

IOM IRAQ

**YAZIDI SURVIVORS IN GERMANY  
AND IRAQ'S REPARATION PRO-  
GRAMME: "I WANT FOR US TO  
HAVE A SHARE IN IRAQ"**

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## ACRONYMS

<b>C4JR</b>	Coalition for Just Reparations
<b>CIGE</b>	Commission for Investigation and Gathering Evidence
<b>CRSV</b>	Conflict-related sexual violence
<b>CSO</b>	Civil society organization
<b>GoG</b>	Government of Germany
<b>GoI</b>	Government of Iraq
<b>IDP</b>	Internally Displaced Person
<b>IOM</b>	International Organization for Migration
<b>IPP</b>	Institute for Psychotherapy and Psychotraumatology, University of Duhok
<b>IQD</b>	Iraqi Dinar
<b>ISIS</b>	Islamic State of Iraq and Syria
<b>KRG</b>	Kurdistan Regional Government
<b>KRI</b>	Kurdistan Region of Iraq
<b>MoLSA</b>	Ministry of Labour and Social Affairs
<b>UN</b>	United Nations
<b>UNITAD</b>	United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL
<b>USD</b>	U.S. Dollar

## EXECUTIVE SUMMARY

Iraq recently adopted the Yazidi [Female] Survivors Law – a landmark bill that outlines and stipulates for a host of reparation benefits for survivors of the ISIS conflict, particularly Yazidi women and girls who survived conflict-related sexual violence. However, specific details regarding the implementation of the programme remain largely unclear. Participation of potential applicants to the programme's design and implementation will play a significant role in its success. Although some past initiatives have brought decision-makers, survivors, and civil society together, the reparation programme must also be sure to meet the particular demands of Yazidi refugees that are currently forcibly displaced outside the territory of Iraq due to fears of persecution and devastating consequences of the genocide. The Yazidi [Female] Survivors Law does mention applications received from outside of Iraq, thus pointing to the existence of political will to include refugee survivors. Nonetheless, implementation should be designed with careful consideration to ensure both availability and accessibility.

Drawing upon semi-structured interviews with 13 Yazidi women, this report provides an overview of reparation demands of Yazidi women living in Germany and their opinions regarding the new law and its future implementation. The interviewees are part of the Baden-Württemberg Special Quota Humanitarian Admission Programme that was announced in 2014 to provide medical and psychosocial support to Yazidi women and children who survived ISIS, through which 1,100 survivors arrived in Germany. The report concludes by offering decision-makers concrete recommendations for the implementation of reparations and development of secondary legislation (bylaws).

Yazidi survivors in Germany who were interviewed as part of this study directed their reparation demands at Iraq, which they have a right to regardless of their intention to return. They also asked for the inclusion of Yazidi men and children as well as survivors from other communities in the scope of the reparation programme. Still, answers indicated a prioritization based on vulnerability as many asked for reparations for Yazidi survivors in Iraq first.

Among the chief demands, interviewees emphasized the restoration of property. However, barriers to return, especially lack of security, basic services, infrastructure and income in Sinjar must first be addressed in order to enjoy this benefit. Addressing these barriers beyond reparation programmes could help prevent the recurrence of atrocities. Compensation in the form of a monthly payments is of critical importance, not only for survivors in Iraq who live under poverty, but also for survivors residing in Germany, to support their economic empowerment. Considering the multi-faceted harms arising from conflict-related sexual violence, survivors prioritized rehabilitation and particularly psychosocial

support. Education and employment were raised as critical elements supporting survivors in rebuilding their lives and coping with trauma. The most vocalized demand was initiating search and rescue operations for those who are still in captivity. Survivors also expressed the urgency of exhuming all mass graves, identification of the remains, collective (rather than gradual) announcement of victims' names, and financial and logistical support in visiting Iraq for participating in justice and reparations mechanisms. Demands for symbolic measures included proper reburials conducted in accordance with Yazidi rituals, statues and monuments marking the mass graves to honour the victims, official recognition of the genocide and declaring August 3 as a national day. Perpetrators should be prosecuted under international crimes and measures adopted to ensure safe participation by survivors in trials.

The Yazidi [Female] Survivors Law seems to capture many key demands of Yazidi survivors in Germany. Secondary legislation must aim toward swift and survivor-centric implementation. Participation of survivors, communities impacted by the conflict and civil society in determining the specifics of the reparative measures and their overall implementation is key to ensuring accessibility by all survivors, both inside and outside of Iraq. Creating application, verification and distribution mechanisms to support refugee survivors' access to benefits requires that the Government of Iraq develop innovative solutions. Given its status as a host country, Germany can support survivors in accessing reparation benefits distributed by Iraq.



Figure 1: Raber Aziz/IOM Iraq

## I. INTRODUCTION

Thousands of women and girls were subjected to conflict-related sexual violence (CRSV) during the Islamic State of Iraq and Syria (ISIS) conflict in Iraq. Often in the form of forced marriages and sexual slavery, CRSV was particularly widespread during the Yazidi Genocide. These violations have had devastating medical, psychological, and social effects on survivors' lives, which have worsened as they have been met with an insufficient response.<sup>1</sup> Complicating the issues is that thousands of Yazidi survivors who fled their homes remain displaced to this day, thus increasing their vulnerability.

Out of the 400,000 people that were forcibly displaced from Sinjar due to ISIS's armed attack which started in August 2014, more than 200,000 remain displaced in the Kurdistan Region of Iraq (KRI).<sup>2</sup> The majority of these Internally Displaced Persons (IDPs) are Yazidi and are presently forced to live in inhumane conditions in and around IDP camps in Duhok. Fears of persecution have caused large numbers of Yazidis to seek asylum outside of Iraq. 1,100 survivors, the majority of whom are Yazidi women and children, arrived in Germany via the Baden-Württemberg Special Quota Humanitarian Admission Programme, and other countries have since implemented similar initiatives. Many survivors have also left Iraq through risky, irregular migration routes. While receiving countries provide certain services to some survivors, many individuals, especially those that are undocumented, do not receive any form of support and continue to suffer from the impact of the violations they were subjected to, which are aggravated due to poverty, family separation, and challenges in integration.

Reparations, as the most concrete transitional justice mechanism to support survivors' healing, has emerged as a mutual demand voiced by survivors, as well as by civil society actors supporting survivors since the conflict. As the state responsible for making remedy,<sup>3</sup> Iraq initiated the process to fulfil this obligation with the announcement of the Yazidi [Female]<sup>4</sup> Survivors Bill by the Government of Iraq (GoI) President Barham Salih in April 2019.

This bill was Iraq's first attempt at providing reparations to survivors of the ISIS conflict specifically, and included a number of measures, such as psychological and medical services, housing, land, compensation, education, livelihood measures, and commemoration and memorialization activities for female Yazidi survivors of ISIS captivity.<sup>5</sup> The complexity of the proposed reparation programme, i.e. the fact that it combined a number of different forms of reparations, was praised by survivors and civil society alike as Yazidi activists called it "the most significant piece of legislation ever with respect to the Yazidis in Iraq to be discussed within the framework for Iraq."<sup>6</sup>

According to Iraqi laws, the bill must go through three "readings" before it is voted on by the Council of Representatives, during which amendments to the text can be introduced. The bill's first reading was completed in July 2019, and the second in November 2020. The bill was finally adopted on 1 March 2021 and ratified on 8 March 2021.<sup>7</sup> The Yazidi community commended the adoption, but noted that this was a "first step" and "doesn't solve everything".<sup>8</sup> While this law provides a significant framework for redress and demonstrates political will to remedy harms arising from the ISIS conflict, it is not *the* solution for delivering justice for the Yazidi Genocide. In addition to other transitional justice mechanisms that must be pursued simultaneously and in coherence with reparations, criminal justice in particular, the law's success will be determined according to its adequacy, effectiveness and promptness.<sup>9</sup> Understanding what constitutes adequate and effective reparations undoubtedly requires participation of potential applicants to the programme in its design.

Although the bill's first draft was initially criticized for lack of survivor participation, this has been somewhat remedied through recent efforts in bringing together decision-makers, survivors, and civil society in Iraq and the KRI. There have also been a number of publications focusing on perceptions of justice and reparation demands of com-

1. Yazidis who survived ISIS crimes have repeatedly asked to be referred to as "survivors." In line with this demand, the report uses the term "survivor" regardless of gender, except for references made to legal texts that use the term "victim."
2. IOM Iraq, [Protracted Displacement in Iraq: Revisiting Categories of Return Barriers](#), 2021.
3. In accordance with its obligations arising from numerous international treaties on human rights and humanitarian law, Iraq shall provide reparations to those whose rights are violated. Clara Sandoval & Miriam Puttick, [Reparations for the Victims of Conflict in Iraq: Lessons Learned from Comparative Practice](#), *Ceasefire Centre for Civilian Rights and Minority Rights Group International*, 2017.
4. The word female is in brackets to indicate that while this word is not contained in the title, the suffix to the word survivor in Arabic refers to female survivors.
5. Iraqi Presidency, [The Presidency Submitted the Yazidi Female Survivors' Law to Parliament for Review and Approval on March 28, 2019](#), 2019. Eligibility criteria have changed with later amendments to the bill, which will be explained below.
6. Mohammed Rwanduzi, [Iraqi bill for Yazidi women, children 'most significant': Yazidi activists](#), *Rudaw*, 2019.
7. Sura Ali, [Yazidi survivor law ratified by Iraqi President](#), *Rudaw*, 2021.
8. Joe Snell, [Iraq passes law addressing women survivors of Yazidi genocide](#), *Al-Monitor*, 2021.
9. UN General Assembly, [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](#), 2005.

munities victimized by ISIS, particularly the Yazidi, as well as analyses of the bill based on international law and best practices.<sup>10</sup> These resources have informed the Gol and the Council of Representatives of several crucial demands raised by survivors in Iraq and international standards in setting up mass reparation programmes, many of which were then incorporated to the final text of the law.

Still, considering the thousands of Yazidi survivors who had no choice but to leave Iraq due to fear of persecution and the devastating aftermath of the genocide, the reparation programme must ensure it addresses the demands of Yazidi refugees.<sup>11</sup> In accordance with international law, survivors have a right to reparation regardless of whether they are physically residing within the territory of the country responsible for making remedy.<sup>12</sup> Indeed, the state's obligation to provide reparations is not discharged if the survivor is outside the state's jurisdiction, including when there is no intention of returning to the country of origin.<sup>13</sup> This highlights the importance of designing the reparation programme in line with refugee survivors' demands and conditions and in doing so, ensuring that all survivors are eligible for and able to access reparations without discrimination.

There has been insufficient inclusion of the particular demands of refugee survivors during the drafting phase. More importantly, questions regarding the programme's implementation, and with that, accessibility, remain unanswered as the law does not detail the implementation process, consequently leaving these details to be specified in secondary legislation. However, these gaps can still be addressed; the text does not explicitly exclude survivors from the programme based on their country of residence, and in fact, mentions that the General Directorate of Yazidi [Female] Survivors Affairs (Directorate) in charge of reparations (to be established as per the law) shall consider applications "from inside and outside Iraq" (Article 10/4).<sup>14</sup> Bylaws and other secondary legislation can further clarify that Yazidi survivors currently outside the territory of Iraq are eligible and also establish application, verification, and distribution procedures supporting refugees' access.

While consultations alone are not sufficient in ensuring meaningful and effective participation, they offer a relatively straightforward method to gather opinions about the proposed reparation programme. To date, no such study dedicated to the Yazidi [Female] Survivors Law (YSL) has been conducted with Yazidi refugees. Having identified this crucial gap, IOM Iraq commissioned this study as part of the "Advancing the Right to Reparations for Survivors of Conflict Related Sexual Violence (CRSV) in Iraq" project, implemented by IOM Iraq with funding by the German Federal Foreign Ministry since November 2020. This report constitutes the output of the study and aims to support survivor participation in the reparation programme by providing an overview of the reparation demands of Yazidi refugees who arrived in Germany through the Baden-Württemberg programme and their opinions on the text and implementation of the YSL. It also presents recommendations for the implementation of reparations and drafting of bylaws concerning the law.

The report begins with an overview of the study's methodology, challenges and limitations of the data. It moves on to provide a timeline of the developments surrounding the YSL and amendments suggested since its introduction in April 2019. The subsequent section introduces the Baden-Württemberg programme, by also incorporating successes, challenges and criticisms detailed in media and literature. Drawing on data collected during this study, the report turns to reparation demands of Yazidi refugee survivors in Germany, using the foundations contained in the 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 (UN Basic Principles).<sup>15</sup> The following section highlights potential issues that may arise from implementation and offers considerations in ensuring access to reparations by refugee survivors. Finally, the report provides a number of recommendations to the Gol, Government of Germany (GoG), IOM, and civil society organizations (CSOs).

10. Commission for Investigation and Gathering Evidence, *Consultations for Reparations: Enhancing Victims Participation Towards the Development of a Comprehensive Reparation Policy*, 2020; Payam Akhavan, Sareta Ashraph, Barzan Barzani, and David Matyas, *What Justice for the Yazidi Genocide?: Voices from Below*, *Human Rights Quarterly* 42 (1), 2020; Abdulrazzaq Al-Saiedi, Kevin Coughlin, Muslih Irwani, Waad Ibrahim Khalil, Phuong Pham, and Patrick Vinck, *Never Forget: Views on Peace and Justice Within Conflict-Affected Communities in Northern Iraq*, *Harvard Humanitarian Initiative*, 2020; Phuong Pham, Niamh Gibbons, Jana Katharina Denking, Florian Junne, and Patrick Vinck, *Justice Not Forgiveness: Perspectives on Justice and Reconciliation among Yazidi Women Refugees in Germany*, *Journal of Human Rights Practice* 11 (3), 2019; Güley Bor, *Response to and Reparations for Conflict-Related Sexual Violence in Iraq: The Case of Shi'a Turkmen Survivors in Tel Afar*, *LSE Middle East Centre*, 2019; Güley Bor, *Iraq's Reparation Bill for Yazidi Female Survivors: More Progress Needed*, *LSE Middle East Centre Blog*, 2019; American Bar Association Center for Human Rights, *Iraq's Reparations Bill for Victims of Sexual Violence During Conflict: Recommendations to Ensure Compliance with International Standards*, 2020.

11. This report uses the term "refugee" as defined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as someone who is unable or unwilling to return to their country of origin due to a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group, or political opinion, notwithstanding whether refugee status has been recognized under domestic laws of any country. For a word of caution on the adoption of the 1951 Refugee Convention definition of refugee in reparation programmes, see Peter Van der Auweraert, *The Potential for Redress: Reparations and Large-Scale Displacement in Transitional Justice and Displacement* (ed. Roger Duthie), International Center for Transitional Justice, Brookings-LSE Project on Internal Displacement, 2012.

12. David James Cantor, *Restitution, compensation, satisfaction: transnational reparations and Colombia's Victims' Law*, *UNHCR New Issues in Refugee Research*, 2011.

13. Id. See also UN Economic and Social Council, *Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles)*, 2005, §2.2.

14. An English translation of the law was provided to the author by IOM Iraq.

15. *Supra*, n. 9.

## II. METHODOLOGY AND LIMITATIONS

The design of this study builds on previous research conducted in December 2018 with Yazidi and Shi'a Turkmen female survivors on response to and reparations for CRSV in Iraq.<sup>16</sup> Elements of the methodology used by the Commission for Investigation and Gathering Evidence (CIGE) for their report on reparations for Yazidi women were also incorporated,<sup>17</sup> and input was received from the Global Survivors Fund collaborating with survivors on reparations for CRSV in different contexts.<sup>18</sup>

Although the research team initially intended to gather data through in-person focus group discussions and interviews with survivors in relevant cities in Baden-Württemberg state, this proved impossible due to COVID-19 health risks and restrictions. The study was consequently postponed to the summer of 2020, due to concerns regarding the ethics and logistics of conducting online consultations during the pandemic and with hopes that the situation would permit safe travelling and in-person data collection without risking participants or researchers by then. The situation deteriorated, however, with lockdown measures implemented in Germany, making it impossible to hold physical meetings.

At the same time, discussions surrounding the YSL intensified and it became apparent that the second reading would take place soon. This signified that the window of opportunity to provide decision-makers with input from survivors outside of Iraq was closing. When the second reading of the bill was confirmed for 11 November 2020, concerns that the process would move forward without guaranteeing access by refugee survivors to the programme deepened. Considering these constraints and following extensive deliberations, the team chose to conduct the study virtually.<sup>19</sup> This decision proved to be wise; in the following months, the Council of Representatives would adopt the law as this report was being drafted. This inevitably left little time to inform decision-makers on refugee survivors' demands as they prepared the secondary legislation.

Online focus group discussions were not feasible due to difficulty in facilitating discussions by multiple participants online and lack of appropriate technology. Instead, thanks to the support of social workers working with Yazidi survivors, online semi-structured interviews were organised.

Semi-structured interviews were conducted via videoconference in December 2020 and January 2021 with 13 Yazidi women who were admitted to the Baden-Württemberg programme and who currently live in Germany. Social workers initially shared verbal and written information about the project with the survivors they worked with. Afterwards, short biographies of the research team and a video message explaining the study were conveyed to survivors who indicated interest in participating. The video also explicitly explained that the interviewees' participation was voluntary and that it had no effect on their legal status in Germany. The interviews were conducted in the Kurmanji dialect of Kurdish with the support of two female Yazidi translators from Iraq with extensive experience in interviewing survivors. Although the setting did not allow for much rapport, the team dedicated the initial part of the interviews to a light conversation discussing the study, the data, its use, and confidentiality measures. These conversations ensured that survivors were fully informed of the study prior to granting consent, while also managing their expectations and creating a light transition to interviews. The presence of Yazidi women on the research team also increased the credibility of the study and garnered a certain level of trust among participants. It is also important to note that unlike survivors in Iraq, many survivors interviewed in this study had previously engaged in public speaking or advocacy. They were informed of certain justice-related developments concerning the Yazidi Genocide, and thus felt more comfortable participating in consultations.

The research team's most significant concern was doing no harm. For this purpose, extensive meetings were held with social workers working with the state of Baden-Württemberg to plan the interviews by prioritizing the wellbeing and safety of survivors. Social workers arranged the location and equipment for survivors to attend the call safely and in private. They also provided counselling before and after the interview and made referrals to support services as needed. For safety reasons, all information provided by participants (including current location) were anonymized prior to publication, regardless of if they had already engaged in public advocacy. Despite all challenges, the feedback received from both survivors and the social workers

16. As part of research conducted with the Conflict Research Programme of the Middle East Centre at LSE, interviews and focus group discussions were held in November to December of 2018 with 22 female Yazidi and five female Shi'a Turkmen survivors in Duhok and Tel Afar respectively. See [Reforming Legal Responses to Conflict-Related Sexual Violence in Iraq and the Kurdistan Region](#), Conflict Research Small Grants Programme, LSE Middle East Centre.

17. CIGE, *supra*, n. 10.

18. See [Global Survivors Fund](#).

19. For an overview of the challenges and opportunities virtual qualitative research presents, see Marnie Howlett, [Looking at the 'field' through a Zoom lens: Methodological reflections on conducting online research during a global pandemic](#), *Qualitative Research*, 2021.



indicated that the team was able to create a safe environment in which survivors felt comfortable to voice their needs and opinions. Participants' responses also indicated that survivors found it important that this study was being conducted, even if it was done so online.

The data has several limitations. Firstly, the number of participants was limited due to difficulties of conducting research online and during the pandemic. Secondly, in recognizing the gravity of the discussion topic and fatigue induced by sitting in front of a computer, interviews were often kept short. Thirdly, given that the team and interviewees were not physically in the same room, it was more challenging to sense distress. This emphasized the criticality of minimizing risk of re-traumatization from the start of interviews. No questions regarding specific instances of violations were asked. This was made clear to survivors from the beginning to mitigate any pressure they might be feeling to talk about captivity. Additionally, topics that are relatively less distressing for survivors to talk about, e.g., demands for compensation and services, were discussed more in comparison to more emotional or sensitive topics, e.g., children born of rape. This created some imbalance between data on material and symbolic reparations, particularly on guarantees of non-repetition, as it was difficult for survivors to speak of a future back in Sinjar. Finally, it is important to note that the majority of participants were relatively young. Overall, younger survivors had more interest in speaking about issues concerning justice and reparations and had more mental and emotional wellbeing, making it relatively less distressing to participate in the study. In order to supplement this data, the report also draws upon findings of the 2018 study.

Many of the findings contained in this report speak to needs and demands of refugee survivors more broadly and may be relevant for survivors in other countries. Indeed, even though the Baden-Württemberg programme was the first dedicated initiative to grant protection to Yazidi survivors of genocide, it is not the only one. Large numbers of Yazidi survivors have arrived in Canada, Australia, France, and other countries. However, there are undoubtedly differences arising from the varying contexts of host countries. These factors include family reunification procedures, services made available, and even distance to Iraq.

Furthermore, thousands of survivors of genocide who fear persecution in Iraq were denied admission to these programmes and forced to leave Iraq through irregular migration routes, with many awaiting their asylum claims to be processed or stranded in transit countries under perilous conditions. Understandably, their specific needs and demands would differ from the survivors interviewed in this study, who are granted with permanent

residency, accommodation, and services in Germany. Hence, while this report provides a glimpse into the reparation demands of Yazidi refugee survivors, it should not be considered as an exhaustive list of demands and should be complemented with further research.

It is important to note, still, that survivors who arrived via the Baden-Württemberg programme should also be considered refugees as defined in the 1951 Refugee Convention, regardless of whether they applied for or were granted refugee status under German laws. The Convention deems a person a refugee as soon as they fulfil the criteria contained in the refugee definition (with recognition of the refugee status having only declaratory nature).<sup>20</sup> Thus, the report uses the term refugee to accurately capture the conditions under which survivors interviewed as part of this study arrived in Germany: a well-founded fear of persecution in Iraq due to their religion.



Figure 2: Raber Aziz/IOM Iraq

20. UNHCR, [Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating the Status of Refugees](#), 2019.

### III. IRAQ'S YAZIDI [FEMALE] SURVIVORS LAW

Iraq is familiar with mass reparations programmes.<sup>21</sup> The most recent reparation scheme was established in 2009 with the Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions (Law No. 20), to provide reparations to survivors of certain violations and families of the killed and missing. Although those impacted by the ISIS conflict can also apply to the Compensation Subcommittees for compensation and restitution, Law No. 20 does not address some of the most rampant violations committed during the ISIS conflict, including CRSV and forced recruitment of children. This means that many survivors are deprived of benefits that they are legally entitled to and need. Even if the individual's application concerns violations outlined in Law No. 20, such as killings, injuries and damage to property, the application process is complicated and the evidence required is too burdensome for applicants, thus making otherwise eligible survivors unable to claim reparations.<sup>22</sup> Taking into account the existing backlog of claims arising from Law No. 20, this framework cannot handle such a large volume of applications. Considering the strong demands raised by communities impacted by the conflict, especially the Yazidi community's demand for the official recognition of the Yazidi Genocide, and the precarious conditions under which survivors live, it became apparent that a new reparations framework is needed to address the harms inflicted by ISIS against minorities in particular.

The Yazidi [Female] Survivors Bill was introduced for that purpose. The first draft of the bill, however, was criticized on several grounds, including the lack of explicit acknowledgment of CRSV, its limited scope of eligibility, internal inconsistencies, and more.<sup>23</sup> Many of the bill's inadequacies arose from the lack of survivor participation and expertise on gender-sensitive reparations during its drafting. To remedy this gap, a number of actors took action to better incorporate survivors' demands and uphold the bill to international standards.

The Coalition for Just Reparations (C4JR), established in November 2019 to advocate for the right to reparation of survivors and victims of the ISIS conflict, is an alliance of 31 CSOs reflecting the diversity of Iraq and KRI.<sup>24</sup> In addition to publishing a model reparations law for use by lawmakers,<sup>25</sup> the C4JR has been meeting with government officials<sup>26</sup> and engaging the international community<sup>27</sup> in this issue, while also creating platforms for survivors to comfortably and safely voice their opinions.

Meanwhile, IOM has been working to build the capacity of government officials as well as civil society on reparations for survivors of CRSV. As part of a project dedicated to reparations for CRSV, a number of studies mapping services for CRSV survivors and efforts to document CRSV have been completed, as well as several activities aimed at raising awareness on the right to reparation. Furthermore, IOM Iraq, in coordination with IOM Kosovo and IOM Croatia, organized a study visit for members of the Iraqi Council of Representatives to Kosovo and Croatia to review the framework and implementation of their respective reparations programmes.<sup>28</sup> Workshops were held with the attendance of survivors and policy makers to bridge the gap between the first draft of the bill and survivor demands.<sup>29</sup>

After over a year of deliberations, during which an urgent interim reparation programme in the form of a one-off payment was implemented,<sup>30</sup> the Council of Representatives held a second reading of the bill in November 2020. This was followed by a revised draft of the bill, prepared by the parliamentary Women, Family and Childhood Committee and the Martyrs, Victims and Political Prisoners Committee. This passed in March 2021 without revisions. The final text of the YSL is a testament to the hard work of those involved in advocacy for reparations as it remedies many of the flaws criticized in the first draft.

21. See the UN Compensation Commission established to grant reparations for Iraq's invasion of Kuwait and the Commission for the Resolution of Real Property Disputes set up to remedy violations of property rights committed during Saddam Hussein's Ba'athist regime. IOM, [Property Restitution and Compensation: Practices and Experiences of Claims Programmes](#), 2008.

22. Sandoval & Puttick, *supra*, n. 3.

23. Bor, *More Progress Needed*, *supra*, n. 10.

24. Güley Bor, [Civil Society in Iraq and the Kurdistan Region Launch the 'Coalition for Just Reparations'](#), *LSE Middle East Centre Blog*, 2019.

25. Coalition for Just Reparations (C4JR), [Draft Law on Reparations for Survivors of Conflict-Related Sexual Violence](#).

26. C4JR, [C4JR Continues Advocacy for Improving and Enacting Yazidi Women Survivors Bill](#), 2020; C4JR, [C4JR flags amendments to the Yazidi Women Survivor's Bill at the IOM meeting in Erbil](#), 2020.

27. C4JR, [Virtual conference signals the way forward for wartime sexual violence reparations in Iraq](#), 2020; C4JR, [Head of UNITAD Voiced Support for C4JR's Work](#), 2020.

28. IOM Kosovo, [Iraqi Parliament Representatives Learning From Kosovo's\\* Experience in Reparations of Survivors of Conflict-Related Sexual Violence](#), 2019.

29. IOM Iraq, [Reparations to survivors of conflict-related sexual violence](#), 2019.

30. The programme was set up by the GoI's Ministry of Displacement and Migration and the KRG's Ministry of Interior Affairs and Office of the Kidnapped and Rescue Affairs; it awarded 899 Yazidi female survivors a lump sum payment of IQD 2 million each (equivalent to approximately USD 1,700). The programme was criticized, however, for lack of clarity regarding eligibility and selection criteria. CIGE, *supra*, n. 10; Yazda, [Interim Relief Program for CRSV in Iraq: Survivors' Grant Scheme in Practise and Recommendations for its Improvement](#), 2021.

The first draft had only allowed Yazidi women who survived ISIS captivity to be eligible for reparations. The final text defines survivor to include those who survived CRSV by explicitly referring to several forms of CRSV including sexual slavery, forced marriage, forced pregnancy, and forced abortion. Although the title remains Yazidi [Female] Survivors Law, presumably to highlight the gravity of violations directed at the Yazidi community, it includes female Turkmen, Christian and Shabak survivors kidnapped by ISIS. Moreover, Yazidi children who were minors at the time of abduction as well as male Yazidi, Turkmen, Christian, and Shabak survivors of mass killings are deemed eligible to receive reparations under the final text.

The final version of the law retains the benefits listed in the first draft; survivors shall be granted a monthly salary, a residential plot of land with a real estate loan or a free housing unit, medical and psychosocial care, priority at public employment, and the right to return to study notwithstanding their age. Importantly, the final text also includes the search for those who are still missing, exhumations of mass graves, identification of remains, and proper reburials. Crimes against the Yazidi community (as opposed to crimes against Yazidi women alone – as articulated in the first draft) are recognized as genocide. This constitutes the first legal acknowledgment of the Yazidi Genocide by Iraq. August 3 is declared as a national day to commemorate the Yazidi Genocide and authorities shall undertake memorialization activities and projects, including the construction of monuments, statues, and exhibitions. There shall be no amnesty for crimes against abducted Yazidis and importantly, survivors shall be granted protection for criminal trials – another crucial addition to the first draft. The only issue that was tackled in the first version of the law but left out in the final version is the registration of children born of rape, who are forced to register under the father's name and as Muslim as per laws in force. The first draft had included some vague provisions on this, but it was unclear how these measures were meant to benefit the children or their mothers. The final text excludes these provisions altogether and does not provide any remedies for children born of rape.

Unlike the first draft, the final text of the law details some of the fundamental elements of implementation. The directorate in charge of implementing the YSL shall be established under the federal Ministry of Labour and Social Affairs (MoLSA) in Nineveh Governorate. The directorate has the authority to open branches in areas with large survivor populations and shall be headed by a Yazidi civil servant. The YSL requires that the directorate gathers data on survivors, with a new reference to using pre-existing information held by governmental and non-governmental institutions. It shall also coordinate with other governmental bodies to realize the benefits detailed in the law, although the specifics of how benefits shall be delivered are not yet clear.

Reparation claims shall be decided by a committee formed by MoLSA. The committee is chaired by a judge nominated by the Supreme Judicial Council and consists of eight members in total, at least 30 per cent of whom shall be women. The committee members represent various ministries, such as the Ministry of Health and the Ministry of Justice, as well as governmental bodies, including the Iraqi High Commission for Human Rights and the Kurdistan Regional Government (KRG). The committee shall meet at least twice a week with an absolute majority of members and make decisions with the present majority. It "may" open an electronic database and application platform to receive applications from inside and outside of Iraq (Article 10/4). The decision shall be rendered within 90 days of receipt of the claim, after an interview conducted by the committee. The decision can be appealed once before the same committee and a second time before a court of first instance. The court's decision is final. The remaining issues concerning the application process, such as how interviews shall be conducted with survivors abroad and other evidentiary requirements, are left to the Council of Ministers which shall issue the secondary legislation within 90 days following the law's publication in the Official Gazette.

While a complete analysis of the YSL exceeds the purpose of this paper, the following chapters situate provisions of the law against the data collected during this study and international standards.



Figure 3: Anjam Rasool/IOM Iraq

## IV. THE BADEN-WÜRTTEMBERG PROGRAMME FOR YAZIDI WOMEN AND CHILDREN

The German Federal State of Baden-Württemberg's ground-breaking Special Quota Humanitarian Admission Programme was announced in 2014. It aims to provide specialized psychosocial and medical support that at the time<sup>31</sup> was unavailable in Iraq and KRI to women and children who survived ISIS.<sup>32</sup> A total of 1,100 survivors, the majority of whom are Yazidi,<sup>33</sup> arrived in 22 cities in Germany in 2015 and 2016, with logistical support provided by IOM. Survivors were granted accommodation, medical and psychosocial care, financial support and education, including German language classes, upon their arrival. Following a two-year temporary residency status, they were allowed to apply for permanent residency and family reunification.<sup>34</sup> While this programme does not constitute as reparations and did not appear to be perceived as such by participants, it bears great significance for the role of Iraq's reparations efforts considering all individuals who were admitted to the Baden-Württemberg programme survived serious violations of international law and are thus potential beneficiaries of Iraq's YSL.

Studies on participants' views of the programme reveal a diversity of experiences.<sup>35</sup> This was also true for this study. Many survivors expressed satisfaction for being included in the programme and thanked the GoG for its efforts in supporting the Yazidi community. The medical and psychosocial support provided through the programme helped many of them in their healing processes. Having lived there for over five years, a number of respondents, particularly younger ones, had shown great progress in their German language classes and felt more comfortable navigating their day-to-day lives. Some had completed their studies and were searching for employment, while others had started working and were mostly financially independent. Many mentioned how beneficial the programme has been for their children. Overall, none of the participants seemed to regret the decision to move to Germany.

However, while psychosocial support is available upon request, a number of respondents indicated that they had issues accessing these services due to language barriers or lack of childcare

facilities.<sup>36</sup> Many mentioned the importance of education and employment for the healing process, and that COVID-19 restrictions have hindered such activities, thus negatively impacting their mental health: "Now we are home all the time, we remember everything [that happened to us]."<sup>37</sup> Additionally, not all respondents were satisfied with their housing arrangements and mentioned difficulties in finding appropriate accommodation by themselves. That members of the same family were relocated to different cities brought additional challenges and impacted the process of adapting to life in Germany. Older survivors in particular spoke about challenges in integration; this was the case for many who have spouses that are still in Iraq.

Indeed, the focus on women and children in the programme design and the subsequent lack of political will by the German authorities to reunite families have raised criticism.<sup>38</sup> The issue of family separation warrants immediate attention; not only do survivors have a right to family unity<sup>39</sup> but often, the sense of loneliness also negatively impacts the healing and integration process. As one survivor put it, "The children haven't seen their father. He lives alone in the camp in Iraq. We feel bad only because of this, otherwise, this place is very good for us."<sup>40</sup> Survivors' frustration is aggravated due to confusion over inconsistent information as to whether the programme had initially promised family reunification as well as lack of clarity regarding the future of the programme.<sup>41</sup> This uncertainty has contributed to a sense of insecurity and hesitation in investing their futures in Germany: "It could happen that [Germany] doesn't accept us anymore, they could tell us to 'return back to your country'... We don't own anything here. We might think of doing this and that, and then there is a decision, for example, to say you have to return back to your countries."<sup>42</sup>

One issue raised that is directly related to the delivery of reparations and participation in transitional justice mechanisms is the bureaucratic, logistical and financial barriers to visiting Iraq. These will be examined in the implementation section below.

31. The University of Duhok's [Institute for Psychotherapy and Psychotraumatology \(IPP\)](#) has since opened a master's programme to remedy the lack of sufficient mental health professionals in Iraq and KRI with funding from the GoG and the state of Baden-Württemberg.

32. Thomas McGee, [Saving the survivors: Yazidi women, Islamic State and the German Admissions Programme](#), *Kurdish Studies* 6(1), 2018.

33. Although the programme was open to all ethnic and religious groups, the majority of those admitted were Yazidi. Pham et al, supra, n. 10.

34. Id.

35. McGee, supra, n. 32; Virginia My Tuyet Tran, [Perceptions of German Healthcare Among Yazidi Refugees in Germany](#), Harvard Medical School (Doctoral Dissertation), 2019.

36. In the same direction, see McGee, supra, n. 32.

37. Interview, 26 January 2021, online.

38. McGee, supra, n. 32; Elizabeth Hagedorn, [Surviving Yazidi men desperate to reunite with families in Germany](#), *Middle East Eye*, 2019; Kristen Chick, [A Radical German Program Promised a Fresh Start to Yazidi Survivors of ISIS Captivity. But Some Women Are Still Longing for Help](#), *Time*, 2020.

39. Frances Nicholson, [The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification](#), *UNHCR Legal and Protection Policy Research Series*, 2018.

40. Interview, 15 December 2020, online.

41. McGee, supra, n. 32.

42. Interview, 26 January 2021, online.

## V. REPARATIONS FOR YAZIDI SURVIVORS IN GERMANY

### A. PERSPECTIVES ON RESPONSIBILITY, ELIGIBILITY, AND PRIORITIZATION

In addition to questions about their opinions pertaining to specific forms of reparations, participants were asked about the party responsible for providing reparations as well as who should be receiving such benefits. All participants agreed that it was Iraq's responsibility to undertake the reparation programme: "It is our country, and this happened to us in that country. [Reparation] is our right from [Iraq]."<sup>43</sup> Still, a number of participants expressed a lack of trust in Iraq, which is aggravated by the delay in responding to the aftermath of the genocide and scepticism as to whether the benefits would actually be delivered: "Iraq doesn't continue things, they start something and end them in the middle."<sup>44</sup>

Regardless of these doubts, the demand for the Gol to provide reparations is strong. This may partly be driven by the fact that survivors do not believe receiving reparations from the perpetrators (i.e., ISIS members) is feasible. In this case, they turn to the state that failed to protect them instead: Iraq. While discussions about holding non-state armed actors responsible for reparations are gaining traction in academia and practice, this is unlikely to happen in the case of ISIS given their unwillingness.<sup>45</sup> The UN Basic Principles articulates that states shall make an effort to provide reparations when those responsible for the violations are unwilling to do so.<sup>46</sup> This fits the case of the Yazidi vis-à-vis the Gol. Still, partially financing the reparation programme through ISIS's confiscated assets is an option that points to the responsibility of non-state perpetrators to provide redress.<sup>47</sup>

Reparation demands directed at Iraq also demonstrate the significance of the responsibility attributed by survivors to Iraq in failing to protect the Yazidis. This highlights the crucial opportunity this reparation programme presents in beginning to restore

the Yazidi community's trust into governmental institutions by treating them as equal, valued citizens of Iraq. That more than one respondent identified the delivery of reparations as being granted "a share in Iraq"<sup>48</sup> supports the handling of reparations as a larger "political project".<sup>49</sup>

A critical aspect that would help convince survivors that reparations efforts are genuine is the inclusion of all survivors in the scope of the programme. All participants, regardless of their intention to return, demanded that they be eligible to receive reparations from Iraq. One participant stated, "It is not reparation if you give them to some and don't give to others."<sup>50</sup> This sentiment was shared by many survivors, emphasizing that "if they give reparations [to survivors in Iraq] and they don't give them to [survivors in Germany], [survivors in Germany] will become victims twice."<sup>51</sup> The YSL mentions applications received from outside of Iraq, suggesting that there is political will to include refugee survivors. The logistics, however, necessitate careful consideration to ensure availability and accessibility. These points are explored further below.

The demand for equal treatment among survivors also included Yazidi men and children. Many survivors pointed to insufficient attention received by male survivors in particular: "[M]any men also... survived, but nothing is done for [them]. They are also survivors like us."<sup>52</sup> Criticisms have been raised against the "hyper-visibility" of Yazidi women's suffering and its translation into "invisibility and silencing" of Yazidi men and children in media and humanitarian efforts, with female survivors using their platforms to raise men and boys' reparation demands as well.<sup>53</sup> That the YSL's final version includes Yazidi men who survived "mass killings and mass elimination" and Yazidi children who were minors at the time of abduction points that these criticisms have been heard to some extent.

43. Interview, 15 December 2020, online.

44. Interview, 4 December 2020, online.

45. Luke Moffett, *Beyond Attribution: Responsibility of Armed Non-State Actors for Reparations in Northern Ireland, Colombia and Uganda in Responsibilities of the Non-State Actor in Armed Conflict and the Market Place* (eds. Noemi Gal-Or, Cedric Ryngaert, and Math Noortmann), Brill | Nijhoff, 2015.

46. *Supra*, n. 9, §16.

47. Sandoval & Puttick, *supra*, n. 3.

48. Interview, 2 December 2020, online; Interview, 4 December 2020, online.

49. Pablo de Greiff, *Justice and Reparations in The Handbook of Reparations* (ed. Pablo de Greiff), Oxford University Press, 2006, p. 454.

50. Interview, 9 December 2020, online.

51. Interview, 16 December 2020, online.

52. Interview, 9 December 2020, online.

53. Veronica Buffon and Christine Allison, *The gendering of victimhood: Western media and the Sinjar genocide*, *Kurdish Studies* 4(2), 2016, p. 177, 188; McGee, *supra*, n. 32; Bor, *supra*, n. 24.

A final demand concerning equal treatment of survivors was that women of all communities who survived ISIS captivity should receive reparations. Since the introduction of the first version of the bill, Yazidi survivors in Iraq have shown great solidarity in advocating for not just their right to reparation but the rights of survivors from other communities who are not as outspoken, mostly due to fear and stigmatization. One respondent explained: "We are all survivors like each other. We are all tired like each other. We all have rights like each other. We want support for any human that this disaster happened to and who were harmed. We want [Iraq] to support all humans, Yazidis, Muslims, whichever person, but it doesn't work to give to some and not to give to others."<sup>54</sup> While the YSL does not include *all* survivors of any particular violation, a discriminatory feature that could potentially deepen inter-community tensions, final revisions made in the text before the law's adoption have ensured that Turkmen, Christian, and Shabak female survivors of CRSV and male survivors of mass killings are eligible to receive benefits.

Although participants advocated for all survivors to exercise their right to reparation, answers indicated a prioritization based on vulnerability. Many asked for reparations for Yazidi survivors in Iraq first, and even spoke about the needs of survivors living in camps rather than their own.<sup>55</sup> This is understandable considering the poverty faced by survivors in Iraq and the lack of services in IDP camps, which participants were well aware of through contact with their relatives: "The most important thing is for the women in Iraq to receive help, because they need it the most."<sup>56</sup> This input may encourage the Gol to implement other urgent interim reparation programmes for survivors in Iraq, and guide decision-makers on what criteria to use while prioritizing survivors to deliver benefits.

## B. DEMANDS FOR REPARATIONS

The UN Basic Principles lays out five forms of reparations to redress the harms arising from serious violations of international law. Each are examined below, with reference to demands raised by participants and relevant provisions of the YSL. What must be kept in mind is that these violations are tied to deep-rooted inequalities that women, Yazidis, and Yazidi women at the intersection have been facing. Thus, instead of merely addressing the immediate harms arising from these violations as if they happened

in a vacuum, reparations "must aim to address the political and structural inequalities that negatively shape women's and girls' lives."<sup>57</sup> Even though the YSL -or any reparations initiative- may not be sufficient or suitable by themselves to address all inequalities faced by Yazidi women, maintaining this transformative agenda as a guiding principle will prevent the reparation programme from reinforcing injustices that pre-date the genocide.

## RESTITUTION

Restitution refers to restoring the victim to their *status quo ante*. Even though this is not possible for many of the violations committed during the Yazidi Genocide, and not desirable in cases where the previous situation is unequal, data collected during this study revealed that the return of property is a major restitution demand.

All survivors have lost everything they owned during the genocide, including housing, land, and belongings. Thus, they demanded that their property be returned and for the Gol to provide them with housing. The right of refugees and displaced persons to have their property restored to them is already well established with soft laws such as the Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles) which support refugees' claims for restoration.<sup>58</sup>

While the main purpose of restoration is to return the original property, it can take various forms according to the specifics of the violations and the context.<sup>59</sup> Many survivors from Kocho raised the issue of location of the property to be returned on their own. Considering the atrocities that took place in Kocho and the many mass graves that now surround the village, survivors stated it would be very difficult to live there and that Kocho is now "sacred",<sup>60</sup> but that they "cannot leave [their] bones".<sup>61</sup> At the same time, survivors drew comparisons between the grave nature of the violations Yazidis in Kocho were subjected to and the relatively isolated location of Kocho versus other Yazidi villages that prevented its residents from fleeing when ISIS first attacked. For security reasons, they suggested that the property to be granted as reparations should not necessarily be in Kocho but near Kocho, referencing Kocho's current *mukhtar* as a possible source of guidance in determining where the restored property should be.

54. Interview, 16 December 2020, online. This was echoed by survivors in a final workshop on the reparations bill organized by IOM Iraq on December 20-22, 2020 that brought together survivors from various communities and decision-makers.

55. Also see Pham et al, supra, n. 10.

56. Interview, 2 December 2020, online.

57. [Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation](#), 2007, §3(H).

58. Supra, n. 13.

59. Inter-Agency, [Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'](#), 2007.

60. Interview, 26 January 2021, online.

61. Interview, 2 December 2020, online.

Some participants expressed a longing for their homeland; however no participants had intentions to return under the current circumstances. The most cited reason for the unwillingness to return was safety, followed by the lack of infrastructure, basic services and income. One respondent stated, "Sinjar is not a place for families, or someone who tries to make a living, or search for a future."<sup>62</sup> These reasons were also raised by IDPs, despite their current conditions in the camps. According to a study examining IDPs' intention to return to their areas of origin, IDP households who reported their intention to return to Sinjar within three months is at 3 per cent, with 64 per cent citing safety, 54 per cent destruction of property, and 53 per cent lack of basic services as the main barriers to return.<sup>63</sup> Without tackling these issues, reintegration to the place of origin cannot be considered a durable solution to displacement.<sup>64</sup>

Refugee survivors have a right to have their property returned notwithstanding their desire or intention to return to Iraq. Indeed, "long-term displacement *does not* extinguish or de-legitimise restitution claims. Nor does a decision to resettle or integrate locally" (emphasis in original).<sup>65</sup> Survivors have not only a right to restitution but also a need for it, with many expressing that restoring their property would give them a sense of financial and mental stability: "It is true because we are here, we might live better than those who are living in Iraq now. But I don't have any house in Germany, or anything. It is true we live in peace and they give us salaries and I can work here but if I work, I will be only eating and living day by day, but I wouldn't have anything that I own, no house, just like a guest... I have nothing here either. So, if they can give us something from [Iraq], we don't want to be deprived from [what the Gol might provide]."<sup>66</sup>

Having survivors' property restored is also significant for coordinating trips to Iraq, which many survivors expressed either a desire to or necessity for. In addition to the several bureaucratic and financial hurdles in planning these trips, the lack of accommodation complicates these visits, which are often made for difficult reasons such as providing testimony, undertaking DNA tests, or attending reburial ceremonies. Furthermore, it is important to remember that many survivors in Germany have immediate or extended family in Iraq, including the KRI, and the holy site of Lalesh and several shrines are located there. Thus, these trips have great personal and spiritual significance, and despite their

potentially destabilizing effect, they may play a part in the healing process. For many survivors who have younger children, such visits also connect their children to Yazidi religion and culture, as survivors also fear their assimilation: "If we had houses [in Iraq], if it were possible for me and my children to go there once a year, at least they won't forget the mother tongue."<sup>67</sup>

The YSL provides female survivors with either a residential plot of land with a real estate loan or a free housing unit. However, some of these details have yet to be defined, including the terms of the loan. Findings from this study highlight the importance of restoring property to refugee survivors and the inclusion of community leaders and survivors when deciding on the specifics, especially location. Furthermore, the issue of property restitution must be handled while considering the broader land tenure issues impacting Yazidis and disadvantages faced by women in owning and controlling property.<sup>68</sup> Keeping these in mind while tackling restoration could have transformative impact for inequalities faced by women and religious minorities.<sup>69</sup> Most importantly, barriers to return must be tackled simultaneously with reparations. This is key as survivors cannot truly enjoy such benefits otherwise.

## COMPENSATION

Compensation should be provided for any economically assessable damage, including physical and mental harm, loss of opportunities, moral damages, and incurred expenses. All respondents found compensation to be critically important, and understandably so considering that the majority of survivors in Iraq live in poverty. Although compensation arises from the right to reparation and survivors have a separate right to development through which poverty reduction programmes should be simultaneously implemented, the role of compensation in helping survivors rebuild their lives and gain some level of financial independence is undeniable.

Compensation was often raised as an indispensable part of reparations for survivors both in Germany and Iraq. Both groups mentioned that many survivors had lost breadwinners of their families, were unable to find employment, experiencing mental health problems which hindered their ability to work, or were struggling to provide for their children. At the same time, participants emphasized that compensation alone did not satisfy their

62. Interview, 4 December 2020, online.

63. REACH Iraq, [Intentions Survey: IDPs in Formal Camps](#), September 2020, p. 2.

64. IOM, *supra*, n. 2.

65. Inter-Agency, *supra*, n. 59, p. 18.

66. Interview, 16 December 2020, online.

67. Interview, 26 January 2021, online.

68. UN Habitat, [Emerging Land Tenure Issues Among Displaced Yazidis from Sinjar, Iraq: How chances of return may be further undermined by a discrimination policy dating back 40 years](#), 2015.

69. UN, [Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence](#), 2014.

demands for reparations: "Whatever money they pay it is good for me, for my daily life. But I would never tell myself ah that is it, it is compensated."<sup>70</sup> This points to the importance of combining compensation with other forms of reparations, particularly symbolic reparations, to mitigate the perception that compensation is paid as "blood money."<sup>71</sup>

Yet despite the feeling of unease implied in survivors' responses regarding monetary benefits, they were also adamant that compensation is the bare minimum that the GoI should provide: "If they do this for the survivors, the survivors will think the Iraqi government wants to do something for them, that the Iraqi government is supporting them. But until they don't give them a salary, the survivors will feel the government is not doing anything for them... [Survivors'] living would be from this salary and [they] would think that there is a human who is supporting them."<sup>72</sup> The prioritization of survivors in Iraq came up frequently in discussions surrounding compensation, which were often accompanied by references to their vulnerable conditions: "From one side, if [compensation] is related to justice, I am not proud of it, if it is money. From another side, now I am in Germany and I can work, but there are some survivors in Iraq, and they are vulnerable, they cannot work. So, from another side it is good for them."<sup>73</sup> Compensation will thus be seen as an acknowledgment of their suffering, that they are "valuable"<sup>74</sup> in the eyes of the GoI, while helping survivors rebuild their lives.

All respondents agreed that a monthly pension would be preferable as lump-sum payments would be finite and potentially wasted. A monthly payment can also help alleviate poverty, bringing stability and even a degree of financial independence: "If now I receive a lot at once, what would I do with it? I might buy something with it. That amount, regardless of how much it is, it will finish. But if it is on monthly basis, the living [costs] of the person and their families would be covered little by little. That is good."<sup>75</sup>

The YSL provides for a monthly pension to survivors, whose amount shall not be less than twice the minimum pension specified in the Unified Pension Law No. 9 of 2014 and its amendments. While the exact amount of compensation will be presumably determined through secondary legislation, the refer-

ence to the Unified Pension Law indicates that the amount shall not be less than IQD 1,000,000 per month (an equivalent of approximately USD 680). Moreover, the YSL states that receiving compensation under this programme shall not prevent survivors from receiving compensation under local laws or international decisions. This means that survivors who are widows, for instance, may still apply to Compensation Subcommittees under Law No. 20 to receive a pension for harms arising from their indirect victimhood as well as the YSL. Additionally, in line with best practices, Iraq has preferred a monthly pension instead of a one-off payment, which is known to make it relatively easier for survivors to remain in control of the money.<sup>76</sup> However, how this amount will be distributed (e.g., through direct pick-ups from MoLSA offices or deposits to bank accounts, the process of collecting the money and required documents), will impact the level of agency survivors can exercise in spending it.

## REHABILITATION

Rehabilitation measures include medical, psychological, legal, and social services. These are often critical for survivors of CRSV, which causes multifaceted harms. Participants in this study also prioritized rehabilitation, and psychosocial support in particular.

Many respondents had received medical and psychological care in Germany and spoke about the importance of having these services available for their wellbeing. Free and prioritized access to mental health services was raised as a primary need especially for survivors in Iraq, and even as a precondition to continuing with their day-to-day lives: "[T]he most important thing is for the psychology of the person to be good. It is like when you say I am hungry, you cannot sleep, study, work until you fill your stomach. Psychological state is also like that."<sup>77</sup> However, the stigmatization of mental health within Iraqi society remains a barrier to seeking psychological support.<sup>78</sup> As one survivor stated, "[W]e all saw in Iraq, when someone needs psychological support or needs to see a psychiatrist, they look at such people in a different way, as if they are crazy."<sup>79</sup> However, there is some progress within the Yazidi community in breaking this stigma.<sup>80</sup>

70. Interview, 15 December 2020, online.

71. Colleen Duggan and Ruth Jacobson, *Reparation of Sexual and Reproductive Violence: Moving from Codification to Implementation in The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (ed. Ruth Rubio-Marín), Cambridge University Press, 2009, p. 141.

72. Interview, 9 December 2020, online.

73. Interview, 9 December 2020, online.

74. Interview, 21 January 2021, online.

75. Interview, 26 January 2021, online.

76. Ruth Rubio-Marín, *Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue*, *William & Mary Journal of Women and the Law* 19(1), 2012.

77. Interview, 4 December 2020, online.

78. This was also observed among Shi'a Turkmen survivors in Tel Afar. See Bor, *Response to and Reparations for CRSV*, supra, n. 10.

79. Interview, 9 December 2020, online.

80. Zeynep Kaya, *Iraq's Yazidis and ISIS: The Causes and Consequences of Sexual Violence in Conflict*, *LSE Middle East Centre*, 2019.



Education and employment were raised as critical elements to support survivors in rebuilding their lives. Participants often expressed the positive impact of the language classes, school, or work they have in Germany on their emotional wellbeing as these activities and opportunities helped them cope with the trauma: "[Going to school] is just like putting all my thoughts in a box and locking it, but when not, all this thinking will come out."<sup>81</sup> Indeed, education and employment were often discussed as part of "keeping busy" as opposed to dealing with troubling thoughts: "As far as the person sits at home, whether in Iraq or here, there is nothing apart from thinking. But once the person is busy, the life of the person becomes normal little by little. It is true that we cannot forget, but the life of the person is managed."<sup>82</sup>

At the same time, participants demanded education and particularly employment as means to planning their futures. Even though Yazidi women are disadvantaged in both areas, gender dynamics have partly shifted toward equality post-genocide.<sup>83</sup> This is especially true for survivors in Germany as they are provided support in attending school and finding job opportunities. The empowering effect of education and employment and their importance in making decisions for survivors' futures and gaining financial independence were mentioned by many respondents. Considering that older survivors had little access to education, they mentioned vocational trainings and small business grants to help women with learning professional skills and earning income: "In the latest years it is better, but for a woman that is the mother of children, it is difficult for her to go and work in another place. They can give something simple to such a woman and she can work in it, like opening a shop for her. To give her trainings on how to manage a shop. And she can provide support for herself and her family, because there are women whose husbands are gone, or they don't have an older child to work for them."<sup>84</sup>

Health and psychological rehabilitation centres are provided under the YSL, with a reference to providing treatment to survivors within facilities in Iraq and if necessary, abroad. Resuming education without being constrained by age requirements is also included as a restoration measure, although further initiatives for Yazidi survivors to receive professional skills training could fall under the educational opportunities mentioned in the YSL. The responsible directorate shall also secure employment opportunities for survivors, including priority in public hiring at a rate of 2 per cent.

Implementing such measures for survivors outside the territory of Iraq is not as straightforward. Nonetheless, this does not justify depriving refugee survivors of these benefits. Considerations for implementation are discussed below.

## SATISFACTION

Satisfaction can refer to measures aimed at ceasing continuing violations, the public disclosure of truth, search for the missing, identification and proper reburials, public apologies for and acknowledgments of the violations and acceptance of responsibility, judicial sanctions against perpetrators and memorialization. Almost all of these were raised by respondents of this study, demonstrating the importance attributed to symbolic measures in combination with material benefits.

The most vocalized demand was initiating search and rescue operations for those who are still in captivity. Considering that thousands of Yazidis are still missing and instances of women and children being found in neighbouring countries, the urgency of this matter cannot be overstated.<sup>85</sup> Even though the KRG's Office of the Kidnapped and Rescue Affairs provides operational and financial support to families of the missing,<sup>86</sup> there is a need for internationally coordinated efforts to locate and rescue captive Yazidis. Many survivors raised this demand before any other, demonstrating a prioritization of indirect victimhood over direct violations they were subjected to: "Reparations for many mothers is the return of her daughter or her son, it is the biggest reparation."<sup>87</sup> This is not to say that harms suffered as direct victims should not be redressed, however, survivors would understandably question the genuineness of any reparation effort while violations against Yazidis, the same ones that YSL seeks to address, continue without any effort to cease them.

Unfortunately, there is a possibility that some of those who are missing were killed and buried in mass graves that are located near Sinjar. The UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) was established in August 2018 to support domestic efforts to hold ISIS accountable by collecting, preserving, and storing evidence. Since March 2019, the team has been working to exhume mass graves and identify remains in cooperation with the GoI.<sup>88</sup> The delay in exhumations has caused great agony to survivors while potentially destroying

81. Interview, 9 December 2020, online.

82. Interview, 9 December 2020, online.

83. Kaya, *supra*, n. 80.

84. Interview, 9 December 2020, online.

85. Most recently, a 7-year-old Yazidi girl was rescued in Ankara, Turkey after the captor posted an advertisement for her "sale" on deep web. Fehim Tastekin, [Online 'auctions' of Yazidi captives speak of ongoing Islamic State activity in Turkey](#), *Al-Monitor*, 2021.

86. Saman Dawod, [Yazidis still negotiating return of kidnapped women, children](#), *Al-Monitor*, 2020.

87. Interview, 9 December 2020, online.

88. UN Iraq, [UNITAD working with Government of Iraq to commence exhumation of mass grave site at Kojo, Sinjar Region](#), 2019.

crucial evidence of the genocide. The first reburial ceremony to honour 103 ISIS victims killed in Kocho was held in February 2021,<sup>89</sup> which some participants mentioned plans to attend. Survivors expressed the urgency of exhuming all mass graves and identifying the remains as not knowing whether their loved ones are alive has trapped them in a state of limbo: "The first time they announced the names of 60, then they said will bring 104 on January 31 to bury them. The rest will remain. When would they announce them, I don't know. And this is only Kocho, if each time they give the names of 100 and still they haven't exhumed the graves of the other Yazidis, this is difficult because many have the hope they will return. Those who were with [their loved ones when the attacks happened], they know they are gone, but they still have hope. If they know [their loved ones' fate], they will cut their hope and try to forget."<sup>90</sup>

Survivors also expressed that the gradual announcement of the identity of victims "repeats the genocide for [them] every few months."<sup>91</sup> This also creates several challenges for survivors in Germany in particular, who face hurdles when visiting Iraq for these purposes, as detailed in the below section on implementation. Instead, interviewees suggested that the names be announced collectively and stressed that exhumations should be completed immediately as they fear the bones might get lost, thus violating their right to truth and creating a perpetual state of uncertainty: "If the government works together [with other actors] and makes [the announcement of victims' identities] a one or two-time thing it is better. But if this takes years, that is also difficult. The bones might get lost, some might be taken by animals, some by water... It is like the person has two hopes, [maybe] our [loved ones'] bones are also among them, but if [the bones] are taken by water, the person would say maybe [the missing] are alive. It is difficult."<sup>92</sup> Participants further demanded for proper reburials conducted in accordance with Yazidi rituals and monuments marking the mass graves to honour the victims: "Even if we don't remain [in Iraq] for good, we want to go there once or twice a year... [T]he children also have the right to go to the graves of their family and know what had happened to their family. We want to have something there as well; the children have this right and I say we have this right as well."<sup>93</sup>

The Yazidi community has been advocating for Iraq to officially recognize the genocide since 2014. Participants of this study repeated this demand, mentioning that Iraq's acknowledgment would also encourage other countries to adopt resolutions in recognition of the genocide. They also demanded for August 3 be declared as a national day to commemorate the genocide to ensure it will never be forgotten, and for statues and museums to be established to memorialize the suffering of the Yazidi.

Even though they are not reparations *per se*, prosecutions of perpetrators handled simultaneously with other reparations mechanisms could have reparative effect. While UNITAD has been collecting evidence of ISIS crimes against the Yazidi, international crimes are yet to be legislated by the Gol,<sup>94</sup> and current trials against ISIS members held under anti-terrorism laws, failing to capture the gravity of the crimes committed.<sup>95</sup> Holding ISIS members accountable was raised by participants as a vital part of justice for the Yazidi Genocide, especially in terms of engendering a potential deterrent effect: "If [perpetrators] are not brought to courts now, maybe after ten years, the same person will appear with a different name and do this not only to the Yazidis but to other religions as well. Therefore, it is important for justice to be applied on those who did this to us, so as they won't do this to the generations coming after us, to other religions."<sup>96</sup> They also demanded participation in trials: "I want the person who did this to me to be brought to the court, and I [will] go and stand in front of him, so he knows how much he has done to us, but I am stronger than him. To stand in front of him."<sup>97</sup> The demand to prosecute perpetrators was directed not only against the Gol but also to other countries, European countries in particular, by mentioning foreign fighters who played an undeniable role in the crimes against Yazidi.<sup>98</sup> Still, the same participant emphasized that prosecutions alone would not satisfy their demands for reparations, especially while violations still continue: "[Prosecuting perpetrators] alone is not a part of reparation. There was a trial of an Iraqi [IS fighter] in Frankfurt and this was a very big thing for us. But it is not a part of reparation, it means he was brought to justice and justice is applied on him. The simplest example is that the Iraqi survivors are still captured."<sup>99</sup>

89. Jane Arraf, [Years After a Massacre, Yazidis Finally Bury Their Loved Ones](#), *The New York Times*, 2021.

90. Interview, 9 December 2020, online.

91. Interview, 21 January 2021, online.

92. Interview, 21 January 2021, online.

93. Interview, 16 December 2020, online.

94. UNITAD has reported ongoing work with the Gol in the codification of international crimes. [Fifth report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant](#), 2020.

95. Beth Van Schaack, [The Iraq Investigative Team and Prospects for Justice for the Yazidi Genocide](#), *Journal of International Criminal Justice* 16(1), 2018.

96. Interview, 9 December 2020, online.

97. Interview, 9 December 2020, online.

98. International Federation for Human Rights (FIDH) and Kinyat Organization for Documentation, [Sexual and gender-based crimes against the Yazidi community: the role of ISIL foreign fighters](#), 2018.

99. Interview, 9 December 2020, online.

The YSL includes many satisfaction measures. First and foremost, it legally acknowledges the Yazidi Genocide; even though there have been some executive orders to that end, this constitutes the first binding document that recognizes these violations as international crimes. The law also stipulates that the Ministry of Foreign Affairs will work to raise awareness of these crimes in international fora and organize search and rescue operations in cooperation with local and international authorities. The responsible directorate shall coordinate with the Mass Graves Directorate of the Martyrs' Foundation to exhume mass graves, identify remains, and hold proper reburials. August 3 is also declared as a national day to commemorate the genocide, on which activities to honour the victims shall be held. The Ministry of Culture, Baghdad Municipality, and other relevant authorities shall work on constructing monuments, statues, and exhibitions. The YSL only provides a framework of memorialization; the process of designing these specific initiatives, including commemorative ceremonies, monuments, etc., should include survivors and the Yazidi community to ensure respect for Yazidi rituals. This would also help prevent further marginalize those who are already vulnerable, especially women.

Several provisions of the YSL also touch upon criminal accountability, stating that the directorate shall coordinate with both local and international investigative and judicial bodies and provide data and evidence to help prosecute perpetrators. The Ministry of Foreign Affairs shall also work on extraditing perpetrators for criminal trials. Perpetrators of abductions against the Yazidi shall not be granted any amnesty, and authorities shall follow up on the arrest and trials of perpetrators and provide protection for survivors and witnesses. These provisions must be followed up by secondary legislation as well as amendments in the penal and criminal procedure laws that clarify their implementation; ensuring they are in line with international standards, especially for protection of survivors and witnesses, is critical for safe participation in trials.

## GUARANTEES OF NON-REPETITION

Guarantees of non-repetition encompass a myriad of measures directed at preventing the recurrence of violations. This includes civilian control of military and security forces, strengthening judicial institutions, human rights trainings to law enforcement, and reforming laws that contributed to or allowed these violations to occur in the first place. Such measures are particularly

well suited for tackling the injustices that underlie the violations by transforming these injustices towards equality. While the YSL mentions preventing the recurrence of violations, it does not provide any specific methods to reach that goal.

Ensuring that another genocide does not take place was a critical demand of participants. Many survivors expressed serious doubts that the Gol could keep its promise of preventing another genocide and referenced the current security issues in Sinjar. As mentioned, this perception constitutes the main barrier to return: "If I tell you I dare to go to Iraq and go to my village and I won't be scared, it would not be true. If I go, I wouldn't dare taking my children, because I don't know what will happen. We want to have security more than anything else, for what happened to us not to be repeated and not to happen to our children."<sup>100</sup>

How preventing another genocide could to be achieved was not discussed in length, as previously explained in the methodology chapter. However, a common theme mentioned throughout the interviews was international protection.<sup>101</sup> Additionally, participants mentioned the fragmented administrative and security landscape of Sinjar and Yazidis' lack of political control over their homeland: "I will think of [returning] when I know Sinjar is free. When I say free, I don't mean only from ISIS, but from the governments too, from the [political] parties that are fighting over Sinjar. [Sinjar will be free] when it is in the hands of Yazidis, when others don't interfere."<sup>102</sup> Integration of Yazidis to security forces and law enforcement as well as a democratically-elected local administration could play an important role.<sup>103</sup> The recognition of the genocide by Iraq was also cited in this context for its potential in preventing violence, as it would imply a commitment to protect the Yazidis from further harm:<sup>104</sup> "74 genocides were committed against the Yazidis but none of them is admitted. If it is admitted this time, it will mean that there are some who care about the Yazidis."<sup>105</sup>

A failure of Iraq in the YSL has been to tackle the issue of registration of children born of rape by amending its personal status laws. These laws are not only discriminatory against religious minorities but also exacerbate existing stigma, consequently worsening the aftermath of the genocide's impact on the Yazidi community. All respondents agreed that the issue of children born of rape is quite sensitive because the fathers are also the perpetrators. Additionally, Yazidism is an endogamous religion,

100. Interview, 16 December 2020, online.

101. In the same direction, see CIGE, *supra*, n. 10.

102. Interview, 9 December 2020, online.

103. The Sinjar deal reached between the Gol and KRG in October 2020 stipulates that 2,500 individuals will be hired for local security positions in coordination with the KRG, 1,000 of whom will be Sinjar residents and 1,500 IDPs whose place of origin is Sinjar. It also provides for a Yazidi from Sinjar to be "appointed", not elected, as the mayor of Sinjar.

104. Güley Bor, *Toward Transformative Reparations for the Yazidi Genocide: Delivering the Unfulfilled Promise of 'Never Again'*, 2021 (working paper).

105. Interview, 9 December 2020, online.

requiring both parents to be Yazidi for the child to be accepted as Yazidi. Many respondents, regardless of their opinions as to whether the children should be accepted as Yazidi, emphasized that neither the mothers nor the children should have any guilt whatsoever and that they should be provided with support and preferably protection outside of Iraq. However, they also mentioned that one of the main obstacles to integration is the registry because children are registered under the father's name and religion. As one survivor stated, "[If I had a child born of rape] I would never let them know that they are the children of Daesh. I can raise those children, but to register them on the names of their fathers and grandfathers so that one day they return, or become Daesh? I am not with those who do that at all, to be honest."<sup>106</sup>

The Iraqi Council of Representatives may have taken a step back on this issue in the YSL to allow for Yazidi leaders to decide whether these children would be accepted into the faith. This line of thinking, however, conflates obligations of the state arising from international law with faith-based decisions made by religious authorities. The victim status of children born of rape is recognized separately from the victim status of their mothers; thus, children born of rape also have a right to reparation under international law.<sup>107</sup> Consequently, the Gol is obliged to provide reparations to the children as well, regardless of which faith they belong to or decisions made by religious leaders. The YSL could have introduced exceptions to personal status laws regarding the registration of children born of rape. Such provisions could have remedied laws discriminating against women from religious minorities without interfering with the internal affairs of Yazidi religious leaders. Additionally, acknowledgment of their victim status could have served as a first step in the reintegration of children born of rape by alleviating stigma.

Even if such provisions have been excluded from the YSL, amending personal status laws that discriminate against women from religious minorities must remain on the Gol's agenda. Reparation efforts should be complemented with the codification of international crimes, adoption of the law on preventing violence against women, amendments to sexual violence provisions contained in the criminal law to better conform with international standards, alongside security sector reform, reconstruction and development. Overall, it is crucial that reconciliation works as part of a forward-looking objective

that is tackled in conformity with these measures to address long-lasting, inter- and intra-community tensions that have deepened with the ISIS conflict. The YSL (on its own) is not best suited for many of these measures. Instead, these changes require wider political will and institutional reform to achieve fundamental social change.<sup>108</sup> However, the YSL's explicit mention of non-repetition as a goal could trigger larger debates about transforming structural inequalities faced by religious minorities in Iraq, which is a crucial part of fulfilling the promise of "never again."



Figure 4: Raber Aziz/IOM Iraq

106. Interview, 4 December 2020, online.

107. Joanne Neenan, *Closing the Protection Gap for Children Born of War: Addressing Stigmatization and the Intergenerational Impact of Sexual Violence in Conflict*, LSE Centre for Women, Peace and Security, 2018.

108. Clara Sandoval, *Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition* in *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (ed. Roger Duthie and Paul Seils), International Center for Transitional Justice, 2017.

## VI. CONSIDERATIONS FOR ENSURING ACCESS TO REPARATIONS BY REFUGEE SURVIVORS

As detailed above, the YSL seems to capture many key demands of Yazidi survivors in Germany. The success of the programme, however, depends on its swift and survivor-centric implementation. The Pinheiro Principles requires states to ensure that refugees are able to access claims processes regardless of their place of residence. This is critical because accessing such processes may have an impact on survivors' decision to return to Iraq, integrate to Germany, or resettle in a third country.<sup>109</sup> Questions on implementation have a direct impact on accessibility of the programme by survivors outside the territory of Iraq. Given that implementation was not a core focus of this study, a full picture of potential barriers to accessing reparations exceeds the scope of this report. This section instead touches upon main considerations for ensuring the accessibility of the programme by refugee survivors.

A second guiding principle is ensuring participation of survivors, victimized communities, and civil society in determining the specificities of the reparative measures and their implementation. Even though survivors may not be well-suited to speak to the technical details, their opinions, needs, and demands must be heard by decision-makers as they create procedures that are truly accessible. Cooperation with CSOs in Iraq and KRI, which have been supporting survivors since 2014 and have gained the trust of many, could accelerate and improve implementation. Coordinated cooperation among stakeholders could also prevent duplication of efforts and bring credibility to the programme. Involvement of international organizations with experience in mass reparations initiatives that have international reach, such as IOM, could bring technical expertise to the table.

The first step in creating accessible processes to refugee survivors is collecting data and assessing the universe of survivors outside the territory of Iraq, including basic demographic information, violations, harms, and vulnerabilities. This data would allow the GoI to reach an estimated number of potential applicants, which would be required for financial planning and budgeting. Existing sources of information collected by CSOs and local and international authorities could help in this endeavour.<sup>110</sup> The YSL indicates that the directorate shall prepare data belonging to survivors by also drawing from information collected by

governmental and non-governmental institutions working in this field. For survivors outside the territory of Iraq, data collected by governmental institutions such as the Office of the Kidnapped and Rescue Affairs, the CIGE, and the Survivors' Centre of the KRG and MoLSA and Ministry of Migration and Displacement of the GoI could be of use. IOM, as the facilitator of the logistics of the Baden-Württemberg programme, among others, can also provide data. A number of CSOs in Iraq and KRI have assisted governments in collecting applications to admissions programmes and documented survivors prior to their departure. Many of them also established offices in Europe to serve refugees and remain in close contact with survivors. Additionally, there are a number of Yazidi CSOs set up by the diaspora community that could also be a source of information. Finally, governments who ran the humanitarian admissions programmes could also share statistical data. Of course, some survivors were forced to leave Iraq through irregular migration routes and are not necessarily registered in the host countries. Further mapping exercises in cooperation with CSOs that are trusted by survivors might prove necessary in order to obtain more accurate statistics.

Secondly, the GoI should create accessible application procedures for survivors abroad. According to the UN Basic Principles, states shall "make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy".<sup>111</sup> The Pinheiro Principles further asks states to "seek to establish restitution claims-processing centres and offices throughout affected areas where potential claimants currently reside".<sup>112</sup> Accordingly, the GoI can allow submitting claims via post or proxy, create an online application portal, or authorize Iraqi embassies and consulates to receive applications. Considering that a number of survivors may be illiterate or have difficulty using digital platforms, dispatching trained statement takers to countries with high numbers of survivors such as Germany, Canada, Australia, and France and providing free legal aid to support survivors in applications can ease the process. CSOs and international organizations working with survivors in these countries can also support filling out registration forms.

109. ICTJ Research Unit, *Transitional Justice and Displacement: Challenges and Recommendations*, Brookings-LSE Project on Internal Displacement, 2012.

110. The author conducted another study commissioned by IOM Iraq in 2019 on existing sources of information regarding CRSV in Iraq that could be used to register and verify reparation claims. Data collected from 17 stakeholders engaged with documentation (including CSOs and governmental bodies) revealed a large volume of pre-existing information concerning survivors of CRSV that help the GoI in planning and implementing the reparation programme. Güley Bor, *Mapping Efforts to Document Conflict-Related Sexual Violence (CRSV) in Iraq: Analyzing Scale, Models and Quality of Data Collection for Purposes of Reparation and Survivor Assistance Programs*, IOM Iraq, 2019 (unpublished report).

111. *Supra*, n. 9, §12(d).

112. *Supra*, n. 13, §13.5.

Thirdly, evidentiary requirements should be kept flexible enough to ensure the maximum number of survivors are included in the programme. The YSL states that decisions on applications shall be rendered following an interview conducted by the committee handling claims. It is yet undetermined how this interview is to be conducted with survivors abroad and what other evidentiary requirements shall be put in place to support claims for reparations. A possible solution is to establish mobile units or authorize embassies and consulates to conduct interviews; however, ensuring that statement takers are trained in psychological first aid and gender-sensitive interview techniques is crucial to avoid re-traumatization. Ideally, considering the over-documentation of Yazidi survivors of CRSV in particular, interviews should be used only when other supporting evidence does not suffice in documenting the claim or when there is a particular demand by the survivor to be heard by the committee. This would also save the committee time and resources, thus accelerating the processing of claims and redirecting much needed resources to survivors. Presumptions about the causal links between harm and violations for those who can place themselves at certain locations where widespread human rights violations are known to have occurred at a certain time (e.g., applicants who can place themselves in Kocho between 3-15 August 2014) through witness testimony, can be a useful solution.<sup>113</sup> Other evidence to be required by the committee should not be burdensome for the applicants; using relaxed standards to allow for the submission of mental health records, letters by Iraqi or other governmental institutions or CSOs to which survivors previously submitted a testimony to, witness testimony or photographs would increase the number of survivors benefitting from the initiative. The GoG should also support survivors in issuing documents to support their reparation claims.<sup>114</sup>

Fourthly, outreach activities should be implemented for survivors abroad to inform them of the reparation programme.<sup>115</sup> The Pinheiro Principles states that information regarding claims processes shall be made available, including in countries of asylum, so that all affected persons are aware of the process.<sup>116</sup> Ideally, outreach activities should have started prior to the YSL's adoption to raise awareness on the right to reparation and inform survivors of the bill. Interviews conducted as part of this study revealed that very few survivors were aware that Iraq had been working on establishing a reparation programme. Now that the YSL has passed, the GoG should immediately commence outreach

activities in countries where survivors reside. The GoG can do so through the support of CSOs, international organizations, and the GoG. Considering that Facebook is used widely, including for disseminating information to survivors abroad on identification of remains exhumed from mass graves, social media can also be utilized as a low-expense method to spread information. Outreach activities should continue after the registration process opens to inform survivors on accessing registration forms, meetings with statement takers, confidentiality measures, eligibility requirements, necessary documents, and deadlines. Designing outreach activities carefully to manage expectations from the reparation programme is crucial, particularly in terms of timing.

Information sharing should flow both ways by creating safe platforms for survivors to actively participate in the process of designing the implementation structure and to hear survivors' opinions about the logistics of the programme. Survivors' feedback should be sought when designing the format and details of the application procedure; the registration form should also be pilot tested by survivors abroad.<sup>117</sup> The MoLSA and the committee in charge of handling claims should coordinate with and establish close working relationships with CSOs for this purpose.

Last but not least, decision-makers should carefully consider potential obstacles in distributing benefits to survivors abroad. This may require innovative solutions. In terms of compensation, survivors raised the importance of ensuring that the money actually reaches and remains in the survivors' hands. For beneficiaries who are part of the Baden-Württemberg programme, the monthly pensions can be deposited to their bank accounts that are already used to collect welfare payments from the GoG. Not all refugee survivors have bank accounts, however. In these cases, potential solutions to explore include supporting survivors in setting up bank accounts or sending monthly checks to a designated address; however, the latter may risk creating a number of logistical challenges and the money being confiscated by others. Another important point that was articulated during the interviews was the potential tax to be levied on the compensation by the GoG. The 1951 Refugee Convention already prohibits host states from imposing taxes on refugees higher than those collected from its nationals, yet the GoG should exempt reparations payments from taxation altogether.<sup>118</sup>

113. Ruth Rubio-Marín, *The Gender of Reparations in Transitional Societies* in *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (ed. Ruth Rubio-Marín), Cambridge University Press, 2009.

114. Cantor, *supra*, n. 12.

115. Ruben Carranza, Cristián Correa, and Elena Naughton, *Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations*, International Center for Transitional Justice, 2017.

116. Cantor, *supra*, n. 12.

117. Carranza et al, *supra*, n. 115.

118. For instance, reparations for Holocaust survivors are exempt from tax in a number of jurisdictions. See [Conference on Jewish Material Claims Against Germany \(Claims Conference\)](#).

Rehabilitation services will be made available in Iraq, however, survivors who have no intention to return will understandably not be in a position to access them. An alternative method could be to deposit an amount of cash to survivors' bank accounts for those who demonstrate the need for treatment.<sup>119</sup> Survivors from the Baden-Württemberg programme already have access to certain medical and psychosocial services free of charge in Germany. Even though this does not constitute reparations, it does satisfy some of the survivors' need for rehabilitation services. Still, this money can be given to survivors who demonstrate the need for further treatment not covered by the GoG, as well as to those who do not have access to any services in their host countries.

Participation of survivors abroad in satisfaction measures constitutes one of the most challenging aspects of this reparation initiative. This was raised by almost every respondent. Many of these measures require traveling to Iraq for purposes such as providing testimony, undertaking DNA tests, attending commemorations, and reburial ceremonies. However, interviews revealed that both Iraqi and German authorities have made these trips difficult for survivors. On the GoG side, survivors are not provided with any financial support to cover their trips and are often left with no choice but to borrow money to visit Iraq. Furthermore, the GoG does not seem to take into consideration the impact of rescheduling significant events on survivors abroad. Practically speaking, survivors plan their trips (including childcare and permission from school and work) around a particular date to attend a reburial ceremony only for that ceremony to be later postponed, which complicates plans. Thus, survivors asked for both financial support and better planning of such events, especially for reburials, so that they can also attend: "From my family there are about 30-40 people in the mass graves... It is our right to go there and bury them... If we don't go on such a day, believe me, we will never feel relieved. We didn't see how they killed them and what they went through, we want to be there when they bury them. This would be very important if they do it for us."<sup>120</sup>

Although the GoG and the state of Baden-Württemberg are not part of the reparations initiative, their support to Yazidi survivors in Germany could have great impact on survivors' access to reparation benefits in Iraq. Survivors complained about the reductions of their pensions due to visits to Iraq, as well as lack of childcare facilities. Survivors cannot finance their own trips and their children's, especially because they are left without income during their visits and are not provided with any support should they choose not to bring their children. These make it very difficult to organize their stays, adding to

the distress of planning or undertaking visits for justice purposes: "I faced problems here [because of my trip to Iraq]... They reduced a lot from our salary ... I didn't go there to have fun and I don't have any family there... I went for the court, I did a blood test, that is why I went."<sup>121</sup> Furthermore, there are survivors who have arrived in Germany through irregular migration routes, including husbands of survivors that were admitted to the Baden-Württemberg programme and whose status in Germany do not permit them to travel to Iraq. This prevents survivors from participating in justice mechanisms that have great importance in the healing process.

The GoG and the state of Baden-Württemberg should facilitate Yazidi refugee survivors' participation in Iraq's reparation programme. This should also include outreach to survivors that neither the existence of this programme, nor the decision to participate in it have an impact on their legal status in Germany. This is because a reparations initiative alone does not amount to a change in personal circumstances for cessation of refugee protection and visiting the country of origin to participate in a reparation programme does not indicate that the person has re-established themselves there.<sup>122</sup> This must be emphasized especially in light of reports surrounding Germany's refusal to grant asylum to Yazidis on the ground and that Iraq is no longer unsafe for them after ISIS's defeat.<sup>123</sup>



Figure 5: Raber Aziz/IOM Iraq

119. Cantor, *supra*, n. 12; Inter-American Court of Human Rights, *Case of the Miguel Castro-Castro Prison v. Peru*, Judgment of November 25, 2006.

120. Interview, 16 December 2020, online.

121. Interview, 16 December 2020, online.

122. Cantor, *supra*, n. 12.

123. Sareta Ashraph, *Asylum and the Duty to Protect the Yazidis from Genocide*, *OpinioJuris*, 2018.

## VII. CONCLUSION AND RECOMMENDATIONS

The YSL has the potential of vastly improving the lives of survivors. Even though its formation took place more than six years after the genocide, swift implementation can still address much of the harms that have worsened due to a lack of response and redress. Creating procedures that ensure access by refugee survivors is necessary to abide by the principle of non-discrimination. The following recommendations can be of use when considering applications from outside the territory of Iraq, the distribution of benefits to refugee survivors, and implementation of reparations for survivors of ISIS more broadly.

### TO THE GOI:

#### For survivors abroad:

1. Ensure the participation of survivors in any reparation mechanisms and their access to benefits regardless of place of residence. This can be done by considering particular vulnerabilities of refugee survivors that could hinder their access to such initiatives,
2. Create safe platforms for refugee survivors to voice their needs and wishes, and design application procedures and specificities of benefits (including collective symbolic measures) in accordance with survivors' demands and conditions,
3. Immediately commence outreach activities directed at survivors abroad, informing them of the YSL while also managing expectations,
4. Provide financial support to survivors abroad for trips to Iraq related to justice and reparations mechanisms, and
5. Carefully schedule and announce commemorative events to ensure survivors abroad are able to participate.

#### For all survivors:

1. Consider the historical and structural inequalities faced by women, religious minorities, and women of religious minorities while designing the details of implementation and aim for maximum transformative impact,
2. Considering the delay in establishing a formal initiative to provide redress, swiftly implement the YSL and distribute benefits to survivors,
3. To address perilous conditions of survivors in Iraq, continue and expand interim reparation programmes until benefits under the YSL are distributed,
4. In light of the principle of non-discrimination, create redress mechanisms for survivors from communities other than Yazidi, Christian, Turkmen and Shabak. Also include non-Yazidi children in reparation initiatives by creating new programmes or amending the YSL,
5. Urgently initiate rescue operations through coordination with local and international bodies, as well as governments of neighbouring countries where survivors are known to remain in captivity,
6. Swiftly complete the exhumations of mass graves and identification of remains, and make an effort to announce the names of identified victims collectively rather than gradually in consideration of the emotional toll of each announcement,
7. Provide specialized medical and psychosocial services to survivors while implementing awareness raising activities directed at mental health stigma,
8. Create educational programmes for survivors that also include trainings on income-generating skills,
9. Support survivors in finding job opportunities while considering that many have duties as caregivers for their children, injured, and elderly family members, e.g., by providing of free-of-charge childcare facilities,
10. Address protracted displacement by tackling main barriers to return, especially security, destruction of property and infrastructure, and lack of livelihood in Sinjar, to create a durable solution to displacement and facilitate voluntary returns to the place of origin,
11. Undertake reconstruction, development, and security sector reform in harmony with reparation programmes to address deep-rooted inequalities faced by victimized communities, the Yazidi in particular, and guarantee non-repetition of such atrocities,
12. Coordinate with UNITAD and governments of citizens who have joined ISIS in prosecuting perpetrators and sharing evidence of international crimes,
13. Bring penal and criminal procedure laws in line with international standards by codifying international crimes to try perpetrators and incorporating protection measures for survivors to safely participate in trials,
14. Amend personal status laws that discriminate against women from religious minorities by allowing for mothers to register their children under their own name and religion,
15. Address the precarious situation of children born of rape and their mothers by ensuring their safety and providing reparations that aim to redress primary harms and secondary harms, especially stigma,
16. Explore the possibility of financing part of the reparation programme with seized ISIS assets, and
17. Establish close working relationships with CSOs and international organizations, especially those working with survivors abroad, to provide support to programme applicants.



**TO THE GOG:**

1. Fulfil survivors' right to a family unity by accelerating the asylum claims process and granting residency to allow survivors to travel to Iraq for justice and reparations mechanisms without impacting their legal status in Germany,
2. Facilitate survivors' participation in such mechanisms, including the issuance of relevant documents, support in administrative procedures, payment of pensions without any deductions, and providing free childcare services for trips to Iraq for justice and reparations purposes,
3. Conduct outreach activities informing survivors of the conditions of the Baden-Württemberg programme, including guarantees that their status in Germany will not be impacted by their participation in the reparation programme,
4. Support the Gol in its outreach to survivors in Germany regarding the YSL,
5. Exempt any benefits given by the Gol from taxation, and
6. Advocate with Iraqi decision-makers to amend personal status laws and address stigma against children born of rape and their mothers to ensure they can live safely in Iraq; consider creating an admission programme for the mothers and the children from Syria and Iraq while ensuring their confidentiality.

**TO IOM:**

1. Provide technical support and expertise to the Gol in designing the implementation procedures of the YSL,
2. Support survivors' participation in the design of the programme's implementation,
3. Support the Gol in outreach activities directed at refugee survivors,
4. Provide trainings to government officials involved in the programme on the survivor-centred approach, statement taking and psychological first aid, among others,
5. Build the capacity of CSOs working with refugee survivors to help facilitate applications for the reparation programme submitted from outside the territory of Iraq, and
6. Provide legal aid, including assistance for the completion of registration forms and gathering supporting documents, to refugee survivors claiming reparations and accessing benefits.

**TO CSOS:**

1. Support the Gol in outreach activities directed at refugee survivors,
2. Liaise with the Gol on statistical data pertaining to refugee survivors as well as their particular needs, and
3. Support refugee survivors claiming reparations in the application process through the issuance of supporting documents and providing assistance in completing registration forms.

## ACKNOWLEDGMENTS

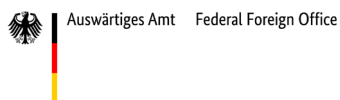
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