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Iraq's Criminal Laws Preclude Justice For Women And Girls



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In light of the gender dynamics at the root of Daesh's violence, gender must also be at the center of accountability. With justice for Daesh beginning, this Briefing details how Iraq's current legal framework precludes meaningful justice for women and girls. It highlights the gender gaps in Iraq's criminal laws and identifies opportunities for broader reform to better protect Iraqi women and girls from sexual and gender-based violence.

INTRODUCTION

For years the world watched in collective horror as Daesh committed brutal atrocities. Central to this violence was sexual and gender-based violence, with explicit targeting of women and girls. Daesh used rape, sexual slavery, forced marriage and torture—distinct crimes on their own as well as constituent elements of genocide, crimes against humanity and war crimes—as tools for recruitment, conversion, forced indoctrination, and the fundamental destruction of community cohesion.¹ For many, the only thing that stood in opposition to these crimes was the prospect, however far away, of justice.

Justice, however, is complex. It requires accountability, redress and a focus on preventing the recurrence of violations. Justice efforts must be independent, credible, inclusive, and accepted by impacted communities, with special respect and recognition for the dignity of victims. Importantly, and as this Briefing illustrates, it must reflect the full scope and scale of the crimes that occurred.

As the international community and the Iraqi government begin the process of holding members of Daesh accountable for their crimes, it is critical to examine the legal systems that will be responsible for these prosecutions. Prosecutions to date, which have all been conducted under Iraq's 2005 counter-terrorism law, have failed human rights standards and do not suffice the interest of justice.

This Briefing highlights one such example—specifically how Iraq's current laws fall far short of the requirements for justice, as they are unable to punish the most egregious of Daesh's gender crimes. Iraq's Penal Code is a patriarchal patchwork rooted in preexisting peacetime gender inequalities and violence.² The way and manner in which the Code defines sexual and gender-based violence crimes is steeped in language and perspectives that are inherently and overtly discriminatory against women and fall short of international standards. Any justice mechanism organized under these laws will fail to provide full accountability and redress to Daesh's female victims.

In order to highlight these challenges, this Briefing: (i) identifies particular categories of Daesh's gender crimes and considers how these crimes are currently codified in Iraqi law; (ii) details the gaps where Iraq's laws do not entirely capture the ways in which Daesh committed sexual and gender-based violence; and (iii) describes international standards for defining and understanding the many facets of these crimes.

A complete reckoning with the planned and inherently gendered elements of Daesh's violence is essential for Iraq to begin the transition out of armed conflict. These first steps of putting this history behind it must provide justice for victims, combat these victims' marginalization, and prevent future violations against women, girls and other communities targeted on behalf of their gender.

DOMESTIC CRIMES COMMITTED BY DAESH



DOMESTIC CRIMES

The following looks at Iraq's definitions of rape, enslavement, forced marriage, and torture as examples of how Iraq's criminal laws collectively fail to fully define, deter, prevent, punish, and redress sexual and gender-based violence crimes. These specific crimes were chosen because: they are included in Iraq's criminal framework, they were committed by Daesh, and there are strong international standards that shine light on a gendered understanding of the criminal conduct. To be sure, Daesh committed a litany of other sexual and gender-based crimes (including forcible impregnation, forced abortions, forced sterilization, outrages on personal dignity, and persecution) and the following is not intended to be a comprehensive analysis. Instead, it is designed to highlight the need for reform by showing the obstacles to full gender justice for Daesh crimes under existing Iraqi law.

RAPE: ACT OF RAPE

RELEVANT IRAQI LAWS

- Penal Code Article 393 defines rape as “sexual intercourse with a female without her consent or...buggery with any person without their consent.” There are several “aggravating circumstances,” that increase the penalty for rape, including if the victim is a minor, if the offender is a relative, guardian, or has authority over the victim, if the victim is a virgin, and if the crime is committed by multiple offenders or multiple times.³
- Article 394 provides lesser penalties for consensual sex with a person under 18 years old.⁴

GENDER GAPS: WHAT'S LEFT OUT?

- Article 393 is not gender-neutral and is limited only to acts of “sexual intercourse” (vaginal 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 a lack of consent).⁵ However, the term “consent” is not defined, clarified, or otherwise described anywhere in the Penal Code's rape provision. Prosecutions on “consent” inherently focus on semantics about the victim's words or actions and do not properly consider victims whose enslavement, age, or subjection to threats or coercive environments prevented genuine consent.⁶
- The law's limited focus on a victim's “consent” fails to recognize the inherent coerciveness of conflict environments.⁷ In Daesh captivity or under their rule, women and girls had limited autonomy, including no choice over where they were taken, to whom they were sold, or how they were treated, and had no ability to decide the conditions in which they engaged in sexual activity.⁸

INTERNATIONAL STANDARDS

- Under international criminal law, rape is defined as “*inva[d]ing the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.*”⁹ This is a broader definition including various forms and types of penetration, extending beyond the Iraqi law's narrow use of “sexual intercourse” and accounts for the full array of acts amounting to rape.¹⁰
- Instead of relying on “consent,” international standards define rape as being “*committed by force, or by threat of force or coercion*” (the Rome Statute of the International Criminal Court includes examples where the victim's “consent” might have been achieved through coercive environments, abuse of power or oppression, or where the victim is incapable of giving genuine consent).¹¹ By emphasizing coercion over consent, international criminal law takes into account “*contexts of power and culture that affect a woman's ability to express or otherwise assert her will, as well as the inherent inequality in male-female dynamics that can render the issue of consent almost meaningless.*”¹²
- A 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.¹³ Criminal accountability should not be limited to an antiquated focus on sexual intercourse and consent, and should instead reflect the diverse and varied ways and reasons Daesh committed rape.

DOMESTIC CRIMES

RAPE: MARRIAGE EXCEPTION TO RAPE

RELEVANT IRAQI LAWS

- Penal Code Article 398 provides that criminal actions against perpetrators of rape or sexual assault are null and void (and any sentence already passed is quashed) if the perpetrator “*then lawfully marries the victim.*”¹⁴
- Iraq’s Constitution establishes that “*all forms of violence and abuse in the family...shall be prohibited,*” but Iraq does not otherwise have a comprehensive law that protects women from domestic violence.¹⁵ In fact, Penal Code Article 41 explicitly states no crime can occur where an act is carried out while exercising a legal right—such as where a husband “*punishes*” a wife.¹⁶

GENDER GAPS: WHAT’S LEFT OUT?

- In some cases Daesh fighters married Yazidi women and girls to avoid having to purchase them, and many survivors of Daesh captivity refer to rape as “*marriage.*”¹⁷ In other cases, women were raped when they refused to marry Daesh fighters or were forced to marry them and then subsequently raped.¹⁸ The full consequences of this exception depend on how Daesh’s forced “*marriages*” are treated by Iraqi courts,¹⁹ but this errant exception could potentially inoculate Daesh fighters from the thousands of rapes they committed, including in the context of forced marriages.

INTERNATIONAL STANDARDS

- International law does not permit a marital exception for rape under any circumstances. Distinctions in protection from sexual violence based on marital status constitute discrimination and do not provide for full gender equality, in violation of human rights law.²⁰

DOMESTIC CRIMES

RAPE: REPORTING RAPE AND CRIMINAL PROSECUTION OF RAPE

RELEVANT IRAQI LAWS

- Article 3 of the Criminal Procedure Code establishes that prosecution for rape only begins if the victim affirmatively acts.²¹ 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.²² If the victim withdraws their complaint, they “lose their right to criminal justice.”²³
- 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.”²⁴ 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.”

GENDER GAPS: WHAT’S LEFT OUT?

- Victims of rape and sexual violence may be unwilling to initiate such proceedings.²⁵ In conservative societies like Iraq, women face societal barriers in reporting sexual violence crimes, including fear of retribution from, or against, family members.²⁶ For example, despite Yazidi spiritual leader Baba Sheik calling on members of the Yazidi community not to punish or ostracize victims of sexual violence, reports indicate that the stigma remains and survivors keep abuses secret from their families out of concern for the negative consequences, such as honor killings.²⁷
- Further, women and girls in Daesh-controlled territory were brought to houses, sometimes by the hundreds, and group-by-group taken for rape.²⁸ 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.

INTERNATIONAL STANDARDS

- International standards do not require victim initiation or participation for prosecution of rape or sexual violence.²⁹ 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.³⁰ For these reasons, such requirements should not be any part of accountability for rape generally and must not be a feature when holding Daesh accountable.

DOMESTIC CRIMES

ENSLAVEMENT AND SEXUAL SLAVERY

RELEVANT IRAQI LAWS

- Slavery is prohibited by Iraq’s 2005 Constitution, but is not defined, described or otherwise legislated in Iraq’s Penal Code.³¹
- Iraq has criminalized human trafficking and kidnapping. To be considered “*human trafficking*” a person must act “*in order to sell and exploit the trafficked individual.*”³² Kidnapping requires “*seiz[ing], detain[ing], or depriv[ing] a person of his liberty. . . .*”³³ Both crimes include increased penalties and/or aggravating circumstances if carried out in a particular manner.³⁴
- Iraq has not specifically outlawed sexual slavery. Penal Code Article 423 notes that sexual intercourse with a kidnapped woman over the age of 18 is punishable by death. There is no parallel provision for male victims, or for female victims under the age of 18.

GENDER GAPS: WHAT’S LEFT OUT?

- Yazidi women and girls were considered “spoils of war” and were systemically forced into slavery.³⁵ While Daesh’s sexual slavery system has primarily targeted Yazidis, other ethnic and religious minority groups have also been held in captivity and subjected to sexual slavery.³⁶ Prosecuting only kidnapping or trafficking fails to accurately capture Daesh’s brutal assertion of ownership, control, and its attempt to dehumanize women and girls.³⁷ It misses the deprivation of autonomy that distinguishes slavery from kidnapping or detention.³⁸
- Because Iraq’s human trafficking law requires conduct undertaken “in order to” sell and exploit, cases where Daesh fighters “gifted” or otherwise exchanged women and girls without a monetary transaction do not fit within the law.³⁹
- Iraq has no separate provisions outlawing trafficking or kidnapping when it is specifically sexual in nature. While Article 423 includes the aggravating factor of “sexual intercourse,” this provision excludes other forms of sexual violence—such as forced body searches, examinations by gynecologists to determine virginity, or other forms of sexual assault that fall short of intercourse.⁴⁰ Finally, Article 423 is not extended to male victims or to female victims under 18 years of age (a significant proportion of Daesh’s slaves).⁴¹

INTERNATIONAL STANDARDS

- International criminal law prohibits both “*enslavement*” and “*sexual slavery.*”⁴²
- “*Enslavement*” is characterized by the perpetrator “*exercis[ing] any or all of the powers attaching to the right of ownership over one or more persons, such as purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.*”⁴³ This definition is intentionally broad to include acts exerting control beyond just “*selling*” or “*exploiting*” in order to capture the many ways slavery may be conducted.
- To be considered “*sexual slavery*” the perpetrator must also cause the victim to engage in one or more acts of a sexual nature. This definition is inclusive of a variety of sexual activities, going far beyond a narrow conception of “*sexual intercourse.*” It is also gender neutral and not age-specific.
- Granting sexual slavery status as a crime unto itself is critical to full gender justice as it underscores the unique limitations on one’s autonomy to decide matters relating to sexual activity. This is precisely what Daesh did, for which it must be held accountable.

DOMESTIC CRIMES

FORCED MARRIAGE

RELEVANT IRAQI LAWS

- 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.*"⁴⁴
- Where there has been a forced marriage, either a specialized "*personal status*" court or the victim must refer the case to criminal justice authorities.⁴⁵
- 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 marriages that have been consummated.⁴⁶

GENDER GAPS: WHAT'S LEFT OUT?

- 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.⁴⁷ 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.⁴⁸
- Personal status courts and victims are ill-equipped to make referrals about forced marriage to law enforcement. Iraq is a conservative society and marital courts are likely enmeshed in patriarchal and narrow conceptions of women's autonomy and role in society. For example, under Iraqi law husbands are entitled by right to "*punish*" their wives.⁴⁹ Additionally, victims of forced marriage are often unable or unwilling to risk reporting to the authorities for fear of reprisal.⁵⁰
- Although forced marriage is prohibited, the government makes few efforts to enforce the law, and traditional forced marriages of girls continue, especially in rural and Daesh-controlled areas.⁵¹

INTERNATIONAL STANDARDS

- 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.*"⁵²
- International human rights law also protects the right to marry freely, and that women's "*right to choose when, if, and whom she will marry must be protected and enforced by law.*"⁵³
- Specifically criminalizing and punishing forced marriage recognizes the suffering and injury inflicted upon victims in forced marriages as distinct from that of sexual slavery, since victims are forced to perform additional non-sexual duties and may suffer additional consequences if they are thought to have breached their exclusive relationship with the perpetrator.⁵⁴ It recognizes and may help to negate the long-term stigmatization that victims can endure in being associated with perpetrators.⁵⁵ These consequences have already been reported in Iraq, where communities have sought to expel family members or those perceived to be associated with Daesh.⁵⁶ As such, any criminal accountability occurring in Iraq should explicitly include punishment for forced marriage.

DOMESTIC CRIMES

TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

RELEVANT IRAQI LAWS

- 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.*”⁵⁷
- 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.⁵⁸
- Iraq’s Penal Code outlaws cruel treatment, defining it as treatment by a public official that causes a loss of dignity or physical pain.⁵⁹

GENDER GAPS: WHAT’S LEFT OUT?

- 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. In other jurisdictions, this has meant that sexual and gender-based violence is not included in the list of crimes that constitute “*torture.*”
- These laws improperly link “*torture*” to admissions or confessions, inferring conduct occurring in interrogations or similar settings. Such a narrow linkage overlooks the tortuous acts women and girls faced at the hands of Daesh and that were not conducted to obtain confessions—namely brutal and unrelenting sexual violence, forced marriages, forced pregnancies, forced abortions, forced religious conversions, threats and physical beatings.⁶⁰
- Iraqi law generally limits perpetrators of torture to public officials, leaving out situations where torture or cruel, inhuman or degrading treatment is carried out by private actors but prompted, asked for, or otherwise enabled by public officials. For example, in Daesh captivity women and girls suffered indescribable physical and mental trauma at the hands of private actors. They were utterly stripped of human dignity and autonomy, having no choice over where they were taken, to whom they were sold, how they were treated, whether to engage in sexual activity, and what happened to their children.⁶¹

INTERNATIONAL STANDARDS

- The Convention against Torture, to which Iraq is a party, defines torture as: “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third party, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*”⁶²
- This definition covers 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 captured⁶³—and is therefore essential to ensuring full gender justice for Daesh crimes.

INTERNATIONAL CRIMES COMMITTED BY DAESH

INTERNATIONAL CRIMES

The broad-based and systematic nature of Daesh’s violence elevated their crimes beyond the traditional domestic framework and into international concern. International crimes are those acts that the global community finds particularly egregious, capable of producing wide-scale harm, and are multi-jurisdictional in nature. There are numerous “international crimes”—such as terrorism, drug trafficking, and piracy—but the following addresses the core international atrocity crimes of genocide, crimes against humanity, and war crimes, all of which Daesh committed and none of which Iraq has formally outlawed.

GENOCIDE

RELEVANT IRAQI LAWS

- Iraq has no domestic law prohibiting or punishing genocide.⁶⁴ Neither does it have criminal prohibitions or any other law that encapsulates attempts or acts aimed at destroying based on identity.
- Iraq is a party to the Convention on the Prevention and Punishment of the Crime of Genocide,⁶⁵ but has not complied with its treaty obligations to make genocide a crime in the Iraqi Penal Code.

GENDER GAPS: WHAT’S LEFT OUT?

- 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 Yazidis for destruction with acts including killing, rape, forcible transfer, and enslavement.⁶⁶
- Failing to investigate and prosecute genocide as a distinct crime 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.

INTERNATIONAL STANDARDS

- Genocide is defined as: “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - a. Killing members of the group;
 - b. Causing serious bodily or mental harm to members of the group;
 - c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - d. Imposing measures intended to prevent births within the group;
 - e. Forcibly transferring children of the group to another group.”⁶⁷
- This definition specifically designates that intending to destroy a group, as such, is central to genocide. Additionally, the acts that can amount to genocide are broad enough to not foreclose any method a group like Daesh may adopt in their attempts. Indeed, in the landmark case of *Prosecutor v. Akayesu*, it was established that rape and sexual violence can constitute acts of genocide.⁶⁸
- Genocide is also a crime under treaty and customary international law, which imposes obligations on governments and international entities to prevent, suppress and punish its commission.⁶⁹ This means the government of Iraq, other states and international entities are required to take all measures reasonably within their means to punish the sexual and gender-based crimes committed in furtherance of Daesh’s genocide, and the failure to do so violates their international obligations.⁷⁰

INTERNATIONAL CRIMES

CRIMES AGAINST HUMANITY

RELEVANT IRAQI LAWS

- Iraq does not have domestic legislation penalizing crimes against humanity.⁷¹

GENDER GAPS: WHAT'S LEFT OUT?

- 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.⁷² 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.*”⁷³ Central to this crime is the widespread and systematic nature of the perpetrator’s conduct. Daesh crimes fall squarely within this definition. They took place over a massive yet precise geographical spread. Starting in Sinjar, Daesh’s crimes against the Yazidis soon spread to large areas of northwest Iraq and Syria.⁷⁴ At the time of the Sinjar attack the enslavement of Yazidi women and girls was predetermined and “organized [with] acts of violence committed in a near-identical manner by fighters across Sinjar and later, across [Daesh]-controlled areas of Syria and Iraq.”⁷⁵
- 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.

INTERNATIONAL STANDARDS

- Crimes against humanity are acts that have been “*committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack,*” including murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, sexual violence, persecution, enforced disappearance of persons, apartheid, and other inhumane acts.⁷⁶ Such an “*attack*” must also be “*pursuant to or in furtherance of a State or organizational policy to commit such attack.*”⁷⁷
- Crimes against humanity need not take place only during conflict and may also occur during peacetime.⁷⁸
- This definition fully embraces and accounts for the particular atrocities humans are liable to commit unto one another. It properly accounts for organized, widespread, or systemic attacks that stand outside the purview of Iraq’s Penal Code.
- 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.

INTERNATIONAL CRIMES

WAR CRIMES

RELEVANT IRAQI LAWS

- 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 1977,⁷⁹ and accordingly has international obligations to criminalize and hold accountable war criminals—obligations that are unfulfilled as long as the Iraqi Penal Code does not specifically incorporate and penalize war crimes.

GENDER GAPS: WHAT'S LEFT OUT?

- Without special protections, the fact that Daesh engaged in and carried out their 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. International humanitarian law—the body of law establishing the obligation to penalize war crimes—specifically seeks to regulate the means and methods of warfare in order to minimize suffering and protect persons who are not actively involved in hostilities, including civilians.⁸⁰

INTERNATIONAL STANDARDS

- International humanitarian law and the Rome Statute of the International Criminal Court delineate many acts that may constitute a war crime—a central feature of which is that the act is committed in the context of, and with the perpetrator's awareness of, an armed conflict.
- Still, although the violence and harm created by acts of gender-based and sexual violence and discrimination can factually fall under many war crimes provisions, the Rome Statute “*explicitly recognises rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence as distinct types of war crimes.*”⁸¹
- One reason there are so many enumerated war crimes in the Rome Statute is because protecting civilians during armed conflict is one of international law's most fundamental legal obligations. In fact, under the Geneva Conventions of 1949, Iraq has legal obligations to pass legislation prohibiting and punishing war crimes⁸²—obligations to which Iraq is currently in violation.
- Throughout history, wartime sexual violence has been widespread and often viewed as an unavoidable consequence of armed conflict. Iraq must not fail to prosecute Daesh's sexual and gender-based crimes for what they were: war crimes.

CONCLUSION

Iraq needs fundamental legal reform in order to achieve justice for Daesh's victims, and more broadly and further afield for the people of Iraq. As currently codified, its 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, sexual slavery, forced marriage, and gender-motivated torture, as well as the international atrocity crimes of genocide, crimes against humanity, and war crimes.

Admittedly, no single law or court judgment alone can remedy the consequences of Daesh's sexual violence or undo negative gender attitudes. Complete gender justice is going to 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.

There is an opportunity now to begin this process in Iraq. In developing the mechanism that will ultimately hold Daesh accountable, Iraq can embrace accountability and redress that aim to achieve gender justice. This would entail criminal prosecutions (under international standards of sexual and gender-based crimes), truth-seeking (into causes and impacts of sexual and gender-based violence in Iraq and areas once under Daesh control), reparations (individual and collective; material and symbolic), and reform (of domestic criminal laws and of the police and judiciary).⁸³

Of course, such ambitious objectives will require ambitious actions. As the global focus shifts to Daesh accountability—and in particular to the UN's Investigative Team created to aid Iraq in achieving justice⁸⁴—the time for action is now. By intentionally including the experiences of Daesh's victims of sexual and gender-based violence in accountability, Iraq can start a new path forward in providing access to justice for all Iraq's women, girls, and others targeted for their gender.

ENDNOTES

1. See U.N. Secretary-General, *Rep. on Conflict-Related Sexual Violence*, ¶¶ 29, 83, U.N. Doc. S/Mar. 23, 2015/203.
2. ALICIA LUEDKE, CHLOE LEWIS, & MARISELLA RODRIGUEZ, U.S. INST. OF PEACE, *SEXUAL VIOLENCE EXPLOITATION AND ABUSE: IMPROVING PREVENTION ACROSS CONFLICTS AND CRISES*, SPECIAL REPORT 415, at 4 (Nov. 2017).
3. Penal Code art. 393(1)-(2) (Iraq).
4. Penal Code art. 394(1).
5. Penal Code art. 393(1). “Consent” is not otherwise defined or qualified in the Iraqi 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 Iraqi 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).
6. *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.
7. ICC Rules of Procedure and Evidence r. 70(a)-(c); Prosecutor v. Kunarac et al., Case No. IT-96-23 & IT-96-23/1-A, Appeals Judgment, ¶¶ 130, 132 (the circumstances “that prevail in most cases charged as either war crimes or crimes against humanity will be almost universally coercive. That is to say, true consent will not be possible.”) (where victims were in detention and “considered the legitimate sexual prey of their captors,” circumstances were “so coercive as to negate any possibility of consent”); AMNESTY INT’L, *RAPE AND SEXUAL VIOLENCE: HUMAN RIGHTS LAW STANDARDS IN THE INTERNATIONAL CRIMINAL COURT* 29-31 (2011).
8. Human Rights Council, *Rep. of the Ind. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They Came to Destroy”: ISIS Crimes Against the Yazidis*, ¶ 121, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016); *Iraq: Sunni Women Tell of ISIS Detention, Torture, Describe Forced Marriage, Rape*, HUMAN RIGHTS WATCH (Feb. 20, 2017), <https://www.hrw.org/news/2017/02/20/iraq-sunni-women-tell-isis-detention-torture>.
9. ICC Elements of Crimes art. 7(1)(g)-1, element 1.
10. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Trial Judgment, ¶ 686 (Sept. 2, 1998). Another potential avenue for accountability for sexual violence crimes in Iraqi law is under the lesser penalty for “sexual assault.” The actions which constitute “sexual assault” are not defined elsewhere in the Penal Code. Penal Code arts. 396-97.
11. ICC Elements of Crimes art. 7(1)(g)-1, element 2.
12. K. Alexa Koenig et al., *The Jurisprudence of Sexual Violence* 45 (Univ. Cal. Berkeley Human Rights Ctr., Sexual Violence and Accountability Project Working Paper Series, 2011).
13. *See* U.N. Secretary-General, *Rep. on Conflict-Related Sexual Violence*, ¶¶ 28-29, U.N. Doc. S/2015/203.
14. Penal Code art. 398. Proceedings can be resumed or sentences reinstated within three years if the marriage ends according to certain circumstances. Penal Code art. 398.
15. Constitution art. 29(Fourth); HUMAN RIGHTS WATCH, *DOMESTIC VIOLENCE IN IRAQ: HUMAN RIGHTS WATCH COMMENTARY ON THE DRAFT LAW ON ANTI-DOMESTIC VIOLENCE IN IRAQ* (2017). Kurdistan does have an anti-domestic violence law, and it includes a prohibition on “forced wife and husband sexual intercourse” among other forms of domestic violence. Act No. 8 of 2011, Act Combating Domestic Violence in Kurdistan Region-Iraq art. 2(First)(13).
16. Penal Code art. 41.
17. U.N. High Comm’r for Human Rights, *Rep. 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*, ¶¶ 37-38, U.N. Doc. A/HRC/28/18 (Mar. 13, 2015).
18. *Iraq: Sunni Women Tell of ISIS Detention, Torture, Describe Forced Marriage, Rape*, HUMAN RIGHTS WATCH.
19. UNAMI, for example, received complicated feedback from local communities on how marriages to ISIS members might be treated domestically. The mission was told by some leaders that:
where a woman consented to the marriage, the matrimonial contract could be confirmed subsequently in the federal court if needed; this would serve not to recognize ISIL as an entity that had originally endorsed the contract, but rather to recognize the contract of marriage between two consenting adults in the presence of two witnesses under Iraqi law. . . . Where a woman was forced to marry a member of ISIL against her will, even where a marriage contract was signed, such a contract would not be valid unless it was consummated by sexual intercourse. If the marriage was consummated, the contract could be annulled by a federal civil court under article 16 of the Personal Status Law of 1917. In this case, the

woman could have the marriage contract confirmed by a civil court, register any children born pursuant to that contract, and then have the contract annulled in a second subsequent court case.

- 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 ¶¶ 31-32 (Aug. 22, 2017), 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].
20. Convention on the Elimination of All Forms of Discrimination Against Women art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13; Convention on the Elimination of All Forms of Discrimination Against Women Comm., General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶¶ 21-26, 29(e), U.N. Doc. CEDAW/C/GC/35 (July 26, 2017); Convention on the Elimination of All Forms of Discrimination Against Women Comm., General Recommendation No. 19 on Violence Against Women, ¶¶ 7, 24(b), U.N. Doc. A/47/38 (1992). *See also*, U.N. WOMEN, HANDBOOK, at 24, 49; Opuz v. Turkey, App. No. 33401/02, Eur. Ct. H.R. ¶¶ 191, 199-202 (June 9, 2009) (holding that the State’s failure to protect applicant’s family from domestic violence violated the European Convention’s prohibition on torture and the right to life, and the prohibition of discrimination); M.C. v. Bulgaria, App. No. 39272/98, Eur. Ct. H.R. ¶¶ 153, 166 (Dec. 4, 2003) (“the member States’ positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act”); Melanie Randall & Vasanthi Venkatesh, *The Right to No: The Crime of Marital Rape, Women’s Human Rights, and International Law*, 41 BROOK. J. INT’L L. 153 (2015).
21. Criminal Procedure Code art. 3(A)(iii). Under Article 3(A), a complaint must be made by “the aggrieved party or someone taking his place in law” regarding certain offenses, including “[t]heft, rape, breach of trust, fraud, or acquisition of items by these means, if the aggrieved party is a spouse or descendent of the perpetrator and these items were not seized legally or administratively or legally transferred to another person.” While the provision could possibly be read to require victim-initiated complaints only in cases of rape where the victim is a spouse or descendent of the perpetrator, the reference to “these items” arguably limits the relationship qualifier, leaving the provision to require victim-initiated complaints in all cases of rape. *See also* 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*, UNAMI, PROMOTION AND PROTECTION OF RIGHTS OF VICTIMS OF SEXUAL VIOLENCE BY ISIL, ¶ 23.
22. Criminal Procedure Code art. 6.
23. 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.
24. Penal Code art. 385.
25. UNAMI, PROMOTION AND PROTECTION OF RIGHTS OF VICTIMS OF SEXUAL VIOLENCE BY ISIL, ¶ 23.
26. 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).
27. AMNESTY INT’L, ESCAPE FROM HELL: TORTURE AND SEXUAL SLAVERY IN ISLAMIC STATE CAPTIVITY IN IRAQ 13 (2014), https://www.amnesty.org.uk/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf; UNAMI, PROMOTION AND PROTECTION OF RIGHTS OF VICTIMS OF SEXUAL VIOLENCE BY ISIL, ¶ 23. *See also* UNAMI Strongly Condemns the Continued Practice of Honor Killings, U.N. IRAQ (Oct. 27, 2015), http://uniraq.org/index.php?option=com_k2&view=item&id=4426:unami-strongly-condemns-the-continued-practice-of-honor-killings&Itemid=605&lang=en.
28. 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, at 5.
29. U.N. WOMEN, HANDBOOK, at 34-35.
30. CEDAW Comm., General Recommendation No. 35, ¶ 26(c).
31. Constitution art. 37(Third).
32. Law No. 28 of 2012, Combating Trafficking in Persons art. 1(First) (Iraq). Kurdistan does not currently have an anti-human trafficking law and has not chosen to implement the Iraqi government’s law on human trafficking. U.S. DEP’T OF STATE, 2017 TRAFFICKING IN PERSONS REPORT: IRAQ (2017), <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271208.htm>
33. Penal Code art. 421.
34. Law No. 28 of 2012, Combating Trafficking in Persons arts. 5-6; Penal Code arts. 421-24. The kidnapping provision was amended to remove an exception if the perpetrator married the victim, unlike for rape and sexual assault. Penal Code former art. 427 (no longer in force, Coalition Provisional Authority Order 31, Modification of Penal Code and Criminal Proceedings Law § 2(3)).

35. *The Revival of Slavery Before the Hour*, DABIQ MAGAZINE, no. 4, 2015, at 1, 14-17.
36. Statement of the Special Rep. of the Secretary-General on Sexual Violence in Conflict Zainab Hawa Bangura and the Special Rep. of the Secretary-General for Iraq Nickolay Mladenov, *Iraq: UN Officials Call for Immediate End to Sexual Violence Against Iraqi Minorities* (Aug. 13, 2014), <http://www.un.org/sexualviolenceinconflict/press-release/iraq-un-officials-call-for-immediate-end-to-sexual-violence-against-iraqi-minorities/>; U.N. ASSISTANCE MISSION TO IRAQ & OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, REPORT ON THE PROTECTION OF CIVILIANS IN THE ARMED CONFLICT IN IRAQ: 1 MAY- 31 OCTOBER 2015, at 17-18, <http://www.ohchr.org/Documents/Countries/IQ/UNAMIRreport1May31October2015.pdf>; PUTTICK, CEASEFIRE CTRE. FOR CIVILIAN RIGHTS & MINORITY RIGHTS GROUP INT’L, NO PLACE TO TURN, at 21.
37. Human Rights Council, *Rep. of the Ind. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They Came to Destroy”: ISIS Crimes Against the Yazidis*, ¶¶ 118-24.
38. The Rome Statute’s emphasis is on the “exercise of such power,” and includes expansive means by which perpetrators can exert powers of ownership over individuals and be criminally liable. Rome Statute of the International Criminal Court art. 7(2)(c), July 17, 1998, 2187 U.N.T.S. 3 (describing trafficking as one example of conduct included in the exercise of power constituting enslavement); U.N. Econ. & Social Council, *Update to the Final Rep. Submitted by Ms. Gay J. McDougall, UN Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict*, ¶ 50, U.N. Doc. E/CN.4/Sub.2/2000/21 (June 6, 2000) (“One respect in which slavery differs from imprisonment or arbitrary detention is that the limitations on autonomy can be solely psychological or situational, with no physical restraints.”); Prosecutor v. Katanga, Case No. ICC-01/04-01/07, Trial Judgment, ¶¶ 975-78 (Mar. 7, 2014); Valerie Oosterveld, *Sexual Slavery and the International Criminal Court: Advancing International Law*, 25 MICH. J. INT’L L. 605, 649-51 (2004) (sexual slavery as a distinct crime puts the focus on the perpetrator’s actions in depriving victims of autonomy rather than the victim’s dignity or honor). Recognizing this criminal behavior as slavery and the level of control exerted over victims might also discourage prosecutions of victims for “crimes” committed as a result of trafficking. See U.S. DEP’T OF STATE, 2017 TRAFFICKING IN PERSONS REPORT: IRAQ (describing the arrest, imprisonment, and abuse of individuals “for unlawful acts committed as a direct result of being subjected to human trafficking, such as prostitution, immigration violations, and child soldiering”).
39. International law does not require a monetary transaction for relevant acts to constitute trafficking or sexual slavery. U.S. DEP’T OF STATE, 2017 TRAFFICKING IN PERSONS REPORT: IRAQ (noting the definition of trafficking used is not consistent with the definition in the U.N. 2000 Trafficking in Persons Protocol as it “requires a monetary transaction”); U.N. Econ. & Social Council, *Update to the Final Rep. Submitted by Ms. Gay J. McDougall, UN Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict*, ¶ 50 (“no requirements of any payment or exchange” in customary law interpretations of slavery and sexual slavery); Prosecutor v. Katanga, Case No. ICC-01/04-01/07, Trial Judgment, ¶¶ 976.
40. Human Rights Council, *Rep. of the Office of the United Nations Commissioner for Human Rights on the Human Rights Situation in Iraq in the Light of the Abuses Committed by the So-called Islamic State in Iraq and the Levant and Associated Groups*, ¶¶ 37-41 .
41. Human Rights Council, *Rep. of the Ind. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They Came to Destroy”: ISIS Crimes Against the Yazidis*, ¶¶ 42-80, 82-83.
42. Rome Statute arts. 7(1)(c) and (g), 8(e)(vi).
43. Rome Statute art. 7(2)(c); ICC Elements of Crimes art. 7(1)(c) and 7(1)(g)-2, element 1.
44. Personal Status Law No. 188 of 1959 art. 9(1) (Iraq).
45. Personal Status Law No. 188 of 1959 art. 9(3).
46. 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).
47. 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_POCHR_11Dec2014-30April2015.pdf (reporting the abduction and killing of Sunni and Turkmen Shi’a women who refused to marry ISIS fighters).
48. 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).
49. Penal Code art. 41 (punishment of a wife by her husband is a legal right within certain limits).

50. Reluctance to report these crimes might come either from fear of being subject to collective punishment in being associated with ISIS, or from “honor killings” or stigma associated with kidnapping and sexual violence. HUMAN RIGHTS WATCH, *FLAWED JUSTICE*, at 57 (“Interviews with victims indicated that victims had not opened complaints (despite several victims being questioned regarding specific ISIS fighters’ identities by authorities) because they were afraid for the safety of their families who were still in ISIS controlled territory”); UNAMI, *PROMOTION AND PROTECTION OF RIGHTS OF VICTIMS OF SEXUAL VIOLENCE BY ISIL*, ¶¶ 37-44; ORG. FOR WOMEN’S FREEDOM IN IRAQ ET AL., *SEEKING ACCOUNTABILITY AND DEMANDING CHANGE: A REPORT ON WOMEN’S RIGHTS VIOLATIONS IN IRAQ, SUBMISSION TO THE U.N. HUMAN RIGHTS COMM. IN RESPONSE TO THE FIFTH PERIODIC REPORT OF THE REPUBLIC OF IRAQ 19-23, 29 (2015)*; PUTTICK, *CEASEFIRE CTRE. FOR CIVILIAN RIGHTS & MINORITY RIGHTS GROUP INT’L, NO PLACE TO TURN*, at 18, 28-29.
51. 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.
52. 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. Ieng 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).
53. Universal Declaration of Human Rights art. 16(2), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); International Covenant on Civil and Political Rights art. 23(3), Dec. 19, 1966, 999 U.N.T.S. 171; Convention on the Elimination of All Forms of Discrimination Against Women art. 16(1)(a)-(b) (noting Iraq’s reservation to Article 2(f)(g) and Article 16 of the Convention, *Status on the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec); Convention on the Elimination of All Forms of Discrimination Against Women Comm., General Recommendation No. 21 on Equality in Marriage and Family Relations, ¶¶ 15-16, U.N. Doc. A/49/38 (1994).
54. *Prosecutor v. Ongwen*, Case No. ICC-02/04-01/15, Confirmation of Charges, ¶¶ 92-94 (noting additional restrictions on movement, forced pregnancy, forced labor and domestic duties, violation of basic right to consensual marriage, and implied relationship of exclusivity as distinct harm from sexual slavery, making forced marriage “not a predominantly sexual crime”).
55. *Prosecutor v. Ongwen*, Case No. ICC-02/04-01/15, Confirmation of Charges, ¶ 93; *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Trial Judgment, ¶¶ 1296, 1466 (Mar. 2, 2009).
56. UNAMI, *PROMOTION AND PROTECTION OF RIGHTS OF VICTIMS OF SEXUAL VIOLENCE BY ISIL*, ¶¶ 28-30, 37-44 (reporting agreements made between local administrations and communities to forcibly evict family members believed to be associated with ISIS, which also risk associating women who may have been married to ISIS members with or without their consent); 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 xii, 4-6.
57. Constitution art. 37(first)(C).
58. 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”).
59. Penal Code art. 332.
60. Human Rights Council, *Rep. of the Ind. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They Came to Destroy”: ISIS Crimes Against the Yazidis*, ¶¶ 64, 129-33; Global Justice Ctr., Article 15 Submission to the Office of the Prosecutor of the International Criminal Court Concerning the Gender Elements of Daesh’s Atrocities (Dec. 2015); PUTTICK, *CEASEFIRE CTRE. FOR CIVILIAN RIGHTS & MINORITY RIGHTS GROUP INT’L, NO PLACE TO TURN*, at 21, 24-26.
61. Human Rights Council, *Rep. of the Ind. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They Came to Destroy”: ISIS Crimes Against the Yazidis*, ¶ 120.
62. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85.
63. 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).
64. 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).
65. 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>.
66. 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>.

67. Convention on the Prevention and Punishment of the Crime of Genocide art. 5, Dec. 9, 1948, 78 U.N.T.S. 277; Rome Statute art. 6.

68. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Trial Judgment, ¶ 731 (Sept. 2, 1998); Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Trial Judgment, ¶ 292 (June 17, 2004); Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Judgment, ¶¶ 494, 502, 513 (Apr. 28, 2005).

69. Genocide Convention arts. 1-8; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), Preliminary Objections Judgment, 1996 I.C.J. 595, ¶ 31 (July 11) (“the rights and obligations enshrined by the [Genocide] Convention are rights and obligations erga omnes”).

70. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶¶ 430-31 (Feb. 26); Global Justice Ctr., Letter in Support of Filing of OTP-CR-397/15 to the Office of the Prosecutor of the International Criminal Court (Dec. 17, 2015).

71. 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.

72. 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).

73. Int’l Law Comm’n, *First Rep. of the Special Rapporteur on Crimes Against Humanity*, ¶ 27.

74. Human Rights Council, *Rep. of the Ind. Int’l Comm’n of Inquiry on the Syrian Arab Republic*, “They Came to Destroy”: ISIS Crimes Against the Yazidis, ¶¶ 6, 7, 17, 127.

75. Human Rights Council, *Rep. of the Ind. Int’l Comm’n of Inquiry on the Syrian Arab Republic*, “They Came to Destroy”: ISIS Crimes Against the Yazidis, ¶ 167.

76. Rome Statute art. 7(1).

77. Rome Statute art. 7(2)(a).

78. Prosecutor v. Tadić, Case No. IT-94-1-A, Appeals Judgment, ¶ 251 (July 15, 1999).

79. *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.

80. INT’L COMM. OF THE RED CROSS, COMMENTARY ON THE FIRST GENEVA CONVENTION: CONVENTION (I) FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD intro. ¶ 1 (2d ed. 2016).

81. INT’L CRIMINAL COURT OFFICE OF THE PROSECUTOR, POLICY PAPER ON SEXUAL AND GENDER-BASED CRIMES ¶ 25 (2014).

82. Geneva Convention (I) for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field arts. 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 arts. 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.

83. Human Rights Council, *Analytical Study on Human Rights and Transitional Justice*, ¶¶ 8, 19, 28, 37, U.N. Doc. A/HRC/12/18 (Aug. 6, 2009).

84. S.C. Res. 2379, U.N. Doc. S/RES/2379 (Sept. 21, 2017).

