

Reparations for survivors of conflict-related sexual violence in Iraq

Returns Working Group

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Background

- IOM partnership with Office of UN Special Representative for Sexual Violence in Conflict to support GoI, KRG, CSOs, and survivors to **engage in the process of developing an adequate framework and efficient mechanisms for the provision of reparations to survivors of CRSV in Iraq;**
- Seeks to further implementation of Joint Communiqué for Prevention and Response to Sexual Violence in Conflict, signed between Iraqi Government and Office of Special Representative.

What are reparations?

- A mechanism of transitional justice, alongside criminal justice, truth seeking, and institutional reforms;
- Used in the post-conflict and post-authoritarian context to address mass violations;
- Seek to address the consequences of violence on individuals and communities, restore their rights and dignity, officially acknowledge wrongdoing, rebuild trust, and empower victims/survivors;
- A legal principle, enshrined in international and domestic law.

“Adequate, effective and prompt reparation [are measures] intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law.”

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, UN General Assembly Resolution 60/147 of 16 December 2005

What are reparations? (cont.)

- Types of reparations:
 - Material & symbolic
 - Individual & collective
 - Judicial (local, regional, ICC) & administrative
- Forms of reparations:
 - Restitution (freedom, property, citizenship, etc.)
 - Monetary compensation
 - Rehabilitation (psychosocial support, health care, legal support, economic empowerment, etc.)
 - Satisfaction (official acknowledgement, commemorations)
 - Guarantees of non-recurrence (law reforms, independent institutions for protecting human rights)

How do reparations differ from similar concepts?

- State reparation programs vs. humanitarian/development aid
 - Beneficiaries (victims of HR violations vs. wider population)
 - Providers (State vs. variety of actors)
- Reparation program vs. social welfare
 - Beneficiaries (victims of HR violations vs. vulnerable groups)
 - Basis (specific law or decree vs. regular function)

Draft Law on Yazidi Survivors (April 2019)

- Initiative of the President of Iraq
- Beneficiaries: Yazidi women survivors; survivors from other communities
- Broad scope of rights: compensation, land, rehabilitation (health care, education, employment, etc.), community revival, symbolic measures
- Institutional structure: Directorate under Council of Ministers Secretariat (in Ninewa)
- Procedure: to be designed by Directorate decisions and/or by-laws

Draft Law on Yazidi Survivors (April 2019)

- First official effort to systematically redress the legacy of ISIL crimes against the Yazidi community through a comprehensive programme of reparations. Potential to:
 - Advance the rights of affected individuals and address their myriad needs;
 - Help to rebuild trust between affected communities and Iraq institutions;
- Legislation aligns with Iraq's international and national commitments in relation to protection of human rights, and specific commitments to protect and recognize survivors of CRSV set out in the Joint Communique.

Strengths and opportunities

- First official effort to systematically redress the legacy of ISIL crimes against the Yazidi community through a comprehensive programme of reparations. Potential to:
 - Advance the rights of affected individuals and address their myriad needs;
 - Help to rebuild trust between affected communities and Iraq institutions;
- Legislation aligns with Iraq's international and national commitments in relation to protection of human rights, and specific commitments to protect and recognize survivors of CRSV set out in the Joint Communique;
- Wide range of reparations measures foreseen, including both symbolic and material forms.

Substantive and procedural issues

- Justification of the legislative initiative;
- Lack of consultation during the process of drafting the bill;
- Definition of victims and beneficiaries;
 - Broad definition of the violation: act of kidnapping and, implicitly, slavery (“later freed”)
 - Selectivity based on ethnicity, gender, and age
 - Lack of inclusion of “indirect victims” (e.g. families, children born in the context of their mother’s abduction)
 - No clear or specific reference to survivors who have been resettled abroad (rather, provisions on the institutional framework indicate that this group of survivors has not been taken into account)

Substantive and procedural issues (cont.)

- Scope of rights
 - Lack of interim (urgent) reparative measures
 - As violations are ongoing, need to incorporate specific references to the urgency of ceasing the violations and alleviation the suffering of those in captivity (and their families)
 - Limited collective reparations foreseen, and specific measures needed to restore all elements of religious, ethnic, and communal life
 - Lack of clarity on the guidance and principles to address the legal status of children born in the context of their mother's abduction
- Principles guiding implementation
- Relation to other TJ measures in Iraq

Decision 735-697 and MoMD provision of grants as a form of reparations

- Sends a strong message: shows that the Iraqi government is committed to and capable of providing interim (urgent) reparations in a rapid manner;
- Raises some of the same issues as the Draft Law (e.g. selectivity based on ethnicity, gender, and age);
- Questions on how survivors are identified and who is eligible, to be answered through further discussion with MoMD;
- Overall, a valuable step to provide concrete, interim (urgent) reparations to survivors, but additional measures needed to address survivors' needs in the longer term.

Questions?