

**Women's Rights in Iraq: The State's Response to Gender-based Violence Perpetrated by
ISIS and its Compliance with International Human Rights Instruments**

By

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Abstract

Iraqi women from majority and minority groups have fallen victim to horrific gender-based crimes committed against them by the Islamic State of Iraq and the Al-Sham (ISIS). In a campaign internationally recognized as genocide, Yezidi women were subjected to unspeakable gender and sexual-based violence and endured years of enslavement, torture, trafficking, and mental and physical abuse. In addition to the stigmatization and rejection of their children born out of rape by their communities, the women who survived these atrocities returned to destroyed homes, killed family members, and disturbed social structures. Adding to their lived traumas, the women's enjoyment of justice has been impeded by the failure of Iraqi courts to prosecute ISIS members for the crimes they committed against these women, including rape and sexual slavery. This and additional judicial requirements added to their access to reparation programs have created challenges in their journey to justice. Their access to critical services and mobility has been made difficult, at times impossible, by the challenging process of re-issuing civil documentation of themselves and their children. In this paper, I discuss the responses of the Iraqi State to these challenges in comparison to international human rights instruments.

Keywords: ISIS, gender-based violence, women, Iraq, CEDAW

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1 Introduction

1.1 Background

After decades of political instability, sanctions, war, and armed conflict in Iraq, in 2013, an extremist terrorist group called the Islamic State of Iraq and Al-Sham (ISIS), also called Daesh in Arabic, controlled parts of Iraq.¹ Turning Iraqi women's living conditions for the worse, ISIS perpetuated various forms of gender-based violence against women. The terrorist group abducted, enslaved, raped, and tortured Iraqi women. These crimes were specifically targeted against the Yazidis, an ethno-religious community predominantly residing in the northwest of Iraq. In a campaign internationally recognized as genocide, ISIS abducted between 4,000 to 6,000 women and committed crimes of mass atrocities against them.²

While armed conflict disproportionately impacts all groups, women in Iraq have faced particularly severe consequences due to the combination of wartime violence and pre-existing patriarchal norms. ISIS's use of sexual violence as a weapon of war during their occupation of parts of Iraq exemplifies their horrific strategy of terrorizing communities and genocide of the Yazidis. Gender and sexual-based violence during conflict is weaponized and deliberately strategized as a form of

¹ Wilson Center. "Timeline: The Rise, Spread, and Fall of the Islamic State," n.d. <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state>.

² The Genocide Network. "The Prosecution at National Level of Sexual and Gender-based Violence (SGBV) Committed by the Islamic State in Iraq and the Levant (ISIL)." EUROJUST, 2017. https://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2017-07_Prosecution-at-national-level-of-sexual-and-gender-based-violence_EN.pdf; Sayki, Inci. "Where Are the Yazidis Today, Almost a Decade After ISIS's Genocidal Campaign?" *FRONTLINE*, March 13, 2024. <https://www.pbs.org/wgbh/frontline/article/yazidis-decade-after-isis-genocidal-campaign/#:~:text=Thousands%20Escaped%2C%20Thousands%20Missing,to%20return%20home%2C%20Shamdeen%20said>.

control, which “has been a pervasive feature of all wars throughout history.”³ This sexual violence is committed as a form of punishment to insert dominating power, lead to displacement, and disturb the existing relations of the victim in patriarchal societies.⁴

Iraq is predominantly conservative and patriarchal in a societal nature, with strict gender norms. The country consistently ranks in the lowest countries for gender equality. According to the Global Gender Gap Index report in 2021, Iraq ranked 154 out of 156 countries, making it the third most gender-unequal country in the world.⁵ This gender disparity is reflected across various aspects, such as education, employment, access to opportunities, and participation in decision-making processes. Women make up 41% of enrolment in secondary education and 12% in tertiary education.⁶ Consequently, women’s participation in the labor force in Iraq is one of the lowest in the world, with an average of 12%; 9 out of 10 women are without income.⁷ As of 2021, women's income is 12% of that of men.⁸ These statistics reflect and demonstrate the structural and systematic limitations women face nationwide regardless of belonging to majority or minority groups.

Despite Iraq’s multiethnic and multicultural composition, similar gender practices and traditional binary roles are adopted across the country. Men are predominantly expected to be decision-

³ Chinkin, Christine, and Mary Kaldor. “GENDER AND NEW WARS.” *Journal of International Affairs* 67, no. 1 (2013): 167–87. <https://www.jstor.org/stable/24461677>.

⁴ Valji, Nahla, Romi Sigsworth, and Anne Marie Goetz. “A Window of Opportunity: Making Transitional Justice Work for Women.” Second., 2012. https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/10/WP_Ssourcebook-06B-TransitionalJusticeWork4Women-en.pdf.

⁵ The World Economic Forum. “Global Gender Gap Report.” *The World Economic Forum*, March 2021. https://www3.weforum.org/docs/WEF_GGGR_2021.pdf.

⁶ The World Economic Forum. “Global Gender Gap Report.” *The World Economic Forum*, March 2021. https://www3.weforum.org/docs/WEF_GGGR_2021.pdf.

⁷ Faraj, Noor. “9 Out of 10 Iraqi Women Stay Out of the Job Market.” Middle East Research Institute (MERI). Accessed May 31, 2024. <http://www.meri-k.org/iraqopendata/produced-data-driven-stories/9-out-of-10-iraqi-women-stay-out-of-the-job-market/>.

⁸ The World Economic Forum. “Global Gender Gap Report.” *The World Economic Forum*, March 2021. https://www3.weforum.org/docs/WEF_GGGR_2021.pdf.

makers and breadwinners, while women are caretakers and holders of their family's honor. These traditional expectations of women are socially adhered to and enshrined in national legislation. Few examples among others; the Iraqi Penal Code allows the punishment of a wife by her husband as an exercise of a legal right. According to Article 128, reduced penalties are granted for killings under the excuse of honor and, in some cases, of adultery of the wife, according to Article 409. According to the Iraq Family Health Survey (IFHS) conducted in 2006/7, one out of every five Iraqi women experience physical domestic violence; however, there is a lack of legislation that criminalizes domestic violence.⁹ In cases of rape, Article 398 allows the perpetrator impunity of investigation and punishment if he marries the victim and provides that "legal proceedings will resume, or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within three years following the cessation of the proceedings," indicating that the marriage has to last for at least three years before the divorce is granted.¹⁰

In addition to the social practices and policies that enforce traditional gendered limitations, decades of war and conflict in Iraq have exacerbated the conditions of women in Iraq. Under Saddam Hussein's brutal regime in Iraq, women and girls faced horrific violence. They were tortured, raped, beheaded, and kidnapped. Women faced cruel treatment as activists, members of minority groups themselves, or relatives of male dissidents who were against the regime. The wives, sisters,

⁹ Human Rights Watch. "Human Rights Watch Submission to the UN Human Rights Committee in Advance of Its Review of Iraq," August 22, 2022. <https://www.hrw.org/news/2022/01/25/human-rights-watch-submission-un-human-rights-committee-advance-its-review-iraq>.

¹⁰ Refworld- Global law and policy database. "Iraq: Penal Code, No. 111 of 1969, July 1969," February 11, 2024. Accessed June 13, 2024. <https://www.refworld.org/legal/legislation/natlegbod/1969/en/103522>.

and daughters were weaponized as a tactical tool for threatening opposition or ethnic minority groups that the Baath regime violated.¹¹

In addition to the gender-based violence the dictatorship directly committed against women, wars, and resulting economic sanctions, they have had devastating effects on women's lives. After the 1990 Kuwait war, the United Nations Security Council (UNSC) imposed a full-trade sanction on Iraq for 13 years, leading to shortages of food, medication, education, and clean water.¹² These sanctions affected women and girls' access to education and disrupted their families' market opportunities due to the economic crisis.¹³ Despite the existence of few sources that link the UNSC sanctions to gender-based violence in Iraq, research has proven the direct link between poverty and an increase in violence against women.¹⁴ Similarly, as an outcome of the year-long Iran-Iraq war, many women were widowed and lost their breadwinners, who were predominantly men—three decades of the Baath regime left 1.5 million widows in Iraq and many others whose husbands disappeared or were executed and buried unidentified.¹⁵

Following the Saddam Hussein regime, the 2003 US-led invasion of Iraq led to hundreds of thousands of civilian casualties, unconfirmed how many were women.¹⁶ Women detainees were

¹¹ Amnesty International. "Iraq: Decades of Suffering – Now Women Deserve Better." Report, 2005. Accessed May 31, 2024. <https://www.amnesty.org/en/wp-content/uploads/2021/09/mde140012005en.pdf>.

¹² Forde, Killian. "Iraq - Sanctions Take Their Toll." ENN, January 6, 1998. <https://www.enonline.net/fex/4/iraq;> Cankar, Louise. "THE GULF WAR, SANCTIONS AND THE LIVES OF IRAQI WOMEN." *Arab Studies Quarterly* 15, no. 2 (1993): 15–51. https://www.jstor.org/stable/41858972?searchText=&searchUri=&ab_segments=&searchKey=&refreqid=fastly-default%3A77230460ab71ef86c670996ad68d23b5&seq=1.

¹³ Al-Jawaheri, Yasmin Husein. "Women in Iraq: The Gender Impact of International Sanctions." PeaceWomen, February 8, 2015. Accessed May 31, 2024. <https://www.peacewomen.org/node/90094>.

¹⁴ Oxfam Policy & Practice. "Gender Profile - Iraq: A Situation Analysis on Gender Equality and Women's Empowerment in Iraq - Oxfam Policy & Practice," June 22, 2023. <https://policy-practice.oxfam.org/resources/gender-profile-iraq-a-situation-analysis-on-gender-equality-and-womens-empower-620602/>.

¹⁵ Ihsan, Mohammed. "Transitional Justice in Iraq After 2003." In *Iraq After ISIS*, 29–37. Springer Nature Switzerland AG, 2019. <https://doi.org/10.1007/978-3-030-00955-7>.

¹⁶ Crawford, Neta C. "Civilian Death and Injury in the Iraq War, 2003-2013." *Costs of War*. Boston University, March 2013. Accessed May 31, 2024. <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2013/Civilian%20Death%20and%20Injury%20in%20the%20Iraq%20War.%202003-2013.pdf>.

tortured, beaten, sexually abused, and potentially raped by US government soldiers in prisons like Abu Gharib. In addition, the lawlessness and spread of militia control that followed the invasion led to the abductions, raping, and killing of women, including human and women rights activists and politicians.¹⁷ These violations inserted fear within Iraqi women and families, leading to women becoming more housebound and further away from public, private, and decision-making spaces.¹⁸ Not long after the US-led war, Iraq was terrorized by an extremist terrorist organization that strategized controlling women as a part of their campaign. Men, women, and children collectively experienced the violence ISIS committed. Among other groups of women, Yezidi women faced the harshest, most horrific consequences of ISIS. For this paper, attention will be given to women's and girls' experiences of ISIS violence, reparations, and responses of the Iraqi state, with a focus on Yezidi women. In the first section, I discuss a brief history of ISIS, followed by the types of crimes the group committed against Iraqi women, starting with sexual violence and then other types of violence. In the following section, I discuss Iraq's national legislation, Yezidi's Survivor Law, shortcomings in reparations, and the prosecution of ISIS members for the crimes committed against Iraqi women. Finally, I compare Iraq's responses to international standards and human rights instruments, mainly to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), then the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), and the International Covenant on Civil and Political Rights (ICCPR).

¹⁷ Elliott, Ingrid, Institute for International Criminal Investigations, Women Empowerment Organization, and Foreign & Commonwealth Office. "GUIDANCE FOR PRACTITIONERS IN IRAQ." Report. Edited by Stephanie Barbour. *Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, 2018. Accessed May 31, 2024. https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/supplement-to-the-international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict-iraq/Iraq-IP2-Supplement_English_Online.pdf.

¹⁸ Amnesty International. "Iraq: Decades of Suffering – Now Women Deserve Better." Report, 2005. Accessed May 31, 2024. <https://www.amnesty.org/en/wp-content/uploads/2021/09/mde140012005en.pdf>.

1.2 Research Question

This paper will examine the effectiveness of the Iraqi government's responses to the gender-based violence perpetrated by ISIS against women in Iraq in comparison to international standards and international human rights instruments. In doing so, it will assess the status of women in Iraqi society pre- and post-ISIS in terms of gender and sexual-based violence. Then, the research will explore both national legislation and the Yezidi Survivor Law, discussing their responsiveness in terms of providing justice and reparations to Iraqi women survivors. Finally, the paper will compare these responses to established international human rights instruments and their alignment with the CEDAW and other human rights treaties.

1.3 Methodology

This paper's methodology approach involves analyzing secondary academic literature, reports, and shadow reports by Iraqi women's and human rights civil society organizations (CSOs). In addition to documentation by international non-governmental organizations (INGOs) that focus on gender-based violence perpetrated by ISIS against women in Iraq. It will examine the domestic legal framework in Iraq, including Yezidi Survivors Law, in terms of responding to survivors of ISIS-perpetrated violence against women. In doing so, it will encompass reviewing the CEDAW, reports by Special Rapporteurs, and other relevant treaties to analyze and investigate the extent to which this international instrument has been applied or considered in the responses of Iraq in the restoration of justice to women victims and survivors of ISIS.

2 ISIS in Iraq

2.1 The History of ISIS

In 2014, ISIS, a descendant of al-Qaeda, declared itself as an Islamic Caliphate and took over vast regions of Iraq and Syria. ISIS originates from a group founded in 1999 by a Jordanian Sunni Islamist militant named Abu Musab al-Zarqawi and gained influence after the United States invasion of Iraq in 2003. It focused on killing Shia Muslims within Iraq, different from the leading al-Qaeda group that aimed for a broader fight against the West.¹⁹ After Zarqawi died in 2006, the group rebranded as the Islamic State of Iraq (ISI). In 2010, Abu Bakr al-Baghdadi, a previously imprisoned Iraqi scholar, became the new leader, and in 2013, the group changed its name to the Islamic State of Iraq and Al-Sham (ISIS). The extremist terrorist organization's propaganda was published in dozens of languages on their websites and social media platforms, attracting a global audience and the support of individuals with similar ideologies.²⁰

ISIS attracted thousands of men and women around the world to join them in their mission in Iraq and Syria.²¹ These ISIS combatants were highly skilled engineers, tech experts, doctors, accountants, and fighters.²² A United Nations report indicated that 25,000 foreigners joined ISIS

¹⁹ Wright, Robin, United States Institute of Peace, Woodrow Wilson Center, J. M. Berger, International Centre for Counter-Terrorism, William Braniff, START Consortium, University of Maryland, et al. "THE JIHADI THREAT." Report, 2016. <https://www.usip.org/sites/default/files/The-Jihadi-Threat-ISIS-Al-Qaeda-and-Beyond.pdf>. ; US Department of State : Archives. "Zarqawi Letter." Accessed June 1, 2024. <https://2001-2009.state.gov/p/nea/rls/31694.htm>.

²⁰ Wright, Robin, United States Institute of Peace, Woodrow Wilson Center, J. M. Berger, International Centre for Counter-Terrorism, William Braniff, START Consortium, University of Maryland, et al. "THE JIHADI THREAT." Report, 2016. <https://www.usip.org/sites/default/files/The-Jihadi-Threat-ISIS-Al-Qaeda-and-Beyond.pdf>.

²¹ Wright, Robin, United States Institute of Peace, Woodrow Wilson Center, J. M. Berger, International Centre for Counter-Terrorism, William Braniff, START Consortium, University of Maryland, et al. "THE JIHADI THREAT." Report, 2016. <https://www.usip.org/sites/default/files/The-Jihadi-Threat-ISIS-Al-Qaeda-and-Beyond.pdf>.

²² Hummel, Kristina. "The British Hacker Who Became the Islamic State's Chief Terror Cybercoach: A Profile of Junaid Hussain." Combating Terrorism Center at West Point, March 22, 2022. <https://ctc.westpoint.edu/british-hacker-became-islamic-states-chief-terror-cybercoach-profile-junaid-hussain/>.

from over 100 countries, including 4,000 flagged by Interpol.²³ ISIS established local governance in Iraq and Syria but maintains a global recruitment network and conducts various terrorist attacks worldwide.²⁴ From 2014, an estimated 850 to 1,250 foreign individuals have joined ISIS in Iraq.²⁵ The terrorist group aimed to take over larger territories by “setting up a base in a weak state, recruiting members, and fomenting local chaos,” for which Iraq and Syria were most suitable due to conflict and political unrest. “In its caliphate, ISIS established court systems based on Sharia law, schools of Islamic teachings, social services, and local governments. They also had a publishing house to produce books, pamphlets, and textbooks for children.”²⁶ In 2014, ISIS gained control over multiple governorates of Iraq, including its largest governorate, Mosul. It is estimated that around 1.5 million people lived under ISIS control in Iraq,²⁷ and more than 3.3 million were internally displaced as a result.²⁸

²³Porter, Tom. “Isis: Interpol Tracking More Than 4,000 Foreign Jihadists.” *International Business Times UK*, June 5, 2015. <https://www.ibtimes.co.uk/isis-interpol-tracking-more-4000-foreign-jihadists-1504593>;

Ali, Mah-Rukh. “ISIS AND PROPAGANDA: HOW ISIS EXPLOITS WOMEN.” *Reuters Institute Fellowship Paper*. University of Oxford, 2015.

<https://reutersinstitute.politics.ox.ac.uk/sites/default/files/research/files/Isis%2520and%2520Propaganda-%2520How%2520Isis%2520Exploits%2520Women.pdf>.

²⁴ Wright, Robin, United States Institute of Peace, Woodrow Wilson Center, J. M. Berger, International Centre for Counter-Terrorism, William Braniff, START Consortium, University of Maryland, et al. “THE JIHADI THREAT.” Report, 2016. <https://www.usip.org/sites/default/files/The-Jihadi-Threat-ISIS-Al-Qaeda-and-Beyond.pdf>.

²⁵ Schmid, Alex P., and Judith Tinnes. “Foreign (Terrorist) Fighters With IS: A European Perspective.” Report. *ICCT Research Paper*, December 2015. Accessed June 1, 2024. <https://doi.org/10.19165/2015.1.08>.

²⁶ Hadra, Dana. “ISIS: Past, Present and Future?: Pro-ISIS Media and State Formation.” Thesis. *Boston College Electronic Thesis or Dissertation*, 2015. <https://core.ac.uk/download/pdf/151481452.pdf>.; Wright, Robin, United States Institute of Peace, Woodrow Wilson Center, J. M. Berger, International Centre for Counter-Terrorism, William Braniff, START Consortium, University of Maryland, et al. “THE JIHADI THREAT.” Report, 2016. <https://www.usip.org/sites/default/files/The-Jihadi-Threat-ISIS-Al-Qaeda-and-Beyond.pdf>.

²⁷ Lafta, R., Valeria Cetorelli, and Gilbert Burnham. “Living in Mosul During the Time of ISIS and the Military Liberation: Results From a 40-cluster Household Survey.” *Conflict and Health* 12, no. 1 (August 1, 2018). <https://doi.org/10.1186/s13031-018-0167-8>.

²⁸ “Iraq Master List Report 128 (October - December 2022) | Displacement Tracking Matrix,” April 29, 2024. <https://dtm.iom.int/reports/iraq-master-list-report-128-october-december-2022>.

2.2 The Crimes ISIS Committed Against Iraqi Women

2.2.1 Sexual Violence

In 2014, after the fall of Mosul, ISIS attacked the world's most Yezidi-populated Sinjar district and took control of the town of Sinjar on August 3.²⁹ ISIS identified the Yezidi people as infidels and pagans and subjected the Yezidi people to unspeakable human rights violations, including arbitrary killings, torture, trafficking, and enslavement.³⁰ Upon ISIS's advancement in the region, hundreds of thousands of Yezidis fled for their lives, some leaving behind elderly or family members who were physically unable to flee. An additional 40,000 to 50,000 people sought shelter on Mount Sinjar and could not escape to neighboring governorates. Shortly after, ISIS surrounded the mountain from August 3 to 7, entrapping the families who sought refuge there. In the absence of food, water, and medical care, hundreds of Yezidis died of dehydration and starvation. The United Nations reported the deaths of 40 Yezidi children within just three days of the blockade.³¹ The families who did not escape were captured by ISIS and separated from each other according to gender and age. Older adults or persons with disabilities were allowed to leave or remain but converted to Islam or directly executed. Men from the age of puberty were forced to convert to either become slaves or join ISIS, and the ones who resisted were executed or buried alive in mass graves.³² Boys of younger age were forced into ISIS training camps to become future fighters.

²⁹ Wilson Center. "Timeline: The Rise, Spread, and Fall of the Islamic State," n.d. <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state>.

³⁰ Cetorelli, Valeria, and Sareta Ashraph. "A Demographic Documentation of ISIS's Attack on the Yazidi Village of Kocho." LSE Research Online, 2019. Accessed June 2, 2024. https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/08/report/a-demographic-documentation-of-isis-attack-on-the-yazidi-village-of-kocho/Cetorelli_Demographic_documentation_ISIS_attack.pdf.

³¹ Kikoler, Naomi and United States Holocaust Memorial Museum. "'OUR GENERATION IS GONE' the Islamic State's Targeting of Iraqi Minorities in Ninewa." *Bearing Witness Trip Report*, 2015. <https://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>.

³² Nicolaus, Peter, and Serkan Yuce. "Sex-Slavery: One Aspect of the Yezidi Genocide." *Iran & the Caucasus* 21, no. 2 (2017): 196–229. <https://www.jstor.org/stable/44631115>.

Girls as young as the age of 9 were enslaved regardless of whether they converted to Islam or not. Girls younger than that were left with their mothers. The women who were deemed to be beyond childbearing age were separated from the other women and directly executed.³³

The violence ISIS committed against women was unprecedented and started soon after the control of the area. Within August 2014, an estimated 4,000 to 7,000 Yazidi women and girls were kidnapped, tortured, and forced into sex slavery, forced marriages, forced pregnancies, and abortions.³⁴ To further dehumanize their victims, ISIS created price lists based on the age, appearance, and virginity of their women sex slaves and published them on their telegram channels. The prices ranged from a mere \$13 to \$12,500.³⁵ These women were repetitively raped and sold to ISIS members or other men in Syria, Turkey, Saudi Arabia, Qatar, Egypt, and other countries.³⁶ Some were sold up to 15 times to different people across borders. The women sold were advertised as packages with their children under the age of 7, with whom they were confiscated. Some women sex slaves were forced to terminate pregnancies. Other women were

³³ Cetorelli, Valeria, and Sareta Ashraph. "A Demographic Documentation of ISIS's Attack on the Yazidi Village of Kocho." LSE Research Online, 2019. Accessed June 2, 2024. https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/08/report/a-demographic-documentation-of-isis-attack-on-the-yazidi-village-of-kocho/Cetorelli_Demographic_documentation_ISIS_attack.pdf; Wilson Center. "The 10th Anniversary of the Yazidi Genocide and Iraqi PM's Historic White House Visit: Key Discussions for Biden and Al-Sudani," n.d. <https://www.wilsoncenter.org/article/10th-anniversary-yazidi-genocide-and-iraqi-pms-historic-white-house-visit-key-discussions>.

³⁴ Human Rights Council. "'They Came to Destroy': ISIS Crimes Against the Yazidis." Report. *Thirty-Second Session*, June 15, 2016. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf; Ceasefire, "The Yazidi Survivors' Law: A Step towards Reparations for the ISIS Conflict" (The Ceasefire Centre for Civilian Rights, May 11, 2021) <<https://www.ceasefire.org/the-yazidi-survivors-law-a-step-towards-reparations-for-the-isis-conflict/>> <https://www.ceasefire.org/the-yazidi-survivors-law-a-step-towards-reparations-for-the-isis-conflict/>.

³⁵ Nicolaus, Peter, and Serkan Yuce. "Sex-Slavery: One Aspect of the Yazidi Genocide." *Iran & the Caucasus* 21, no. 2 (2017): 196–229. <https://www.jstor.org/stable/44631115>; New York Daily News. "Roughly 3,000 Yazidi Women and Girls Are Sold on ISIS Sex Slave Market," July 6, 2016. <https://www.youtube.com/watch?v=H-Ktit7cK0A>; Wright, By Rachel. "Fighting to Free the Women and Children Enslaved by IS," July 6, 2023. <https://www.bbc.com/news/world-middle-east-66108078>.

³⁶ The Week. "Exclusive Interview With a Yazidi - a Former ISIS Slave Speaks Out," January 16, 2020. <https://www.youtube.com/watch?v=6UGQkCioUbQ>; Nicolaus, Peter, and Serkan Yuce. "Sex-Slavery: One Aspect of the Yazidi Genocide." *Iran & the Caucasus* 21, no. 2 (2017): 196–229. <https://www.jstor.org/stable/44631115>

separated from their children that were born as a result of rape, and some remain with unknown fates today. Some women who attempted to escape or resisted rape were beaten, threatened, and gang raped. Some women who attempted suicide were told that if they tried again, their families would be killed.³⁷

ISIS used interpretations of Sharia law to justify the violence they committed against Yazidi women. On their website and other platforms, they spread Islamic interpretations such as “[o]ne should remember that enslaving the families of the kuffar [the infidels] and taking their women as concubines is a firmly established aspect of the Shariah, or Islamic law.”³⁸ Indicating that capturing and having sex with non-believing women, as in non-Muslims, is permissible in Islam due to her unbelief.³⁹

Furthermore, women and girls from other minority and majority groups were faced with sexual violence and various types of traumas by the Islamic State. Iraqi Women Network estimates that around 600 Turkmen women were kidnapped by ISIS and enslaved.⁴⁰ Women from other minority groups, such as Shabak, Christian, and Muslim women, were abducted and held captive⁴¹ to the

³⁷ Amnesty International. “ESCAPE FROM HELL: TORTURE AND SEXUAL SLAVERY IN ISLAMIC STATE CAPTIVITY IN IRAQ.” Report, 2014. https://www.amnestyusa.org/wp-content/uploads/2017/04/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_mde_140212014_.pdf

³⁸ Abdelaziz, Salma. “ISIS states its justification for the enslavement of women.” CNN, October 13, 2014. Accessed June 2, 2024. <https://edition.cnn.com/2014/10/12/world/meast/isis-justification-slavery/index.html>.

³⁹ Roth K, “Slavery: The ISIS Rules” Human Rights Watch (October 28, 2020) <<https://www.hrw.org/news/2015/09/05/slavery-isis-rules>>

⁴⁰ Iraqi Women Network. “Women, Peace and Security Recommendations for the UPR of Iraq,” 2019. https://upr.info/sites/default/files/documents/2019-10/iraqi_women_network_submission.pdf.

⁴¹ Shahali, Shadab, Shahrooz Shariati, and Ali Montazeri. “Sexual Violence Against Women by So-called Islamic State of Iraq and Syria (ISIS): Protocol for a Systematic Review.” *Systematic Reviews* 9, no. 1 (October 12, 2020). <https://doi.org/10.1186/s13643-020-01496-2>.

extent that studies show approximately 70% of women and girls who survived ISIS captivity in Iraq were raped.⁴²

It is estimated that around 4000 children were born as an outcome of rape by ISIS fathers.⁴³ Since, according to Iraqi law, lineage can only be passed on by fathers only in the presence of a marriage certificate, mothers cannot pass their names to their offspring; as a result, the children born of ISIS fathers remain without civil identification.⁴⁴ This has devastating consequences for Yezidi women who were victims of ISIS sexual violence and their children. The children are rejected for essential services such as education enrollment and healthcare access due to lack of civil identification.⁴⁵ In addition, Iraqi law obligates children to be registered as Muslims in the absence of unknown fathers.⁴⁶ As a result, children of Yezidi women who were successfully registered were obliged to register as Muslims and face further exclusion and stigmatization in their Yezidi community, adding another layer of hardship for them and their mothers.⁴⁷

The Yezidi beliefs dictate that a Yezidi child can only be born from a Yezidi mother and father; as a result, children of ISIS fathers cannot be considered Yezidis. This situation has forced some mothers to register their children under their grandfathers' names if the family accepts. Some

⁴² Oxfam Policy & Practice. “Women, Peace and Security in the Middle East and North Africa Region: Factsheet - Oxfam Policy & Practice,” June 22, 2023. <https://policy-practice.oxfam.org/resources/women-peace-and-security-in-the-middle-east-and-north-africa-region-factsheet-596392/>.

⁴³ رشيد, رجاء حميد. ““My Name Is My Mother’s Name” in Iraq.” *مواطن*, March 26, 2024. <https://muwatin.net/en/47578/my-name-is-my-mothers-name-in-iraq/>.

⁴⁴ Refworld. “Iraq: National Card Law No. (3) of 2016.” Uploaded by Refworld - UNHCR’s Global Law and Policy Database, 2016. <https://www.refworld.org/legal/legislation/natlegbod/2016/en/124167>.

⁴⁵ Davis, Lisa. “IRAQI WOMEN CONFRONTING ISIL: PROTECTING WOMEN’S RIGHTS IN THE CONTEXT OF CONFLICT.” *SOUTHWESTERN JOURNAL OF INTERNATIONAL LAW* 22 (2016): 28–78. <https://rss.swlaw.edu/sites/default/files/2017-04/SJIL%20V22%2C%20N1%203-Iraqi%20Women%20Confronting%20ISIL-Davis.pdf>.

⁴⁶ Refworld. “Iraq: National Card Law No. (3) of 2016.” Uploaded by Refworld - UNHCR’s Global Law and Policy Database, 2016. <https://www.refworld.org/legal/legislation/natlegbod/2016/en/124167>.

⁴⁷ Amnesty International. “Iraq: Legacy of Terror: The Plight of Yezidi Child Survivors of ISIS - Amnesty International.” *Amnesty International*. Amnesty International, 2020. <https://www.amnesty.org/en/documents/mde14/2759/2020/en/>.

children were abandoned by their mothers or mother's extended families due to shame and stigmatization. However, some Yezidi mothers who wish to stay with their children flee or refuse to return to their families and communities.⁴⁸ In addition, the Yezidi community is known to adhere to the concept of honor firmly and refuse premarital relationships among men and women. While honor killings are prevalent in their communities, the Yezidis welcomed their women survivors back. However, according to official statements issued by their religious and political leaders, their stance on children born of ISIS fathers is the opposite.⁴⁹ Upon some women's return from ISIS captivity, their families rejected their children.⁵⁰ The children were viewed as a reminder of violence and as a cause that could lead to further extremism in their societies. Some children were in Syria, and their mothers escaped without them.⁵¹ It is important to remember that some of the mothers were still in their early teenage years, and their views of their children born out of rape might not have been the same of a child born out of a consensual relationship.

Also, considering the nature of Iraq's society, survivors of sexual violence are highly stigmatized in Iraq. Survivors are viewed as "impure" and "dishonored" and blamed for disgracing their families' reputations.⁵² Generally, in Iraq, the subject of rape and sexual violence is taboo and is

⁴⁸ Amnesty International. "Iraq: Legacy of Terror: The Plight of Yezidi Child Survivors of ISIS - Amnesty International." *Amnesty International*. Amnesty International, 2020. <https://www.amnesty.org/en/documents/mde14/2759/2020/en/>.

⁴⁹ Amnesty International. "Iraq: Legacy of Terror: The Plight of Yezidi Child Survivors of ISIS - Amnesty International." *Amnesty International*. Amnesty International, 2020. <https://www.amnesty.org/en/documents/mde14/2759/2020/en/>.

⁵⁰ Human Rights Watch, "Human Rights Watch Submission to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) of Iraq's Periodic Report for the 74th CEDAW Session: (21 October – 8 November 2019)" (Human Rights Watch 2019) <https://www.hrw.org/sites/default/files/supporting_resources/hrw_submission_cedaw_iraq.pdf> accessed March 30, 2024

⁵¹ Chulov, Martin. "After Isis, Yazidi Women Forced to Leave Their Children Behind." *The Guardian*, August 31, 2021. https://www.theguardian.com/world/2020/oct/16/after-isis-yazidi-women-forced-to-leave-their-children-behind?CMP=fb_gu&utm_medium=Social&utm_source=Facebook#Echobox=1602866656.

⁵² Elliott, Ingrid, Institute for International Criminal Investigations, Women Empowerment Organization, and Foreign & Commonwealth Office. "GUIDANCE FOR PRACTITIONERS IN IRAQ." Report. Edited by Stephanie Barbour. *Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*,

not viewed purely as a nonconsensual violation of human rights. Nevertheless, it is more of a morality and honor-related issue for which women are blamed. Despite the public empathy Yezidi survivors have received within Iraq, they still face stigmatization and marginalization within their communities and others. This is true to the extent that some survivors have chosen to stay silent regarding the sexual violence and rape that was perpetrated against them from the fear of causing shame to their families. Some families have also expressed worries about the future of the women and girl survivors, including they would not “find husbands” due to the stigma associated with them.⁵³ These conditions leading to the reluctance of ISIS survivors to discuss the violence that was perpetrated against them directly affects their access to critical health or psychosocial services, ensuring their physical and mental well-being.

2.2.2 Other Forms of Violence

The women and girls who remained with their families within ISIS territories were forcefully made to wear a Niqab and cover their entire bodies, including their faces, heads with veils over their eyes, gloves, and socks. Human Rights Watch reports that in some rural areas, women had limited access to healthcare, and girls were prevented from attending schools.⁵⁴ In addition to rules on attire and limiting access to services, the women who lived in ISIS-controlled territories were confined within the frame of their households out of fear.⁵⁵ Women were not allowed outside their

2018. Accessed May 31, 2024. https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/supplement-to-the-international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict-iraq/Iraq-IP2-Supplement_English_Online.pdf.

⁵³ Amnesty International. “ESCAPE FROM HELL: TORTURE AND SEXUAL SLAVERY IN ISLAMIC STATE CAPTIVITY IN IRAQ.” Report, 2014. https://www.amnestyusa.org/wp-content/uploads/2017/04/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_mde_140212014_.pdf.

⁵⁴ Human Rights Watch. “Iraq: Women Suffer Under ISIS,” October 27, 2022. <https://www.hrw.org/news/2016/04/06/iraq-women-suffer-under-isis>.

⁵⁵ Human Rights Watch. “Iraq: Women Suffer Under ISIS,” October 27, 2022. <https://www.hrw.org/news/2016/04/06/iraq-women-suffer-under-isis>.

homes without male guardians, and gender-specific rules were coerced by ISIS to “promote virtue and prevent vice.” Women who violated these rules were beaten and punished;⁵⁶ of their husbands or male family relatives would be publicly punished and humiliated.

Meanwhile, women living in ISIS territories were threatened not only by living under the control of ISIS but also by their husbands, who used ISIS to intimidate them: “[M]y husband threatened me with ISIS. He always said: ‘[I]f you [do not] shut your mouth, I will tell ISIS that you are not a good woman, and I will let them take you.’”⁵⁷ The presence of ISIS and its rules reinforced strict gender norms and controlled women’s mobility and access. It led to shifts in household dynamics and intimidated women and men through threats of punishment. This impact on gender norms and family relations has long-term consequences on Iraqi communities and has not been sufficiently explored through academic research.

ISIS also conducted public executions or stoned women who were accused of committing adultery while others watched.⁵⁸ In addition, the terrorist groups committed horrific crimes against gender non-conforming individuals, perceived to be members of the LGBTQ+ community by public executions, throwing them off tall buildings and beheading them.⁵⁹ The number of LGBTQ+ individuals executed by ISIS in Iraq is not precise, and it is undocumented how many of the victims

⁵⁶ Office of the United Nations High Commissioner for Human Rights. “Address by Ms. Flavia Pansieri, United Nations Deputy High Commissioner for Human Rights to the Human Rights Council’s Special Session on Iraq: Special Session on Iraq,” September 1, 2014. Accessed June 13, 2024. <https://www.ohchr.org/en/statements/2014/09/address-ms-flavia-pansieri-united-nations-deputy-high-commissioner-human-rights>.

⁵⁷ Oxfam Policy & Practice. “Gender Profile - Iraq: A Situation Analysis on Gender Equality and Women’s Empowerment in Iraq - Oxfam Policy & Practice,” June 22, 2023. <https://policy-practice.oxfam.org/resources/gender-profile-iraq-a-situation-analysis-on-gender-equality-and-womens-empower-620602/>.

⁵⁸ Withnall, Adam. “Isis Throws ‘gay’ Men off Tower, Stones Woman Accused of Adultery and Crucifies 17 Young Men in ‘retaliatory’ Wave of Executions | the Independent.” *The Independent*, January 19, 2015. <https://www.independent.co.uk/news/world/middle-east/isis-throws-gay-men-off-tower-stones-woman-accused-of-adultery-and-crucifies-17-young-men-in-retaliatory-wave-of-executions-9986410.html>.

⁵⁹ “Timelines of Publicized Executions for Alleged Sodomy by the Islamic State Militias.” *Outright International*, January 24, 2023. <https://outrightinternational.org/content/timeline-publicized-executions-alleged-sodomy-islamic-state-militias#230548828-3447906283>.

identified as women. These violations have not been condemned by the Iraqi government or accounted for since the post-ISIS liberation.⁶⁰ However, considering the current context of Iraq and the criminalization of homosexuality, it is unlikely that this issue will be contemplated within the justice system anytime in the future.⁶¹

2.2.3 Displacement and Civil Identification

In addition to the communities living in ISIS-controlled areas, as of February 2017, the atrocities committed by ISIS left more than three million Iraqis internally displaced.⁶² Families who fled ISIS faced multifaceted challenges, including but not limited to loss or confiscation of legal documents such as civil identification, ownership, marriage, and birth certificates, all necessary to access vital services.⁶³ These consequences, directly and indirectly, affect the living conditions of women upon displacement and return to their original locations due to disturbed gender, social, and economic dynamics. Women who returned to their homes after areas were liberated from ISIS were further away from job markets and income-generating opportunities due to the fear spread among displaced families.⁶⁴ In addition to that, as a result of the challenging economic conditions some families faced upon displacement, they arranged early marriages for their daughters, who

⁶⁰ Qadir, Bakhan. "Iraq's Queer Community Torn Between Militias, Moralities and Masculinities." Thesis, University of Iceland, 2021. [Unpublished]

⁶¹ Human Rights Watch. "Iraq: Repeal Anti-LGBT Law," May 20, 2024. <https://www.hrw.org/news/2024/05/20/iraq-repeal-anti-lgbt-law>.

⁶² "Iraq Master List Report 128 (October - December 2022) | Displacement Tracking Matrix," April 29, 2024. <https://dtm.iom.int/reports/iraq-master-list-report-128-october-december-2022>.

⁶³ Buchanan, Elysia, and Caroline Zullo. "Life in the Margins: Re-examining the Needs of Paperless People in Post-conflict Iraq." Report, September 2022. <https://www.nrc.no/globalassets/pdf/reports/life-in-the-margins/life-in-the-margins.pdf>.

⁶⁴ Qadir, Bakhan. "GENDER AND CULTURAL NORMS IN AGRICULTURE: Gender Analysis." Uploaded by Mercy Corps, December 2022. Accessed June 14, 2024. <https://drive.google.com/file/d/1xxSAhS7JfoNxAlCjCq744QiW4iArTJnt/view>.

were sometimes still teenagers.⁶⁵ Also, research shows that women who fled ISIS were subjected to a higher rate of physical and verbal violence by their husbands as a result of poverty.⁶⁶

During ISIS-caused displacement, women's access and mobility in camps are restricted. Women who arrived at camps or borders of other governorates upon fleeing ISIS-controlled areas had their civil identification confiscated by security forces. This is due to perceived affiliations with ISIS or being relatives of male family members with affiliations with ISIS.⁶⁷ Some others possessed ISIS-issued identification cards, specifically for children born in ISIS-controlled areas, or marriage certificates issued in ISIS-established courts that the Iraqi government does not recognize.

The lack of civil identification leads to denied access to public services and freedom of movement in and outside camps or between governments. This has led to women's inability to access health services and, at times, home births without the supervision of medical doctors.⁶⁸ Women who gave birth in hospitals were not issued identification cards for their children without the presence of the father. Some of the women who lost their husbands and did not have their civil identification or Iraq-approved marriage certificates cannot prove the lineage of their children. At times, issued documents for these children were stamped with terms such as "son of Daesh" or other derogatory terms that increased security and stigmatization risks.⁶⁹

⁶⁵ Vilardo, Valeria, and Sara Bittar. "GENDER PROFILE – IRAQ: A Situation Analysis on Gender Equality and Women's Empowerment in Iraq." Report. *Oxfam*. Oxfam, December 2018. <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620602/rr-gender-profile-iraq-131218-en.pdf>.

⁶⁶ Dietrich, Luisa, and Simone E. Carter. "GENDER AND CONFLICT ANALYSIS IN ISIS AFFECTED COMMUNITIES OF IRAQ." Report. *Oxfam*. Oxfam, May 2017. <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620272/rr-gender-conflict-isis-affected-iraq-300517-en.pdf;jsessionid=E701D9F8F73A1294EC5DAA687CEA67E3?sequence=1>.

⁶⁷ Buchanan, Elysia, and Caroline Zullo. "Life in the Margins: Re-examining the Needs of Paperless People in Post-conflict Iraq." Report, September 2022. <https://www.nrc.no/globalassets/pdf/reports/life-in-the-margins/life-in-the-margins.pdf>.

⁶⁸ Moayed Baker, Helin. "Iraq: No Documents, No Future | NRC." NRC, 2019. <https://www.nrc.no/perspectives/2019/iraq-no-documents-no-future/>.

⁶⁹ Saieh, Alexandra, Naomi Johnstone, Jesse Delbridge, Asmaa Noori, Helin Baker, and Daniel Gorevan. "BARRIERS FROM BIRTH." *The Norwegian Refugee Council (NRC)*. The Norwegian Refugee Council (NRC), 2019. <https://www.nrc.no/globalassets/pdf/reports/iraq/barriers-from-birth/barriers-from-birth---report.pdf>.

In 2019, it was reported that more than 45,000 children residing in camps do not have civil identification and consequently do not have access to vaccinations, education, and other services.⁷⁰

Women without civil documentation for themselves and their children are more vulnerable to marginalization, exploitation, and harassment. It prevents women from registering to receive financial support from the government during their displacement or accessing possible employment opportunities. This has left women in precarious conditions and, at times, facing sexual exploitation.⁷¹ Due to the bureaucratic process and additional layers of security clearance requirements, women need to travel long distances with security risks to their original locations to obtain civil documentation.⁷² Considering the traditional gender norms of Iraq, the loss of income, and the risk of poverty during displacement, these women face additional challenges in traveling and finalizing complex administrative tasks in men-dominated ministries, to which they might not be accustomed.

After areas were liberated from ISIS, families were allowed to return to their original locations before displacement. Safety and security and the fear of returning or remaining in ISIS units or explosives are the main issues for returnees.⁷³ Families who did not escape ISIS are perceived to

⁷⁰ Saieh, Alexandra, Naomi Johnstone, Jesse Delbridge, Asmaa Noori, Helin Baker, and Daniel Gorevan. "BARRIERS FROM BIRTH." *The Norwegian Refugee Council (NRC)*. The Norwegian Refugee Council (NRC), 2019. <https://www.nrc.no/globalassets/pdf/reports/iraq/barriers-from-birth/barriers-from-birth---report.pdf>.

⁷¹ United Nations Development Programme Iraq [UNDP]. "Affiliated With ISIS: Challenges for the Return and Reintegration of Women and Children," October 2022. <https://reliefweb.int/report/iraq/affiliated-isis-challenges-return-and-reintegration-women-and-children-enar>.

⁷² United Nations Development Programme Iraq [UNDP]. "Affiliated With ISIS: Challenges for the Return and Reintegration of Women and Children," October 2022. <https://reliefweb.int/report/iraq/affiliated-isis-challenges-return-and-reintegration-women-and-children-enar>.

⁷³ DAVIS, ROCHELLE, GRACE BENTON, DANA AL DAIRANI, MICHAELA GALLIEN, and SALMA AL-SHAMI. "HOME AFTER ISIS: A STUDY OF RETURN AS a DURABLE SOLUTION IN IRAQ." *Journal of Peacebuilding & Development* 13, no. 2 (August 2018): 1–15. https://www.jstor.org/stable/pdf/48603210.pdf?refreqid=fastly-default%3Af93d51c506d9cb9f687e92ea176b44d8&ab_segments=&origin=&initiator=&acceptTC=1.

be ISIS affiliates, which causes inter-community tensions and discrimination to this day.⁷⁴ This tension is more dominant in regions occupied by communities from diverse ethnoreligious identities. As an example, Yezidi families refuse to return to locations where they used to live with Arabs due to perceived sympathetic attitudes toward ISIS or accusations of being involved in the killings and kidnapping of Yezidis.⁷⁵ This occurs among Sunni and Shia groups as well, predominantly accusations of Sunni groups being affiliated with ISIS. Some families are not welcome in some areas even after obtaining security clearances from the Iraqi government or are requested to abandon their male children “even if they were one day old.”⁷⁶

⁷⁴ UN Human Rights Council. “Report of the Special Rapporteur on Minority Issues on Her Mission to Iraq: A/HRC/34/53/Add.1.” Refworld, February 12, 2024. Accessed June 13, 2024. <https://www.refworld.org/reference/mission/unhrc/2017/en/115623>.

⁷⁵ Human Rights Council. ““They Came to Destroy”: ISIS Crimes Against the Yazidis.” Report. *Thirty-Second Session*, June 15, 2016. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf.

⁷⁶ United Nations Development Programme Iraq [UNDP]. “Affiliated With ISIS: Challenges for the Return and Reintegration of Women and Children,” October 2022. <https://reliefweb.int/report/iraq/affiliated-isis-challenges-return-and-reintegration-women-and-children-enar>.

3 Iraq's Responses to Gender-Based Violence Committed by ISIS

3.1 Iraq's National Legislation

Despite the comprehensive documentation of ISIS crimes against women, as of 2019, no ISIS member was prosecuted or convicted for these crimes in Iraqi courts.⁷⁷ According to Human Rights Watch, these acts against Yazidis amount to war crimes against humanity,⁷⁸ and were internationally recognized as genocide.⁷⁹ While Iraq is a state party to the Convention on the Prevention and Punishment of the Crime of Genocide,⁸⁰ Iraq's national legislation does not mention the criminalization of genocide. However, according to Article 37(3) of Iraq's Constitution, "[f]orced labor, slavery, slave trade, trafficking in women or children, and sex trade" is prohibited.⁸¹ Nevertheless, Iraq is not a state party to the Rome Statute of the International Criminal Court,⁸² it does not have the jurisdiction to criminalize war crimes, crimes against humanity, or genocide.

Simultaneously, upon a request of Iraq's government in 2017, based on Resolution 2379 of 21 September 2017, the United Nations Security Council (UNSC) established a United Nations

⁷⁷ Human Rights Watch. "Human Rights Watch Submission to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) of Iraq's Periodic Report for the 74th CEDAW Session (21 October – 8 November 2019)," September 2019. https://www.hrw.org/sites/default/files/supporting_resources/hrw_submission_cedaw_iraq.pdf.

⁷⁸ Human Rights Watch. "Human Rights Watch Submission to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) of Iraq's Periodic Report for the 74th CEDAW Session (21 October – 8 November 2019)," September 2019. https://www.hrw.org/sites/default/files/supporting_resources/hrw_submission_cedaw_iraq.pdf.

⁷⁹ ISIL/Da'esh Committed Genocide of Yazidi, War Crimes Against Unarmed Cadets, Military Personnel in Iraq, Investigative Team Head Tells Security Council | Meetings Coverage and Press Releases," May 10, 2021. <https://press.un.org/en/2021/sc14514.doc.htm>.

⁸⁰ UNTC. "Convention on the Prevention and Punishment of the Crime of Genocide." Accessed June 14, 2024. <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280027fac>.

⁸¹ "Iraq 2005 Constitution." Accessed June 13, 2024. https://www.constituteproject.org/constitution/Iraq_2005.

⁸² United Nations Treaty Collection [UNTC]. "Rome Statute of the International Criminal Court." UNTC, 2002. Accessed June 2, 2024. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=en.

Investigative Team to Promote Accountability for Crimes Committed by ISIS in Iraq (UNITAD). The mandate of UNITAD was to support Iraq in holding ISIS accountable “by collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide.” However, the government of Iraq faced criticism as this request was conducted without consultations with Yezidi survivors.⁸³

Seven years after the establishment of UNITAD, and despite its proposition of a draft law to incorporate international crimes into Iraq’s legal system in 2020, Iraq has failed to enact legislation to address these crimes.⁸⁴ Despite joint efforts of the Yezidi organization and survivor groups, national and international organizations to extend UNITAD’s mandate and develop national legislation to prosecute ISIS’s crimes fully, the Iraqi government and UNSC ended UNITAD’s mandate with no possibility of extension to due September 2024.⁸⁵

Even though Iraq lacks national legislation that would allow it to prosecute international crimes and is not a signatory of the Rome Statute, it has previous experience introducing legislation to prosecute international crimes. To investigate the crimes Saddam Hussein’s regime committed against the Iraqi people, Iraq set up the Iraqi High Tribunal.⁸⁶ The Tribunal was a national court with legal jurisdiction from the Iraqi Criminal Code but prosecuted international crimes from 1968 to 2003. However, the Tribunal faced criticism not for being heavily male-dominated and having

⁸³ Mohammed, Omar and The Program on Extremism at George Washington University. “The Perilous Intersection of Amnesty and Accountability: Iraq’s Legal Quandary and Its Global Counterterrorism Ramifications,” September 2023. <https://extremism.gwu.edu/sites/g/files/zaxdzs5746/files/2023-10/the-perilous-intersection-of-amnesty-and-accountability-final.pdf>.

⁸⁴ “Iraq (UNITAD), June 2024 Monthly Forecast: Security Council Report,” n.d. <https://www.securitycouncilreport.org/monthly-forecast/2024-06/iraq-unitad-8.php>.

⁸⁵ “The Prosecution of ISIS Members Following the UN Security Council Vote on UNITAD,” October 3, 2023. <https://www.yazda.org/the-prosecution-of-isis-members-following-the-un-security-council-vote-on-unitad/>; Smith, Mairéad, Jiyan Foundation for Human Rights, Coalition for Just Reparations (C4JR), Delman Kareem, and IOM Iraq. “TAKING STOCK THREE YEARS AFTER THE ADOPTION OF THE YAZIDI [FEMALE] SURVIVORS LAW,” March 1, 2024. <https://c4jr.org/wp-content/uploads/2024/03/C4JR-Report-2024-Three-Years-After-YSL-1.pdf>.

⁸⁶ Hybrid Justice. “Iraqi High Tribunal,” April 5, 2019. <https://hybridjustice.com/iraqi-high-tribunal/>.

only two women judges appointed among 55 men and for failing to charge defendants with crimes of sexual violence.⁸⁷ The Tribunal acknowledged widespread sexual violence under the Baath Regime but fell out in bringing specific charges.⁸⁸ In the Anfal case, despite the repeated plaintiff statements on the occurrences of rape and sexual violence against Kurdish women,⁸⁹ none of the defendants were charged with rape or sexual violence, neither as a crime against humanity nor as a war crime.⁹⁰

In addition to lacking behind in achieving justice for women, these shortcomings in addressing the sexual violence committed by the Baath dictatorship have impeded proper documentation of gender-based crimes of a sexual nature that Iraqi women have faced. Not holding perpetrators fully accountable for gender-based crimes in court reinforces the traditional harmful stigma surrounding such crimes and discourages survivors from coming forward. In addition, the failure of a high-level court that was assembled under international standards to account for such crimes fully downplays their brutality and consequences on women's lived experiences. These shortcomings also impeded paving a pathway for the transformation of the legal framework of Iraq that still overlooks the crime of rape if the perpetrator marries the victim.⁹¹

Similarly, the national courts in Iraq prosecuted captured ISIS members under narrow legal provisions that did not account for the gravity of their gender-based crimes. ISIS suspects are

⁸⁷ PeaceWomen. "IRAQ: The Iraqi High Tribunal Makes Strides Toward Improving Women's Rights in International Law," February 3, 2015. Accessed June 15, 2024. <https://www.peacewomen.org/content/iraq-iraqi-high-tribunal-makes-strides-toward-improving-womens-rights-international-law>.

⁸⁸ Iraqi High Tribunal. "Judgment of the Dujail Trial at the Iraqi High Tribunal: Dujail Case No. 1/C 1/2005," 2005. <https://www.legal-tools.org/doc/a2fdfa/pdf/>.

⁸⁹ Iraqi High Tribunal. "Special Verdict Pertaining to Case No 1/ CSecond/2006 Al Anfal." *Iraqi High Tribunal*, June 24, 2007. https://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Iraq/Anfal_verdict.pdf.

⁹⁰ Trahan, Jennifer. "REMARKS REGARDING THE IRAQI HIGH TRIBUNAL'S 'ANFAL' TRIAL: SPEECH DELIVERED AT INTERNATIONAL LAW WEEKEND." *ILSA Journal of International & Comparative Law*, n.d., 588–602. <https://core.ac.uk/download/pdf/80035562.pdf>.

⁹¹ Jones, Madeline. "A Call to Repeal Iraq's Rape-Marriage Law." *Michigan State International Law Review*, March 20, 2023. <https://www.msuir.org/new-blog/2023/3/20/a-call-to-repeal-iraqs-rape-marriage-law>.

charged under Federal Iraq's anti-terrorism law of 2005⁹² and the Kurdistan Region government's anti-terror 2006 law⁹³, usually only for being members of ISIS as a terrorist organization and for entering Iraq illegally. Further attention is not given to the gravity of the crimes committed against the Yezidis during court proceedings, including sexual slavery and acts of genocide.

The Federal Iraq law defines terrorism as “[e]very criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.”⁹⁴ This definition of both laws has been criticized for being general and vague and for the criminalization of a person for being associated with a terrorist group, not whether the person has committed violence or was forced to join the group.⁹⁵ This indicates that individuals who joined ISIS out of fear or for survival can face the same penalties as those who actively participated in the act of terrorism.⁹⁶

⁹² Refworld - UNHCR's Global Law and Policy Database. “Iraq: Anti-Terrorism Law (Law No. 13 of 2005).” Refworld, February 12, 2024. <https://www.refworld.org/legal/legislation/natlegbod/2005/en/122206>.

⁹³ Kurdistan Parliament - Iraq. “یاسای ژماره (٣) سالی ٢٠٠٦ یاسای بمرنگاربونوهی تۆقاندن (تیرۆر) له ههریمی کوردستان - عێراق.” *Kurdistan Parliament - Iraq*. Kurdistan Region, Iraq: Kurdistan Parliament - Iraq, 2006. Accessed June 2, 2024. <https://www.parliament.krd/english/parliament-business/legislation/2006/>.

⁹⁴ Refworld - UNHCR's Global Law and Policy Database. “Iraq: Anti-Terrorism Law (Law No. 13 of 2005).” Refworld, February 12, 2024. <https://www.refworld.org/legal/legislation/natlegbod/2005/en/122206>.

⁹⁵ According to UNAMI's translation of the 2006 Anti-Terror Law applicable in the Kurdistan region, the law defines a ‘terrorism’ as: “[o]rganized use of violence, or threatening to use violence, or encouraging or glorifying the use of violence to achieve a criminal act either by an individual or groups randomly for the purpose of spreading terror, fear, chaos among the people to sabotage the general system or jeopardize security and safety in the region or the lives of individuals or their freedoms or security or sanctity, and causing damage to the environment or natural resources or public utilities or public or private properties to achieve political, intellectual religious, racist or ethnic aims or goals.”

⁹⁶ United Nations Assistance Mission for Iraq, Office of the United Nations High Commissioner for Human Rights, Jeanine Hennis-Plasschaert, and Michelle Bachelet. “Human Rights in the Administration of Justice in Iraq: Trials Under the Anti-terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL.” Baghdad, Iraq, January 2020. https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf.

The suspected ISIS members are judged in short and rushed trials that last less than fifteen minutes.⁹⁷ Most get the death penalty according to Article 4 of the anti-terrorism law, which entails “[a]ny one who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator.”⁹⁸ There is no official list of the individuals that have been tried, and as a result, it is unknown how many ISIS members were judged according to the provisions of the anti-terrorism law. In addition, there have not been documented cases of victim testimonies throughout ISIS trials, which takes away the opportunities from affected communities to witness justice after the atrocities they have endured.⁹⁹

This process is a missed opportunity to comprehensively and officially document and prosecute the crimes that ISIS has committed, specifically the crimes committed against women and Yezidi women. In a Submission to Iraq’s 74th Periodic Review of the CEDAW, Human Rights Watch indicates that Iraqi judges suggest the applicability of Article 4 of the anti-terrorism law to the sexual abuse and rape crimes perpetrated by ISIS. And not adding similar charges to ISIS cases is due to “victims don’t come forward to file complaints and the courts lack the capacity to identify victims.”¹⁰⁰ However, several sources confirm that in several cases, ISIS detainees have admitted to subjecting Yezidi women to sexual slavery and rape. Still, the prosecutors have overlooked

⁹⁷ Mironova, Vera. “Iraq’s Broken Justice System for Islamic State Fighters.” Law Fare Media, July 24, 2020. Accessed June 2, 2024. <https://www.lawfaremedia.org/article/iraqs-broken-justice-system-islamic-state-fighters>.

⁹⁸ Refworld - UNHCR’s Global Law and Policy Database. “Iraq: Anti-Terrorism Law (Law No. 13 of 2005).” Refworld, February 12, 2024. <https://www.refworld.org/legal/legislation/natlegbod/2005/en/122206>.

⁹⁹ Hagedorn, Elizabeth. “Why Iraq’s Courts Aren’t Recognising IS Crimes Against the Yazidis.” *The New Arab*, 2019. <https://www.newarab.com/analysis/iraqs-courts-arent-recognising-crimes-against-yazidis>.

¹⁰⁰ Human Rights Watch. “Human Rights Watch Submission to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) of Iraq’s Periodic Report for the 74th CEDAW Session (21 October – 8 November 2019),” September 2019. https://www.hrw.org/sites/default/files/supporting_resources/hrw_submission_cedaw_iraq.pdf.

charging them with rape, which carries a sentence of up to 15 years according to national legislation.¹⁰¹

This lack of punishment and judicial recognition of the crimes that were committed against Yazidis and the gravity of the abuse women faced raises concerns and implications for achieving justice, promoting accountability, and an opportunity for healing. In addition, the reasons given for not pursuing rape charges are problematic and impede the fulfillment of transitional justice. On the one hand, the court is overlooking the patriarchal and cultural contexts of the survivors. The stigmatization, possible shaming of the victim, and their family's reluctance to support them in publicly discussing rape to protect their "honor" is of high possibility. On the other hand, the court has not taken additional measures to encourage the participation of victims and strengthen its internal capacity to proceed with such cases. Including establishing women judges or administrative staff to ease some contextual gender barriers, the victims might face.¹⁰²

In addition to the failure of criminal prosecution of ISIS members to bring justice to the gravity of committed crimes, some survivors of rape that were pregnant when they escaped or were rescued were denied abortion.¹⁰³ According to Article 417 of the Iraqi Penal Code, abortion is illegal with no conditional circumstances of rape, with legally mitigated circumstances for women that

¹⁰¹ Human Rights Watch. "Human Rights Watch Submission to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) of Iraq's Periodic Report for the 74th CEDAW Session (21 October – 8 November 2019)," September 2019. https://www.hrw.org/sites/default/files/supporting_resources/hrw_submission_cedaw_iraq.pdf.

¹⁰² International Crisis Group. "Iraq: Stabilising the Contested District of Sinjar." *Middle East Report*. Vol. N°235, May 31, 2022. <https://www.crisisgroup.org/sites/default/files/235-iraq-sinjar.pdf>; Elliott, Ingrid, Institute for International Criminal Investigations, Women Empowerment Organization, and Foreign & Commonwealth Office. "GUIDANCE FOR PRACTITIONERS IN IRAQ." Report. Edited by Stephanie Barbour. *Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, 2018. Accessed May 31, 2024. https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/supplement-to-the-international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict-iraq/Iraq-IP2-Supplement_English_Online.pdf.

¹⁰³ Mazher, Simav. "Clock Ticks: Still No Legal Abortion for ISIS Rape Victims." Rudaw, October 22, 2015. Accessed June 13, 2024. <https://www.rudaw.net/english/kurdistan/22102015>.

“procures her own miscarriage out of shame.”¹⁰⁴ These conditions of obligating survivors of rape and sexual violence to give birth to their perpetrators’ children without their consent raises serious concerns for the survivors’ wellbeing. In addition, the expectation and risk of future stigmatization and a journey of difficult consequences for children born out of ISIS fathers is dire. Particularly if they are rejected by their communities, such as children born of Yazidi mothers, separated from their mothers, viewed only from a security perspective, and left to unknown fates in Iraqi orphanages without identification.¹⁰⁵ Another major issue for these children, as discussed in the previous section of this paper, is issuing civil documentation and national identity cards. Since lineage can only be established through a marriage certificate, and the father of the child must be present, proven dead, or imprisoned, these children remain without identification cards, impeding access to education, health, and other critical services.¹⁰⁶

3.2 The Yazidi’s Survivor Law

In terms of the sexual violence that women faced during ISIS control, the implementation of an inclusive, responsive, and just law and mechanism for survivors is yet to be established. In 2021, seven years after ISIS attacked the Yazidi-populated regions, the Iraqi Parliament (The Iraqi Council of Representatives) passed the Yazidi’s Survivor Law (Law No. 8 of 2021), which

¹⁰⁴ Refworld- Global law and policy database. “Iraq: Penal Code, No. 111 of 1969, July 1969,” February 11, 2024. Accessed June 13, 2024. <https://www.refworld.org/legal/legislation/natlegbod/1969/en/103522>.

¹⁰⁵ Cook, Joana. “Distinguishing Children From ISIS-Affiliated Families in Iraq and Their Unique Barriers for Rehabilitation and Reintegration on JSTOR.” *Perspectives on Terrorism* 17, no. 3 (2006): 42–69. <https://www.jstor.org/stable/27255604>; Amnesty International. “Iraq: Legacy of Terror: The Plight of Yazidi Child Survivors of ISIS - Amnesty International.” *Amnesty International*. Amnesty International, 2020. <https://www.amnesty.org/en/documents/mde14/2759/2020/en/>.

¹⁰⁶ “Gender-Based Violence and Discrimination Against Women and Girls in Iraq: A Submission to the United Nations Universal Periodic Review of IRAQ - Thirty-fourth Session of the UPR Working Group of the Human Rights Council,” April 2019.; UNICEF. “ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING CIVIL DOCUMENTATION IN IRAQ,” n.d. https://mptf.undp.org/sites/default/files/documents/35000/una053_iraq_unicef_unami_iraq_analysis_of_legal_framework.pdf.

provided reparations for ISIS survivors of sexual violence. The law included provisions regarding re-enrollment in education without age restrictions, access to public employment with a quota, a monthly salary, and establishing a governmental directorate to provide the “necessary care” to survivors.¹⁰⁷

The passing of this law marked an essential step in transitional justice for the women survivors and victims of ISIS and was widely welcomed. The law was anticipated as a promise or hope for the women and their families to have justice and reparations after years of violence and abuse. In its first Article, the law states that it applies to “each woman or girl who has been subjected to crimes of sexual violence, including abduction, sexual slavery, being sold in slave markets, being separated from her family, forced religious conversion, forced marriage, forced pregnancy and forced abortion, or physical and psychological harm by ISIS.”¹⁰⁸ This law was initially intended to be only for Yazidi women and girls; however, it was later amended to apply to women of other minority groups that faced similar violence, specifically Turkmen, Christian, and Shabak women. The law dedicated a monthly salary no less than twice the minimum wage, psychological rehabilitation, property restoration, protection measures, and guarantees of non-repetition.¹⁰⁹

The implementation and administration aspects of the law were assigned to the Iraqi General Directorate for Survivors’ Affairs (GDSA) under the Ministry of Labor and Social Affairs (MoLSA).¹¹⁰ Survivors can apply for the Yazidi Survivor Law benefits in three ways: online if they live abroad, which has not been entirely successful so far, or by submitting a paper application

¹⁰⁷ Presidency of the Republic of Iraq. “Yazidi [Female] Survivors’ Law.” *Coalition for Just Reparations (C4JR)*, March 24, 2021. <https://c4jr.org/wp-content/uploads/2022/01/Yazidi-Female-Survivors-Law-March-24-2021.pdf>.

¹⁰⁸ Presidency of the Republic of Iraq. “Yazidi [Female] Survivors’ Law.” *Coalition for Just Reparations (C4JR)*, March 24, 2021. <https://c4jr.org/wp-content/uploads/2022/01/Yazidi-Female-Survivors-Law-March-24-2021.pdf>.

¹⁰⁹ The Ceasefire Centre for Civilian Rights. “The Yazidi Survivors’ Law: A Step Towards Reparations for the ISIS Conflict,” May 11, 2021. Accessed June 3, 2024. <https://www.ceasefire.org/the-yazidi-survivors-law-a-step-towards-reparations-for-the-isis-conflict/>.

¹¹⁰ The General Directorate for Survivors’ Affairs. “The General Directorate for Survivors’ Affairs - YSL Submissions.” Accessed June 3, 2024. <https://ysl.ur.gov.iq/>.

in person. The application is reviewed within 90 days, and eligibility information and the application process are available with support from civil society organizations. Most of GDSA's official communication is through Facebook, which has been criticized for lack of anonymity in the privacy of survivors.¹¹¹

Two months after receiving applications, the Yazidi Survivor Law committee chair, appointed by the High Judicial Council, added a requirement not found in the law: applicants must file a criminal complaint in a federal court to fulfill evidentiary requirements to be able to receive reparations. Applicants were requested to submit a criminal complaint in an anti-terrorism court in Iraq before applying for the reparation program. The immediate concern is that this additional requirement goes against the law's non-judicial nature and undermines its effectiveness.¹¹² Considering the cultural barriers women survivors face, adding the requirement of a criminal investigation of rape and sexual slavery to their reparation process is counterproductive. It might also include harmful practices that further retraumatize, stigmatizes, and dehumanizes the survivors, such as unscientific virginity tests as proof of rape.¹¹³ Several Special Rapporteurs, including the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, and human rights organizations such as Human Rights Watch and Amnesty International, expressed concerns through letters and statements that this additional requirement is not in alignment with international best practices of lowering standards of evidence and shifting the burden of proof for

¹¹¹ Smith, Mairéad, Jiyen Foundation for Human Rights, Coalition for Just Reparations (C4JR), Delman Kareem, and IOM Iraq. "TAKING STOCK THREE YEARS AFTER THE ADOPTION OF THE YAZIDI [FEMALE] SURVIVORS LAW," March 1, 2024. <https://c4jr.org/wp-content/uploads/2024/03/C4JR-Report-2024-Three-Years-After-YSL-1.pdf>.

¹¹² Global Survivors Fund. "Iraq: Flexibility Is Needed for Yazidi Survivors Say NGOs," September 4, 2023. <https://www.globalsurvivorsfund.org/iraq-flexibility-is-needed-for-yazidi-survivors-say-ngos/>

¹¹³ Begum, Rothna. "Dispatches: 'Virginity Testing' to End for Yezidi Rape Survivors." *Human Rights Watch*, August 2, 2023. <https://www.hrw.org/news/2016/01/27/dispatches-virginity-testing-end-yezidi-rape-survivors#:~:text=They%20were%20in%20dire%20need,forensic%2C%20post%20rape%20examination.>

domestic reparation programs of mass atrocities.¹¹⁴ In addition, the ninth section of Article 9 of Yazidi's Survivor Law states that there should be coordinated efforts of investigative and judicial bodies "that contribute to documenting and establishing crimes committed by ISIS in a way that helps prosecute the perpetrators of these crimes."¹¹⁵; however, there have not been any convictions of sexual violence and rape yet.¹¹⁶

The shortcomings of Yazidi's Survivor Law were soon apparent after its announcement. The law covered only women from specific communities and left out men and children from those communities and everyone else from other community groups. In addition, the law has no mention of application pathways that prevent further stigmatization and social shame that the survivors are struggling with. It does not mention the protection, confidentiality, and privacy of those who come forward for reparations. Neither does it ensure that the provisions of trained staff involved in its applications implement survivor-centered or Do No Harm principles.¹¹⁷

¹¹⁴ Various Special Rapporteurs. "Letter to the Government of Iraq." *Various Special Rapporteurs*, May 10, 2023. Accessed June 14, 2024. <https://spcommreports.ohchr.org/fr/TMResultsBase/DownloadPublicCommunicationFile?gId=28060>.

; Global Survivors Fund. "Iraq: Flexibility Is Needed for Yazidi Survivors Say NGOs," September 4, 2023. Accessed June 3, 2024. <https://www.globalsurvivorsfund.org/iraq-flexibility-is-needed-for-yazidi-survivors-say-ngos/>; Shamdeen, Abid. "Nadia Murad's Statement on the Change to the Eligibility Requirements for the Yazidi Survivors Law — Nadia's Initiative." Nadia's Initiative, April 4, 2023. <https://www.nadiasinitiative.org/news/nadia-murads-statement-on-the-change-to-the-eligibility-requirements-for-the-yazidi-survivors-law>.

¹¹⁵ Presidency of the Republic of Iraq. "Yazidi [Female] Survivors' Law." *Coalition for Just Reparations (C4JR)*, March 24, 2021. <https://c4jr.org/wp-content/uploads/2022/01/Yazidi-Female-Survivors-Law-March-24-2021.pdf>.

¹¹⁶ Al-Rahim, Rend. "Transitional Justice in Iraq: The Challenges of National Healing and Recovery." Journal-article. *Istituto Affari Internazionali PAPERS*, August 2023. <https://www.iai.it/en/publicazioni/transitional-justice-iraq-challenges-national-healing-and-recovery>; Amnesty International. "Germany/Iraq: World's First Judgment on Crime of Genocide Against the Yazidis," August 16, 2022. <https://www.amnesty.org/en/latest/news/2021/11/germany-iraq-worlds-first-judgment-on-crime-of-genocide-against-the-yazidis/>.

¹¹⁷ Ceasefire. 2021. "The Yazidi Survivors' Law: A Step towards Reparations for the ISIS Conflict." The Ceasefire Centre for Civilian Rights. May 11, 2021. <https://www.ceasefire.org/the-yazidi-survivors-law-a-step-towards-reparations-for-the-isis-conflict/>.

4 Iraq's National Legislation and Comparison with International Human Rights Instruments

As demonstrated, Iraq has not taken the necessary measures to introduce legislation that would enable it to prosecute the crimes committed by ISIS against women but disregarded crimes of sexual slavery and rape from ISIS members. These measures fall short of what is required to fully meet international standards enshrined in international human rights instruments Iraq has ratified, such as CEDAW, the ICCPR, the CAT, the Convention on the Prevention and Punishment of the Crime of Genocide, and others.

4.1 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The CEDAW was established by the United Nations General Assembly on December 18, 1979, and entered into force on September 3, 1981.¹¹⁸ One hundred eighty countries have adopted CEDAW and set a universal standard for women's human rights. Unlike regional or national human rights laws, CEDAW represents an international agreement on fundamental principles of gender equality and non-discrimination against women beyond each context's cultural and traditional values. The articles of CEDAW's mandates incorporate international principles of equality into national legal frameworks based on principles of non-discrimination.¹¹⁹

¹¹⁸ Office of the United Nations High Commissioner for Human Rights. "Convention on the Elimination of All Forms of Discrimination Against Women," 1979. Accessed June 13, 2024. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

¹¹⁹ Saraswati, Ayu Nanda Saraswati Anak. "The Discourse of Reservations to CEDAW on Women's Rights in Malaysia, Brunei, and Indonesia." *Indonesian Journal of International Law* 19, no. 4 (2004): 515–38. <https://doi.org/10.17304/ijil.vol19.4.1>.

The CEDAW defines discrimination against women as “any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” The Istanbul Convention build up on CEDAW’s provisions and define violence against women as “violence against women is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹²⁰

Under CEDAW, State Parties are obligated to take all necessary measures to prevent, investigate, punish, and provide effective remedies for gender-based violence. This translates into enacting laws that expressly prohibit all forms of gender-based violence, establishing comprehensive support services for victims, raising public awareness about gender-based violence, and holding perpetrators accountable through prosecution and appropriate punishment.¹²¹ Iraq formally ratified CEDAW in 1986, publishing it in the official legal record (Official Gazette).¹²² Iraq has made reservations on Article 16, which concerns women’s family and reproductive rights, and Article 2, sections f and g, which concern the non-discriminatory establishment of laws within the party

¹²⁰ Office of the United Nations High Commissioner for Human Rights. “Convention on the Elimination of All Forms of Discrimination Against Women,” 1979. Accessed June 13, 2024. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

¹²¹ Office of the United Nations High Commissioner for Human Rights. “Convention on the Elimination of All Forms of Discrimination Against Women,” 1979. Accessed June 13, 2024. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

¹²² United Nations Human rights Treaty Bodies. “UN Treaty Body Database - Reporting Status for Iraq.” Accessed June 15, 2024. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=IRQ&Lang=EN.

states.¹²³ The justification for Iraq's reservations is to uphold the Islamic Sharia law, mentioning that Sharia grants women equal rights concerning the provisions of these articles. The CEDAW Committee has consistently stipulated whether reservations based on religion, especially those targeting Articles 2 and 16, truly align with the objective of the Convention. In addition, other state parties repeatedly voiced their disapproval of reservations based on religion.¹²⁴

CEDAW is one of the international human rights treaties with most religion-based reservations. Over 60% of reservations to the CEDAW are based on religious justifications and often target articles that promote women's equality within marriage and family, which weakens the overall effectiveness of CEDAW in achieving its objectives.¹²⁵ Article 2(f) has received the most religious-based reservations from Muslim-majority countries. Under the article, States Parties commit to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women.”¹²⁶

Iraq follows this pattern of reservation, which impedes women's rights to equality and non-discrimination in various ways. Among others, Iraq's national legislation lacks a comprehensive mechanism to ensure equality among men and women and prosecute gender-based crimes and violence against women.¹²⁷ Regarding passing lineage to their children, a challenge reflected

¹²³ UNTC. “Convention on the Elimination of All Forms of Discrimination Against Women.” Accessed June 13, 2024. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en#EndDec.

¹²⁴ Montoya, Mariana, and Basac Çali. “THE MARCH OF UNIVERSALITY? Religion-based Reservations to the Core Un Treaties and What They Tell Us About Human Rights and Universality in the 21st Century.” *Universal Rights Group*. Universal Rights Group, May 2017. Accessed June 13, 2024. https://www.universal-rights.org/wp-content/uploads/2017/05/Policy_report_march_universality_LR_spread.pdf.

¹²⁵ Montoya, Mariana, and Basac Çali. “THE MARCH OF UNIVERSALITY? Religion-based Reservations to the Core Un Treaties and What They Tell Us About Human Rights and Universality in the 21st Century.” *Universal Rights Group*. Universal Rights Group, May 2017. Accessed June 13, 2024. https://www.universal-rights.org/wp-content/uploads/2017/05/Policy_report_march_universality_LR_spread.pdf.

¹²⁶ UNTC. “Convention on the Elimination of All Forms of Discrimination Against Women.” Accessed June 13, 2024. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en#EndDec.

¹²⁷ Various National Human and Women Rights Organizations. “Gender-Based Violence and Discrimination Against Women and Girls in Iraq: A Submission to the United Nations Universal Periodic Review of IRAQ - Thirty-fourth Session of the UPR Working Group of the Human Rights Council,” April 2019.

explicitly in Iraq's national legislation concerning justice for the victims of ISIS's atrocities. As a result, it has been criticized by international human rights treaties such as the CEDAW Committee. In its 2019 review of Iraq, the Committee expressed concern about Iraq's reservation of Article 2 and Article 16 of the Convention, calling it "incompatible with the object and purpose of the Convention and constitute an obstacle to the implementation of the Convention as a whole," and for Iraq's lack of a comprehensive law on violence against women.¹²⁸ Articles 6 and 2 are considered core provisions of CEDAW, specifically Article 2, which is central to the convention's objective. By entering reservations of both articles, Iraq compromises women's access to equality and non-discrimination through provisions of domestic legislation and the possibility of accessing justice when gross gender-based violations are committed against them.¹²⁹

Iraq's national report submitted to the Human Rights Council for the 2019 Universal Periodic Review states that "The Amnesty Act excludes offenses of rape and the courts have considered 5,000 cases of Yazidi women who suffered violence at the hands of ISI[S]. Of them, 1,529 – as well as 88 Shabak women who had suffered sexual violence – were exceptionally included in the social protection network, and registration offices were opened for them..."¹³⁰ However, in 2023, Iraq's drafted amendment of the amnesty act included ISIS-affiliation. It was criticized for its vagueness and having no basis of national request. Additionally, the bill leads to possible

¹²⁸ Committee on the Elimination of Discrimination against Women. "Concluding Observations on the Seventh Periodic Report of Iraq." Report. *Convention on the Elimination of All Forms of Discrimination Against Women*. Convention on the Elimination of All Forms of Discrimination against Women, November 12, 2019. Accessed June 13, 2024. <https://documents.un.org/doc/undoc/gen/n19/363/33/pdf/n1936333.pdf?token=nDpuIX93euFEIskBST&fe=true>.

¹²⁹ "General Recommendations Made by the Committee on the Elimination of Discrimination Against Women: General Recommendation No. 21 (13th Session, 1994)." Accessed June 13, 2024. <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

¹³⁰ Human Rights Council and United Nations. "National Report Submitted in Accordance With Paragraph 5 of the Annex to Human Rights Council Resolution 16/21." Report. *Working Group on the Universal Periodic Review*. Vol. 34, August 22, 2019. <https://documents.un.org/doc/undoc/gen/g19/248/40/pdf/g1924840.pdf?token=imm5SgLe4BLpHfAGya&fe=true>.

amnesties for ISIS members who committed or contributed to gender and sexual-based crimes against Iraqi and Yezidi women.¹³¹ Including the rushed trials of ISIS fighters that are only based on counter-terrorism laws, without prosecution and punishment for the specific crimes of rape and sexual violence, and possible amnesties for perpetrators of these crimes, are not in alignment with the provisions of CEDAW, specifically with Articles 2(b), 2(e), 2(f), and 2(g) of the Convention.¹³² Meanwhile, Iraq's failure to adopt time-bound, temporary special measures to ensure the safety and well-being of survivors of sexual violence during one of the country's most horrific tragedies is unsatisfactory in comparison to Article 4 of the Convention.¹³³ Iraq's prioritization of traditional norms over the nonconsensual pregnancies of Yezidi survivors that were a result of rape is a violation of women's human rights. The denial to legalize abortion for Yezidi survivors of rape violates CEDAW Articles 3, 2(f), 2(e), and Article 16. This includes the court orders requiring medical centers to perform virginity tests on women and girl survivors of ISIS as proof of rape which are considered severe human rights violations and sexual violence on their own. In addition to the possibility of retraumatizing the survivor, this practice, with no scientific basis, is a violation of women's dignity and does not pertain to survivor-based or Do No Harm approaches.¹³⁴

¹³¹ Mohammed, Omar and The Program on Extremism at George Washington University. "The Perilous Intersection of Amnesty and Accountability: Iraq's Legal Quandary and Its Global Counterterrorism Ramifications," September 2023. <https://extremism.gwu.edu/sites/g/files/zaxdzs5746/files/2023-10/the-perilous-intersection-of-amnesty-and-accountability-final.pdf>.

¹³² Various Special Rapporteurs. "Letter to the Government of Iraq." *Various Special Rapporteurs*, May 10, 2023. Accessed June 14, 2024. <https://spcommreports.ohchr.org/fr/TMResultsBase/DownloadPublicCommunicationFile?gId=28060>.

¹³³ Committee on the Elimination of Discrimination against Women. "Concluding Observations on the Seventh Periodic Report of Iraq." Report. *Convention on the Elimination of All Forms of Discrimination Against Women*. Convention on the Elimination of All Forms of Discrimination against Women, November 12, 2019. Accessed June 13, 2024. <https://documents.un.org/doc/undoc/gen/n19/363/33/pdf/n1936333.pdf?token=nDpuIX93euFEIskBST&fe=true>.

¹³⁴ Elliott, Ingrid, Institute for International Criminal Investigations, Women Empowerment Organization, and Foreign & Commonwealth Office. "GUIDANCE FOR PRACTITIONERS IN IRAQ." Report. Edited by Stephanie Barbour. *Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, 2018. Accessed May 31, 2024. https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/supplement-to-the-international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict-iraq/Iraq-IP2-Supplement_English_Online.pdf.

In addition, the possibility of a woman passing lineage to her children without the presence of a marriage certificate is essential to ensure their and their children's safety in dire circumstances. The failure to adopt temporary measures for mothers to access civil documentation for themselves and their children without the presence of a male guardian is a discriminatory practice towards women and not in alignment with Articles 2, 16, and 9 of the Convention. The consequences of this discrimination not only hinder women's access to critical services but expose them to possibilities of further harassment, stigmatization, and exploitation, including denying their children the opportunities of enrollment in education and access to health services and putting them at risk of being stateless. These conditions trap women in a continuous cycle of trauma and discrimination and add additional layers of costly and lengthy administrative requirements that are specifically challenging for survivors of gross human rights violations.¹³⁵

4.2 Other International Human Rights Instruments

The Declaration on the Elimination of Violence Against Women (DEVAW) provides a detailed framework for tackling gender-based violence in all its forms.¹³⁶ The DEVAW requires states to “[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women,” and to “... [ensure] that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and

¹³⁵ Committee on the Elimination of Discrimination against Women. “Concluding Observations on the Seventh Periodic Report of Iraq.” Report. *Convention on the Elimination of All Forms of Discrimination Against Women*. Convention on the Elimination of All Forms of Discrimination against Women, November 12, 2019. Accessed June 13, 2024.

¹³⁶ “Declaration on the Elimination of Violence Against Women,” December 1993. Accessed June 15, 2024. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>.

programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.”¹³⁷ The living conditions, difficulty in re-issuing civil documentation and access to services, virginity tests, and the possibility of mothers passing lineage are not in alignment with international standards enshrined in DEVAW. Additionally, the added requirement for submission of criminal investigation requests for eligibility of the reparations program impedes the realization of rights and access to justice. It exposes survivors to further stigmatization and re-traumatization and does not align with the mentioned international standards.

Furthermore, the CAT, ratified by Iraq in 2011,¹³⁸ recognizes that torture and other cruel treatment can constitute forms of gender-based violence.¹³⁹ In the second periodic report submitted to the CAT, Iraq states, “[t]he Iraqi authorities, including the Supreme Judicial Council, have taken steps to pursue and bring to justice the perpetrators of the sexual violence that accompanied the terrorist crimes committed by ISIL, and appropriate sentences have been handed down against them.”¹⁴⁰ However, there is no further clarification or documentation if perpetrators have been charged with crimes of rape and sexual violence, and the vast amount of literature reviewed for this paper suggests otherwise.

¹³⁷ “Declaration on the Elimination of Violence Against Women,” December 1993. Accessed June 15, 2024. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>.

¹³⁸ United Nations Human rights Treaty Bodies. “UN Treaty Body Database - Reporting Status for Iraq.” Accessed June 15, 2024. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=IRQ&Lang=EN.

¹³⁹ “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” December 1984. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

¹⁴⁰ “Second Periodic Report Submitted by Iraq Under Article 19 of the Convention, Due in 2019,” November 20, 2019. Accessed June 15, 2024. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICaQhKb7yhsty%2FioOKC90Qg7MxW3YSO%2FKtFzCtPKOeWeCmn43cZVi2Oifsk8RPPUrtWofKpnsUwpy2%2Fu6BcFOpL6JqEbPFAs8rWqkXyA5ULTxx6gev4aYX>.

Concerning the trials of ISIS members, human rights organizations have expressed concerns regarding the fulfillment of due process and pre-trial investigation processes, in addition to the provision of opportunities for survivor testimonies.¹⁴¹ The lack of necessary measures to accommodate for testimonies of women who were subjected to rape and sexual slavery is not in alignment with Article 2 of the ICCPR, which grants the right to an effective remedy. Meanwhile, the challenges women face in re-issuing civil identification directly influence their right to free movement within the country, contrary to Article 12 of the ICCPR.¹⁴²

¹⁴¹ Human Rights Watch. *FLAWED JUSTICE*. Human Rights Watch, 2017. https://www.hrw.org/sites/default/files/report_pdf/iraq1217web.pdf.

¹⁴² “International Covenant on Civil and Political Rights,” December 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

5 Conclusion

Honor killings, female genital mutilation, domestic violence, and forced and underage marriages are a reality of Iraqi women's lives. Their conditions have worsened as a result of the continuous cycle of war and conflict, leading to sexual violence, displacement, limited access to services, and economic hardship. While women continue to struggle, Iraq's legislation reinforces discriminatory practices against them. This exacerbates the situation and impedes women's access to justice and enjoyment of fundamental human rights.

The violence and atrocities perpetrated by ISIS against women in Iraq are of unimaginable horror. Timely and proper documentation, prosecution, punishment, and reparations according to international human rights standards are essential to ensure justice for the victims and survivors. The State is responsible for taking temporary and long-term measures to ensure their safety, physical and mental well-being, and reintegration into their communities in a dignifying manner. Even though specific numbers of remaining ISIS members awaiting trial in Iraqi prisons were not obtained, there are remaining opportunities for Iraq to prosecute the gender and sexual-based crimes ISIS committed against women. Taking necessary measures to allow for survivor testimonies before and during trials is essential for justice and healing. In addition, consulting survivors while designing and implementing relevant policies to ensure privacy, gender sensitivity, and responsiveness to needs and contexts is of high priority.

The consequences of ISIS crimes continue, and the level of damage to the current and future generations of women and girls, their children, and their families is yet to be known. Only through multifaceted, non-discriminatory, and just legal and social processes can survivors enjoy their human rights and step towards healing from the violence they faced.

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