

Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls

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(Please use this reference in your reply)

10 May 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 45/10, 45/3, 44/5, 44/8, 52/5, 49/10, 52/7, 50/7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged recent imposition of additional requirements for victims/survivors (including women and girls) of gross human rights violations, such as gender-based violence and sexual violence, enforced disappearance, torture, slavery and killings committed against Yazidi, Christian, Turkmen, and Shabak minority communities by the Islamic State of Iraq and the Levant (ISIL) to file a criminal complaint to be eligible for reparation under the Yazidi Survivors Law (YSL) and associated by-laws. The new requirements substantially impair the realization of the rights of victims and survivors to reparation as stipulated under the YSL and international standards.**

In a previous joint communication by the Special Procedures mandate holders to your Excellency's Government sent on 15 September 2022 (AL IRQ 3/2022), we have noted the progress achieved towards recognizing and redressing the gross human rights violations (including sexual violence, enforced disappearance, torture, slavery, and killings) suffered by Yazidi, Christian, Turkmen, and Shabak communities through the adoption of the YSL of March 2021 and its regulations of September 2021. However, we urged the relevant authorities to adopt the necessary measures to ensure their effective and prompt implementation to guarantee access to justice and reparations to victims, and expressed concern regarding a series of challenges encountered in their implementation process. We regret that to date we have not received a response to the communication.

According to the information received:

Pursuant to the enactment of the YSL and associated by-laws and the specific requirements of article 10 of the YSL, a committee was created within the Government of Iraq with a mandate to consider, review and reach decisions on reparation applications submitted by survivors as well as on related appeals. In September 2022, the reparation application process was officially launched.

Both the YSL and the by-laws integrate a victim-centered approach to the reparation process aimed at ensuring the protection of survivors and preventing their exposure to stigma and re-victimization. In particular, the norms establish relaxed evidentiary standards to prove the harm suffered by victims, avoiding invasive methods of investigation and verification. In particular, the by-laws establish that survivors may submit a wide range of documents that support their reparation claims such as Government records, NGO reports, and eyewitness testimony, among others (article 8.1). They further establish that the reparations committee can conduct interviews with the applicant if needed (article 8.3) and that it shall exhaust official evidence before resorting to other proof (article 8.2).

Despite the initial indications that the reparations committee would adopt relaxed evidentiary standards in line with the provisions of the by-laws, and the existence of a plethora of pre-existing evidence collected by official bodies and NGOs, two months into the application process the reparations committee started requesting victims and survivors to lodge a criminal complaint with an anti-terrorism court in Iraq before submitting a reparation application, and to enclose such relevant investigation documents together with their reparation application. The applications of victims and survivors who do not submit investigation documents are expected to be rejected.

While reiterating our appreciation for the adoption of the YSL establishing an administrative reparation programme, and without prejudging the accuracy of the new allegations, we express serious concern at the alleged imposition of additional requirements for victims and survivors to lodge a criminal complaint to be eligible for reparation through the mechanisms established pursuant to the law and associated by-laws as this adds an additional unnecessary burden.

We are concerned that the new requirements may have a negative impact in the realization of the rights of victims and survivors, including women and girl victims/survivors of sexual and gender-based violence, to reparation and remedy as stipulated under the law and international standards. Administrative reparation programmes as the one established under the aforementioned legal framework are crucial avenues for victim and survivors of gross violations of human rights and serious violations of international humanitarian law to seek and receive reparation for the harm suffered, as they facilitate access for victims and survivors through faster and affordable processes outside of judicial processes, simplify evidentiary thresholds and burden of proof on victims and survivors, and reduce their exposure to stigma and re-traumatization.

Administrative reparation processes provide an alternative to pursuing claims through the courts which are usually prohibitively expensive for many victims and

survivors and take years to resolve, leaving them without access to much needed reparation during this period. Moreover, since judicial proceedings entail establishing the civil or criminal responsibility of the perpetrator, the standard of evidence is naturally higher than that required to recognize victim status for the granting of reparation. In this regard, we are concerned that the new procedure in place may contravene international standards in the field of reparation, according to which victims should be considered as such regardless of whether the perpetrator of the violation is identified, apprehended, or convicted.¹ We are further concerned that requiring survivors and victims to file a criminal complaint is unduly onerous and in violation of international standards requiring States to guarantee that they are treated with humanity and respect for their dignity, to adopt appropriate measures to ensure their safety, physical and psychological well-being and privacy, and to ensure to the extent possible that victims and survivors benefit from special consideration and care to avoid re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.² Administrative reparation programmes must aim at reducing survivors' and victims' exposure to stigma and re-traumatization and at guaranteeing their wellbeing throughout the administrative process. There are significant obstacles that prevent survivors and victims from reporting cases, including trauma and fears that exposure will lead to stigmatisation or further violence. To counter these challenges, administrative programmes must entail appropriate mechanisms to safeguard survivor's privacy and safety and avoid imposing unnecessary burdens on them, such as onerous evidentiary standards. This is particularly pertinent with respect to survivors of conflict-related sexual violence, given the stigma that society often imposes on them and the difficulties associated with providing evidence and witnesses of the crime. We would like to note that it is therefore inconsistent with the nature and rationale of a non-judicial domestic reparation programmes such as the one established under the Yazidi Survivors Law, and with international standards, to require victims to lodge a criminal complaint to be eligible for reparation. Moreover, such requirements would have the effect of dissipating the important gains ensued with the enactment of the law and the establishment of the administrative program.

We reiterate our concern expressed in communication IRQ 3/2022 in relation to the alleged failure of the Iraqi Government to ensure effective access to remedy and reparation to all categories of ISIL victims, especially women and girls who have been victims of gender-based violence. We remind your Excellency's Government that all survivors of terrorism must be protected and assisted. These victims collectively have the right to be recognized, to be treated with compassion and respect for their dignity, and to be informed of their right to adequate, effective, and prompt reparation, which includes their being readily accessible.³ They must be provided legal recognition and status, as well as access to adequate remedies, including physical and psychosocial support, legal and material assistance, justice and truth.⁴ States must uphold their obligations towards victims of terrorism and ensure they are granted the necessary protection and assistance in due consideration of applicable international standards.⁵ We further underscore that women who are subjected to violence should be provided

¹ 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, article 9.

² Ibidem, article 10.

³ A/66/310, para. 25

⁴ A/HRC/16/51, para. 25

⁵ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/66/310, para 27.

with information and access to the mechanisms of justice and just and effective remedies for the harm that they have suffered, as provided by national legislation.⁶ The right to access to justice for women is essential to the realization of all the rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please inform about the measures adopted to implement the YSL and associated by-laws and to ensure that reparation processes adopted pursuant to them are victim-centered, ensure the well-being and safety of survivors and victims, and protects them from unnecessary exposure to stigma and re-traumatization.
3. Please inform how the requirement for victims and survivors to file a criminal complaint to be eligible for reparation under the administrative programme is proportionate to the aim of establishing their victimhood, in view of the nature and rationale of administrative reparation programmes and the plethora of pre-existing evidence collected by official bodies and NGOs and submitted by survivors themselves regarding the harm they suffered.
4. Please inform how the decision of the reparations committee requiring victims and survivors to lodge a criminal complaint to be eligible for reparation under the administrative programme complies with the provisions of the YSL and associated by-laws as well as with international human rights standards.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

⁶ Article 4 of the Declaration on the Elimination of Violence Against Women

Please accept, Excellency, the assurances of our highest consideration.

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non-recurrence

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Dorothy Estrada-Tanck
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and without prejudging the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to refer to the obligation to investigate and punish gross human rights violations and to provide redress to victims. We recall articles 2, 6, 7, 9 and 16, read alone or in conjunction with article 2(3) of the Covenant on Civil and Political Rights, ratified by Iraq on 25 January 1971, which guarantee the rights of persons whose rights or freedoms are violated to have an effective remedy, the right to life; right to liberty and security; the right to recognition everywhere as a person before the law and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; also provided for in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Iraq in 2011.

Furthermore, we would like to recall the right of victims of human rights violations to receive full reparation for the harm suffered, pursuant to their right to an effective remedy established by article 2.3 (a) of the ICCPR. The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005 (articles 31-34) recall the duty of States to make reparation to victims and establish that all victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings. Moreover, it establishes that beyond these forms of remedy, reparations may be provided to victims through programmes, based upon legislative or administrative measures, funded by national or international sources, addressed to individuals and to communities.

Similarly, the 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 establish the right of victims to receive adequate, effective and prompt reparation for the harm suffered, and to have access to relevant information on reparation mechanisms, pursuant to their right to an effective remedy. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations (paragraph 16). Reparation should be proportional to the gravity of the violations and the harm suffered. Victims should be provided with full and effective reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (principles 11, 15, and 18). Moreover, the Basic Principles establish that victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation (principle 10). In addition, they establish that

a person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim (principle 9).

In his report on domestic reparation programmes for victims of serious human rights violations, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence noted that registries allow State authorities to decide who is eligible for reparation. However, the object of a registration process is not to challenge the veracity of the claims made by the victims or the evidence they have provided, rather to assume in good faith that what has been said is a statement of truth. The Special Rapporteur noted with appreciation that many States place the burden of proving the damage on State institutions rather than on victims, or that they apply lower standards of evidence (A/HRC/42/45, paragraph 57).

We would like to further recall that Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that a victim of torture and other cruel, inhuman or degrading treatment or punishment has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of death of a victim as a result of torture or other ill-treatment, his or her dependents shall be entitled to compensation. We refer your Excellency's Government to the Committee against Torture's General Comment No. 3 (2012), which specifies that victims shall be considered as such regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted (para. 3), or regardless of the victim's participation in court proceeding (see Report of the Special Rapporteur on Torture, A/HRC/52/30, para. 47).

We further draw your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which provides that victims of acts of enforced disappearance and their families shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible. In the event of the death of the victim as a result of an acts of enforced disappearance, their dependents shall also be entitled to compensation (article 19). We also refer to article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) which guarantees the right of each victim to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. We make reference to the Working Group's General comment on the Right to the Truth in Relation to Enforced Disappearances (A/HRC/16/48), which elaborates on the right to the truth as both a collective and an individual right. Each victim has the right to know the truth about violations that affected him or her, but the truth also has to be told at the level of society as a "vital safeguard against the recurrence of violations". We also make reference to the Working Groups report on Standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3).

We would like to bring your Excellency's Government's attention to obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which your Excellency's Government acceded on 13 August 1986. In its General Recommendation No. 19 (1992), updated by General Recommendation 35 (2017), the Committee CEDAW stated that gender-based violence

against women impairs or nullifies women's enjoyment of their human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of CEDAW, whether perpetrated by a public official or a private citizen, in public or private life. Thus, the Committee considers that States parties have an obligation to act with due diligence to investigate and punish acts of violence, including sexual violence against women and girls, and to provide adequate compensation without delay. In General Recommendation No. 35, the Committee sets out specific punitive, rehabilitative, preventive and protective measures that States should adopt to fulfil this obligation, making it clear that "States parties will be held accountable for failing to take all necessary measures to prevent, investigate, prosecute, punish and compensate victims of gender-based violence by non-State actors. In General Recommendation No. 33, the Committee stated that the right to access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good quality, the provision of remedies for victims and the accountability of justice systems. The Committee recommended revision of the rules on the burden of proof in order to ensure equality between the parties in all fields where power relationships deprive women of fair treatment of their cases by the judiciary.

We would also like to bring to your Excellency's attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women. It provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. The Declaration also notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

Furthermore, we would like to draw your attention to the resolution 2467 adopted by the Security Council in 2019, which calls for a survivor-centered approach to inform all prevention and response measures, including holistic survivor-centered transitional justice to address the root causes of conflict-related sexual violence and provides for transformative reparations (S/RES/2467).

We also deem it appropriate to make reference to Commission on Human Rights Resolution 2005/41, which strongly condemns violence against women and girls committed in situations of armed conflict, such as murder, rape, including widespread and systematic rape, sexual slavery and forced pregnancy, and calls for effective responses to these violations of human rights and international humanitarian law. In this context, reference is further made to the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention), which provides that in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race,

colour, religion or faith, sex, birth or wealth, or any other similar criteria. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, are and shall remain prohibited acts at any time and in any place whatsoever with respect to the above-mentioned persons.

In its report to the Human Rights Council on women deprived of liberty (A/HRC/41/33), the Working Group on discrimination against women and girls noted that women and girls may also be targeted and detained based on their religion, ethnicity, tribal identity or place of origin, specifically referencing the abduction and detainment of Yazidi women in Iraq. The experts urged Governments to provide effective protection for women and girls from abduction and detention by non-State criminal or armed groups, guarantee non-recurrence and provide gender-sensitive and comprehensive services and adequate restitution to those who have been held captive by such groups. In their report on Women's and girls' sexual and reproductive health rights in crisis (A/HRC/47/38), the Working Group on discrimination against women and girls stated that Yazidi women have been systematically subjected to reproductive violence, including forced pregnancy and sterilization, and have been separated from their children. Their lives have been shaped by histories of oppression, enslavement, exclusion and forced assimilation, as well as systematic violence and disregard for their culture, spirituality and traditions, and, as a result, have been subjected to a "persistent state of crisis." Women and girls are entitled to receive adequate reparations, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition, for violations of their sexual and reproductive health rights, and States have a core obligation to ensure access to effective and transparent reparations. Women and girls continue to face a variety of barriers to access to justice in situations of crisis, from the lack of recognition of the harm caused to them as being a violation of human rights to the absence of procedures and formal mechanisms. The Working Group on discrimination against women and girls recommended that States legally recognize and implement a broad set of reparations for violations of sexual and reproductive health rights, including through structural measures, such as guarantees of non-repetition.

We also would like to recall your Excellency's obligation to protect the rights for minorities, article 27 provides that the State Parties where ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. In relation to the obligations pursuant to article 27 of the ICCPR, we further recall General Comment No. 23: Rights of Minorities (art. 27), adopted by the Human Rights Committee on 8 April 1994. In particular, we bring attention to the conclusion that, in protecting the rights of minorities covered under article 27, "a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation" and thus "[p]ositive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party" (CCPR/C/21/Rev.1/Add.5, para 6.1).

We refer your Excellency's Government to the Model provisions on reparations and assistance to victims provided by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

on the Ten areas of best practices in countering terrorism (A/HRC/16/51 para. 25), according to which:

1. Damage to natural or legal persons and their property resulting from an act of terrorism or acts committed in the name of countering terrorism shall be compensated through funds from the State budget, in accordance with international human rights law.
2. Natural persons who have suffered physical or other damage or who have suffered violations of their human rights as a result of an act of terrorism or acts committed in the name of countering terrorism shall be provided with additional legal, medical, psychological and other assistance required for their social rehabilitation through funds from the State budget.

We also would like to bring to your Excellency's attention paragraph 25 and 27 of the Report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/66/310), according to which:

25. Reparation schemes put in place on the national level should follow certain principles, some of which are listed below by way of example. Reparation schemes should aim at full restitution and foresee individual and collective reparation for both victims of counter-terrorism measures by the State and victims of terrorist acts, and follow a participatory approach. National reparation mechanisms must be independent and provide for adequate, effective and prompt reparation, which includes their being readily accessible and their taking a gender perspective into account [...]
27. The Special Rapporteur considers that the model provisions on reparations and assistance to victims contained in his predecessor's report to the Human Rights Council on 10 areas of best practices in countering terrorism¹¹ as well as the 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 provide useful standards and guidance, including on best practices.