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Statement on the implementation of the Yazidi Survivors Law

NGOs and experts raise concerns over requirement for survivors to file criminal complaints to receive reparation

Experts and Non-Governmental Organisations welcomed the adoption by Iraq of the Yazidi Survivors Law on 1 March 2021, establishing an administrative reparation programme aimed at giving effect to survivors' right to reparation. While the law is ground-breaking in many respects, there are serious concerns regarding the recent imposition of an additional requirement for survivors to file a *criminal* complaint to be eligible for reparation.

The undersigned would like to emphasise the importance of administrative reparation programmes as a crucial avenue for survivors of crimes under international law and other gross human rights violations to access reparation, particularly survivors of sexual violence. These programmes are designed to facilitate access for survivors and simplify evidentiary thresholds. It would be inconsistent with the nature and rationale of a non-judicial process to require survivors to file a criminal complaint to be eligible for reparation. It would also go against international practice and the right to an effective remedy under international human rights law.

The undersigned would respectfully like to highlight international standards on evidentiary requirements for domestic reparation programmes and set out States' obligations on survivors' treatment and procedural rights in accessing this remedy.

The importance of administrative mechanisms to facilitate access to reparation

The undersigned welcomed the Government of Iraq's decision to implement a reparation programme to uphold the rights of Yazidi and other minority group survivors of crimes committed by the armed group Islamic State. Administrative programmes have the capacity to provide a more accessible route to reparation than judicial avenues. They can respond to

large numbers of survivors in a prompt manner, reduce costs and formalities, simplify the standard of evidence, reverse the burden of proof and reduce survivors' exposure to stigma.¹

If applicants to an administrative programme are required to file criminal complaints, the benefits of administrative avenues would be partially lost. This requirement risks overloading judicial mechanisms, might not be in line with survivors' agency to decide whether to bring their cases to the judicial forum, can cause stigma and re-traumatisation and could delay or even hinder access to adequate, prompt and effective reparation. For these reasons, we strongly discourage requiring survivors to file criminal complaints as a means of establishing eligibility for reparation.

International evidentiary standards for administrative reparation programmes

To avoid re-traumatisation and give effect to survivors' rights, it is critical that appropriate evidentiary requirements are not unduly burdensome for survivors, given the psychological impact of being required to re-count facts. The need for less onerous evidentiary standards is particularly pertinent with respect to survivors of conflict-related sexual violence (CRSV), given that the crimes are often committed in the absence of witnesses and are difficult to prove.

Consequently, best practice in administrative reparation programmes requires special standards of proof for CRSV and other at-risk groups of survivors such as children, applying presumptions of truth based on patterns of violence and other established facts.² Examples of this practice include reparation standards in Peru and Colombia,³ which apply the principle of "presumption of good faith" and place the burden of proof on State authorities to provide clear reasons as well as consistent and reliable evidence that might contradict survivors' statements.

In Kosovo, the *Commission for the Verification and Recognition of Sexual Violence Victim Status* was tasked to process and decide survivors' eligibility for reparation, based on an application form completed by survivors, where supporting documents such as medical, legal reports, and witness statements could be attached. In no case were survivors required to file a criminal complaint.⁴ In order to uphold the "do no harm" principle, to fulfil State obligations to provide "*special consideration and care to avoid re-traumatisation*", and to "*minimise the inconvenience to victims*,"⁵ four non-governmental organisations that were familiar to survivors were

¹ United Kingdom: Foreign and Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, March 2017, p. 76-77.

² Guidance Note of the Secretary-General – Reparations for Conflict-Related Sexual Violence, 2014, Principle 8.

³ Peru, Supreme Decree N015-2006-JUS approving the Regulation for the Integral Plan for Reparations Law N28592, Chapter II, Article 8(c); Colombia, Victims and Land Restitution Law, Law 1448/2014, Article 5.

⁴ Kosovo, Regulation (GRK) No. 22/2015 Defining the procedures for Recognition and Verification of the Status of Sexual Violence Victims during the Kosovo Liberation War, amended by Regulation (GRK) No. 10/2016, Article 29.

⁵ 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, 16 December 2005 in General Assembly resolution 60/147, Article 12, (c).

appointed to support the process, including the evidentiary requirements, thereby taking on the evidentiary burden and assisting survivors with their applications.

International standards on evidentiary thresholds indicate that survivors' records or testimonies should be sufficient to establish their status as victims of sexual violence, and that medical, forensic, clinical or psychological evidence, additional witness testimonies or proof of a judicial complaint should not be required for beneficiaries of the Yazidi Survivors Law. State authorities have other ways to examine the reliability and credibility of survivors' statements, such as by cross-checking the information with State-held records, evidence collected by official bodies, or reports by experts or non-governmental organisations.

A non-judicial evidentiary approach is aligned with the Yazidi Survivors' Law and Bylaw No. 4. Article 5 of the Law allows for different evidential paths for survivors' applications to be approved, including the use of records from government and civil society organisations; and the possibility of providing State-led activities to establish facts and patterns. Presumptions should be made using a "balance of probabilities" standard, regarding what treatments would have occurred if a woman, man, girl or boy was abducted or detained in a given facility at a certain date. Such a standard is appropriate for administrative reparation rather than needing to prove "beyond reasonable doubt" as is used in criminal proceedings.

There are significant obstacles that prevent survivors from reporting cases, including trauma and fears that exposure will lead to stigmatisation or further violence. Requiring survivors to file a criminal complaint is unduly burdensome and in violation of international standards. It will deter a significant number of CRSV survivors from coming forward.

International obligations regarding survivors are clear in that *"a person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim"*.⁶

State obligations regarding survivors' treatment and procedural rights

Survivors have the right to access truth, justice, an effective remedy and reparation. The undersigned organizations continue calling for fair trials to fulfil the right to justice and reparation, without resorting to the death penalty. Fair trials are needed to hold to account those against whom there is sufficient admissible evidence of responsibility for crimes under international law against Yazidi and other minority group survivors of crimes committed by the armed group Islamic State.

The undersigned organisations emphasize that reparation is not a form of assistance. It is a right afforded to survivors of violations of international human rights and humanitarian law which, by their very grave nature, constitute an affront to human dignity, such as those suffered

⁶ UN Basic Principles, Article 9.

by Yazidi survivors. As rights holders, States have an obligation to treat survivors “with compassion and respect for their dignity”,⁷ and to “minimise the inconvenience to victims and their representatives, protect against unlawful interference with their privacy, and ensure their safety”,⁸ which includes psychosocial safety. To fulfil survivors’ right to reparation, “appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families”.⁹

It is crucial that in implementing the Yazidi Survivors Law, reparation processes are designed and implemented in consultation with survivors, ensuring that they do not cause re-traumatisation. This is of the utmost importance, since “violations of the obligations on the treatment of victims can amount to serious violations of international law”.¹⁰

We, therefore, call on the Iraqi Government to ensure that no additional eligibility burdens are imposed on survivors seeking reparation under the Yazidi Survivors Law. We encourage Iraq to develop procedural and evidentiary rules that consider the reality and needs of survivors and ensure access to adequate, effective and prompt reparation.

Signatories

Amnesty International

Ceasefire Centre for Civilian Rights

The Center for Victims of Torture (CVT)

Coalition for Just Reparations

Fédération International pour les droits de Humains (FIDH)

Global Centre for the Responsibility to Protect (GCR2P)

Global Survivors Fund (GSF)

Human Rights Watch

International Commission of Jurists (ICJ)

International Rehabilitation Council for Torture Victims (IRCT)

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⁷ UN Basic Principles, Preamble.

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, 16 December 2005 in General Assembly resolution 60/147, Principle 12, (b).

⁹ UN Basic Principles, Article 10.

¹⁰ Security Council Resolution, 2467 (2019).