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*Human Rights Watch Submission to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) of Iraq's periodic report for the 74th CEDAW Session (21 October – 8 November 2019)
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We write in advance of the 74th session of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) relating to Iraq's compliance with the convention. This submission addresses issues related to articles 2, 3, 10, 15 and 16 of the convention.

1. Yezidi Women and Girls Subject to Abuses by ISIS (CEDAW articles 2, 3 and 16)

Human Rights Watch and other organizations documented a system of organized rape, sexual slavery, and forced marriage by Islamic State (also known as ISIS) forces of Yezidi women and girls.¹ However, in our research we found no case where an ISIS member has been prosecuted or convicted for those specific crimes. Moreover, the crimes committed against Yezidi women and girls amount to war crimes and possibly crimes against humanity or genocide against the Yezidis. However, Iraq does not criminalize war crimes,

¹ "Iraq: Forced Marriage, Conversion for Yezidis," Human Rights Watch news release, October 2014, <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>; "Iraq: ISIS Escapees Describe Systematic Rape, Yezidi Survivors in Need of Urgent Care," Human Rights Watch news release, April 14, 2015, <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>; Sarah Margon (Human Rights Watch), "ISIL's Reign of Terror: Confronting the Growing Humanitarian Crisis in Iraq and Syria" testimony, Senate Foreign Relations Committee, December 9, 2014, <https://www.hrw.org/news/2014/12/09/isils-reign-terror-confronting-growing-humanitarian-crisis-iraq-and-syria-testimony>; "Iraq: Protect Mass Graves, Evidence of Possible ISIS Genocide Endangered," Human Rights Watch news release January 30, 2016, <https://www.hrw.org/news/2016/01/30/iraq-protect-mass-graves>; and Rothna Begum and Samer Muscati (Human Rights Watch), "Interview: These Yezidi Girls Escaped ISIS. Now What?," April 15, 2015, <https://www.hrw.org/news/2015/04/15/interview-these-yezidi-girls-escaped-isis-now-what>.

crimes against humanity or genocide. ISIS suspects are instead charged with violating provision 4 of the counterterrorism law, primarily for ISIS membership, support, sympathy, or assistance.²

However, this approach makes it less likely that the process will establish a more comprehensive judicial record of the crimes committed, and gather the evidence of these crimes from witnesses and victims. The overreliance on counterterrorism laws also makes it less likely that the process will prioritize and punish the most serious offenses committed by ISIS.

Iraqi judges have told Human Rights Watch that provision 4 is all-encompassing and indirectly includes crimes such as rape and other crimes committed by ISIS members.³ They have also justified not bringing additional charges by stating that victims don't come forward to file complaints and the courts lack the capacity to identify victims.¹ This is despite large amounts of documentation by various organizations of crimes against victims including interviews and forensic tests undertaken for instance by the Committee of Gathering Evidence of ISIS's crimes (Genocide Committee). Even in cases in which defendants have admitted to subjecting Yezidi women to sexual slavery, prosecutors have still neglected to charge them with rape, which carries a sentence of up to 15 years. Moreover, victims of ISIS abuse, including Yezidis, have not been able to participate in court proceedings.

In June 2017, a Judicial Investigation Board for Crimes Against the Yezidis was reportedly established to investigate crimes committed against them by ISIS. However, key Yezidi groups say they have never heard of the work of this body.

Yezidi victims have also had serious violations against their privacy and in some cases have been interrogated by security forces instead.⁴ There is some limited psycho-social assistance, and initiatives for survivors the means to

² Iraqi Counterterrorism Law, No. 13 of 2005.

³ Human Rights Watch report, *Flawed Justice: Accountability for ISIS Crimes in Iraq*, December 2017, <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq#>.

⁴ See for instance, "Yezidi Girl's Freedom Opens Door to Justice in Iraq: Prosecute ISIS Members for Specific Crimes," Human Rights Watch Dispatches by Belkis Wille, April 2, 2018, <https://www.hrw.org/news/2018/04/02/yezidi-girls-freedom-opens-door-justice-iraq>.

earn their livelihoods, for Yazidi survivors of violence in the Kurdistan Region of Iraq, but this could be strengthened.

While the Yazidi community leaders have welcomed back women and girl victims of ISIS, there has been more reluctance of accepting children born of rape. Some families have told women to leave such children, forcing women to either abandon their children during escape or to remain with their children and unable to return to their families or communities.

On April 7, 2019, the President submitted the draft Law on Support to Yazidi Women Survivors (Draft Law) to parliament. The draft, which was shared with Human Rights Watch, aims to rehabilitate, reintegrate and provide economic empowerment to Yazidi female survivors, as well as to provide symbolic recognition of genocide committed against Yazidis. However, there are a number of shortcomings including that the definition of survivors relates only to Yazidi women who were kidnapped by ISIS and then released. It does not include men and boys, girl survivors or victims from other communities also attacked and kidnapped by ISIS.

We encourage the Committee to make the following recommendations to the Iraqi government:

- Incorporate war crimes, crimes against humanity and genocide into the criminal code;
- Develop a national strategy for ISIS prosecutions and a range of other initiatives, including truth-telling and reparations, to address ISIS crimes;
 - o urgently develop a coordinated strategy to prioritize the prosecution of those who committed the most serious crimes by bringing charges for the full range of crimes committed including sexual violence and sexual slavery, and with a clear role for victim engagement;
- Consult with survivors and civil society on the draft Law on Support to Yazidi Women Survivors including broadening the scope of other survivors of ISIS, ensuring confidentiality of information and data, providing that reparations are in line with international human rights law including programs to deal with stigma against victims and

children born of rape, as well as specific guidelines on children born to women survivors.

2. Detention of Non-Iraqi Female Relatives of ISIS Members (CEDAW articles 2, 15 and 16)

Women and children who are foreign nationals and accused of affiliation with ISIS have been subjected to rushed proceedings, lack of due process, and unfair convictions and sentences. Most of the foreign women and children held in Iraq belong to a group of more than 1,300 foreigners detained by Iraqi forces in August 2017 during the battle for the ISIS stronghold of Tal Afar in the northwest of Iraq. A security source told AFP news agency that the group was composed of 509 women and 813 children, though the overall number of foreign women and children in detention is believed to be higher based on information from sources close to the penitentiary system in Baghdad.⁵ Prime Minister Haider al-Abadi stated in an interview with Associated Press News in September 2017 that most of the women and children were not guilty of a crime, and his government was in the process of returning the detainees to their home countries. However, in January 2018, the Iraqi government proceeded to prosecute women and children ages 9 and up.⁶

Foreign national children under age 3 are usually kept in jail with their mothers in often overcrowded cells. Those between 3 and 9 are usually separated from their detained mothers and put in foster institutions run by the Iraqi state. Those between 9 and 18 are held in juvenile detention facilities, a lawyer following the cases told Human Rights Watch. Foreign orphans are kept in local orphanages. Some foreign children have been transferred to their home countries while many others are still waiting to be transferred, likely because of delays on the Iraqi and home countries' sides.⁷

⁵ "Iraq PM: Half of IS families detained near Mosul are Turkish," Associated Press News, September 16, 2017, <https://apnews.com/e15b0221b00b419fbba4f1f3a15d9d3f> (accessed on March 1, 2019).

⁶ "Iraq: Change Approach to Foreign Women, Children in ISIS-Linked Trials," Human Rights Watch news release, June 21, 2018, <https://www.hrw.org/news/2018/06/21/iraq-change-approach-foreign-women-children-isis-linked-trials>.

⁷ "Iraq: Change Approach to Foreign Women, Children in ISIS-Linked Trials," Human Rights Watch news release, June 21, 2018.

In cases reviewed by Human Rights Watch, defence lawyers assigned to detainees by Iraqi law rarely provide an adequate defense, and families with perceived ties to ISIS suspects are generally left without access to legal services.⁸ They rarely had access to their clients before hearings and translators were seldom granted to detainees. In addition, Iraqi judges appeared to dismiss, without consideration, defendants' claims of not officially supporting ISIS and coercion. The lack of robust investigation into the detainees' individual contributions to ISIS abuses indicate a further denial of due process and justice.

Trials that occurred before proceeding to the standard three-judge panel in Iraqi criminal proceedings, as witnessed by Human Rights Watch, only lasted several minutes with presiding judges asking the detainees general questions regarding their entry into Iraq, money received from ISIS, their husbands' locations, and conviction to ISIS ideology. On the same day as the trials, life (20 years) and death penalty sentences were issued in almost all cases reviewed by Human Rights Watch.

Some women have told judges that they were coerced into coming to Iraq, but as far as Human Rights Watch has observed, judges have ignored and refused to investigate such claims.⁹

We encourage the Committee to make the following recommendations to the Iraqi government:

- Ensure that the defendants have a fair trial including that they and their representatives are able to prepare and present all evidence in their defense, including the individual circumstances through which women ended up in Iraq and examine what their contribution was – if any – to ISIS abuses.*
- Prioritize prosecuting those responsible for the most serious crimes while seeking alternatives to prosecution for those who may have*

⁸ *Iraq: Officials Threatening, Arresting Lawyers,* Human Rights Watch news release, September 18, 2018, <https://www.hrw.org/news/2018/09/12/iraq-officials-threatening-arresting-lawyers>

⁹ *"Iraq: Change Approach to Foreign Women, Children in ISIS-Linked Trials,"* Human Rights Watch news release, June 21, 2018.

travelled to join or live under ISIS under constraint or who did not cause harm to anyone in Iraq. Alternatives might include reparation, community service or participation in national truth-telling processes.

- Ensure that sentences are proportionate to the crimes committed, and defendants are not sentenced to death.

3. Collective Punishment of Iraqi Families with Perceived Isis-Affiliation (CEDAW articles 2, 15 and 16)

Despite fighting between Iraqi forces and ISIS subsiding, an estimated 1.8 million people remain displaced—450,000 of them across 109 camps and another 1.2 million in private or informal housing arrangements. They are uniquely vulnerable to abuse. Some are being forced to return home to unsafe conditions, where they risk landmines, revenge attacks from neighbors, or forced recruitment into local armed groups. Some are being prevented from returning home and are effectively detained in camps.

In 2019, humanitarian workers in Iraq identified 242 distinct areas in Iraq where families have not been able to return even though the fighting ended, because areas have yet to be cleared of landmines, explosives, and booby-trapping of homes by ISIS; and because in 94 of the areas, there is de facto ban on returns. An Interior Ministry official estimated that 250,000 people from families with perceived ISIS affiliation could not return home because of objections by federal or local authorities or communities.

This is partly because Iraqis need “security clearance” to replace any missing civil documentation. Based on estimates by aid groups, in early 2019 at least 156,000 displaced people are missing at least some of their essential civil documentation. ISIS authorities, during the rule between 2014-2017, regularly confiscated official documentation and issued their own, which the Iraqi authorities do not recognize. In addition, state security forces confiscated some families’ documents as they fled fighting or when they arrived at camps for displaced people.

To obtain security clearance, officers will run their names through a database of people flagged as “wanted” for their suspected links to ISIS. If their

relative is on one of those lists, officers will deny them clearance, tear up the application, and destroy even their expired documents – in some cases even arrest them.

Without security clearance and documents an Iraqi is not allowed to freely move within the country, as there are thousands of checkpoints along every main road and throughout all towns and villages and at the entrances and exits to camps.

In addition, people missing documentation cannot get a job or health care or apply for welfare benefits in Iraq. They cannot get birth certificates for new-born children or children born under ISIS control. Children denied birth certificates are not allowed to enroll in school and are at risk of statelessness. Women unable to obtain death certificates for their spouses are unable to inherit property or remarry for several years.¹⁰

We encourage the Committee to make the following recommendations to the Iraqi government:

- Ensure that areas are safe for displaced people and families to return to.
- Abolish the requirement for obtaining security clearance to replace any missing civil documentation.
- Assist people missing documentation so they are able to get a job, access health care or apply for welfare benefits. Allow birth certificates for all new-born children or children born under ISIS control. All women to obtain death certificates for their spouses so they are able to inherit property or remarry.
- Suspend the requirement for children to present their civil documentation in order to enroll in school until civil documentation obstacles are resolved.

4. Violence Against Women Including Domestic Violence and Honor Killings (CEDAW articles 2, 3, and 16)

¹⁰ Belkis Wille, "Iraqi: Not a Homecoming," commentary, Human Right Watch witness piece, June 14, 2019, <https://www.hrw.org/news/2019/06/14/iraqi-not-homecoming>

Domestic violence remains a serious problem in Iraq. A 2012 Ministry of Planning study found that at least 36 percent of married women reported experiencing some form of psychological abuse from their husbands, 23 percent to verbal abuse, 6 percent to physical violence, and 9 percent to sexual violence.¹¹

While the Iraqi constitution expressly prohibits “all forms of violence and abuse in the family,” only the Kurdistan Region of Iraq has a law on domestic violence.¹² Iraq’s Anti-Violence against Women Strategy (2013-2017), adopted in March 2013, and the National Strategy on Advancement of Women in Iraq, adopted in 2014, both called for legislation on domestic violence/violence against women.

Iraq’s criminal code does not criminalize domestic violence and only general provisions relating to assault could apply in such instances. However, several provisions in the criminal code enable impunity for violence against women including domestic violence.

Article 41(1) of the Penal Code provides that “the punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom” is the exercise of a legal right and as such, is not a crime. In addition, the Penal Code also provides for mitigated sentences for violent acts including murder for so-called “honorable motives” or if catching his wife or female relative in the act of adultery/sex outside of marriage.¹³ The Penal Code also allows

¹¹ Ministry of Planning Central Statistical Organization-CSO, “Iraq Women Integrated Social and Health Survey (I-WISH) Summary Report,” March 2012, pp. 47-48, <http://reliefweb.int/sites/reliefweb.int/files/resources/IWISH%20Report%20English.pdf> (accessed March 6, 2017).

¹² Iraq Constitution, article 29; Domestic Law no. 8 Kurdistan Region of Iraq.

¹³ Articles 128(1) and 409 of the Penal Code, Law No. 111 of 1969.

perpetrators of rape or sexual assault to escape prosecution or have their sentences quashed if they marry their victim.¹⁴

The draft anti-Domestic Violence law, originally introduced in the Iraqi parliament in 2015 and further amended in 2016, remains pending despite renewed efforts for its passage in the fall of 2019. The strengths of the draft bill, as seen by Human Rights Watch in 2017, include provisions for services for domestic violence survivors, protection orders (restraining orders), and penalties for their breach, and the establishment of a cross-ministerial committee to combat domestic violence.¹⁵

However, the bill has several gaps and provisions that would undermine its effectiveness. One of the major problems with the draft law is that it prioritizes reconciliation over protection and justice for abused victims.¹⁶ The draft law calls for the parties to be referred to family reconciliation committees and for prosecutions of abusers to be dropped if reconciliation is reached.¹⁷ But women in Iraq are often under tremendous social and economic pressure to prioritize the family unit over their own protection from violence.

While the draft law defines domestic violence as a crime, it fails to set penalties. It also does not repeal provisions in the Iraqi Penal Code that condone domestic violence.

Furthermore, the draft law, does not refer to police officers or outline concrete duties for police officers in responding to cases of violence against women, other than the Department of Family Protection (which sits in many police stations).

The draft law does provide for protection orders: an important mechanism in the fight against

¹⁴ Article 398 of the Penal Code, Law No: 111 of 1969.

¹⁵ Human Rights Watch, "Iraq: Strengthen Domestic Violence Bill," March 19, 2017, <https://www.hrw.org/news/2017/03/19/iraq-strengthen-domestic-violence-bill>.

¹⁶ Article 3(2), draft Anti-Domestic Violence Law.

¹⁷ Article 19, draft Anti-Domestic Violence Law.

domestic violence. However, the draft law does not distinguish between short-term emergency protection orders and longer-term protection orders.¹⁸ Article 18(1) of the draft law allows investigative judges on domestic violence to issue a protection order which offers victims up to 30 days of “protection” from the suspected perpetrator, and which can be renewed. This means that women will be required to repeatedly seek orders for protection which may cause undue delays in receiving protection.

According to a 2014 UNAMI Human Rights Office report, there are very few working shelters and many victims of domestic violence are often sent to temporarily stay in female prisons.¹⁹ A proposed amendment to the draft law would provide for the establishment of government shelters in coordination with local women’s rights organizations but it is silent about privately-run shelters for survivors of domestic violence. Existing women’s rights organizations with such shelters have often been physically attacked and threatened and faced hostility from some government officials.

We encourage the Committee to make the following recommendations to the Iraqi government:

- Pass the draft Anti-Domestic Violence Law, in line with international human rights standards, with the following amendments:
 - o Remove all references to “reconciliation.”
 - o Set penalties for the crime of domestic violence.
 - o Repeal provisions in the Iraqi Penal Code including articles 41(1), 128(1), 398 and 409 that condone violence against women.

¹⁸ UN Women, “Handbook on Legislation on Violence against Women,” 2012, section 3.10.4 and section 3.10.5, http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/12/unw_legislationhandbook%20pdf.pdf?v=1&d=20141013T121502 (accessed March 6, 2017).

¹⁹ UNAMI Human Rights Office/OHCHR Baghdad, “Report on Human Rights in Iraq: January – June 2014,” August 2014, section 5.3, p. 14, http://www.ohchr.org/Documents/Countries/IQ/HRO_Jan-Jun2014Report_en.pdf (accessed March 6, 2017).

- Set out specific duties for the police and specialized police officers in responding to domestic violence.
- Distinguish between short-term emergency orders and longer-term protection orders, including making clear that short-term orders can be issued without all parties present on the basis of a victim's testimony, whereas a longer-term order would allow for a full hearing and review of evidence.
- Ensure that women's rights organizations can administer, provide training, and operate the government shelters as to be established under the draft law, and permit the establishment and operation of privately-run shelters for survivors of domestic violence.

5. Protection of Education During Armed Conflict (CEDAW article 10)

Iraq endorsed the Safe Schools Declaration in December 2015.²⁰ (In our pre-session submission we incorrectly stated that Iraq was yet to endorse. In April 2019, Norway announced Iraq's endorsement.) Further information regarding attacks on education can be found in our pre-session submission. We encourage the Committee to congratulate Iraq for endorsing the Safe Schools Declaration and pose the following questions to the Iraqi government:

- What steps has Iraq taken in line with UN Security Council Resolution 2143 (2014) and 2225 (2015) to deter the military use of schools?
- Are protections for schools from military use included in any policies or trainings for Iraq's security forces?
- What specific steps have been taken in order to protect girls right to education?