



Iraq Genocide Recovery and Persecution Response - Learning and Pilots (GRPR L&P)

PERSPECTIVES FROM LEGAL PRACTITIONERS

Iraq Legal Technical Learning Forum

INTRODUCTION

More than six years after the initial attack by the so-called Islamic State of Iraq and Syria (ISIS) that led to incomprehensible devastation across one third of Iraq, Iraqis struggle to recover and (re-) establish their status as full citizens. Before the attacks, many individuals from minority communities were already disadvantaged in terms of their legal status and their ability to pursue legal rights and benefits due to isolation, indigence and institutionalized discrimination. These factors continue to present barriers to recovery and stabilization, yet there are many individuals, women included, who have access to legal services that were unavailable where they lived before ISIS. Limited access to government benefits and legal rights impacts entire communities, with women and girls facing greater marginalization due to patriarchal traditions and discrimination that includes dependence on men for livelihoods, shelter and other needs.

Legal services address critical and at times lifesaving needs for people displaced by conflict, and specifically women and girls at risk of or experiencing gender-based violence (GBV). The lack of identity documents renders women vulnerable to exploitation and abuse because they must rely on male relatives for shelter, food and other basic needs, a challenge that is exacerbated by the fact that so many of their male

relatives are dead or missing, and they have dependent children. Thousands of Iraqi women and girls who faced early and forced illegal marriage need assistance legally registering their marriages and their children, a process that is made more complex for those who faced genocide, because it is more difficult to prove their identities.

Lawyers are essential advocates working with their clients to achieve rights in Personal Status Courts as many women and girls do not know their rights and/or do not have the financial resources to pursue cases in court or to pay the government fees required when requesting government issued documents. With the assistance and counsel of a good lawyer, a woman has a much better chance of achieving her legal rights that exist under Iraqi law. At the same time, the Iraqi justice system includes a strong customary justice component where many problems are resolved by tribal and religious leaders in ways that conflict with Iraqi law and that undermine the safety of women and girls, blocking access to their legal rights.

Government leaders, organizations and activists in Iraq and around the world have acknowledged that the atrocities committed by ISIS amount to international crimes including crimes against humanity and genocide and recognize the importance of accountability and justice for victims. However, despite calls for justice that could include an international response or a domestic

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approach that incorporates international crimes, no viable mechanism has been established for various and complex reasons. Instead, the response has occurred at the domestic level with thousands of individuals detained and prosecuted under Iraq's Anti-Terrorism Law No. 13 of 2005. Many Iraqis including those from minority communities that were singled out by ISIS as part of their genocidal campaign recognize the shortcomings of the Iraqi justice system and in part due to major security breaches that paved the way for ISIS to emerge. Subsequently, they do not trust the ability of the government to deliver justice. At the same time victims, including victims and survivors of sexual violence in captivity, provide evidence and testimony in trials against defendants under the terrorism law even when specific crimes such as rape are not explicitly part of the crime of terrorism under Iraqi law.

The U.S. Agency for International Development (USAID) as part of the Iraq Genocide Recovery and Persecution Response, Learning and Pilots (GRPR L&P) program held a remote Technical Learning Forum on August 27th with Iraqi lawyers who represent women seeking legal rights, to discuss legal issues facing women and girls from minority communities that were targeted by ISIS and who are facing GBV. The program, implemented by Management Systems International (MSI), is part of broader USAID efforts to help women and girls from persecuted ethnic and religious minority groups to recover from abuses suffered under ISIS, and to prevent future atrocities through the implementation of five innovative pilot programs. The legal advocacy and gender-sensitive negotiation pilot programs are run in the Sheikhan city center and surrounding areas where Yazidis displaced from Sinjar reside. The Dak Organization for Ezidi Women Development is implementing the legal advocacy pilot, and the Free Yazidi Foundation (FYF) recently completed the gender-sensitive negotiation pilot.

The GRPR L&P program invited legal practitioners with significant experience in handling cases on behalf of women and girl clients from minority communities who were at risk of, or facing, GBV to participate in the forum. Nineteen individuals attended the Technical Learning Forum; of these 10 were Iraqi lawyers¹ representing six organizations² operating in the Ninewa Plains, Mosul and the Kurdistan Region of Iraq

(KRI), with other participants coming from MSI, Dak Organization for Ezidi Women Development and the Free Yazidi Foundation. These lawyers brought five to fifteen years of experience handling identification and other documentation cases, GBV cases in Iraqi Personal Status Courts and criminal courts and terrorism cases.

This BRIEF is based on discussions held during the Technical Learning Forum and three follow up interviews with select lawyers, and presents Iraqi lawyers' perceptions about justice and the law, legal practice, clients' needs and challenges and recommendations to improve access to justice for their clients. The discussions focused on three categories: 1) advocating for the rights of women and girls in the Personal Status courts; 2) justice for survivors of sexual violence in conflict; and 3) the application of Iraqi customary justice in cases involving GBV. As the conversation developed, many issues emerged and the lawyers focused more heavily on some issues such as the draft Yazidi Female Survivors Law based on lawyers' interests and community priorities. This BRIEF does not incorporate externally published reports and research related to these topics, which are extensive and beyond the scope of the Technical Learning Forum.

ADVOCATING FOR MINORITY WOMEN'S RIGHTS IN MATTERS INVOLVING PERSONAL STATUS

Isolation of ethnic and religious minority communities and repeated displacements in Iraq have left thousands of men, women and children without documents including the Iraqi nationality ID and civil ID. Added to this is the problem of illegal early marriage in which the marriages and the children born in these marriages are not legally registered or recognized by the government.³ Women and girls who face GBV have the right to seek divorce, custody and financial support but require the help of lawyers to understand their rights and the legal process. This is particularly important as GBV victims risk retaliation and pressure to withdraw cases from their relatives and extended clan or tribal members. It is critical for women to know their rights, how to find a lawyer and that organizations offer these services

1 To encourage a frank conversation, we assured lawyers we would not publish their names or attribute specific comments to them.

2 Organizations that participated in the Legal Technical Learning Forum include: Intersos, Heartland Alliance International, Yazda, Emma Organization, Dak Organization for Ezidi Women Development and War Child. Also participating was a lawyer who represented the Council for the Yazidi Spiritual Committee.

3 Iraqi Personal Status Law, No. 188 of 1959, arts. 7 and 8. The minimum age of marriage is 18-years old with exceptions to allow girls to marry as young as 15-years old with the consent of their parents and a judge.

and cover legal and transportation costs for indigent women.

OBTAINING IDENTITY AND PERSONAL STATUS DOCUMENTS

Lawyers identified the lack of key identity documents such as the Iraqi nationality and civil ID to be one of the most significant legal needs for internally displaced persons (IDPs), because these are necessary to establish a person's identity as a citizen and they are foundational documents to access a range of benefits. According to one lawyer, "half of IDPs in Sheikhan do not have their Iraqi national IDs." Equally in demand were requests by women for legal assistance to obtain residency cards, Iraqi passports, marriage certificates, birth certificates and death certificates for individuals with missing relatives who have not been identified.

"The majority of people in Sinjar, many of them who are now in their 80s, until now do not have IDs. That means that legally they are not Iraqis. Not only do the people of Sinjar need awareness, the Iraqi government needs awareness since they have not provided offices for Yezidis in the Sinjar region." — Iraqi Lawyer participating in the Learning Forum

As the lawyers pointed out, gaps in access to government services especially for minority communities go back many years to the former Baathist regime. Isolated communities lived far from government offices and became accustomed to being undocumented, getting married and having children without registering these events. Lawyers said it was common to meet clients as old as 65-years of age who have never had a civil or nationality ID. These clients are usually married, and have children and grandchildren, none of whom are registered. According to participants there are thousands of such cases.

Lawyers reflected on how the lack of documentation is a barrier to many benefits and privileges that are afforded to Iraqi citizens, including registering children in school, obtaining government benefits, like the food ration card or widow benefits, social security, certain humanitarian benefits and intra-provincial and international travel through checkpoints. Widows and women with missing spouses cannot apply for benefits or start the missing persons process until they can legally prove

their marriage, which is complicated further when they lack identity documents and relatives are unavailable to prove their identity.

"Providing legal services to survivors is further complicated as most of their family members are lost, like their husbands. There are many political tensions and disagreements between the Central Government and the Kurdish Regional Government. Some of the Yezidi survivors are in the KRI and they cannot go to Mosul to issue papers in government offices, because ISIS was there and psychologically, they cannot handle it." — Iraqi Lawyer participating in the Learning Forum

Survivors face many hurdles to obtaining or replacing documents that were left behind or destroyed by ISIS. When survivors escaped from ISIS captivity, the burden was on them and their families to make multiple visits to government offices, including traveling to Baghdad at their own expense to apply for a nationality ID and passport. In the Yezidi community, where many survivors lost their spouses and parents, survivors had to take extra measures to prove their identity without the benefit of their family members to provide verification. They emphasized that the government was not taking these vulnerabilities such as the lack of resources into consideration to improve access to government services, particularly since the government failed to protect these individuals from atrocities.

A common complaint among Iraqis is that government procedures are confusing and extremely bureaucratic; furthermore, indigent Iraqis especially IDPs cannot afford to make repeated trips to government offices and to pay fees. As one lawyer pointed out, a person might visit different government offices, each one asking for different documents. "What they do not take into consideration is that when you are asked to bring a death certificate, it might take one year to get it because the relative is missing and this is very difficult for people who were kidnapped by ISIS."

As one lawyer put it, "NGO projects are for one year but fixing these problems needs more time." Another lawyer said the procedures should be reformed to account for the realities of previous wars and the

realities facing so many IDPs. At the same time, they recognized that it would likely take the government anywhere from 10 to 15 years to modify government procedures, but that it is the government's responsibility to solve these issues.

"Most of these offices are far from each other. There is a lack of clarity about the required documents by each department or officer. For example, if a person requests an ID, the office will ask for other documents in order to issue the ID and usually other documents are also missing. One office could be in Baqj, one could be on Sinjar and some are in Duhok." – Iraqi Lawyer participating in the Learning Forum

While non-governmental organizations (NGOs) do focus on these issues and provide legal representation to thousands of Iraqis each year, the sheer scale of demand for services leaves significant gaps. Another lawyer pointed out that there are between two to five NGOs providing legal services to a displaced population in Dohuk of between 700,000 to 800,000 IDPs, making it difficult to reach all of them. One organization developed and distributed a booklet explaining step by step how to obtain a marriage certificate or birth certificate and how to replace missing documents, "helping to take the pressure off NGOs."

MATTERS INVOLVING PERSONAL STATUS

Lawyers who represented clients in cases of divorce, custody and domestic violence noted that women were largely unaware that they had legal rights. They did not know, for example, that they could request custody of their children. The fear of losing their children if they filed for divorce was a major impediment to seeking divorce even in cases of domestic violence. Lawyers noted that these problems were common in both the IDP and host communities.

In general, lawyers focused on gaps in the law to protect women from domestic violence and polygamy, for example one lawyer criticized Iraqi law that still allows polygamy. Another said, "Husbands have the right to insult their wives based on religious Sharia and the Iraqi law," and another, "Until now, the draft law of combating violence against women has not been passed."⁴

Lawyers also pointed to strong support among Iraqi parliamentarians for the proposed Al-Jafari law that supported early marriage, opposed passage of domestic violence legislation and would have undermined civil law and courts in favor of religious laws and leaders.⁵ They noted that even if there are laws that serve people, they are not implemented. One example they raised was the Compensation Law No. 20 of 2009⁶ which includes many good provisions, but as lawyers noted it falls short when it comes to how the law is applied.

In addition to these issues, lawyers highlighted social barriers women face. One lawyer noted, "it is the society that prevents women from asking for their rights, because of tribal traditions and the way they see women as inferior."

Another issue they raised was the cost of pursuing cases which could run as high as 500,000 Iraqi Dinars. Cost, combined with difficult court procedures, means that women's likelihood of being successful in pursuing their rights depends on their ability to find a good lawyer to represent them and an organization to cover their legal expenses.

Recommendations

- Government offices and courts that offer services to the public for documentation and registering personal status matters should make legal and paperwork procedures easier. They are usually complicated and take a long time to complete. It would also be better if these procedures could be done electronically, which would allow women to handle legal matters without having to visit these offices where they are subjected to harassment and bad treatment by government employees.
- NGOs need to do more to raise the awareness of women and men about their legal rights and legal procedures, especially in more remote areas such as

⁴ Lawyers did not distinguish between the laws under federal Iraq and the KRI, the latter having passed the Family Violence Law No. 8 of 2011 and further restricting polygamy under the Personal Status Law amendments in 2008.

⁵ Proposed several times, the Al Jafari law failed to pass after strong advocacy efforts of Iraqi men and women activists; deferring to religious doctrine it would have allowed marriage of girls as young as nine years of age.

⁶ Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions, Iraqi Law 20, 2009 was first amended by Law No. 57 in 2015 and again by Law No. 2 in March 2020.

camps, villages and sub-districts. It would be useful if they could provide clear written explanation of legal procedures for women who cannot find a lawyer to help them.

- More donors should fund legal services and more NGOs should develop legal programs and expertise to help the many individuals in need of legal support.
- NGOs should develop easy to follow materials that guide people in government procedures such as filing for identity documents, because that can help many people to apply even when they are unable to find legal representation.

JUSTICE FOR SURVIVORS OF SEXUAL VIOLENCE IN ISIS' CAPTIVITY

ISIS perpetrated sexual violence against women regardless of their ethnic or religious identities, including Christian, Turkmen, Sunni and Shia Muslims, yet they specifically targeted Yezidi women and girls as part of a genocidal campaign to destroy the religious minority group. ISIS committed atrocities against the Yezidis that included mass killings, forced religious conversion, conscription of child soldiers and abduction and trafficking of women and girls based on their group identity. The 'Yezidi case' has received significant attention worldwide due to intense media focus, and male community members sometimes encouraged survivors to talk publicly about what they suffered in captivity. The lawyers in the discussion recognized that there are other victims and survivors of sexual violence, however, given the focus of the forum on minority women, the discussion was predominantly about the needs of Yezidi survivors. Despite efforts from some organizations, there continue to be gaps in recognizing and addressing the needs of all survivors and finding ways to access communities that are currently silencing survivors and preventing them from accessing services.

Given the profound harm inflicted onto Yezidi women and girls in ISIS' captivity, they have significant and often unique legal needs. When survivors escaped or were rescued from ISIS, they had no documentation and, like other IDPs, were required to obtain or replace their civil ID and nationality cards. The already bureaucratic process was more challenging for survivors, many of whom lost parents and other relatives. Lawyers discussed these issues as well as handling GBV cases in the Personal Status Courts. Lawyers also spent a lot of time discussing the lack of access to justice for survivors,

the shortcomings of the Iraqi Terrorism Law and the need for the Iraqi Parliament to pass the "Yezidi Female Survivors Law" (discussed below) as part of a much needed reparations bill that would provide services, benefits and symbolic reparations as a response to the atrocities they faced.

Six years after the initial assault on Sinjar's towns and villages, lawyers who represented survivors discussed their clients' ongoing plight. They pointed out that it was more difficult to address survivors' legal needs due to the fact that they suffered "serious psychological problems because they were held captive for a very long time," and because obtaining IDs requires documentation of relatives, who were killed or are still missing or in captivity. Survivors do not have financial resources, and many are unable to access their legal rights without programs providing free representation and covering legal fees and travel expenses.

"Legal services are provided for survivors, but they are insufficient due to the number of survivors and their significant and complex legal needs." - Iraqi Lawyer participating in the Learning Forum

CHILDREN BORN OF WAR

"Normally if someone who is Yezidi converts to another religion, they are not allowed to return to the Yezidi religion, but for the survivors, our committee established new rules because this is a different situation and they were forced to convert to Islam." - Iraqi Lawyer participating in the Learning Forum

Spiritual leader Baba Sheikh, on the recommendation of the Spiritual Council, took the unprecedented step of welcoming women and girls who were abducted by ISIS to return to their families. However, it proved to be much more difficult accepting their children back if both of the parents were not Yezidi. The topic of children born to Yezidi women who were held captive by ISIS and became pregnant while in captivity is very sensitive due to legal, cultural and religious factors related to honor and shame as well as group identity and cohesion. The lawyers focused primarily on Iraqi laws that discriminate against minorities that impose a Muslim

religious identity onto children of Yezidi women.⁷ Lawyers identified the following laws as discriminatory and problematic for survivors and their children:

- National ID Card Law No. 3 of 2016 Art. 20(2) – “illegal” children are presumed to be Iraqi Muslim;
- Article 26 of the National ID Card Law, non-Muslim sects can convert to Islam, but a Muslim cannot convert to a minority sect for example;
- Article (32/2) of the Civil Status Law No. 65 of the year 1974, “A bastard child is considered Iraqi Muslim unless proven otherwise;
- Article (45) of Juvenile Care Law No. 76 of the year 1983, “A child without known kinship is considered Iraqi Muslim unless proven otherwise.”

Despite calls by advocates and minority religious groups to change these discriminatory laws, they remain in force. Lawyers discussed how this puts survivors, their children, families and community in a very difficult position legally.

“As for women with children born as a result of rape, how can they register them? Many of these women were raped by more than five to six ISIS members. The women don’t know who the father of their children is.” – Iraqi Lawyer participating in Learning Forum

As one lawyer pointed out, “if the Draft Yezidi Survivors’ Law would allow women to register a child with only the mother’s name, this would not be accepted by the Yezidi community to have the father’s name missing, we have to think about the best solution for these children in the future.” The lawyer suggested that some women who do return can do so with their children if their families agree and that the situation “varies from one survivor to another.”

It is unlikely that addressing legal issues alone would lead to acceptance since Yezidis prohibit conversion and

marriage outside their religion, and within the religion, outside of one’s caste. Also, there is deep stigma in how the community perceives the children, associating them with ISIS perpetrators.⁸ The lawyers in the forum did not discuss these issues and barriers to integrating children in any detail beyond the legal challenges. This issue remains the most difficult confronting survivors who must choose between their children and their families and community, particularly since as one lawyer estimated, there are “thousands of these children.”

REPARATIONS AND THE DRAFT YEZIDI FEMALE SURVIVORS BILL

“Survivors have lost everything. There are things you cannot compensate.” – Iraqi Lawyer participating in the Learning Forum

Lawyers discussed the deep breach of trust that occurred between Yezidi and Muslim communities in Sinjar, as well as the loss of trust in the government that failed to protect them from ISIS. Though the entire community suffered a wide range of atrocities, lawyers felt strongly that survivors of sexual violence should be compensated for the harm they suffered, and urgently. Iraq’s current reparations scheme under the Compensation Law is a complex topic that could not be adequately discussed due to time constraints, however it is worth noting that lawyers in the meeting handle these cases on behalf of minorities and face many challenges due to the burdensome procedures.

In March 2019, Iraq’s President Barham Salih [submitted](#) the “Yezidi Female Survivors Law” to Parliament for review. The draft law introduced a comprehensive reparations plan for Yezidi women captured by ISIS, including financial compensation, land grants, rehabilitation, medical treatment and economic and educational opportunities. The law in its current draft applies only to Yezidi female survivors, excluding survivors who are from other ethnic and religious groups, as well as male survivors, and relatives of those who died; this creates a hierarchy of victims based on group identification rather than the harm suffered. Other criticisms of the

⁷ Taken together, these laws only permit the Muslim parent’s religion to be passed on in cases of mixed religious marriages, for example if a woman from a minority faith marries a Muslim man. Furthermore, if the father is unknown, he and consequently the child is presumed to be Muslim and the mother of a minority religion cannot pass on her religion to her child.

⁸ In April 2019, Yezidi Spiritual Leader Baba Sheikh issued a decree on April 24, 2019 that related to questions about women and their children and stated that all survivors were to be accepted back to the community. At the time there was significant focus on the question of children born in captivity, and many interpreted this decree to mean that these children would be accepted. It also was a logical conclusion that this was what the decree referred to, since the women and girl survivors were already welcomed back in 2015. Yet after a strong community backlash, Baba Sheikh issued a second decree on April 27, 2019 that clarified this decree only applied to children where both the mother and father were Yezidi.

bill have included the handling of the issue of children born of war;⁹ in which the bill defers to current Iraqi law which discriminates against minorities. Perhaps the most important critique is that survivors were not consulted in the initial drafting of the law. Despite these criticisms, the law is an important step towards restorative justice, and the lawyers participating in the forum said they believed the law should be passed urgently because women and girls were suffering and desperately needed support.

Overall, the lawyers were not optimistic about the Iraqi legal system and the likelihood that the Iraqi Parliament would pass the Yezidi Female Survivors Law. Some pointed to the political disagreements that plague the parliament and prevent lawmakers from reaching consensus to pass laws that are needed to move the country forward; others stated that parliament members, “Don’t care about people. They don’t care about victims, they just take salaries and that is it.” They identified the lack of adequate representation in the parliament for minorities, including the Yezidis, as being a primary impediment to moving their agenda forward and suggested Yezidi MPs represent their parties’ interests rather than the broader interests of the community. Another lawyer suggested that the bill would not be ratified because it applies only to Yezidis and excludes survivors from the Christian, Turkmen, Shabak and other minority communities. Some lawyers insisted they had to remain hopeful.

“ISIS wants us to keep silent, to migrate and I’m against this and this law makes us cling to our land, to cling to my nationality, to my identity because I am a Yezidi and I’m part of this land [Iraq] and we should not keep silent.” – Iraqi Lawyer participating in the Learning Forum

Lawyers were determined to continue to advocate for the rights of minorities and victims of human rights violations. They suggested that their only way forward was to change Iraq’s political system from a religious to a civil system, “only then Yezidis, Muslims and Christians, Sabaeen and all others will have one Iraqi national identity.” Participants emphasized the importance of NGOs and the international community to pressure the Iraqi government to change its system from religious to civil and to protect everyone.

“There were some families in Sinjar, they were having dinner with their neighbors. The second day in the morning they found their daughters being taken by their neighbors. Iraq needs new ideas and a new system.” – Iraqi Lawyer participating in the Learning Forum

PURSuing JUSTICE FOR SURVIVORS OF SEXUAL VIOLENCE

Iraq is not a signatory to the Rome Statute of the International Criminal Court (ICC), and Iraq has not incorporated international crimes of genocide, crimes against humanity and war crimes into Iraqi law and therefore has no jurisdiction over these crimes committed in Iraq. An examination of the complex issues related to justice for survivors of international crimes is beyond the scope of this BRIEF. There are many other issues that were not part of this discussion due to time constraints, including the work of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), problems with Iraq’s anti-terrorism law and a more in-depth understanding of how their clients perceive justice, to name a few.

However lawyers articulated that they believed in the importance of an international justice response and also touched on several issues including Iraq’s prosecution of juveniles who joined ISIS, prosecutions under Iraq’s anti-terrorism law and domestic prosecutions under Iraqi criminal law as well as survivors’ perceptions of justice and barriers to bringing cases forward.

“A weak justice mechanism will not be able to protect all groups including children, especially if law is not actually implemented on the ground. Therefore, survivors would be better served through an international justice mechanism.” – Iraqi Lawyer participating in the Learning Forum

9 Salloom, Saad, “Iraqi Bill on Female Yezidi Survivors Stirs Controversy,” Al Monitor (April 25, 2019), found at: <https://www.al-monitor.com/pulse/originals/2019/04/iraq-yazidi-isis-minorities.html?emailaddress=sherizaan.minwalla%40gmail.com#>.

Most lawyers said they believed that survivors would be better served if ISIS perpetrators are tried under international law. However, the reasons for this were less about pursuing the most serious violations of international crimes and more focused on the shortcomings of the Iraqi justice system. Some pointed to the inefficiency of the justice system, amnesties that allow convicted militants to obtain early release and the lack of trust of the authorities.

"Iraq has not protected the survivors from ISIS therefore, people no longer trust the power of Iraqi law." – Iraqi Lawyer participating in the Learning Forum

We asked lawyers whether they handled or were familiar with cases where domestic courts prosecuted ISIS militants for crimes related to sexual violence, such as human trafficking or domestic crimes, and whether they knew of the perceptions of survivors regarding domestic prosecutions. One lawyer expressed concern that, "Survivors will not be happy because many ISIS militants are getting punished based on the terrorism law, not for rape or kidnapping." He suggested that pursuing cases under Iraqi domestic law is a viable action in the absence of international legal options.

"ISIS members have not only committed one crime. ISIS cases include many crimes including kidnapping a woman or girl in Sinjar then abusing and raping them. They also sold these women and used them as slaves and the women had children as a result of rape. Each of these things is a crime. Article 421 punishes the crime of kidnapping for example. Other articles punish the crime of abuse, rape, trafficking and forced marriage. Article 421 gives a penalty of 5 to 10 years imprisonment, the penalty of rape could be 15 years of imprisonment and if the victim of rape is under 18 then the penalty is death." – Iraqi Lawyer participating in the Learning Forum

Lawyers noted that investigation judges referred such cases to be tried under the Anti-Terrorism Law No. 13 of 2005, because of affiliation with ISIS and their perception that "only a group, and not an individual, can commit all of these crimes." Some thought applying the anti-terrorism law to these cases was a positive approach, because "the terrorism law is very strong and, if convicted, ISIS militants would be punished for at least 15 years," and that, "Also, when multiple crimes are committed, the court hands out the most extreme penalty. In this case the most extreme penalty is death penalty under terrorism law."

Lawyers discussed that survivors have testified against accused ISIS members in terrorism trials in Ninewa and that it is risky.

"There are a lot of risks dealing with cases of survivors because many suspects are not captured. Survivors fear that someone who killed 10 people wouldn't mind killing the victim who raises a complaint against them. Survivors fear visiting investigation courts as many ISIS members are free to come and go and they also have information. There is risk for witnesses and the lawyers." – Iraqi Lawyer participating in the Learning Forum

Other reasons for not pursuing cases in Iraq included the reality that many survivors travelled outside of Iraq; they do not know their legal rights; survivors who registered their cases with the Commission for Investigation and Gathering Evidence (CIGE) established by the Kurdish Regional Government to collect DNA and testimonial evidence of genocide think that is the only available process; survivors lacked information about the perpetrators' identities; and importantly survivors were scared of negative consequences.

Another lawyer said that there must be international prosecution such as in the International Criminal Court (ICC) to document for historical archives and to confirm that what happened was indeed a genocide, "This could help secure non-repetition of what happened in the future. The domestic court has no law that punishes ISIS for the crime of genocide they perpetrated against Yazidis and the international crimes they committed against other minority communities. Even if Iraq could

prosecute for these crimes, courts would not be able to fully conduct these trials because of the collapse of the Iraqi legal system. Also, perpetrators are being released from the prisons illegally and they are not providing security to the victims." Another lawyer suggested having a mixed court, the location of the court to be inside Iraq with neutral judges and international investigators who are experienced.

Lawyers did not identify concerns with trials of ISIS members and affiliates including coerced confessions or due process violations. The sheer number of individuals who have been detained and convicted of terrorism charges is high and includes those who may have committed violent acts, those who provided support to ISIS but did not engage in violence, individuals forced to join ISIS and others who were not affiliated with ISIS but were suspected of affiliation because of their ethnic and/or religious identity. Lawyers mentioned concern that the Iraqi government was issuing amnesties to many juveniles convicted under the Anti-Terrorism Law, but they did not acknowledge that these juveniles should have been treated differently due to their age, and that they may have been coerced to support ISIS or face retribution which would be potentially mitigating factors.

Though not specifically based on the law, the Iraqi government and the KRI through the Presidencies' offices frequently issue amnesties to those who have been convicted of crimes, allowing early release.

"Many people who joined ISIS were minors. They were convicted but later were released from prison. When I asked about them in the prison, they said some actors helped them to get released. They were perpetrators. They have committed a lot of crimes, but they didn't complete their penalty and after a compromise they were released despite the decision made by the court. The Ministry of Justice is also involved." – Iraqi Lawyer participating in the Learning Forum

VICTIMS ACCUSED OF TERRORISM

Lawyers discussed a problem facing Yezidis from Sinjar who have been accused of being ISIS affiliates and in some cases are charged and convicted under the

anti-terrorism law. When people fled from ISIS during the attack, they left their houses, personal papers and identity documents, phone sim cards and laptops behind. When ISIS took hold of their possessions, specifically sim cards that were registered to Yezidis, they used these phones when committing terrorist crimes. After the liberation of Mosul and other areas that had been occupied by ISIS, security and intelligence forces traced these sim cards back to Yezidis. It was not clear how significant of an issue this was or still is, but a lawyer was familiar with at least one case against a young Yezidi man from Sinjar who is still detained and accused of terrorism.

Recommendations

- NGOs should demand that the government simplify procedures for survivors of terrorism, because routine paperwork requirements are burdensome.
- The government should simplify the procedures for replacing IDs, provide resources to survivors who cannot afford to visit government offices, and provide better guidance for people who cannot afford a lawyer, because the process is complicated and traumatizing with the intelligence background procedures.
- The survivors are traumatized and in addition to psychological treatment, they need to know about their legal rights and have assistance to access those rights.
- NGOs should go further than providing legal advice and consultation to respond to survivors' needs for legal representation in court or at government offices. These procedures are complex and without legal representation many survivors will not be able to access their legal rights.
- Legal programs to assist survivors need to consider where they live which is mostly in camps which are now underserved.
- Courts should dismiss terrorism investigation and charges levelled against Yezidis under the Anti-Terrorism Law No. 4 which are based on electronic data such as sim cards that were abandoned and then used by ISIS terrorists for communication. It should be obvious that these individuals who were victims of genocide were not involved in terrorism.
- The Iraqi Parliament should pass the Yezidi Survivors Law and NGOs should pressure the government to certify the law.
- Until the Yezidi Survivors Law is passed, the government should give salaries to the survivors because they desperately need support.
- Transform the Iraqi legal system from a religious, sectarian system to a civil law system.

CUSTOMARY JUSTICE IN IRAQ AND THE IMPACT ON WOMEN'S LEGAL RIGHTS

"For any cases in court, there will be a request from the court to go back to the committee to make the decision based on their religious background – this is only for minorities because the law is based on Islamic Sharia. In many cases we are trying to conduct mediation with them." – Lawyer representing the Yezidi Spiritual Council

Cases resolved through the Iraqi customary justice system by tribal and religious leaders tend to reaffirm traditional attitudes and beliefs, including gender norms with a focus on reconciliation rather than the legal and human rights of individuals. Customary justice responses to legal and non-legal matters, and the influence of arbiters of justice within minority communities, is increasing due to the difficulty of accessing courts, legal discrimination, distrust of the formal justice system and fear of bringing perceived shame to their families and retaliation. Women's burden of upholding family honor is a major deterrent from seeking legal rights. Lawyers are often involved in mediation, reconciliation and even negotiation in trying to resolve cases, either as a component of a case that is in court or entirely separate from any formal justice process.

Most of lawyers in the Forum said that social problems like divorce and separation were settled through tribal council sessions. "For Yezidis they follow the tribal laws to settle these issues," according to several lawyers. These councils involve community leaders, or they create committees to resolve issues between spouses, including domestic violence which is pervasive throughout Iraq. Both men and women prefer, according to one lawyer, to rely on their customs and traditions to solve marital problems rather than going to court. Lawyers mentioned that NGOs engaged in reconciliation efforts as well, "NGOs create councils and provide people with consultation and support to solve their social problems by following the customs." Another lawyer said, "If they go to court, many believe they will be divorced right away, or the problems will become bigger than the problems that they already have."

"People think it's shameful to go to the court and complain therefore they prefer to have a mediator like a community or tribal leader or religious leader." – Iraqi Lawyer participating in the Learning Forum

Lawyers attributed the strong role of the customary justice sector to the fact that much of Iraqi society is tribal. Lawyers said they also believed that in many cases it was better to try to resolve cases outside of court, with court being a last resort if problems and disputes continued. Even the courts asked people to resolve their issues through social reconciliation, especially in cases of divorce and separation, and especially when those requests were made by women.

One lawyer suggested that they, as lawyers, should take on the role of an objective third party, "like an intermediary to try to solve problems." They said if reconciliation failed, cases could be referred to religious leaders. If that did not work, they could go to court and, for those under the administration of the Kurdistan Regional Government, they could seek help from the Ministry of Interior's Directorate for Tracing Violence Against Women.

Lawyers did note there was a change, and that more women were accessing courts because they were able to find NGOs that provided legal services.

"Maybe at the beginning many cases went through the traditional way, but the Yezidi community has changed, and they are going to the court asking for justice." – Iraqi Lawyer participating in the Learning Forum

There was no discussion about what it meant to take a survivor-centered approach that would identify what the client wanted and would help her reach an informed decision based on a conversation about risks and benefits of different options. There was little discussion of the harms that befall women and girls who were denied access to justice and legal rights, nor was there a significant focus on differences in how men and women experience customary justice systems, particularly in cases involving domestic violence. One lawyer shared an example of a case where a girl faced attempted rape by her father; however after seeking help from an NGO she refused to report the crime to the authorities. She feared that if the case went to

court, it would be shared on social media and the lawyer was concerned in that situation that the girl might commit suicide. They tried to resolve the case by moving the father out of the home and filing for separation from his wife, even if this was not an ideal outcome.

Lawyers did raise some concerns about the customary justice system and said, “as lawyers we do not encourage the customary justice system.” One criticism was that these decisions were not binding as they were in court and committing both parties could be difficult. Also, religious leaders often conducted religious marriages that were illegal under Iraqi law with impunity and this creates many problems for people since the court does not recognize these marriages. These marriages can lead to divorce, but the marriage would first need to be registered, and until that happened, children had no birth certificates and were undocumented and not in school. If a woman pursued divorce through the customary justice system, she had no rights and would lose her children and would have to return her dowry and any personal property she received during the marriage. Lawyers said this was done in Sinjar and even with IDPs living in camps.

General Recommendations on Legal Programs and Service Delivery

- Donors who want to fund legal programs should consider funding NGOs for a duration that allows them to handle more complex cases that take longer to complete.
- Iraqi laws should not discriminate based on religion and the parliament should take steps to eliminate these discriminatory laws.
- Donors and NGOs should continue to deliver services to people living in camps who include many genocide survivors who desperately need assistance.

CONCLUSION

This BRIEF offers insights into the perspectives of lawyers who represent women facing GBV, including survivors of ISIS captivity. The discussion during the Technical Learning Forum provided an opportunity for lawyers to share their views and experiences representing clients and legal strategies for handling complex cases. The discussion that was facilitated by lawyers from Dak Organization for Ezidi Women Development was structured but also afforded lawyers space to focus on issues they prioritized. The broad topics for discussion were selected based on USAID’s GRPR L&P legal advocacy pilot project to respond to GBV.

The demand for legal services to assist with legal IDs outstrips the services available. Legal services are essential to help the tens of thousands of Iraqis who are suffering because of conflict and violence throughout the country and the failure of the State to protect its civilians. Legal rights mean little without the ability to access those rights and many Iraqis face barriers that are financial and the lack of access to specialized knowledge that comes with legal representation. Private attorneys are expensive and donors should seriously consider funding legal services to help individuals establish their Iraqi identity and access their legal rights, including victims and survivors of GBV.

Thousands of ethnic minorities that were targeted by ISIS do not have access to identity documents. This includes girls married before the legal age. Identity documents are important for accessing public services, filing for divorce, gaining custody of children and receiving financial support but the process for obtaining identity documents or having these documents reissued is onerous, time consuming and costly.

Furthermore, women and girls frequently are unaware of their legal rights. Women’s lack of awareness about their rights fuels fears that taking legal steps to address issues such as divorce, custody or domestic violence could lead to a loss of their children or other harmful repercussions. The social barriers faced by women adds to their reluctance to seek legal options, as does the cost of pursuing cases. The lawyers recommended an increase in streamlined government services for issuing documentation and registering personal status matters, such as electronic processes.

Women who experienced sexual violence from ISIS militants face complex legal needs. There continue to be gaps in recognizing and addressing the needs of survivors, including managing social stigma to accessing services. Survivors often struggle with a lack of identity documents, lack of justice for survivors, failure to integrate children born or war and the lack of reparations for the harms they suffered. Lawyers voiced mixed views about the role and importance of international law as a path to justice following the Yazidi genocide due to the shortcomings in Iraqi law, or an Iraqi option such as a tribunal but with the support of international experts.

The role of customary law complicates accessing justice for women and girls, as their legal rights are often not recognized by tribal and religious leaders. For example, religious leaders perform illegal underage marriages, which creates problems when women want to register their children, seek divorce due to domestic violence

and include their marital status on their ID. This also affects children, as without a marriage certificate any children's births are not registered and the children are undocumented.

However, customary justice is often preferred by some women and men due to concerns about exposing what are seen as private matters publicly with strangers and causing larger problems than existed before. However, as more legal support has become available through NGOs, women are starting to access courts in larger measure. While the lawyers did not encourage customary justice, in part due to the lack of binding decisions,

they also are participants in this system given its intersection with the formal justice system.

A deeper dive into any of these topics would be warranted, including the role of customary justice actors in responding to GBV outside of, and intersecting with, formal courts. Additionally, further inquiry into lawyering skills, given there is no practical skills training in law school, would be useful to understand the quality of legal representation, client-centered approaches to representation and how that works in practice. We hope these perspectives add useful insights and contribute to ongoing discussions about these important topics.