



## **Iraq**

Submission to the United Nations Committee on the Elimination of Discrimination  
against Women

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Created in 2005, the **Global Justice Center** is a United States based human rights organization with consultative status to the United Nations that works to achieve sustainable justice, peace and security by building a global rule of law based on gender equality and universally enforced international human rights laws.

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## Submission to the UN Committee on the Elimination of Discrimination against Women

*74<sup>th</sup> Session*

### **Iraq**

#### **I. Introduction**

1. In advance of the Committee on the Elimination of Discrimination against Women's (Committee) forthcoming review of Iraq, it is critical that the Committee pay particular attention to the need for fundamental reform of Iraq's criminal legal system in order to achieve justice for Daesh's victims, and more broadly for the women and girls 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.
2. In the last review cycle for Iraq, multiple recommendations were made by the Committee with respect to the need "to systematically and continuously implement the provisions of the Convention,"<sup>1</sup> and "[r]epeal all discriminatory provisions against women contained in the Penal Code, the Code of Criminal Procedure and other legislation, regulations and directives and take measures aimed at creating a non-discriminatory legislative and de facto environment for women as previously recommended by the Committee."<sup>2</sup> As this submission displays, Iraq has failed to take sufficient action on these recommendations.
3. This submission highlights a number of concerns over Iraq's criminal laws as violations of Iraq's obligations under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), specifically Articles 2 and 15 and General Recommendations 28 and 33.
4. Article 2(f) requires all states parties "[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women". As described below, multiple provisions and gaps in Iraq's criminal legal system continue to discriminate against women in their wording, application and effect.
5. Problematically, Iraq has reserved to CEDAW's Article 2(f) and (g), which read, "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: ... (f) To take all appropriate measures, including legislation, to

modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.”<sup>3</sup> The CEDAW Committee has held Article 2 to be “central to the object and purpose of the Convention.”<sup>4</sup> Iraq’s reservation to Article 2 is therefore at odds with CEDAW’s object and purpose, rendering it invalid.<sup>5</sup> As the Committee stated in their List of issues in March of this year, Iraq should review its remaining reservations “with a view to withdrawing them.”<sup>6</sup>

6. Article 15 provides that women and men must and benefit from equal protection of the law. As described below, Iraq’s current criminal legal system denies women equal protection of the law by failing to reflect the full scope of sexual and gender-based violence experienced by women in general and specifically by survivors of Daesh’s atrocities. The criminal legal system also places patriarchal and discriminatory procedural obstacles on women’s full equal protection of the law.
7. General Recommendation 28 makes clear that, “States parties have the obligation to ensure that all rights enshrined in the Convention are fully respected at the national level.” As described below, Iraq’s current criminal legal system denies women the right to be free from discrimination and sexual and gender-based violence.
8. General Recommendation 33 recognizes that the right to access to justice for women “is essential to all the rights” under CEDAW. As described below, Iraq’s current criminal legal system denies women’s access to justice and thereby hinders their enjoyment of all rights under CEDAW by failing to reflect the full scope of violence committed against them, imposing discriminatory procedure and evidential requirements, and proliferating gender stereotypes.
9. Specific examples where legal reform is needed include amending provisions regarding rape, forced marriage, torture, as well as domesticating the international crimes of genocide, crimes against humanity, and war crimes in line with international standards. The definitions of these crimes leave out various forms of violence against women that are protected under CEDAW, as well as under other human rights instruments including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the International Covenant on Civil and Political Rights (ICCPR), and international humanitarian law, under the Geneva Conventions.
10. Until these criminal laws are reformed, Iraq will continue to be in violation of its CEDAW obligations.

## **II. Iraq’s Discriminatory Criminal System**

### **A. Domestic Crimes**

11. 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.

## **Rape**

12. Iraq's rape laws are not in line with international standards and do not encompass the number of ways that rape was perpetrated and used by Daesh against the Yazidis. Specifically, Iraq's Penal Code Article 393 defines rape as "*sexual intercourse with a female without her consent or...buggery with any person without their consent.*" Article 393 is not gender-neutral and is limited only to acts of "sexual intercourse"—leaving out Daesh's serious violent and invasive sexual crimes that were beyond "*sexual intercourse or buggery*" (e.g. by including penetration by objects and other body parts). "*Consent*" is central to Iraq's definition of rape (rape only occurs where there is lack of consent).<sup>7</sup> However, the term "*consent*" is not defined, clarified, or otherwise described anywhere in the Penal Code's rape provision. Prosecutions focusing on "*consent*" inherently focus on semantics about the victims' words or actions and do not properly consider victims whose enslavement, age, or subjection to threats or coercive environments prevented genuine consent.<sup>8</sup>
13. A broader, more comprehensive criminal definition of rape is necessary, especially during conflict or mass atrocities, to account for rape's multifarious methods, purposes, contexts, individual motives, and intra-group dynamics. For example, beyond "sexual intercourse," Daesh used rape as a tool for recruitment and to erode community cohesion.<sup>9</sup> Criminal accountability should not be limited to an antiquated focus on sexual intercourse and consent; rather, it should reflect the diverse and varied ways and reasons Daesh committed rape.

## **Reporting Rape**

14. Article 3 of Iraq's Criminal Procedure Code establishes that prosecution for rape only begins if the victim affirmatively acts.<sup>10</sup> Complaints relating to rape will not be accepted more than three months after the victim "*became aware of the offence or from the disappearance of any compelling excuse*" which prevented the complainant's submission of the complaint.<sup>11</sup> If the victim withdraws their complaint, they "*lose their right to criminal justice.*"<sup>12</sup> Penal Code Article 385 criminalizes "*any person who has carnal knowledge of a girl to whom he is not married with her consent when she has not yet reached the age of 18.*"<sup>13</sup> A prosecution of this crime, however, "*may only be brought on the basis of a complaint by the victim or her ancestor, descendant, brother or sister.*"
15. International standards do not require victim initiation or participation for prosecution of rape or sexual violence.<sup>14</sup> Such provisions can cause survivors of sexual violence to relive or confront their trauma in forced and highly destructive ways. They presuppose what women's responses to such violence should be and negatively affect women's rights to equality before the law, fair trial, and effective remedy.<sup>15</sup> Further, victims of rape and sexual violence may be unwilling to initiate such proceedings.<sup>16</sup> In conservative societies like Iraq, women face societal barriers in reporting sexual violence crimes, including fear of retribution from, or against, family members.<sup>17</sup> Women and girls in Daesh-controlled territory were brought to houses, sometimes by the hundreds, and group-by-group taken for rape.<sup>18</sup> The sheer volume of rape occurring at the hands of Daesh, coupled with the fact that many victims do not

know and have no way of identifying their rapists, means that victim-initiated complaints are next to impossible in practice. For these reasons, such discriminatory requirements should not be any part of accountability for rape generally and must not be a feature when holding Daesh accountable.

### **Forced Marriage**

16. Article 9 of Iraq's Personal Status Law criminalizes forced marriage: "*no relative or non-relative has the right to force marriage on any person, whether male or female, without their consent.*"<sup>19</sup> Where there has been a forced marriage, either a specialized "*personal status*" court or the victim must refer the case to criminal justice authorities.<sup>20</sup> Article 9 further establishes that "*[t]he contract of a forced marriage is considered void if the marriage is not yet consummated.*" However, the law does not automatically void forced marriages that have been consummated.<sup>21</sup>
17. Forced marriage is not specifically described within international criminal law, but has been prosecuted as the crime against humanity of an "*inhumane act,*" which requires "*great suffering, or serious injury to body or to mental or physical health.*"<sup>22</sup> While Iraq has reserved to CEDAW Article 16, which calls on States to take measures to eliminate discrimination against women with respect to marriage, it has not reserved to Article 15 providing women the right to freely enter contracts and choose their residence or domicile.
18. Iraq's Personal Status Law Article 9 does not define the types of actions that constitute marriage by "*force*" (e.g. by threats of violence) or the types of "*consent*" that are considered invalid (e.g. under duress). As such, the law is vague and does not fully account for the ways by which women and girls were systemically and en masse forced or otherwise coerced into marriages with Daesh fighters.<sup>23</sup> This gap is a particular risk as Iraq continues to prosecute people for "membership or support" of a terrorist organization, potentially including women and girls whose only "membership or support" of Daesh was having been forcibly married to a Daesh fighter.<sup>24</sup> Although forced marriage is prohibited, the Iraqi Government makes few efforts to enforce the law, and traditional forced marriages of girls continue, especially in rural and Daesh-controlled areas.<sup>25</sup>

### **Torture**

19. Article 37 of the 2005 Constitution prohibits "*all forms of psychological and physical torture and inhumane treatment,*" barring confessions obtained under torture and ensuring victims' right to seek compensation for "*material and moral damages incurred.*"<sup>26</sup> Both the Iraq Criminal Procedure Code and the Penal Code prohibit the use of torture "*and other illegal methods*" to obtain confessions or admissions, when used by public officials.<sup>27</sup> Iraq's Penal Code outlaws cruel treatment, defining it as treatment by a public official that causes a loss of dignity or physical pain.<sup>28</sup>
20. Iraq's prohibition on torture and its framing on custodial interrogations excludes multiple forms of sexual and gender-based violence disproportionately committed against women and girls. The Convention against Torture (CAT), to which Iraq is a party, defines torture in such a way to cover specific and sufficiently broad conduct to capture the various means and ways torture is actually carried out. It acknowledges that torture can be physical or mental, that it

can be performed because of discrimination, and that it can be done because of the mere acquiescence of a public official. This breadth allows for the gendered harms perpetrated by Daesh, including rape, sexual assault, trafficking, slavery, forced and child marriage, to be fully captured<sup>29</sup>—and is therefore essential to ensuring full gender justice for Daesh crimes. None of Iraq’s laws on torture define the types of conduct that constitute torture—they merely contain declarations that “*torture*” is prohibited. Accordingly, there is no clarity on what constitutes “*torture*” under Iraqi law. Without more specificity, conduct amounting to torture carried out against women and girls is often ignored.

#### *Recommendations*

- The Government should adopt a legal definition of rape in line with international standards.
- The Government should remove the requirements of victim initiation or participation for prosecution of rape or sexual violence.
- The Government should criminalize and punish forced marriage.
- The Government should adopt a definition of torture that is in line with international standards and recognizes sexual and gender-based violence as acts constituting serious mental and physical harm amounting to torture. .
- The Government should remove its reservations to CEDAW, specifically to Article 2(f) and (g) and Article 16, and take steps to fully implement CEDAW.

#### **B. International Crimes**

21. 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 legislate against, 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. By failing to include these crimes in its broader criminal legal framework, Iraq perpetuates a legal environment that precludes justice for survivors of Daesh’s most heinous sexual and gender-based violence crimes.

#### **Genocide**

22. Iraq has no domestic law prohibiting or punishing genocide,<sup>30</sup> nor does it have criminal prohibitions on persecution or any other law that encapsulates attempts or acts aimed at destroying the Yazidis or eradicating those based on group identity. Iraq is a party to the Convention on the Prevention and Punishment of the Crime of Genocide,<sup>31</sup> but has not complied with its treaty obligations to make genocide a crime in the Iraqi Penal Code. The absence of a law criminalizing genocide means that the specific nature of Daesh’s intent to destroy the Yazidis will not, and indeed cannot, be punished. There will be no accountability for the fact that Daesh intentionally targeted Yazidi women and girls for destruction with acts including killing, rape, forcible transfer, and enslavement.<sup>32</sup>

## **Crimes against Humanity**

23. Iraq does not have domestic legislation penalizing crimes against humanity.<sup>33</sup> Thus, Iraq's Penal Code does not properly account for the organized, widespread, or systemic attacks that characterize Daesh's crimes. The specific prohibition of "*crimes against humanity*" is intended to name and criminalize conduct that is viewed as an attack on the very quality of being human.<sup>34</sup> Indeed, "*the crime is so heinous that it is an attack not just upon the immediate victims, but also against all humanity, and hence the entire community of humankind has an interest in its punishment.*"<sup>35</sup> Central to this crime is the widespread and systematic nature of the perpetrator's conduct. Daesh crimes fall squarely within this definition. The efficiency and uniform manner in which Daesh committed its sexual and gender-based violence are central to its criminality, and therefore must be accounted for in Iraq's efforts at justice.
24. Without a dedicated law, Iraq is incapable of punishing, stigmatizing, or memorializing the egregious systemization and scale of crimes Daesh committed, not only against individuals but the community as a whole. By not codifying crimes against humanity domestically, justice for women and ethnic minorities is precluded and amounts to discrimination.

## **War Crimes**

25. Iraq does not have domestic legislation penalizing war crimes. Iraq is a party to the four Geneva Conventions of 1949 and Additional Protocol I of 1977,<sup>36</sup> and accordingly has international obligations to criminalize and hold accountable war criminals. In fact, under the Geneva Conventions of 1949, Iraq has legal obligations to pass legislation prohibiting and punishing war crimes.<sup>37</sup> These obligations remain unfulfilled as long as the Iraqi Penal Code does not specifically incorporate and penalize war crimes.
26. Iraq must not fail to prosecute Daesh's sexual and gender-based crimes for what they were: war crimes. Without special protections, the fact that Daesh engaged in and carried out its atrocities under the unique legal circumstances brought on by war will not be specially punished. Indeed, dedicated laws are required to protect civilians from death, rape, torture, or any other intentional harms that accompany armed conflict.

## ***Recommendations***

- The Government should adopt a law criminalizing genocide in line with the Convention on the Prevention and Punishment of the Crime of Genocide.
- The Government should adopt domestic legislation penalizing crimes against humanity
- The Government should pass legislation prohibiting and punishing war crimes in line with its legal obligations under the Geneva Conventions of 1949 and reflecting all the sexual and gender-based violence offenses that amount to such crimes.

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<sup>1</sup> Committee on the Elimination of Discrimination against Women, Concluding observations of the combined fourth to sixth reports of Iraq, U.N. Doc. CEDAW/C/IRQ/CO/4-6, para. 57, Mar. 10, 2014.

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<sup>2</sup> Committee on the Elimination of Discrimination against Women, Concluding observations of the combined fourth to sixth reports of Iraq, U.N. Doc. CEDAW/C/IRQ/CO/4-6, para. 18(c), Mar. 10, 2014.

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination Against Women Preamble, art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>4</sup> Report of the Committee on the Elimination of Discrimination against Women (Eighteenth and nineteenth sessions), p. 49, A/53/38/Rev.1 (1998).

<sup>5</sup> See Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, p. 13 (“The object and purpose of the Convention thus limit both the freedom of making reservations and that of objecting to them.”).

<sup>6</sup> CEDAW/C/IRQ/Q/7, 18 Mar. 2019, Para. 1.

<sup>7</sup> Penal Code art. 393(1). “Consent” is not otherwise defined or qualified in the Iraq Penal Code or Criminal Procedure Code. The Penal Code’s description of sexual assault as “without his or her consent and with the use of force, menaces, deception or other means” may suggest that consent and force/coercion are distinct concepts in Iraq law. Penal Code art. 396(1); see also Penal Code art. 393 (describing perpetrators’ authority over the victim, the victim’s age, and multiple perpetrators as aggravating circumstances rather than circumstances affecting potential consent.)

<sup>8</sup> See, e.g., Prosecutor v. Bemba, Case No. ICC-01/05-01/08-3343, Trial Judgment, ¶¶ 105-06 (Mar. 21, 2016) (“the victim’s lack of consent is not a legal element of the crime of rape under the Statute. . . . on the basis that such a requirement would, in most cases, undermine efforts to bring perpetrators to justice.”); Prosecutor v. Kunarac et al., Appeals Judgment, Case No. IT-96-23 & IT-96-23/1-A, ¶ 128 (June 12, 2002) (rejecting the assertion that continuous resistance was necessary to provide adequate notice to perpetrators); Int’l Criminal Court, Rules of Procedure and Evidence r. 70(c); U.N. WOMEN, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN 25 (2012) (noting that “definitions of sexual assault based on a lack of consent may, in practice, result in the secondary victimization of the complainant/survivor by forcing the prosecution to prove beyond reasonable doubt that the complainant/survivor did not consent” and emphasizing that definitions of sexual violence based on coercion should include expansive circumstances). Another example left out by the focus on consent is rape committed under coercion or threats directed not against the victim, but a third person. Int’l Criminal Court, Elements of Crimes art. 7(1)(g)-1, element 2.

<sup>9</sup> See U.N. Secretary-General, *Rep. on Conflict-Related Sexual Violence*, ¶¶ 28-29, U.N. Doc. S/2015/203.

<sup>10</sup> Criminal Procedure Code art. 3(A)(iii) (in cases of rape where the victim is a spouse or descendant of the perpetrator); Penal Code art. 385 (complaint must be brought by victim or ancestor). The Criminal Procedure Code also specifies that the right to submit a complaint does not transfer to heirs. Criminal Procedure Code art. 9(D). See also, U.N. ASSISTANCE MISSION FOR IRAQ & OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, PROMOTION AND PROTECTION OF RIGHTS OF VICTIMS OF SEXUAL VIOLENCE BY ISIL/ OR IN AREAS CONTROLLED BY ISIL IN IRAQ ¶ 23 (Aug. 22, 2017), [http://www.uniraq.com/index.php?option=com\\_k2&view=item&task=download&id=2237\\_d4579691236af63a6d57621c51d8aa35&Itemid=650&lang=en](http://www.uniraq.com/index.php?option=com_k2&view=item&task=download&id=2237_d4579691236af63a6d57621c51d8aa35&Itemid=650&lang=en) [UNAMI, PROMOTION AND PROTECTION OF RIGHTS OF VICTIMS OF SEXUAL VIOLENCE BY ISIL].

<sup>11</sup> Criminal Procedure Code art. 6.

<sup>12</sup> Criminal Procedure Code art. 9(F). Article 8 also specifies that complaints will be dismissed if not “followed up on” by complainants within three months in cases where submitting a complaint is required. Criminal Procedure Code art. 8.

<sup>13</sup> Penal Code art. 385.

<sup>14</sup> U.N. WOMEN, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN 34-35 (2012).

<sup>15</sup> CEDAW Comm., General Recommendation No. 35, ¶ 26(c).

<sup>16</sup> UNAMI, PROMOTION AND PROTECTION OF RIGHTS OF VICTIMS OF SEXUAL VIOLENCE BY ISIL, ¶ 23.

<sup>17</sup> Penal Code arts. 128, 409, 417(4) (committing specified crimes out of shame or with “honourable motives” is a mitigating excuse); U.N. ASSISTANCE MISSION FOR IRAQ & OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, REPORT ON HUMAN RIGHTS IN IRAQ: JULY TO DECEMBER 2016, at 28-29; Huda Ahmed, Freedom House, *Iraq, in WOMEN’S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA* 1, 7-8 (2010); U.S. DEP’T OF STATE, IRAQ 2016 HUMAN RIGHTS REPORT 49-52 (2017) (victims of sexual or domestic violence “did not usually report it to authorities or pursue legal remedies” because of social stigma and risk of familial retribution or because they feared family protection units “would immediately inform their families of their testimonies”); MIRIAM PUTTICK, CEASEFIRE CTR. FOR CIVILIAN RIGHTS & MINORITY RIGHTS GROUP INT’L, THE LOST WOMEN OF IRAQ: FAMILY-BASED VIOLENCE DURING CONFLICT 18, 28-29 (2015), <http://minorityrights.org/wp-content/uploads/2015/08/Lost-Women-English.pdf>; U.K. HOME OFFICE, COUNTRY POLICY AND INFORMATION NOTE, IRAQ: KURDISH ‘HONOUR’ CRIMES (2017), <https://www.justice.gov/eoir/page/file/995246/download> (honor crimes continue in Kurdistan despite its repeal of honor as a mitigating circumstance).

<sup>18</sup> Seivan M. Salim, *The Yazidi Women Who Escaped ISIS*, THE DAILY BEAST (2015), <http://www.thedailybeast.com/longforms/2015/isis/portraits-of-the-yazidi-women-who-escaped-isis.html>; AMNESTY INT’L, ESCAPE FROM HELL: TORTURE AND SEXUAL SLAVERY IN ISLAMIC STATE CAPTIVITY IN IRAQ 5 (2014),



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[https://www.amnesty.org.uk/files/escape\\_from\\_hell\\_-\\_torture\\_and\\_sexual\\_slavery\\_in\\_islamic\\_state\\_captivity\\_in\\_iraq\\_-\\_english\\_2.pdf](https://www.amnesty.org.uk/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf);

<sup>19</sup> Personal Status Law No. 188 of 1959 art. 9(1) (Iraq).

<sup>20</sup> Personal Status Law No. 188 of 1959 art. 9(3).

<sup>21</sup> Personal Status Law No. 188 of 1959 art. 9(1). The Kurdistan Personal Status Law was amended to consider forced marriages void and suspended even if consummated, and forced marriage is included as a crime in Kurdistan's 2011 anti-domestic violence law. Act No. 15 of 2008, Act to Amend the Amended Law No. 188 of 1959, Personal Status Law, in Iraq Kurdistan Region art. 6(1); Act No. 8 of 2011, Act Combating Domestic Violence in Kurdistan Region-Iraq art. 2(First)(1).

<sup>22</sup> Rome Statute art. 7(1)(k); ICC Elements of Crimes art. 7(1)(k), elements 1-2. Forced marriage has been recognized as an "other inhumane act" in the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the International Criminal Court. *See* Co-Prosecutors v. Teng Sary et al., Case No. 002/19-09-2007-ECCC-OCIJ, Closing Order, ¶¶ 1442-47 (Sept. 15, 2010); Prosecutor v. Ongwen, Case No. ICC-02/04-01/15, Confirmation of Charges, ¶¶ 87-95 (Mar. 23, 2016); Prosecutor v. Brima, Case No. SCSL-2004-16-A, Appeals Judgment, ¶ 186, 195-96 (Feb. 22, 2008).

<sup>23</sup> Human Rights Council, *Rep. of the Ind. Int'l Comm'n of Inquiry on the Syrian Arab Republic*, ¶¶ 59, 73, U.N. Doc. A/HRC/30/48 (Aug. 13, 2015); Salim, *The Yazidi Women Who Escaped ISIS*; AMNESTY INT'L, ESCAPE FROM HELL, at 5-7, 11-12; *Iraq: Sunni Women Tell of ISIS Detention, Torture, Describe Forced Marriage, Rape*, HUMAN RIGHTS WATCH; U.N. ASSISTANCE MISSION FOR IRAQ & OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, REPORT ON THE PROTECTION OF CIVILIANS IN THE ARMED CONFLICT IN IRAQ: 11 DECEMBER 2014–30 APRIL 2015, at 22

[http://www.ohchr.org/Documents/Countries/IQ/UNAMI\\_OHCHR\\_4th\\_POCCReport-11Dec2014-30April2015.pdf](http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_4th_POCCReport-11Dec2014-30April2015.pdf) (reporting the abduction and killing of Sunni and Turkmen Shi'a women who refused to marry ISIS fighters).

<sup>24</sup> *See, e.g., Iraq Kurdish Authorities Must End Disgraceful Detention of Yazidi Woman Who Survived IS Captivity*, AMNESTY INT'L (Sept. 9, 2016), <https://www.amnesty.org/en/latest/news/2016/09/iraq-kurdish-authorities-must-end-disgraceful-detention-of-yezidi-woman-who-survived-is-captivity/>; Letta Taylor, *The Women Who Escaped ISIS: From Abused to Accused*, HUMAN RIGHTS WATCH (Mar. 11, 2017), <https://www.hrw.org/news/2017/03/11/women-who-escaped-isis>; UNAMI, PROMOTION AND PROTECTION OF RIGHTS OF VICTIMS OF SEXUAL VIOLENCE BY ISIL, ¶ 41 (noting the risk that women married to ISIL members with or without consent may be subject to discrimination and collective punishment); HUMAN RIGHTS WATCH, "NO ONE IS SAFE:" ABUSE OF WOMEN IN IRAQ'S CRIMINAL JUSTICE SYSTEM 19-37 (2014) (describing the arrest and detention of women under the 2005 Anti-Terrorism Law based on familial association); HUMAN RIGHTS WATCH, FLAWED JUSTICE: ACCOUNTABILITY FOR ISIS CRIMES IN IRAQ 27-33 (2017) (on current prosecutions).

<sup>25</sup> U.S. DEP'T OF STATE, IRAQ 2016 HUMAN RIGHTS REPORT, at 56. "According to UNICEF, approximately 975,000 girls in Iraq were married before the age of 15, twice as many as in 1990." *Id.* *See also* Huda Ahmed, Freedom House, *Iraq*, at 12.

<sup>26</sup> Constitution art. 37(first)(C).

<sup>27</sup> Criminal Procedure Code arts. 127, 218; Penal Code art. 333. *See also* Constitution art. 9(D) (intelligence service shall operate according to law and "recognized principles of human rights").

<sup>28</sup> Penal Code art. 332.

<sup>29</sup> *See* Human Rights Council, *Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 51-67, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016) (by Juan E. Méndez).

<sup>30</sup> There is no criminal law outlawing or otherwise describing genocide in Iraq's Penal Code. The "Iraqi High Tribunal"—created to punish crimes committed by Saddam Hussein's government—contains an article criminalizing genocide, crimes against humanity and war crimes, but the law that created this tribunal does not apply generally to Iraq's Penal Code, or to Daesh's crimes. Law No. 10 of 2005, Law of the Iraqi Higher Criminal Court art. 1(Second) (Iraq).

<sup>31</sup> Notification of Accession by Iraq to the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide, Doc. C.N.16.1959.Treaties-1 (Feb. 24, 1959),

<https://treaties.un.org/doc/Publication/CN/1959/CN.16.1959-Eng.pdf>.

<sup>32</sup> AMNESTY INT'L, ESCAPE FROM HELL; Human Rights Council, *Rep. of the Ind. Int'l Comm'n of Inquiry on the Syrian Arab Republic*, ¶¶ 63, 188, U.N. Doc. A/HRC/28/69 (Feb. 5, 2015); Human Rights Council, *Rep. of the Ind. Int'l Comm'n of Inquiry on the Syrian Arab Republic*, ¶¶ 113-17, U.N. Doc. A/HRC/30/48; Human Rights Council, *Rep. of the Office of the United Nations Commissioner for Human Rights on the Human Rights Situation in Iraq in Light of the Abuses Committed by the So-called Islamic State in Iraq and the Levant and Associated Groups*, ¶¶ 76, 78; Human Rights Council, *Rep. of the Ind. Int'l Comm'n of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, ¶ 53-55, U.N. Doc. A/HRC/27/CRP.3 (Nov. 19, 2014); *Iraq: ISIS Escapees Describe Systematic Rape*, HUMAN RIGHTS WATCH, (Apr. 14, 2015), <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>.

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<sup>33</sup> Several provisions of the Penal Code contain “aggravating factors” that incorporate scale and patterns of abuses, such as committing crimes that involve multiple perpetrators, brutal methods, or are committed multiple times, but none capture the international nature of crimes against humanity. *See, e.g.*, Penal Code arts. 135, 393(2)(d), 406(1), 421-24. The Penal Code provides that material circumstances that would increase the penalty of the offence affect the liability of all parties, whether or not they are aware of those circumstances. To incur criminal liability, the Rome Statute requires that perpetrators must know that their “conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population” and in the case of sexual violence be “aware of the factual circumstances that established the gravity of the conduct.” *Compare* Penal Code art. 51 (“If there exists material circumstances in the offence that would by their nature increase or decrease the penalty, then they will affect all parties to the offence, principal or accessory, whether they are aware of those circumstances or not.”), *with* ICC Elements of Crimes, art. 7(1)(g)-6, elements 3, 5, and art. 7(1)(g)-1, element 4.

<sup>34</sup> Int’l Law Comm’n, *First Rep. of the Special Rapporteur on Crimes Against Humanity*, ¶ 27, U.N. Doc. A/CN.4/680 (Feb. 17, 2015) (by Sean D. Murphy).

<sup>35</sup> Int’l Law Comm’n, *First Rep. of the Special Rapporteur on Crimes Against Humanity*, ¶ 27.

<sup>36</sup> *Treaties, States Parties and Commentaries: Iraq*, INT’L COMM. RED CROSS, [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp\\_countrySelected=IQ](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=IQ).

<sup>37</sup> Geneva Convention (I) for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field art. 49-51, Aug. 12, 1949, 75 U.N.T.S. 31; *see also* Geneva Convention (II) for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea art. 50-52, Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention (III) Relative to the Treatment of Prisoners of War arts. 129-131, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War arts. 146-148, Aug. 12, 1949, 75 U.N.T.S. 287.