



COALITION  
FOR JUST  
REPARATIONS

**TOWARDS A VIABLE REPARATIONS  
SCHEME FOR SURVIVORS OF  
CONFLICT RELATED SEXUAL  
VIOLENCE IN IRAQ**

**—Policy paper—**

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## **Acknowledgements**

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## **About C4JR**

Coalition for Just Reparations (C4JR) is an alliance of 27 Iraqi NGOs calling for comprehensive reparations for civilian victims of atrocity crimes perpetrated during the ISIS conflict in Iraq. C4JR uses Iraqi law and international human rights law to support reparation claims of survivors and remind Iraq of its obligation to provide reparations. More information about C4JR can be found at [www.c4jr.org](http://www.c4jr.org)

## Acronyms

C4JR	Coalition for Just Reparations
CEDAW	Convention on Elimination of Discrimination Against Women
CIGE	Commission for Investigation & Gathering Evidence
CIJA	Commission for International Justice and Accountability
CPC	Criminal Procedure Code
CRC	Convention on the Rights of the Child
CRSV	Conflict Related Sexual Violence
GOI	Government of Iraq (Federal)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
IP2	Second edition of the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict
ISIL/ISIS	The so-called Islamic State of Iraq and the Levant/ Islamic State of Iraq and Syria
JRR	Justice Rapid Response
KRI	Kurdistan Region, Iraq
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
SGBV	Sexual and gender-based violence
UN	United Nations
UNAMI	United Nations Assistance Mission for Iraq
UNITAD	UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL

# Introduction

As Iraq moves forward in dealing with its difficult past, more is being done in the field of providing reparations to victims of mass human rights abuses. The government of Iraq (GOI) is also in the process of establishing a legal framework to provide reparations to certain survivors of CRSV. This builds on Iraq's significant history of providing reparations: i) in 1991, the UN Compensation Commission provided reparations to some victims of Iraq's invasion of Kuwait; ii) after the removal of Saddam Hussein from power, the Iraq Property Claims Commission dealt with land-related violations committed under Hussein's regime; and iii) Law 20,<sup>1</sup> amended in 2015<sup>2</sup> and 2020,<sup>3</sup> set up a system to provide redress to those who suffered violations since 2003. More recently, in April 2019, the Iraqi Presidency introduced to the Parliament the "Yazidi Female Survivor's Law," considered "Iraq's first laudable step towards redressing ISIL's<sup>4</sup> abuses and violations."<sup>5</sup> Nonetheless, the proposed law has faced criticism, and practitioners have identified gaps.

In an attempt to address these gaps, the Coalition for Just Reparations (C4JR)<sup>6</sup> has drafted a separate Law on Reparations for Survivors of Conflict Related Sexual Violence Committed During the ISIS Conflict In Iraq (Draft Law). The Draft Law builds on the C4JR's position on reparations and is the Coalition's attempt to lobby for effective and adequate reparations to all that have suffered CRSV during the ISIS conflict in Iraq.

Between 9 June 2020 and 31 August 2020, a JRR expert worked with the C4JR and the Working Group on CRSV and Women's Rights (Working Group) to draft this paper laying down some of the steps that need to be taken or points in the Draft Law that need to be further detailed, in order to ensure that it is implemented. In preparing this report, the expert has drawn upon international standards and best practices, lessons from the establishment of administrative reparations programs in other post conflict states, particularly Croatia and Kosovo which are implementing reparations schemes for CRSV survivors, and knowledge collected from the Working Group members during weekly meetings.<sup>7</sup>

This Policy Paper aims is to inform the C4JR's advocacy for passing the Draft Law, and should be used as an advocacy tool that serves as a roadmap for implementation of the various provisions of the Draft Law. The first section follows the structure of the Draft Law, providing additional suggestions for the implementation of provisions in the various Articles of the Draft Law. The second section highlights some of the provisions in the Draft Law that the C4JR could consider further clarifying. It also indicates promising avenues for improving the Draft law. The final section provides a list of suggested next steps and areas for

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<sup>1</sup> Iraq: Law No. 20 of 2009: Law on Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations. Available at: <https://www.refworld.org/cgi-bin/telex/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5e4579204>.

<sup>2</sup> Iraq: Law No. 57 of 2015: First Amendment to the Law on Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations [Iraq], 30 December 2015. Available at: <https://www.refworld.org/cgi-bin/telex/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5e4564a34>.

<sup>3</sup> Iraq: Law No. 2 of 2020: Second Amendment to the Law on Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations [Iraq], 7 January 2020. Available at: <https://www.refworld.org/docid/5e45644c4.html>.

<sup>4</sup> This reports refers to the Islamic State of Iraq and the Levant/Daesh as ISIS (Islamic State of Iraq and Syria), as per reference used by C4JR.

<sup>5</sup> CIGE, "Consultations for Reparations: Enhancing Victims Participation towards the development of a Comprehensive Reparation Policy," August 2020.

<sup>6</sup> An alliance of Iraqi CSOs, representing Iraq's linguistic, ethnic and religious diversity, supporting reparation claims of survivors and other victims of crimes perpetrated during the ISIS conflict in Iraq.

<sup>7</sup> The first meeting of the expert and Working Group was held on June 30, 2020. It was a short meeting, since only five members of the Working Group were present. The next meeting on July 8, 2020 had nine members of the Working Group and was used mainly to discuss the draft ToR for the Working Group compiled by the expert and the group's possible work plan. There was also discussion about possible training that the expert could provide to the Working Group, but its members never defined any training topics. The next meeting on July 22, 2020 was used mainly to familiarize members of the Working Group with the Draft Law, and the following weekly meetings after that (on July 29, August 4, August 11, August 18, and August 25) were used to gather inputs on the various points of the policy paper.

further exploration that C4JR could consider as it promotes reparations for CRSV survivors. Terms of Reference of the C4JR Working Group are attached in Annex 1 whereas C4JR Draft Law on Reparations for Survivors of Conflict Related Sexual Violence Committed During the ISIS Conflict in Iraq in Annex 2 of this Policy Paper.

## **A. “Roadmap” for the Implementation of the Draft Law**

This section of the paper should be read in conjunction with the Draft Law.<sup>8</sup> Together with the members of the Working Group, the expert has identified specific points in the Draft Law that require greater detailing and broken them down below.

### **Article 1 Definitions**

The C4JR position paper on reparations<sup>9</sup> contains a more elaborate definition of “survivors” than the Draft Law. Understanding of the concept of “survivors” should, thus, in addition to those who individually suffered harm, incorporate their immediate family or dependents which should include at least: parents, grandparents, siblings, spouses, and children. This would also include families of victims who are deceased or missing.

### **Article 2 General Directorate of Survivors’ Affairs**

#### **Trainings**

To ensure the General Directorate is able to complete its mandate, as per international law and best practices, all the involved staff should undergo relevant mandatory trainings. It is recommended that all relevant staff, including Director General, Commissioners, staff at the Secretariat, sub-offices and mobile teams, undergo necessary training. Selected NGOs should also be trained. Training should cover at least the following topics:

- CRSV, as per international and domestic law, including the definition of sexual violence and its varied nature, scale, nexus with the armed conflict, context of CRSV in Iraq;
- The survivor centered approach, including on survivors’ agency, informed consent, “do no harm” principle, confidentiality, protection of privacy and the “best interest of the child” principle in relation to girls and boys;
- Associated physical, mental, social and economic harms suffered by different CRSV victims, including victims of different ages, national, ethnic and religious backgrounds, and mental and physical abilities;
- Awareness about CRSV-related stigma and stigma sensitization;

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<sup>8</sup> C4JR’s proposed Draft Law is attached to this Policy Paper (see Annex 2) and available at [https://c4jr.org/wp-content/uploads/2020/07/C4JR-DRAFT-CRSV-REPARATION-LAW\\_English.pdf](https://c4jr.org/wp-content/uploads/2020/07/C4JR-DRAFT-CRSV-REPARATION-LAW_English.pdf).

<sup>9</sup> C4JR Position paper on reparations is a document, agreed among C4JR members, containing core common principles on reparations in Iraq that will serve as one of the blueprints to measure forthcoming state efforts to provide reparations to survivors of ISIS conflict in Iraq. C4JR Position paper on reparations is available at <https://c4jr.org/wp-content/uploads/2020/04/C4JR-POSITION-PAPER-ON-REPARATIONS-EN.pdf>

- Capture, storage, management, confidentiality and disclosure of information, as per national legislation and best international practices;
- Basics of CRSV investigation, with a focus on the appropriate burden of proof envisaged by the Draft Law;
- Internal rules of procedures and Code of Conduct training;
- Basic trauma understanding and awareness (especially relevant for staff that will be doing outreach and consultations), including recognizing signs of trauma and distress, understanding that trauma signs can take different forms in different people, techniques and tools to minimize the potential trauma, basic responses to assist a survivor showing signs of trauma, including thorough knowledge and use of referral pathways;
- Methods and procedures to prevent trauma, including vicarious trauma;
- Self-care techniques to reduce vicarious trauma, including training on signs and symptoms of secondary trauma, support protocols and safe working methods.

Ideally, the trainings would be delivered early on in the process, as soon as core staffing positions are filled. Jeta Krasniqi, a Commissioner from a similar body in Kosovo strongly recommended that the trainings should be delivered as a package of longer trainings, as a block of trainings, rather than scattered shorter trainings.<sup>10</sup>

### **Internal procedures**

The Draft Law envisages the establishment of a General Directorate of Survivors' Affairs (Article 2), and it also lists some of its duties (Article 3). However, there are a lot of details in the work of the General Directorate that are not worked out in the Draft Law. Some of these could be codified in secondary legislation, or considered by C4JR for inclusion in a possible second version of the Draft Law. Regardless of the approach, the General Directorate should have rules of procedure to guide its work. These would presumably be drafted and approved by the Director General and the Commissioners.

Below are several possible points that could be included and further detailed in these internal rules of procedure:

- Duties of the Director General and Commissioners, in addition to those listed in Article 3 of the Draft Law:
  - The Director General, Commissioners, and everyone else associated with the General Directorate (staff at the Secretariat, sub-offices, mobile teams, diplomatic staff receiving claims, etc.) should sign a confidentiality agreement and maintain the confidentiality of all the information they access as part of their work with the Directorate;
  - The Director General and Commissioners should, in cooperation with similar bodies in other countries, international and national NGOs, UN agencies, organize required trainings and attend all the trainings. They also decide what trainings are mandatory for other staff;
  - The Director General and Commissioners should attend all the meetings of the Directorate;

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<sup>10</sup> Interview with Jeta Krasniqi, Commissioner in the Government Commission on Recognition and Verification of the status of sexual violence victims during the Kosovo Liberation War, August 28, 2020.

- The Director General and Commissioners should excuse themselves from the review of any claims where they might have a conflict of interest;
  - The Director General, in cooperation with the Commissioners, should develop the Directorate's annual budget;
  - The Director General should authorize a protocol of engagement with media, specifying, inter alia, who answers any media requests;
  - The Director General should chair all the meetings of the Directorate;
  - At every meeting, the Director General and Commissioners should approve the minutes of the previous meeting;
- Procedure on how to determine the cases:
    - Just evidentiary thresholds are a factor in determining the “completeness” of a reparations program. The evidentiary threshold should not be set too high, as it could result in many legitimate survivors not being able to claim their right to reparations;
    - Following international standards of best practice, the primary burden of proof in verifying survivors' claims falls on the Directorate (as per Article 13).<sup>11</sup> In this regard, it's important to remember:
      - The existing record of CRSV collected by others shall be utilized before undertaking any further documentation or evidence collection (Article 13 (2));
      - Proof requirements shall be kept flexible (Article 13 (3));
      - Proof requirements shall not unduly burden survivors (Article 13 (3));
      - No procedure, medical or other, amounting to inhuman or degrading treatment or otherwise stigmatizing a survivor, including but not limited to virginity testing, shall be used (Article 13 (4));
      - Credible and reliable testimony from a witness should be considered sufficient proof of CRSV having occurred;<sup>12</sup>

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<sup>11</sup> OHCHR, “Rule-of-law tools for post-conflict states: reparations programmes,” 2008, p. 18, and also note 31 on the same page for examples: “Morocco’s Equity and Reconciliation Commission accepted at face value the testimonies it received and assumed the burden of proof. Some of Argentina’s reparations programmes accepted as evidence the corroborating testimony of two persons or, in line with a decree passed precisely to make the evidence required to receive benefits more flexible, accepted and judged, with other parts of a petition, documents of national and international human rights organizations, press articles and consistent bibliographic material.”

<sup>12</sup> This follows international practice set in cases of criminal prosecutions (where the burden of proof would be even higher than in the administrative procedures that the Directorate General will deal with). Rules of procedure and evidence in international criminal tribunals state that no corroboration is required in cases of sexual violence, meaning that in absence of any physical evidence, a guilty conviction can be entered based on witness testimony. For example, Rule 96 of the ICTY Rules of Procedure and Evidence states “In cases of sexual assault: (i) no corroboration of the victim's testimony shall be required;”



- Sexual conduct of the survivor, prior and/or after the CRSV act, shall not be considered in any capacity;<sup>13</sup>
  - The standard of proof for the Directorate should be lower than that required for a criminal conviction (i.e. “a ‘balance of probabilities’ as opposed to proof ‘beyond reasonable doubt’”);<sup>14</sup>
  - The Directorate can “expand the scope of evidence for sexual violence to include, for instance, testimonies from other witnesses and scientific experts, such as psychologists and sociologists, which can help explain the victims’ behaviors, choices and needs.”<sup>15</sup>
  - The generalized practice of sexual violence (i.e. in terms of location, time, patterns, etc.) can be used as corroboration for individual cases.<sup>16</sup>
- What quorum is required to decide on a case;
  - What constitutes a majority vote to decide a case;
  - Would any dissenting votes be documented, and if yes, how;
  - If more information is required, how would this be collected;
- The procedure on how to determine a survivor’s salary (as per Article 5):
    - As per international standards, the salary for survivors should be “appropriate and proportional to the gravity of the violation and the circumstances of each case”;<sup>17</sup>
    - The Draft Law specifies that survivors who give birth to children conceived through acts of CRSV and take care of such children (Article 5 (1)) shall receive a higher amount of compensation. It also states that the amount should be tailored to the type and duration of violation, degree and consequence of harm suffered (Article 5 (1));
    - The IP2<sup>18</sup> lists several forms of harm:

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<sup>13</sup> This follows international practice set in cases of criminal prosecutions (where the burden of proof would be even higher than in the administrative procedures that the Directorate General will deal with). Rules of procedure and evidence in international criminal tribunals state that the court should not consider the victim's prior sexual conduct. For example, Rule 96 of the ICTY Rules of Procedure and Evidence states “In cases of sexual assault: [...] (iv) prior sexual conduct of the victim shall not be admitted in evidence.”

<sup>14</sup> IP2, (see footnote 18 below), p. 78.

<sup>15</sup> Ibid.

<sup>16</sup> Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence, June 2014, pp. 13-14. See note 31 in the same document for example of Peru where jurisprudence followed this principle.

<sup>17</sup> 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, A/RES/60/147, March 21, 2006, ¶20.

<sup>18</sup> Second edition of the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (IP2), published by the Foreign & Commonwealth Office (FCO) of the government of the United Kingdom of Great Britain and Northern Ireland (UK), and its lead authors are Sara Ferro Ribeiro & Danaé van der Straten Ponthoz. IP2 can be downloaded from the website of the FCO, at [www.gov.uk/government/publications/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict](http://www.gov.uk/government/publications/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict).

- I. “Physical harm, e.g. immediate and long-term injuries and diseases, including reproductive health problems;
  - II. Mental harm, e.g. trauma, depression and mental illnesses;
  - III. Social harm, e.g. stigma, ostracism, damaged reputation, divorce/loss of marriage opportunities and other sources of moral damage;
  - IV. Economic harm, e.g. loss of income and earning potential; lost opportunities including employment, education and social benefits; medical expenses incurred and cost of future rehabilitative care, including psychological services; cost of legal process (legal/expert assistance fees); cost of raising a child born of rape and of raising children by single parent victim after losing marriage or re-marriage opportunities, and ostracism from the family unit; displacement.”<sup>19</sup>
- The UN Basic Principles on the Right to a Remedy state that compensation should be provided for “any economically assessable damage, [...] such as:
    - I. Physical or mental harm;
    - II. Lost opportunities, including employment, education and social benefits;
    - III. Material damages and loss of earnings, including loss of earning potential;
    - IV. Moral damage;
    - V. Costs required for legal or expert assistance, medicine and medical
    - VI. services, and psychological and social services.”<sup>20</sup>
  - Put in place measures and protocols to protect the information received from survivors and their data, and any other confidential information received by the Directorate, including ensuring security of all online communications, data management and storage. This should be applicable to all channels that can receive sensitive information – the Directorate General, its Secretariat, the sub-offices, the mobile teams and diplomatic missions.
  - Establish a database/repository of all available evidence on CRSV during the ISIS conflict in Iraq, such as statements, reports, and other information collected by other governmental, non-governmental and international actors (as per Article 13)
    - Triangulate<sup>21</sup> as much as possible the information in this database;

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<sup>19</sup> IP2, p. 82. See also Chapter 2 of IP2: Understanding Sexual Violence, section D, Impact of sexual violence, for a non-exhaustive list of possible impacts of sexual violence; the list has been contextualized for Iraq in the Institute for International Criminal Investigations, "Supplement to the International Protocol on Documentation and Investigation of Sexual Violence in Conflict: Iraq," March 2018, pp. 6-8.

<sup>20</sup> 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, A/RES/60/147, March 21, 2006, ¶20.

<sup>21</sup> Triangulation is a research technique in social sciences and a strategy to increase the validity of findings based on consulting and cross-referencing diverse sources of information. See more here <https://methods.sagepub.com/reference/encyc-of-research-design/n469.xml>

- Map out patterns of violations and locations for ease of reference and to aid in the review of future cases;
- This should be done very early on after the establishment of the Directorate, as all received cases should be decided within three months of claim submission (Article 15 (2)) and existing evidence and records are part of proof requirements that the Directorate should rely on (as per Article 13 (2)).
- Determine how the decision document should be drafted. The decision should include:
  - Personal information of the person submitting the claim;
  - A summary of the act(s) of CRSV;
  - Decision of the Directorate;
  - Reasoning of the decision, with enough details to enable the survivor to appeal the decision (if negative) ;
  - In cases of a positive decision, specify the amount of a monthly salary with the relevant justification for it;
  - In cases of negative decision, specify the appeals process and accompanying timelines.
- Determine how the minutes of each meeting should look like by, i.e. providing suitable meeting minutes template;
- Establish a database to track all cases and processes the Directorate deals with. This would be useful as a record system, and to be able to recall any cases if the Directorate ends up having to consider the same case more than once when additional information is required. It would also enable keeping track of timelines, both for the benefit of ensuring the time limit set in Article 15 (2) is observed and to know when the decision is delivered to the survivor, which could be relevant once the appeals process is decided on;<sup>22</sup>
- Consultations with survivors:
  - Set the minimum number of required consultations with survivors (once per year is recommended) ;
  - Set up a system to incorporate survivors' input into work of the Directorate;
  - Decide on a methodology for consultations with survivors.
- Establish a procedure to conduct the assessment of the situation four years after the law comes to effect (as per Article 14). This should include consultations with survivors;

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<sup>22</sup> Krasniqi, Commissioner from Kosovo, emphasized the lack of such a database as one of the challenges of Kosovo's Commission

- Establish support protocol for all staff in order to minimize the risk of re-traumatizing survivors. This could include the establishment of regular supervision sessions for all staff;<sup>23</sup>
- Set up the principles for all outreach and awareness rising work. These should follow the Principles for Global Action.<sup>24</sup>

### **Directorate staff**

In order to assist the selection and appointment of the Director General and Commissioners, the Working Group suggests several criteria that could guide this process. The criteria below are drawn from the Draft Law, suggestions of the Working Group and practice of similar bodies in other countries, mainly Croatia and Kosovo.

- The Director General:
  - is a member of the Yazidi community, preferably a woman (Article 2 (5) (a));
  - holds a primary university degree in law, political science, psychology, sociology or similar fields (Article 2 (5) (b)) ;
  - has a minimum five years' work experience in the field of human rights, social services, legal aid or the judiciary (Article 2 (5) (c)) ;
  - is a citizen of Iraq;
  - has no criminal record and is not under any criminal investigation;
  - preferably, has experience in working on CRSV and/or working with CRSV survivors;
  - preferably, is a distinguished professional in its respective field;
- Commissioners:
  - are members of different ethnic and religious components impacted by the ISIS conflict (Article 2 (6)) ;
  - have a minimum of three years of experience working in the field of human rights (Article 2 (6));<sup>25</sup>
  - are citizens of Iraq;

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<sup>23</sup> Krasniqi, Commissioner from Kosovo, pointed to the lack of regular supervision sessions as one of the challenges of the Commission there and emphasized the need to have reoccurring supervision sessions.

<sup>24</sup> Principles for Global Action: Preventing and Addressing Stigma Associated with Conflict-Related Sexual Violence, September 2017, Available at <https://www.gov.uk/government/publications/launch-of-the-principles-for-global-action-on-tackling-the-stigma-of-sexual-violence-in-conflict>

<sup>25</sup> In addition to professionals in the field of human rights, it would be advisable that the Draft Law and subsequent secondary legislation widen this criteria to include also other professions. For example, the law in Kosovo that sets up a similar body identifies that it should have professionals from the following Ministries: Office of the Prime Minister, Ministry of Labor, Ministry of Justice, Ministry of Health, Institute of War Crimes, as well as the following professionals, who do not have to come from government bodies: clinical psychologist, psychiatrist, lawyers, and also a civil society representative. The law in Croatia mandates that a similar body should have: at least one member with a legal background, at least one psychologist, at least two doctors, of whom at least one is a psychiatrist, other professionals with experience in defense of human rights.

- have no criminal record and are not under any criminal investigation;
- preferably, have experience in working on CRSV and/or working with CRSV survivors;
- preferably, are distinguished professionals in their respective fields.

Commissioners should be selected in a public, transparent and fair process. The advertisement for the positions should be public, and the selection panel should also include representatives of civil society.<sup>26</sup>

### **Secretariat**

It is recommended that the Directorate has a functioning Secretariat to support its work by handling all related administrative and logistics tasks. If no Secretariat is established, all the duties will fall onto the Directorate, causing it to be overburdened. Suggestion to establish a Secretariat is aligned with best international practices, as well as lessons learned from the implementation of Law 20 in Iraq. One of the reasons for the backlog of the Central Committee reviewing claims under Law 20 had been the lack of a “full-time, specialized institution” and poor secretariat support.<sup>27</sup> This was later rectified with the 2015 amendment of Law 20, as the Central Committee now also has teams of administrative staff that support its work.<sup>28</sup> The experience in Kosovo has also taught us the importance of having a strong secretariat. Commissioner Krasniqi specified that the work of the Commission in Kosovo would have been more efficient and its backlog smaller if the Secretariat was better placed to prepare the cases for review, (i.e. ensure that all the necessary documentation for claims is included in the case file before the Commission reviews it). The Secretariat must also be effectively supported by other governmental bodies and institutions, especially in promptly acquiring all necessary documentation.<sup>29</sup>

Since the Directorate’s headquarters is in Sinjar, it would make sense for the Secretariat to be based there as well. Listed below are some recommendations regarding the possible staffing and duties of the Secretariat:

- The office of the Secretariat should be staffed by a minimum of two full time employees in the Directorate’s headquarters in Sinjar. At least one employee should be a woman, and at least one employee should be a legal practitioner.
- Possible profile of Secretariat staff:
  - have at least two years of experience in the field of human rights;
  - are citizens of Iraq;
  - have no criminal record and are not under any criminal investigation;
  - preferably, have experience in working on CRSV and/or working with CRSV survivors;
  - have an excellent command of Arabic, Kurdish (Kurmanji) and English language.

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<sup>26</sup> This would also follow practice of how the process was done in Croatia and Kosovo, where the public selection of Commissioners was regulated by law.

<sup>27</sup> Clara Sandoval and Miriam Puttick, “Reparations for the Victims of Conflict in Iraq: Lessons learned from comparative practice,” Ceasefire Centre for Civilian Rights and Minority Rights Group International, November 2017, p. 19.

<sup>28</sup> *Ibid*, p. 21.

<sup>29</sup> Interview with Jeta Krasniqi, Commissioner in the Government Commission on Recognition and Verification of the status of sexual violence victims during the Kosovo Liberation War, August 28, 2020.

- The Secretariat would support the technical and administrative work of the Directorate, including, but not limited to:
  - ensuring that all the Directorate’s files and all received claims are stored in a secure manner that protects all personal information;
  - receiving claims submitted by survivors directly at the Directorate’s headquarter in Sinjar;
  - documenting claims that survivors decide to present orally at the Directorate’s headquarter in Sinjar;
  - receiving and storing claims from the sub-offices and diplomatic missions;
  - if needed, supporting survivors to fill out their claims;
  - organizing the meetings of the Directorate;
  - preparing the files of reparation claims for review by the Director General and Commissioners;
  - compiling the minutes of each Directorate meeting;
  - drafting all decisions of the Directorate;
  - ensuring the Directorate’s decisions are available in a language understandable to the survivor;
  - informing the survivors of the Directorate’s decisions and ensuring they receive a copy of the decisions;
  - establishing, maintaining and updating a secure and confidential database of all the claims the Directorate receives and the corresponding decisions;
  - establishing a thorough, safe, vetted, and geographically relevant referral pathway for all types of survivor support services (especially medical, mental health and psycho-social, and protection services);<sup>30</sup>
  - establishing, maintaining and updating a database/repository of presently available information on CRSV perpetrated during the ISIS conflict in Iraq, to be used by the Directorate when deciding on cases;
  - updating the referral pathway before any consultations with survivors;
  - setting up any consultations with the survivors that the Directorate decides to have;
  - answering questions from survivors and others in relation to the claim submissions process;

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<sup>30</sup> The GBV sub-cluster maintains a mapping of available support services in many governates in Iraq – this could be a good first step in establishing the referral pathway. IP2, Chapter 7: Do No Harm, on p. 101 specifies steps on how to refer survivors.

- coordinating with Directorate members, and especially the Directorate General when dealing with any media requests and media engagement;
- supporting the Directorate in development of the Directorate’s annual budget.

### **Article 3 Duties of the Directorate**

#### **Liaison with those that have documented CRSV**

Article 3 (a) of the Draft Law specified that the Directorate will “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.” This would aid the Directorate in deciding on claims, especially as the Directorate has the main burden of proof (see Article 13 (1) and 13 (2)). Considering how important the liaison is in ensuring that the decisions are considered promptly, the Working Group has provided contact details of some of these bodies and organizations that the Directorate could liaise with:

- Yazda NGO, <https://www.yazda.org/>;
- Yezidi organization for documentation, <https://www.eyzidi-documentation.org/>;
- Free Yezidi Foundation, <https://www.freeyezidi.org/>;
- Turkmen Rescue Foundation, <https://turkmenrescue.com>;
- Emma organization for human development, <http://emmaorg.me/>;
- Commission for Investigation and Gathering Evidence (CIGE) established in 2014 following a decision by the Judicial Council of the Kurdish Regional Government (KRG), with the mandate to investigate and gather evidence of violations committed by the Islamic State of Iraq and the Levant (ISIL)/Daesh against ethnic and religious groups in Sinjar and Nineveh plains, which may amount to war crimes, crimes against humanity and genocide under international law <http://www.cice.gov.krd/showcate.php?page=3&showstyle=1&cateid=322&lang=1>;
- Commission for International Justice and Accountability (CIJA) ;
- Committee of Gathering Evidence of ISIS’s crimes;
- Judicial Investigation Board for Crimes Against the Yezidis;
- Dohuk based office of kidnaped and rescue affairs;
- Committee within the Office of the Prime Minister of the Kurdistan Regional Government to collect information and follow up on the question of abducted persons;
- UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), <https://www.unitad.un.org>;
- United Nations Assistance Mission for Iraq (UNAMI), <https://www.uniraq.org>;
- Office of the High Commissioner for Human Rights (OHCHR), Iraq;

- Human Rights Watch;
- Ministry of Martyrs and Anfal Affairs of a High Committee for Identification of Genocide Crimes against Residents of the Kurdistan Area;
- Directorate Combatting Violence against Women (DCVAW) in the KRI (it interprets its mandate to include some ISIS CRSV cases) ;

### **Directorate's sub-offices**

The Draft Law in Article 3 (c) mandates the Directorate to open sufficient sub-offices, which would act on the behalf of the Directorate. Being aware of the main locations where survivors live and considering the geography and infrastructure that might make transportation difficult, the Working Group recommends the following options as potential locations for the Directorate sub-offices:

- Duhok, where majority of Yezidi survivors live in camps;
- Sinjar district of Nineveh governate where the HQ will be, possibly have a second office there too;
- Mosul as well, though it's in the same governate of Nineveh;
- Kirkuk;
- Salah al-Din;
- Anbar;
- Tal Afar because the majority of the kidnappers were there (also a lot of Turkmen survivors there);
- Bejee (related to Tikret Governorate) ;
- As per the Draft Law (Article 3 (d)), the Directorate will also dispatch mobile teams which would conduct outreach to survivors in remote areas and IDP camps in each of the above mentioned directorates, and assist survivors in submitting claims.

In addition to tasks of the sub-offices specified in the Draft Law , the duties below should also be considered:

- receiving claims submitted by survivors directly in the sub-office (Article 11 (1)) or to the mobile team. Note that Article 3 (d) states that mobile teams will assist survivors in submission of the claims, but it's unclear what exactly 'assist' means;
- documenting (writing down and registering) claims that survivors decide to present orally in the sub-offices (Article 11 (1));
- securely transferring all received claims to the Directorate's headquarters (i.e. future Directorate's Secretariat);
- if needed, supporting survivors in filling out their claims;



- answering questions of survivors and others relating to the claim submission process.

Article 3 of the Draft Law specifies that in addition to sub-offices, there will also be mobile teams to be dispatched to IDP camps. Each sub-office of the Directorate (established as per Article 3 (c)) could be staffed by a minimum of one full time woman employee. The sub-offices in governorates with many IDP camps, should also have mobile teams (established as per Article 3 (d)), which could be staffed by a minimum of one full time woman employee. Staff at sub-offices and mobile teams are recommended to possess the following qualifications:

- have at least two years of experience in the field of human rights, social services, legal aid or judiciary;
- are citizens of Iraq;
- have no criminal record and are not under any criminal investigation;
- preferably, have experience in working on CRSV and/or working with CRSV;
- should reflect, as much as possible, the ethnic diversity of potential survivors in the respective governorate.

#### **NGO selection**

The Draft Law states that NGOs will “assist the Directorate in the application procedure and provision of rehabilitative services to survivors” (Article 3 (e)). Article 3 (e) states that the Directorate will formulate the criteria for the selection of these NGOs and set up the procedures, while Article 7 (3) states that the criteria and procedure for this selection will be set up in a separate bylaw, which will also detail the range of services the NGOs are authorized to provide. The Draft Law also specifies that NGOs may assist survivors during the application process, and that the criteria and procedure for this selection will be regulated in a separate bylaw (Article 11 (2)). It is not clear if this would be the same bylaw or if there would be two bylaws. The Draft Law is also not clear on whether an NGOs is expected to provide assistance in both the application procedure and provision of rehabilitative services, or if engagement in just one of these activities would suffice.

The Working Group recommends certain attributes that the NGOs assisting survivors and providing rehabilitative services under the Draft Law should have:

- valid registration/accreditation as an NGO;
- valid license to provide respective rehabilitation services in the respective governorate;
- experience in working with CRSV survivors and the ability to submit proof of this experience along with corresponding results (i.e. in the form of reports, references, etc.) ;
- adequate staff with experience in working with survivors of CRSV, including providing rehabilitative services;
- protocols and processes in place to ensure data protection;
- code of conduct signed by all staff, including a policy against sexual exploitation and abuse;

- the Directorate could consider carrying out a ‘reputation check’ of the applying NGOs, through consultations with survivors, their networks and camp residents. The purpose of such inquiry would be determining quality of services provided as well as adherence to ethical principles.

The Working Group members suggested that these criteria could be further defined in consultation with survivors.

Upon selection of the NGOs, their staff should receive proper training (for suggested topics of trainings, see above heading “Trainings” under “Article 2”). To effectively aid the work of the Directorate, a joint training for all NGOs that will be assisting survivors with the claims should be organized. This would ensure standardization through utilization of uniform formats for additional documentation, thus facilitating the Directorate’s access to the relevant information. Krasniqi, the Commissioner from Kosovo, pointed out that this type of training would have avoided the challenge the Commission in Kosovo currently faces. Namely, that of having too much (often unnecessary) information to sort through which sometimes “encroaches the dignity of the survivor” with the amount of unnecessary details.<sup>31</sup>

### **Considerations for consultation with survivors**

The Draft Law, in line with best international practices and the survivor centric approach, specifies in a couple of Articles the need to consult with survivors. Specifically, the Draft Law states:

- The Directorate General shall “engage in continuous and effective consultations with survivors to receive their feedback on implementation and adapt practices accordingly.” Article 3 (j). This consultation would ideally also constitute a big part of the assessment to be undertaken four years after the Draft Law comes into effect (Article 14);
- Survivors shall also be consulted prior to realization of commemorative and education projects (Article 9 (6));
- Survivors shall also be consulted by the Council of Ministers in relation to issuance of public instructions to facilitate the implementation of the provisions of the Draft Law (Article 23 (1)).

Consultations with survivors are an important tool in ensuring a successful survivor-centric reparation’s program. The Secretary General’s 2004 report on Rule of Law and Transitional Justice notes that “the most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out.”<sup>32</sup> This is also echoed in the Nairobi declaration<sup>33</sup> which states “[t]hat the particular circumstances in which women and girls are made victims of crimes and human rights violations in situations of conflict require approaches specially adapted to their needs, interests and priorities, as defined by them.” In the sourcebook on Women, Peace and Security, UN Women highlights the importance of consultations in transitional justice process and reparations programming.<sup>34</sup> The Nairobi declaration also points out that survivor participation leads to empowerment of survivors, specifically women and girls.

It is paramount that all consultations with survivors are meaningful, rather than just “ticking a box”. Survivor inputs from these consultations should be seriously considered and should influence all future work of the Directorate General and the implementation of the Draft Law.

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<sup>31</sup> Interview with Jeta Krasniqi, Commissioner in the Government Commission on Recognition and Verification of the status of sexual violence victims during the Kosovo Liberation War, August 28, 2020.

<sup>32</sup> Report of the Secretary-General, “The rule of law and transitional justice in conflict and post-conflict societies,” S/2004/616, August 23, 2004, ¶ 16.

<sup>33</sup> Nairobi declaration on women’s and girl’s right to a remedy and reparation, March 2007, p. 2.

<sup>34</sup> UN Women, Sourcebook on Women, Peace and Security, 2012, section 6 on Gender and Transitional Justice.

A strong “do no harm” approach must be followed in all consultations with survivors. Below are several basic principles that should be considered in planning safe and ethical consultations with survivors:<sup>35</sup>

- *Transparent and informative* – Survivors must be provided with full, accessible, clear, understandable, honest and diversity-sensitive information about the consultation, its scope, purpose, and potential impact. Informed written consent shall be obtained from all survivors, prior to any consultations.<sup>36</sup> Consultations should be done in the language and dialect most familiar to the survivors, using words that they understand. When necessary, appropriate interpretations for those conducting the consultation should be arranged, and all measures should be taken to ensure the interpreter is well trained and preserves the confidentiality of the consultation;
- *Voluntary* – Survivors should never be coerced into attending any consultative meetings nor into expressing their views. They should be informed that their involvement can cease at any stage. There should be no pressure on the survivors to participate in consultations, nor any creation of incentives or inducements for survivors, or those around them, to participate in consultations should be avoided;
- *Confidential* – Unless agreed upon differently with the survivors, the identity of survivors and details around the consultation should not be made public. The number of non-survivors involved in consultations should be kept to a minimum. All those involved in the consultations, should sign confidentiality declarations. Survivors should be able to participate in consultations in an anonymous manner (i.e. not revealing their identity). The survivors should be clearly informed who will know of the consultation, of its content, and of the identity of those participating. Any sort of recordings, whether audio and/or visual, should be avoided. If a recording is strongly needed for the purposes of the consultation, it should be audio only, and only after obtaining informed consent from participating survivors. (For more information, see below “Confidentiality checklist,” from IP2) ;
- *Relevant* – Consultations with survivors should discuss topics that are relevant to them and enable survivors to draw on their experience, knowledge, skills and abilities. Unless the survivors voluntarily want to share their CRSV experience, consultations should not be used as a platform to collect evidence or investigate past crimes;
- *Safe and sensitive to risk* – An assessment of possible risks to survivors should be done before any consultations, and measures should be taken to minimize the risks to survivors from their participation. The assessment should include intersectional risks to the survivors, and their families and communities. This assessment should be reviewed as often as necessary, and the consultation should not proceed if the risks cannot be mitigated. An emotionally and physically safe environment should be created for each consultation;
- *Well-prepared and supported by training* – Staff should be well prepared for the consultations, including through preparing open questions to guide the discussions, but at the same time allowing topical trajectories in the conversations. A thorough, safe, vetted, and geographically relevant

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<sup>35</sup> These are inspired by the methodology used by CIGE, “Consultations for Reparations: Enhancing Victims Participation towards the development of a Comprehensive Reparation Policy,” August 2020; Siobhan Hobbs, “The Conflict Did Not Bring Us Flowers: The Need for Comprehensive Reparations for Survivors of Conflict Related Sexual Violence in Kosovo,” UN Women, 2016; Basic requirements for the implementation of the rights of the child to be heard set up in the Committee on the Rights of the Child, General Comment No. 12 on the Right of the child to be heard, CRC/C/GC/12, July 2009; IP2; and the draft Murad Code, “Draft Global Code of Conduct for Investigating and Documenting Conflict-Related Sexual Violence.”

<sup>36</sup> For more information, see below “Fundamentals of informed consent,” from IP2. For guidance on obtaining informed consent from minors, see [GBV SOPs for KRI](#) (updated 2019) and [GBV SOPs for Central and South Iraq](#) (update 2019).

referral pathway for all types of survivor support services (especially medical, mental health and psycho-social, and protection services) should be established and updated prior to each consultation.<sup>37</sup> Consultations should be led by trained staff, who have knowledge and a strong understanding of how to minimize harm and risk of harm to survivors. As much as possible, Continuity of staff should be maintained, especially in cases of repeated communication with the same survivors, to maintain trust and comfort levels with them;

- *Accountable* – Feedback should be provided to survivors at the end of each consultation, informing them on how their views have been interpreted and allowing them the opportunity to challenge and influence the analysis by validating the gathered data. Following the consultation, survivors should be informed on how the data and analysis from the consultations has been used and any impact it has created. Consultations should be two-way platforms, not only allowing the survivors to ask questions and receive feedback, but also, where possible, organizing separate side events for the survivors. These events ought to include courses, workshops, social events, etc. Facilitators should not make any promises that are unlikely or unable to be kept.

In addition to the principles above, the following practical steps should be observed when setting up and conducting the consultations:

- Outreach to survivors should be done through their networks, CSOs that work directly with survivors, as well as directly through survivors that have agreed to be contacted by the Directorate for future consultations;
- Consultations should occur in safe spaces and ideally in places that survivors can easily reach. In any case, transportation support should be provided to survivors as well;
- Consultation meetings should occur at times and in places that are convenient for the survivors, taking into consideration their work/duties/chores;
- Sufficient time should be allowed for consultations, allowing time for all survivors that wish to express their views, to do so;
- Possibility of childcare should be provided when consultations are held with survivors who have small children;
- Where consultations take place in groups, survivors should be grouped in a way that would make them feel safe (i.e. with others of the same gender, of the same ethnic group, of the same age group, etc.).

### **Fundamentals of informed consent**

Giving informed consent means survivors, witnesses and any other cooperating person deemed competent consents to participation on the basis of:

1. Comprehension

— full disclosure of information regarding all aspects and stages of the documentation process, and its risks and benefits

— comprehension of the information disclosed to them

2. Voluntariness

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<sup>37</sup> See footnote 30 above.

- giving their voluntary consent without coercion
3. Stated Permission
- indicating their consent.

Who can't give informed consent?

The ability to give voluntary informed consent is based on a general requirement of competency. Adult men and women with severe intellectual disabilities, mental illness, or any other physical, mental or emotional condition that may impair their ability to fully comprehend all the relevant facts may not be competent to provide informed consent.

Children are generally presumed to lack competency to consent, but depending on their age and other factors, such as maturity, may be required to provide informed . (See IP2 Chapter 16: Sexual Violence against Children for more detail.)

In the case of an individual, adult or child, who is not capable of giving informed consent, the permission of a legally authorized representative in accordance with applicable law must be sought in lieu of informed consent.

Above text taken completely from IP2<sup>38</sup> Chapter 7: Do No Harm, on p. 89

### **Confidentiality Checklist**

1. Define confidentiality procedures and make sure that all members of the documentation team are aware of what information is and is not taken, where and how it may be stored, and who has access to it. Determine a policy on whether audio or visual recording is permitted.
2. Ensure information protection measures are in place with regards to all identifying information on the victim/witness and their testimony, including the use of pseudonyms and coding systems for testimonial information as well as any referral options implemented or protective measures put in place (see also IP2 Chapters 8: Safety and Security, and IP2 Chapter 13: Storing and Handling Information).
3. Ensure all members of the team understand and apply the parameters of confidentiality established in the documentation exercise, and do not discuss case details with family, friends or colleagues who are not part of the team.
4. Fully and clearly explain to survivors/witnesses the conditions and limits of confidentiality and ensure they give their informed consent to how their information is used.
5. Agree with the victims/witness how they would like you to approach and interact with them in public, if at all, and how to get in touch with them and other potential witnesses in a way that respects their privacy and need for safety

Above text taken completely from IP2 Chapter 7: Do No Harm, on p. 95

### **Outreach**

Article 3 (i) states that the Directorate shall conduct community outreach to inform survivors on their rights and procedures to claim them, as envisaged in the Draft Law. This could be done in cooperation with NGOs, especially those that already work with and engage with large communities of survivors. Moreover, this outreach could continue throughout the process of implementing the Draft Law. This would ensure that any delays and challenges are explained to the survivors, and that the process itself remains trustworthy. Commissioner Krasniqi mentioned limited outreach and public relations engagement of the Commission as one of the challenges with implementation of the reparations scheme in Kosovo. The Commission in

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<sup>38</sup> IP2, (see footnote 18 above).

Kosovo has had a backlog and its work has been publicly criticized, including by NGOs that are authorized to support its work, causing a lack of trust in the process among the survivors.<sup>39</sup>

### **Article 5 Compensation**

Members suggested that the monthly compensation could go straight into the survivor's bank account. One should take into account obstacles that survivors might face in accessing and keeping monetary reparations. These include the lack of bank accounts and/or possible obstacles to open them in the first place (i.e. lack of necessary documentation or lack of access to banks), power differentials within families that might influence how the money is spent; and who within the family has access to a bank account.<sup>40</sup>

*See SECTION A, Article 2 on internal procedures of the Directorate on how to determine a survivor's salary (as per Article 5).*

The Draft Law enables survivors currently living abroad to apply for reparations. If the survivor's is approved, it would be eligible for all reparations provided under the law. While part of the reparations, such as rehabilitation and some restitution measures, are specifically provided within Iraq, compensation and restitution in the form of outstanding salaries, as specified in Article 6 (2), would constitute monetary reparations paid out directly to the survivor. Members of the group suggested that survivors living abroad could give power of attorney to someone who continues to live in Iraq and who could claim these monetary reparations on the survivor's behalf.

### **Article 6 Restitution**

The Draft Law lists several measures of restitution that survivors shall have access to. They include restoration of infrastructure of survivors' areas (Article 6 (3)) and rebuilding of religious objects of survivors' communities (Article 6 (4)). These two provisions can be implemented early in the implementation of the Draft Law. As per Article 3 (a), the Directorate should liaise with other bodies and agencies that have investigated CRSV, enabling the Directorate to map out and determine what locations were most affected by CRSV during the ISIS conflict in Iraq. These locations could be accorded priority in the course of restoration of infrastructure and rebuilding of religious objects, even before survivors from these areas submit claims to the Directorate.

Article 6 (5) states that survivors and their families shall be provided with identity documents on an expedited basis. To lower the cost for the beneficiaries, mobile courts could be set up and expanded throughout the areas where survivors live, so that their costs related to identity documents' issuance is lowered.<sup>41</sup> Also, according to a UNAMI and OHCHR report, the Civil Status Law states that identification documents must be renewed in the applicant's place of origin, which can be an additional burden for many

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<sup>39</sup> Interview with Jeta Krasniqi, Commissioner in the Government Commission on Recognition and Verification of the status of sexual violence victims during the Kosovo Liberation War, August 28, 2020.

<sup>40</sup> The June 2014 Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence highlights an example in South Africa as a cautionary tale on the importance to consider how monetary compensations are disbursed: "In South Africa, reparations took the form of a once-off payment of approximately USD \$4000. However, the policy failed to take into consideration both power differentials within families as well as the historic lack of access to bank accounts among women. Local victims groups reported that the money was often deposited into the accounts of male family member and women were given limited or no control over the resources. In some cases, tensions over how money should be spent in households lent itself to family violence."

<sup>41</sup> See Eva Huson, "Mobile magistrates are Iraq's new frontline fighters," The New Humanitarian, July 18, 2017; available at <https://www.thenewhumanitarian.org/feature/2017/07/18/mobile-magistrates-are-iraq-s-new-frontline-fighters>, for an overview of existing mobile courts initiative.

displaced survivors.<sup>42</sup> In that case, further legal provisions should be considered to enable displaced survivors to renew their identification documents in their current place of residence and/or through mobile courts.

### **Article 7 Rehabilitation**

The Draft Law lists minimum rehabilitative services, to be provided by designated state bodies and Iraqi NGOs, that survivors will have access to. To ensure survivors have access to these rehabilitative services in the vicinity of where they reside and that these are provided in conformity with international standards and best practices (as per Article 7 (2)), there should be an assessment of what services are already available, their quality and what new services need to be established. Governorate sub-clusters on GBV maintain a mapping of available support services for GBV victims, which could serve as a reference point for the assessment. This could be further enriched with knowledge from C4JR members, information from state sources, through key informant interviews as well as a review of Iraq's submissions to various international monitoring bodies.<sup>43</sup> A second step should be assessing the quality of these services, and then developing a plan how to improve their reach, quality and availability.

Among rehabilitative services, the Draft Law also lists community-oriented programs that could support the reintegration of survivors and children conceived through acts of CRSV (Article 7 (1) (g)). Service mappings from the GBV sub-clusters also include mapping of awareness raising activities. This could be coupled with a mapping of statements and public agreements that tribal leaders have made in support of CRSV survivors.<sup>44</sup>

Additionally, the Working Group has suggested working on an action plan and roadmap on how to provide rehabilitation to CRSV survivors, highlighting the needs to build capacities especially in the health sector and the provision of mental health services. Eyzidi Organization for Documentation has volunteered to draft standards for the provision of mental health services to CRSV survivors, which the Working Group can then further develop and use to influence the standards on how mental health services are provided in the country.

Even if the Iraqi state promptly establishes the reparations system set up in the Draft Law, it will take some time until all survivors submit their claims and are verified. Thus, in areas where it is known that many survivors live,<sup>45</sup> a collective approach to rehabilitation could be applied. This would follow the Secretary General's guiding principle that "individual and collective reparations should complement and reinforce each other," but collective reparations should not substitute individual ones. In addition to being able to provide reparations even before cases are verified, collective reparations could also prevent stigma against survivors, as survivors do not need to be identified individually in order to benefit from them. Survivors should be consulted when designing any collective reparations.<sup>46</sup>

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<sup>42</sup> United Nations Assistance Mission for Iraq and Office of the United Nations High Commissioner for Human Rights, "The Right to Education in Iraq. Part One: The legacy of ISIL territorial control on access to education," February 2020, p. 12.

<sup>43</sup> For example, Iraq's state report submitted to the Committee against Torture in August 2019 lists several services provided in relation to CRSV: psychosocial support (see ¶ 78 and ¶ 81), services of family counseling (see ¶ 72), health services (see ¶ 108 and ¶ 109), education services (see ¶ 126), livelihood support (see ¶ 82).

<sup>44</sup> For an initial mapping of these, see United Nations Assistance Mission for Iraq and Office of the United Nations High Commissioner for Human Rights, "Promotion and Protection of Rights of Victims of Sexual Violence Captured by ISIL/or in Areas Controlled by ISIL in Iraq," August 22, 2017, ¶¶ 28-30.

<sup>45</sup> As per Article 3 (a), the Directorate should liaise with other bodies and agencies that have investigated CRSV, and this would enable the Directorate to map out and determine what locations were most affected by CRSV during the ISIS conflict in Iraq.

<sup>46</sup> Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence, June 2014, pp. 7-8. 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, A/RES/60/147, March 21, 2006, ¶13 also endorses the idea of collective reparations.



However, there are downsides to providing collective reparations. They are prone to not being seen as “real” reparations. This is especially the case where a “non-excludable good”, such as a service or reconstruction of infrastructure, not restricted to survivors only, is involved. In this case collective reparations can be conflated with development programs, and development is an entitlement of everyone, irrespective of whether they suffered any harm during the conflict.<sup>47</sup>

### **Article 10 Guarantees of Non-Repetition**

Guarantees of non-repetition are one of the categories of reparations, *and can play an important role in ensuring that reparations are transformative*. The Draft Law points out several steps that the Government should undertake to ensure non-repetition, including, among others, reform of its penal code and ensuring prompt and effective prosecution of sexual violence. Such reforms would also be in line with recommendations that Iraq has received from international human rights mechanisms.

One of the first steps could be removing reservations entered to Articles 2 (f, g) and 16 of the CEDAW mandating states to repeal discriminatory laws and practices and ensure equality in all matters related to family and marital relations.

How Iraqi law currently treats SGBV is detailed below. These are juxtaposed with how the same issues are treated in international law and/or based on best practice and standards.

Iraq’s Penal Code 111 of 1969 as amended to 14 March 2010, criminalizes sexual violence, but the entire framework of this crime falls short of international standards and is discriminatory against women.

Rape:

- Penal Code Article 393 defines rape as “sexual intercourse with a female without her consent” or “buggery with any person without their consent,” and lists several aggravating circumstances, such as that the victim was a virgin. Iraq’s Penal Code focuses on the lack of consent as the necessary condition for the crime of rape:
  - Under international criminal law, rape has a significantly broader definition. Elements of Crimes of the ICC Statute defines it as “invas[ing] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.” Note that the broader definition is gender neutral and includes all forms of penetration;
  - International criminal law has also shifted from a focus on consent to defining rape as an act “committed by force, or by threat of force or coercion, [...] or by taking advantage of a coercive environment, or [...] against a person incapable of giving genuine consent;
  - “The focus on virginity is not in line with international standards and may result in harmful questioning/‘hymen testing’ of the victim.” Moreover, there are no scientific basis for “virginity testing” and it is a clear violation of human rights.

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<sup>47</sup> OHCHR, “Rule-of-law tools for post-conflict states: reparations programmes,” 2008, pp. 25-27.



- Penal Code Article 398 provides for dropping of all investigations and charges into allegations of rape, if the perpetrator “lawfully marries the victim.” Also, Penal Code Article 41 states “There is no crime if the act is committed while exercising a legal right”, such as “the punishment of a wife by her husband” (Article 41 (1)):
  - Such marriage exceptions for rape are not allowed under international law. Moreover, distinguishing the level of protection a victim of sexual violence receives based on their marital status constitutes discrimination and is in violation of human rights law.
- Iraq’s CPC no. 23 of 1971 as amended to 14 March 2010, Article 3 (A) (III) states that only the aggrieved party can initiate criminal proceedings for a number of crimes, and it is arguable that this also includes allegations of rape. Penal Code Article 385 has similar provisions:
  - International practice does not require the victim to initiate a rape claim. This can be of particular value “[i]n conservative societies such as Iraq, [where] women who have been subjected to rape and other forms of sexual violence may be unwilling to initiate such proceedings.”

#### Other forms of sexual violence:

- Penal Code Article 396 (1) criminalizes sexual assault, with a possible sentence that is lower than that of rape. However, as sexual assault is not defined it is not clear whether all of the coercive circumstances set out in the Rome Statue and customary international law are included;
- Penal Code also criminalizes an “immodest act in public” (Article 401), “indecent advances” (Article 402 (1) (a)), and “public assailing in immodest manner” (Article 402 (1) (b)), but without defining what is specifically meant by these. It also criminalizes forced abortion (Article 418 (1)).
  - International criminal law defines the crime of sexual violence more broadly. The Rome Statue recognizes the following acts of sexual violence as a basis for criminal charges “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.” The last part of that definition, allows “the courts to exercise jurisdiction over any other, un-enumerated serious sexual assaults of comparable gravity to the named sex based crimes.”;

#### Gender based violence and domestic violence:

- Article 29 of the Iraqi Constitution prohibits “all forms of violence and abuse in the family,” but a law on domestic violence is promulgated only in the Kurdistan Region of Iraq. There are ongoing efforts to pass a bill on domestic violence in Iraq. The current Council of Representatives has referred the latest draft of the bill, which underwent its second reading in early 2017, “back to the Government along with a body of other bills in order for it to identify legislative priorities.” The latest publicly available draft of the law still has some gaps that would undermine its effectiveness, in particular the prioritization of reconciliation over protection and justice for victims;
- Penal Code Article 41 (1) allows for the husband to punish his wife, and Article 398 states that all charges and investigations into rape allegations are dropped if the perpetrator “lawfully marries the victim.”

- These articles allow for marital rape, which is banned as per international standards and best practices. Moreover, distinguishing the level of protection a victim of sexual violence receives based on their marital status constitutes discrimination and is in violation of human rights law;
- International standards clearly stipulate responsibility of States to protect women against all kinds of violence.
- In addition, the Penal Code Articles 128, 130, 131 and 409 (and the subsequent Revolutionary Command Council Order No. 6 of 2001) provide for mitigated sentences for crimes, including murder, if they were committed because of “honorable motives” or by a man who caught his wife, girlfriend or female relative in adultery. Kurdistan region has suspended the application of Article 409:
  - The lack of definition of “honorable motives” provides “a very broad mitigating excuse.” In the context of Iraq, ‘dishonor’ is most often something that falls on women, making this provision discriminatory as “it provides sanction to men who commit offences against women. This violates Article 14 of the Constitution, guaranteeing equality and non-discrimination based on sex, as well as Articles 9 and 26 of the ICCPR, Articles 2 (b) and (c), 4, 5, and 15 of CEDAW”;
  - Article 409 and accompanying RCC order are also discriminatory, and in addition to being against Article 14 and 26 of the Iraqi Constitution, they also are a violation of Article 16 of the ICCPR and Article 15 of CEDAW.

#### Prosecution of crimes of sexual violence committed by ISIS:

- Iraq’s Terrorism Law from 2005 is used to investigate and prosecute crimes committed in the course of the ISIS conflict in Iraq. However, to date, none of these prosecutions have included indictments for sexual crimes;
  - To ensure survivors get access to justice and reparations for CRSV, it is important that ISIS crimes are also investigated and prosecuted based on the specific nature of the crime (i.e. for sexual violence, as defined in international criminal law).

#### **Article 11 Initiation of Procedure**

The Draft Law specifies that survivors can submit written or oral claims to the Directorate and to its sub-offices. Authorized NGOs can also support the survivors in submitting their claims, throughout the process of writing up the claim and gathering necessary documentation, to submitting it to the Directorate. A narrow reading of the Draft Law could be interpreted to mean that claims need to be submitted to the Directorate’s headquarters in Sinjar, which could cause an unnecessary burden and possible delays in the process. Thus, it should be specified that claims may be submitted to the Directorate’s sub-offices in various governorates., In Article 3 (d) the Draft Law states that the Directorate shall establish mobile teams “to assist survivors submit claims.” Considering the reality of many survivors living in IDP camps, it should be specified in Article 11 that claims can be submitted orally or in writing to the mobile teams also.

One of the identified challenges with implementing Law 20 in Iraq has been that it initially required “victims to submit their claims in the governorate that the incident occurred even if they were living

somewhere else.”<sup>48</sup> Considering the scale of internal displacement in Iraq, this provision caused delays in the implementation of Law 20. To avoid such delays, the Draft Law should specify that survivors can submit claims in the governorate where they are currently living. The Draft Law also mentions in Article 3 (f) that the Directorate must create mechanisms to allow survivors that live abroad to submit claims in Iraq’s diplomatic missions, but this is not mentioned in Article 11 on initiation of procedure.

### **Article 12 Content of the Claim**

Article 12 of the Draft Law specifies that the claim 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.

In order to assist with the implementation of other provisions of the Draft Law, the claim could also include details on any costs incurred during rescue operations (in relation to Article 18 (3)), and a question to applicants on whether they would want to be contacted by the Directorate in the future for purposes of the Directorate’s consultations with survivors (in relation to Articles 3 (j), 9 (6), and 23 (1)). Considerations of privacy and protection of confidentiality should be reflected in claim forms. The ICTJ guidance on designing application forms for reparations could be useful in the future, when the content and form of the claim are being decided upon.<sup>49</sup>

### **Article 18 Ceasing Existing Violations**

The Draft Law obliges Iraqi authorities to actively seek and rescue those that are still missing (Article 18 (1)), including through creating a database with information on disappeared persons (Article 18 (2)). To avoid any possible duplication, a mapping of ongoing work in this regard should be done. For example, the ICMP has already supported Iraqi authorities to establish an Iraq Missing Persons and Relatives Database.<sup>50</sup> Some of the Working Group members were involved in this work, specifically the Eyzidi Organization for Documentation, which provided information on approximately 1,800 missing persons included in the database.

Working Group members suggest that the work on establishing and maintaining the database, and the work of the focal point mentioned in Article 18 (2), should be kept separate from the work of the Directorate, so as to not overburden it. Of course, strong cooperation should exist between the two bodies.

### **Article 19 Children Conceived Through acts of CRSV**

The Draft Law contains several provisions that promote the principle of “best interest of the child”, one of the basic principles of the CRC, applicable to children conceived through acts of CRSV. This principle also supports women “survivors to keep and care for their children” (Article 19 (1) (c)). Some details of this support are specified in other articles of the Draft Law in relation to provisions that apply to survivors’

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<sup>48</sup> Clara Sandoval and Miriam Puttick, “Reparations for the Victims of Conflict in Iraq: Lessons learned from comparative practice,” Ceasefire Centre for Civilian Rights and Minority Rights Group International, November 2017, p. 20.

<sup>49</sup> Ruben Carranza, Cristián Correa, and Elena Naughton, “Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations,” International Center for Transitional Justice (ICTJ), 2017.

<sup>50</sup> For an overview of the ICMP work in Iraq, see their website at <https://www.icmp.int/where-we-work/middle-east-and-north-africa/iraq/>

family members (i.e. Article 6 (5) on expedited access to identity documents and Article 7 (1) on access to rehabilitative services). Further details could be added to specify the type of support envisaged in Article 19 (1) (c), based on the specific circumstances pertaining to Iraq and possibly also looking into examples of other countries.<sup>51</sup>

The Draft Law also provides for the establishment of a first instance court that would support the civil registration and issue documents to children (Article 19 (2)). To avoid any possible delays in the future, the Draft Law could further specify that the first instance court would process all the cases presented to it, irrespective of whether a connected claim is made to the Directorate or not. To speed up processing cases, the Draft Law could also specify that there should be a strong link between the first instance court and the Directorate, with the Directorate being able to submit cases to the court, subject to survivors' consent. The Working Group suggested that the Directorate could have a liaison working directly with the first instance court, collecting all the necessary documentation and submitting claims on behalf of survivors, subject to their consent. Considering the limitations that many survivors face in accessing services, the first instance court could replicate the model of "mobile courts" that have already been set up in IDP camps assisting people to get access to documents.<sup>52</sup>

### **Article 21 Criminal Justice**

The suggested mapping of services under Article 7 on rehabilitation could also include a mapping of available legal aid services (mappings of services maintained by the GBV sub-clusters also include legal services). This would provide knowledge on what services already exist, where the gaps are, and what the quality of legal aid services, which are mandated to be provided to survivors and witnesses under Article 21 (1), is.

### **Article 23 Implementation and Financing**

One of the main challenges in implementing the Draft Law will be the state's capacity to secure the necessary financial resources. The Draft Law is ambitious, and it will require a significant budget in order to set up the Directorate and all other mechanisms stipulated therein including ensuring that the survivors have access to all the envisioned forms of reparations. The C4JR should be aware that the authorities might use the cost of implementing the Draft Law as an excuse to oppose it, as was done for example during the amendment of Law 20, even if such opposition might be political rather than financial.<sup>53</sup> An OHCHR analysis of reparation efforts has shown that while economic development can be a precondition for implementing reparations, countries in similar economic situations have taken quite different approaches. Moreover, when there's a lack of strong and broad coalitions that support reparations, countries have not implemented reparation plans even when they could afford them.<sup>54</sup> A decision to finance the Draft Law providing for reparations to survivors of CRSV might end up becoming even more political in a patriarchal context where there is a lot of stigma around CRSV.

Learning from the implementation of Law 20 in Iraq, where victims received positive decisions but no actual compensation due to different bodies being responsible for different reparations,<sup>55</sup> it is important to

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<sup>51</sup> For example: Programa Integral de Reparaciones en Peru, Ley 28592, Articles 2-6 provides children born out of acts of CRSV in Peru with access to economic compensation until they are 18 years old and preferential access to education services.

<sup>52</sup> Eva Huson, "Mobile magistrates are Iraq's new frontline fighters," *The New Humanitarian*, July 18, 2017; available at <https://www.thenewhumanitarian.org/feature/2017/07/18/mobile-magistrates-are-iraq-s-new-frontline-fighters>.

<sup>53</sup> Clara Sandoval and Miriam Puttick, "Reparations for the Victims of Conflict in Iraq: Lessons learned from comparative practice," *Ceasefire Centre for Civilian Rights and Minority Rights Group International*, November 2017, p. 21.

<sup>54</sup> OHCHR, "Rule-of-law tools for post-conflict states: reparations programmes," 2008, p. 32.

<sup>55</sup> Clara Sandoval and Miriam Puttick, "Reparations for the Victims of Conflict in Iraq: Lessons learned from comparative practice," *Ceasefire Centre for Civilian Rights and Minority Rights Group International*, November 2017, p. 32.

maintain the provisions of the Draft Law, where the Directorate would be the only body with responsibility to coordinate the implementation of the reparations scheme.

There are two broad models of financing reparations: creating special trust funds for reparations or funding them through a specific line in the national budget. The former allows for the possibility to find alternative sources of funding, including funding from donors; while the latter would be a clear sign of political will to implement reparations.<sup>56</sup> One way of securing this type of political will could be through providing an accurate estimate of what the expected number of reparation claims might be. For example, in Croatia, the UNDP carried out a sociological research estimating the number of survivors,<sup>57</sup> which appears to have been a turning point in garnering support for CRSV reparations. Conversely, though the law on reparations for CRSV survivors in Kosovo was amended in 2014, only the government's 2018 budget included funds for implementation of these reparations.<sup>58</sup> The Kosovo Government was most likely apprehensive about the costs of providing reparations to CRSV survivors, as the widely quoted figure of CRSV victims in Kosovo is 20,000.

The Draft Law mandates the creation of a specific line in the national budget to enable its implementation. However, considering the dismal financial reality of Iraq, C4JR could consider a mixed model of financing reparations: through the national budget and a trust fund. Article 79 of the Rome Statute represents one example of using this type of model. It implements reparations ordered by the ICC, and “is financed by private and public sources, including states’ voluntary contributions, and receives court-ordered fines and forfeitures.”<sup>59</sup> Other countries, such as Columbia and Sierra Leone, have also used this model.

Other avenues may also be explored to secure funding for reparations, through a trust fund set up and/or from the national budget. These include:

- Donor funding. This could be an avenue where C4JR can play a big role in terms of advocating with the international community and other private donors. Nonetheless, even if international aid is provided, this should not substitute the role that Iraq’s state must play in reparations;
- Setting up a trust fund like the United Nations Compensation Fund which received 5% of the proceeds from Iraq’s oil exports. The UN Compensation Commission used this fund to pay out reparations to some victims of Iraq’s invasion of Kuwait;<sup>60</sup>
- Specific taxes. The South African Truth and Reconciliation Commission suggested a “wealth tax,” which taxed corporate and private income, donations from companies based on their market capitalization, past profits, etc.<sup>61</sup>
- Debt swaps, where Iraq would negotiate with international lenders to cancel a portion of its debt on the condition that the same amount is used for reparations. Peru was able to do this on small scale.<sup>62</sup>

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<sup>56</sup> OHCHR, “Rule-of-law tools for post-conflict states: reparations programmes,” 2008, pp. 25-27.

<sup>57</sup> UNDP, “Assessment of the Number of Sexual Violence Victims during the Homeland War on the Territory of the Republic of Croatia and Optimal Forms of Compensation and Support to Victims,” December 2013.

<sup>58</sup> Nadie Ahmeti, “Rreth 400 gra dhe 12 burra me statusin e viktimës së dhunës seksuale (Around 400 women and 12 men with the status of sexual violence victim),” Radio Free Europe, July 5 2019, available at <https://www.evropaelire.org/a/viktimat-dhune-seksuale-ne-lufte/30037547.html>.

<sup>59</sup> Clara Sandoval and Miriam Puttick, “Reparations for the Victims of Conflict in Iraq: Lessons learned from comparative practice,” Ceasefire Centre for Civilian Rights and Minority Rights Group International, November 2017, p. 16.

<sup>60</sup> Ibid, p. 16.

<sup>61</sup> Christopher J. Colvin, “Overview of the Reparations Program in South Africa,” in Handbook of Reparations, ed. Pablo de Greiff. New York: Oxford University Press, 2006, p. 199.

<sup>62</sup> OHCHR, “Rule-of-law tools for post-conflict states: reparations programmes,” 2008, p. 33.

## B. Further Legislative Development

To ensure that the reparations system is properly established, the legislative framework should be further developed to avoid any confusions and bridge all the gaps. This can be done through developing secondary legislation, and/or through a second version of the Draft Law. Some of these issues have been pointed out above and are further mentioned below:

- The Draft Law does not provide sufficient details as to how the Directorate would be established, what powers it would have and how its staff would be selected/appointed, etc.;
- The Draft Law does not provide for any sort of administrative support body for the Directorate, such as a Secretariat. This could make the work of the Directorate extremely difficult;
- The Draft Law is silent on the repercussions of Article 48 of Iraqi CPC no. 23 of 1971 as amended to 14 March 2010 that obliges all public servants to report misdemeanors and felonies, which includes rape. C4JR should prioritize addressing this, possibly through providing for an exemption to this Article for all those that will be involved in the work of the Directorate;
- The Draft Law is silent on whether survivors would ever appear in front of the Directorate. If not, this needs to be clearly stated. If yes, further provisions are required to detail how this would be done in a victim-centric manner;
- C4JR could consider providing for deputies for the Director General and Commissioners in Article 2. Depending on what is set as the necessary quorum for any decision making, it might be particularly useful for each member to have a deputy;<sup>63</sup>
- C4JR could consider providing more details on the profiles of staff employed by the sub-offices and the mobile teams. It could also consider other profiles in addition to those working in the field of human rights for Commissioners (Article 2 (6)) ;
- The Draft Law, in Article 3 (d) states that the Directorate shall establish mobile teams “to assist survivors submit claims.” Considering the reality of many survivors living in IDP camps, C4JR could consider specifying in Article 11 that claims can be submitted orally or in writing to the mobile teams also;
- Article 3 (e) states that the Directorate will formulate the criteria for the selection of NGOs and establish the necessary procedures, while Article 7 (3) and Article 11 (2) state that the criteria and procedure for this selection will be specified in a separate bylaw. This inconsistency should be addressed. It is also not clear if there would be one bylaw or two to address this. The Draft Law is also not specific if NGOs should assist in both the application procedure and provision of rehabilitative services, or if NGOs could be engaged in just one of these activities;

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<sup>63</sup> All members of the Commission in Croatia have deputies. In Kosovo, members do not have any deputies. According to Commissioner Krasniqi this has contributed to delays in the process, as they have at times struggled to reach the necessary quorum of six. This has in particular been an issue during the COVID-19 pandemic, also because one of the Commissioners has passed away and has not been replaced (the Law in Kosovo specifies that this particular Commissioner should be delegated by the Institute for War Crimes. Since the Institute has in the meantime been dissolved, that position cannot be filled unless the Law is changed.)

- The Draft Law ensures survivors currently living abroad also have access to reparations. Some of these reparations would be monetary reparations paid out directly to the survivor (mainly compensation in Article 5 and restitution in the form of outstanding salaries in Article 6 (2)). C4JR could include more details on how these reparations would be paid to survivors residing outside of Iraq. Working Group members suggested that survivors living abroad could give power of attorney to someone who continues to live in Iraq and could claim these monetary reparations on the survivor's behalf;
- C4JR could consider further legal provisions to ensure displaced survivors can renew their identification documents in their current place of residence and/or through mobile courts (Article 6 (5)) ;
- Considering the experience with implementation of Law 20 and the reality of many survivors being displaced from their homes, C4JR could consider specifying in Article 11 that survivors, in addition to Diplomatic missions if living abroad (as per Article 3 (f)), can submit claims in the Iraqi governorate where they currently reside;
- A narrow reading of the Draft Law could be interpreted to mean that NGOs need to submit claims to the Directorate headquarters in Sinjar, which could create an unnecessary burden on survivors and delays in the process. Rather, the C4JR could consider specifying that NGOs supporting survivors can also submit claims to Directorate's sub-offices in various governorates (Article 11 (2)) ;
- Considering the reality of many survivors living in IDP camps, C4JR could consider specifying in Article 11 that claims can be submitted orally or in writing to the mobile teams also;
- Article 12 could include more details on the content of reparation claims, by including both information required in other articles and additional information that would follow international standards. C4JR could also consider specifying whether survivors can also submit additional documents as copies rather than originals, as well as possibly establishing a process to verify copies;
- Article 14 states that, following an assessment, the deadline to submit claims may be extended. C4JR could consider providing more details on this assessment, in particular by specifying that such an assessment must be conducted in consultation with survivors;
- Article 16 states that survivors shall be enabled access to reparative measures no later than three months from the date when written decision has been issued. C4JR could consider adding provisions clarifying whether survivors would be eligible for retroactive reparations covering the time they were awaiting the Directorate's decision and the following three months;
- Article 17 mentions the possibility of appeal but provides practically no details on what this process would entail. C4JR could further discuss this and come to an agreement with members on how an appeal process would work;
- Article 18 is not clear on what the relationship would be between the Directorate and the database and focal point;
- Further details could be provided on the type of support envisaged in Article 19 (1) (c);



- To avoid any possible delays in the future, the Draft Law could further specify that this first instance court would process all the cases presented to it, irrespective if a connected claim is made to the Directorate. To speed up the processing of cases, the Draft Law could also specify that there should be a strong link between this court and the Directorate, with the Directorate being able to submit cases to the first instance court, subject to survivors' consent (Article 19 (2));
- It is likely that CRSV survivors might benefit from reparations under other schemes, either currently or forthcoming. To avoid any future confusion and to protect the best interest of the survivors, Article 22 could include clarification on this. This would avoid a situation as in Croatia, where CRSV survivors who already benefit from another reparation scheme are not allowed to receive their benefits as CRSV survivors, even if the latter scheme includes a larger compensation;<sup>64</sup>
- The principle of confidentiality and protection of the privacy of survivors throughout the reparations system set up by the Draft Law needs to be further strengthened and explicitly reflected in the Draft Law;
- The Draft Law does not specify when the Directorate would start accepting claims. For comparison, legislation in Kosovo specified that the Commission will start receiving claims after basic trainings and no later than three months after appointment.<sup>65</sup> This could be pertinent especially considering that the three month deadline to reach a decision (Article 15 (2)) could be frustrated during the beginning stages of establishing the Directorate, which would entail, inter alia, setting up processes and collecting documentation in keeping with Article 13 (1) and (2).

## C. Next Steps and Remaining Questions

### Advocacy

C4JR has drafted a Draft Law which provides a strong basis for establishing effective reparations for CRSV survivors. The Coalition has used a “maximalist approach” when developing the draft, but they also need to be realistic and manage expectations of the Coalition members and most importantly of survivors and their network. Many of the Draft Law’s provisions might be “watered down” in the process of turning the Draft into actual legislation. C4JR should also keep in mind that setting up reparations systems requires a confluence of factors and often takes a long time, as evidenced by the process in other jurisdictions. It requires political will, as well as financial resources. This is where advocacy of civil society and the international community may play an important role.

<sup>64</sup> Ivanka Toma, “Štede li na žrtvama? 'Moj suprug je žrtva seksualnog zločina u jednom srpskom logoru. Nagovorila sam ga da se obrati Povjerenstvo. Poslušao me i - zažalio!' (Are they saving on victims? 'My husband is a victim of sexual violence in a Serb camp. I convinced him to address the Commission. He listened to me and – regretted it!'),” *Jutarnji List*, November 25, 2017, available at <https://www.jutarnji.hr/vijesti/hrvatska/moj-suprug-je-zrtva-seksualnog-zlocina-u-jednom-srpskom-logoru-nagovorila-sam-ga-da-se-obrati-povjerenstvo-poslusao-me-i-zazalio-6780402>.

<sup>65</sup> Regulation (GRK) no. 22/2015 on defining the procedures for recognition and verification of the status of sexual violence victims during the Kosovo liberation war, Article 27.



For example, Kosovo civil society had been advocating for years to establish a system of reparations for CRSV survivors, intensifying these efforts in 2012. Then, in March 2013 one political party presented an amendment to Parliament which specified CRSV survivors as beneficiaries within the law on civil victims. This amendment was passed only a year later, after the then President of Kosovo created the National Council, a coordinating inter-agency body which also had representatives of civil society and brought a lot of attention to the topic and increased political pressure. Secondary legislation was approved in December 2015 (and amended in 2016). However, the Commission established to administer reparations started working only in February 2018.

Moreover, even when a reparation process is fully established, it can remain fragile to political pressures and can be stalled or endangered by political interests. For example, the Commission set up by the 2015 law in Croatia<sup>66</sup> was appointed in November 2015. On the eve of extraordinary elections in September 2016, the Ministry of Croatian Veterans (under whose auspices the Commission has been set up) first indefinitely postponed the sessions of the Commission and then dismissed six members of the seven member Commission and five of their deputies, and appointed new members. There has been little information on why the members were dismissed, and three of the dismissed members have since sued the Minister. There has been some criticism that while the new members fulfill the necessary minimal criteria, they do not have the same level of experience of working with CRSV or sexual violence in general.<sup>67</sup>

Thus, it is important that the C4JR and the Working Group develop a **strong advocacy plan** and engage in advocacy to garner political commitment. At the very least, the advocacy should target:

- Government officials, parliamentarians and politicians, in order to ensure the Draft Law is considered and approved in the Parliament, and that the budget and other resources are set aside for its implementation;
- The general public, and community and traditional leaders, in order to ensure that the Draft Law has the support of the public, civilian victims of the conflict and veterans;
- The international community, in order to put pressure on the government but also to commit more strongly to supporting development programs that can be combined with reparations and to provide donations for a possible trust fund;
- Survivors, to manage their expectations in terms of the time frame that might be needed to pass the law and implement it, as well as in terms of considering any challenges and delays that might be expected during the scheme's ratification and implementation stages.

The advocacy plan and advocacy materials of the C4JR should substantiate the various provisions of the Draft Law, explaining why C4JR is recommending specific provisions, how it is based on international standards, best practices in other countries, consultations with survivors and anything else that is relevant. The policy paper provides some of these details, but all the Draft Law's provisions should be substantiated with strong reasoning, especially concerning provisions that might be more controversial in Iraq.

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<sup>66</sup> Law NN 64/15 from 2015, amended by Law 98/19 from 2019 on the rights of victims of sexual violence during the armed aggression on the Republic of Croatia in the Homeland War.

<sup>67</sup> Ivana Erceg Matijašević, "Sutkinja Branka Žigante: 'Zbog nezakonite smjene tužit ću ministra Tomu Medveda' (Judge Branka Žigante: 'Because of the unlawful change I will sue Minister Toma Medved')," tportal, November 12, 2016. Available at <https://www.tportal.hr/vijesti/clanak/zbog-nezakonite-smjene-tuzit-cu-ministra-tomu-medveda-20161110>

## Needs of children

Many survivors of CRSV during the ISIS conflict in Iraq were children (under 18 years old), when they were harmed, and some might still be children. Their experience and current needs likely differ from those survivors who were adults when the harm occurred.

It is important that C4JR explore the impact of violations on children, those that have gone through CRSV themselves or who were conceived through acts of CRSV, as well as the impact of suggested reparations for them. Children's views and experiences should inform the development of the reparations program,<sup>68</sup> while keeping in mind that consultations with children require a specific set of skills and more preparation than consultations with adults. Child-sensitive reparations would ensure these children are reintegrated into society, minimize the possibility of inter-generational trauma and the risk of developing a victimhood mentality.<sup>69</sup>

## Possible risks

The Draft Law has been drafted with a strong gender lens and provides for gender-sensitive measures. For example, it acknowledges that women survivors who want to keep caring for children conceived through acts of CRSV might want to relocate to third countries and that the Directorate should assist them in this (Article 19 (1) (d)). This gender-sensitivity must also be reflected in the implementation of the Draft Law, and C4JR could consider further exploring what risks and challenges survivors might face in the course of accessing reparations. For example, with women CRSV survivors receiving compensation and/or restitution, the power dynamics in the family might change, possibly leading to family violence.<sup>70</sup> A strong analysis of the risks in this scenario would enable the development of effective mitigation measures.

## Links with development

Reparations must include an acknowledgment of responsibility. However, there is a strong link between development and reparations, though development cannot substitute reparations.

See also above under the heading “Article 7 Rehabilitation” for a discussion on conflation of collective rehabilitation with development.

Kosovo is a good example on the impact that development could have when linked with reparations. According to Commissioner Krasniqi coupling access to reparations with development programs, in Kosovo's case with a micro-grants scheme, enabled survivors to bring in the money into their families' budget while not declaring the source of the monthly pension. This was particularly important for survivors that had not yet made their past experience of CRSV known to family members, and where a stream of monetary compensations, could have made it more difficult to keep their secret. The development program of the micro-grants scheme also created synergies with reparations, which enabled survivors to manage their own businesses and become financially independent. It also enabled reparations to have a transformative impact, enabling survivors to start a dialogue with family members about their past experiences. This eventually produced a significant effect on the survivors' mental health and general well-being.<sup>71</sup>

<sup>68</sup> This is in line with the CRC's basic principle of children's right to be heard, as per the Convention's Article 12.

<sup>69</sup> For guidance on how to achieve this, can consult, among others: UNICEF's resources on children and transitional justice, including research and tools, available at <https://www.unicef-irc.org/research/children-and-transitional-justice/>, and ICTJ pages on children and youth, available at <https://www.ictj.org/our-work/transitional-justice-issues/children-and-youth>

<sup>70</sup> The June 2014 Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence highlights how the failing in South Africa to take into account power differentials within families, in some cases, resulted in “tensions over how money should be spent in households [which] lent itself to family violence.”

<sup>71</sup> Hobbs, Siobhan, “Bees of Change: The Exponential Impact of Micro-Grants for Survivors of Conflict-Related Sexual Violence in Kosovo,” UN Women, 2019.

### **Development of further guidelines**

C4JR, and more specifically the Working Group, could consider developing guidelines that would be useful for the implementation of the Draft Law, as well as for coordination of the service provision among members. For example, the Working Group has suggested working on an action plan and roadmap on how to provide rehabilitation to CRSV survivors, and especially mental health services. Eyzidi Organization for Documentation has volunteered to draft a document specifying the standards for the provision of mental health services to CRSV survivors. The Working Group can further develop this document and use it to influence the standards of how mental health services are provided in the country. Other similar standards and guidelines might prove beneficial in the advocacy for the Draft Law, and for its implementation.

### **Continued work of the Working Group**

The Working Group has developed its ToR, and an initial draft Work Plan in early July 2020 (see Annex 1). Its members have been meeting on a weekly basis to provide inputs to the present report. They appear to be eager to continue working on other issues, and the momentum of the Working Group should be harnessed to support the future work of the C4JR.

Working Group members were selected through a process of self-nomination from among C4JR members. As such they are a group of members that are interested in the topic and work with CRSV survivors and/or gender issues. One suggestion is to be flexible on who from the organization may attend these meetings and participates in the various processes. When working on this report some members mentioned struggling due to not having a legal background and suggested that a lawyer from their organization would attend future meetings.

At the beginning, the Working Group members also appeared to have little knowledge of the Draft Law and its content. This was the reason why in the meeting on July 22, 2020, Bojan Gavrilovic, Head of Program for Rights and Justice of the Jiyan Foundation for Human Rights was invited to participate and introduce the Draft Law and the reasons behind its provisions. It is recommended that the Draft Law, this report, and all other documents that the Coalition and its working groups produce, be properly discussed within the Coalition so that all members can serve as advocates and push the work forward effectively.

## D. Recommendations for Iraqi decision-makers

In addition to substantial recommendations that are an inherent part of the C4JR Draft Law, in order to establish a viable and accessible reparations program able to deliver high quality services to survivors in line with international standards and best practice, C4JR suggest undertaking the following steps:

- Specify that, in addition to those who individually suffered harm, at least their parents, grandparents, siblings, spouses, and children benefit from reparative services envisaged in the law;
- Ensure that all those involved in consultations with survivors, collecting evidence, assisting in submitting claims, deciding on claims and delivering specific forms of reparations, including Director General, Commissioners, staff at the Secretariat, sub-offices, mobile teams and selected NGOs, undergo mandatory training;
- Envisage that the Director General and Commissioners have deputies to facilitate efficient decision making.
- Specify that survivors may benefit from certain forms of reparations under other state funded schemes;
- Ensure that mandatory training covers at least the following topics:
  - CRSV, as per international and domestic law, including the definition of sexual violence, nexus with the armed conflict, context of CRSV in Iraq;
  - The survivor centered approach, including on survivors' agency, informed consent, "do no harm" principle, confidentiality, protection of privacy and the "best interest of the child" principle in relation to girls and boys, gender sensitivity;
  - Associated physical, mental, social and economic harms suffered by different CRSV victims;
  - Awareness about CRSV-related stigma and stigma sensitization;
  - Capture, storage, management, confidentiality and disclosure of information, as per national legislation and best international practices;
  - Basics of CRSV investigation, with a focus on the appropriate burden of proof;
  - Ethical engagement with survivors;
  - Basic trauma understanding and awareness, including recognizing and responding to signs of trauma and distress;
  - Methods and procedures to prevent trauma, including vicarious trauma;
  - Self-care techniques to reduce vicarious trauma, including training on signs and symptoms of secondary trauma, support protocols and safe working methods.
- Provide mandatory training in longer blocks at the latest three months after the General Directorate of Survivors' Affairs is established;

- Enact secondary legislation (guidelines, protocols, instructions etc.) establishing necessary forms, rules and procedures governing work of the General Directorate and designated NGOs. These should at least include:
  - Confidentiality agreements;
  - Cooperation with UN agencies and other international actors;
  - Rules governing selection and further cooperation with NGOs that will assist survivors in submitting claims and provide rehabilitation services;
  - Trainings (content and who should mandatory attend them);
  - Conflict of interest;
  - Developing an annual budget;
  - Organizing, implementing and protocoling of meetings and other decision making processes;
  - Procedures for determining cases (evidentiary standards and proof requirements);
  - Procedure for determining a survivor’s salary;
  - Measures and protocols to protect the information received from survivors and their data;
  - Instructions on drafting decision on claims;
  - Protocols to protect the information received from survivors and their data and any other confidential information received by the Directorate, including ensuring security of all online communications, data management and storage;
  - Consultations with survivors (minimum number of consultations, methodology, implementation of survivor’s input);
  - Code of Conduct detailing ethical engagement with survivors in line with international standards;
  - Protocol of engagement with the media ensuring safety, wellbeing and privacy of survivors.
  - Support protocol for all staff in order to minimize the risk of re-traumatizing survivors and prevent/reduce vicarious trauma.
- Establish an operative Secretariat to support the work of the Directorate by handling all related administrative and logistics tasks;
- Make sure that Secretariat is sufficiently staffed and composed of individuals with relevant professional backgrounds i.e. psychology, law, medicine etc. and that Secretariat has access to experts with experience in working with CRSV survivors;

- Establish mechanisms of cooperation and channels of communication between Directorate, Secretariat and other governmental bodies and institutions;
- Ensure that Directorate has a sufficient number of geographically well placed sub-offices, and mobile teams which would conduct outreach to survivors in remote areas and IDP camps;
- Make signing of the confidentiality agreement mandatory for all employees of the General Directorate, Secretariat as well as all those coming in contact with survivors and their families under this law;
- Set the minimum number of required consultations with survivors and accompanying methodology;
- Establish a system of swift implementation, to the extent possible, of survivors feedback into the ongoing work of implementing the reparation scheme;
- Establish effective outreach mechanisms to inform survivors on the reparation benefits and how to claim them;
- Ensure that written claims can be submitted to the Directorate (headquarters), sub offices and mobile teams;
- Ensure that Directorate, sub offices and mobile teams may receive and document (write down and register) oral claims of survivors;
- Enable NGOs to assist survivors in submitting claims and provide rehabilitation services under the state funded reparation scheme;
- Make clear that that survivors that live abroad can submit written or oral claims through Iraq's diplomatic missions;
- Specify that survivors can submit documents required for verification of their claims as copies rather than originals;
- Liaison with those that have documented CRSV in order to ensure that all available data on CRSV is collected and utilized before conducting new interviews with survivors for the purpose of processing their claims;
- Make sure that only data necessary for verifying survivors' claims is collected and used;
- Ensure that no degrading and/or stigmatizing procedures will be used in the course of verifying survivors' claims;
- Ensure that credible testimony from a witness should be considered sufficient proof of CRSV having occurred;
- Ensure that sexual conduct of the survivor, prior and/or after the CRSV act, shall not be considered in any capacity;
- Ensure that evidentiary standard for verifying survivors' claims are kept flexible and that primary burden of proof falls on the Directorate;

- In determining the salary of a particular survivor make use of the international standards and best practice specified in UN Basic Principles and Guidelines on the Right to a Remedy and Reparation;
- Ensure that each decision of the Directorate includes: personal information of the applicant, summary of violation, disposition, reasoning, amount of salary with justification, and short instruction on the appeal procedure and timeline for it;
- Establish a secure database/repository of all available evidence on CRSV during the ISIS conflict in Iraq, such as statements, reports, and other information collected by other governmental, non-governmental and international actors;
- Establish a secure database to track all cases and processes the Directorate deals with.

# Annex 1

## Terms of Reference of the C4JR Working Group on Conflict-Related Sexual Violence and Women's Rights (as of July 8, 2020)

### Purpose

The Working Group on conflict-related sexual violence and women's rights (Working Group or WG) has been established to facilitate the activities of the Coalition for Just Reparations (C4JR) in the field of conflict-related sexual violence (CRSV) and women's rights. The working group will work on formulating adequate and viable solutions for reparations for CRSV survivors, and submit these to the C4JR Coordinating Committee. The aim of the group is to work towards realization of the rights of CRSV survivors.

### Responsibilities

The principal responsibilities of the WG will be to:

- Lobby and advocate for the adoption and implementation of the draft law, as a crucial step towards improving Iraqi legislation to support CRSV survivors;
- Secure public and political support for the draft law;
- Ensure the voices of CRSV survivors are front and center in the work of the WG;
- Develop a policy paper to support the implementation of the draft law, as per the C4JR's position paper on reparations and best international practices;
- Interact with other C4JR working groups;
- Ensure a strong gender perspective in all C4JR activities and support the coalition's gender-sensitive approach;
- Serve as a platform for further coordination among the WG members and a platform to receive more information on the work of the C4JR and responsibilities of each of its member organizations;
- Work on connecting country policies to international developments, new procedures and good practices.

### Membership

12 members of the C4JR are members of the WG, each having delegated specific persons to participate in the working group. These members commit to supporting and contributing to the work of the WG, including attending the scheduled meetings of the WG.

The following Iraqi CSOs are members of the WG:

1. Better World Organization for Community Development;
2. Bishkoreen Organization;
3. Emma;
4. Eyzidi Organization for Documentation;
5. The Free Yezidi Foundation;
6. Iraqi Institution for Development;
7. The Lotus Flower;
8. TAJDID Iraq;



9. Turkmen Rescue Foundation;
10. Women Leadership Institute;
11. Women Legal Assistance Organization;
12. Yazda;

Other interested C4JR members, as well as CRSV survivors and their representatives can join the WG, if all current WG members approve of this. All new members commit to reviewing the minutes of past WG meetings and work already done by the WG.

### **Work Methodologies**

- The WG will conduct its work by correspondence, as well as online and in-person meetings;
- The WG may hire external experts to assist the WG in specific activities;
- The WG will create a shared work plan, with clear timelines and responsible members, so that all WG members are updated on the progress of the WG's work;
- The WG has a focal point, elected from the members of the WG. The focal point will:
  - facilitate communication among members of the WG;
  - coordinate and arrange meetings of the WG;
  - draft and share minutes from the meetings;
  - submit bi-weekly progress reports to the C4JR Secretariat.

### **Meeting frequency**

The WG will meet every two weeks to discuss the progress of the work and next steps. The WG will also meet on an ad-hoc basis, if there is a need for urgent discussions or decisions.

## Annex 2

### **C4JR Draft Law on Reparations for Survivors of Conflict Related Sexual Violence Committed During the ISIS Conflict in Iraq**

*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>72</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>73</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 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);

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<sup>72</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>73</sup> For a definition of SGBV see [UNHCR Emergency Handbook](#)

- (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;
- 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 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. 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.).