IRAQ
Reparations Bill for Victims of Sexual Violence During Conflict: Recommendations to Ensure Compliance with International Standards
JUNE 2020
ABOUT the American Bar Association Center for Human Rights

The ABA Center for Human Rights works to promote and protect human rights around the world by supporting human rights defenders who face retaliation for their legitimate rights work.

ACKNOWLEDGMENTS

The Center would like to thank Kristin Smith for preparing this report. The Center would also like to thank Güley Bor for contributing to the proposed revisions of the draft bill.

The statements and analysis expressed are solely those of the authors, have not been approved by the House of Delegates of the Board of Governors of the American Bar Association, and do not represent the policy of the American Bar Association as a whole. Further, nothing in this report should be considered legal advice for specific cases.

Front Cover: Iraqi Yazidi refugees in Newroz camp receive help from International Rescue Committee
Photo Credit: Rachel Unkovic/International Rescue Committee (2014)
All photos are modified and credited accordingly via Adobe Creative Commons.
Executive Summary

The government of Iraq is currently considering establishing a legal regime for providing reparations to certain survivors of conflict-related violence. The American Bar Association Center for Human Rights commends the Iraqi government for preparing a draft bill, the “Yazidi Women Survivor’s Bill” ("draft bill"), to establish this reparations regime. The following report suggests changes (summarized in the attached Annex) to the draft bill to bring the reparations scheme envisioned closer to Iraq’s international law obligations to provide reparations for victims and survivors of conflict-related sexual violence. Beyond these obligations, ensuring remedies and reparations for serious crimes is also a practical necessity: it reinforces the criminality of atrocities, builds trust in institutions, protects civilians’ fundamental rights, and strengthens the domestic legal framework necessary to seek accountability and prevent future crimes.3

In many ways, the draft bill is ambitious in its breadth of initiatives, including compensation, rehabilitation and medical treatment, economic opportunities, remembrance, and other measures. The proposed revisions add detail and protections necessary to increase the effectiveness of the individual and collective reparations envisioned, as well as some additional forms of reparation such as ceasing violations and protecting access to future criminal justice efforts.

The Center has suggested several fundamental changes to the draft bill needed for clarity and coverage, including which crimes, victims, or survivors are covered and the interaction between a future reparations process and other relevant laws and practices in Iraq. Additional legislation would be needed to bring Iraq fully into compliance with its international obligations. The proposed revisions therefore reflect an attempt to address the main gaps in the proposed law for the class of victims identified by the drafters as most urgently needing assistance. This report outlines why the proposed revisions are necessary and identifies other areas that need further clarification and protection:

1) Ensuring Inclusivity and Nondiscrimination: The Center recommends that the draft bill be revised to include all victims of sexual violence crimes, regardless of victims’ religious affiliation or gender and regardless of the affiliation of the perpetrator. The draft bill was limited to only a narrow class of crimes related to kidnapping, abduction

---

1 The statements and analysis expressed are solely those of the authors, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and do not represent the position or policy of the American Bar Association. Furthermore, nothing in this report should be considered legal advice for specific cases. The Center would like to thank Kristin Smith for preparing this report.

2 See below section on “Definition of ‘Victim’ and Eligibility for Reparations” on the use of “victim.”

3 UNITED NATIONS, FRAMEWORK OF ANALYSIS FOR ATROCITY CRIMES 2 (2014).
and captivity, and forced displacement, leaving many victims without remedy.\textsuperscript{4} The proposed revisions, however, only encompasses victims of one particular subset of atrocity crimes—crimes of sexual violence. International law requires that rights to remedy and reparations be applied without discrimination. Limiting protection, rights and remedies to one group of victims but not others will also likely further longstanding tensions between groups in Iraq. Although this reparations scheme has the potential to impact the immediate needs of sexual violence victims if implemented (such as physical and mental health), reparations for the conflict will not be comprehensive if victims of other crimes and other groups are not included in future schemes, and delay of this inclusion could further tensions between groups.

2) **Prohibiting Statutes of Limitations or Amnesties for International Crimes:** The Center recommends including a provision clarifying that no statute of limitations or amnesties should be applied to acts of conflict-related sexual violence or to genocide, crimes against humanity or war crimes. The impact of this provision requires that crimes be recognized as sexual violence or atrocity crimes, and not as terrorism offenses, to which amnesties have been applied in Iraq. Furthermore, practical limits exist on the prosecution of sexual violence crimes domestically that might function as limitations de facto and should be addressed in future legislation. Time limitations placed on seeking reparations should be reviewed if they become unduly restrictive, which would make reparations ineffective.

3) **Protecting Privacy and Confidentiality:** Victims of conflict-related sexual violence continue to face the risk of reprisals and re-traumatization. To ensure that the reparations program addresses these risks, the program must protect victims’ privacy and confidentiality throughout the various reparations initiatives, whether in making claims, seeking healthcare, securing shelter, or receiving compensation. The proposed revisions recommend a number of changes to reflect international standards that reparations “do no harm” to those they seek to serve.

4) **Preserving Access to Justice and Criminal Accountability:** While the draft bill is intended to provide reparations to victims rather than access to justice, the government of Iraq has an obligation to ensure that the reparations bill supports efforts to hold those responsible for atrocity crimes accountable. To date, few prosecutions have been brought for sexual violence crimes committed by members of ISIS. The proposed revisions would help protect the rights of victims to seek justice through the Iraqi criminal system against their perpetrators, but additional changes to Iraq domestic law will be required in order to reach the policies of persecution, intent to destroy whole populations, and widespread, systematic attacks against civilians committed as part of this conflict, including through acts of sexual violence.

5) **Establishing a Victim-Centered Reparations Program:** The Center also suggests considering additional measures aimed at ensuring the reparations system designed for sexual violence victims is effective. Reparations should be gender-sensitive, i.e. designed in a way that addresses gender norms, inequality, and access to resources.\textsuperscript{5} To this end, Iraq may consider establishing a victims’ rights office with professional

---


staff trained both in the criminal process and in unique needs of sexual violence victims (including best practices of trauma-informed care) to help bridge the gap between this reparations program and formal justice processes. The government of Iraq should also consider legislation to enhance victims’ rights to participate in the criminal justice process, including through procedures to appoint independent counsel for victims. Previous reparations programs in Iraq have been hindered by slow implementation, financial support, lack of central oversight and a backlog of claims. The proposed revisions would better prepare Iraq to make its reparations program truly effective and impactful by meeting victims’ needs and connecting them more quickly to services.

6) **Definition of “Victim” and Eligibility for Reparations:** The Center suggests adopting a definition of “victims” that encompasses survivors of sexual violence crimes, as envisioned in the draft bill, but also includes those victims who remain missing or did not survive, and their immediate family members. Acknowledging and seeking to address the harm suffered by this broader class of victims would bring the bill in line with international standards and is necessary given the scale and lasting impact of sexual violence crimes on individuals, families, and communities.

Establishing comprehensive and gender-sensitive reparations for sexual violence crimes is a positive step, and if implemented, could help ensure progress towards addressing the unique needs of victims. Remedies and reparations programs should be designed (in consultation with victims) so that they are “transformative,” seeking to truly respond to victims’ needs and to confront systems of inequality and discrimination. Reparations should be pursued alongside other transitional justice measures, such as truth telling and formal accountability through criminal prosecutions. The whole of these efforts is essential to disrupt cycles of violence. The long-term stability of Iraq depends on recognizing the harm suffered and needs of other victims and marginalized groups, and providing equal access to justice for all victims of the conflict.6

**Introduction**

The draft bill seeks to provide individual and collective forms of reparations to female Yazidi survivors of ISIS captivity (and children born during captivity). In particular the bill focuses on providing rehabilitation services, compensation, opportunities for future livelihoods, and pathways to social reintegration. The bill also aims to expose crimes committed against the Yazidi (in which sexual and gender-based violence was central).7 The proposed revisions suggest changes that seek to bring the reparations scheme envisioned closer to Iraq’s obligations under international law and to international standards in providing reparations for victims of sexual violence specifically and victims of atrocity crimes more broadly.

Reparations have important goals and consequences that make them essential both for victims and for states. For victims, they recognize the distinct harm suffered by individuals and communities, clarify their legal rights, provide services that respond to the harm suffered, mitigate future risks

---


7 Draft “Law for Yazidi Women Survivors” arts. 4-5, 15.
and violations, and contribute to truth and justice. Reparations programs also serve the broader interests of society. Reparations and other transitional justice measures that follow international standards can “help re-establish civic trust” and relationships “based on equality and respect,”

build social cohesion, encourage development that responds to populations’ needs, and help break cycles of violence”—goals which are of particular importance in post-conflict states like Iraq. Lastly, international law obligates states to provide remedies, including reparations, for serious human rights violations and crimes that rise to the level of genocide, crimes against humanity and war crimes (“atrocity crimes” collectively).

Under international law, victims should be provided with “adequate, effective, and prompt” reparations to promote justice, restoration, and rehabilitation. Reparations programs should seek to be transformative—giving victims a voice and role in social and societal change and addressing the structural inequalities that led to or fueled violations.

Many of these purposes are furthered by the draft bill, but significant gaps between the bill and international standards are evident. To this end, the proposed revisions include a measure to promote recognition and remembrance, which acknowledges suffering of particular communities (Article 10). The Center also recommends provisions aimed at ensuring access to health care and economic rehabilitation (both by compensation and property, educational and vocational opportunities) (Articles 6-8), and community-oriented programs for reintegration of victims and children (Articles 8(4) and 18) which is an ongoing challenge for victims.

The proposed revisions would also preserve victims’ access to justice through criminal accountability and formal

---

8 Clara Sandoval & Miriam Puttick, Reparations for the Victims of Conflict in Iraq: Lessons Learned from Comparative Practice 6 (Ceasefire Ctre. for Civilian Rights & Minority Rights Group Int’l 2017) [hereinafter Sandoval & Puttick, Reparations for the Victims in Conflict in Iraq: Lessons Learned].


justice systems, which is an essential piece not only of the right to remedy, but to building the rule of law and long-term stability.

This report outlines the Center’s recommended revisions to the bill, such as its extension from “female Yazidi survivors” to “victims of sexual violence,” and the addition of privacy and confidentiality protections. While the proposed revisions would help bring the draft bill closer to compliance with Iraq’s international obligations, they do not address all obligations to all victims of the conflict. Rather, as the draft bill focuses on a narrow class of victims and crimes, the proposed revisions help ensure that the reparations regime begins the process of addressing the needs of the community identified by the drafters of the bill, recognizing that further legislative reforms are needed to address the needs of all victims. Lastly, this report suggests several options to bolster the impact of reparations, such as the creation of a victims’ rights office or increasing victims’ rights and participation in the criminal justice process.

Ensuring Inclusivity and Non-Discrimination

The draft bill sought to provide reparations for female, Yazidi survivors of certain crimes.\(^{14}\) While still recognizing the immense and specific harm suffered by the Yazidi population at the hands of ISIS and the scale to which this group was targeted,\(^{15}\) the proposed revisions suggest a reparations scheme that would encompass all victims of sexual violence crimes, regardless of the ethnicity, sect, religion, gender, age, or place of residence of the victim.\(^{16}\) Under international law, human rights, including the right to remedy, apply in a non-discriminatory manner and governments therefore cannot discriminate in affording human rights protections based on religion, race, sex, or other characteristics.\(^{17}\) The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation note that the right to remedy and reparation must be applied “without any discrimination of any kind or on any ground, without exception.”\(^{18}\) By broadening which victims are included in the bill, the reparations scheme would no longer discriminate between genders, ethnic or religious groups.

The draft bill also needs to be revised to provide reparations to all victims of conflict-related sexual violence regardless of the perpetrator. Although the use of sexual violence was central to ISIS’s campaign, there is evidence of sexual violence crimes committed by other parties during the conflict as well. Unless the law applies to all victims of conflict-related sexual violence equally, the reparations regime would run afoul of the state’s obligations to provide remedies to all victims. It would also increase the risk of cycles of violence as victims who are not eligible for reparations

---

\(^{14}\) The application of the draft bill (“Law for Yezidi Women Survivors”) was inconsistent—for example, in Article 13, it said it “applied to all women captured by ISIS,” while Article 2 stated a more narrow application of “Yezidi women survivors who were abducted” by Daesh after 10/6/2014 “and released after this date.” The draft bill described the criminal conduct at issue as “abduction and captivity.”

\(^{15}\) See, e.g., Human Rights Council, “They Came to Destroy:” ISIS Crimes Against the Yazidis ¶¶ 150-65, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016) (finding genocidal intent of ISIS crimes against the Yazidis) [Human Rights Council, “They Came to Destroy:” ISIS Crimes Against the Yazidis].

\(^{16}\) See Annex, Proposed Article 5. See also Proposed Article 2(2) for the definition of “survivor.”

\(^{17}\) See, e.g., ICCPR arts. 2-3, 26; International Covenant on Economic, Social and Cultural Rights art. 2(2), Dec. 16, 1966, 999 U.N.T.S. 171; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief art. 2; G.A. Res. 36/55, U.N. Doc. GA/RES/36/55 (Nov. 25, 1981) (“any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”); UDHR arts. 2, 8 (on non-discrimination and the right to a remedy).

\(^{18}\) UN Basic Principles on the Right to a Remedy ¶ 25.
may seek remedy outside established legal channels. For this same reason, Iraq will also need to adopt additional domestic legislation to provide remedies to victims of other serious crimes committed during the conflict.

Recognition, reparation, and justice for sexual violence crimes is an important focus, as these crimes are often underrecognized and underprosecuted. Sexual and gender-based discrimination and targeting was central to ISIS’s rhetoric, criminality, and persecution of the Yazidi. However, the Iraqi government remains obligated to provide remedies and reparations for victims of other crimes as well, and both the Iraqi government and civil society should continue to advocate for and legislate provisions that do so. Without recognition and comprehensive reparations for victims of all serious crimes, tension and inequities could deepen divisions in Iraqi society, threatening long-term stability and leaving civilians at risk for future atrocities. The UN Office of the High Commissioner on Human Right’s Rule of Law Tool on Reparations notes that excluding some targeted groups and prevalent crimes from reparations programs risks “unequal treatment that could undermine the program’s legitimacy” and that without providing justice to all victims, reparations will remain a political issue for years to come and risk the initiative’s stability and therefore overall impact.

**Prohibiting Statutes of Limitations or Amnesty for International Crimes**

International law does not permit statutes of limitations for atrocity crimes, which includes acts of sexual violence when they constitute atrocity crimes. Acts of sexual violence constitute

---

19 Security Council, S.C. Res. 2467, preamble, U.N. Doc. S/RES/2467 (Apr. 23, 2019) [UNSC Res. 2467]; UN Secretary General, Guidance Note on Reparations for Conflict-Related Sexual Violence 13 (June 2014) [UN Secretary General, Guidance Note].

20 Passing domestic legislation to make rights and remedies effective is part of states obligations to protect human rights and prevent atrocity crimes. See, e.g., ICCPR art. 2(2)-(3); Convention on the Prevention and Punishment of the Crime of Genocide arts. IV, Dec. 9, 1948, 78 U.N.T.S. 277 [Genocide Convention].


22 UN OHCHR, Reparations Programmes at 21 (noting Chile’s prior exclusion of victims of torture and political detainees, a large portion of crimes).

23 See, e.g., Rome Statute art. 29 (described as a “general principle” of criminal law); UN Basic Principles on the Right to a Remedy ¶ 6; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity arts. I, IV, Nov. 11, 1970, 754 U.N.T.S. 73 [Convention on Non-Applicability of Statutory Limitations]. While Iraq is not a party to the above treaties, the prohibition on statutes of limitations for atrocity crimes is recognized as a principle of customary international law. See Customary IHL Database: Rule 160, Int’l Comm. of the Red Cross, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule160. The 2005 Law of the Supreme Iraqi Criminal Tribunal stipulated that genocide, war crimes and crimes against humanity were not subject to statutes of limitations in Article 17(4). Further, the Genocide Convention (to which Iraq is a party) contains provisions ensuring effective punishment of genocide and that states enact legislation to make that punishment effective. Genocide Convention arts. IV-V.

atrocity crimes when they are committed with the intent to destroy a protected group, as part of a widespread or systematic attack against civilians, or as part of an armed conflict (genocide, crimes against humanity and war crimes respectively). Iraq is also required to provide effective remedies when rights are violated, which means that they are actually enforced regardless of perpetrators’ official capacity.25

Although Iraq does not appear to have statutes of limitations in its domestic criminal law for most crimes,26 the need to prevent statutes of limitations for atrocity crimes is not fully addressed in the draft bill and needs additional clarity. While Article 22 of the proposed revisions states that “[n]othing 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” there are many existing limitations in domestic law that might prevent, as a practical matter, the pursuit of criminal justice and accountability for crimes of sexual violence committed during the conflict, including unjustified time restrictions on filing complaints.27 It is therefore necessary to expressly state in the bill that such statutes of limitations do not apply to the class of crimes covered by the bill.

In addition to statutes of limitations, applying amnesties to atrocity crimes and serious human rights violations would be incompatible with states’ international law obligations.28 The Center therefore recommends adding provisions in proposed Article 19 clarifying that “there shall be no statute of limitations applied to crimes, including acts of sexual violence, that constitute grave violations of international law, such as genocide, crimes against humanity or war crimes,” 29 and that perpetrators of sexual violence crimes will not benefit from amnesties. The effectiveness of these provisions require that perpetrators’ crimes be recognized as crimes of sexual violence as opposed to terrorism crimes, which have been prosecuted almost exclusively in Iraq30 and to which amnesties have been applied in the past.31

25 ICCPR art. 2(3).
27 Iraq Criminal Procedure Code, Law No. 23 of 1971 arts. 3(A)(iii) and 6 (criminal complaints for rape in some circumstances can only be filed by the victim within three months or the disappearance of “compelling circumstances” preventing the filing of a complaint) and arts. 8-9 (complaints may be dropped if victims do not “follow up” within a certain time period and the right to submit complaints is lost if the victim dies before submitting one.)
28 Genocide Convention arts. IV-V (“persons committing genocide… will be punished” and states undertake to enact legislation necessary to, “in particular, to provide effective penalties for persons guilty of genocide”). See also, Inter-American Ct. H.R., Case of the Massacres of El Mozote and Nearby Places v. El Salvador, ¶¶ 283-86; Prosecutor v. Saif Al-Islam Gaddafi, ICC-01/11-01/11, Pre-Trial Chamber I Decision on the ‘Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute’, ¶ 61 (Apr. 5, 2019) (noting “a strong, growing, universal tendency that grave and systematic human rights violations—which may amount to crimes against humanity by their very nature—are not subject to amnesties or pardons under international law”).
29 Article 11 of the draft “Law for Yazidi Women Survivors” prevented amnesties for the “crime of abduction and captivity” only.
31 The General Amnesty Law No. 27 of 2016 allegedly prevents amnesty from being applied to those who committed other serious offenses, including crimes of sexual violence. However, as noted by Human Rights Watch, if those crimes are not investigated and
While there are certain complications related to ensuring accountability for conflict-related sexual violence, many of the same concerns apply to other atrocity crimes. To ensure compliance with its international obligations, Iraq should enact legislation that comprehensively addresses these concerns with regards to all atrocity crimes. The “effective punishment” of atrocity crimes is essential to prevention of future crimes, protecting human rights, building confidence in society and establishing peace and security.³² The prosecution of these crimes, including acts of sexual violence, as the international and atrocity crimes they are is essential to recognize the scale and nature of harm done to the community as a whole and to articulate the wrongness of the individual acts as well as their use as a system of persecution.³³

**Protecting Privacy and Confidentiality**

One issue left unaddressed by the draft bill is how the reparations process will ensure victims’ safety and protect their privacy through confidentiality procedures. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation note that states must protect victims’ privacy and “ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings.”³⁴ Reparations procedures and the services (medical, social, etc.) they provide must not expose victims or their families to re-victimization or danger by compromising their privacy.³⁵ Past efforts at combatting violence against women, for example, have been ineffective in protecting victims and their families, and shelters for victims of domestic and sexual violence have been subjected to harassment.³⁷ Social services that ensure safety and privacy of victims must therefore be prioritized, funded, and monitored for effectiveness, and staff should be trained on these laws, gender sensitivity, and trauma-informed care.³⁸

To this end, the Center has suggested adding several provisions (in proposed Articles 8, 12, and 13) that recognize the need to protect victims’ confidentiality and privacy in all stages of the reparations process. These protections will still need to be implemented by the Council of Ministers (or other relevant body) through more specific measures and staff training, the details of which are largely beyond the scope of the draft bill. Article 13 of the proposed revisions makes

---

³² Convention on the Non-Applicability of Statutory Limitations preamble.
³⁴ UN Basic Principles on the Right to a Remedy ¶ 12(b).
³⁵ UN Basic Principles on the Right to a Remedy ¶ 10.
³⁸ UN OHCHR, *REPARATIONS PROGRAMMES* at 24-25.
clear that the burden of proof in adjudicating reparations claims rests with the state rather than victims. Efforts to document and investigate sexual violence should be designed in a way that “respect safety, confidentiality and informed consent” and facilitates’ victims’ connection to services that fit their specific needs.³⁹

Other best practices suggested by international organizations and civil society organizations to protect victims privacy and confidentiality include banning the use of previous sexual behavior of victims or regulating the use of evidence of consent, using relaxed evidence rules in forms and interviews and presuming good faith of the claimant, training investigators or enlisting experts in trauma and psychological aspects, establishing effective safe houses, developing gender-sensitive witness protection protocols (including in cooperation with international counterparts), and including other measures designed to protect victims from re-traumatization and to facilitate effective reparations.⁴⁰ Compensation payment should also be made confidentially and in ways (whether sum or pension) that seek to mitigate obstacles for its use by the victim for their needs related to sexual violence.⁴¹

In Iraq, previous processes have unduly hindered victims’ access to remedy due to cost, lack of information, and lack of access to official documents for evidence. The government of Iraq should take care to avoid similar limitations when implementing this program and should consult international standards and best practices.⁴² Ensuring that victims of sexual violence contribute to the design of the program and its implementing regulations, especially women who have historically been excluded from that process, is one way to help ensure that it meets their unique needs and concerns.⁴³ Lastly, administrators of this reparations program should be honest and transparent about progress in implementing these protections and remaining risks so that participants can make informed decisions about participation.⁴⁴ Building confidentiality protections into reparations processes is “essential to encourage victims to come forward, to have faith and engagement in the process, and to protect them from further harm.”⁴⁵ Procedural rules should reflect those needs and be adequate to protect them.⁴⁶

**Preserving Access to Justice and Criminal Accountability**

The proposed revisions suggest adding provisions to clarify the relationship between this reparations process and any future justice and accountability processes. Both the draft bill and proposed revisions focus on an administrative reparations process, which could enable the provision of compensation and services more quickly and with more flexible procedures than judicial proceedings. Ideally, these reparations program will reach more victims as a result.⁴⁷

---

³⁹ UNSC Res. 2467 ¶ 8.
⁴⁰ See generally, UN Secretary General, Guidance Note 14; Sandoval & Puttick, Reparations for the Victims in Conflict in Iraq: Lessons Learned at 14-15, 25; UN OHCHR, Reparations Programmes at 18; UN Office of the High Comm’r for Human Rights, Rule of Law Tools for Post-Conflict States: Prosecution Initiatives 19-20 (2006) [UN OHCHR, Prosecution Initiatives].
⁴¹ UN Secretary General, Guidance Note 16-17.
⁴² Sandoval & Puttick, Reparations for the Victims in Conflict in Iraq: Lessons Learned 19-20.
⁴³ UN OHCHR, Reparations Programmes 36-37.
⁴⁴ U.S. Dep’t of State, Transitional Justice Overview.
⁴⁵ UN Secretary General, Guidance Note 11.
⁴⁶ UN Secretary General, Guidance Note 1.
⁴⁷ UN Secretary General, Guidance Note 6.
While a reparations bill focused on sexual violence survivors is a positive step because these crimes were widespread and central to ISIS’s criminality, Iraq is also obligated to pursue accountability for atrocity crimes through criminal justice, as discussed above.\textsuperscript{48} Obligations to provide judicial remedies for violations are distinct from obligations to provide reparations—the two are complementary and should be linked. Indeed, reparations “without recognition of responsibility, full investigation of the violations suffered and disclosure of the truth about what happened” would not satisfy Iraq’s international obligations.\textsuperscript{49} In the proposed revisions, Article 22(1) therefore seeks to preserve other rights guaranteed in international law, including the right to participate in criminal proceedings.

In particular, the Center proposes a provision to provide free legal aid and protections, including psychosocial support, for victims in criminal proceedings. International standards recognize that victims need assistance in order to realize access to justice, and that victims of sexual violence may need additional protection and assistance. UN Security Council Resolution 2467 (2019), for example, calls upon states to “strengthen legislation and enhance investigation and prosecution of sexual violence in conflict and post-conflict situations.”\textsuperscript{50} The support for criminal justice procedures established in the proposed revisions recognize that the state should support justice efforts more broadly, not only for sexual violence crimes.

While the proposed revisions address some of the gaps between the draft bill and Iraq’s obligations to all victims of the conflict, it does not attempt to resolve all of these issues in this bill. There remain several gaps that will need to be addressed through future legislation (such as amending the criminal code). First, in determining that the acts described by victims and survivors are recognized as “sexual violence” as defined by the draft law,\textsuperscript{51} international standards should be used.

Iraqi criminal law defines certain criminal acts, including rape, forced marriage, trafficking, and torture in a manner that could limit their application to crimes committed by ISIS. Unlike the current Iraqi Criminal Code, international standards, for example, do not permit exceptions for marriage and do not distinguish between victims who are married or where forced relationships are consummated.\textsuperscript{52} The definition of rape in Iraqi criminal law is not gender-neutral, and thus

\textsuperscript{48} Inter-American Ct. H.R., Case of the Massacres of El Mozote and Nearby Places v. El Salvador, ¶ 317–19 (noting states’ obligations to investigate and judicially determine individual and/or state responsibilities for human rights violations and holding that the state (in this case, El Salvador) must “within a reasonable time, initiate, promote, re-open, direct, continue and conclude, as appropriate, with the greatest diligence, the pertinent investigations and proceedings in order to establish the truth of the events and to determine the criminal responsibilities that may exist, and remove all the obstacles de facto and de jure that maintain total impunity”); Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 2007 I.C.J. Rep. 43, ¶¶ 425–27 (Feb. 26) (noting close link but distinct obligations to prevent and punish genocide in the Genocide Convention); UN Office of the High Comm’r for Human Rights, Rule of Law Tools for Post-Conflict States: Amnesties 33 (2009); UN OHCHR, Reparations Programmes at 34.

\textsuperscript{49} Sandóval & Puttick, Reparations for the Victims in Conflict in Iraq; Lessons Learned at 13.

\textsuperscript{50} UNSC Res. 2467 ¶ 14.

\textsuperscript{51} Annex, Proposed Article 2(1).

\textsuperscript{52} See Global Justice Ctr., Iraq’s Criminal Law Precludes Justice for Women and Girls 3–8; Convention on the Elimination of All Forms of Discrimination Against Women art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13; CEDAW Comm., General Recommendation No. 35, at ¶ 29(e). See also, UN Women, Handbook for Legislation on Violence Against Women 24, 49 (2012) (recommending legislation remove provisions that differentiate between victims based on marital status) [UN Women,
might be read to exclude sexual violence committed against men or that does not result in penetration, yet there is evidence of sexual violence committed against individuals of other genders during the conflict. The proposed revisions thus seek to allow for these victims to be included in reparations schemes in line with non-discrimination obligations. To address these concerns, Articles 22 (2) and 22 (3) of the proposed revisions establish (respectively) that rights apply regardless of the perceived relationship between the perpetrator and victim, and “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.”

Even with these additions, both crimes themselves and criminal procedures that are discriminatory towards women will continue to be a hindrance for full justice for sexual violence crimes in Iraq, as noted by UN human rights bodies. While addressing the Criminal Code and Criminal Procedure Code is beyond the scope of this bill, the provision of reparations should not replicate any discriminatory provisions or forms of unequal treatment that exist in domestic crimes or criminal procedures. Iraq has an opportunity, through the enactment of a comprehensive law that addresses the needs of all victims, to be a leader in administering a post-conflict reparations scheme that avoids the pitfalls that have plagued such programs in other conflicts.

Establishing a Victim-Centered Reparations Program

As part of efforts to strengthen investigation and prosecution, UN Security Council Resolution 2467 (2019) notes that states might establish “specialized police units and courts” to address sexual violence crimes and reduce impediments to justice. Previous reparations programs in Iraq, such as those conducted pursuant to Law 20 on Compensating Victims of Military Operations, Military...
Mistakes, and Terrorist Actions, were hampered by slow implementation, lack of financial support, delays in processing claims, and the absence of a central bureaucratic focal point.\textsuperscript{60}

To prevent a recurrence of such problems, the Center recommends establishing a “victims’ rights office” as part of this administrative reparations program which would be able to represent victims in relevant criminal proceedings and connect them to services. The proposed revisions (in Article 4) task the Directorate with conducting outreach activities to inform victims of their rights and the procedures to exercise them, and with coordinating between ministries to realize those rights. While these provisions elevate victims’ interests within the administrative reparations program and provide greater connection between services, victims engaging with the criminal justice process in Iraq would benefit from advocacy and representation through a victims’ rights office as well.

A victims’ rights office with professional staff trained in not only the criminal process but also the unique needs and services for victims in Iraq would help ensure proper coordination, especially for victims of sexual violence who often face additional barriers to safe participation. A victims’ rights office would also play a valuable role in advocating for, designing, and linking victims to services (medical, psychological, social, economic, or other) that are responsive to the needs identified by victims and through this program. While the implementation of this program continues, the government should identify and provide interim measures to address immediate needs of sexual violence victims, such as medical services that address serious bodily injuries and sexually transmitted diseases such as HIV/AIDS.\textsuperscript{61} Because non-governmental organizations have been targeted for providing legal services in the past, anchoring this role in government, with adequate protection, might help to counter secondary stigma that has historically challenged similar efforts.\textsuperscript{62}

Another possibility is to establish a procedure to appoint independent counsel for victims to pursue criminal accountability within the domestic criminal justice system. So far, the criminal system has overwhelmingly focused on prosecuting perpetrators of atrocity crimes for terrorism offenses,\textsuperscript{63} which does not fully capture their criminality or recognize victims of certain crimes, including sexual violence. This trend has continued notwithstanding considerable evidence of crimes committed and the identity of some perpetrators.\textsuperscript{64} While the state bears ultimate responsibility for the investigation and (where appropriate) prosecution of crimes,\textsuperscript{65} creating the possibility of private prosecutions to pursue criminal complaints on behalf of victims has proven to be an effective means to address these challenges in other contexts.\textsuperscript{66} Criminal prosecution is

\textsuperscript{60} SANDOVAL & PUTTICK, REPARATIONS FOR THE VICTIMS IN CONFLICT IN IRAQ: LESSONS LEARNED at 19.
\textsuperscript{61} UN SECRETARY GENERAL, GUIDANCE NOTE 12-13.
\textsuperscript{62} INST. FOR INT’L CRIMINAL INVESTIGATIONS, SUPPLEMENT TO THE INTERNATIONAL PROTOCOL: IRAQ 29.
\textsuperscript{64} HUMAN RIGHTS WATCH, FLAWED JUSTICE 30, 57.
\textsuperscript{65} UN Basic Principles on the Right to a Remedy ¶ 3(b). This is part of the “satisfaction” part of comprehensive reparations, in addition to establishing norms that hopefully prevent future violations (“guarantees of non-repetition”). UN SECRETARY GENERAL, GUIDANCE NOTE 17-20.
\textsuperscript{66} The Atrocity Prevention Act in India establishes a similar procedure and has resulted in successful prosecutions of atrocities.
not simply about punishment, but also has a “preventative effect or purpose” and therefore is an essential part of Iraq’s obligations to prevent atrocity crimes.

Although private prosecutions are rare, they have contributed to addressing situations where public prosecutors may face pressure not to pursue cases. While Iraq has a legal obligation to investigate and prosecute these crimes and it would not be appropriate to shift the burden of prosecutions to victims, the option of pursuing private prosecutions can supplement the state’s efforts to hold perpetrators accountable.

Iraq may also wish to consider other ways of including victims in the process. In other conflict-affected countries, victims and human rights organizations can in theory “present lines of inquiry throughout the investigation to the prosecutor,” file complaints with judges about the prosecutor’s failure to act on their suggestions, examine witnesses, present evidence, propose witnesses and appeal cases. Other jurisdictions permit victims to petition the court to make statements and require prosecutors to keep victims informed on decisions whether to prosecute and case progress (for both victims’ safety and right to information).

In either scenario, technical support for prosecutors and investigators should also be sought when implementing this bill, including from international partners. Current prosecution practices are not sufficient to satisfy Iraq’s obligations to prevent and punish atrocity crimes nor victims’ rights to judicial remedies and information about the violations they suffered.

**Definition of “Victim” and Eligibility for Reparations**

The Center recommends that the bill’s definition of “victims” be amended to include both direct victims of sexual violence and the family members of victims of sexual violence who are missing or deceased in accordance with international standards. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation defines “victims” as:

- persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their

---

fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.\(^72\)

As is, the draft law seeks to provide reparations for “Yazidi women who were abducted by Da’ash (ISIS) gangs after June 01, 2014 and then released,” which excludes victims of sexual violence crimes during the conflict who remain missing or were killed and falls short of the more inclusive definition in international standards. The draft law therefore does not cover all of those harmed by the subset of sexual violence crimes committed against the Yazidis and other victims during the conflict. Because of the widespread criminal conduct by ISIS, which included an extensive system of sexual slavery, many victims did not survive their captivity, and sexual violence can have lasting consequences not only for direct victims but also their dependents and families.\(^73\) These victims, and their immediate families, should still be addressed in some way through a comprehensive reparations scheme.\(^74\) Article 2(2) of the proposed revisions offers a definition that includes all victims of sexual violence crimes in line with international standards.

Recognizing that some victims of sexual violence crimes prefer the term “survivor,” the term “victim” often indicates distinct rights in legal analyses because of the victim’s connection to a particular crime. This report and proposed revisions therefore use “victim” for clarity and to encompass the larger class of those harmed by sexual violence crimes during the conflict, which is appropriate given their scale and lasting impact on individuals, families, and communities.

**Conclusion**

The Center’s proposed revisions build on the original draft bill in order to broaden the protections, remedies, and reparations available to victims of sexual violence crimes in Iraq. These crimes were a central part of ISIS’s attacks and have had a deep and lasting impact on communities in Iraq.\(^75\) Establishing comprehensive and gender-sensitive reparations for sexual violence crimes is a positive step, and if implemented, could help ensure progress towards addressing the unique needs of victims, including long-term physical and mental health care, guarantees of non-repetition, and economic security. Victims should be consulted in this process so that reparations are designed in a way that truly respond to their needs as much as possible and confront systems of inequality and discrimination.

---

\(^72\) UN Basic Principles on the Right to a Remedy ¶ 8. See also, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, ¶ 1-3.

\(^73\) Human Rights Council, “They Came to Destroy:” ISIS Crimes Against the Yazidis ¶¶ 106-11; UN SECRETARY GENERAL, GUIDANCE NOTE 3.

\(^74\) The Iraqi Criminal Procedure Code includes the possibility of victims’ family members involvement in criminal claims, but the definition of “victim” remains focused on the target of a criminal act and thus may require amendment in future legislation in order to more fully account for rights for victims’ families to remedy and reparation in civil and criminal justice processes. Iraq Criminal Procedure Code, Law No. 23 of 1971 arts. 9-10; Comm. on Enforced Disappearances, Report of Iraq due in 2012, ¶¶ 142-44, U.N. Doc. CED/C/IRQ/1 (July 25, 2014) (noting that while “victims’ relatives are entitled to claim compensation and reparation in respect of the harm suffered,” adoption of the definition of “victim” in enforced disappearances to include family members would require amendment to the Iraqi legal system).

\(^75\) Human Rights Council, “They Came to Destroy:” ISIS Crimes Against the Yazidis ¶¶ 175-87.
Together with other transitional justice measures, reparations that are guided by international standards can help to rebuild trust in institutions and social cohesion, strengthen the rule of law, and protect civilians from further violence and human rights abuses. The long-term stability of Iraq depends on recognizing other victims and marginalized groups, and the equal access to justice and treatment of all groups who were victims of different crimes during the conflict.

---

76 Sandoval & Puttick, Reparations for the Victims in Conflict in Iraq: Lessons Learned at 6; U.S. Dep’t of State, Transitional Justice Overview.

77 UN OHCHR, Reparations Programmes at 13 (“However, designing a reparations programme as a systematically interlinked set of measures covering a large number of the relevant violations has advantages over a gradualist, incremental approach. It is more likely that different categories of victims will be treated fairly when a comprehensive programme is designed than when their fate is left to the vagaries of the myriad factors, including political clout, that can determine the outcome of separate legislative fights over a long period of time. The fact that there are entire categories of victims that will have to keep up the struggle to receive what is owed to them as a matter of right, while others receive their benefits, is not only unfair to the former, it also detracts from the reparations effort’s legitimacy, erodes the contribution to political stability and civic trust that reparations overall may make, and simply guarantees that the issue will remain on the political agenda for a very long time.”).
ANNEX 1

LAW ON REPARATIONS FOR VICTIMS OF SEXUAL VIOLENCE

Article 1 – Purpose

The purpose of this Law is to recognize and redress, financially and morally, acts of sexual violence committed during the armed conflict with Daesh against Iraqi citizens as of 10 June 2014 and to prevent such acts from being repeated in the future.

Article 2 – Definitions

For the purposes of this Law, the following expressions shall have the meanings assigned to them below.

(1) “Sexual violence” means rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation, forced marriage and any other form of sexual violence of comparable gravity.

(2) “Victim” means any person who individually suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their rights, through acts of sexual violence. “Victim” also includes the immediate family members or dependents of direct victims, and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

(3) “Perpetrator” means persons who commit acts of sexual violence against victims.

(4) “Reparation” means benefits provided to victims of sexual violence to redress the harms arising from such violence.

(5) “Directorate” means the General Directorate for Victims’ Affairs.

Article 3 – General Directorate of Victims’ Affairs

(1) A General Directorate of Victims’ Affairs shall be established under the General Secretariat of the Council of Ministers.

(2) The headquarters of the Directorate shall be in the Sinjar district of Ninewa Governorate. The Directorate shall open sub-offices authorized to act on behalf of the Directorate in locations accessible to victims, as well as create mechanisms allowing victims 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 headed by the Director General, who:

a) is a member of the Yazidi community;

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.

(5) The Director General shall be supported by a Commission consisting of seven Commissioners, who are members of different ethnic and religious minorities impacted by the Daesh conflict and have a minimum of three years of experience working in the field of human rights.

Article 4 – Duties of the Directorate

The Directorate shall:

(1) in cooperation with governmental offices, investigative bodies, international and non-governmental organizations who document cases of sexual violence, conduct assessments on victims, including data on numbers of victims, their vulnerabilities and specific needs, risks in accessing and receiving reparations, and other aspects of their profile relevant for designing and implementing reparation measures;
(2) collect and decide on reparation claims made under this Law;
(3) open sub-offices authorized to act on its behalf in locations accessible to victims;
(4) create mechanisms allowing victims who resettled abroad to benefit from this Law;
(5) coordinate with the relevant ministries and offices to realize rights of victims under this Law;
(6) train staff employed in the Directorate and its sub-offices to ensure they operate on the basis of do no harm, respect for victims’ dignity, and non-discrimination;
(7) conduct community outreach activities to inform victims, including those who resettled abroad, on their rights provided herein, procedures to exercise their rights and protective measures available;
(8) engage in continuous and effective consultations with victims to receive their feedback on implementation and adapt practices accordingly;
(9) operate, at all times, on the basis of enhancing and promoting victims’ rights to truth, justice, and other forms of redress.

Article 5 - Eligibility

This Law shall apply to all victims of acts of sexual violence perpetrated as part of the armed conflict with Daesh partially or wholly in Iraq as of 10 June 2014, regardless of the ethnicity, sect, religion, gender, age or place of residence of the victim.

Article 6 – Compensation

(1) Victims 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 victims who give birth to children conceived by rape and choose to undertake the care of such child.
(2) Victims shall be granted a piece of residential land or housing units free of charge.
Article 7 – Restitution

(1) Victims whose education was interrupted shall be entitled to return to study, regardless of age.
(2) Victims previously employed by the government whose employment was interrupted shall be entitled to return to their previous place of work. Outstanding salaries and benefits for the time the victim was prevented from working shall be paid.

Article 8 – Rehabilitation

(1) Health centers and clinics shall be opened in locations accessible to victims to provide medical and psychosocial treatment. Victims shall have unimpeded access to such facilities for as long as they wish to benefit from them.
   a) Health centers and clinics shall also be trained in accordance with Article 4(f) above to ensure they operate on the basis of do no harm, respect for victims’ dignity, and non-discrimination;
   b) Health centers and clinics shall institute procedures and protections to protect the privacy of victims and their families.
(2) Educational opportunities, such as primary and secondary schools and vocational trainings, shall be provided to victims.
(3) Livelihood programs shall be established to create employment opportunities for victims.
(4) Community-oriented programs shall be implemented to support reintegration of victims and children born of rape.

Article 9 – Recognition of Acts of Genocide

Attacks by Daesh against the Yazidi community constitute genocide.

Article 10 - Remembrance

(1) 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 sexual violence in conflict and honor victims.
(2) 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.
(3) 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 Sexual Violence in Conflict and the National Day of Remembrance of the Yazidi Genocide, and the formation of monuments, statues and exhibitions of this occasion.
(4) The Ministry of Education shall take necessary measures to include in school curricula lessons on gender equality and minority rights.
Article 11 – Initiation of Procedure

The procedure to exercise rights contained herein shall be initiated by the victims, 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.

Article 12 – Content and Confidentiality of the Claim

(1) The claim referred to in Article 11 of this Law shall contain:
   a) The name and other personal information of the victim;
   b) A description of the act(s) of sexual violence;
   c) All available evidence regarding the act of sexual violence.

(2) The Directorate shall institute procedures and protections to protect the privacy of victims and their families at all stages in the process and the confidentiality of claims and reparations measures granted.

Article 13 – Proof Requirements

(1) The Directorate shall have primary burden of proof in verifying victims’ claims. All available evidence may be used to verify the claim submitted by the victim, including the victim’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) Proof requirements shall be kept flexible and shall not unduly burden victims.

Article 14 – Decisions on Claims

(1) The Directorate shall decide on claims initiated by victims as per Article 11 of this Law in the form of a written decision.

(2) The written decision shall include a clear description of reasons for why a claim was approved or denied and describe the process for resubmission (in the case of insufficient information or evidence) and appeal.

(3) The written decision shall be rendered no later than three months from the date of submission of the claim.

Article 15 – Realizing Rights

Victims 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 16 – Appeal
Victims shall have a right to appeal to written decisions rendered by the Directorate.

Written requests for appeal shall be submitted to an appellate body no later than six months following the written decision of the Directorate.

Article 17 – Ceasing Existing Violations

The Directorate shall advise security bodies to put in place programs to rescue victims who are still being subjected to sexual violence, by also reimbursing families of victims for costs they incurred during rescue operations.

Article 18 – Children Born of Rape

(1) Victims who give birth to children conceived by rape shall be provided with the option to register the child under her name and religion.

(2) A court of first instance shall be established in Duhok Governorate to deal with the civil conditions of children born of rape. 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 victims.

Article 19 – No Amnesty for Perpetrators

(1) The perpetrators of acts of sexual violence described herein shall not benefit from any general or special amnesty.

(2) Notwithstanding any other provision of law, there shall be no statute of limitations applied to crimes, including acts of sexual violence, that constitute grave violations of international law, such as genocide, crimes against humanity or war crimes.

Article 20 – Criminal Justice

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

(2) The High Judicial Council shall institute appropriate procedures to protect victims’ and witnesses’ safety, and shall include reasonable measures to inform victims and witnesses about the process, its outcome, and their rights.

(3) 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 victims’ consent and providing protective measures to victims.

Article 21 – Extradition

The Ministry of Foreign Affairs and the High Commission for Human Rights shall explain and advocate against the crime of genocide against the Yazidis and international crimes committed against the peoples of the Republic of Iraq in international fora to cooperate in the process of extradition of perpetrators for trial in the Republic of Iraq.
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 victim.

Article 23 – Implementation

The Council of Ministers shall issue instructions to facilitate the implementation of the provisions of this law.

Article 24 – Entry into Force

This law shall enter into force on the date of its publication in the Official Gazette.
The ABA Center for Human Rights works to promote and protect human rights around the world by supporting human rights defenders who face retaliation for their legitimate rights work.

JOIN THE CONVERSATION

humanrights@americanbar.org
abachr
@chr_ab

STAY CONNECTED
www.americanbar.org/groups/human_rights