

## هاوپهیمانی بۆ قهره بووکردنه وهی دادپه روه رانه

*Taking account of* the fact that numerous human rights violations against the people of the Republic of Iraq have been committed in the course of the self-declared Islamic State in Iraq and Syria (“ISIS”) conflict in Iraq

*Emphasizing* that ISIS particularly targeted several of Iraq’s religious and ethnic components, such as Yazidi, Christian, Turkmen, Shabak and Kaka’i and acknowledging that most serious international crimes committed against members of these components may include acts amounting to genocide

*Determined* to address, remedy and prevent reoccurrence of conflict-related sexual violence in Iraq

*Realizing that* survivor-centered approach can best mitigate the effects of conflict-related sexual violence and other gross human rights violations

*Acknowledging* the bravery of survivors, in particular Yazidi women, who made the sexual violence committed by ISIS known both in Iraq and internationally

*Noting the Joint Communiqué between the Republic of Iraq and the United Nations on the Prevention and Response to Conflict-Related Sexual Violence (2016) and the Government of Iraq’s pledge to provide reparations to survivors of sexual violence and their children therein*

*Assuring* that gross violations of human rights and serious violations of humanitarian law, other than conflict-related sexual violence, committed during the ISIS conflict in Iraq shall be addressed in due time

the Council of Representatives of Iraq enacts a:

## LAW ON REPARATIONS FOR SURVIVORS OF CONFLICT RELATED SEXUAL VIOLENCE COMMITTED DURING THE ISIS CONFLICT IN IRAQ

### Article 1

#### DEFINITIONS

“*Conflict-Related Sexual Violence*” (CRSV) means rape, sexual slavery, trafficking in persons for the purpose of sexual violence or exploitation, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation, forced marriage and any other form of sexual violence of comparable gravity occurring during or following an armed conflict and having a direct or indirect nexus with that respective conflict.<sup>1</sup>

“*Sexual and gender-based violence*” (SGBV) refers to any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships. It includes physical, emotional or psychological and sexual violence, and denial of resources or access to services.<sup>2</sup>

“*Survivor*” means anyone who individually suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts of CRSV committed during the ISIS conflict in Iraq.

“*Survivors' families*” means immediate family or dependents of survivors.

“*Perpetrator*” means persons who are members of and who act in the name or on behalf of armed state or non-state actors active during the ISIS conflict in Iraq and who commit acts of CRSV against survivors.

“*Reparation*” means benefits provided to survivors of CRSV perpetrated during the ISIS conflict in Iraq to redress the harms arising from such violence.

“*ISIS conflict in Iraq*” means period from 09. 06. 2014 until 09.12. 2017 when ISIS effectively controlled part of the Iraqi territory. Those individuals taken captive in the indicated period, subsequently trafficked outside of Iraq and released after 2017 or still not released shall be, for the purposes of this law, recognized as survivors as well.

### Article 2

#### GENERAL DIRECTORATE OF SURVIVORS' AFFAIRS

(1) A General Directorate for Survivors Affairs shall be established and attached to the General Secretariat of the Council of Ministers.

(2) The headquarters of the Directorate shall be in the Sinjar district of Nineveh Governorate. The Directorate shall open sub-offices authorized to act on behalf of the

<sup>1</sup> For a full definition of CRSV see the [United Nations' Secretary-General's annual report to the Security Council on CRSV, UN Doc No. S/2019/280](#) (29 March 2019) at para 4.

<sup>2</sup> For a definition of SGBV see [UNHCR Emergency Handbook](#)

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Directorate in locations accessible to survivors, as well as create mechanisms allowing survivors who resettled abroad to benefit from this law.

- (3) The Directorate shall have legal personality and financial and administrative independence;
- (4) The Directorate shall be provided with sufficient resources (financial, human, logistical);
- (5) The Directorate shall be headed by the Director General, who:
  - a) is a member of the Yazidi community, preferably a women;
  - b) holds a primary university degree in law, political science, psychology, sociology or similar fields;
  - c) has a minimum of five years of experience working in the field of human rights, social services, legal aid or judiciary.
- (6) The Director General shall be supported by a Commission consisting of seven Commissioners, (out of which at least three will be women) who are members of different ethnic and religious components impacted by the ISIS conflict and have a minimum of three years of experience working in the field of human rights.

### Article 3

#### DUTIES OF THE DIRECTORATE

The Directorate shall:

- a) liaise with governmental offices, investigative bodies, international and non-governmental organizations who document CRSV perpetrated during the ISIS conflict in Iraq, to incorporate their data into its work;
- b) collect and decide on reparation claims made under this law;
- c) open sufficient number of sub-offices authorized to act on its behalf in locations accessible to survivors;
- d) dispatch mobile teams to IDP camps and remote areas to assist survivors submit claims;
- e) formulate criteria, set up procedures and select NGOs to assist the Directorate in the application procedure and provision of rehabilitative services to survivors;
- f) create mechanisms allowing survivors who resettled abroad to benefit from this law, i.e. by submitting written claims in Iraq's diplomatic missions;
- g) coordinate with the relevant ministries and offices to realize rights of survivors under this law;
- h) train staff employed in the Directorate and its sub-offices to ensure they operate on the basis of 'do no harm' principle, respect for survivors' dignity, and non-discrimination;

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- i) conduct community outreach activities to inform survivors, including those who resettled abroad, on their rights provided herein, procedures to exercise their rights and protective measures available;
- j) engage in continuous and effective consultations with survivors to receive their feedback on implementation and adapt practices accordingly;

### Article 4

#### ELIGIBILITY

This law shall apply to all survivors of CRSV perpetrated partially or wholly during the ISIS conflict in Iraq, on a non-discriminatory basis and regardless of factors including but not limited to ethnicity, religion, sect, gender, age, disability or place of residence of the survivor or the survivors' family.

### Article 5

#### COMPENSATION

- (1) Survivors shall be paid a monthly salary not less than twice the minimum pension stipulated in the Unified Retirement Law No. 9 of 2014. This amount shall be increased for survivors who give birth to children conceived through acts of CRSV and choose to undertake the care of such child. The concrete amount of salary shall be tailored to the type and duration of violation, degree and consequences of harm suffered.
- (2) Survivors shall be granted a piece of residential land or housing units free of charge. If necessary, further assistance in livestock, mechanization and other necessities to secure viable livelihoods should be made available as well.

### Article 6

#### RESTITUTION

- (1) Survivors whose education was interrupted shall be entitled to return to study, regardless of age.
- (2) Survivors whose employment was interrupted shall be entitled to return to their previous place of work. Outstanding salaries and benefits for the time the survivor was prevented from working shall be paid.
- (3) To ensure the delivery of public services, infrastructure of survivors' areas shall be restored.
- (4) Religious objects of survivors' communities shall be rebuilt.
- (5) Survivors and survivors' family members who have lost or do not have identity documents shall be provided those documents on an expedited basis.

## Article 7

### REHABILITATION

(1) Survivors and their family members shall be provided with a range of rehabilitative services in order to enable them to continue with their lives in dignity. The portfolio of services to be made available to survivors and their family members shall include at least the following:

- a) **Mental Health and Psychosocial Support** provided through individual-based, family-based and group-based therapies and other culturally sensitive and appropriate techniques;
- b) **Medical services** should include comprehensive health services, including sexual and reproductive health, necessary for treating physical after effects of CRSV. These services should be provided in non-discriminative manner, residentially and through referrals to specialists. The consistent supply of necessary medications shall be ensured.
- c) **Legal aid services** that encompass assistance with legal issues stemming from or arising out of an individual's status as a survivor or a member of a survivor's family including, but not limited to, legal action to access civil documentation, welfare benefits, and participation in criminal proceedings against alleged perpetrators.
- d) **Educational opportunities** at primary, secondary and tertiary level
- e) **Livelihood programs** including offering vocational trainings for securing and retaining suitable employment and income-generating work.
- f) **Family counselling** providing professional guidance on how to advance physical and psychological well-being of survivors, including by strengthening and reestablishing family ties severed or damaged by acts of CRSV;
- g) **Community-oriented programs** to support reintegration of survivors and children conceived through acts of CRSV. These programs should strengthen social support networks (including but not limited to friends, neighbors, community and religious groups), by fostering understanding for survivors and cautioning against harmful and discriminatory traditional practices.

(2) These services shall be designed and provided so as to be

- a) in conformity with the international standards and best practices;
- b) in the vicinity of places where survivors and their family members reside;
- c) compatible with and advancing services made available to the broader community (i.e. Iraqis that are not beneficiaries of this law);

(3) Providers of rehabilitative services shall be designated state bodies (clinics, health and social centers) and Iraqi non-governmental organizations with a proven track record in providing quality rehabilitation services to CRSV survivors in Iraq. Criteria and procedure for selection of respective NGOs and range of services they are authorized to provide shall be regulated in a separate bylaw.

## Article 8

### RECOGNITION OF ATROCITY CRIMES AGAINST COMPONENTS OF IRAQI SOCIETY

- (1) Attacks by ISIS against the Yazidi community constituted genocide.
- (2) Massive violence ISIS committed against other Iraq's religious and ethnic components constituted atrocity crimes including but not limited to crimes against humanity.

## Article 9

### SATISFACTION

- (1) Iraqi authorities offer their sincere apology to the affected communities for failing to prevent crimes committed against them.
- (2) June 19th of each year shall be designated as the '*National Day to Eliminate Sexual Violence in Conflict*', to raise awareness on the need to end CRSV and honor survivors.
- (3) August 3rd of each year shall be designated as the '*National Day of Remembrance of the Yazidi Genocide*', to remember the violations committed against the Yazidi and honor the survivors and other victims of the Yazidi Genocide.
- (4) The Iraqi Ministry of Culture, the Secretariat of Baghdad and the specialized authorities shall take the necessary measures to commemorate the National Day to Eliminate CRSV and the National Day of Remembrance of the Yazidi Genocide, and the formation of monuments, statues and exhibitions of this occasion.
- (5) The Ministry of Education shall take necessary measures to develop educational programs for schools and the public that aim to eradicate stigma and discrimination against survivors, regardless of gender.
- (6) Commemorative and educational projects shall be realized following consultation with survivors, political and civil society representatives of affected communities

## Article 10

### GUARANTEES OF NON-REPETITION

- (1) The Government of Iraq commits itself to repeal discriminatory laws and legal provisions and ensure formal equality between men and women in all matters and remove any provisions stigmatizing survivors of sexual violence such as those evidencing rape. This commitment includes reform to the Iraqi criminal and criminal procedure code's provisions relating to rape and other forms of SGBV.
- (2) The relevant committees of the Council of Representatives shall undertake a review of existing legislation and propose necessary reforms in a public document.
- (3) Moreover, the Government of Iraq pledges to take appropriate legal and procedural measures to ensure that present day sexual and gender-based violence is promptly and

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effectively investigated and prosecuted as well as to adopt a national action plan to advance practical equality between men and women.

### Article 11

#### INITIATION OF PROCEDURE

(1) The procedure to exercise rights contained herein shall be initiated by the survivor, their legal guardian or a proxy by submitting a written claim to the Directorate or its authorized sub-offices. Claims can also be submitted orally and entered into record by employees of the Directorate and authorized sub-offices.

(2) Non-governmental organizations with proven experience in work with survivors, may assist survivors, if they so wish, during the application process by clarifying the procedure, assisting in filling out necessary forms, acquiring documentation or other evidence, submitting a written claim to the Directorate and appealing a negative decision. Criteria and procedure for selection of respective NGOs shall be regulated in a separate bylaw.

### Article 12

#### CONTENT OF THE CLAIM

The claim referred to in Article 11 of this law shall contain:

- a) the name and other personal information of the survivor;
- b) a description of the act(s) of CRSV;
- c) all available evidence regarding the act of CRSV.

### Article 13

#### PROOF REQUIREMENTS

(1) The Directorate shall have primary burden of proof in verifying survivors' claims. All available evidence may be used to verify the claim submitted by the survivor, including the survivor's statement, witness testimony, medical reports, documents and letters, statements collected by other governmental bodies, reports by non-governmental organizations, media reports, or open source information.

(2) For the purpose of verifying survivors' claims, existing records of CRSV collected by governmental, non-governmental and international actors in Iraq shall be utilized before undertaking further documentation or evidence collection of any kind.

(3) Proof requirements shall be kept flexible and shall not unduly burden survivors.

(4) In the course of evidencing sexual violence, medical or any other procedures amounting to inhuman or degrading treatment or otherwise stigmatizing for survivors, including but not limited to virginity testing, shall not be used.

## Article 14

### DEADLINE TO SUBMIT CLAIMS

The deadline for submitting a claim under this law shall be five years from the date of its entry into force. Following an assessment of the situation, which is to take place four years after this law comes into effect, this deadline the Directorate may extend initial deadline to another 5 years to ensure that all survivors are able to submit a claim. The decision on extension must be made before expiration of initial 5 years deadline.

## Article 15

### DECISIONS ON CLAIMS

- (1) The Directorate shall decide on claims initiated by survivors as per Article 11 of this law in the form of a written decision.
- (2) The written decision shall be rendered no later than three months from the date of submission of the claim.

## Article 16

### REALIZING RIGHTS

Survivors whose claims are accepted by a written decision of the Directorate shall be provided access to the measures contained in this law no later than three months from the date of the Directorate's written decision.

## Article 17

### APPEAL

- (1) Survivors shall have a right to appeal to written decisions rendered by the Directorate.
- (2) Written appeal shall be submitted to the second instance body no later than six months after the written decision of the Directorate has been officially delivered to the survivor.

## Article 18

### CEASING EXISTING VIOLATIONS

- (1) Iraqi authorities will continue to actively seek whereabouts and put in place programs to rescue survivors who are still being subjected to CRSV or, in the case they deceased, return their remains to their families for proper burial.
- (2) A database containing available information on disappeared persons and all necessary personal information and DNA samples of the next of kin of the disappeared shall be created.



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A focal point and a budget for this purpose shall be established. This focal point shall brief the families on latest developments at least once a month. The creation of the database shall be regulated in a separate bylaw.

(3) Survivors families shall be reimbursed for costs incurred during rescue operations as part of any decision on compensation upon presentation of relevant evidence.

### Article 19

#### CHILDREN CONCEIVED THROUGH ACTS OF CRSV

(1) Primary consideration in dealing with children conceived through acts of CRSV shall be the best interest of the child principle. Application of this principle may vary depending on circumstances but shall in any case include:

- a) right of women survivors to register their children under their name and to have the sole right of parental custody;
- b) right of women survivors to, as an exception to Article 26 (2) of the 2015 National Identity Card Law specifying that children born to one Muslim parent are by default registered as Muslims, determine religious affiliation of their children;
- c) support to women survivors to keep and care for their children;
- d) relocation of women survivors who want to keep caring for their children to third countries, provided that they explicitly request such relocation.

(2) A court of first instance shall be established in Duhok Governorate to deal with the civil conditions of children conceived through acts of CRSV. The court shall provide for expedited proceedings and shall at all times operate on the basis of the child's best interest and the safety and wellbeing of survivors.

### Article 20

#### NO AMNESTY FOR PERPETRATORS

The perpetrators of CRSV shall not benefit from any general or special amnesty.

### Article 21

#### CRIMINAL JUSTICE

(1) Survivors and witnesses shall be provided with free legal aid and protective measures for criminal proceedings, including psychosocial support.

(2) The Directorate shall support national and international efforts to bring perpetrators to justice by, among others, entering into formal protocols of cooperation for sharing data and evidence subject to survivors' consent and providing protective measures to survivors.

## Article 22

### APPLICATION

- (1) Nothing in this law can be interpreted to impair rights guarantees by other national laws and applicable international law, including initiating and participating in criminal proceedings against perpetrators and claiming benefits from courts or other administrative programs.
- (2) This law shall be applicable regardless of whether the act of sexual violence defined herein is recognized as a criminal act or other form of violation of international or Iraqi law.
- (3) The rights contained herein shall be exercisable regardless of whether the perpetrator of the act of sexual violence is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the survivor.

## Article 23

### IMPLEMENTATION AND FINANCING

- (1) The Council of Ministers shall issue public instructions to facilitate the implementation of the provisions of this law in consultations with survivors, affected communities, and civil society.
- (2) Implementation of this law shall be ensured by dedicating a separate budget line to financing reparation measures specified in this law in the yearly national budget of the Republic of Iraq.
  - a) The Council of Ministers shall provide an initial estimate of funds necessary for setting up and functioning of the General Directorate for Survivors Affairs.
  - b) General Directorate for Survivors Affairs shall annually submit subsequent budget estimates of funds necessary for financing reparation measures specified in this law to the Council of Ministers
  - c) Independent external audit of the Directorate's financial records shall be performed annually. Report of the External Auditor shall be made public and formally submitted to the Council of Representatives.

## Article 24

### ENTRY INTO FORCE

This law shall enter into force on the date of its publication in the Official Gazette.

## RATIONALE

Gross violations of international human rights law and serious violations of international humanitarian law have been committed against the people of the Republic of Iraq during the period from 2014 until 2017 when the self-declared Islamic State in Iraq and Syria (“ISIS”) exercised effective control over parts of the Iraqi territory. ISIS militants particularly targeted several of Iraq’s religious and ethnic communities, such as Yazidi, Christian, Turkmen, Shabak and Kaka’i by committing grave crimes of sexual violence amounting but not limited to the crime of genocide.

Iraqi authorities are determined to address, rectify, to the fullest extent possible, and prevent the reoccurrence of conflict related sexual violence by giving effect to international human rights norms specifying the right of survivors and other victims to reparations.

By enacting this law Iraqi authorities acknowledge the tireless advocacy work of female SGBV survivors, especially Yazidis, which led the Iraqi President and Parliament to address survivors’ right to reparations in Iraq.

With this law Iraqi authorities honor their obligations under the Iraq's Constitution of 2005, Joint Communiqué between the Republic of Iraq and the United Nations on the Prevention and Response to Conflict-Related Sexual Violence (2016), Iraqi National Action Plan 2014-2018 for the implementation of Res. 1325 on Women, Peace, and Security, UN Security Council resolutions on “Women, Peace and Security”: 1325 (2000); 1820 (2009); 1888 (2009); 1889 (2010); 1960 (2011); 2106 (2013); 2122 (2013); 2242 (2015), 2467 (2019), and 2493 (2019) as well as core human rights treaties Iraq is a party to (International Covenant on Civil and Political Rights, Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, Convention for the Protection of All Persons from Enforced Disappearance etc.).