

As UNITAD's Mandate Ends, ISIL Survivors Still Lack Justice

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ABOUT THE AUTHORS

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Alannah Travers is a British-German journalist and consultant based in Iraq between 2021 and 2023, who previously supported the Coalition for Just Reparations (C4JR), an alliance of 34 Iraqi NGOs calling for comprehensive reparations for survivors of atrocities perpetrated during the ISIL conflict.



Brief Analysis

As UNITAD's mandate ends, all involved parties should examine the limitations of what the organization was able to accomplish for the victims of ISIL's crimes after seven years.

As the mandate of UNITAD—the United Nations Investigative Team to Promote Accountability for Crimes Committed by Daesh/ISIL—draws to a close on September 17, two competing narratives are almost certain to emerge. In an effort to explain the lack of prosecutions resulting from UNITAD's work—just [nine prosecutions \(https://www.wilsoncenter.org/microsite/7/node/120664\)](https://www.wilsoncenter.org/microsite/7/node/120664) for crimes against humanity and genocide have resulted from this data collection, [mostly in Germany \(https://www.justice-iraq.com/international-efforts/\)](https://www.justice-iraq.com/international-efforts/) but also earlier this year in [Portugal \(https://reliefweb.int/report/iraq/triumph-accountability-efforts-how-iraq-and-unitad-supported-portugals-first-conviction-international-crimes-enar\)](https://reliefweb.int/report/iraq/triumph-accountability-efforts-how-iraq-and-unitad-supported-portugals-first-conviction-international-crimes-enar)—proponents of UNITAD will likely cast the Iraq state as the primary obstacle in achieving justice, blaming Iraqi authorities for failing to meet international standards and the Government of Iraq for requesting the end of UNITAD's mandate from the UN Security Council (UNSC) last year. In Baghdad, officials will continue to criticize UNITAD for withholding critical evidence and failing to collaborate effectively with Iraqi authorities, as was explicitly outlined in the [original UNITAD mandate \(https://www.unitad.un.org/content/our-mandate\)](https://www.unitad.un.org/content/our-mandate). The reality will lie somewhere between the country's remaining displacement camps, informal settlements, and shattered lives. In examining the current results of UNITAD's work seven years after its mandate began, a host of shortcomings and failures can be found in both quarters, all contributing to the failure to provide justice for the victims of ISIL's crimes.

Tasked with documenting and investigating the horrific crimes committed by ISIL, UNITAD's goal was to collect evidence which could then enable prosecutions for genocide, war crimes, and crimes against humanity, helping to bring some measure of justice for ISIL's victims. Yet the inability of UNITAD and Iraqi authorities to coordinate has meant that this mission has failed. Moreover, this friction has not only undermined trust between the two sides, but it has also actively harmed the overall goal of achieving justice for survivors.

Political Games: UNITAD's Role in the Deadlock

Established under a UNSC [resolution \(https://www.unitad.un.org/sites/www.unitad.un.org/files/general/s_res_23792017_e_7.pdf\)](https://www.unitad.un.org/sites/www.unitad.un.org/files/general/s_res_23792017_e_7.pdf) in 2017 after a request from Iraqi authorities, UNITAD was already seen as a flawed compromise. Many survivors of ISIL's brutality originally advocated via local NGOs for an international and hybrid court. Survivor community representatives have also criticized the UK as the current penholder of UNITAD at the UN Security Council (UNSC); as the lead on negotiating and drafting resolutions, these survivor communities feel the UK has not done nearly enough to advocate for justice in a country it had a role in destabilizing.

While UNITAD focused on testimony and evidence collection, including the publication of [lengthy reports \(https://reliefweb.int/report/iraq/acting-special-adviser-peyro-llopis-delivers-eight-reports-crimes-committed-isil-daesh-during-her-final-meeting-president-supreme-judicial-council-enar\)](https://reliefweb.int/report/iraq/acting-special-adviser-peyro-llopis-delivers-eight-reports-crimes-committed-isil-daesh-during-her-final-meeting-president-supreme-judicial-council-enar), it was apparently never able to determine an effective way to collect evidence that could lead to prosecutions within the constraints of the Iraqi judicial system. UNITAD's insistence on strict [conditions \(https://www.france24.com/en/live-news/20240908-under-pressure-un-winds-down-unique-iraq-probe-into-is-crimes\)](https://www.france24.com/en/live-news/20240908-under-pressure-un-winds-down-unique-iraq-probe-into-is-crimes) for evidence sharing with Iraqi authorities ostensibly designed to uphold international standards—including the requirement that Iraq abolish the death penalty and ensure fair trials—have proven an insurmountable hurdle for the Iraqi legal system. This issue of historic false allegations and

wrongful convictions is undoubtedly a concern in Iraq's post-conflict justice landscape, as [documented \(https://www.ohchr.org/en/press-releases/2024/06/scale-and-cycle-iraqs-arbitrary-executions-may-be-crime-against-humanity\)](https://www.ohchr.org/en/press-releases/2024/06/scale-and-cycle-iraqs-arbitrary-executions-may-be-crime-against-humanity) in various UN [reports \(https://www.ohchr.org/en/special-procedures/sr-independence-of-judges-and-lawyers\)](https://www.ohchr.org/en/special-procedures/sr-independence-of-judges-and-lawyers), but UNITAD's inability to work around these issues has greatly delayed the judicial process for those survivors the organization was designed to support.

UNITAD's approach strongly appears to have been marred by bureaucratic inefficiency and a lack of strategic vision. The organization's failure to complete its investigations, finalize the [excavation of mass graves \(https://reliefweb.int/report/iraq/unitad-and-iraq-working-cooperatively-build-modern-forensic-capacity-iraq-enar\)](https://reliefweb.int/report/iraq/unitad-and-iraq-working-cooperatively-build-modern-forensic-capacity-iraq-enar), or build a comprehensive roadmap for the use of collected evidence once the organization became aware of its impending shuttering is one such concern. During the UNSC [discussion \(https://press.un.org/en/2023/sc15411.doc.htm\)](https://press.un.org/en/2023/sc15411.doc.htm) in New York on the mandate renewal last year, no one even attended from UNITAD. Moreover, UNITAD continued to interview witnesses as late as June 2024, just months before its closure and handover of final evidence, raising serious questions about its operational planning and priorities when the timing indicated these testimonies would most likely not be shared with legal authorities.

Publicly available information about these testimonies is concerningly vague; despite repeated requests from the author, UNITAD has not confirmed how many witness and survivor statements it possesses. Meanwhile, civil society organizations (CSOs), diplomatic missions, and Iraqi officials have all quoted different figures regarding UNITAD's body of evidence—both the amount handed over to the Iraqi side and in total. Furthermore, of the evidence that has been [handed over \(https://www.facebook.com/UNITADIraq/posts/717461753891438/\)](https://www.facebook.com/UNITADIraq/posts/717461753891438/) to the Iraqi authorities, several survivor organizations have become increasingly concerned that much of the evidence collected fails to meet the threshold for criminal investigations in Iraq. A dozen hard drives, containing nearly 30 terabytes of data, have already been [shared \(https://news.un.org/en/story/2024/06/1150701\)](https://news.un.org/en/story/2024/06/1150701) with Iraq's Judicial Council, but it is vital to clarify how much of this data is usable within Iraq's judicial system. UNITAD's mission in Iraq would have benefited greatly from increased preparation and familiarization with Iraq's legal system before the mandate started to ensure that as much information collected could be acted upon as possible.

The coming weeks might see an enhanced archiving system for UNITAD evidence not turned over to Iraqi authorities, if this is proposed by the UK to the UNSC. This would be part of the Office of Legal Affairs (OLA) and as such responsible for the evidence and responding to third party requests. If this enhanced archiving system is not established, the evidence will be stored within a normal archiving system in the UN, much of it already [handed over to the UN Secretariat in New York \(https://m.facebook.com/story.php?story_fbid=817255287245417&id=100068828605986\)](https://m.facebook.com/story.php?story_fbid=817255287245417&id=100068828605986). This data will either take a significant time to process or become inaccessible altogether; a damning waste of time, effort, and extortionate funds. Should this enhanced system not be established, Iraq would surely be blamed rather than the UK.

Ultimately, UNITAD has also highlighted the challenges and limitations of donor funding. With an average [annual budget \(https://www.securitycouncilreport.org/whatsinblue/2019/09/isil-daesh-accountability-council-to-renew-unitad.php\)](https://www.securitycouncilreport.org/whatsinblue/2019/09/isil-daesh-accountability-council-to-renew-unitad.php) of around \$20 million [\(https://www.dw.com/en/after-is-justice-for-yazidis-the-world-has-moved-on/a-69811717\)](https://www.dw.com/en/after-is-justice-for-yazidis-the-world-has-moved-on/a-69811717), the contrast is stark between these expenditures and those of survivor organizations working on the ground. At least some of this discrepancy comes from the fact that a number of states that contributed funding are faced with bureaucratic regulations within their own countries. Most of the money the United States contributes to the UN, for example, goes to peacekeeping forces and these types of operations; instead of sending troops, it sends money. UNITAD fits into the accountability efforts of the State Department and aligns well with the U.S. approach to accountability, which is external to the ICC. While justice and accountability are worthy pursuits, the cumulative UNITAD budget could have had a profound impact had it been spent rebuilding Sinjar, providing trauma therapy to survivors, or funding education for the next generation.

Iraq's Failings: A Legal System Unprepared

The Government of Iraq (GoI) has failed to enact legislation that would allow for the prosecution of international crimes, while simultaneously preventing other legal bodies from seeking justice. Authorities' inability to meet the basic conditions for evidence sharing with UNITAD reflects a deeper problem: a lack of political will and a justice system that, despite improvements, [still falls short of international standards \(https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf\)](https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf).

Specifically, authorities in some of the areas most affected by ISIL's crimes have attempted to try former fighters, but this process has been stymied by Iraq's legal structure. Peshmerga forces under the Kurdistan Regional Government (KRG) liberated much of the Yazidi community and other affected groups from ISIL in Sinjar; as a result, the KRG now holds many former ISIL fighters in detention centers. Yet when the KRG drafted a law to establish a [criminal tribunal \(https://www.rudaw.net/english/kurdistan/270620212\)](https://www.rudaw.net/english/kurdistan/270620212) in 2021 to prosecute these cases, the Iraqi Federal Supreme Court intervened and rejected the tribunal on constitutional grounds. Baghdad has made no serious efforts to provide an alternative mechanism to fill the void in the years since.

On the one hand, Iraq's government has indicated its intention to pass legislation that would enable prosecution for genocide, and the Prime Minister's office has drafted a law to prosecute international crimes, which would allow it to incorporate international crimes in domestic

legislation rather than simply referring to it in sentencing. This legal reform is essential to ensure justice for all victims of atrocities and to uphold the principles of international law.

However, there are concerns about whether such prosecutions would be carried out in accordance with basic human rights standards, including that the GoI might not be trusted to use the evidence in a human rights-compliant manner nor, indeed, against the guilty parties. In frequent conversations, many victims expressed their apprehensions about sharing evidence with Iraqi authorities, fearing political manipulation and insufficient protection and doubting that they will adhere to a survivor-centered approach that focuses on their experiences and needs.

Impact on Survivors: Betrayed and Forgotten

The victims of these failures to bring justice are the survivors of ISIL's brutal campaign of violence, and the erosion of trust (<https://www.usip.org/conflict-and-stabilization-monitoring-framework-nineveh-province>) in both UNITAD and Iraq's justice system is palpable. Based on personal testimonies, survivors and their communities are increasingly disillusioned (<https://www.youtube.com/watch?v=xnPqYBJqT4w>), skeptical that they will ever see those responsible for their suffering brought to justice. This loss of faith is not just a setback for the survivors themselves; it undermines (<https://www.justice-iraq.com/position-paper/>) broader efforts to rebuild and reconcile Iraqi society in the wake of ISIL's destruction.

Iraqi civil society and international aid groups have attempted to hold ISIL fighters accountable for the atrocities, but achieving justice is an uphill battle in this current environment. Yazda (<https://www.yazda.org>), an advocacy group for Yazidi survivors, has painstakingly collected around 3,000 witness testimonies and documented over 150 crime scenes in Sinjar for UNITAD, according to Yazda's Executive Director, Natia Navrouzov. Yet if these testimonies cannot be used to prosecute alleged perpetrators due to the lack of coordination between UNITAD and the GoI, survivors gave these testimonies under a false hope of obtaining justice.

In response to the closing of UNITAD and ongoing frustrations with the current state of prosecutions against ISIS perpetrators, the Coalition for Just Reparations (C4JR) has outlined (https://c4jr.org/wp-content/uploads/2024/03/C4JR-summary_ENG.pdf) the concerns and recommendations of CSOs and survivor networks for the future. The report (https://c4jr.org/wp-content/uploads/2024/03/C4JR-report_ENG.pdf) discusses the issues of raised expectations among survivors and Iraqi CSOs regarding UNITAD's establishment and its role in achieving justice, and Iraq's lack of readiness to prosecute core international crimes for which UNITAD collected evidence.

Moving Forward: Urgent Steps and Recommendations

As UNITAD concludes its mission in Iraq, there is an urgent need to consider what comes next for Iraq's survivors and to ensure that the attempt for justice does not end with UNITAD's departure. Iraq's 2021 Yazidi Survivors' Law (<https://c4jr.org/ysl>) (YSL) aims to provide restitution and support to survivors of ISIL atrocities and includes provisions for financial compensation, access to medical and psychological services, and measures to facilitate the reintegration of survivors into society. However, the implementation of specific articles recognizing the genocide and calling for justice and accountability—including coordination and evidence sharing, protection of witnesses, initiation on criminal proceedings and extradition of criminals—face challenges due to the lack of a robust legal framework for prosecuting international crimes in Iraq, despite Iraqi courts increasingly referring to the YSL in sentencing (<https://www.newarab.com/news/iraqi-court-sentences-abu-bakr-al-baghdadis-widow-death>). The Coalition for Just Reparations (C4JR) has outlined clear, actionable steps that are necessary for achieving criminal justice.

Legislate International Crimes in Iraq

The Iraqi parliament must urgently pass legislation to incorporate genocide, crimes against humanity, and war crimes into its domestic law. Without this legal foundation, Iraq will remain incapable of prosecuting ISIL's atrocities in a manner that meets international standards, in line with the overwhelming wishes of survivors (https://c4jr.org/wp-content/uploads/2024/08/10-Demands-10-Years-After-the-Genocide-by-ISIL_English.pdf).

Enhance Survivor Participation

Survivors must be at the center of any justice process moving forward. This includes ensuring that they are legally represented in proceedings, have access to legal aid, and are fully aware of their rights. Trust in the justice process can only be restored if survivors feel empowered and respected.

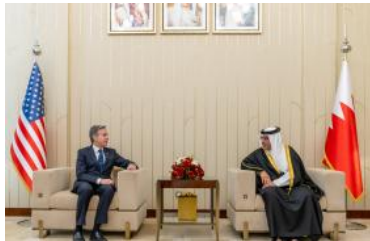
Establish a Robust Witness Protection Program

Iraq must prioritize the implementation of its existing witness protection law, ensuring that those who come forward to testify are safeguarded from retaliation and harm. It is essential to protect survivors who have provided testimonies to ensure their safety and willingness to participate in legal proceedings. This might involve relocation programs, measures to preserve anonymity, and other forms of protection. Iraq passed [witness protection law number 58 \(https://www.iasj.net/iasj/article/224571\)](https://www.iasj.net/iasj/article/224571) in 2017, but it still needs to be implemented effectively. The international community has contributed vast sums to UNITAD and cannot now wash its hands of Iraq; continued oversight and support is essential to ensure that the momentum toward justice is not lost, starting with an acknowledgement of where UN work has failed, and following up by providing the necessary support and oversight to ensure that justice is finally served and both sides immediately stop playing survivors off against the other.

The end of UNITAD's mandate does not have to mark the end of justice for ISIL survivors; it can also signal the opportunity to re-open a survivor-centered prosecution mechanism in Iraq.

By implementing [the recommendations outlined by C4JR \(https://www.justice-iraq.com/position-paper/\)](https://www.justice-iraq.com/position-paper/), the justice that survivors seek might be delivered yet. Only then can the survivors of ISIL's atrocities begin to heal. ❖

RECOMMENDED



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IN-DEPTH REPORTS

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September 18, 2024, starting at 11:00 a.m. (1500 GMT)

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Devorah Margolin,
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