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**SEEKING ACCOUNTABILITY AND DEMANDING CHANGE:
A REPORT ON WOMEN'S RIGHTS VIOLATIONS IN IRAQ**



IN RESPONSE TO

**THE FIFTH PERIODIC REPORT OF
THE REPUBLIC OF IRAQ**

Submitted By

Iraqi Organizations

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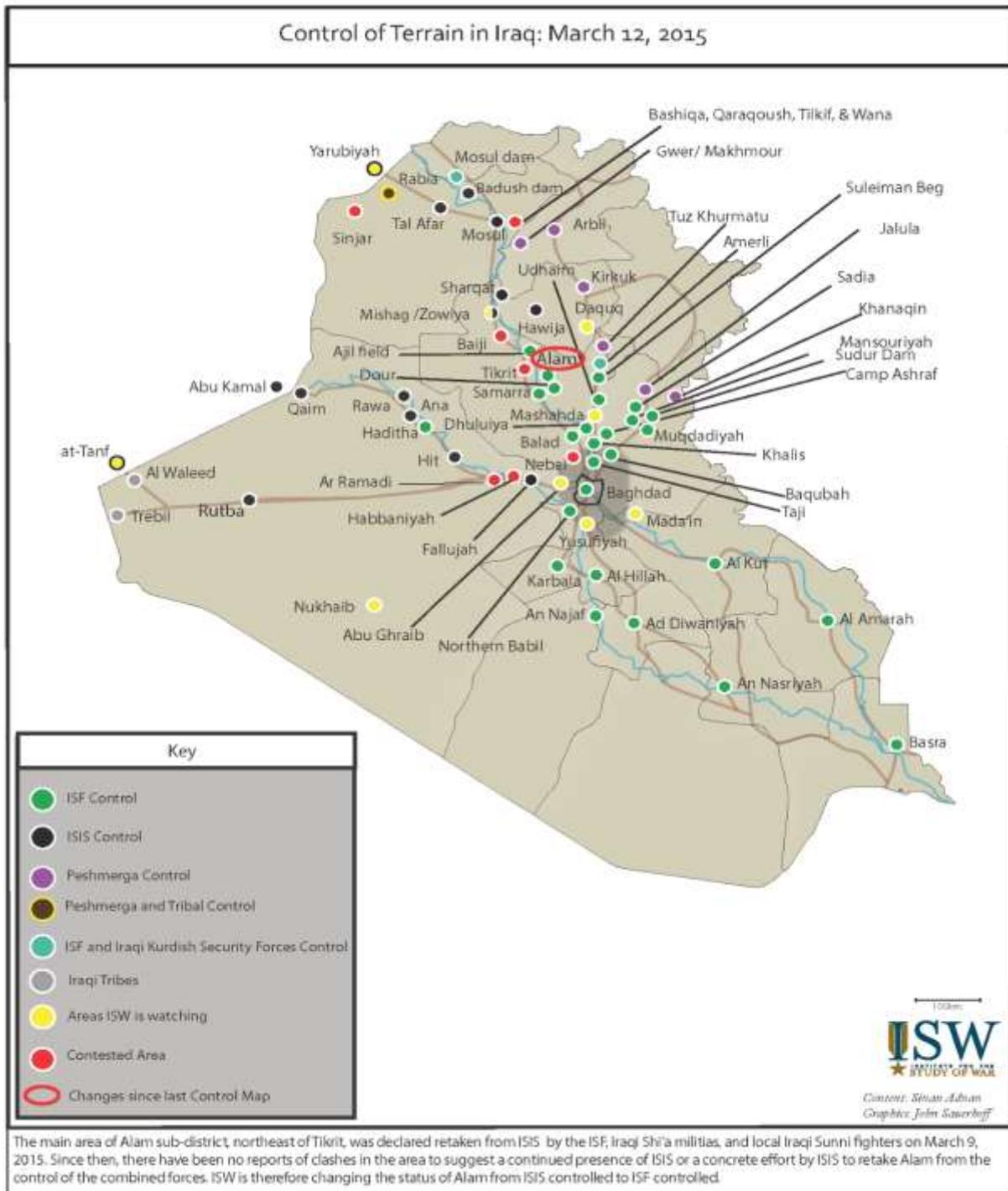
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The Women's International League for Peace and Freedom (WILPF)

Map of the ISIL Conflict in Iraq* March 2015



* Sinan Adnan, *Control of Terrain in Iraq: March 12, 2015*, INSTITUTE FOR THE STUDY OF WAR

List of Acronyms

CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CIDT	Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CUNY	City University of New York (School of Law)
FPC	Family Protection Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Persons
IRC	International Rescue Committee
ISIL	Islamic State of Iraq and the Levant
IWHR	International Women's Human Rights (CUNY Law School)
OHCHR	Office of the High Commissioner on Human Rights
OWFI	Organization of Women's Freedom in Iraq
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
WILPF	Women's International League for Peace and Freedom
WHO	World Health Organization

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Introduction

This report is intended to supplement the fifth periodic report submitted by Iraq to the UN Human Rights Committee for its review of Iraq during the 115th Session to be held in October 2015. Several areas of concern related to the status of the rights of women and girls in Iraq are addressed herein, including the prevalence of gender-based violence, impunity for human rights violations against women and girls, and discriminatory legal provisions. This report offers specific actionable recommendations to the Government of Iraq so that it may adequately comply with its human rights obligations under the International Covenant on Civil and Political Rights (ICCPR).

The Government of Iraq has failed in its obligation under the ICCPR to take proper measures to protect and promote women's human rights, to ensure effective remedies in cases of violations, and to prevent systemic impunity. While all Iraqis face daily insecurity due to terrorism and civil strife, women and girls experience additional and specific abuse because of their gender. Despite numerous provisions under Iraqi law that aim to protect women's human rights, egregious gender-based violence remains widespread, including domestic violence, "honor" killings, rape, and sexual assault. Under the Islamic State of Iraq and the Levant (ISIL), Iraqi women and girls have become increasingly vulnerable to sexual slavery and to forced prostitution. Women who escape ISIL, are left vulnerable to trafficking and honor killings due to stigma and weak governance. Victims of forced prostitution are criminalized and mistreated by law enforcement. Additionally, those engaged in or presumed to be engaged in forms of sexual transaction face criminalization, including women who are survivors of trafficking, as well as violence and other human rights violations at the hands of non-state armed actors and Iraqi officials. Forced, under-aged, and temporary marriages are a reality for many Iraqi women and girls. Cultural norms and certain Iraqi legal provisions promote a culture of impunity for these human rights violations.

In recent months, the occupation of parts of Iraq by ISIL has dramatically worsened the human rights situation in Iraq. A recent investigation by the Office of the High Commissioner for Human Rights (OHCHR) found evidence of ISIL committing war crimes, crimes against humanity, and genocide.¹ Evidence also suggests that ISIL has committed crimes against humanity, including murder, enslavement, forcible transfer, imprisonment, torture, rape, sexual slavery, other forms of sexual violence and persecution, as part of a widespread and systematic attack against various communities including Christians, Shi'a, and Yezidi populations. Evidence additionally supported the accusation that ISIL committed war crimes within Iraq, including murder, mutilation, cruel treatment, torture, extrajudicial killings; directed attacks against civilians, religious sites, and historic buildings; rape, sexual slavery and other sexual violence, conscription of children, and the displacement of civilian populations.² The response to ISIL by Iraqi security forces and militias, already authors of grave human rights violations, has

¹ U.N, High Commissioner for Human Rights, *ISIL may have committed war crimes, crimes against humanity and genocide: UN report* (March 19, 2015),

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15720&LangID=E>

² Office of the United States High Commissioner for Human Rights (OHCHR), *Report on the Human Rights Situation in Iraq in the Light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups – Advance Unedited Version*, at ¶ 76 U.N. Doc. A/HRC/28/18 (March 2015), available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_18_AUV.doc#sthas_h.qmK8lo6T.dpuf

resulted in more atrocities,³ furthering a cycle of deadly violence and perpetuating an environment of impunity.

These violations of the human rights of Iraqi civilians, in particular women and girls, should be understood as a continuing outgrowth of the deterioration of women's human rights over the last couple of decades in Iraq, as well as of long-standing discriminatory policies and practices. Comprehensively addressing the rights and needs of women and girls fleeing ISIL requires addressing pre-existing threats to women and girls embedded in Iraq's laws and social norms. Additional humanitarian measures must also be taken to immediately assist the victims of ISIL.

The information contained in this report was gathered through research, field interviews and documentation of personal testimonies from 2013 to 2015 by the Organization for Women's Freedom in Iraq, the International Women's Human Rights (IWHR) clinic at the City University of New York School of Law and MADRE. This Report was written in collaboration with Iraqi women's and human rights organizations and activists. Some chose to remain anonymous for safety concerns. Reference to specific individuals and organizations have been omitted for safety reasons.

We hope that the findings in this report will be useful to the Committee and serve as a catalyst for further advocacy efforts.

Sincerely,

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³ See generally, Amnesty International, *Absolute Impunity- Militia Rule in Iraq*, (2014); Human Rights Watch, *After Liberation Came Destruction- Iraqi Militias and the Aftermath of Amerli*, (March 18, 2015).

I. ARTICLES 2, 3, 7, 12 & 26, RAPE, SEXUAL ASSAULT AND DOMESTIC VIOLENCE

Article 12, read together with Articles 2, 3 and 26, protect women's equal right to freedom of movement. States have an obligation under the Convention to exercise their due diligence to prevent, punish, investigate and redress the harm caused by violations of the ICCPR, including violations committed by private actors.⁴ States' failure to take adequate measures to address domestic violence and rape, including where committed by private actors, may constitute violations of the right not to be subjected to torture or ill treatment under the ICCPR.⁵ The UN Special Rapporteur on Violence Against Women has echoed this responsibility, finding that governments have positive obligations under international law to protect and ensure women's human rights, including acts committed by private individuals when State do not upheld their due diligence responsibilities.⁶ Furthermore, the Committee has underscored States' obligations to uphold human rights under the Convention in times of armed conflict, including by taking measures "to protect women from rape, abduction, and other forms of gender-based violence."⁷

States Parties must also ensure women's equality before law and equal enjoyment of all rights in the Covenant, regardless of traditional, religious or cultural attitudes to the contrary.⁸ States' obligations under the Convention are binding upon all branches and levels of government, and states may not invoke national, regional or local laws as justification for failure to uphold them.⁹

A. Inadequate shelter for women fleeing violence in Iraq; women fleeing abuse put in greater risk by prohibition of Iraqi NGO-run shelter provisions

With over 3 million¹⁰ displaced and over 8 million¹¹ Iraqis in need of humanitarian assistance in the current climate of the conflict in Iraq, there is an exponentially higher need for NGO-run shelters for displaced persons.

⁴ Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 8, U.N. Doc CCPR/C/21/Rev.1/Add.13 (26 May, 2004).

⁵ Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)*, ¶ 11, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), available at <http://www.refworld.org/docid/45139c9b4.html> The U.N. Committee Against Torture also determined that sexual and gender-based violence, including rape and domestic violence, can constitute instruments of torture where states acquiesce to these acts. Committee Against Torture, *General Comment No. 2, Implementation of Article 2 by States Parties* ¶ 18 U.N. Doc. CAT/C/GC/2.

⁶ Human Rights Council, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, ¶¶ 11, 35, U.N. Doc. A/HRC/23/49 (May 2013).

⁷ Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), available at <http://www.refworld.org/docid/45139c9b4.html>

⁸ Human Rights Committee, *Comment No. 28: Article 3 (Equality of Rights Between Men and Women)*, ¶ 5.

⁹ Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 4 ("This understanding flows directly from the principle contained in Art. 27 of the Vienna Convention of the Law of Treaties, according to which a State Party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty.'").

¹⁰ International Displacement Monitoring Centre, *Iraq IDP Figures Analysis*; IDMC Estimates That At Least 4 Million Iraqis Were Internally Displaced as of 15 June 2015, available at <http://www.internal-displacement.org/middle-east-and-north-africa/iraq/figures-analysis>

¹¹ Kanya D'Almeida, *8.2 Million Iraqis In Need of Emergency Humanitarian Assistance*, Inter Press Service News Agency, June 5, 2015, available at <http://www.ipsnews.net/2015/06/8-2-million-iraqis-in-need-of-emergency-humanitarian-assistance/>

Unfortunately, in central and southern Iraq, it is against public policy for Iraqi NGOs to provide shelter to women escaping domestic violence, attempted “honor” killings, trafficking or other forms of gender-based violence. Consequently, NGO-run shelters and their service providers are not only vulnerable to police raids; they also lack protection from threats of violence by extremist groups.¹²

The Law No. 28 of 2012 on Combating Trafficking in Persons, states that the Ministry of Labor and Social Affairs should create shelters to assist the victims of human trafficking and exploitation. Regrettably, government officials have interpreted this policy to mean that *only* the government can run shelters,¹³ although local activists report that State-run shelters remain vacant.¹⁴

Despite this policy, a few women’s rights organizations continue to provide safe housing to those fleeing domestic violence, threat of “honor” killings and other forms of gender-based violence. Organizations who accept the dangers associated with sheltering families, take on the additional risk of doing so clandestinely. One Iraqi women’s rights activist explained, “Shelters are thought of as encouraging women to disobey their husbands, and daughters to disobey their parents. This leads to the presumption that a shelter----a place where a group of immoral women reside without a male guardian----is likely a brothel.”¹⁵ Several Iraqi women’s human rights organizations also confirmed this belief.¹⁶

Women’s rights defenders seeking to assist women and girls encounter regular harassment, and arbitrary surveillance. Women’s shelters are subjected to warrantless searches as well as police and militia raids. This not only puts staff and residents at risk, it forces them to routinely relocate, avoiding unwanted attention from neighbors who have on occasion mistaken safe houses for brothels. Furthermore, it leaves women in hiding unprotected from family members or ex-boyfriends who track them down for escaping threats of “honor” killings. For example:

- In July 2014, a staff member of a women’s rights organization in Baghdad received a phone call from local police relaying a threat from the Asaib Ahl al Haq militia. The threat stated that the militia was aware that the organization harbored gay men and runaway girls and knew the locations of its shelters, and insisted that they halt their activities, and leave their

¹² Interview with representatives of three local Iraqi women’s organizations, Istanbul, Turkey, January 2015 (on file with authors). See also, U.S. Department of State, *Country Narrative Trafficking in Persons Report 2012–Iraq* (2012).

¹³ International Labour Organization, *Iraq; Elimination of Child Labour, Protection of Children and Young Persons*, available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94253&p_country=IRQ&p_count=232&p_classification=04&p_classcount=6

¹⁴ Interview with representatives of three local Iraqi women’s organizations, Istanbul, Turkey, January 2015 (on file with authors).

¹⁵ Interview with Iraqi women’s rights activist Istanbul, Turkey, January 2015 (on file with authors). This belief towards women’s shelters has also been touted in other countries including Afghanistan. Dean Nelson, *Afghan Women in Shelters Are Prostitutes, Says Justice Minister*, The Telegraph, June 21, 2012, available at <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/9346779/Afghan-women-in-shelters-are-prostitutes-says-justice-minister.html>

¹⁶ Interview with representatives of three local Iraqi women’s organizations, Istanbul, Turkey, January 2015 (on file with authors).

office, or the militia would come and kill them. The staff member managed to convince the police officer that the militiamen's accusations were fallacious, but the police officer made it clear that there was nothing the police could do to stop the militia should they choose to carry out the threat.

- In September 2013, the Director of the same local organization was informed by a close acquaintance that a group of security guards from Sadr city were plotting to raid the organization's office in Baghdad. They had referred to the organization as the "prostitutes' organization" run by the Director in downtown Baghdad. The acquaintance had learned that the group planned to put the Director and all "the prostitutes" in prison so as to make an example of them. In response to the threat, the Director decided to evacuate the LGBT residents for a few days, until staff members could ensure their safety upon return.
- In September 2012, the organization's shelter for women was raided by a local Iraqi police force and all shelter residents were asked to present their identification documents. The police officer became suspicious upon discovering that the women were not related to one another. However, after determining that no illegal activity was taking place, the officer released the women, but only after insisting that each contact their families. The incident caused great distress among the women and girls sheltering at the safe house and particularly the staff member managing the shelter. Following the raid the organization decided to evacuate the shelter for a month until further follow up with local officials could be done to guarantee the location's safety before returning women to the shelter.

The examples above serve to illustrate how the government's policy regarding NGO-run shelters puts the staff members and residents directly at risk of violence by both state and non-state actors. Additionally, it means that such services cannot be publicly advertised nor expanded to meet the current need further increasing the difficulty in accessing critical services for those in need.

In recognition of the grave ramifications of this policy, in its recent concluding observations to the government of Iraq in August 2015, the UN Committee Against Torture (CAT) articulated deep concern regarding the Iraqi government's ban on NGO-run shelters, and called on the State party to authorize private shelters and provide them with protection from all forms of harassment and violence.¹⁷ The CAT Committee issued the following recommendations:

"The State party should:

- (a) Ensure that all cases of violence against women are thoroughly investigated, perpetrators are prosecuted, and that victims obtain redress, including fair and adequate compensation;

¹⁷ U.N. Committee Against Torture, *Concluding Observations On The Initial Report of Iraq*, August 2015 ¶ 23 U.N. Doc. CAT/C/IRQ/CO/1, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRQ%2fCO%2f1&Lang=en

- (b) Provide better protection and appropriate care for such victims, including access to safe houses, State-run and private shelters, identity documents without prior authorization of a male family member, medical care and psychological support;
- (c) Increase cooperation with non-governmental organizations working to protect women and girls from violence throughout the country, and ensure that such organizations are protected from all forms of harassment and violence;
- (d) Enact comprehensive legislation to address domestic and gender-based violence, including a law permitting privately run shelters.¹⁸

Lifting the ban on NGO-run shelters will enable local Iraqi women’s human rights organizations to operate legally and provide better protective services and emergency response to women and girls as well as other at-risk individuals fleeing violence. Furthermore, legalizing their activities will provide an additional layer of protection for these organizations by unblocking their access to police assistance and collaboration in protecting the victims of gender-based violence.

Only in the region of Kurdistan have local NGOs been permitted to run and maintain shelters for women fleeing violence.¹⁹ In 2011 the Kurdish Regional Government (KRG) passed Domestic Law No. 8, the Law against Domestic Violence in the Kurdistan Region of Iraq, which calls for the creation of women’s shelters. While the law does not explicitly allow for NGO’s to run shelters, it provided space for collaboration between government and civil society and led to the creation of some government-run shelters although not enough to meet the current needs. While an important step in ensuring protection for women and girls, shelters in Kurdistan are significantly under-resourced and government involvement in the shelters in Kurdistan has led to erosion in quality of services, according to local women’s advocates.²⁰

In February 2014, the Iraqi Government announced the passage of the *Iraq National Action Plan, for the Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security (2014-2018)*.²¹ with the “expected result” that “women will receive better services by NGOs and institutions they meet.”²² Unfortunately, the plan has yet to be funded or implemented, and significant elements of the overall plan were gutted, including sections on

¹⁸ *Id.*

¹⁹ In 2011, the Kurdistan region of Iraq adopted a domestic violence law that prohibits all forms of gender-based violence. According to the law, the Kurdistan Regional Government is responsible to “provide shelter to the victims of domestic violence.” The Regional Government agreed to allow Kurdistan NGOs to run shelters for women fleeing violence. Currently there are 7 shelters in Kurdistan, which include four government-run shelters, one run by a political party, and two shelters run by local NGOs.

²⁰ Thomas von der Osten-Sacken, “*Concealment and Neglect*”: *A Report Criticizes the Poor State of Iraqi-Kurdistan’s Women’s Shelters*, EKURD DAILY, (6 July, 2010) <http://www.ekurd.net/mismas/articles/misc2010/6/state3934.htm>

²¹ *Iraq National Action Plan, for Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security 2014-2018*, Pillar 2 – Protection and Prevention, Strategic Objective #2, Specific Actions #3, p. 54.

²² *Id.* at Strategic Objective #2, Expected Results #3, p. 54.

necessary legislative changes and budgeting.²³ Similarly, Iraq's 2012 anti-trafficking law, provisions of which call for shelter for women and girls fleeing gender-based violence, has yet to be properly implemented or funded.²⁴

A local women's civil society organization helping to shelter, protect, and care for women who have fled gender-based violence, has unique access to victims of gender-based violence, whose stories help illustrate the scope, breadth, and seriousness of this issue in Iraq. The organization members have catalogued many of the organization's experiences advocating for shelter. Their experiences illustrate the dire need for independently run shelters for women fleeing ISIL and gender-based violence; the obstacles the organization faces in establishing shelters; as well as the ability of grassroots women's groups like this organization to advocate for changes to shelter policy. For example:

- In the Dohuk region, local organizations reached an agreement with the local government, which realized that it lacked the proper capacity, to care for 128 women and girls who escaped from ISIL;
- In Karbala, local organizations worked with the local Government and teachers to overcome documentation issues, and set up caravans to transport children from a camp sheltering displaced Turkmens to classes with local teachers who speak the Turkmen dialect, who are often displaced persons themselves;
- Also in Karbala, local organizations reached an agreement with the local government allowing them to create additional safe housing for displaced persons;
- In Baghdad, when attempting to acquire the operating license for its radio station, a local organization was forced by the Government to sign a letter declaring, among other things, that they would not operate any displaced persons shelters.²⁵

B. Impunity for rape and sexual assault in law and practice

Gender-based violence and discrimination against women and girls has been a longstanding, pervasive problem in Iraq. Rape and other forms of sexual assault, while criminalized under the Penal Code, continue to be met with impunity, in part due to discriminatory provisions in the law. For example, the Penal Code states that perpetrators of crimes involving sexual violence may be exonerated if they marry their victim, even after having been sentenced, including in cases where the victim is under age 18.²⁶ In tandem with cultural norms related to "honor," this

²³ Women Peacemakers Program, "Challenges for Women's Participation in Peacebuilding Processes in Iraq," (2 February 2015), available at <https://www.womenpeacemakersprogram.org/news/challenges-facing-womens-participation-in-peacebuilding-processes-in-iraq/>.

²⁴ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶¶ 31, 32(a), U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014).

²⁵ Interviews with three Iraqi women's organization representatives, Istanbul, Turkey, January 2015 (on file with authors).

²⁶ Despite the Coalition Provisional Authority's 2003 elimination of Iraq Article 427 Penal Code 1969, the termination of rapists' sentences upon marriage to their victim still occurs, and is also permitted under Article 398 of the Penal Code, which was not covered by the CPA decision. Dr. Bishri Al Obaidi, *Clarification of the Penal Code*

provision increases pressure on victims to marry their rapists. The law also prolongs victims' endangerment in a provision mandating perpetrators to remain married to their victims at least three years to avoid reinstatement of the rape charges.²⁷ Marital rape is not criminalized in Iraq.²⁸ There are no reliable estimates of the incidents of rape in Iraq, and no metrics on the effectiveness of Government enforcement of the Penal Code.²⁹

Other forms of discrimination in the legal and criminal justice system, along with social stigma tied to rape, limit women's recourse in the case of gender-based violence. A 2012 United Nations Development Program (UNDP) report found instances in Iraq in which the families of rape victims encouraged the victims to marry their aggressors.³⁰ When these women refused these marriages, some families pressured judges to force the marriage between survivor and rapist.³¹ Rape victims in Iraq are unlikely to press charges against perpetrators and pursue legal remedies due to societal pressures and norms.³² Additionally, consideration of a victim's sexual history in rape cases is permitted under Iraqi law.³³ Women who report sexual violence face harassment and abuse from Iraq's police force, which is male-dominated; and may even be accused of adultery or prostitution.³⁴ Tellingly, more than 97% of women in one survey said they would not be willing to report gender-based violence to the police because of fear of damaging their reputation or the belief that law enforcement would not be able to solve the problem.³⁵

C. Stigma and other obstacles to services for victims of sexual violence

Where female victims might otherwise be treated for the physical and mental effects of sexual assaults or rape, the possibility of stigma and shame often stops them from talking with family members. This makes it difficult for them to access any treatment because more often than not, female victims have to rely on relatives in order to physically reach necessary services.³⁶

Regarding Crimes and Violations Against Women, MOHAMAH.NET (March 26, 2015), available at <http://www.mohamah.net/answer/31532/%D8%AA%D9%88%D8%B6%D9%8A%D8%AD-%D9%85%D9%88%D9%82%D9%81-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82%D9%8A-%D8%A7%D9%84%D8%AC%D8%B1%D8%A7%D8%A6%D9%85-%D8%A7%D9%84%D8%AA%D9%89-%D8%A7%D9%86%D8%AA%D9%87%D8%A7%D9%83%D8%A7-%D8%A7%D9%84%D9%85%D8%B1%D8%A3%D8%A9>; see also, U.N. High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq* *157 n. 887 (2012), available at <http://www.refworld.org/pdfid/4fc77d522.pdf>

²⁷ Human Rights Watch, *Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad* at 15 (July 2003), Vol. 15, No. 8, available at <http://www.hrw.org/sites/default/files/reports/iraq0703.pdf>

²⁸ U.S. State Dept. *2012 Country Reports on Human Rights Practices – Iraq* at 40 (April 19, 2013), available at http://photos.state.gov/libraries/iraq/5/Reports/2012_human_rights_report_english.pdf

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id.

³³ Human Rights Watch, *Iraq- At a Crossroads: Human Rights In Iraq Eight Years After the US-led Invasion*, 28 available at <http://www.hrw.org/sites/default/files/reports/iraq0211W.pdf>

³⁴ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 36.

³⁵ U.N. Assistance Mission in Iraq (UNAMI), “*Women in Iraq Factsheet*” 2 (March 2013).

³⁶ Amnesty International, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, (December, 2014) at 13-14, available at https://www.es.amnesty.org/uploads/media/Escape_from_hell_-_Torture_and_sexual_slavery_in_Islamic_State_captivity_in_Iraq_-_English.pdf

When visiting a health clinic, women and men who have been raped report being ridiculed, shamed or blamed for what has happened to them. Sometimes they are turned away. As a result, many rape victims do not attempt to access medical treatment due to the social stigma attached to sexual violence. This stigma, which is embedded in religion, traditions, and customs, includes, but is not limited to, rejection by the family and society, re-victimization (i.e. “honor” crimes) for “shaming the family,” and negotiation with the perpetrators of rape to marry the victim so as to restore her honor without any regard to the victim’s wish.

D. Obstacles to addressing domestic violence under the Iraq Penal Code

Domestic violence receives widespread societal acceptance in Iraq. Article 41 of the Penal Code reinforces such cultural attitudes by allowing a husband to “punish” his wife “within certain [undefined] limits prescribed by law or by custom.”³⁷ Marital rape is not recognized by the penal code.³⁸ Lawyers pursuing cases of domestic violence face harassment, while a lack of adequately trained police and judicial personnel further impedes efforts to bring perpetrators to justice.³⁹

Traditional social attitudes and practices reinforce acts of domestic violence against women and girls. Experts have determined that violence within families is grossly underreported in Iraq.⁴⁰ One study placed the prevalence of women suffering physical violence at the hands of their husbands at roughly one in five,⁴¹ while another found that 56.4% of Iraqi men believe they have a right to beat their wife if she disobeys.⁴² Even where law enforcement does act, legal personnel may be harassed and threatened by victims’ family members seeking to terminate legal proceedings.⁴³

Women contemplating divorce in situations of domestic violence are faced with the harsh realities of life as a divorcee, which weigh disproportionately heavy on women. Less likely to have education or professional work experience, particularly in Iraq’s rural regions, many women are dependent on male relatives for survival.⁴⁴ Many opt to stay in abusive relationships rather than risk violent reprisals, crippling social stigma and financial isolation created by

³⁷ Samer Muscati, *Women in Iraq: Losing Ground* at 88, in *THE UNFINISHED REVOLUTION, VOICES FROM THE GLOBAL FIGHT FOR WOMEN’S RIGHTS*, ED. MINKY WORDEN (2012).

³⁸ U.S. State Department, *2012 Country Reports on Human Rights Practices – Iraq* at 40 (April 19, 2013), available at <http://www.state.gov/documents/organization/160462.pdf>

³⁹ Id.

⁴⁰ Amnesty International Stop Violence Against Women Project, *Iraq: Decades of Suffering, Now Women Deserve Better* at *15 (February 22, 2005), available at <http://www.amnesty.org/en/library/asset/MDE14/001/2005/en/6f025a30-d539-11dd-8a23-d58a49c0d652/mde140012005en.pdf>

⁴¹ World Health Organization, *Republic of Iraq – Iraq Family Health Survey Report IFHS 2006/2007*, at 25, available at http://www.who.int/mediacentre/news/releases/2008/pr02/2008_iraq_family_health_survey_report.pdf (noting that 21.2% of a sample of married women aged 15-49 suffered physical violence at the hands of her husband.)

⁴² U.N. Assistance Mission in Iraq (UNAMI), “*Women in Iraq Factsheet*” 3 (March 2013), <http://www.iau-iraq.org/documents/1864/Woman-Factsheet.pdf>.

⁴³ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 34.

⁴⁴ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 35.

leaving their violent spouses.⁴⁵

In 2011, the Kurdish Regional Government (KRG) passed Domestic Law No. 8, to address domestic violence. The law criminalizes various forms of gender-based violence, including physical, psychological and verbal abuse of girls and women; female genital mutilation; spousal rape and threats, and child abuse. Despite this key milestone, domestic violence remains a widespread problem in the Kurdistan region.⁴⁶ In 2013, human rights advocates documented dozens of cases of abuse and killings of women by their male family members in the Kurdistan Region.⁴⁷ While the Iraqi Constitution expressly prohibits “all forms of violence and abuse in the family,”⁴⁸ the central Government of Iraq has failed to enact comprehensive national legislation against domestic violence.⁴⁹ The government’s failure to adequately prevent, prosecute and protect victims from domestic violence has left women vulnerable to further domestic violence and reprisals.⁵⁰

E. National initiatives to address gender-based violence

Last year, the Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) called on the Government of Iraq to repeal all discriminatory legal provisions against women, ensure legal penalties for perpetrators of domestic violence, and ban implementation of discriminatory directives by the Ministry of the Interior in order to allow for women’s freedom of movement and equal access to passports.⁵¹ The CEDAW Committee also recommended that the Government of Iraq ensure the effective functioning of the Ministry of State for Women’s Affairs and the Supreme Council for Women’s Affairs in the Kurdistan Region by allocating adequate human and financial resources and otherwise enhancing their capacities.⁵²

In February 2014, the Iraqi government launched its *National Action Plan on the Implementation of U.N. Security Council Resolution 1325 on Women, Peace and Security (2014-2018)*.⁵³ The plan acknowledges, among other things, the special vulnerabilities of women during conflict, noting they face the “double trauma” of sexual assaults and the stigma attached to it. It also

⁴⁵ Heartland Alliance, *Institutionalized Violence Against Women and Girls: Laws and Practices in Iraq*, at 29 (2011), available at http://www.heartlandalliance.org/international/research/institutionalized-violence-against-women-and-girls-in-iraq-laws-and-practices_english.pdf

⁴⁶ Id.

⁴⁷ Human Rights Watch, *World Report 2014: Iraq*, available at https://www.hrw.org/sites/default/files/related_material/iraq_5.pdf

⁴⁸ Iraq Constitution, Article 29 (4th), available at http://www.iraqnationality.gov.iq/attach/iraqi_constitution.pdf

⁴⁹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 34.

⁵⁰ Inter-Agency Information and Analysis Unit (IAU), *Violence Against Women in Iraq Factsheet at 2* (November 2010), http://www.jauiraq.org/documents/1149/Violence%20against%20women%20Factsheet_Final.pdf

⁵¹ Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq, ¶ 18, U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 10, 2014).

⁵² Id. at ¶ 20.

⁵³ U.N. Assistance Mission in Iraq (UNAMI), *Government of Iraq launches its National Action Plan on UN Security Council Resolution 1325 (2014-2018)* (February 6, 2014), available at http://www.uniraq.org/index.php?option=com_k2&view=item&id=1617:government-of-iraq-launches-its-national-action-plan-on-un-security-council-resolution-1325-2014-2018&Itemid=605&lang=en

recognizes the increased levels of domestic violence in the aftermath of conflict.⁵⁴ Additionally, it points out many of Iraq's discriminatory legal provisions and describes their harmful impact on women.⁵⁵ The plan lists a variety of proposed solutions for remedying the nation's legal system, including: prohibiting courts from allowing defendants to use "honor" as a defense to mitigate sentences; barring coerced marriages; conducting general review of Iraq's legal obligations towards women with regard to treaties it has ratified, and introducing national laws to ensure adherence to those treaty obligations.⁵⁶ The plan also calls for the creation of shelter for women escaping violence, stating as a goal the Government will work to create an "Amendment to the Act of the Federal Ministry of Labor on Shelters, taking the example of Law 2/2011 in [Kurdistan]."⁵⁷

Despite the urgency of the issues facing women and girls in Iraq, and counter to the directive in the plan,⁵⁸ this action plan has yet to be implemented or funded. Addressing "pre-existing threats to women and girls embedded in laws and social norms," in October 2014, Iraqi women activists called on the UN Security Council and all Member States to urge the Iraqi government to uphold its duty to ensure 1325's mandates are incorporated into the nation's legal framework.⁵⁹

In 2013, the Council of Ministers ratified the National Strategy on Combatting Violence Against Women, which promotes legislation and social programs addressing the effects of discrimination and violence on women and girls.⁶⁰ The Council, however, declined to implement the program.⁶¹ In January 2015, the House of Representatives and the President of the Republic approved the Protection from Domestic Violence Draft Law. Provisions within the draft law include: Article - 8 (7) which states that the Ministry of the Interior is to provide full protection for domestic violence victims and witnesses through its officers and shelters in cases of domestic violence and to provide the necessary supplies for them.⁶² Chapter 6. Article 20 states that the Protection from Domestic Violence Department or its affiliated offices when receiving a complaint orally or written of the occurrence of domestic violence must do the following: (Second) Provide shelter for the survivor with her children in one of the shelters for the abused in (24) twenty-four hours.⁶³ If passed and implemented the Protection from Domestic Violence Law could greatly enhance victims' services and access to justice. The UNAMI report cited above described serious concerns with a proposed draft "Family Protection Bill" as of 2014, including a lack of a

⁵⁴ Iraq National Action Plan, *for Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security 2014-2018*, at 6.

⁵⁵ *Id.* at 7-10.

⁵⁶ *Id.* at 13-14.

⁵⁷ *Id.* at Pillar 2 – Protection and Prevention, Strategic Objective #1, Specific Actions #4.

⁵⁸ *Id.* at Pillar 6 – Resource mobilization and M&E, Strategic Objective #2, Indicators #2 (stating that the Iraq government will allocate an annual budget and programs for implementation of the plan).

⁵⁹ See Suaad Allami, *Statement to the UN Security Council Open Debate on Women, Peace and Security, "Displaced Women and Girls: Leaders and Survivors"* (October 28, 2014), available at http://womenpeacesecurity.org/media/pdf-NGOWG_Statement_28%29ct2014.pdf

⁶⁰ Committee on the Elimination of Discrimination Against Women (CEDAW), *List of issues in relation to the combined fourth, fifth and sixth periodic report of Iraq – Addendum, Replies of Iraq to the List of Issues*, at ¶ 12(a), U.N. Doc. CEDAW/C/IRQ/Q/4-6/Add.1 (November 6, 2013).

⁶¹ U.N. Assistance Mission in Iraq (UNAMI), *Report on Human Rights in Iraq: July-December 2013*, at 13 (June 2014), available at http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2013Report_en.pdf

⁶² *Protection from Domestic Violence Law*, The Federal Judiciary, January 2015, <http://www.iraqja.iq/view.1717/>

⁶³ *Id.*

definition of domestic violence, nothing to address early marriage, and other issues. These issues should be addressed in the draft law before its passage.

F. Women denied access to government-issued identification documents

This Committee has condemned laws and practices that restrict women's freedom of movement, including requirements that women obtain permission from third parties to obtain passports or travel documents;⁶⁴ Iraq continues to be in violation of its obligations in this regard. Iraqi women cannot obtain legal identification in the absence of a male family member to verify their identity. They are unable to obtain a passport and travel outside the country without the approval of their husband or other close male relative.⁶⁵ This dramatically heightens the dangers facing women who are fleeing from conflict-related violence. Without such identity documentation women cannot travel, find housing, obtain employment, get health care services, or enroll into education institutions. In such cases, women may become stateless and more vulnerable to violence and discrimination.

It is highly difficult for women to obtain identity documents without the presence of a male relative. In Iraq, the Civil Status Identification Document is required to access public services, including food assistance, healthcare, employment, education and housing; as well as to obtain a passport and work. An Iraqi woman can only be granted a Civil Status ID if a male relative vouches for her.⁶⁶ This poses a crushing obstacle for women and girls who seek services after fleeing conflict related violence or gender-based violence. For example, staff members from an Iraqi women's organization, an Iraqi NGO, who were assisting a female Iraqi minor, whose entire family had been murdered, were told that she could not obtain identification documentation without the presence of male relatives until she reached 18 years of age. This left her unable to attend school, obtain social care or access a range of other public services.⁶⁷

According to one recent survey, an estimated 44% of all internally displaced Iraqi families have one or more members who lack identification documentation. Most can only replace the documents by returning to their place of origin. As of February 2015, the Iraqi government had opened five governorate-level offices to issue identity cards to internally displaced people, but physical and bureaucratic hurdles still make it all but highly difficult for many to obtain

⁶⁴ U.N. Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)* ¶ 16, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000); see also, U.N. Human Rights Committee, *Concluding Observations on the Islamic Republic of Iran*, ¶ 9 (2011); stating, "The State party should amend the Civil Code and further amend the draft Family Protection Law, to ... (g) remove the requirement for a husband's approval when a woman intends to leave the country; ... and (i) remove the power of a man to prohibit his wife from entering employment."

⁶⁵ Interview with Iraqi women's organizations staff members, Istanbul, Turkey, January 2014 (on file with authors); U.S. Department of State, Iraq, *Country Reports on Human Rights Practices for 2010*, 29 (April 8, 2011) available at <http://www.state.gov/documents/organization/160462.pdf> (noting the MOI Passport office maintains a policy that women must have the consent of a close male relative to obtain a passport.).

⁶⁶ Abeer Mohammed, *Passport Misery Highlights Iraqi Women's Plight*, 29 June 2011, available at <http://www.refworld.org/docid/4e1c7a912.html>

⁶⁷ This case was documented in detail on a television show, in which the Minister of Women's Affairs and other officials were interviewed. Al Sumaria News, Press Releases, *Kalam Leaks Uncovers the Story of Aseel*, August 16, 2013, available at <http://www.alsumaria.tv/Press-Releases/907/kalam-leaks-on-alsumaria-uncovers-the-story-of-a-d>

documents.⁶⁸

Iraqi women's rights organizations have observed the effects of lack of documentation on the women and children living in Iraq's displaced persons camps. They find that identification is one of the most pressing concerns for residents. Lack of identification also means that women cannot work or even enroll in training or educational programs such as computer classes, while undocumented children cannot attend school.⁶⁹ For these reasons, some Iraqi civil society organizations launched a public education campaign encouraging women to keep a copy of their identification documents on them at all times in the event that they must flee a flare-up of armed violence.⁷⁰

G. Response by the Government of Iraq

In its fifth periodic report to the Committee, the Government of Iraq states that it has initiated legislative initiatives aimed at promoting equality and prohibiting gender-based discrimination.⁷¹ The government points to the Constitution of the Republic of Iraq of 2005 as its "principle instrument" for guaranteeing protection of the Covenant's human rights "without distinction of any kind."⁷² Particularly given the years of tumult since the State's fourth periodic report in 1997, the Government should be lauded for taking measures towards incorporating human rights into law and policy, including by signing and ratifying various international human rights covenants.⁷³ Unfortunately, there remains a chasm between the concepts of equality and nondiscrimination promulgated in the Iraqi Constitution and the reality of everyday life for Iraqi women and girls.

The Iraqi government admits that, where women are concerned, the "legislative guarantees enshrined in the Constitution and the laws in force have proved insufficient to enable women to effectively enjoy equality," and attributes this to a lack of implementation stemming from ongoing conflict and from cultural resistance.⁷⁴ Whatever the reasons, States are not permitted to abandon their responsibilities to protect women's human rights under the Covenant, even in times of crisis such as an internal armed conflict.⁷⁵ Nor is a state permitted to neglect its obligations to ensure women and girls equal enjoyment of all rights contained in the Covenant by resorting to the pretext of custom or tradition.⁷⁶ Furthermore, the problem is not confined to a lack of implementation of existing laws. Discriminatory legal provisions, such as those eliminating a perpetrator's charge for rape when he marries the victim, or permitting perpetrators to use physical violence against their wives in certain circumstances, continue to undermine attempts to address gender-based violence and ensure true equality for women and girls.

⁶⁸ Internal Displacement Monitoring Centre, *Iraq: IDPs Caught Between a Rock and a Hard Place as Displacement Crisis Deepens*, (30 June, 2014), <http://www.internal-displacement.org/middle-east-and-north-africa/iraq/2015/iraq-idps-caught-between-a-rock-and-a-hard-place-as-displacement-crisis-deepens>.

⁶⁹ Interview with Iraqi women's organization activist, Istanbul, Turkey, January 2015 (on file with authors).

⁷⁰ *Id.*

⁷¹ Iraq State Report, *Fifth Periodic Report*, ¶ 218, ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

⁷² *Id.* at ¶ 49.

⁷³ *Id.* at ¶ 219.

⁷⁴ *Id.* at ¶ 62.

⁷⁵ Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)* ¶¶ 7, 8.

⁷⁶ *Id.* at ¶¶ 4, 5.

The fifth periodic report points to the creation of the Ministry of Human Rights as an example of the Government of Iraq's commitment to promoting and protecting human rights,⁷⁷ but omits any relevant data about the new Ministry's operations or any effect its existence may have on the situation of women and girls. Along with the parliamentary Human Rights Committee, the Ministry faces critiques of ineffectiveness in its mandate to protect human rights.⁷⁸

Currently, the Iraqi government is undergoing a reshuffling of government ministries, with several ministries being merged together. New leadership of these realigned Ministries still being determined. For example, the Ministry of the Environment has now been merged with Ministry of Health. Other Ministries appeared to have been gutted altogether. The Ministry of Human Rights for example has been proposed to become a "committee" under the purview of the Prime Minister's office.

The Government's report also touts the Family Protection Committee (FPC) as another example of its commitment to the Covenant's principles of equality and nondiscrimination.⁷⁹ Created pursuant to CEDAW General Recommendation No. 19 and in accordance with Article 29, paragraph 4 of the Iraqi Constitution, the report refers to the FPC as one of the principle measures taken by the Government to "mitigate the impact of violence against women" by reviewing legislation to ensure women's rights are properly applied.⁸⁰ On its face, this appears to be an encouraging development. However, the FPC only serves in an advisory capacity, and the Committee's longest-serving head, the recently vacated Minister of State for Women's affairs, Dr. Ibtihal al-Zaidi, has publicly stated her contempt for the principles of equality and nondiscrimination. "I am against the equality between men and woman," she insisted, "If women are equal to men they are going to lose a lot. Up to now I am with the power of the man in society."⁸¹

Other initiatives have been as similarly ineffectual as the FPC. For example, the *Iraq National Action Plan for the Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security (2014-2018)* and Iraq's National Strategy on Combatting Violence Against Women both emerged from the Iraqi legislature stillborn, without funding or implementation plans.

Furthermore, while the Iraqi Constitution expressly prohibits "all forms of violence and abuse in the family,"⁸² the central Government of Iraq has failed to enact comprehensive national legislation against domestic violence, impermissibly allowing acts of spousal abuse, marital rape and "honor" killings to flourish. To protect the rights of women and girls under the ICCPR, the Government of Iraq must commit to measures to prevent, investigate, prosecute and provide redress for all acts of gender-based violence and gender discrimination. This should include

⁷⁷ Iraq State Report, *Fifth Periodic Report* ¶ 220, ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

⁷⁸ See Salah Nasrawi, *Iraq's Forgotten Human Rights*.

⁷⁹ Iraq State Report, *Fifth Periodic Report* ¶¶ 65-66, ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

⁸⁰ Id.

⁸¹ See Mufid Abdulla, *Outrage as Iraqi Women's Affairs Minister Opposes Equality for Women*, KURDISTAN TRIBUNE (February 14, 2012), available at <http://kurdistantribune.com/2012/outrage-iraqi-womens-affairs-minister-opposes-equality-for-women/>

⁸² Iraq Constitution, Article 29.

immediate legislative advances as well as enforcement of existing initiatives designed to address gender discrimination and gender-based violence.

H. Recommendations to the Government of Iraq

1. The Government of Iraq should take all appropriate measures in compliance with the CAT Committee's 2015 Concluding Observations (CAT/C/IRQ/CO/1, ¶ 23(a)) to prevent gender-based violence and impunity for such violations, monitor and document instances of gender-based violence, and thoroughly investigate and prosecute violence committed by State and non-State actors, ensuring women and girls' access to justice and adequate redress; State party is obliged to ensure that national laws are compatible with State party obligations under the ICCPR;
2. The Government of Iraq should comply with its obligation under the CAT Committee's 2015 Concluding Observations (CAT/C/IRQ/CO/1, ¶ 23 (c) and (d)) and take the requisite measures to enact comprehensive legislation permitting privately run shelters to operate in central and southern Iraq, and guarantee that organizations operating private shelters are protected from all forms of harassment and violence. This is further echoed by CEDAW Committee's 2014 Concluding Observations (CEDAW/C/IRQ/CO/4-6, ¶ 29(c)) which calls on the Government to take all appropriate measures to ensure the availability of shelters for women victims of violence throughout its territory so as to strengthen both medical and psychological services, and ensure that they are properly resourced and that the quality of services is regularly monitored;
3. The Government of Iraq should take all appropriate measures in accordance with the CAT Committee's 2015 Concluding Observations (CAT/C/IRQ/CO/1, ¶ 23(b)) to immediately repeal its policy of requiring prior authorization of a male relative for issuing identity documents for women, and place special emphasis on ensuring documents for women and girls displaced by ongoing sectarian violence and for victims of domestic violence. It should also prioritize the allocation of adequate funding, proper administration, and effective implementation to increase the number of government offices specifically addressing this need, and eliminate bureaucratic barriers that impeded displaced peoples' access to identity documents;
4. The Government of Iraq should immediately repeal all discriminatory and dangerous Penal Code articles, including Article 41, which permits spousal abuse, including rape, and provisions that eliminate charges for perpetrators of crimes of sexual violence where they subsequently marry their victims. The Government should also define and criminalize marital rape in the Penal Code, taking all appropriate measures to disseminate the new legal standard at all levels of law enforcement and across Iraqi society at large;
5. The Government of Iraq should take all appropriate measures to ensure adequate resources are allocated and effective measures adopted to ensure that victims of gender-based violence, in particular sexual violence, have access to comprehensive, gender-sensitive medial treatment, mental health care, and psychosocial support;

6. The Government of Iraq should call on the Minister of Health, Majeed Hammad Ameen, to issue a decree calling on doctors to uphold the Hippocratic oath and provide services to sexual violence survivors.
7. The Government of Iraq should collaborate with the Ministry of Health to provide trainings to medical professionals including doctors, nurses and medical technicians aimed at reducing stigmatization associated with sexual violence, gender-based violence, and masculinities. This includes training healthcare providers in Baghdad's four main hospitals on treatment protocols for how to appropriately provide care for survivors of sexual violence. Provide referrals for sexual violence victims to local NGOs who provide long-term psycho-social supportive services.
8. The Government of Iraq should create and staff the position of a liaison for hospital emergency rooms specifically tasked with meeting and assisting sexual violence survivors when they go to hospitals and seek care. While such a position may need to be funded by the international community, the long-term sustainability the position will foster is providing access to critically needed treatment as well as connection to a supportive environment (through NGO referrals), and thus empowerment of sexual violence victims.
9. The Government of Iraq should take all appropriate measures to prioritize the allocation of adequate funding, proper administration, and effective implementation of existing legislative initiatives to address gender-based violence and discrimination, such as the *National Action Plan on the Implementation of U.N. Security Council Resolution 1325 on Women, Peace and Security (2014-2018)* and the *National Strategy on Combatting Violence Against Women*;
10. The Government of Iraq should comply with the CEDAW Committee's 2014 Concluding Observations (CEDAW/C/IRQ/CO/4-6, ¶ 29(b)) and provide systematic training on the *National Strategy to Combat Violence Against Women in Iraq* to all police officers working in family protection units and continue its efforts to ensure the recruitment and retention of women police officers;
11. The Government of Iraq should take all appropriate measures to adopt gender-sensitive training and procedures, including training on sexual violence, at all levels of law enforcement, in order to avoid re-victimization and stigmatization of gender-based violence victims. It should establish special protection units and gender-based violence desks in police stations, and undertake investigations confidentially and sensitively;
12. The Government of Iraq should address the ongoing legal and cultural subordination of women and girls in Iraq by taking steps, in accordance with the Committee's 1997 Concluding Observations (CCPR/C/70Add.84, ¶ 13), to ensure full equality between men and women in the political, economic, social and cultural life of the country, and to eliminate all forms of legal and de facto discrimination against women;
13. The Government of Iraq should allocate adequate funding and supplies, proper administration, and effective implementation to provide full protection for domestic

violence victims and witnesses through its officers and shelters, pursuant to Domestic Violence Draft Law Article 8 (7). Prior to passage of the law the Government should address the serious concerns outlined by UNAMI.

II. ARTICLES 2, 6, 14, & 26 “HONOR” KILLINGS: IMPUNITY, LACK OF PREVENTION

This Committee has made clear that mitigated sentences for “honor” crimes violate Articles 6, 14, and 26 of the Covenant.⁸³ In this Report, “honor” crimes refers to killing and other violence committed, usually against women or girls, by family members who believe the victim to have transgressed social, cultural, or religious norms, thus bringing shame to their family. Being raped, or even being suspected of having been raped, are amongst the “transgressions” that can make women or girls victims of “honor” killing.⁸⁴

In 2005, the U.N. General Assembly reaffirmed the due diligence responsibility of State parties to prevent, investigate, and punish perpetrators of “honor” crimes against women and girls,⁸⁵ emphasized that such acts are incompatible with all religious and cultural values,⁸⁶ and called upon all states to adopt measures to eliminate them, including implementation of awareness and education campaigns to change cultural attitudes justifying “honor” crimes,⁸⁷ and provision of supportive services responsive to the needs of victims, including safe shelter, counseling, legal aid, and healthcare.⁸⁸

This Committee has repeatedly emphasized State parties’ obligation to legally classify “honor” killings as aggravated homicides, ensuring effective investigation and sanction of all “honor” crimes, and engaging in public information campaigns to discuss the gravity of such acts.⁸⁹ States must also provide sufficient funding for services, including shelters, to assist victims,

“Even in murders there is no equality.”

-- Iraqi women activists discussing “honor” killings, Istanbul, Turkey, January 23, 2015.

⁸³ Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)*, ¶ 31 (“The commission of so-called “honour crimes” which remain unpunished constitutes a serious violation of the Covenant and in particular of articles 6, 14 and 26.”); *see also* Rashida Manjoo, *Report of the Special Rapporteur on Violence Against Women, Its Causes, and Consequences* at ¶ 89 (May 2012), available at http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf

⁸⁴ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 37.

⁸⁵ U.N. General Assembly, *Working Towards the Elimination of Crimes Against Women and Girls Committed in the Name of Honor*, Resolution A/RES/59/165, 2 (February 10, 2005) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/486/16/PDF/N0448616.pdf?OpenElement>

⁸⁶ *Id.* at 2.

⁸⁷ *Id.* at 3.

⁸⁸ *Id.* at 3-4.

⁸⁹ Human Rights Committee, *Concluding Observations of the Human Rights Committee, Turkey*, ¶ 13, U.N. Doc. CCPR/C/TUR/CO/1 (November 13, 2012) (“The State party should under no circumstances tolerate “honour killings”. In this perspective, the State party should ensure the inclusion of such killings within the scope of article 82 of the Penal Code to classify them as aggravated homicides. It should pursue its efforts to guarantee the effective investigation and sanction of all allegations of “honour killings” and widely disseminate information on the gravity of such crimes.”).

including services run by NGOs;⁹⁰ without re-victimizing and forcing either victims or those at risk of victimization into forced “protective custody” situations comparable to detention.⁹¹

During Iraq’s Universal Periodic Review with the U.N. Human Rights Council in both its 2014 & 2010 reviews, various nations expressed concern about “honor” killings in Iraq and called for the Government to eliminate legal provisions allowing mitigated sentences for “honor”-based violence and murder.⁹² In its 2012 report, the U.N. Refugee Agency pointed to these same legal provisions and to cultural acceptance of distorted notions of “honor” as reasons to grant Iraqis’ claims for assistance or protection in asylum.⁹³ Other treaty bodies, most recently in 2014 & 2015 the CEDAW and CRC Committees, similarly condemned the practice of “honor” killings and violence, and Iraq’s discriminatory legal provisions mitigating sentences for “honor” crimes. They recommended repeal of all laws supporting mitigation, and called for increased identification, prosecution, and punishment of perpetrators.⁹⁴

A. “Honor” Crimes committed against women in Iraq

Several Iraqi Penal Code provisions, including Article 128,⁹⁵ Article 130,⁹⁶ and Article 409,⁹⁷ allow for mitigated sentences for violent acts, including homicide, committed for so-called

⁹⁰ See, for example, Human Rights Committee, *Concluding Observations of the Human Rights Committee, Russian Federation*, ¶ 10, U.N. Doc. CCPR/C/RUS/CO/6 (November 24, 2009) (“The State party should promptly investigate complaints related to . . . acts of violence against women, including honour killings, and ensure that those responsible are prosecuted and adequately punished. Sufficient funding should be allocated for victim assistance programmes, including those run by non-governmental organizations, and additional shelters should be made available across the country.”).

⁹¹ See, for example, Human Rights Committee, *Concluding Observations of the Human Rights Committee, Jordan*, ¶ 8, U.N. Doc. CCPR/C/JOR/CO/4 (November 18, 2010) (“The Committee is concerned . . . at the policy of placing women who risk becoming victims of so-called “honour” crimes in a form of involuntary “protective” custody comparable to detention . . . The State party should immediately terminate its practice of placing women in “protective” custody and instead provide women at risk of violence with protection and support in a way that does not violate their rights.”).

⁹² Report of the Working Group on the Universal Periodic Review of Iraq, *Iraq*, ¶ 127 at (133-134) U.N. Doc. A/HRC/28/14 (Dec. 12, 2014). Report of the Working Group on the Universal Periodic Review of Iraq, *Iraq*, ¶¶ 26, 30, 81, at (68- 71), 82 (10-14 U.N. Doc. A/HRC/14/14) (Mar. 15, 2010).

⁹³ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 37-38; see also United Kingdom: Home Office, *Operational Guidance Note – Iraq* at 31-32 (August 2014) available at <http://www.refworld.org/docid/53fc86ea4.html>

⁹⁴ See, for example, Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶¶ 26, 27 (a), U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014); Committee on the Rights of the Child (CRC), *Concluding Observations on the Combined Second to Fourth Periodic Reports of Iraq*, ¶ 25, 26, U.N. Doc. CRC/C/IRQ/CO/2-4 (3 March 2015).

⁹⁵ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 159 n. 918 (“Article 128(1) of the Law No. (111) of 1969, Penal Code, reads: “Legal excuse either discharges a person from a penalty or reduces that penalty. Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honourable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse.”).

⁹⁶ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 159 n. 918. (“Article 130 of the Penal Code reads: ‘If there exists a mitigating excuse for a felony for which the penalty is death, the penalty shall be reduced to life imprisonment or imprisonment for a term of years or detention for a period of not less than 1 year. If the penalty is life imprisonment or imprisonment for a term of years; the penalty shall be reduced to a period of detention of not less than 6 months unless otherwise stipulated by law.’”).

“honourable motives.”⁹⁸ While Law No 14 of 2002 amends the Iraqi Penal Code, stating that the killing of women for reasons of “honor” is no longer a legal excuse that may lessen the punishment for purposes of the applications of Articles 128, 130, 131, the law does not provide any guidance on how the term ‘honourable motives’ is defined and therefore leaves the door open for wide interpretation and abuse that allows “honor” killings to continue with impunity.

“Honor” killings remain a serious problem throughout all of Iraq.⁹⁹ Cultural norms that encourage “honor” killings prevent women from reporting gender-based violence due to fears of indifference or violent retaliation.¹⁰⁰ Women have stated that the mere reporting of sexual abuse and violence itself can trigger “honor”-based crimes and retaliation - this threat of violence further prevents victims from pursuing justice.¹⁰¹

In addition to being denied protection by the legal system, women threatened with “honor” crimes are also left with limited recourse should they try to flee. Options may include shelters and even prison, though neither is a sustainable long-term setting.¹⁰² Any available shelters that can provide support are under-resourced, and often not well-advertised for safety reasons. Additionally, shelter employees may even become targets of violence themselves for providing services to victims, which remains against Iraq public policy.¹⁰³ Further limiting options for victims is the fact that in Central and Southern Iraq, women’s shelters are outlawed.¹⁰⁴ Women’s organizations seeking to provide shelter for those escaping “honor”-based violence are forced to run their operations clandestinely.¹⁰⁵

Local civil society advocates report that within Iraqi society, terminology distinguishes between *forms* of “honor” killings, with some being so commonly accepted as to be considered a “private” action done by families, or an action beyond reproach. Local women’s human rights advocates explain that according to cultural norms held by those who justify violence in the name of “honor,” one exercises a personal right if they kill a female relative who has purportedly

⁹⁷ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 159 n. 919 (“Article 409 of the Penal Code reads: ‘Any person who surprises his wife in the act of adultery or finds his girlfriend in bed with her lover and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding 3 years. It is not permissible to exercise the right of legal defense against any person who uses this excuse nor do the rules of aggravating circumstance apply against him.’”).

⁹⁸ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 159 n. 920 (noting the lack of a definition for “honourable motives” under the Penal Code results in a “very broad mitigating excuse.”).

⁹⁹ U.S. Department of State, Bureau of Democracy, Human Rights & Labor, *Iraq 2013 Human Rights Report*, 49 (2014) available at <http://www.state.gov/documents/organization/220565.pdf>

¹⁰⁰ Interview with Iraqi Women organization activist, Istanbul, Turkey, January 2015 (on file with authors).

¹⁰¹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 34-35.

¹⁰² *Id.* at 37.

¹⁰³ *Id.* at 38.

¹⁰⁴ Although Iraq’s proposed plan for implementing U.N. Security Council Resolution 1325 calls for the opening of shelters, the plan has yet to be implemented or funded. *See infra* Section I, Part E; *Iraq National Action Plan, for Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security 2014-2018*, Pillar 2 – Protection and Prevention, Strategic Objective #2, Specific Actions #3, p. 54.

¹⁰⁵ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 38.

brought shame to their family. Perpetrators are rarely charged, and police reports often mark perpetrators as “unknown”.¹⁰⁶

“Honor” killings are notoriously difficult to document and record in Iraq, in part due to the social norms and customs that hinder open discussion of such acts.¹⁰⁷ Further obscuring the extent of the violence is the fact that police are unwilling to investigate cases due to their own social acceptance of “honor” killings.¹⁰⁸ Facing immense social pressure and the potential for serious retaliation by victim’s family members, medical examiners often refuse to register violent deaths in cases where a body bears the marks of violence, and instead label the deaths as suicides.¹⁰⁹

The UN Assistance Mission for Iraq (UNAMI) reported on several “honor” killings that occurred between July and December, 2013, and the subsequent lack of adequate criminal investigation in their wake.¹¹⁰ These incidents included:

- The suspension of a defendant’s sentence in Basra on December 29, 2013 who admitted to attempted murder of his sister with a sword and iron bar for reasons of “honor.”
- The shooting of a 17 year old woman on December 1, 2013, which police reported to media was an accidental shooting, despite sources in the community saying the woman was killed by her brother for reasons of “honor”;
- The self-attestation of a man arrested for killing his sister on November 19, 2013 that the murder was justified as the cleansing of his “honor”;
- The discovery of a young woman’s body in Kirkuk on October 8, 2013, handcuffed and beheaded, bearing the signs of additional torture;
- The burning death of a 21 year old woman on September 22, 2013, reported as a suicide by her father;
- The discovery of a young woman’s body by police officers in Kirkuk on August 19, 2013 with severe head and neck wounds;
- The burning death of a 24 year old woman in the bathroom of her home in Kirkuk on July 24, 2013, reported as an accident by her brother, who is an intelligence officer;

¹⁰⁶ Interview with three Iraqi Women organization representatives, Istanbul, Turkey, January 2015 (on file with authors).

¹⁰⁷ UNAMI Human Rights Office, *Report on Human Rights in Iraq: January - June 2014*, 14 (August, 2014), available at http://www.ohchr.org/Documents/Countries/IQ/HRO_Jan-Jun2014Report_en.pdf

¹⁰⁸ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 37.

¹⁰⁹ The Kvinna till Kvinna Foundation, *Violence Against Women in Iraq* at 2 (2014), available at <http://kvinna.tillkvinna.se/en/files/qbank/217b4c71837fac172fabebfc299f755b.pdf>

¹¹⁰ UNAMI, *Report on Human Rights in Iraq: July-December 2013*, at 15 (June 2014).

Iraqi women's organizations have also documented "honor" killings. The following are but a few examples of the numerous documented instances of "honor" crimes and honor killings that the organization has collected:¹¹¹

- In the fall of 2014, in Basra, a young woman, facing a forced marriage to her cousin, ran away with her lover to escape. After a couple months, she called her sister and told her where she was. The woman's brother-in-law overheard this conversation, assaulted the sister to discover the woman's location, and then brought the woman back to Basra. There, her family killed the young woman by slitting her throat with a knife.
- In the summer of 2014, in the Anbar region of Iraq, a 17-year-old girl was rumored to have had sexual relations outside of marriage. Tribal officials ordered the girl killed. Members of the girl's family pushed her into a nearby river containing a whirlpool that sucked her body down to the bottom of the river. Upon discussion with human rights advocates later on, the divers noted the floor bed looks "like a graveyard," with the faces on the bodies disintegrating over time.
- In 2013, in Baghdad, police officers raped two girls who were coming home one night. The girls' father and uncle decided to kill the girls to protect the family's honor. The police report officially states the cause of death as an "accidental killing," the uncle having been "cleaning his gun" at the time it went off.
- In 2011, in the Dohuk region, a young man and woman were in love. The man asked the woman's family for permission to marry the girl, but the family said no. The two young people ran away together and got married. The couple eventually returned to the tribe and were shot and killed for challenging the community's norms.

B. "Honor" crimes are exacerbated by the current conflict

Distorted norms of "honor" recognized both in Iraq's Penal Code and within Iraqi society pose an additional threat to women and girls in the context of the ongoing conflict in Iraq. For example, women or girls who have been abducted by ISIL fighters are commonly suspected of having been subjected to sexual violence. They face the risk of being subjected to "honor" killings after they flee based on the mere suspicion or probability that they may have been sexually assaulted.

Some Iraqis have called for the government to bomb the ISIL-controlled schools and hospitals serving as makeshift prisons and holding women and girls who have been kidnapped and likely raped, in order to kill the imprisoned women and thus "save the honor" of the people from these

¹¹¹ Interviews with three Iraqi Women organization representatives, Istanbul, Turkey, January 2015 (on file with authors).

besieged towns.¹¹² Reports have also emerged of women committing suicide after being abducted by ISIL and raped, “because they couldn’t stand the shame” they would bring to their families and communities.¹¹³

Notably, faced with the threat of genocide by the extent of sexual and other violence committed by ISIL has compelled some limited changes to commonly held beliefs about sexual violence and “honor.” Within the Yazidi community, a community ravaged by ISIL with hundreds of women kidnapped, raped, and sold into sexual slavery, one religious leader issued a fatwa calling on the community to not engage in violence in the name of “honor” against women who escape and return from ISIL.¹¹⁴ The Fatwa encourages members of the Yazidi community to ignore the distorted concerns of “shame” these women and girls may carry, and instead recognize them as victims and welcome them back into their family and support units.¹¹⁵ As noted by one Iraqi woman advocate notes, “[i]t’s harder to blame a woman for having been raped when it’s happening to so many.”¹¹⁶ This shift in attitudes around shame and stigma connected to rape and sexual assault is an important change that the Iraqi government could seize on and promote, in order to prevent “honor” killings and erode the effectiveness of rape as a weapon of war.¹¹⁷

C. Response by the Government of Iraq

In its report to the Committee, the Iraqi Government affirmed the repeal of Revolutionary Command Council Decree No. 111 of 1990, which exempted perpetrators of “crimes of honor” from prosecution. With the exception of the Kurdistan Regional Government’s repeal of Article 409, it has taken no action to repeal the current legal provisions, specifically Article 128, Article 130, and Article 409 of the Penal Code, permitting mitigating sentences for “honor” crimes. Allowing for impunity for such acts encourages the continued practice of killing in the name of “honor.” Additionally, the Government failed to address the absence of official documentation of continued “honor” killings, the lack of investigation or prosecutions in reported cases, or the lack of access to shelters and services for women and girls threatened with “honor” killings. Furthermore, it makes no mention of its prohibition on privately-run shelters or other services for women and girls fleeing gender-based violence.

D. Recommendations to the Government of Iraq

1. In Compliance with the CAT Committee’s 2015 Concluding Observations (CAT/C/IRQ/CO/1, ¶ 23 (e)), the 2014 CRC Committee’s Concluding Observation (CRC/C/IRQ/CO/2-4 ¶¶ 25, 26) and the 2015 CEDAW Committee’s Concluding

¹¹² Human Rights Council, Joint Written Statement Submitted by the MADRE and Women’s International League for Peace and Freedom (WILPF), *The threat of ISIL and the situation of Women in Iraq* at 3, U.N. Doc A/HRC/S-22/NGO/13 (September 2014).

¹¹³ Zahra Radwan and Zoe Blumenfeld, *Surging Violence Against Women in Iraq*, FOREIGN POL. IN FOCUS, (June 26, 2014), <http://fpif.org/surging-violence-women-iraq/>

¹¹⁴ Interview with Iraqi Women organization activist, New York, NY, March 2015 (on file with authors); Amnesty International, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, at 13.

¹¹⁵ Interview with Iraqi Women organization activist, New York, NY, March 2015 (on file with authors).

¹¹⁶ Yifat Susskind, *What will it take to stop Isis using rape as a weapon of war?*, GUARDIAN (February 17, 2015), <http://www.theguardian.com/global-development/2015/feb/17/disarm-isis-rape-weapon-war>

¹¹⁷ Id.

Observation (CEDAW/C/IRQ/CO/4-6 ¶¶ 25, 26) the Government of Iraq should repeal mitigating and exculpatory legal provisions in the Penal Code permitting or justifying violence against women on the basis of “honor,” specifically including, Articles 128, 130, and 409, and take prompt measures to end impunity for rape and gender-based violence. The Government of Iraq should implement a “zero-tolerance policy” towards violence committed in the name of so-called “honor,” and adopt a national strategy to end such acts. This strategy should include awareness raising efforts in collaboration with civil society and women’s organizations to challenge stereotypes justifying “honor” killings, measures to ensure prompt and effective investigation into all claims of “honor” killings, and provision of adequate protection and services, including access to shelter, for women and girls at risk of such acts.¹¹⁸

2. As echoed in UN General Assembly Resolution A/RES/59/165,¹¹⁹ the Government of Iraq should engage in awareness raising efforts to challenge gendered stereotypes undergirding “honor” killings, train police personnel and judicial staff to properly investigate perpetrators of such acts and protect potential victims; support the work of civil society organizations seeking to eliminate “honor” killings; implement and strengthen available supportive services including protection, access to safe shelters, counseling, legal aid, health care services, and psycho-social services; and begin gathering statistical information and accurate documentation concerning the occurrence of “honor” crimes.
3. The Government of Iraq should immediately eliminate its prohibition on NGO shelters for women and girls fleeing violence, and operationalize and fund its proposed national action plan for implementing Security Council Resolution 1325 by allowing for establishment of “shelters and safe spaces for psychosocial support and free legal services for women victims of violence in accordance with international standards,” and providing resources for such shelters and services.

¹¹⁸ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶¶ 26, 27(a), U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014); CRC, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Iraq*, ¶ 26, U.N. Doc. CRC/C/IRQ/CO/2-4 (March 2015).

¹¹⁹ U.N. General Assembly, *Working Towards the Elimination of Crimes Against Women and Girls Committed in the Name of Honor*, Resolution A/RES/59/165, 3, 4 (February 10, 2005) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/486/16/PDF/N0448616.pdf?OpenElement>

III. ARTICLES 3, 7 & 8 SEXUAL SLAVERY AND SEX TRAFFICKING

Article 3, when read in conjunction with Article 8,¹²⁰ requires State parties to take positive measures to eliminate all forms of slavery against women and girls, including labor or sex trafficking, or forced prostitution.¹²¹ As a part of this obligation, the Committee has called on States to prosecute and punish perpetrators of human trafficking in order to give Article 8 full effect.¹²² State parties also must take preventive measures and provide protection and supportive services to victims of trafficking or forced prostitution¹²³ and refrain from criminalizing victims of trafficking.¹²⁴ Under the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, States are obligated take measures, including through multilateral agreement, to alleviate conditions that make people vulnerable to trafficking, including “poverty, underdevelopment and lack of equal opportunity.”¹²⁵ Iraq has ratified this protocol.

¹²⁰ International Covenant on Civil and Political Rights, Art. 8, §1 (“No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.”)

¹²¹ Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)*, ¶ 12, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), available at <http://www.refworld.org/docid/45139c9b4.html> (“Having regard to their obligations under article 8, States parties should inform the Committee of measures taken to eliminate trafficking of women and children, within the country or across borders, and forced prostitution. They must also provide information on measures taken to protect women and children, including foreign women and children, from slavery, disguised, inter alia, as domestic or other kinds of personal service.”)

¹²² U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Ukraine*, ¶ 18, U.N. Doc. CCPR/CO/73/UKR (November 12, 2001)

¹²³ U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Georgia*, ¶ 15, U.N. Doc. CCPR/CO/74/GEO (April 19, 2002) (“The Committee recommends that preventive measures be taken to eradicate trafficking in women and provide rehabilitation programmes for the victims. The laws and policies of the State party should provide protection and support for the victims.”); U.N. Human Rights Committee, *Concluding Observations - Russian Federation*, ¶ 10 U.N. Doc. CCPR/CO/79/RUS (2003), available at <http://www1.umn.edu/humanrts/hrcommittee/russia2003.html> (“The State party should reinforce measures to prevent and combat trafficking in women through, inter alia, enacting legislation penalizing such practices and providing protection and support, including rehabilitation programmes, for the victims (art. 8).”); U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Slovenia*, ¶ 11, U.N. Doc. CCPR/CO/84/SVN (July 25, 2005) (“Protection should be provided to all victims of trafficking, including providing a place of refuge and so facilitating their giving evidence against those responsible. Prevention and rehabilitation programmes for the victims should also be established.”); International Covenant on Civil and Political Rights (ICCPR), *Concluding Observations of the Human Rights Committee, Latvia*, ¶ 8, U.N. Doc. CCPR/C/LVA/CO/3 (April 11, 2013) (“The State party should: . . . (c) Reinforce the mechanisms of support, rehabilitation, protection and redress, including the State-funded social rehabilitation services and assistance in reporting incidents of trafficking to the police, and ensure their availability to all victims of trafficking, as relevant.”)

¹²⁴ U.N. Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/4, ¶14 (23 April 2014). *See also*, Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, U.N. Doc. E/2002/68/Add. 1, Guideline 5(5), 10 (May 20, 2002) (States should “[g]uarantee[] that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation.”)

¹²⁵ U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, art. 9(4), November 15, 2000, 2237 U.N.T.S. 319 (Iraq acceded to the Protocol on February 9, 2009); *see also* Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, 108-110, U.N. Doc. HR/PUB/10/2 (2010), available at http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf

Criminalizing victims of trafficking violates their right to be free from cruel, inhuman or degrading treatment under Article 7.¹²⁶ While sexual transactions are not always a result of trafficking, the CEDAW committee implicitly recognizes the ways in which criminalizing sex work not only harms people engaged in it for their livelihood, but also victims of sex trafficking. Noting that women and girls continue to be subject to trafficking, and expressing concern at Iraq's severe prison sentences for women involved in prostitution. In 2015, the CEDAW Committee called on Iraq to decriminalize prostitution, ensure women in the sex trade are not punished, and provide them with livelihood opportunities to leave prostitution.¹²⁷

In its recently released *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, the Office of the High Commissioner on Human Rights stressed that states are responsible for the human trafficking crimes of both private individuals and state actors, and that states' due diligence obligation extends far beyond a mere duty "not to traffic".¹²⁸ Under human rights standards, states must take action to: 1) prevent trafficking by addressing factors that increase vulnerability, including poverty, migration restrictions, and gender-based discrimination,¹²⁹ 2) criminalize perpetrators¹³⁰ 3) provide physical and psychological care, including medical care, counseling, safe houses and shelters to victims,¹³¹ 4) refrain from criminalizing and detaining victims of trafficking,¹³² and 5) provide victims of trafficking access to remedies that are effective and appropriate, including domestic legal measures that offer victims the possibility of compensation for suffering.¹³³

A. Lack of adequate measures to prevent human trafficking and sexual exploitation

Iraq has been cited as both a source and destination country for people subject to sex trafficking and forced labor. Ongoing instability coupled with the internally displaced and refugee crisis within Iraq and in neighboring Syria contributes to this trend, with multiple reports of women and girls from Iraq as well as migrants from surrounding countries subject to forced labor and forced prostitution. According to reports, perpetrators have included not only criminal networks or individuals, but Iraqi police and security forces as well.¹³⁴

¹²⁶ International Covenant on Civil and Political Rights, Art. 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.").

¹²⁷ Committee on the Elimination of Discrimination Against Women, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, U.N. Doc. CEDAW/C/IRQ/CO/4-6, ¶ 31, 32(d), (March 10, 2014).

¹²⁸ Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, 77, U.N. Doc. HR/PUB/10/2 (2010), available at http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf

¹²⁹ Id. at 106-112.

¹³⁰ Id. at 185.

¹³¹ Id. at 149.

¹³² Id. at 131-136 ("The Trafficking Principles and Guidelines are explicit on the point that the detention of victims of trafficking is inappropriate.").

¹³³ Id. at 228.

¹³⁴ U.S. Department of State, *Trafficking in Persons Report 2013 – Iraq*, 210-211 (June 2014), available at <http://www.state.gov/documents/organization/226846.pdf>

Despite reports of persistent human trafficking,¹³⁵ in 2013 Iraq reported identifying no trafficking victims, representing a decrease in efforts from 2012, during which the Government reported initiating at least eleven investigations of trafficking suspects.¹³⁶ A combination of inadequate victim services and a lack of awareness-raising campaigns is likely the reason that Iraq's new "anti-trafficking hotline" had yet to result in a single phone call has been reported as of 2014.¹³⁷ In 2012, Iraq passed the Trafficking in Persons Act No. 28. However, legislation implementing and operationalizing the bill had yet to pass as of 2014.¹³⁸

In Iraq, victims of trafficking are arrested, incarcerated, fined, deported, or otherwise penalized for acts committed as a direct result of being trafficked.¹³⁹ Even where victims attempt to report abuse, police are often unwilling to investigate cases of sexual violence, trafficking or abductions. In some cases, they abuse victims, and in many cases they blame victims and conduct inadequate investigations.¹⁴⁰ Trafficking victims languish in jail, often on prostitution charges, while perpetrators go free.¹⁴¹ For example, a young woman reported that in 2006, when she was fifteen, her mother and two brothers made it clear that they intended to sell her to a brothel through the public appearance of an arranged marriage.¹⁴² When she reported what her family was planning and revealed the location of the brothel to a police officer, the police arrested her. She spent two years in prison, despite not having been convicted of a crime.¹⁴³

In addition to criminalizing victims instead of pursuing trafficking cases, the Government of Iraq does not provide adequate psychological treatment, medical care, shelters, and other necessary services to victims of trafficking or forced prostitution. Although the government opened its first temporary shelter for victims of trafficking in 2013, no one was assisted there as of 2014. The government identified a site to build a permanent shelter in 2012, but in 2013 has not begun construction on it.¹⁴⁴ In 2014, the CEDAW Committee noted the establishment of only one government shelter in Baghdad for victims.¹⁴⁵ However, women's rights activists report that the

¹³⁵ U.S. Department of State, *Trafficking in Persons Report 2013 – Iraq*, 210-211 (June 2014), available at <http://www.state.gov/documents/organization/226846.pdf>; Human Rights Watch, *At A Crossroads; Human Rights in Iraq Eight Years after the US-Led Invasion 2*, 11-14 (February 2011), available at <http://www.hrw.org/sites/default/files/reports/iraq0211W.pdf>

¹³⁶ U.S. Department of State, *Trafficking in Persons Report 2014 – Iraq*, 211 (June 2014), available at <http://www.state.gov/documents/organization/226846.pdf> Of seven prosecutions initiated in 2012, five remained pending in 2013.).

¹³⁷ Id.

¹³⁸ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶¶ 31, 32(a), U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014).

¹³⁹ U.S. Department of State, *Trafficking in Persons Report 2013 – Iraq*, 204, 211-212 (June 2013); Human Rights Watch, *At A Crossroads; Human Rights in Iraq Eight Years after the US-Led Invasion*, 14-15, available at <http://www.hrw.org/sites/default/files/reports/iraq0211W.pdf>

¹⁴⁰ Human Rights Watch, *At A Crossroads: Human Rights in Iraq Eight Years after the US-Led Invasion*, 15-16 (February 2011).

¹⁴¹ Id. at 14.

¹⁴² Rania Abouzeid, *Iraq's Unspeakable Crime: Mother's Pimping Out Their Daughters*, TIME (March 7, 2009), <http://content.time.com/time/world/article/0,8599,1883696,00.html?xid=newsletter-weekly>

¹⁴³ Id.

¹⁴⁴ U.S. Department of State, *Trafficking in Persons Report 2013 – Iraq*, 212 (June 2014), available at <http://www.state.gov/documents/organization/226846.pdf>

¹⁴⁵ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶ 31, U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014).

shelter remains empty and unstaffed. To meet the need, women's grassroots groups continue to provide desperately needed shelter, despite prohibition on NGO-run shelters in Central and Southern Iraq.¹⁴⁶

These very same women's civil society organizations have taken on the burden of trying to adequately and effectively identify, document, and assist victims of trafficking and sexual exploitation, in the face of the Iraqi Government's failure to do so.¹⁴⁷ Within the last year, the Anti-Trafficking Coalition a network of Iraqi human rights organizations, was formed and has been meeting to discuss methods to document instances of trafficking and push for legal reform.¹⁴⁸ At the most recent meeting of the Coalition, over 37 partner organizations were present, all committed to addressing and ending the trafficking epidemic in Iraq.¹⁴⁹ The Coalition proposed a resolution to the Government of Iraq, outlining the necessary steps to adequately and effectively address trafficking in Iraq. These include better prevention and documentation, effective prosecution of perpetrators, and provision of assistance to victims.¹⁵⁰ As of yet, they have received no official response to these recommendations.

B. Trafficking and sexual exploitation of women and girls in Iraq has worsened under the ISIL occupation

In August of 2014, Zainab Hawa Bangura, the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, and Nickolay Mladenov, the Special Representative of the Secretary-General on Iraq, issued a joint statement condemning violence, including sexual violence against Iraqi minorities. They noted that some 1,500 Yazidi and Christian people may have been forced into sexual slavery by that point, and that Turkomen and Shabak women and children were abducted and raped as well.¹⁵¹ In September of 2014, the Director of the UN's human rights office in Iraq estimated the number of ethnic minority women and girls abducted by ISIL militants in and around the Nineveh province could be as high as 2,500.¹⁵² Interviews with escaped Yazidi women and girls included more details about human rights violations, including multiple instances of forced "temporary marriages."¹⁵³

By October, more reports indicated women and girls held captive by ISIL were subject to forced religious conversions, forced marriage, rape, physical and sexual assault, and sale into sexual

¹⁴⁶ Interview with representatives of three local Iraqi women's organizations, January 2014, (on file with authors); UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 38.

¹⁴⁷ U.S. Department of State, *Trafficking in Persons Report 2013 – Iraq*, 212 (June 2014), available at <http://www.state.gov/documents/organization/226846.pdf>

¹⁴⁸ Interview with Iraqi Women organization activist, New York, NY, March 2015 (on file with authors).

¹⁴⁹ Id.

¹⁵⁰ Id. (notably, one particular suggestion involved getting women's medical and social support covered by social insurance coverage).

¹⁵¹ Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict, Press Release: *Iraq: UN Officials Call for Immediate End to Sexual Violence Against Iraqi Minorities*, (August 13, 2014), available at <http://www.un.org/sexualviolenceinconflict/press-release/iraq-un-officials-call-for-immediate-end-to-sexual-violence-against-iraqi-minorities>.

¹⁵² Samuel Oakford, *Women Abducted by the Islamic State Feared Trapped in Sexual Slavery*, VICE NEWS, (Sept. 10, 2014), <https://news.vice.com/article/women-abducted-by-the-islamic-state-feared-trapped-in-sexual-slavery>

¹⁵³ UNICEF, *Horrible accounts of child rights violations emerge from survivors of violence in north-western Iraq*, (August 20, 2014), http://www.unicef.org/media/media_74848.html

slavery.¹⁵⁴ ISIL has not attempted to distance itself from this rising evidence of sexual slavery and trafficking of women and girls. In one recent issue of ISIL’s online magazine, *Dabiq*, in an article titled *The Revival of Slavery*, ISIL’s propaganda division acknowledged and embraced the practice of sexual slavery and trafficking as a means to eradicate “pagan” Yazidi women and girls from the Muslim world.¹⁵⁵

A March 2015 report of the Office of the High Commissioner for human rights confirmed this abuse with consistent reports from girls and women who escaped from ISIL recounting the systematic process by which they were raped and enslaved.¹⁵⁶ Women and girls were numbered or otherwise recorded on lists and evaluated for their beauty. Young girls were forced to smile while ISIL fighters took photographs during inspection.¹⁵⁷ ISIL fighters have raped girls as young as six years old.¹⁵⁸ OHCHR made several recommendations to the Government of Iraq in light of ISIL’s extreme gender-based human rights violations, calling on it to investigate allegations that its armed forces failed to protect certain communities from ISIL, and calling for it to provide essential services to victims of sexual slavery and rape, such as psycho-social services and medical care.¹⁵⁹

Women and girls who have escaped from ISIL have little or no medical services or counseling at the shelters and camps they are guided to, thus ensuring their continued physical and psychological struggle, including from experiences such as having to carry their rapist’s child.¹⁶⁰ The danger these women face does not end upon their successful escape from ISIL, underscoring the long-term need for shelter and social services. As discussed in Section II of this report, Iraq’s discriminatory legal provisions and distorted traditional notions of “honor,” mean these women could be at risk of “honor” killings if they are able to return to their communities.

Many organizations have documented stories from women and girls who have been kidnapped, sold into sexual slavery, and repeatedly subjected to sexual violence under ISIL. The following are but a few examples since ISIL’s invasion:

- In Mosul, ISIL seized a 12-year-old girl from her family and passed her between multiple ISIL soldiers who repeatedly raped her. Eventually, she was taken to a hospital where she was treated for internal bleeding.¹⁶¹
- In a displacement camp near Dohuk, women’s human rights advocates met with five Yazidi women who had escaped from ISIL. One interviewee, a 15 year-old girl reported

¹⁵⁴ Human Rights Watch, *Iraq: Forced Marriage, Conversion for Yezidis* (October 11, 2014), available at <http://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>

¹⁵⁵ Robert Mackey, *Islamic State Propagandists Boast of Sexual Enslavement of Women and Girls*, NY TIMES (October 14, 2014), available at <http://www.nytimes.com/2014/10/15/world/middleeast/islamic-state-propagandists-admit-sexual-enslavement-of-yazidis.html>.

¹⁵⁶ OHCHR, *Report on the Human Rights Situation in Iraq* at ¶ 37, U.N. Doc. A/HRC/28/18 (March 2015).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at ¶ 40.

¹⁵⁹ *Id.* at ¶ 79.

¹⁶⁰ Presentation, Syrian and Iraqi women’s organizations, Istanbul, Turkey, January 2015 (notes on file with authors).

¹⁶¹ *Id.*

that she had been sold to over 10 ISIL soldiers. She said all the men treated her the same: after they finished their daily prayer, they raped her.¹⁶²

- In Mosul, a young woman reported attempting suicide with her sister while in ISIL captivity: One woman reported, “At night we tried to strangle ourselves with our scarves. We tied the scarves around our necks and pulled away from each other as hard as we could, until I fainted.”¹⁶³
- Another woman and her sister, held for a month by ISIL before escaping: “They kept bringing prospective buyers for us but luckily none of them took us because we are not beautiful and we were always crying and holding on to each other. Once, we tried to kill ourselves and the man who was holding us promised not to separate us, but he was becoming more and more impatient. He wanted to get rid of us, to unload the responsibility for us on to someone else, and if we had not managed to escape it was only a matter of time before we would have ended up married by force or sold to some men, like many other girls.”¹⁶⁴
- In Adnaani, a woman told human rights investigators that while she was in captivity with a group of young women and girls, an “emir” wrote the names of 14 girls on small pieces of paper and called two ISIL fighters to pick one piece of paper. They called out the names on the slips and two girls ages 15 and 18, were taken into a back room and “temporarily married” (forcibly raped). Men reportedly stood outside the room laughing while the girls inside were screaming.¹⁶⁵

C. Response by the Government of Iraq

Under Article 37, paragraph 3 of the Constitution of the Republic of Iraq, “Forced labour, slavery, the slave trade, trafficking in women and children and the sex trade shall be prohibited.”¹⁶⁶ The Government of Iraq affirms this Article in its report to the Committee and highlights Iraq’s 1955 ratification of the Convention for the Suppression of the Traffic in Persons¹⁶⁷ and its 2007 accession to the UN Convention against Transnational Organized Crime and the two Protocols thereto, in particular the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children of 2000.¹⁶⁸ The Government acknowledges the prevalence of trafficking and sexual exploitation in Iraq and noted that the armed conflict fuels instability and the conditions that increase vulnerability to trafficking.¹⁶⁹

¹⁶² Presentation, Iraqi Women organization activist, *Women Under ISIS Conference*, March 2015 (notes on file with authors).

¹⁶³ Amnesty International, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, at 8.

¹⁶⁴ *Id.* at 6.

¹⁶⁵ OHCHR, *Report on the Human Rights Situation in Iraq* at ¶ 38, U.N. Doc. A/HRC/28/18 (March 2015).

¹⁶⁶ Iraq State Report, *Fifth Periodic Report*, ¶ 54, ICCPR, U.N. Doc. CCPR/C/IRQ/5 (December 2013).

¹⁶⁷ *Id.* at ¶ 55.

¹⁶⁸ *Id.* at ¶ 107.

¹⁶⁹ *Id.* at ¶ 54 (“Iraq has not escaped from human trafficking, which made headway as a result of the wars, internal conflicts and unstable conditions that afflicted the country and gave rise to trafficking problems. Displaced persons, women, widows and others prone to enticement, as well as children separated from their families and orphans dependent on humanitarian aid in order to survive, often fall victim to sexual or economic exploitation in the wake of armed conflicts.”).

In its report to the Committee, the Government of Iraq also points to its Repression of Prostitution Act No. 8 of 1988 as a key step in its efforts to respond to human trafficking.¹⁷⁰ Unfortunately, this legislation criminalizes people engaged in sexual transaction,¹⁷¹ and mandates prison sentences for acts of prostitution.¹⁷² The Government acknowledges that there has been some conflation between this law and the trafficking law, which has also been apparent in the application by judges.¹⁷³

The Government of Iraq also notes the passage of Law No. 28 of 2012- Combatting Trafficking in Persons.¹⁷⁴ While this law is an important step in that it focuses on penalizing traffickers, preventing human trafficking, and providing services to victims,¹⁷⁵ it has yet to be operationalized or funded.¹⁷⁶

Overall, the Iraqi government has failed to meaningfully investigate, prosecute or punish acts of trafficking. As of 2014, the Government had failed to issue any rulings in human trafficking cases for the small number of investigations initiated in 2012, and had reported no cases for 2013.¹⁷⁷ Prosecutors and judges are still too often uneducated about the law and courts continue to prosecute trafficking victims under laws criminalizing prostitution.¹⁷⁸ Additionally, the Government of Iraq does not effectively investigate or punish Government officials who face allegations of complicity in trafficking-related offenses.¹⁷⁹

Since the passage of the Trafficking in Persons Act in 2012, the Government of Iraq has also failed to provide the protection and victims' services the Act calls for, or to provide resources, legal legitimacy, or support to civil society organizations already providing victim services. The Government of Iraq has not documented, or at least has not made publicly available, any official statistics about trafficking in persons in Iraq or about delivery of assistance to victims since the

¹⁷⁰ Iraq State Report, *Fifth Periodic Report*, ¶ 107, ICCPR, U.N. Doc. CCPR/C/IRQ/5 (December 2013).

¹⁷¹ Over the last decades, the Iraqi Government instituted extremely severe penalties for “brokering” acts of prostitution, and for engaging in sex work. A 2001 resolution prescribed the death penalty for both “brokers” and for people engaged in prostitution. (Revolutionary Command Council Resolution 234 of 2001, available at <http://gipi.org/wp-content/uploads/rcc-resolution-234-of-2001.pdf>) However, the Coalition Provisional Authority reduced this to a maximum penalty of life imprisonment. (“Combating Prostitution Law No. 8 of 1988, GLOBAL JUSTICE PROJ.: IRAQ (February 20, 2010), available at <http://gipi.org/2010/02/20/combating-prostitution-law-no-8-of-1988/>)

¹⁷² Law on Combatting Prostitution No. 8 of 1988, Trans. Global Justice Project: Iraq, Art. 4, available at gipi.org/wp-content/uploads/gjpi-law-on-combating-prostitution-no-8-of-1988-eng.doc.

¹⁷³ Iraq State Report, *Fifth Periodic Report*, ¶ 54, ICCPR, U.N. Doc. CCPR/C/IRQ/5 (December 2013).

¹⁷⁴ Iraq State Report, *Fifth Periodic Report*, ¶ 107, ICCPR, U.N. Doc. CCPR/C/IRQ/5 (December 2013).

¹⁷⁵ Law No. 28 of 2012 Combatting Trafficking in Persons, Alwaqai Aliraqiya, 2012-04-23, No. 4236, P. 1 - P.5, (April 23, 2012), English language draft available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/94253/110682/F-1734200948/IRQ94253%20Eng.pdf

¹⁷⁶ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶¶ 31, 32(a), U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014).

¹⁷⁷ Of seven prosecutions initiated in 2012, five remained pending in 2013. U.S. Department of State, *Trafficking in Persons Report 2014 – Iraq*, 211 (June 2014), available at <http://www.state.gov/documents/organization/226846.pdf>

¹⁷⁸ Presentation, Iraqi Judge, Istanbul, Turkey, January 2015, (notes on file with authors); Human Rights Watch, *World Report 2014: Iraq, Events of 2013* <http://www.hrw.org/world-report/2014/country-chapters/iraq>

¹⁷⁹ U.S. Department of State, *Trafficking in Persons Report 2014 – Iraq*, 211 (June 2014); Interview with Iraqi Women organization activist, Istanbul, Turkey, January 2015 (on file with authors).

passage of the Trafficking in Persons Act.¹⁸⁰ There is also no information as to whether the Government has designated a specific budget for victim protection or assistance.¹⁸¹ All available care is still being administered primarily by local women's organizations, in shelters with unclear legal status.¹⁸² Furthermore, the Government has remained silent as to whether it plans to develop or implement procedures for referrals of identified trafficking victims from government first responders to civil society organizations that have experience providing victim services.¹⁸³

D. Recommendations to the Government of Iraq

1. The Government of Iraq should take affirmative steps to operationalize Law No. 28 of 2012- Combatting Trafficking in Persons and ensure perpetrators of trafficking are prosecuted, and that victims of trafficking receive necessary services, including safe houses, shelter, medical and psychosocial treatment, and legal support.
2. In accordance with CEDAW's 2014 Concluding Observations, (CEDAW/C/IRQ/CO/4-6) ¶ 32(a)-(e), the Government of Iraq should operationalize and implement Law No. 28 of 2012- Combatting Trafficking in Persons; establish effective mechanisms for the investigation, prosecution, and punishment of trafficking perpetrators; establish supportive services for the identification, protection, and support of victims of trafficking; conduct awareness raising campaigns; systematically collect and analyze disaggregated data on trafficking; provide training to all relevant law enforcement officials and judicial staff on the causes and consequences of trafficking; repeal all relevant legislation criminalizing prostitution and women engaged in the sex trade; and ensure immediate release of women serving prostitution sentences.¹⁸⁴
3. In accordance the CRC's 2015 Concluding Observations, (CRC/C/IRQ/CO/2-4 ¶ 85(a)-(d)), the Government of Iraq should take steps to guarantee perpetrators of trafficking are effectively prosecuted and punished, ensure victims of trafficking and sexual exploitation are not criminalized and receive necessary service, and carry out awareness raising campaigns to highlight to Iraqi communities the dangers of trafficking and emphasize protective measures available.¹⁸⁵
4. In accordance with the Office of the High Commissioner on Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking* –

¹⁸⁰ Presentation, Syrian and Iraqi women's organizations, Istanbul, Turkey, January 2015 (notes on file with authors).

¹⁸¹ *Id.*

¹⁸² UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 38. Although Iraq's proposed *Iraq National Action Plan, for the Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security (2014-2018)* would allow NGOs to operate shelters, the plan has yet to be implemented.

¹⁸³ Presentation, Syrian and Iraqi women's organizations, Istanbul, Turkey, January 2015 (notes on file with authors).

¹⁸⁴ CEDAW, *Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶ 32, U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014).

¹⁸⁵ CRC, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Iraq*, ¶ 85, U.N. Doc. CRC/C/IRQ/CO/2-4 (March 2015).

Commentary,¹⁸⁶ the Government of Iraq should review and implement Guidelines 1-11 for best practices on prevention, prosecution, and the provision of proper victim services.

5. In accordance with Article 45 of the Constitution of the Republic of Iraq,¹⁸⁷ the Government of Iraq should partner with the Anti-Trafficking Coalition composed of 37 civil society organizations in Iraq and other relevant NGOs on strategies for documentation and prosecution of human trafficking, and provision of services to victims.¹⁸⁸
6. The Government of Iraq should provide shelter for trafficking victims and amend its policy to immediately permit non-profit organizations to run private shelters for women and girl victims of gender-based violence, including trafficking and sexual exploitation.
7. The Government of Iraq should implement and fund its proposed *Iraq National Action Plan, for the Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security (2014-2018)*, amending the law to allow for the establishment of shelters and safe spaces for psychosocial support and free legal services for women victims of violence in accordance with international standards.
8. In accordance with recommendations in the March 2015 Office of the High Commissioner on Human Rights *Report on the Human Rights Situation in Iraq in the Light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*,¹⁸⁹ the Government of Iraq should ensure all allegations of sexual slavery, rape and other gender-based violence committed by ISIL are fully investigated; provide all victims services and necessary treatment, and document human rights violations to ensure effective remedies for victims upon resolution of the conflict.¹⁹⁰
9. The international community, in conjunction and consultation with Iraqi grassroots women’s civil society organizations, should support efforts to eliminate major contributing factors to sexual slavery and human trafficking in Iraq. Actions should include halting the influx of weaponry to armed groups in Iraq; donating resources to address Iraq’s humanitarian crisis, with particular focus on meeting the immediate needs of women and girl displaced due to violence; lifting migration barriers for Iraqi refugees; and helping to eliminate poverty in Iraq in part by contributing to the restoration of its economic infrastructure.¹⁹¹

¹⁸⁶ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, HR/PUB/10/2.

¹⁸⁷ Iraq State Report, *Fifth Periodic Report*, ¶ 180, ICCPR, U.N. Doc. CCPR/C/IRQ/5 (December 2013) (“The State shall seek to support, develop, and strengthen the role of civil society organizations and preserve their independence.”).

¹⁸⁸ Interview with Iraqi Women organization activist, New York, NY, March 2015 (on file with authors).

¹⁸⁹ OHCHR, *Report on the Human Rights Situation in Iraq*, U.N. Doc. A/HRC/28/18 (March 2015).

¹⁹⁰ *Id.* at ¶ 76.

¹⁹¹ Under the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, States should take measures, including through multilateral agreement, to alleviate conditions that make people vulnerable to trafficking, including “poverty, underdevelopment and lack of equal opportunity.” U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, art. 9(4), November 15, 2000, 2237 U.N.T.S. 319 (Iraq acceded to the Protocol on February 9, 2009).

IV. ARTICLES 3, 23, 24 & 26 FORCED, TEMPORARY AND UNDERAGE MARRIAGE IN IRAQ

The ICCPR requires free and full consent to marriage on the part of intended spouses (Art. 23(3)). Articles 3 and 26 of the Covenant compel States to ensure the rights enshrined in Article 23 and elsewhere in the Covenant, apply to men and women equally, without discrimination based on gender, and that all are considered equal under law.¹⁹² States are obliged to ensure that men and women have equal standing when consenting to or declining marriage, and that women are not coerced into marriage. Article 24 requires States to enact special legislative measures for the protection of girls, in a non-discriminatory manner, due to their status as minors.¹⁹³ States must also “ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights” under Article 3, and must additionally eradicate practices that jeopardize the freedom and well-being of girls.¹⁹⁴

Treaty bodies have previously implored the government of Iraq to end the practice of coerced and early marriages. Most recently, the CRC Committee expressed concern at the “extreme gender-based discrimination, which girls experience from the earliest stages of their lives” in Iraq, “and which exposes them to ... abuse, [and] early, forced and temporary (muta’a) marriage.” The CRC Committee urged the Government of Iraq to eliminate laws that discriminate against girls and to take meaningful action to eradicate gender-based discrimination.¹⁹⁵ Similarly last year, the CEDAW Committee recommended that the State party “adopt a comprehensive strategy to eliminate all harmful practices and stereotypes, in particular child marriage, temporary marriage and [honor killings].”¹⁹⁶ UNAMI also called on Iraq to prevent forced marriages and provide appropriate legal, medical, financial and other support for victims of forced marriages.¹⁹⁷

A. Forced marriage in Iraq

Discriminatory legal provisions and cultural practices in Iraq allow for a variety of instances where women and girls are married against their will, with some marriage practices exploiting women or girls in desperate financial circumstances. In Iraq’s rural regions forced marriages are traditional and part of tribal politics and economics.¹⁹⁸ Known under a variety of local names (Northern Iraqis call the practice *Zhin bi Zhin*, or “woman for a woman”), the practice involves two families or tribes who exchange women for marriage in place of a costly dowry or to pursue

¹⁹² Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)*, ¶¶ 3-5; see also Human Rights Committee, *General Comment 18: Non-discrimination*, ¶¶ 1, 5.

¹⁹³ Human Rights Committee, *General Comment No. 17: Rights of the Child*, ¶¶ 1,2, 5; see also Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)* ¶ 28.

¹⁹⁴ Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)* ¶¶ 5, 28.

¹⁹⁵ Committee on the Rights of the Child, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Iraq*, ¶¶ 17, 18, U.N. Doc. CRC/C/IRQ/CO/2-4 (March 3, 2015).

¹⁹⁶ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, 26 U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014).

¹⁹⁷ UNAMI, *Report on Human Rights in Iraq: July-December 2013*, at Appendix p. x, Rec. 27 (June 2014).

¹⁹⁸ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 38-39.

or renew tribal ties.¹⁹⁹ Another traditional form of forced marriage increasingly seen across Iraq permits women and girls to be married off as *diyya*, or blood money.²⁰⁰ This practice, also known as *fasliyah*, is often a settlement between tribes where a woman from a murderer's family is forced to marry into the family of the deceased as a form of compensation.²⁰¹ As outsiders forced to bear the burden of the sins of their birth families, women in these marriages are extremely susceptible to abuse.²⁰² Forced marriages also arise in the aftermath of rape, where a criminal trial may be suspended if the rapist agrees to marry the victim (*see* Section I.B., Impunity for rape and sexual assault in law and practice, above).²⁰³

Despite the proliferation of forced marriages, the Iraqi legal system has few provisions for their prevention or prosecution. The Constitution contains no right for women or men to freely enter into or reject marriage.²⁰⁴ The most relevant legal provision is found in the nation's Personal Status Law, which holds that forced marriage is a crime punishable by up to three years imprisonment.²⁰⁵ However, forced marriages are not addressed in courts unless a woman files a complaint, whereby she must prove that she was subject to coercion.²⁰⁶ Since the law does not afford legal immunity or assurances of safety following a complaint, women are often vulnerable to subsequent retribution from more powerful family members.²⁰⁷ Further damning women subjected to forced marriages is the legal stance that once a marriage has been consummated, it is no longer subject to challenge.²⁰⁸ Left with few legal or cultural options, many women and girls forced into undesired marriages turn to suicide.²⁰⁹ In a telling cultural appraisal, their suicide does less to dishonor their families than declining the marriage.²¹⁰

¹⁹⁹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 38-39; *see also* Tanyel B. Taysi, *Eliminating Violence Against Women Perspectives on Honor-Related Violence in the Iraqi Kurdistan Region, Sulaimaniya Governorate* at 26 (March 16, 2009), available at <http://mptf.undp.org/document/download/5229> (describing the daughter's "duty to submit to being traded").

²⁰⁰ Dlovan Barwari, *Iraqi Women Victimized by Tribal Marriage Customs* (September 12 2013), available at <http://www.al-monitor.com/pulse/originals/2013/09/iraq-women-forced-marriage-tribal-customs.html>

²⁰¹ Omar Jaffal, *Underage marriage of Iraqi girls rises* (December 23, 2012), available at <http://www.al-monitor.com/pulse/ar/culture/2012/12/the-underage-marriage-crisis-in-iraq.html#>

²⁰² Barwari, Dlovan Barwari, *Iraqi Women Victimized by Tribal Marriage Customs*.

²⁰³ Iraq Article 427 Penal Code 1969; *see also* UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, (noting Article 396 (1) and (2) of the Iraqi Penal Code criminalizes a person who "sexually assaults" or "attempts to do so without his or her consent and with the use of force, menaces, deception or other means" a man or a woman or a boy or a girl under the age of 18. However, Article 398 reads: "If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed . . ." The law provides that the sentence will be reinstated or proceedings will resume if the defendant divorces the victim without legal justification during a period of three years after the end of proceedings).

²⁰⁴ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 38

²⁰⁵ *Id.* at 39 (referencing Article 9 of the law).

²⁰⁶ Iraq Article 427 Penal Code 1969.

²⁰⁷ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 36.

²⁰⁸ Institute for International Law and Human Rights, *Women and the Law in Iraq* at 100 (December 2010) (referring to Article 9 of Iraq's Personal Status Law).

²⁰⁹ Human Rights Council, *The threat of ISIL and the situation of Women in Iraq* at 3.

²¹⁰ Dlovan Barwari, *Iraqi Women Victimized by Tribal Marriage Customs* (September 12, 2013).

B. Temporary marriage in Iraq

The practice of temporary, or *muta 'a* (pleasure), marriages were previously very rare in Iraq having been banned during Saddam Hussein's rule, but more than a decade of sectarian violence has allowed them to flourish.²¹¹ Because these "marriages" are often a product of poverty-driven desperation on the part of widowed women, the dowry is typically a sum of money, leading many critics to label the practice as "little more than prostitution,"²¹² and a *hilah*, or loophole, for men to have sex outside of traditional marriage.²¹³

Despite having its share of defenders,²¹⁴ the practice is not addressed by Iraq's Personal Status Code or other State laws, leaving women who enter into *muta 'a* marriages no inheritance, alimony or child support rights.²¹⁵ The lack of legal recognition or regulation for these marriages leaves women vulnerable to exploitation in various forms of gender-based violence including trafficking²¹⁶ and possible criminal charges for prostitution.²¹⁷

C. Underage marriage in Iraq

Another marriage practice from Iraq's rural areas becoming more common in cities as religious and tribal codes gain national traction is underage marriage.²¹⁸ According to a 2006–2007 Iraqi Ministry of Planning report, 9.4% of all married women in the country had been married by their 15th birthday;²¹⁹ and by 2013 the Ministry reported the figure had become 11%.²²⁰ The same year, a non-government-affiliated survey found that among women between 20-24 years of age, a full 25% had been married before their 18th birthday.²²¹

²¹¹ See Haifa Zangana, *US War Crimes: The Continuing Deterioration of Women's Rights in Iraq*; see also Human Rights Watch, *At A Crossroads; Human Rights in Iraq Eight Years after the US-Led Invasion* (noting *Muta 'a* is a controversial practice in which a man and unmarried woman are "married" in front of a religious figure for a predetermined amount of time, which can be as short as several hours, in exchange for a dowry).

²¹² U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA) - Integrated Regional Information Networks (IRIN), *IRAQ: Women's groups blast 'temporary' marriages* (January 23, 2006), available at <http://www.irinnews.org/report/26074/iraq-women-s-groups-blast-temporary-marriages>; Mumtaz Lalani, Minority Rights Group International, *Still Targeted: Continued Persecution of Iraq's Minorities* at 15 (2011), available at <http://www.minorityrights.org/download.php?id=834>

²¹³ Gulf News, *Misyar marriages gain popularity among Saudis*, (May 25, 2006), available at

<http://gulfnews.com/news/gulf/saudi-arabia/misyar-marriages-gain-popularity-among-saudis-1.238221>

²¹⁴ Institute for War and Peace Reporting, *Temporary Marriages Stir Iraqi Sensitivities* (September 23, 2010), available at <http://iwpr.net/report-news/temporary-marriages-stir-iraqi-sensitivities>

²¹⁵ Noting that children born from these marriages do have a right of inheritance from their father. UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 155 n. 860, referencing Human Rights Watch, *At A Crossroads; Human Rights in Iraq Eight Years after the US-Led Invasion*, 2, 17 (February 2011) available at <http://www.hrw.org/sites/default/files/reports/iraq0211W.pdf>

²¹⁶ U.S. Department of State, *Trafficking in Persons Report 2014 – Iraq* (June 2014).

²¹⁷ U.N. Office for the Coordination of Humanitarian Affairs (OCHA) - Integrated Regional Information Networks (IRIN), *IRAQ: Women's groups blast 'temporary' marriages*.

²¹⁸ Wassim Bassem, *In Iraq, Honor Crimes Spread to Cities* (October 11, 2013).

²¹⁹ World Health Organization, *Republic of Iraq – Iraq Family Health Survey Report IFHS 2006/2007* at 18.

²²⁰ Id.

²²¹ Farzaneh Roudi-Fahimi and Shaimaa Ibrahim, *Ending Child Marriage in the Arab Region* (May 2013), available at <http://www.prb.org/pdf13/child-marriage-arab-region.pdf>

These figures persist despite the fact that Iraq's current Personal Status Law sets the legal age for marriage at 18 for all Iraqis.²²² While a 1979 amendment permits girls as young as 15 to be married in cases deemed "urgent" by judges or in cases of consent by a parent, an adult brother or an adult married sister, extrajudicial marriages of girls younger than 15 take place regularly.²²³ These marriages are conducted according to religious custom and are not legally recognized under Iraqi law.²²⁴ Punishments for incursions to these laws amount to little more than a slap on the wrist where they are enforceable at all. Article 5 of Iraq's Personal Status Law limits punishment for those found guilty of conducting extrajudicial marriages to a jail term of 6-12 months and a small fine.²²⁵ Article 9 offers a similar sentence to those found to have coerced an underage girl into marriage and holds that marriages found to have been concluded under duress will be considered null and void.²²⁶

Underage marriage perpetuates inequality by socially and psychologically isolating young girls who are often abruptly inserted into unfamiliar family units where they are expected to be sexually active and work long hours.²²⁷ These expectations also force girls to abandon their education.²²⁸ In fact, girls are sometimes removed from school well before any marriage prospect due the parents' disinclination to invest in an education given that their daughter will simply be working in another household as soon as she's married.²²⁹

Many underage marriages also end in divorce, leaving girls subject to intense social stigma, harassment and very susceptible to being forced into another marriage.²³⁰ Whether or not their marriages are permanent, however, underage brides who become pregnant face even greater challenges, both legal and medical. Pregnancy for underage brides is highly dangerous and can lead to severe health complications and a rate of maternal mortality twice that of women in their twenties.²³¹ Children born to illegally married underage brides are typically denied birth certificates and civil identification cards, preventing access to basic state services, assistance and education.²³²

²²² Iraq: Law No. 188 of 1959, *Personal Status Law and Amendments* (December 30, 1959) available at https://apps.americanbar.org/rol/publications/iraq_personal_status_law_1959_english_translation.pdf

²²³ Human Rights Watch, *Iraq: Don't Legalize Marriage for 9-Year-Olds* (March 12, 2014), <http://www.hrw.org/news/2014/03/11/iraq-don-t-legalize-marriage-9-year-olds>; UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 39.

²²⁴ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 39 n. 967.

²²⁵ See Government of Iraq, Law No. 188 of the Year 1959: Personal Status Law and Amendments.

²²⁶ Id.

²²⁷ See UNFPA, *Marrying Too Young: End Child Marriage*, 11 (2012) ("At its worst, child marriage can be tantamount to bonded labour or enslavement. It can be a sentence to regular exposure to domestic or sexual violence, and a pathway to commercial exploitation."), available at <http://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf>

²²⁸ UNICEF, *Early Marriage: Child Spouses*, Innocenti Digest, No. 7, 11-12 (2001), available at <http://www.unicef-irc.org/publications/pdf/digest7e.pdf>

²²⁹ Id. at 11-12.

²³⁰ U.N. High Commissioner for Refugees (UNHCR), *Global Appeal 2014-2015 – Iraq* at 4, available at <http://www.unhcr.org/528a0a2c8.html>

²³¹ Aleksandra Perczynska and Daniel Coyle, *Child Marriage as a Health Issue - Nepal Case Study* 1-3, available at <http://www.ohchr.org/documents/issues/children/study/righthealth/herturn.pdf>

²³² UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 3.

Common problems with underage pregnancy are uterine prolapse, caused by pressure on internal organs, and obstetric fistula, caused by passage of the baby through an immature birth canal.²³³ Even with medical treatment, these conditions are highly dangerous for young mothers, and if left untreated, the resulting hemorrhaging, sepsis and organ damage are a death sentence for both mother and child.²³⁴ Moreover, underage brides are twice as likely to die in childbirth as are women in their twenties.²³⁵

In 2013, the Iraqi Justice Minister introduced a proposal for a new personal status law known as the Ja'afari Personal Status Law. The draft law threatens women's rights on multiple fronts. Among other restrictions, it includes provisions that would lower the legal age of marriage for girls to nine years old and would legalize marital rape by stating that a husband is entitled to have sex with his wife regardless of her consent.²³⁶ While the draft law appears to have been tabled during the ISIL crisis, its passage is believed to be imminent upon government operations returning to normal.²³⁷

D. Response By the Government of Iraq

In its fifth periodic report, the Iraqi government admits that cultural and political challenges have resulted in the flawed implementation of legislative initiatives designed to enable women and girls to effectively enjoy the principles of equality and nondiscrimination mandated by the Constitution and the Covenant.²³⁸ Internal crises and cultural resistance are, of course, impermissible derogations of State responsibility under the Covenant,²³⁹ and the Committee has explicitly condemned derogations with regard to legislation designed to overcome discrimination based on sex.²⁴⁰ Despite the difficulties imposed by the current conflict in Iraq, the government must adhere to its Constitutional and Covenant-based obligations, regardless of whether derogations occur due to a lack of proper enforcement of the law or whether they're the product of a lack of promulgation altogether.

In its report, the government points to Iraq's amended Personal Status Act No. 188 of 1958 as the legal expression of the principles of equality and nondiscrimination as they pertain to the

²³³ Aleksandra Perczynska and Daniel Coyle, *Child Marriage as a Health Issue - Nepal Case Study* 1-3, available at <http://www.ohchr.org/documents/issues/children/study/righthealth/herturn.pdf>

²³⁴ Id.

²³⁵ U.N. Human Rights Council, Annual Report of the U.N. High Commissioner for Human Rights, *Preventing and eliminating child, early and forced marriage* at 9, U.N. Doc. A/HRC/26/22, (April 2, 2014).

²³⁶ MADRE, OWFI, IWHC Clinic at CUNY School of Law, *Protecting the Rights of Children in Iraq: Responses to the Committee on the Rights of the Child's List of Issues in Relation to the Combined Second and Fourth Periodic Reports of Iraq*, (January 2015), at 6, available at http://www.madre.org/images/uploads/misc/1413396041_MADRE%20CRC%20LOI%20Iraq%20Submission-%20FINAL.pdf

²³⁷ UNAMI, *Report on Human Rights in Iraq: July-December 2013* at 13 (June 2014).

²³⁸ See Iraq State Report, *Fifth Periodic Report* ¶¶ 62, 190, 222, ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

²³⁹ See Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)* ¶¶ 7, 8; see also, *International Covenant on Civil and Political Rights*, Art. 5, ¶ 2, U.N. Doc. A/6316 (1969).

²⁴⁰ Human Rights Committee, *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)* ¶¶ 4, 5.

rights of women and girls to enter into marriage.²⁴¹ Even disregarding its discriminatory definition of marriage (i.e. between a man and a woman for the purpose of procreation), the law remains deeply problematic and a far cry from an example of equality and nondiscrimination under the Constitution and the Covenant.²⁴²

The Government cites the marriage law as a mechanism for women and girls' protection and empowerment by highlighting provisions basing legal eligibility to contract for marriage on: (1) the possession of sound mental faculties; (2) a minimum age of 18, and; (3) the requirement that both parties give consent to be married.²⁴³ However, the law also allows those as young as 15 to marry where the bride is accompanied by a guardian, and the judge determines that the marriage is in the bride's best interest.²⁴⁴ While acknowledging that this legally sanctioned caveat could lead to issues regarding a minor's ability to consent to marriage (subsequent sexual activity is not discussed), the Iraqi government merely sees this as a vague potentiality predicated more on coercive behavior of the bride's family than any inherent rights of the girl herself.²⁴⁵ This myopic stance allows the Iraqi government to confidently declare that the Personal Status Act provides a remedy, nullification of the marriage and punishment for the coercive party,²⁴⁶ and that the only issue with the admittedly "alarming" proportion of underage marriages in Iraq is simply due to poor application of this law,²⁴⁷ particularly given the fact that the majority of underage marriages are strictly religious affairs, conducted outside the auspices of the state, and often involve the marriage of girls younger than 15 years old.²⁴⁸

Crucially though, the law rests the possibility of nullification on whether or not the marriage has been consummated; if the couple has engaged in sexual intercourse, the court will permit the marriage to continue. Thus, the Government of Iraq's contention that it has "taken every possible measure at the legislative, executive and judicial levels to ensure the welfare and protection of children" is an inaccurate appraisal.²⁴⁹

The Government also notes several other legislative initiatives where it has attempted to foster the principles of equality and nondiscrimination as they pertain to women's issues in Iraq, however, none explicitly address marriage issues. For example, the Ministry of Education's ban on gender discrimination at any stage of education is largely irrelevant where underage marriage is concerned, as girls who are married while attending school tend to withdraw permanently.²⁵⁰

²⁴¹ Iraq State Report, *Fifth Periodic Report* ¶ 60, ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

²⁴² Iraq State Report, *Fifth Periodic Report* ¶ 60 ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

²⁴³ Id at 60, 184-91.

²⁴⁴ Id. at 60, 186-87. The Personal Status Judge's determination is based, at least in part, upon criteria issued by the Chief Justice, which includes a medical examination and testimony to verify whether the girl has attained puberty.

²⁴⁵ Id. at 189. The report acknowledges minor girl may lack the "willpower and awareness" to consent to marriage as a result of persuasion, inducement, or threats, not because of a general principle that minors are inherently incapable of consent.

²⁴⁶ Id.

²⁴⁷ Id. at 190.

²⁴⁸ World Health Organization, *Republic of Iraq – Iraq Family Health Survey Report IFHS 2006/2007*, 18.

²⁴⁹ Iraq State Report, *Fifth Periodic Report* ¶ 193, ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

²⁵⁰ See UNESCO, *Developing and Education Sector Response to Early and Unintended Pregnancy*, at 20-21 (November 2014), available at <http://unesdoc.unesco.org/images/0023/002305/230510E.pdf>

Furthermore, the Government highlights the Ministry of Labour and Social Affairs' Child Welfare Commission as an organ tasked with formulating national policy, but outside it having identified issues such as child marriage and the exploitation of children for sex and labor, the report fails to discuss the Commission's role or accomplishments in any regard.²⁵¹ The government similarly points to several other legislative initiatives to highlight its "strong condemnation" of discrimination and inequality, but fails to include all but rudimentary conceptual details about them.²⁵²

That the fifth periodic report only mentions forced marriages in the context of underage marriages and fails to address the issue of temporary marriages at all illustrates the government's failure to take seriously the full spate of Constitutional and Covenant-based mandates of equality and nondiscrimination, and, given the prior findings of other treaty bodies, the continuing need for a heightened commitment to the principles of its Constitution and the Covenant. Regarding harmful marriage practices, in 2014, the CEDAW Committee recommended that the Government of Iraq "adopt a comprehensive strategy to eliminate all harmful practices and stereotypes, in particular child marriage [and] temporary marriage."²⁵³ The CEDAW Committee's recommendations also include repealing certain laws, eliminating impunity, improving investigatory capabilities and strengthening awareness-raising,²⁵⁴ UNAMI has also noted the need for legal, medical, financial and other support for the victims of forced marriages in Iraq.²⁵⁵

E. Recommendations to the Government of Iraq

1. The Government of Iraq should take all appropriate measures to address early and forced marriage throughout the country, taking special considerations to ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights;
2. The Government of Iraq should to immediately address existing discriminatory and dangerous legislation where it pertains to the element of coercion in underage and forced marriage, including:
 - a. Implement the CRC Committee's 2015 Concluding Observation (CRC/C/IRQ/CO/2-4 53(a)) and CEDAW Committee's 2014 Concluding Observation (CEDAW/C/IRQ/4-6 2015 ¶ 53 (b)) calling on the Government to repeal the discriminatory legal exceptions to the minimum age of marriage for girls contained in the Personal Status Act (No. [188 \(1959\)](#)) and ensure that legal exceptions to the minimum age of marriage, set at 18 years for both women and men, are granted only in exceptional cases and authorized by a competent court for girls and boys of at least 16 years of age and upon their expressed consent";

²⁵¹ Iraq State Report, *Fifth Periodic Report* ¶ 192, ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

²⁵² Id. at ¶¶ 212, 218, 221, 222(c).

²⁵³ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, 26 U.N. Doc. CEDAW/C/IRQ/CO/4-6 ¶ 26 (March 2014).

²⁵⁴ Id. at ¶ 26 (a)(c).

²⁵⁵ UNAMI, *Report on Human Rights in Iraq: July-December 2013*, at 20 (June 2014).

- b. Repeal Article 427 of the Penal Code, which allows a perpetrator of sexual violence to avoid punishment by marrying his victim and otherwise requires victims to prove coercion prior to an official investigation;
 - c. Enact special legislative measures, pursuant to Article 24 of the Covenant, prioritizing the investigation and prosecution of instances of coercion in underage marriages, and offering protections to victims so as to protect them from violent reprisals from their own or their spouse's family;
3. The Government of Iraq should take all appropriate measures to adopt gender-sensitive training and procedures at all levels of law enforcement to investigate and prosecute instances of underage marriage, including where lack of consent can turn consummation into rape and household work into forced labor; establish special protection units and gender desks in police stations; and undertake investigations confidentially and sensitively in order to avoid re-victimization and stigmatization;
4. The Government of Iraq should implement the CRC Committee's 2015 Concluding Observation (CRC/C/IRQ/CO/2-4 ¶ 49(c)) that calls for the establishment of protection schemes for victims of forced marriage who file a complaint;
5. The Government of Iraq should implement the CRC Committee's 2015 Concluding Observation (CRC/C/IRQ/CO/2-4 ¶ 49(b)) that calls for the establishment of awareness-raising campaigns and sensitization programmes on the harmful effects of early and forced marriage on the physical and mental health and well-being of girls, targeting households, local authorities, religious leaders and judges and prosecutors.
6. The Government of Iraq should take all appropriate measures to prioritize the allocation of adequate funding, proper administration, and effective implementation of national comprehensive strategies to eliminate the harmful practices of forced, underage and temporary marriages, such as the *National Action Plan on the Implementation of U.N. Security Council Resolution 1325 on Women, Peace and Security (2014-2018)* and the *National Strategy on Combatting Violence Against Women*, in furtherance of the CEDAW Committee's 2014 Concluding Observation (CEDAW/C/IRQ/4-6 ¶ 26(a)).

V. ARTICLES 7, 9, AND 10, MISTREATMENT OF WOMEN IN THE IRAQI CRIMINAL JUSTICE SYSTEM, FROM ARREST TO IMPRISONMENT

Article 7 of the Covenant requires that State parties not only refrain from torture, but actively work to investigate, prevent, and prosecute specific instances of torture. Statutorily prohibiting torture in and of itself is insufficient for compliance and State parties are obligated to instill an independent body to “fully and promptly” investigate all allegations,²⁵⁶ ensure perpetrators are “punished in a manner proportionate to the gravity of the crimes committed,”²⁵⁷ and guarantee victims are protected and provided effective remedy.²⁵⁸ Additionally, State parties are encouraged to train their State agents in order to ensure that all persons who are arrested or held in custody are informed of their rights.²⁵⁹ Protection for the relatives of terrorist suspects, including the prevention of collective punishment, is another requirement under Article 7.²⁶⁰

In fulfilling its obligation to guarantee effective protection of detained persons, State parties must hold detained persons in officially recognized detention centers, record interrogations, and identify all persons present and involved at judicial or administrative proceedings.²⁶¹ Effective protection also requires prompt and regular access to lawyers and doctors²⁶² and the prohibition statements or confessions obtained through torture.²⁶³

Under Article 9 of the Covenant, State parties must ensure that all arrested or detained persons are brought “promptly” before a judge.²⁶⁴ This Committee has condemned statutory provisions allowing for the pre-trial detention of detained persons for up to 72 hours before being brought before a magistrate; Article 9 indicates that the period of pre-trial detention permitted is, at most, extremely short.²⁶⁵ In terms of actual detention facilities and treatment, Article 10 of the Covenant requires that State parties provide adequate prison conditions, including sufficient food and timely medical care to all detainees.²⁶⁶ This Committee has particularly noted prison overcrowding may rise to the level of a violation of Article 10.²⁶⁷

²⁵⁶ ICCPR, *Concluding Observations - Russian Federation*, ¶ 15 U.N. Doc. CCPR/C/RUS/CO/7; *See also*, International Covenant on Civil and Political Rights (ICCPR), *Concluding Observations of the Human Rights Committee, Sudan* at ¶ 16, U.N. Doc. CCPR/C/SDN/CO/3 (August 29, 2007); ICCPR, *Concluding Observations - Chad*, ¶ 21, U.N. Doc. CCPR/C/TCD/CO/2, *Concluding Observations of the Human Rights Committee, Yemen* at ¶ 24 U.N. Doc. CCPR/C/YEM/CO/5 (April 23, 2012).

²⁵⁷ ICCPR, *Concluding Observations - Russian Federation*, ¶ 14. U.N. Doc. CCPR/C/RUS/CO/7.

²⁵⁸ *Id.* at ¶ 15.

²⁵⁹ ICCPR, *Concluding Observations - Chad*, ¶ 21 U.N. Doc. CCPR/C/TCD/CO/2.

²⁶⁰ ICCPR, *Concluding Observations - Russian Federation*, ¶ 14 U.N. Doc. CCPR/C/RUS/CO/7.

²⁶¹ Human Rights Committee, *General Comment No. 20: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, Article 7* ¶ 11 (Replaces general comment No. 7).

²⁶² *Id.*

²⁶³ *Id.* at ¶ 12.

²⁶⁴ Human Rights Committee, *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶ 32, U.N. Doc. CCPR/C/GC/35 (December 2014).

²⁶⁵ International Covenant on Civil and Political Rights (ICCPR), *Concluding Observations of the Human Rights Committee, Tunisia* at ¶ 13, U.N. Doc. CCPR/C/TUN/CO/5 (April 23, 2008).

²⁶⁶ *Jurisprudence on Rights Relevant to Conditions of Detention*, BLAKE DAWSON WALDRON., 10 (May 2006). (“Breaches of article 10(1) have been found, *inter alia*, in cases where the prisoner is denied adequate bedding, food, exercise or medical attention; is exposed to unsanitary food/water and/or living conditions; physical abuse; extended periods of isolation; overcrowding; lack of educational opportunities, work or reading materials; and physical, psychological and verbal abuse; see also, for example, *Robinson v Jamaica* (Communication No. 731/1996, U.N.

A. Detention in Iraq

Documented reports covering Iraq have noted how women are frequently rounded up during mass arrests and collectively punished for alleged terrorist activities of their male relatives under the auspices of Law No. 13 of 2005—Iraq’s Anti-Terrorism Law—which mandates the death penalty for “those who commit . . . terrorist acts,” and “all those who enable terrorists to commit these crimes.”²⁶⁸ These women are arrested without an arrest warrant, denied access to a lawyer, forced to sign and fingerprint blank pieces of paper that will later be used as a confession, and are not speedily brought before an investigate judge as required by Iraq’s Code of Criminal Procedure.²⁶⁹ One former judge also added that security forces “often arrested a large number of people in an area where an incident occurs without an arrest warrant.”²⁷⁰

Security forces of the Interior and Defense ministries are also reported to be operating unofficial detention facilities where interrogation tactics include torture and sexual abuse.²⁷¹ For instance, journalist Fatima Hussein, who had been documenting abuses of detainees in a prison in Tikrit, was blindfolded, electrocuted, hung from the ceiling by her handcuffs, raped and then forced to sign a blank confession page.²⁷² Fatima spent seven months at this detention center before she saw an investigative judge, and she never saw an attorney.²⁷³ The abuse is so pervasive that women entering prison facilities are often given a pregnancy test because it is assumed she was raped while in police custody.²⁷⁴

Furthermore, the Ministry of Human Rights has consistently failed to investigate allegations of abuse within prisons, and the criminal justice system remains unreformed.²⁷⁵ Women have been subjected to arbitrary arrest without a warrant and detained without trial for periods of up to a year.²⁷⁶ There is also evidence that many women are targeted for reprisal for crimes allegedly committed by male family members.²⁷⁷ Detained women may subsequently face social or familial ostracism for their perceived dishonor.²⁷⁸

Doc. CCPR/C/68/D/731/1996 (2000)); *Sextus v Trinidad and Tobago* (Communication No. 818/1998, CCPR/C/72/D/818/1998 (2001)); *Lantsova; Freemantle v Jamaica* (Communication No. 625/1995, U.N. Doc. CCPR/C/68/D/625/1995 (2000)).

²⁶⁷ International Covenant on Civil and Political Rights (ICCPR), *Concluding Observations of the Human Rights Committee, Cambodia* at ¶ 18, U.N. Doc. CCPR/C/79/Add.108 (July 27, 1999).

²⁶⁸ See, e.g., Human Rights Watch, *Iraq: Executions Surge but No Action on Reform* (April 25 2013), available at <http://www.refworld.org/docid/517e31e44.html> ; Human Rights Watch, “*No One is Safe*”: *The Abuse of Women in Iraq’s Criminal Justice System* at *19 (February 2014), available at <http://www.hrw.org/sites/default/files/reports/iraq0214webwcover.pdf>

²⁶⁹ Human Rights Watch, “*No One is Safe*”: *The Abuse of Women in Iraq’s Criminal Justice System*, at 4.

²⁷⁰ Id. at 20.

²⁷¹ Id. at 23.

²⁷² Id. at 39-43.

²⁷³ Id. at 43.

²⁷⁴ Id.

²⁷⁵ United Kingdom Foreign and Commonwealth Office, *Human Rights and Democracy 2012: Iraq*.

²⁷⁶ Human Rights Watch, *Iraq: Executions Surge but No Action on Reform*; see also, Human Rights Watch, “*No One is Safe*”: *The Abuse of Women in Iraq’s Criminal Justice System*.

²⁷⁷ Human Rights Watch, “*No One is Safe*”: *The Abuse of Women in Iraq’s Criminal Justice System*.

²⁷⁸ U.S. Department of State, *2012 Country Reports on Human Rights Practices – Iraq* (April 19, 2013).

The prisons themselves are overcrowded, and women have almost no access to healthcare.²⁷⁹ The Rusafa complex, Baghdad's central prison for women (also known as "Site 4"), and Shaaba Khamsa, Baghdad's death row facility, are notorious example of these terrible conditions.²⁸⁰ In 2012, Human Rights Watch interviewed 14 women being detained at Site 4 and seven women being detained at "Shaaba Khamsa."²⁸¹ While the wardens at Site 4 said there was an obstetrician / gynecologist on site, only two of the detainees interviewed said they had been examined. Not a single person interviewed from Site 4 had ever seen a mental health professional during their detainment. None of the women from Shaaba Khamsa reported seeing an obstetrician / gynecologist. Two of these women did note, however, how they depended on their relatives to bring them food and medicine needed for long-standing illnesses. One woman described being treated for cancer in India for 2010, but since her confinement had not seen an oncologist and relied upon her family to bring her medicine ever 15 days. Four of these women also noted that although prisons have scheduled doctor visits, detainees are rarely treated in the hospital should they have a significant problem and were not allowed to see doctors for follow-up care.

Finally, it must be noted that Iraqi civil society organizations are rarely allowed to visit any of the inmates within detention facilities.²⁸² Despite this, stories and interviews with prior detainees confirm many of the deplorable conditions ongoing in these institutions.

B. Detention under ISIL

Numerous reports have come out of Iraq documenting the forced abduction and detainment of individuals under ISIL, most notably members of the Yazidi community. The March 2015 OHCHR report highlights some of these detention practices including the detainment of individuals in Mosul and Tel Afar, all without proper access to services, the forced conversion of detainees to Islam, and the repeated transfer of detainees to multiple facilities in order to facilitate feelings of "fear, insecurity, and disorientation."²⁸³ Even worse are the reports of prison massacres orchestrated by ISIL. On June 10, 2014, ISIL took over the Badoush prison and executed more than 600 inmates according to their ethnic and religious affiliation. Shi'a survivors of the massacre said they only survived the mass killing by hiding under the bodies of other people shot by ISIL.²⁸⁴ On June 16, at least 43 prisoners at the al-Wahda police station were executed by gunshots to the head; some victims had broken limbs suggesting they were tortured as well.²⁸⁵

On January 2015, human rights advocates documented ISIL's use of women and children as human shields in Tikrit.²⁸⁶ Iraqi women's organization activists investigated and confirmed these reports, finding women and children were held at gunpoint around four ISIL-controlled buildings: a mosque, a hospital, a school, and a directorate's office.²⁸⁷ At night, these women and

²⁷⁹ UNAMI, *Report on Human Rights in Iraq: July-December 2013* (June 2014).

²⁸⁰ Human Rights Watch, "No One is Safe": *The Abuse of Women in Iraq's Criminal Justice System* at 10.

²⁸¹ *Id.*

²⁸² Interview with Iraqi Women organization activist, Istanbul, Turkey, January 2015 (on file with authors).

²⁸³ OHCHR, *Report on the Human Rights Situation in Iraq* at ¶¶ 20, 36 U.N. Doc. A/HRC/28/18 (March 2015).

²⁸⁴ *Id.* at ¶ 28.

²⁸⁵ *Id.* at ¶ 53.

²⁸⁶ Interview with Iraqi Women organization activist, Istanbul, Turkey, January 2015 (on file with authors).

²⁸⁷ *Id.*

children are held inside the buildings.²⁸⁸ The apparent purpose behind this forced detention is to prevent Iraqi security forces from bombing the location.²⁸⁹

C. Response by the Government of Iraq

The State report notes that under Article 37 of the Constitution of the Republic of Iraq, all forms of torture and cruel or inhuman treatment are prohibited.²⁹⁰ It also notes that in 2008, Iraq became a party to CAT and has begun steps to draft its first report to the Convention.²⁹¹ In proving its compliance with its obligation, the Government of Iraq points to the Iraqi Penal Code which asserts the illegality of torture by law enforcement and investigating officers,²⁹² the channels to which victims can report abuse,²⁹³ and the number of complaints of alleged torture and ill treatment documented by judicial authorities between 2006-2010.²⁹⁴ These steps are to be commended and show intent on the part of the Government of Iraq to ending human rights abuses within the criminal system towards detainees.

Despite this intent, further steps should be taken by the Government of Iraq to meet its obligation under the Covenant. For example, the information on complaints in the State report does not detail which, if any, of these complaints have been successfully prosecuted, or which facilities and officials these complaints were addressed to. Additionally, the State report numbers make no distinction between complaints made by women and those by men; complaints made by women should be given special consideration in light of the unique abuse women often suffer within detention facilities. The Government of Iraq also noted other actions, including inviting the Special Rapporteur on Torture to visit Iraq in 2007²⁹⁵ or the implementation of a “programme to train specialists in human rights and law enforcement,” with several trainings conducted over the past few years,²⁹⁶ without detailing the findings or results of such actions; such information must be made freely accessible to assess progress within Iraq on the issue.

In paragraph 112 of the State report, the Government of Iraq notes Articles 15, 17, and 39 of the Constitution of the Republic of Iraq ensuring the protection of detainees within the criminal justice system, including a presumption of innocence, fair trials, and the bringing of any accused person “promptly” before a judge.²⁹⁷ In paragraphs 122-123, the Government of Iraq highlights its Management of Detention and Prison Facilities Act No. 2 of 2003, in particular highlighting the provision that require all facilities to document the identity, reason for detention, and admittance / withdrawal information for all detained persons,²⁹⁸ and its Prisons Administration

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Iraq Constitution, Article 37(1)(c): “All forms of psychological and physical torture and inhuman treatment shall be prohibited. No account shall be taken of any confession extracted under duress, threat or torture and the victim shall have the right to claim compensation, in accordance with the law, in respect of the physical and mental harm suffered.”

²⁹¹ Iraq State Report, *Fifth Periodic Report* ¶ 95 ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

²⁹² *Id.* at ¶ 89.

²⁹³ *Id.* at ¶ 90.

²⁹⁴ *Id.* at ¶ 93-94.

²⁹⁵ *Id.* at ¶ 94.

²⁹⁶ *Id.* at ¶ 99.

²⁹⁷ *Id.* at ¶ 112.

²⁹⁸ *Id.* at ¶ 122.

Act, in particular highlighting the rights of prisoners including the right to health, security, and placement, the right to medical care, the right to submit complaints and grievances, and the right to benefit from educational and work programs.²⁹⁹ The Government of Iraq also states that the Independent Commission for Human Rights visited all detention facilities to confirm and investigate all cases of infringement of human rights³⁰⁰ and that the Ministry of Human Rights maintains a comprehensive database compiled by inspection teams making regular visits to detention facilities—a database easily accessible to the families of detainees.³⁰¹ These legislative acts and steps taken to prevent and document violations are to be commended.

Unfortunately, reports have still surfaced about ongoing abuses and violations occurring in Iraqi prisons.³⁰² Reports highlight overcrowding and the lack of resources, in particular medical services, available to detained persons as two major problems.³⁰³ Civil society organizations that would ordinarily provide resources and counseling to individuals have been barred from visitation of detention centers.³⁰⁴ Women continue to come forward reporting forced confessions and cruel and unusual forms of punishment within the facilities.³⁰⁵ These deficiencies must be rectified, and if documentation is already available tracking the status of detainees, that information must be made freely available to reporting bodies. This information must be thorough and detail the conditions at detention facilities in addition to explaining how steps were taken to remedy any deleterious conditions and respond to complaints. In addition, the Government of Iraq must ensure all adequate steps are being taken to prevent the freely acknowledged “infringements . . . isolated cases attributable to personal misconduct or ignorance of the laws, regulations, and directives”³⁰⁶ and provide adequate remedies to harmed parties when such infringements occur.

International treaty bodies, including most recently by the 2014 CEDAW and 2015 CRC Committees, have expressed concern about the continued detention practices of Iraq.³⁰⁷ The CEDAW Committee expressed deep concern about: “(c) reports of arbitrary detention of women, torture, and sexual violence in prisons, obstacles faced by women in detention when seeking access to justice, and lack of legal assistance;” and “(d) the precarious conditions and overcrowding of some detention facilities and the lack of adequate health-care facilities and services for women detainees.”³⁰⁸ The CRC Committee noted concern with the lack of services available to women, in particular nursery services for women who are detained with their

²⁹⁹ Id. at ¶ 123.

³⁰⁰ Id. at ¶ 45.

³⁰¹ Id. at ¶ 92.

³⁰² See, e.g., Human Rights Watch, “*No One is Safe*”: *The Abuse of Women in Iraq’s Criminal Justice System*.

³⁰³ UNAMI, *Report on Human Rights in Iraq: July-December 2013* (June 2014); Human Rights Watch, “*No One is Safe*”: *The Abuse of Women in Iraq’s Criminal Justice System* at 68-69.

³⁰⁴ Interview with Iraqi Women organization activist, Istanbul, Turkey, January 2015 (on file with authors).

³⁰⁵ Human Rights Watch, “*No One is Safe*”: *The Abuse of Women in Iraq’s Criminal Justice System*, at 39-43.

³⁰⁶ Iraq State Report, *Fifth Periodic Report* ¶ 120, ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

³⁰⁷ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014); CRC, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Iraq*, U.N. Doc. CRC/C/IRQ/CO/2-4 (March 2015).

³⁰⁸ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶ 48, U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014).

children in prison, and the lack of “sanitation and general care” within these facilities.³⁰⁹ Additionally, the CRC Committee noted with the utmost concern the “sexual enslavement of children detained in makeshift prisons.”³¹⁰ It is for this reason that we pose the following recommendations:

D. Recommendations to the Government of Iraq

1. In accordance with ICCPR Article 7 and Article 9, the Government of Iraq should take affirmative steps to investigate, prevent, and prosecute all instances of torture, particularly within the context of detention facilities, train State agents to protect the rights of all detainees and document any violations, and ensure all victims of abuses are provided rehabilitative services and effective remedies.
2. In accordance with ICCPR Article 10, the Government of Iraq should ensure proper prison conditions, in particular by eliminating overcrowding. It should provide detainees adequate services, including timely medical care. These steps should consider the specific concerns of women detainees and the Government should provide women detainees necessary sexual and reproductive medical services.
3. The Government of Iraq should implement CEDAW’s 2014 Concluding Observation (CEDAW/C/IRQ/CO/4-6 ¶ 49(b)-(d), and include the development of comprehensive gender-sensitive policies, strategies, and programs to assist women in detention; ensure all allegations of human rights violations by women detainees, in particular arbitrary detention, torture, and sexual violence, are effectively investigated and the perpetrators prosecuted; and improve the conditions of women’s detention facilities to eliminate overcrowding and ensure provision of adequate health care services, in particular for pregnant women.³¹¹
4. The Government of Iraq should implement the CRC Committee’s 2015 Concluding Observation (CRC/C/IRQ/CO/2-4 ¶ 57(a)-(b)) and seek out alternative detention arrangements for pregnant women and mothers with young children and to provide adequate living conditions for children, in particular girls, living in prison with their mothers.³¹²
5. The Government of Iraq should eliminate abusive prosecutions, including by immediately ceasing the practice of collective punishment under the Anti-Terrorism Law. Specifically, the Government of Iraq should stop the prosecution of family members of suspected terrorists under the justification of “enabling terrorists.”

³⁰⁹ CRC, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Iraq*, ¶ 56, U.N. Doc. CRC/C/IRQ/CO/2-4 (March 2015).

³¹⁰ CRC, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Iraq*, ¶ 44, U.N. Doc. CRC/C/IRQ/CO/2-4 (March 2015).

³¹¹ CEDAW, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶ 49, U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014).

³¹² CRC, *Concluding Observations on the Combined Second to Fourth Periodic Reports of Iraq*, ¶ 57, U.N. Doc. CRC/C/IRQ/CO/2-4 (March 2015).

6. The Government of Iraq should immediately repeal or amend its ban on visits to prisons by civil society organization in order to allow civil society organizations to access, investigate, and document ongoing human rights violations in detention facilities.
7. The Government of Iraq should provide all documentation generated by the Independent Commission for Human Rights and Ministry of Human Rights on the conditions of detention facilities and status of detainees to the appropriate reporting bodies. It should also provide documentation concerning the Government of Iraq's response, in particular its response to complaints by women detainees.

VI. ARTICLES 18 & 19 THE IRAQI GOVERNMENT’S CLOSURE OF SEVERAL INDEPENDENT RADIO STATIONS THAT ADVOCATED FOR PEACE, TOLERANCE, AND EQUALITY IN THE IRAQI SOCIETY

A. Forced closure of over twenty independent radio stations

The right to the freedom of expression “includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others.”³¹³ Article 19 of the Covenant requires the State Parties to protect the freedom of expression, including the freedom to “impart information and ideas of all kinds,” freedom to seek and receive information. Additionally, under Article 19, State Parties shall not deny any person any rights under the Covenant because of his or her opinions: “Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses.”³¹⁴ Additionally, Iraq’s constitution protects freedom of speech and expression.³¹⁵

From March to June 2014, in response to anti-government demonstrations, the Iraqi Government-run Communication and Media Commission (CMC) revoked the licenses and effectively shut down over twenty radio stations, many of which were independent, non-partisan, and primarily advocates for social equality and justice.³¹⁶ One of the radio stations adversely impacted by this policy was the Organization of Women’s Freedom in Iraq’s (OWFI) Al-Mousawaat (Equality) radio station. Like many of the radio stations that were shut down, Al-Mousawaat radio station is an integral mechanism for disseminating messages of peace, tolerance and respect for human rights and addressing societal discrimination. It is the only radio station of its kind in Iraq to openly and progressively address the rights of women and other at-risk and marginalized groups. The radio conducts much-needed outreach to vulnerable individuals, broadcasting information about the services and support OWFI provides, and informing marginalized and at-risk populations that allies are within reach.

A recent report by Freedom House noted that following the Government’s declared state of emergency in response to ISIL incursion in June 2014, the CMC released “mandatory” guidelines for media and communication activities and networks as part of a “war on terror” campaign. For the main part, the guidelines establish a series of ambiguous requirements that impose arbitrary restrictions on media coverage and broadcasting.³¹⁷

³¹³ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 11 (September 12, 2011).

³¹⁴ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 9 (noting that, it is incompatible with ¶ 1 to criminalize the holding of an opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of Article 19 ¶ 1).

³¹⁵ Iraq Constitution Art 38. Iraq State Report, *Fourth Periodic Report*, ¶ 73, E/C.12/IRQ/4 (November 20, 2013).

³¹⁶ Human Rights Watch, Iraq; Cancel Revocations of TV Station Licenses: Licenses Suspended Amid Rising Death Toll, Civil War Fears, (April 13, 2013), available at <http://www.hrw.org/news/2013/04/30/iraq-cancel-revocations-tv-station-licenses>

³¹⁷ The government-controlled Communications and Media Commission (CMC) is the primary body responsible for regulating broadcast media. Freedom House, *Freedom of the Press 2015 - Iraq*, (August 2015), available at <http://www.refworld.org/docid/55dad73a11.html>

One provision instructed the media networks to maintain the sense of patriotism, and exercise caution with broadcasting content that might offend sentiments or does not comply with “the moral and patriotic order required for the war on terror.”³¹⁸ Furthermore, another provision forbade media outlets from disseminating or publishing material that may be interpreted as criticism against the Iraqi security forces, and impels journalists to mainly feature and highlight the achievements and successes of the armed forces.³¹⁹

These ambiguous guidelines resulted in unreliable and fallacious reports on the status of the fighting, including false claims that the Iraqi armed forces had defeated ISIL forces in Tikrit, while in reality the territory remained under ISIL’s control. Additionally, media networks in Iraqi Kurdistan received similar guidelines.³²⁰ CMC officials claim that despite the lack of a legal basis for the suspensions, the media stations were suspended because they were promoting “violence” and “sectarianism”, without providing any specific information.³²¹

Another justification used by CMC officials is that during the “war on terror,” media stations are forbidden from broadcasting or publishing material that “may be interpreted as being against the security forces.”³²² However, as mentioned above, many of the closed radio stations, including Al-Mousawaat Radio Station, focused on and mainly broadcasted messages of tolerance, freedom, and equality. Moreover, the CMC’s decision seems to be based on politically bias motives rather than security concerns. Within recent months, Iraq’s political blocs and parties debated the independence and integrity of the CMC Commissioner, Safa Al-Din Rabe’a, and his motives behind the decision. The CMC has a history of harassing and issuing threats of closure and withdrawal of licenses of media outlets that criticize the Government,³²³ while Government and political parties influenced, funded,³²⁴ or outright controlled media means are still broadcasting freely, without threats, harassment or interruption.³²⁵

Finally, the closures were unlawful. An Iraqi senior official has admitted that the suspensions are not in compliance with the law.³²⁶ However, the CMC continues to refuse to renew the licenses or issue additional frequencies for the radio stations that were unlawfully shut down.

Since the Iraqi government is currently undergoing a reshuffling of government ministries, with several ministries being merged together and new leadership of these realigned Ministries still

³¹⁸ Id.

³¹⁹ Id.

³²⁰ Id.

³²¹ Human Rights Watch, World Report 2014: Iraq (2014), available at <https://www.hrw.org/world-report/2014/country-chapters/iraq>

³²² Freedom House, *Freedom of the Press 2015 - Iraq*, 21 August 2015, available at <http://www.refworld.org/docid/55dad73a11.html>

³²³ The U.S. Department of State, *Iraq 2013 Human Rights Report: Executive Summary*, 24 (2014); Oday Hatem, *Iraqi Media Ten Years after the Invasion: Partisan, Sectarian, and Factional*, Press, Freedom Advocacy Association in Iraq, (January 31, 2014), available at <http://www.pfaaiq.com/?part=47&id=20>

³²⁴ Freedom House, *Freedom of the Press 2015 - Iraq*, 21 August 2015, available at <http://www.refworld.org/docid/55dad73a11.html>

³²⁵ The U.S. Department of State, *Country Reports on Human Right Practices for 2014: Executive Summary* (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

³²⁶ See, Human Rights Watch Press Statement, <http://www.hrw.org/news/2013/04/30/iraq-cancel-revocations-tv-station-licenses>

being determined. For example, the Ministry of the Environment has now been merged with Ministry of Health. During this reshuffling of ministries, the CMC informed Al Mousawat radio that the Prime Minister's office has decided to form a committee comprised of a number of independent lawyers with the objective of resolving the dispute between the CMC and closed radio stations. However, the Government of Iraq has not provided a timeline or any details as to when the committee will be formed and how it will operate.

B. Response by the Government of Iraq

In its State Report to the Human Rights Committee, the Government of Iraq acknowledges that due to violence committed by ISIL, the media sector has been severely restricted by killings, harassments, threats, detention, and closures, including the closure “of the offices of some satellite channels.”³²⁷ The Government elaborates on the violence committed by ISIL against journalists in its Reply to the List of Issues.³²⁸ The Government explains that in response to this violence, the Council of Representatives promulgated Act No. 21 of 2011 on the protection of journalists and is currently considering the promulgation of another enactment on the free flow of information.

However, the Government of Iraq makes no mention of its forced closures of the over twenty independent Iraqi radio stations.

C. Recommendations to the Government of Iraq

1. The Government of Iraq should immediately reverse the license suspensions for and issue additional frequencies to allow them to continue broadcasting. The Government of Iraq should take all appropriate measures to ensure that all independent local radio stations are able to renew their radio station licenses;
2. The Government of Iraq should notify civil society its plan and timeline for setting up an internal committee to oversee the reissuing of radio station licenses for independent radio stations that were forcibly closed by the revocation of their licenses.

³²⁷ Iraq State Report, *Fifth Periodic Report*, ¶ 161, ICCPR U.N. Doc. CCPR/C/IRQ/5 (December 2013).

³²⁸ *List of Issues in Relation to the Fifth Periodic Report of the Iraq: Replies of Iraq to the List of Issues*, 21 (August 17, 2015).

