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## Iraq's Reparation Bill for Yazidi Female Survivors: More Progress Needed

1 comment

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*Iraqi Yazidi activists Nadia Murad and Lamiya Aji Bashar receive 2016 Sakharov Prize. © European Union 2016 – European Parliament.*

## Introduction

Iraqi President Barham Salih [announced](#) on 7 April 2019 a bill to the Iraqi parliament for review and adoption, entitled “Yazidi Female Survivors’ Law”. The ground-breaking bill sets forth a number of reparation measures for female Yazidi survivors of captivity, which is the first attempt by the Iraqi government to redress the harm suffered by its ethno-religious Yazidi minority as a result of the genocidal campaign initiated by the so-called Islamic State (IS) in 2014. A new legal framework is likely being proposed since it became clear that the existing reparation scheme under Law No. 20 (Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions) is severely [insufficient](#) to address the aftermath of the IS conflict. Prominent Yazidi NGO Yazda praised the bill, [commenting](#) that “this is the most significant piece of legislation ever with respect to the Yazidis in Iraq to be discussed within the framework for Iraq.” While that is indeed true, the bill also raises some concerns and confusions which need addressing before its enactment.

## Narrow Definition of Victims and Violations

The bill applies to “Yazidi women survivors who were abducted by the Da’esh terrorist gangs after 10/6/2014 and released after this date.”

This prioritisation is not surprising, as the plight of thousands of Yazidi women who were sexually enslaved by IS is well documented. However, the bill mentions *abduction* only, refraining from explicitly referring to sexual slavery, rape and other conflict-related sexual violence (CRSV) crimes, which undermines the full range of harm women experienced in IS captivity, and carries the risk of silencing survivors, as well as exacerbating stigma. CRSV should be adequately defined, by ensuring that no victim falls out of the bill’s scope.

At the same time, limiting the violations to be addressed under the reparation program for Yazidi women to CRSV alone disregards other gendered harms experienced by Yazidi women in conflict, possibly over-sexualizing Yazidi women and reinforcing patriarchal attributes of “chastity”. Furthermore, not all Yazidi women who were abducted by IS were subjected to CRSV, as there are documented cases of abducted older or disabled Yazidi women who were not sexually abused, yet subjected to other gross human rights violations. Yazidi women who were subjected to CRSV also experienced different forms over a range of time spans. A one-size-fits-all approach to different groups of victims may fall short of addressing the unique impacts of different violations.

The bill is internally inconsistent: while Article 2 states that the law shall apply to *Yazidi* women who were *abducted* by IS, Article 13 specifies that the “law shall apply to *all women* abductees who survived the terrorist organization Daesh and who were subjected to *enslavement*.” (emphasis added) This warrants clarification as to who is eligible for reparations. Are non-Yazidi women included? Is the violation covered here abduction or enslavement?

As is known, [Shi'i Turkmen, Christian and Shabak women](#) captured by IS were also subjected to CRSV crimes. Furthermore, there are reports of CRSV being committed against [Sunni Arab women](#) by IS, as well as sexual abuse of [women affiliated with IS](#) by security forces in IDP camps. While women and girls have undoubtedly been disproportionately subjected to CRSV in the IS conflict, [men and boys](#) and [LGBTI+ persons](#) were also victims of such crimes. Prioritising a certain group of victims may lead to inter-community tensions and cause the excluded victims feeling left out, exacerbating divisions.

Importantly, the bill excludes from its scope Yazidi victims other than abducted women. IS committed several genocidal acts other than sexual violence towards men, women and children, as detailed in the [Human Rights Council report](#). The bill does not foresee any reparation measures for such groups, nor does it acknowledge that those acts constitute genocide, as Article 9 recognises only that “the crimes committed against female survivors shall be considered genocide crimes.” The bill contradicts itself here since its rationale states “the crimes committed by the terrorist cohorts of Daesh groups against the Yazidis amount to genocide according to international standards.” Leaving out crimes committed against other Yazidi victims from the recognition of genocide and the scope of the reparation program may re-victimise those who are excluded and lead to intra-community tensions. It will also present an insufficient record of events.

Similarly, no reparations are envisioned for non-Yazidi victims of gross human rights violations, a flaw that could deepen the divide between different groups in Iraq and severely halt reconciliation efforts. Perhaps Iraq will deal with reparations for other victims under separate laws, as observed in Argentina. Nevertheless, advocating for redress for all victims while there is momentum and political will is crucial.



*Kine Haji, 37, ran with her children from her village near Sinjar city, carrying her youngest daughter on her shoulders. Her other children ran with her, barefoot. She fled after witnessing her husband killed by ISIL troops. Photo credit: Caroline Gluck/EU/ECHO.*

### **Top-down identification of benefits**

A well-designed reparation programme is complex, i.e. combining different benefits. These benefits are best identified through consultations, as survivors will know best what they need.

The bill provides for psychological and medical care, housing, land, compensation, education, and livelihood measures for Yazidi women, as well as commemoration and memorialisation activities. By combining forms of compensation, restitution, rehabilitation and satisfaction, the bill appears to be quite complex and is praiseworthy in that regard. Article 8/1 of the bill foresees monthly pensions instead of a lump sum payment, which is in line with best practices on compensation for survivors of CRSV, and provides clear criteria on determining the level of compensation (“no less than twice the minimum pension stipulated in the Unified Retirement Law”). It emphasises rehabilitation and reintegration measures directed at



survivors, in addition to reinforcing infrastructure in areas where survivors are located, although it doesn't clarify how these will take place or for how long they will be offered. The inclusion of memorialisation measures as part of symbolic reparation are noteworthy, yet which form these will take must be decided after extensive consultation with survivors.

Still, the bill seems to have been drafted without sufficient victim participation, as it leaves out one of the main demands of survivors. During my [research](#) under the [Conflict Research Programme](#), survivors prioritised their demands as indirect victims of killings and enforced disappearances committed against their families, rather than their demands as direct victims of CRSV. The survivors primarily asked for locating their missing family members and exhuming mass graves to bury their loved ones in a dignified manner. This isn't to suggest that measures aimed at redressing the harm arising from CRSV shouldn't be regulated. To the contrary, reparations for CRSV should be provided, and distinctly from reparations directed at harm arising from other violations. However, victim consultation during the drafting of the law could have made it clear that Yazidi women have several demands to redress various harms arising from different violations, and allowed a draft that better responds to the expectations of survivors. Such bill would include, most importantly, rescue efforts for those still under captivity.

Another troublesome feature of the bill is the lack of measures directed at guaranteeing non-repetition. Such measures are crucial as they hold potential to actually transform unequal social norms, addressing stigma arising from CRSV and gender inequality that underlies it. Non-repetition measures may take various forms, from institutional reform to public education initiatives. A good start would be to amend the sexual violence provisions of the Iraqi Penal Code, which are way behind international standards.

One of the most challenging issues many survivors currently deal with is making the choice to return to their community without [children born of rape](#), or to stay with their children. The issue was further complicated when the Yazidi Supreme Spiritual Council first [declared that children born of rape will be accepted to the community](#), then [revoked its decision](#) three days later following backlash from the community. The Iraqi government has to date done nothing to amend [laws that impose the Muslim religion onto children born to Yazidi mothers](#). The bill tries but fails to provide redress, instead reaffirming “the legal situation of children born of surviving mothers in accordance with the law”, and that “the existing laws shall apply to the new born of a Yazidi female survivor.” What benefit these provisions bring to Yazidi survivors is unclear.

### **Mitigating Possible Risks arising from Implementation**

The bill includes the establishment of a General Directorate for Female Survivors Affairs under the General Secretariat of the Council of Ministers. Creating a separate body dedicated to reparations for female survivors, instead of incorporating this work under an existing body with other responsibilities such as the Martyrs’ Foundation, is favourable in terms of independence and efficiency. The General Directorate shall be headed by a Yazidi, which is preferable for representation but again carries the risk of alienating victims from other groups. Management of the General Directorate should also include representatives of other victim groups.

The General Directorate is to be established in Nineveh, which is where the Yazidi homeland Sinjar is located. However, a majority of survivors are displaced and currently live in Duhok, Kurdistan Region of Iraq, and access could therefore be tricky. Obstacles in access are currently observed in filing claims to Compensation Sub-Committees as per Law No. 20, since there are no offices or sub-committees located in Duhok. The tense relations between Baghdad and Erbil shouldn’t impact the

survivors' access to the General Directorate, and offices should be established in and around Duhok and other places heavily populated by survivors to maximize the programme's reach. The scope of the bill should also include survivors who have re-located abroad.

A troubling provision is Article 5/1, which provides that the General Directorate shall "count and prepare female survivors' data." This is worrisome because this information has already been collected by government agencies and numerous NGOs, and re-interviewing survivors is re-traumatizing. In line with the principle of "do no harm", the General Directorate should liaise with other offices who have already undertaken such work, such as the [Commission of Investigation and Gathering Evidence](#) of the Kurdistan Regional Government. The United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh (UNITAD) can also be a source of support here, in addition to several civil society organisations such as Yazda who have been [documenting](#) IS crimes committed against the Yazidis. Establishing contact with such institutions in the early stages of planning could help access crucial data such as age, level of education, level of income, and types and consequences of violations, while preventing re-traumatisation that could arise from repeated documentation.

The bill is silent on how survivors will be registered to the programme, the evidentiary requirements, and the modes of distribution of reparations. Victim consultation particularly on these elements is key to maximise reach. Finally, the bill doesn't mention specifics of financing or oversight, two important components which will presumably be dealt with later on as part of setting up the programme.

### **Lack of Links to other Transitional Justice Mechanisms**

Reparation programmes should go hand in hand with criminal justice, institutional reform and truth-seeking, what Pablo de



Greiff [calls](#) “external coherence”. The reparation bill makes no reference to truth-seeking, which may cause its intended beneficiaries to perceive this programme as “blood money”, to buy their forgiveness. Institutional reform is crucial to change the system which allowed such violations to occur in the first place, which would also help re-establish trust to the state.

Article 11 provides that “perpetrators of the crime of abduction and enslavement of the Yazidi women are not included in any general or special amnesty” (note once again the use of “enslavement”). The bill goes on to provide for the arrest of perpetrators, protection of witnesses and survivors, and cooperation for the extradition of perpetrators. The explicit reference to prosecution and the exclusion of an amnesty is encouraging, as Iraq is yet to prosecute any member of IS specifically for their crimes against Yazidi women. Still, the bill provides for prosecution of kidnapping, not sexual violence, and not sexual violence as genocide. How these prosecutions will take place, given [gaps in Iraqi law](#), is unclear.

## **Conclusion**

The reparation bill is a step in the right direction, albeit a small one. Recognition of the Yazidi Genocide by the Iraqi government has been a long-awaited move by the Yazidis. Inclusion of complex measures to address the harm faced by thousands of Yazidi women is very much welcomed. It appears, however, that the bill lacks both victim and expert consultation, which is evident from the confusion and inconsistencies in its wording and disregard for key demands of the Yazidi community, such as rescue efforts for those still in captivity. The main concerns on inclusivity of both members of the Yazidi community other than women, and members of communities other than the Yazidi, should be primarily addressed. Eligibility criteria should be clearly defined and justified. Reparations should be designed with extensive survivor consultation, by keeping in mind their possible transformative effects.

Despite its shortcomings, the bill succeeds in opening up space for further debate on the issue of reparations in Iraq post-IS, which is a positive development by itself. Hopefully, this bill will be a first of many steps leading to a comprehensive, holistic, and survivor-centric reparation programme.

*This blogpost is part of the LSE research project [Reforming Legal Responses to Conflict-Related Sexual Violence in Iraq and the Kurdistan Region](#) by Güley Bor, examining how laws in Iraq could be reformed to provide better response to female survivors of conflict-related sexual violence. This project forms part of the Conflict Research Programme, funded by the UK Department for International Development.*

Note: This post was revised to reflect the Yazidi Supreme Spiritual Council's decision not to accept children born of rape.

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*Note: The CRP blogs gives the views of the author, not the position of the Conflict Research Programme, the London School of Economics and Political Science, or the UK Government.*

### About the author



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