

Discrimination by Design:

Key Points for the Universal Periodic Review of Iraq

Iraq Needs to Reform its Legal System

In advance of the Human Rights Council's forthcoming review of Iraq, it is critical that attention is paid to the need for fundamental reform of Iraq's legal system in order to achieve justice for Daesh's victims, and more broadly for the people of Iraq. As currently codified, Iraq's criminal laws do not punish the most egregious aspects of Daesh's sexual and gender-based violence. If prosecuted under these laws, basic features of Daesh's crimes will go unpunished, such as rape with objects, forced marriage, and gender-motivated torture, as well as the international atrocity crimes of genocide, crimes against humanity, and war crimes.

The Global Justice Center's full [submission](#)¹ highlights a number of concerns over Iraq's criminal laws as violations of Iraq's obligations under the treaty bodies to which it is a party – including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Prevention and Punishment of the Crime of Genocide, and the Geneva Conventions.

Iraq's Legal System Fails to Protect Women and Girls Against Discrimination

A fundamental principle of international human rights law is the protection against discrimination. The Universal Declaration on Human Rights and the Charter of the United Nations – as well as CEDAW,² CAT, and the ICCPR – have all codified the principles of non-discrimination and equality.³ Under these principles, states are required to ensure that women, on the basis of equality of men and women, fully enjoy the benefits of the rule of law.

Iraq's definition of rape, forced marriage, and torture are a few examples of how the country's criminal laws collectively fail to fully define, deter, prevent, punish, or redress sexual and gender-based violence crimes. Clearly defining these crimes in line with international standards is an important step in implementing the Iraqi Government's obligations to eliminate discrimination against women.

The broad and systematic nature of Daesh's violence elevated their crimes beyond the traditional domestic framework and into international concern. Daesh committed all of the core international atrocity crimes of genocide, crimes against humanity, and war crimes; yet none of these have been formally outlawed by Iraq. Failing to investigate and prosecute international atrocity crimes as distinct crimes with specific gendered harms misses an opportunity to build a complete historical record, honor the experiences of victims, and ensure full accountability for Daesh's criminality.

Iraq's criminal laws as rendered fail to provide protections for women and girls in violation of the requirement to ensure women are accorded equality with men before the law. As mentioned, specific examples where legal reform is needed include amending provisions regarding rape, forced marriage, and torture, as well as domesticating the international crimes of genocide, crimes against humanity, and war crimes in line with international standards.

Survivors of Sexual and Gender-Based Violence are Entitled to Reparations

Not only are women and girls entitled to non-discriminatory application of the rights contained within these human rights treaties, but so too are they entitled to non-discriminatory reparations in the event that those rights are infringed.⁴ If Iraq's criminal laws are left unchanged, Daesh's victims will be unable to achieve meaningful justice or seek proper redress for the unique harms they faced on the basis of their gender and sex.

Under international law, survivors of sexual and gender-based violence are entitled to reparations including guarantees of non-repetition.⁵ One measure of guaranteeing non-repetition is “[r]eviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international

humanitarian law.”⁶ As the CEDAW Committee has recommended, State parties should “mandate institutional reforms, repeal discriminatory legislation and enact legislation providing for adequate sanctions in accordance with international human rights standards.”⁷ Such legal reform is required to ensure “women and girls are able to move forward and reconstruct their lives without facing discrimination.”⁸

Complete gender justice will take a fully transformative agenda with actors at the local, regional, and international level finally recognizing, redressing, and remedying the gender-based discrimination that underlies the treatment of women and girls. Such effort includes reforming Iraq’s criminal laws to bring them in line with international standards, in order to safeguard better protections for victims from violence and ensure access to justice.

Questions for the Iraqi Government

Domestic Crimes

- **What measures has the Government taken to amend its laws to ensure women are protected against discrimination, both under the law and in practice?**
- **What steps has the Government taken to adopt a definition of torture in line with CAT?**
- **What plans does the Government have to remove its reservations to CEDAW, specifically to Article 2(f) and (g) and Article 16, and to fully implement CEDAW?**

International Crimes

- **What steps has the Government taken to adopt domestic legislation criminalizing genocide, crimes against humanity, and war crimes in line with its legal obligations?**

1. Global Justice Center (“GJC”), Iraq: Submission to the United Nations Universal Periodic Review (2019), [http://www.globaljusticecenter.net/files/GJC - UPR Cover Submission - Iraq - 34th Session Nov 4-15 2019.pdf](http://www.globaljusticecenter.net/files/GJC_-_UPR_Cover_Submission_-_Iraq_-_34th_Session_Nov_4-15_2019.pdf)

2. Despite Iraq’s reservations to certain CEDAW provisions, their breadth and scope run afoul of the Convention’s object and purpose rendering them invalid. For more information see GJC’s shadow report submission. GJC, Iraq: Submission to the United Nations Universal Periodic Review (2019), [http://www.globaljusticecenter.net/files/GJC - UPR Cover Submission - Iraq - 34th Session Nov 4-15 2019.pdf](http://www.globaljusticecenter.net/files/GJC_-_UPR_Cover_Submission_-_Iraq_-_34th_Session_Nov_4-15_2019.pdf).

3. Universal Declaration of Human Rights art. 7, Dec. 10, 1948, U.N. Doc. A/RES/217(III); U.N. Charter Preamble, art. 1, para. 2; CEDAW Preamble, art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13; CAT art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85; ICCPR art. 26, Dec. 19, 1966, 999 U.N.T.S. 171.

4. UN Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence, p. 4 (June 2014).

5. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, ¶¶ 18, 23, Mar. 21, 2006, U.N. Doc. A/RES/60/147.

6. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, ¶ 23(h), Mar. 21, 2006, U.N. Doc. A/RES/60/147.

7. CEDAW Comm., General Recommendation No. 33, ¶ 19(e).

8. UN Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence, p. 20 (June 2014).