

## SUMMARY

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

We, Iraqi and international civil society organisations and survivor networks, are extremely concerned at Iraq's request that the UN Security Council (UNSC) not renew the mandate of the Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) after September 2024, and its consequences. Today, we publish our concerns.

After urgently coming together to consider the implications of the premature closing of UNITAD and consulting with survivor networks, we conveyed our views to UNITAD and the UN Secretary-General, who had been tasked (UNSC resolution [2697/2023](#)) with preparing a report on the sharing of evidence collected by UNITAD. We are pleased to see many of our concerns reflected in that report.<sup>1</sup>

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<sup>1</sup> The UN Secretary-General's report was published on 19 January 2024 and is available [here](#). C4JR also issued a press release following the publication of the report: [UN Secretary-General Marks the Way Forward Towards Utilizing Evidence of ISIL crimes in Iraq](#).

One female Yazidi survivor of ISIL captivity reacted: *“Once UNITAD is out of Iraq, will ISIL members be held accountable? The presence of UNITAD gave us, the victims and families of victims, hope. However, the Iraqi government is now ending this hope. We have no trust whatsoever in the Iraqi government to continue this process by itself.”*<sup>2</sup>

## Our main concerns are:

### 1. Expectations of survivors and Iraqi CSOs were raised that the establishment of UNITAD would result in justice

We are gravely concerned about the negative signal closing down UNITAD so abruptly and without transparent communication will send to the survivors and affected communities, who may feel neglected and may question the Iraqi Government’s commitment to justice and accountability for atrocity crimes. We understand that there may have been some divergences of expectations between UNITAD and the Iraqi Government, but we believe that these can and should be addressed in the interests of achieving the common goal of justice, and urge that they are not allowed to get in the way of pursuing this goal in the best interests of survivors.

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

Part of UNITAD’s mandate was to help build capacity in investigations, prosecutions and the judiciary in Iraq and assist Iraq to develop and implement relevant legislation. However, still no legislation has been adopted to criminalize international crimes in Iraq, and current trials on charges limited to membership of a terrorist organization remain

highly criticized by international observers<sup>3</sup> and are not perceived as meaningful justice by survivors. Although we welcome Iraq’s commitment to advance criminal accountability for atrocity crimes as stated in its recent letter to the UN Secretary-General,<sup>4</sup> nearly ten years after ISIL started to commit crimes against all groups of Iraqi society, not a single ISIL member has been prosecuted to the full extent of the crimes committed, including genocide, crimes against humanity and war crimes. The process is taking too long, and survivors are losing hope.

### 3. Iraq has yet to comply with international law and UN principles and UNITAD may not be able to hand over to Iraq much of the evidence it has collected

UNITAD’s Terms of Reference provide that evidence it collects can only be used in fair and independent criminal proceedings consistent with applicable international law, and that it can only share evidence in accordance with UN policies and best practices and relevant international law. For instance, UNITAD is explicitly required to obtain the informed consent of witnesses and other sources to share evidence they have provided. This was confirmed both by the UN Secretary-General as well as UNITAD in the January 2024 report, responding to Iraq’s request to receive all evidence currently in UNITAD’s custody.

### 4. UNITAD has not completed its work

We believe much important work remains to be done including completing structured investigations and publishing briefs, including a comprehensive report on ISIL crimes; building a roadmap for using the evidence UNITAD has collected, in Iraq and elsewhere; finalizing excavation of mass graves, identification of remains and their return to the families. Further, much remains to be done to strengthen Iraq’s courts and judicial system, and support Iraq to develop evidence digitisation systems and follow survivor-centered processes.

2 Online consultations with survivors conducted in December 2023.

3 See most recent press release of Human Rights Watch <https://www.hrw.org/news/2024/01/24/iraq-unlawful-mass-executions-resume>

4 UNSC, [S/2024/53](#): Letter dated 28 December 2023 from the Chargé d’affaires a.i. of the Permanent Mission of Iraq to the United Nations addressed to the Secretary-General: *“The competent committee in the Office of the Prime Minister has completed a draft act on countering international crime. The draft was sent to the Council of State, which will review it and then return it to the Cabinet for a vote before it is sent to the Council of Representatives of Iraq for enactment.”*

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

We are pleased that the Iraqi Government and UNITAD have now agreed clear modalities on the sharing of evidence with third states, allowing the evidence to continue to be used to support investigations and prosecutions abroad. We also welcome Iraq's position that *"it would like to share evidence with all States after UNITAD has shut down operations in Iraq by the end of 2024."*<sup>5</sup> These still remain the only justice avenue available to survivors and should continue in the years to come to complement prospective prosecutions in Iraq.

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

We wish to see criminal prosecutions of ISIL in Iraq, but there are inadequate safeguards to ensure evidence is stored, preserved and managed in a confidential manner and to prevent it falling into the wrong hands, or be used in unfair and unlawful proceedings,<sup>6</sup> to pursue *inter alia* political interests. This could result in exposing survivors to stigma or reprisals.

## Based on these concerns, we make the following recommendations:

### 1. Establish **benchmarks** that must be reached before UNITAD closes, including:

- Iraq enacting legislation to incorporate international crimes;
- Iraq enabling fair and independent criminal proceedings for ISIL crimes;

- UNITAD having completed work set out in an agreed roadmap and publishing a comprehensive report on ISIL crimes; and
- UNITAD submitting a transition plan to relevant Iraqi bodies.

### 2. Clear conditions should govern handing over of evidence collected by UNITAD to the Iraqi authorities, consistent with the Terms of Reference (ToR) agreed between the UNSG and GoI, UN policies and best practices and relevant international law; an independent Iraqi body should be created to handle any evidence handed over.

### 3. The Iraqi Government and the UN must agree on a legal framework to enable the sharing of evidence collected by UNITAD with third states or with international courts to enable accountability for ISIL crimes to be pursued globally.

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

### 5. UNITAD should take all possible steps to ensure the evidence it has collected can be used to benefit survivors in ways other than criminal proceedings, such as to support reparations, identification of remains, truth-telling and memorialisation.

5 See UNSC, [S/2024/53](#): Letter dated 28 December 2023 from the Chargé d'affaires a.i. of the Permanent Mission of Iraq to the United Nations addressed to the Secretary-General.

6 See recent report by Human Rights Watch highlighting very concerning and disturbing flaws in the Iraqi justice system: Human Rights Watch, [Iraq: Unlawful Mass Executions Resume](#), 24 January 2024.

