landmark legislation acknowledges the international crimes committed by ISIL against religious and ethnic minority (REM) groups – particularly Yezidis. It integrates extensive reparative measures, including accountability and memorialization efforts, alongside individual benefits such as monthly stipends, land allocation, and housing support.

Statistics released by the General Directorate for Survivors' Affairs (GDSA) indicate significant progress in processing applications and disbursing monthly payments, providing mental health services, facilitating access to education, and initiating land allocation processes for survivors.

Despite its significance, the implementation of the YSL faces considerable challenges. Survivors are required to file a criminal complaint to access reparations, a step that presents barriers. The process often fails to utilize existing evidence provided by survivors, and the eligibility criteria are narrowly interpreted. This narrow interpretation excludes children born during captivity to mothers who were pregnant at the time of their abduction, thereby denying them their right to reparations.

Moreover, the absence of a Directorate branch in the Kurdistan Region of Iraq (KRI) creates serious accessibility issues for displaced Yezidi survivors. Lack of information dissemination to survivors and civil society further exacerbates the problem, leading to potential misinformation and misunderstanding of developments related to the YSL.

This report examines deficiencies in the compensation strategies developed by the Iraqi government and proposes recommendations to government entities, Iraqi civil society, and the international community for providing restitution and redress to survivors. The Free Yezidi Foundation (FYF) has identified these issues through its ongoing work with survivors in the KRI since the inception of the application process.

Recommendations

- Enhance information sharing with informed consent to verify reparation claims and reduce evidentiary burdens through improved cooperation among the Government of Iraq (GOI), Kurdistan Regional Government (KRG), civil society, and international bodies.

- Improve coordination between the GDSA and other governmental bodies to fully implement unfulfilled reparative measures under the YSL. This includes providing individual benefits such as housing, land allocation, and employment, and broader initiatives like establishing a search committee for missing persons, pooling resources for search and rescue operations, exhuming mass graves, ensuring criminal accountability, and memorializing victims.
- Extend reparations eligibility to children born in captivity to mothers abducted by ISIL, male survivors of conflict-related sexual violence (CRSV), and children from all affected minority groups.
- Establish a branch office of the Directorate in Duhok to enhance accessibility for displaced Yezidi and other minority group survivors living in the KRI.
- Eliminate the requirement for survivors to file criminal complaints and simplify evidentiary requirements to facilitate access to reparations, in accordance with the original legislation.
- Provide tailored support throughout the application process, including gender- and age-sensitive assistance, specifically targeting minors, survivors with disabilities, and those with limited (digital) literacy.
- Foster collaboration between survivor-centered Civil Society Organizations (CSOs) and government bodies to establish effective and continuous feedback mechanisms. This collaboration is essential for ensuring the participatory and successful implementation of reparations.

> *Survivors need a lot of support. Everything being done for them is little compared to what they have endured.*
>
> Renas (Yezidi Survivor)

Background

The Yezidi community endured unimaginable atrocities during the ISIL onslaught, including mass killings, sexual violence, and widespread displacement. The enactment of the YSL on March 1, 2021, by the Iraqi Council of Representatives represented a significant legislative effort to address the profound physical, mental, social, and financial impact on survivors, particularly women and children. This landmark legislation not only acknowledges the genocide and other international crimes committed by ISIS against the Yezidis and other minority communities, but also establishes provisions for both material and symbolic reparations for survivors.

On September 7, 2021, the GDSA announced the opening of applications under the YSL. Eligible applicants

include women and girls from the Yezidi, Christian, Shabak, and Turkmen communities who survived ISIL captivity, male Yezidis who were minors during their abduction, and all survivors of mass killings from these communities. The application process requires filling out a form that includes personal information and details of the experienced violations, along with submitting supporting identity documents. Applications can be submitted online, in hardcopy, or with assistance from Directorate staff in Mosul and Sinjar. In certain cases, applicants may be called for an interview with an eight-member Committee comprising representatives from various governmental bodies, chaired by a judge. This Committee is responsible for adjudicating individual reparation applications under the YSL.

The YSL holds immense significance as it recognizes the profound suffering of affected communities and mandates several ministries and governmental bodies to undertake critical actions. These include searching for missing persons, ensuring criminal accountability, and memorializing the atrocities – demands that the Yezidi community has passionately advocated for since the aftermath of the 2014 genocide. Furthermore, this law is particularly poignant for the Yezidi community, as it stands as the first Iraqi legislation officially acknowledging one of the many genocides Yezidis have endured throughout history. The law offers individual material reparations primarily targeting women and girls who survived CRSV. These benefits encompass a monthly stipend, access to land through a government loan or provision of a housing unit at no cost, medical care, and mental health and psychosocial support (MHPSS) services, as well as opportunities for education and employment. By blending symbolic gestures with tangible support for individual survivors, the YSL represents a pivotal stride towards reinstating a sense of equal citizenship and justice.

To support survivors, the YSL established the GDSA within the Ministry of Labor and Social Affairs, led by Sarab Elias, a Yezidi woman. This dedicated government body marks a significant step forward in providing essential support to survivors. CSOs located in the KRI, Federal Iraq, and internationally have also played a crucial role in aiding survivors who apply for reparations under the YSL. These organizations raise awareness about survivors' rights to reparations, assist with the application process, provide necessary documentation, offer medical and MHPSS services, and monitor and document the implementation of the YSL. Their advocacy aims to achieve improvements aligned with a survivor-centered approach.[1]

[1] Notable recent publications include FYF's Iraq's Yezidi Survivors Law: Report on Year One of Reparation Applications (September 2023), FYF's Strengthening Implementation of the Yazidi [Female] Survivors Law: Recommendations Based on International and Comparative Best Practices (May 2024), and C4JR's More Than "Ink on Paper": Taking Stock Two Years After the Adoption of the Yazidi [Female] Survivors Law (March 2023).

FYF's Work on the YSL

FYF launched its work on the YSL by conducting extensive outreach to inform communities about the law and their rights to reparations. Between January 2022 and March 2023, 15 members of FYF's all-Yezidi Harikara [2] Team, including 11 women, conducted outreach sessions attended by 2,273 individuals in Khanke, Sharya, and Sheikhan. These sessions aimed to educate both male and female Yezidi survivors about the YSL. The FYF protection team was also present to answer questions and provide updates on the law throughout these sessions.

When the YSL application form became available in September 2021, FYF instituted protocols to offer legal and MHPSS services to applicants. The team underwent training on the YSL framework and trauma-informed interview techniques. A Standard Operating Procedure was developed, outlining the delivery of YSL services and establishing ethical guidelines tailored to YSL-related assistance.

The team began supporting applications in October 2021 and simultaneously launched a YSL helpline, with the number distributed among the Yezidi community by the Harikara team. By 31 May 2024, the team had consulted with 239 Yezidi individuals and assisted 73 survivors with their applications. The protection team regularly follows up on each application with survivors, the GDSA, and other governmental bodies, as necessary, to ensure that applications are being processed and survivors start receiving benefits or lodge timely appeals depending on the outcomes. Additionally, the team provides MHPSS services, including case management, therapy, peer support, and referrals. FYF's work to support survivors accessing compensation under the YSL is multifaceted, further encompassing essential educational programs in financial, language, and digital literacy. Recognizing the significant barriers that language and digital literacy present in the application process, we provide tailored classes to empower female survivors with the necessary skills to navigate and complete their compensation claims independently. Additionally, our financial literacy classes are designed to ensure that female survivors gain control over their compensation and financial and household resources, preventing these assets from being ceded to male relatives.

In March 2023, FYF and seven other Iraqi CSOs signed an Agreement of Cooperation with the GDSA to provide MHPSS services to YSL applicants and beneficiaries.[3] FYF also supported the creation of a questionnaire to monitor

[2] FYF's Harikara (Kurmanji for "helpers") team work on outreach and awareness-raising in IDP camps and within host communities on a range of issues, including mental health, gender equality, and human rights. For further information, see FYF, The FYF Harikara Model (October 2020).
[3] IOM Iraq, Toward Comprehensive Rehabilitation: Mental Health Service Referral System Launched for Genocide Survivors in Iraq (March 28, 2023)

the YSL application process with the Coalition for Just Reparations (C4JR), a civil society coalition of 33 organizations (including FYF) advocating for reparations for YSL survivors. The questionnaire was finalized in June 2023, and in July 2023, FYF participated in a workshop with C4JR and the International Organization for Migration (IOM) Iraq to train CSOs on using the questionnaire for monitoring purposes.

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"I was young when ISIS kidnapped me, so I could not go to school. Providing a salary was very helpful for my future."

Waam (Yezidi Survivor)

Successes of YSL Implementation

The YSL has been a crucial step toward justice and reparations, offering survivors a means to heal and restore their lives with dignity. The GOI has made significant progress in processing applications and distributing monthly payments. As of June 2024, 1,834 survivors have had their YSL applications accepted and have begun receiving monthly reparations payments. Given that most survivors live in extreme poverty, these monthly payments have the potential to significantly improve their lives.

In June 2024, the GDSA announced the initial allocation of 262 plots of land for survivors. The distribution will occur in stages, with one plot allocated per family in each stage. Survivors can complete the land allocation procedures at the corresponding municipalities.[4]

While the distribution of monthly payments has been prioritized under the YSL, the GDSA and GOI have also taken steps to implement other reparation measures foreseen under the YSL. Noteworthy among these is the MHPSS referral system, set up in coordination with Iraqi civil society. Additionally, the GDSA supports survivors in returning to public education and prioritizes them in public employment.

Most recently, the GDSA announced the launch of its Empowerment Initiative, in coordination with the Ministry of Culture. This initiative aims to train YSL beneficiaries in various professions, including soap and candle making, glass drawing, and phone

[4] C4JR Newsletter (June 2024)

repairs, to support independent income generation. To aid the development of their income-generating projects, the Ministry of Labor and Social Affairs will allocate loans to participants. While the implementation and outcomes of this initiative remain to be seen, it marks a significant step toward offering survivors a means to rebuild their lives and communities.[5]

As Manal, a survivor from Sinjar and member of the Survivors Voices Network shares,

> *"I remember everything that we survivors went through at the hands of Daesh, and all the years waiting for justice. [...] We hope that this will be followed by the implementation of the rest of the reparations provided for in the law."*

Barriers to Justice and Reparations for Survivors

Despite its potential, the implementation of the YSL faces significant hurdles. Administrative programs designed to offer reparations are generally more accessible than legal avenues, which can be costly and bureaucratic. However, recent additional requirements for survivors to file criminal complaints to receive reparations pose substantial barriers. These requirements risk overwhelming legal mechanisms, infringing on survivors' autonomy to choose whether to pursue legal action, perpetuating stigma, and causing re-traumatization. [6] Survivors of CRSV face unique challenges under the current implementation of the YSL. These crimes often lack witnesses and are difficult to prove, making the requirement to file criminal complaints particularly burdensome. International standards suggest that survivors should not need to file criminal complaints to receive reparations. Instead, testimonies from survivors, supported by evidence collected by various official and non-governmental bodies, should suffice to establish victim status and ensure access to reparations.

Additionally, government hotlines and paralegal programs should be more widely implemented to assist survivors with their applications. Another critical issue is the narrow eligibility criteria of the YSL, which unfortunately exclude children born in captivity to mothers abducted by ISIL. This oversight significantly impacts many individuals who desperately need support.

Moreover, the lack of a GDSA branch office in the KRI exacerbates accessibility challenges for 180,000 displaced Yezidis and other survivors of REM communities. For many survivors, traveling to Mosul or Sinjar, where current GDSA offices are situated, poses daunting logistical,

[5] C4JR Newsletter (June 2024)
[6] Human Rights Watch, Statement on the implementation of the Yazidi Survivors Law (April 14, 2023)

financial, and emotional hurdles. High transportation costs, childcare responsibilities, and limited mobility further compound these challenges, effectively preventing survivors from accessing the governmental support intended for them. This starkly contrasts the YSL's mission to support these vulnerable populations with the harsh reality of their ability to access that support.[7]

Therefore, it is imperative to enhance accessibility and involve survivors of CRSV in selecting non-traumatizing locations for GDSA offices. Additionally, safe transportation services should be provided to these locations. Financial resources should be allocated to NGOs to support their .operation of mobile clinics and one-stop centers, ensuring survivors have access to comprehensive services

Conclusion

The YSL marks a crucial milestone in seeking justice and reparations for survivors of ISIL's atrocities, and its implementation is underway. Nevertheless, there are significant barriers to application that must be addressed, such as onerous evidentiary requirements and limited eligibility criteria. Establishing local offices is also essential to enhance accessibility for survivors. By tackling these issues, the Iraqi and KRG governments can solidify their dedication to YSL implementation and demonstrate to survivors that their voices are valued and heard.



[7] FYF, Iraq's Yezidi Survivors Law: Report on Year One of Reparation Applications (September 2023)



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Photo - Yezidi family in Khanke Camp, Duhok, Iraq.