



C4JR POSITION PAPER ON REPARATIONS

The undersigned civil society organizations promoting the advancement of human rights and reconciliation between different communities living in the Republic of Iraq,

Guided by the spirit of the Universal Declaration of Human Rights, the International Covenants on Human Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, other relevant human rights instruments and the inherent dignity of the human person,

Having witnessed enormous human suffering caused by barbaric acts amounting to gross violations of international human rights law and serious violations of international humanitarian law,

Emphasizing that justice delayed is justice denied,

Recognizing the plight of victims caused by monstrous crimes committed by the self-declared Islamic State (“ISIS”) bordering with or amounting to that of genocide,

Reminding that sidestepping the legitimate concerns of victims and survivors cannot bring about lasting peace in the region,

Emphasizing the need for programs tailored specifically to achieve peaceful coexistence of peoples and communities in Iraq,

Stressing that cultural, ethnical and religious diversity in Iraq is a worth in and of itself and thus merits preservation,

Reminding that only comprehensive and inclusive strategy on transitional justice can help heal the wounds of individual victims, their families and communities caused by the barbaric acts of violence,

call upon Iraqi authorities (both in federal Iraq and Kurdistan Region of Iraq) to:



SECTION 1

BASIC DEMAND

Establish a comprehensive administrative program(s) aimed at providing reparations to victims in line with international standards.

Victims should remain entitled to pursue reparations through other legal avenues, if otherwise not explicitly indicated. Claims for compensation under relevant civil, criminal or administrative procedures should not be subject to statutes of limitation.

SECTION 2

DEFINING BENEFICIARIES

Consider victims all civilians that directly suffered harm through acts or omissions that constitute gross human rights violations at the hands of all parties to the ISIS conflict in Iraq.

All victims should be allowed access to reparations. For the purpose of accessing benefits provided in the reparation program, the immediate family or dependants (this term shall include at least: parents, grandparents, siblings, spouses, children) of victims who are deceased or missing (the so-called indirect victims) should be considered victims as well. Children recruited to armed groups will be considered eligible.

SECTION 3

VICTIM'S PARTICIPATION IN THE PROCESS OF DELIBERATING, DESIGNING AND IMPLEMENTING REPARATION PROGRAMME

Involve CSOs and especially victims' and women associations representing affected communities in the process of discussing, designing and implementing an appropriate and realistic reparations scheme(s).

SECTION 4

SETTING PRIORITIES

Grant victims different benefits tailored to the type and duration of violation, degree and consequences of harm suffered and other relevant factors.



We consider the following groups most vulnerably and thus in need of being prioritized in the course of devising and implementing reparation measures.

Those inherently more vulnerable than others

- Children including but not limiting to orphans, children forcibly transferred to families other than their own, children born of rape, child soldiers, children victims of conflict related sexual violence and indoctrinated children.
- Widows whose husbands have been killed or disappeared during the ISIS conflict in Iraq.
- Families where sole breadwinners have been killed or abducted.

Those against whom especially severe crimes and/or multiple crimes with grave consequences were committed

- Long lasting and/or especially severe conflict-related sexual violence (CRSV)
- Genocide
- Those that suffered multiple violations (i.e. direct victims of torture/CRSV whose family members were killed or disappeared)
- Long lasting or especially severe forms of torture
- Relatives of missing persons
- Amputees, those maimed and those that suffered irreparable and serious psychological damage

SECTION 5

TERRITORIAL SCOPE

Provide reparations for conflict-related gross human rights violations perpetrated in Iraq and to anyone abducted in Iraq and subsequently trafficked outside of Iraq during the ISIS conflict in Iraq.

SECTION 6

TEMPORAL SCOPE

Cover, at the very least, the period of ISIS conflict in Iraq, i.e. period from 09. 06. 2014 until 09.12. 2017 when ISIS effectively controlled part of Iraqi territory. Gross human rights violations committed by ISIS from the beginning of 2014 that served as precursors to atrocity crimes committed after 09.06 2014 should also be included. Those individuals taken captive in the indicated period and released after 2017 or still not released ought to be recognized as victims as well.



SECTION 7

FORMS OF REPARATIONS

Provide a mix of individual and collective reparations in the prospective reparation program(s). This is because both victims, and specific communities were targeted.

Monetary compensation, however necessary, cannot be viewed as the only means for repairing the wrong done to the victims. Therefore, prospective reparation program(s) should, in addition to pecuniary redress and monetary quantifiable benefits, include moral or symbolic reparations.

SECTION 8

INCLUDE ALL FORMS OF REDRESS I.E. REPARATION MEASURES FALLING UNDER THE FOLLOWING HEADS:

8.1 RESTITUTION

Undertake measures with the principal aim of restoring the victim, as far as possible, to a position occupied before the violations of international human rights or humanitarian law occurred. These measures should include but are not limited to:

- Removing mines and explosive devices from living areas
- Rescuing/determining whereabouts of all missing individuals
- Taking appropriate measures to protect their security upon return
- Facilitating the safe return of internally displaced persons to their place of residence
- Return of land and other property unlawfully confiscated or de facto taken from individuals and families forced to flee conflict zones
- Restoration/rebuilding of private property destroyed in the conflict
- Restoration of public infrastructure to ensure the delivery of public services
- Reinstatement to previously held post (or if this is not possible securing a similar job) in case of wrongful termination of employment

8.2 COMPENSATION

Compensate victims for any economically assessable harm caused by violations of human rights and humanitarian law including physical and mental harm, lost opportunities, material damages, loss of earnings (including the loss of earning potential and moral damages) to the maximum of available resources. The amount of compensation should reflect the gravity of violations.

The designated sum is to be allocated primarily through a pension scheme. Depending on specificities of cases at hand other methods of compensating victims such as providing micro financing opportunities and granting one time lump sum should be made use of, taken alone or in combination.



8.3 REHABILITATION

Provide a range of rehabilitation services to victims and, if required, their family members, meeting relevant quality standards and within physical proximity to those areas where victims reside. These services should go beyond medical and psychological care to encompass at least:

- Social services (include various services to reduce the sense of marginalization that many victims experience. Victims should have access to, at least, a minimum of basic services, including housing, health care, etc.)
- Legal assistance (should include any legal issues stemming from or touching upon their victim status such as: access to other services, pursuing compensation before courts, participating in criminal proceedings against the alleged perpetrators etc.)
- Provide support to mothers of children born of rape to, if they wish so, live independent lives together with their children outside of their native communities
- Education opportunities for victims and/or scholarships for their children
- Family counselling (a program of providing information and professional guidance to members of a family on how to overcome a specific traumatic event)
- Amend relevant personal status legislation (National Identity Card Law) to allow women with children conceived from rape to determine their religious affiliation
- Vocational training (training designed to enable victims to secure and retain suitable employment)

8.4 SATISFACTION

Offer a range of non-monetary or symbolic measures specifically designed to afford satisfaction to the victims such as:

- Ensuring adequate participation of victims in any criminal proceedings relating to violations committed against them
- Identifying remains of all deceased persons and delivering them to the next of kin for proper burial
- Recognizing that certain events amounted to international crimes (war crimes, crimes against humanity, genocide)
- Issuing an official apology and accepting responsibility for human rights violations committed by State agents and/or for failing to prevent human rights violations committed by non-state actors
- Create a database of available personal information on disappeared women and girls and all necessary personal information, and DNA samples of the next of kin of the disappeared so that the State could help locate disappeared persons



- Memorialization efforts (construction of memorials, monuments, and establishing a day of commemoration to remember and to pay tribute to the victims)
- Including in educational materials at all levels an accurate account of the violations, and circumstances that led to them, with a view of preventing future violence by promoting accountability, fostering understanding for the victims and bridging the ethnic and religious divide in the Iraqi society
- Satisfaction measures should be implemented in accordance with the traditions and sacred rituals of affected communities

8.5 *GUARANTEES OF NON-REPETITION*

Undertake a range of measures aimed at making sure that similar crimes will not happen again such as:

- Ensuring that all the perpetrators of gross human rights violations are prosecuted and adequately sentenced
- Stop extrajudicial punishment and discrimination of individuals and families with alleged ISIS ties
- Acceding to the Rome Statute of the International Criminal Court (ICC)
- Redefining the crime of rape as well as criminal procedure requirements for prosecuting alleged rapists in accordance with international standards
- Introducing guarantees/mechanisms that will improve physical safety of minorities (mandatory quota in security forces etc.)
- Introducing/improving mechanism ensuring political participation of minorities on municipal/regional and federal level
- Removing outdated provisions in the Iraqi Penal Code allowing people who commit sexual assault to avoid punishment if they marry their victims, and removing the husband's prerogative to discipline (punish) his wife
- Criminalizing marital rape
- Removing the reservation entered to Articles 2 (f, g) and 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) mandating States to repeal discriminatory laws and practices and ensure equality in all matters related to family and marital relations
- Accepting individual application procedure under the International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture (CAT) and CEDAW
- Bringing Iraqi legislation in line with one's right to freely adopt and manifest a religion or belief of his choice



SECTION 9

FINANCING REPARATIONS

Be the principal sponsor of the national reparation program. International actors should be encouraged to contribute to the reparation effort of Iraq either by making monetary or in-kind donations, rearranging Iraq's foreign debt or through other modalities. Considering high numbers of foreign ISIS fighters who played a significant role in atrocities committed against the peoples of Iraq, countries which these fighters are citizens of are encouraged to assume moral obligation for remedying harm done to victims and support financing of reparation programs in Iraq.

SECTION 10

BURDEN OF PROOF

Ensure that standard of evidence used for determining eligibility of victims for reparation programs is not demanding and thus does not put unreasonable burden on the victims. In principle, sworn statements attesting the truthfulness of described events should be considered sufficient. For gross violations of human rights mental harm should be presumed.

SECTION 11

DOCUMENTATION

Make use of existing documentation of gross human rights violations carried out by governmental and non-governmental actors for assessing claims for reparations before undertaking further documentation of any kind.