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SOCIAL AND CULTURAL RIGHTS (ICESCR)**
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WOMEN'S HUMAN RIGHTS VIOLATIONS IN IRAQ

IN RESPONSE TO
THE FOURTH PERIODIC REPORT OF
THE REPUBLIC OF IRAQ

SUBMITTED BY:

**The International Women's Human Rights (IWHR) Clinic at the City University of New
York (CUNY) School of Law**

MADRE

The Organization of Women's Freedom in Iraq (OWFI)

August 31, 2015

International Covenant on Economic, Social and Cultural Rights
Office of the United Nations High Commissioner for Human Rights
Attention: The UN Committee on Economic, Social and Cultural Rights
Via Email: Samar Khamis, skhamis@ohchr.org , cescr@ohchr.org

Re: Submission to the UN Committee on Economic, Social and Cultural Rights for its review of Iraq scheduled during the 56th Session to be held in September 2015.

Dear Committee Members,

This letter is submitted to you by the Organization of Women's Freedom in Iraq (OWFI), MADRE, and the International Women's Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law. The issues and information highlighted below were written in consultation with five additional Iraqi women's organizations who wish to remain anonymous. The issues discussed in this letter are raised to supplement the information provided in the fourth periodic report submitted by Iraq to the Committee for its review of Iraq during the 56th Session to be held in September 2015.

Our organization wishes to further the work of the Committee on Economic, Social, and Cultural Rights by providing independent information concerning the rights protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR).

We respectfully request that the Committee's review cover several areas of concern related to the status of the rights of women in Iraq, including gender-based violence, sexual exploitation, the institutionalization of gendered stereotypes, and the continuance of discriminatory legislation, as discussed below.

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Introduction

This report is intended to supplement the forth periodic report submitted by Iraq to the International Covenant on Economic, Social and Cultural Rights for its review of Iraq during the 56th Session to be held in September 2015. Several areas of concern related to the status of the economic, social and cultural rights of women and girls in Iraq are addressed herein, including the prevalence of gender-based violence, discriminatory legal provisions, and violations of rights to physical and mental health and adequate standard of living. 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 Economic, Social and Cultural Rights (ICESCR).

The Government of Iraq has failed in its obligation under the ICESCR to take proper measures to progressively achieve the full realization of the economic, social and cultural rights of its citizens, and to ensure effective remedies in cases of violations. 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. Iraqi women and girls have become increasingly vulnerable to sexual slavery and to forced prostitution. Victims of forced prostitution are criminalized and mistreated by law enforcement. Additionally, those engaged in or presumed to be engaged in forms of sex work face criminalization, 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 which pose a grave impediment to women and girls' full and free enjoyment of their economic, social and cultural rights.

In recent months, the occupation of parts of Iraq by the so-called Islamic State of Iraq and the Levant (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 that ISIL may have committed war crimes, crimes against humanity, and genocide.¹ According to OHCHR's report, evidence suggests that ISIL's human rights violations include genocide against the Yezidi community specifically. OHCHR also determined ISIL may have 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

¹ UN 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:

of grave human rights violations, has 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, including their economic, social and cultural 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 field interviews and documentation of personal testimonies in late 2014 and early 2015 by an Iraqi women's organization, MADRE, and the International Women's Human Rights (IWHR) clinic at the City University of New York School of Law. The issues and information highlighted in this report were compiled in consultation with five additional Iraqi women's organizations that wish to remain anonymous.

We hope that the findings in this report will be useful to the Committee on Economic, Social and Cultural Rights and serve as a catalyst for further advocacy efforts.

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_18_AUV.doc#sthash.qmK8lo6T.dpuf.

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*, (Mar. 18, 2015).

I. ARTICLES 2, 3, 9, 10, 11, 12 & 13: RAPE, SEXUAL ASSAULT AND DOMESTIC VIOLENCE– VIOLATIONS, IMPUNITY AND LACK OF REDRESS FOR VICTIMS ARE PERVASIVE IN IRAQ DUE TO DISCRIMINATORY LEGAL PROVISIONS AND SOCIAL NORMS

Together, Articles 2, 3, 9, 10, 11, 12 & 13 of the ICESCR require States to undertake necessary steps by all appropriate means, including adoption and implementation of legislation to ensure women’s full and equal enjoyment of economic, social and cultural rights. Article 2 and 3 demand that States implement measures to guarantee the rights enunciated under this Covenant are exercised without discrimination of any kind, including sex, religion, and national or social origin. Article 9 recognizes the right of all individuals to social security, and Article 10 upholds free consent of the intending spouses as a prerequisite for marriage. Article 11 of the Covenant requires States to undertake measures to guarantee the right of individuals to an adequate standard of living, including adequate food, clothing and housing, and the ongoing improvement of living conditions. Furthermore, States have the obligation under Article 12 to guarantee the full realization of everyone’s right to the highest attainable standard of physical and mental health, and to ensure access to medical services and attention in the event of illness. Article 13 recognizes individuals’ right to receive education, and demands States to undertake the requisite measures to fully achieve the realization of this right.

A. The Iraqi Government does not provide adequate shelter to women fleeing violence in Iraq, and prohibits Iraqi NGOs from providing such services

With over 3 million⁴ displaced and over 8 million⁵ Iraqis in need of humanitarian assistance, it is no surprise that in the current climate of the conflict in Iraq, there is an exponentially higher need for NGO-run shelters for displaced persons.

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.⁶

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 in central and southern Iraq have interpreted this

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

⁵ [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/>

⁶ Interview with representatives of three local Iraqi women’s organizations, Istanbul, Turkey, Jan. 2015 (on file with authors). *See also*, U.S. Department of State, *Country Narrative Trafficking in Persons Report 2012–Iraq* (2012).

policy to mean that *only* the government can run shelters,⁷ although local activists report that State-run shelters remain vacant.⁸

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, "[S]helters 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." This belief towards women's shelters has also been touted in other countries including Afghanistan.⁹ Several Iraqi women's human rights organizations also confirmed this belief.¹⁰

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 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

⁷ 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

⁸ Interview with representatives of three local Iraqi women's organizations, Istanbul, Turkey, Jan. 2015 (on file with authors).

⁹ 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>

¹⁰ Interview with representatives of three local Iraqi women's organizations, Istanbul, Turkey, Jan. 2015 (on file with authors).

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.¹¹ 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;
- (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 combat domestic and gender-based violence, including a law permitting privately run shelters.¹²”

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.

¹¹ United Nations Committee Against Torture, *Concluding Observations On The Initial Report of Iraq*, August 2015, U.N. Doc. CAT/C/IRQ/CO/1, ¶23, available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRQ%2fCO%2f1&Lang=en

¹² *Id.*

Only in the region of Kurdistan have local NGOs been permitted to run and maintain shelters for women fleeing violence.¹³ 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 and provided space for collaboration between government and civil society. 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.¹⁴

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)*. The plan called for the creation of shelters for women escaping violence, stating that the Government of Iraq should create an “[a]mendment of the Act of the Federal Ministry of Labor on shelters, taking the example of Law 2/2011 in [Kurdistan].”¹⁵ The plan also called 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,”¹⁶ with the “expected result” that “women will receive better services by NGOs and institutions they meet.”¹⁷ Unfortunately, the plan has yet to be funded or implemented, and significant elements of the overall plan were gutted, including sections on necessary legislative changes and budgeting.¹⁸ 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.¹⁹

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

¹³ 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.

¹⁴ 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>.

¹⁵ *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 #1, Specific Actions #4, p. 53.

¹⁶ *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.

¹⁷ *Iraq National Action Plan, for Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security 2014-2018*, at Pillar 2 – Protection and Prevention, Strategic Objective #2, Expected Results #3, p. 54.

¹⁸ Women Peacemakers Program, “Challenges for Women's Participation in Peacebuilding Processes in Iraq,” (2 Feb., 2015), available at <https://www.womenpeacemakersprogram.org/news/challenges-facing-womens-participation-in-peacebuilding-processes-in-iraq/>.

¹⁹ 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).

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 Turkmen to classes with local teachers who speak the Turkmen dialect, who are often refugees 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.²⁰

Accordingly, the Iraqi government's failure to provide systematic protections and critical services to victims of gender-based violence, and importantly, refusing to legally authorize NGOs to offer these vital services to victims in the absence of government-sponsored services is in violation of the State's obligations under Article 2, 9, 11 and 12 of the ICESCR.

B. Impunity for Gender-based Violence and Discrimination Enshrined in Law and Practice

Gender-based violence and discrimination against women and girls has been a longstanding, pervasive problem in Iraq. Rape and sexual assault, while criminalized in 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 18.²¹ In tandem with cultural norms related to "honor," this 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.²² Marital rape is not criminalized in Iraq.²³

²⁰ Interviews with three Iraqi women's organization representatives, Istanbul, Turkey, Jan. 2015 (on file with authors).

²¹ 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 Regarding Crimes and Violations Against Women*, MOHAMAH.NET (March 26, 2015), available at [http://www.refworld.org/pdfid/4fc77d522.pdf](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, United Nations High Commissioner for Refugees (UNHCR), <i>UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq</i> *157 n. 887 (2012), available at: <a href=).

²² 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>.

²³ U.S. Department of State, *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

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.²⁴

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.²⁵ When these women refused these marriages, some families pressured judges to force the marriage between survivor and rapist.²⁶ Rape victims in Iraq are unlikely to press charges against perpetrators and pursue legal remedies due to societal pressures and norms.²⁷ Consideration of a victim's sexual history in rape cases is permitted under Iraqi law.²⁸ 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.²⁹ 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 Iraq's law enforcement agencies would not be able to solve the problem.³⁰

As observed by this Committee, "the elimination of discrimination is fundamental to the enjoyment of economic, social and cultural rights on the basis of equality."³¹ Accordingly, the Government's failure to exercise due diligence in amending discriminatory domestic laws, and holding perpetrators of GBV crimes accountable is a breach of Article 2 and 3 of the Covenant thus severely hampers women and girls' ability to fully and freely enjoy their economic, social, and cultural rights. Furthermore, legal provisions which create conditions that place victims under pressure to marry their assailant without free consent are in direct violation of Article 10 of the Covenant.

C. Domestic Violence Under the 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 resort to physical violence against his wife "within certain limits prescribed by law or by custom."³² Marital rape is not recognized by the penal code.³³ 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

²⁴ U.S. Department of State, *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

²⁵ U.S. Department of State, *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.

²⁶ U.S. Department of State, *2012 Country Reports on Human Rights Practices – Iraq* at 40 (April 19, 2013).

²⁷ U.S. Department of State, *2012 Country Reports on Human Rights Practices – Iraq* at 40 (April 19, 2013).

²⁸ 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>.

²⁹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 36.

³⁰ United Nations Assistance Mission in Iraq (UNAMI), "Women in Iraq Factsheet" 2 (March 2013).

³¹ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No.16: The Equal Right of Men and Women to The Enjoyment of All Economic, Social, and Cultural Rights (Art.3 of the International Covenant on Economic, Social and Cultural Rights*, 11 August 2005, U.N. Doc. E/C.12/2005/4, ¶3, available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

³² UNICEF, *Iraq – MENA Gender Equality Profile: Status of Girls and Women in the Middle East and North Africa* at *1 (2011), available at: <http://www.unicef.org/gender/files/Iraq-Gender-Equality-Profile-2011.pdf>

³³ There is no provision currently in the penal code that protects a spouse from marital rape.

justice.³⁴

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.³⁵ One study placed the prevalence of women suffering physical violence at the hands of their husbands at roughly one in five,³⁶ while another found that 56.4% of Iraqi men believe they have a right to beat their wife if she disobeys.³⁷ Even where law enforcement does act, legal personnel may be harassed and threatened by victims' family members seeking to terminate legal proceedings.³⁸

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.³⁹ Many opt to stay in abusive relationships rather than risk violent reprisals, crippling social stigma and financial isolation created by leaving their violent spouses.⁴⁰

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.⁴¹ In 2013, human rights advocates documented dozens of cases of abuse and killings of women by their male family members in the Kurdistan Region.⁴² While the Iraqi Constitution expressly prohibits "all forms of violence and abuse in the family,"⁴³ the central Government of Iraq has failed to enact comprehensive national legislation against domestic violence. Domestic violence is not criminalized under Iraqi law.⁴⁴ The government's failure to adequately prevent, prosecute and protect victims from domestic violence has left women vulnerable to further domestic violence and reprisals.⁴⁵

D. National Initiatives to Address Gender-based Violence

³⁴ U.S. Department of State, *2012 Country Reports on Human Rights Practices – Iraq* at 40 (April 19, 2013).

³⁵ 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>.

³⁶ 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.)

³⁷ United Nations Assistance Mission in Iraq (UNAMI), "Women in Iraq Factsheet" 3 (March 2013), <http://www.iau-iraq.org/documents/1864/Woman-Factsheet.pdf>.

³⁸ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 34.

³⁹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 35.

⁴⁰ 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.

⁴¹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 35.

⁴² Human Rights Watch, *World Report 2014: Iraq*, available at https://www.hrw.org/sites/default/files/related_material/iraq_5.pdf.

⁴³ Iraq Constitution, Article 29 (4th), available at: http://www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf.

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

⁴⁵ Inter-Agency Information and Analysis Unit (IAU), *Violence Against Women in Iraq Factsheet* at 2 (November 2010), http://www.jauiiraq.org/documents/1149/Violence%20against%20women%20Factsheet_Final.pdf.

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)*.⁴⁶ 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 recognizes the increased levels of domestic violence in the aftermath of conflict.⁴⁷ Additionally, it points out many of Iraq’s discriminatory legal provisions and describes their harmful impact on women.⁴⁸ 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.⁴⁹ 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].”⁵⁰

Despite the urgency of the issues facing women and girls in Iraq, and counter to the directive in the plan,⁵¹ 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.⁵²

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.⁵³ The Council, however, declined to implement the program.⁵⁴ In January 2015, the House of Representatives and the President of the Republic approved the

⁴⁶ United Nations 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.

⁴⁷ Iraq National Action Plan, *for Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security 2014-2018*, at 6.

⁴⁸ Iraq National Action Plan, *for Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security 2014-2018*, at 7-10.

⁴⁹ Iraq National Action Plan, *for Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security 2014-2018*, at 13-14.

⁵⁰ 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 #1, Specific Actions #4.

⁵¹ Iraq National Action Plan, *for Implementation of the United Nations Security Council Resolution 1325 Women, Peace and Security 2014-2018*, 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.

⁵² 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.

⁵³ 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).

⁵⁴ United Nations 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.

Protection from Domestic Violence Draft Law. Provisions within the draft law include: Articles 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.⁵⁵ 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: Provide shelter for the survivor with her children in one of the shelters for the abused in twenty-four hours.⁵⁶ If passed and implemented the Protection from Domestic Violence Law could greatly enhance victims' services and access to justice.

E. The Stigmatizing Effects of Gender-based Violence

Gender-based violence and discrimination de facto exclude women and girls from participating in public life and from receiving opportunities equal to that of their male counterparts, forcing them to forfeit their rights to education, employment, legal and other public services.⁵⁷

For example, fear of rampant sexual violence in Iraq has had a detrimental effect on girls' school attendance. One study conducted shortly after the U.S. occupation in 2003 found that girls' attendance had lowered dramatically due to fears of kidnapping and a general lack of personal security.⁵⁸ In 2013, amid re-escalating sectarian violence, UNAMI reported the trend had re-emerged upon finding a diminishing ratio of females to males in primary and secondary school.⁵⁹ The results of this disproportionality are evident throughout the report, such as where the data shows illiteracy in more than 28% of girls 12 and older as opposed to just 13% of males from the same age range.⁶⁰

Similar safety concerns drive critically needed female hospital personnel and clinic staff to stay home,⁶¹ forcing female patients to then either choose to be seen by a male doctor, delay treatment or go without medical care altogether.⁶² Opting out of or delaying treatment for injuries caused by sexual violence presents a host of potentially deadly health risks unique to women and girls,⁶³ such as vaginal tearing, bleeding and infection or unwanted pregnancies.⁶⁴ Further complicating the issue is a general lack of education about the medical and psychological needs of survivors of sexual violence and a lack of guidelines for post-assault procedures.⁶⁵

Iraq's pervasive gender-based violence has been noted by other treaty bodies. For example,

⁵⁵ *Protection from Domestic Violence Law*, The Federal Judiciary, January 2015, <http://www.iraqja.iq/view.1717/>.

⁵⁶ *Protection from Domestic Violence Law*, The Federal Judiciary, January 2015.

⁵⁷ See Zangana, *US War Crimes: The Continuing Deterioration of Women's Rights in Iraq* (February 2, 2014), <http://www.globalresearch.ca/the-continuing-deterioration-of-womens-rights-iniraq/5367085>.

⁵⁸ Save the Children, *Assessment in three schools* (May 18, 2003), <http://www.irinnews.org/report/23692/iraq-school-attendance-reportedly-dropping-says-unicef>.

⁵⁹ United Nations Assistance Mission in Iraq (UNAMI), "Women in Iraq Factsheet" (March 2013), <http://unami.unmissions.org/LinkClick.aspx?fileticket=xqx9gxy7Isk%3D&tabid=2790&language=en-US>.

⁶⁰ Id.

⁶¹ Human Rights Watch, *Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad* at *18 (July 2003), Vol. 15, No. 8, available at: <http://www.hrw.org/sites/default/files/reports/iraq0703.pdf>.

⁶² Id.

⁶³ Id.

⁶⁴ See Medecins Sans Frontiers, *Enough is Enough: Sexual Violence as a Weapon of War*, (March 8, 2004), available at: <http://www.doctorswithoutborders.org/news-stories/ideaopinion/enough-enough-sexual-violence-weapon-war>.

⁶⁵ United Nations Population Fund (UNFPA), *Iraq Reproductive Health Assessment* (August 2003).

earlier this year, the CEDAW Committee recommended that the State party repeal all discriminatory provisions against women in national legislation, ensure legal penalties for perpetrators of domestic violence and direct government Ministries to not issue discriminatory directives.⁶⁶ The Committee also recommended that the Government of Iraq ensure the effective functioning of Ministries and Councils for women's affairs by allocating adequate human and financial resources and otherwise enhancing their capacities.⁶⁷

Therefore, the Iraqi government's failure to adequately address GBV not only violates women and girls' right to physical safety and security, it also has an adverse impact on their enjoyment of economic, social and cultural rights set forth in the Covenant. As demonstrated above, the threat of GBV has forced many girls to leave schools thus jeopardizing their rights to education granted under Article 13 of the Covenant. Moreover, lack of gender-sensitive and appropriate healthcare services severely hampers women and girls' access to these services, and compromises their right to the highest attainable standard of physical and mental health under Article 12 of the Covenant.

F. Women Denied Access to Government-issued Identification Documents

The UN Human Rights 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,⁶⁸ but 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.⁶⁹ This dramatically heightens the dangers facing women who are fleeing from conflict-related violence. Without such identity 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.

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.⁷⁰ 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

⁶⁶ 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 *18 U.N. Doc. CEDAW/C/IRQ/Q/4-6/Add.1 (November 6, 2013).

⁶⁷ Id.

⁶⁸ UN Human Rights Committee, General Comment 28, ¶16, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000); *see also*, UN 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."

⁶⁹ Interview with Iraqi women's organizations staff members, Istanbul, Turkey, Jan. 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.).

⁷⁰ Aber Mohammed, *Passport Misery Highlights Iraqi Women's Plight*, 29 June 2011, available at: <http://www.refworld.org/docid/4e1c7a912.html>.

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.⁷¹

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 impossible for many to obtain documents.⁷²

An Iraqi women's organization staff members 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. As an organization providing shelter for women and girls, the Iraqi women's organization itself also faces additional risks from the discriminatory bars on obtaining identification, as a resident's lack of documentation can put a shelter at risk, even where agreements with local law enforcement permit shelters to operate, due to a cultural tendency to equate a lack of documentation with trafficking and prostitution.⁷³ 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.⁷⁴ For these reasons the Iraqi women's organization staff conduct public education campaigns 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.⁷⁵

Recommendations to the Government of Iraq:

1. The Government of Iraq must 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;
2. 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. Moreover, the State party is obliged to ensure that national laws are compatible with State party obligations under the ICCPR;

⁷¹ 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>.

⁷² 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>.

⁷³ Interview with Iraqi women's organization activist, Istanbul, Turkey, Jan. 2015 (on file with authors).

⁷⁴ Interview with Iraqi women's organization activist, Istanbul, Turkey, Jan. 2015 (on file with authors).

⁷⁵ Interview with Iraqi women's organization activist, Istanbul, Turkey, Jan. 2015 (on file with authors).

3. 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 medical treatment, mental health care, and psychosocial support;
4. 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;
5. The Government of Iraq should comply with the CEDAW Committee's 2014 Concluding Observations (CEDAW/C/IRQ/CO/4-6, ¶ 29(c)) and 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;
6. 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.
7. 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).
8. 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;
9. The Government of Iraq should immediately repeal all discriminatory and dangerous Penal Code articles, such as 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;

10. The Government of Iraq should issue legislation specifically mandating a national medical nondiscrimination policy that would ensure gender-sensitive training and treatment protocols for hospital and clinic staff, and ensure the option of abortion;
11. 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 combat 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*;
12. The Government of Iraq should take all appropriate measures to prioritize the allocation of adequate funding, proper administration, and effective implementation of existing governmental human rights and gender-based human rights entities such as the Ministry of Human Rights, the parliamentary Human Rights Committee and the Ministry of State for Women's Affairs;
13. 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.

II. ARTICLES 2 & 3: "HONOR" KILLINGS- IMPUNITY, LACK OF PREVENTION AND REDRESS ARE PERVASIVE IN IRAQ DUE TO DISCRIMINATORY LEGAL PROVISIONS AND SOCIAL NORMS

A. Honor Crimes Committed Against Women in Iraq

Articles 2 and 3 of the Covenant recognize equal rights of women and men in the full enjoyment of all economic, social and cultural rights, and demand States to guarantee the realization of these rights without discrimination of any kind. Nevertheless, in Iraq support for "honor" killing, which stems from deep-rooted discriminatory social and cultural norms and practices, is written directly into law, consequently hindering women and girls' full enjoyment of economic, social and cultural rights on the basis of equality. Several Iraqi Penal Code provisions, including Article 128,⁷⁶ Article 130,⁷⁷ and Article 409,⁷⁸ allow for mitigated sentences for violent acts, including

⁷⁶ 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.'")

⁷⁷ 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

homicide, committed for so-called “honorable motives.”⁷⁹ These legal mechanisms allow “honor” killings to continue with impunity. The U.S. Department of State reported that “honor” killings were a serious problem throughout all of Iraq in 2013.⁸⁰ Cultural norms that encourage “honor” killings prevent women from reporting gender-based violence due to fears of indifference or violent retaliation.⁸¹ 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.⁸²

“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.⁸³ 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.⁸⁴ 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.⁸⁵

The United Nations Assistance Mission for Iraq (UNAMI) reported on several “honour” killings that occurred between July and December, 2013, and the subsequent lack of adequate criminal investigation in their wake.⁸⁶ These incidents included:

- 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;
- 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 21 year old woman on September 22, 2013, reported as a suicide by her father;
- The discovery of a young woman’s body in Kirkuk on October 8, 2013, handcuffed and beheaded, bearing the signs of additional torture;

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.”)

⁷⁸ 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.’”)

⁷⁹ 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.”)

⁸⁰ 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>.

⁸¹ Interview with Iraqi Women organization activist, Istanbul, Turkey, Jan. 2015 (on file with authors)

⁸² UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 34-35.

⁸³ UNAMI Human Rights Office, *Report on Human Rights in Iraq: January - June 2014*, 14 (August, 2014), available at http://www.ohchr.org/Documents/Countries/IO/HRO_Jan-Jun2014Report_en.pdf.

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

⁸⁵ The Kvinna till Kvinna Foundation, *Violence Against Women in Iraq* at 2 (2014), available at <http://kvinna.tillkvinna.se/en/files/qbank/217b4c71837fac172fabeafc299f755b.pdf>.

⁸⁶ UNAMI, *Report on Human Rights in Iraq: July-December 2013*, at 15 (June 2014).

- The self-attestation of a man arrested for killing his sister on November 19, 2013 that the murder was justified as “cleansing of my 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 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.”⁸⁷

In addition to being denied protection by the legal system, women threatened with honor crimes are also left with limited recourses should they try to flee. Options may include shelters and even prison, though neither is a sustainable long-term setting.⁸⁸ Any available shelters that can provide support are under-resourced, and shelter employees may even become targets of violence themselves for providing services to victims.⁸⁹ Further limiting options for victims is the fact that in Central and Southern Iraq, women’s shelters are outlawed.⁹⁰ Women’s organizations seeking to help potential victims of “honor”-based violence are forced to run their operations underground.⁹¹

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 brought shame to their family. This killing is accepted as a familial right. The perpetrator is therefore not even usually charged, and any police report is left anonymous.⁹² If one exercises a “public right,” however, that involves killing a woman and someone else (such as a lover) outside of one’s family; this form of honor killing is recognized as requiring arrest, but still falling within the category of being justified by “honorable motives” and mitigated under Iraqi Penal Law.⁹³ Even where families do not want to commit violence against their relatives, there is extreme social pressure for them to engage in “honor” killing. Families that have refused to kill a relative who has supposedly brought “shame” to their family have themselves become targets.⁹⁴

An Iraqi women’s organization, as a women’s civil society organization that helps shelter, protect, and care for women who flee the threat of honor crimes, has access to many that would otherwise go unreported and undocumented. The following are but a few examples of the

⁸⁷ UNAMI, *Report on Human Rights in Iraq: July-December 2013*, at 15 (June 2014).

⁸⁸ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 37.

⁸⁹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 38.

⁹⁰ 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.

⁹¹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 38.

⁹² Interview with three Iraqi Women organization representatives, Istanbul, Turkey, Jan. 2015 (on file with authors).

⁹³ Interview with three Iraqi Women organization representatives, Istanbul, Turkey, Jan. 2015 (on file with authors).

⁹⁴ Interview with three Iraqi Women organization representatives, Istanbul, Turkey, Jan. 2015 (on file with authors).

numerous documented instances of honor crimes and honor killings that the organization has collected:⁹⁵

- 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.
- 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 and did so with a machine gun. 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. A relative of the victims told advocates that in actuality, her family paid off the police.
- In the summer of 2014, in the Anbar region of Iraq, a 17-year-old girl was rumored to have had sexual relations outside 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. The girl's father sent divers down to the bottom of the river to recover the girl's body. 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 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 of months, she called her sister and told her where she was. The woman's brother-in-law overheard this conversation, beat up 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.

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 assumed to have been subjected to sexual violence and face the risk of being subjected to honor killings after they flee.

Some Iraqis have called for the government to bomb the ISIL-controlled schools and hospitals 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 besieged towns.⁹⁶ Reports have also emerged of women committing suicide after being abducted by ISIL and raped, "because they couldn't stand the shame"⁹⁷ they would bring to their families and communities.

⁹⁵ Interviews with three Iraqi Women organization representatives, Istanbul, Turkey, Jan. 2015 (on file with authors).

⁹⁶ 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).

⁹⁷ 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/>.

Notably, 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 Yezidi community, a community ravaged by ISIL with hundreds of women kidnapped, raped, and sold into sexual slavery, religious leaders 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.⁹⁸ These leaders encourage members of the Yezidi 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.⁹⁹ 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.”¹⁰⁰ 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.¹⁰¹

Recommendations to the Government of Iraq:

1. The Government of Iraq must repeal any legal provisions permitting or justifying violence against women on the basis of “honor,” in particular Articles 128, 130, and 409 of the Iraqi Penal Code, which allow for sentence mitigation for violence committed for supposed “honorable motives”;
2. In accordance with CRC’s and CEDAW’s recommendations, the Government of Iraq must 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 the repeal of Articles 128, 130, 131 and 409 of the Penal Code, the establishment of 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 acts¹⁰²;
3. In accordance with United Nations General Assembly Resolution A/RES/59/165,¹⁰³ 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

⁹⁸ 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.

⁹⁹ Interview with Iraqi Women organization activist, New York, NY, March 2015 (on file with authors).

¹⁰⁰ Yifat Susskind, *What will it take to stop Isis using rape as a weapon of war?*, GUARDIAN (Feb. 17, 2015), <http://www.theguardian.com/global-development/2015/feb/17/disarm-isis-rape-weapon-war>.

¹⁰¹ Yifat Susskind, *What will it take to stop Isis using rape as a weapon of war?*, GUARDIAN (Feb. 17, 2015), <http://www.theguardian.com/global-development/2015/feb/17/disarm-isis-rape-weapon-war>.

¹⁰² 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).

¹⁰³ United Nations 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 (10 Feb., 2005) available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/486/16/PDF/N0448616.pdf?OpenElement>.

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;

4. 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;

III. ARTICLE 2, 3, 10 & 13: INVOLUNTARY, FORCED, TEMPORARY AND UNDERAGE MARRIAGE IN IRAQ

The ICESCR requires free and full consent to marriage on the part of intended spouses (Art. 10(1)). Articles 2, and 3 of the Covenant compel States to ensure the rights enshrined in all the articles of the Covenant, apply to men and women equally, without discrimination based on gender, and that all are considered equal under law.¹⁰⁴ It is therefore states’ obligations to ensure that men and women have equal footing when consenting to or declining marriage, and that women are not coerced into marriage. Moreover, Article 13 of the Covenant recognizes the right of all individuals to education and obliges States to undertake steps to progressively achieve the full realization of this right.

Treaty bodies have previously implored the government of Iraq to end the practice of coerced and early marriages. Most recently, the Committee on the Rights of the Child (CRC) 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 urged Iraq to eliminate laws that discriminate against girls and to take meaningful action to eradicate gender-based discrimination.¹⁰⁵ 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].”¹⁰⁶ UNAMI also called on Iraq to prevent forced marriages and provide appropriate legal, medical, financial and other support for victims of forced marriages.¹⁰⁷

A. Forced Marriages in Iraq

¹⁰⁴ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No.16: The Equal Right of Men and Women to The Enjoyment of All Economic, Social, and Cultural Rights (Art.3 of the International Covenant on Economic, Social and Cultural Rights*, 11 August 2005, U.N. Doc. E/C.12/2005/4, ¶2,3,4&7, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

¹⁰⁵ 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 (3 Mar., 2015).

¹⁰⁶ 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).

¹⁰⁷ UNAMI, *Report on Human Rights in Iraq: July-December 2013*, at Appendix p. x, Rec. 27 (June 2014).

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 traditionally a product of tribal politics and economics.¹⁰⁸ 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 or renew tribal ties.¹⁰⁹ Another traditional form of forced marriage increasingly seen across Iraq permits women and girls to be married off as *diyya*, or blood money.¹¹⁰ 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.¹¹¹ As outsiders forced to bear the burden of the sins of their birth families, women in these marriages are extremely susceptible to abuse.¹¹² 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* gender-based violence, section I, above).¹¹³

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.¹¹⁴ The most relevant is found in the nation's Personal Status Law, which holds that forced marriage is a crime punishable by up to three years imprisonment.¹¹⁵ However, forced marriages are not addressed in courts unless a woman files a complaint, whereby she must prove that she was subjected to coercion.¹¹⁶ Because 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.¹¹⁷ 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.¹¹⁸ Left with few legal or cultural options, many women and girls forced into undesired

¹⁰⁸ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 38-39.

¹⁰⁹ 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.”)

¹¹⁰ 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>.

¹¹¹ 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#>.

¹¹² Barwari, Dlovan Barwari, *Iraqi Women Victimized by Tribal Marriage Customs*.

¹¹³ 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).

¹¹⁴ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 38

¹¹⁵ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 39 (referencing Article 9 of the law).

¹¹⁶ Iraq Article 427 Penal Code 1969.

¹¹⁷ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 36.

¹¹⁸ 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).

marriages turn to suicide.¹¹⁹ In a telling cultural appraisal, their suicide does less to dishonor their families than declining the marriage.¹²⁰

B. Temporary Marriages 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.¹²¹ 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,"¹²² and a *hilah*, or loophole, for men to have sex outside of traditional marriage.¹²³

Despite having its share of defenders,¹²⁴ 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.¹²⁵ The lack of legal recognition or regulation for these marriages leaves women vulnerable to exploitation in various forms of GBV, trafficking¹²⁶ and possible criminal charges for prostitution.¹²⁷

C. Under-Aged Marriages 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.¹²⁸ 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;¹²⁹ and by 2013 the Ministry reported the figure had become 11%.¹³⁰ The same

¹¹⁹ Human Rights Council, *The threat of ISIL and the situation of Women in Iraq* at 3.

¹²⁰ Dlovan Barwari, *Iraqi Women Victimized by Tribal Marriage Customs* (September 12 2013).

¹²¹ 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).

¹²² United Nations 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>

¹²³ 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>

¹²⁴ 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>

¹²⁵ 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>, (though children born from these marriages do have a right of inheritance from their father).

¹²⁶ U.S. Department of State, *Trafficking in Persons Report 2014 – Iraq* (June 2014).

¹²⁷ United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) - Integrated Regional Information Networks (IRIN), *IRAQ: Women's groups blast 'temporary' marriages*.

¹²⁸ Wassim Bassem, *In Iraq, Honor Crimes Spread to Cities* (October 11, 2013).

¹²⁹ World Health Organization, *Republic of Iraq – Iraq Family Health Survey Report IFHS 2006/2007*. 18.

¹³⁰ World Health Organization, *Republic of Iraq – Iraq Family Health Survey Report IFHS 2006/2007*. 18.

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.¹³¹

These figures persist despite the fact that Iraq's current Personal Status Law sets the legal age for marriage at 18 for all Iraqis.¹³² 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.¹³³ These marriages are conducted according to religious custom and are not legally recognized under Iraqi law.¹³⁴ 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 to 12 months and a small fine.¹³⁵ 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.¹³⁶

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.¹³⁷ These expectations also force girls to abandon their education to the detriment of their social, psychological and intellectual development.¹³⁸ 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.¹³⁹ Underage marriages are not only in violation of Article 10(1) of the Covenant, but also jeopardize the right of women and girls to education, further undermining their personal, social and economic development.

Many underage marriages also end in divorce, leaving girls subject to intense social stigma, harassment and very susceptible to being forced into another marriage.¹⁴⁰ 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.¹⁴¹ Children born to illegally married underage brides are typically denied birth

¹³¹ 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>

¹³² 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.

¹³³ 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.

¹³⁴ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 39 n. 967.

¹³⁵ See Government of Iraq, Law No. 188 of the Year 1959: Personal Status Law and Amendments.

¹³⁶ See Government of Iraq, Law No. 188 of the Year 1959: Personal Status Law and Amendments.

¹³⁷ See UNFPA, *Marrying Too Young: End Child Marriage*, 11 (2012), available at <http://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf>, ("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.")

¹³⁸ UNICEF, *Early Marriage: Child Spouses*, Innocenti Digest, No. 7, 11-12 (2001), available at <http://www.unicef-irc.org/publications/pdf/digest7e.pdf>.

¹³⁹ UNICEF, *Early Marriage: Child Spouses* at 11-12.

¹⁴⁰ United Nations High Commissioner for Refugees (UNHCR), *Global Appeal 2014-2015 – Iraq* at 4, available at: <http://www.unhcr.org/528a0a2c8.html>

¹⁴¹ 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/hertum.pdf>.

certificates and civil identification cards, preventing access to basic state services, assistance and education.¹⁴²

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.¹⁴³ 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.¹⁴⁴ In fact, underage brides are twice as likely to die in childbirth as are women in their twenties.¹⁴⁵

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 9 years old and would legalize marital rape by stating that a husband is entitled to have sex with his wife regardless of her consent.¹⁴⁶ 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.¹⁴⁷

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, per State party obligations under articles 2, 3, and 10 of the Covenant, 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. Prioritizing the allocation of adequate funding, proper administration and enforcement of the provision in Article 9 of the Personal Status Law which criminalizes coercion and punishes the coercive parties in illicit forced marriages;
 - b. Repealing 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;

¹⁴² UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, 3.

¹⁴³ 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>.

¹⁴⁴ Aleksandra Perczynska and Daniel Coyle, *Child Marriage as a Health Issue - Nepal Case Study* 1-3.

¹⁴⁵ U.N. Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights, *Preventing and eliminating child, early and forced marriage at 9*, UN Doc. A/HRC/26/22, (April 2, 2014).

¹⁴⁶ MADRE, OWFI, IWHR 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.

¹⁴⁷ UNAMI, *Report on Human Rights in Iraq: July-December 2013* at 13 (June 2014).

- c. Repealing the provision in Article 9 of the Personal Status Code which permanently quashes legal challenges to forced marriages once the marriage has been consummated;
 - d. Enacting 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; and
 - e. Permanently withdrawing the proposed Jaafari personal status law, which would legalize marriage to children as young as 9 years old;
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 take all appropriate measures to prioritize the allocation of adequate funding, proper administration and enforcement of existing and future legislation regarding marriage regulations, including but not limited to national educational and advocacy campaigns;
5. The Government of Iraq should take all appropriate measures, including legislation, to ensure girls' healthy social, psychological and intellectual development by ensuring that, even where they are licitly married, girls' access to education is sustained by extending compulsory attendance to include secondary education, with special consideration towards enforcing girls' compulsory school attendance against parents and spouses;
6. The Government of Iraq should take all appropriate measures to discourage the practice of temporary marriage, particularly by prioritizing the allocation of adequate funding, and proper administration of non-penal alternatives such as diversionary programs designed to address financial, sociological and psychosocial issues driving women's participation in the practice;
7. The Government of Iraq should take all appropriate measures to prioritize the allocation of adequate funding, proper administration, and effective implementation of existing legislative entities which have been held out by the Government as examples of mechanisms created to protect the rights of women and girls, such as the Ministry of Labour and Social Affairs' Child Welfare Commission and the ministerial Committee on the Prevention of Violence Against Women;
8. The Government of Iraq should ensure that, where licitly married, the State ensures girls' free participation in recreational and creative activities, and their right to rest, leisure, and play, pursuant to Articles 2 and 31(1) of the Convention on the Rights of the Child (CRC/G/CG/17), necessarily limiting the volume and intensity of their labor in the home;

9. 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 Observations (CEDAW/C/IRQ/4-6 ¶ 26(a)).

IV. ARTICLES 2, 3, 11 & 12: SEXUAL SLAVERY AND SEX TRAFFICKING-IMPUNITY, LACK OF REDRESS FOR VICTIMS, AND CRIMINALIZATION OF VICTIMS ARE PERVASIVE IN IRAQ DUE TO DISCRIMINATORY NORMS AND A LACK OF APPROPRIATE RESOURCES AND MEASURES TO ADDRESS TRAFFICKING

Article 2 obligates States to take necessary measures to progressively achieve the full realization of all economic, social and cultural rights of individuals without discrimination of any kind as to race, sex, ethnicity, and religion or other status. Article 3 also requires that State parties ensure all substantive rights in the ICESCR are protected equally for both men and women.¹⁴⁸ Article 11 of the Covenant, recognizes individuals’ right to an adequate standard of living, including adequate food, clothing and housing, and moreover compels States to undertake measures to continuously improve living conditions for all. State parties are also obliged to realize the right of everyone to the highest attainable standard of physical and mental health under Article 12 of the Covenant.

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.”¹⁴⁹

Criminalizing victims of trafficking may violate their right to be free from cruel, inhuman or degrading treatment under Article 7 of the Covenant,¹⁵⁰ which protects people from acts generally committed by a public official—which includes police, judges, and district attorneys—that causes severe pain or suffering (for “cruel [and] inhuman . . . treatment”) or is aimed at humiliating the victim (for “degrading treatment”).¹⁵¹ While sex work is not always a result of

¹⁴⁸ International Covenant on Economic, Social and Cultural Rights, Art. 3 (“The States parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”)

¹⁴⁹ U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, art. 9(4), Nov. 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.

¹⁵⁰ 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.”)

¹⁵¹ See, e.g., Manfred Nowak, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment: Civil and Political Rights, Including Questions of Torture and Detention* (62nd Sess.), ¶ 37, U.N. Doc. E/CN.4/2006/6 (2005).

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, CEDAW called on Iraq to decriminalize prostitution, ensure women in the sex trade are not punished, and provide them with livelihood opportunities to leave prostitution.¹⁵²

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".¹⁵³ 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,¹⁵⁴ 2) criminalize perpetrators¹⁵⁵ 3) provide physical and psychological care, including medical care, counseling, safe houses and shelters to victims,¹⁵⁶ 4) refrain from criminalizing and detaining victims of trafficking,¹⁵⁷ 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.¹⁵⁸

A. Lack of Adequate Measures to Prevent Human Trafficking and Sexual Exploitation, Protect Vulnerable Populations, Prosecute Perpetrators, Provide Services to Victims, and Refrain from Criminalizing and Detaining Victims

The U.S. Department of State reports that Iraq is 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.¹⁵⁹

¹⁵² 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), (10 Mar., 2014).

¹⁵³ 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.

¹⁵⁴ Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, 106-112, U.N. Doc. HR/PUB/10/2 (2010).

¹⁵⁵ Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, 185, U.N. Doc. HR/PUB/10/2 (2010).

¹⁵⁶ Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, 149, U.N. Doc. HR/PUB/10/2 (2010).

¹⁵⁷ Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, 131-136, U.N. Doc. HR/PUB/10/2 (2010), ("The Trafficking Principles and Guidelines are explicit on the point that the detention of victims of trafficking is inappropriate.")

¹⁵⁸ Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, 228, U.N. Doc. HR/PUB/10/2 (2010).

¹⁵⁹ 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,¹⁶⁰ 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.¹⁶¹ 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 as of 2014.¹⁶² In 2012, Iraq passed the Trafficking in Persons Act No. 28. However, legislation implementing and operationalizing the bill had yet to pass as of 2014.¹⁶³

In Iraq, victims of trafficking are arrested, incarcerated, fined, deported, or otherwise penalized for acts committed as a direct result of being trafficked.¹⁶⁴ 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.¹⁶⁵ Trafficking victims languish in jail, often on prostitution charges, while perpetrators go free.¹⁶⁶ 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 via an arranged marriage, just as they had sold her older twin sisters.¹⁶⁷ When she told a friend in the police force to raid her home and the nearby brothel, police arrested her, and she spent the next two years in prison, despite not having been charged with any crime.¹⁶⁸

In addition to criminalizing victims instead of pursuing trafficking cases, the Government 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 for a permanent shelter in 2012, but in 2013 did not begin construction on it.¹⁶⁹ In 2014, CEDAW noted that establishment of one government shelter in Baghdad for victims.¹⁷⁰ Even with adequate staffing and resources, this one shelter would be woefully insufficient to provide for all of the women and girls who need assistance. To meet the need, women's grassroots groups continue to provide desperately needed shelter, despite

¹⁶⁰ 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>.

¹⁶¹ 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.)

¹⁶² U.S. Department of State, *Trafficking in Persons Report 2014 – Iraq*, 212 (June 2014).

¹⁶³ 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).

¹⁶⁴ 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.

¹⁶⁵ Human Rights Watch, *At A Crossroads; Human Rights in Iraq Eight Years after the US-Led Invasion*, 15-16.

¹⁶⁶ Human Rights Watch, *At A Crossroads; Human Rights in Iraq Eight Years after the US-Led Invasion* 14 (February 2011), available at <http://www.hrw.org/sites/default/files/reports/iraq0211W.pdf>.

¹⁶⁷ 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>.

¹⁶⁸ Rania Abouzeid, *Iraq's Unspeakable Crime: Mother's Pimping Out Their Daughters*.

¹⁶⁹ U.S. Department of State, *Trafficking in Persons Report 2013 – Iraq*, 212 (June 2014), available at <http://www.state.gov/documents/organization/226846.pdf>.

¹⁷⁰ 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).

prohibition on NGO-run shelters in Central and Southern Iraq.¹⁷¹ These organizations, providing needed medical and shelter services to many, face the threat of prosecution and are unprotected in the face of threats by violent extremists.¹⁷²

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.¹⁷³ Within the last year, an Iraqi women's organization organized an "Anti-Trafficking Coalition" to meet and discuss methods to document instances of trafficking and push for legal reform.¹⁷⁴ 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.¹⁷⁵ 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.¹⁷⁶ As of yet, they have received no official response to these suggestions.

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 Yezidi and Christian people may have been forced into sexual slavery by that point, and that Turkoman and Shabak women and children were abducted and raped as well. 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. Interviews with escaped Yezidi women and girls included more details about human rights violations, including multiple instances of forced "temporary marriages."

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 slavery. 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" Yezidi women and girls from the Muslim world.

¹⁷¹ Interview with representatives of three local Iraqi women's organizations, Jan. 2014, (on file with authors); UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at 38.

¹⁷² U.S. Department of State, *Trafficking in Persons Report 2013 – Iraq*, 212 (June 2014), available at <http://www.state.gov/documents/organization/226846.pdf>; Presentation, Iraqi Women organization activist, *Women Under ISIS Conference*, March 2015 (notes on file with authors) ("We don't want to be working as outlaws and we have such a terrible need for [shelters].")

¹⁷³ U.S. Department of State, *Trafficking in Persons Report 2013 – Iraq*, 212 (June 2014), available at <http://www.state.gov/documents/organization/226846.pdf>.

¹⁷⁴ Interview with Iraqi Women organization activist, New York, NY, March 2015 (on file with authors).

¹⁷⁵ Interview with Iraqi Women organization activist, New York, NY, March 2015 (on file with authors).

¹⁷⁶ Interview with Iraqi Women organization activist, New York, NY, March 2015 (on file with authors) (notably, one particular suggestion involved getting women's medical and social support covered by social insurance coverage).

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. 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. ISIL fighters have raped girls as young as six years old. 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.

Women and girls who have escaped from ISIL have reportedly received little to 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. 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 for over five days. After recovering, she was taken back by ISIL and forcibly married to an ISIL soldier.
- In a displacement camp near Dohuk, women's human rights advocates met with five Yezidi women who had escaped from ISIL. One interviewee, a 15 year-old young woman, kept smiling. When asked why, she responded that she had been hurt so bad she had lost the ability to feel pain or hurt. 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.
- In Mosul, a young woman reported attempting suicide with her sister while in ISIL captivity: "The man who was holding us said that either we marry him and his brother or he would sell us. 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. Two girls who were held with us woke up and stopped us and then stayed awake to watch over us. When they fell asleep at 5am we tried again, and again they woke up and stopped us."
- 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. 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.”

- In Adnaani, a woman told human rights investigators that while 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, 15 and 18, were taken into a back room and “married” (forcibly raped). The emir and another Imam stood outside the room laughing while the girls inside were screaming.

Recommendations to the Government of Iraq:

1. The Government of Iraq must stop arresting, detaining, and criminalizing women and girls for acts of prostitution related to their status as victims of trafficking or sexual exploitation.
2. In accordance with CEDAW’s 2014 Concluding Observations, ¶ 32(a)-(e), the Government of Iraq must 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.¹⁷⁷
3. In accordance with the CRC’s 2015 Concluding Observations, ¶ 85(a)-(d), the Government of Iraq must 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.¹⁷⁸
4. In accordance with the Office of the High Commissioner on Human Rights’ *Recommended Principles and Guidelines on Human Rights and Human Trafficking* –

¹⁷⁷ CEDAW, *Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶ 32, U.N. Doc. CEDAW/C/IRQ/CO/4-6 (March 2014).

¹⁷⁸ 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,¹⁷⁹ 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,¹⁸⁰ the Government of Iraq should partner with the Anti-Trafficking Coalition composed of 37 women’s civil society organizations in Iraq and consider the Coalition’s proposed resolution for documentation and prosecution of human trafficking, and provision of services to victims.¹⁸¹
6. The Government of Iraq should 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. It should begin funding and constructing safe spaces and shelters for women and girls fleeing violence.
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*,¹⁸² 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.¹⁸³
9. The international community, in conjunction and consultation with Iraqi grassroots women’s civil society organizations, must 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 refugees; lifting migration barriers for Iraqi refugees; and helping to eliminate poverty in Iraq in part by contributing to the restoration of its economic infrastructure.¹⁸⁴

¹⁷⁹ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, HR/PUB/10/2.

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

¹⁸¹ Interview with Iraqi Women organization activist, New York, NY, March 2015 (on file with authors).

¹⁸² OHCHR, *Report on the Human Rights Situation in Iraq*, U.N. Doc. A/HRC/28/18 (March 2015).

¹⁸³ OHCHR, *Report on the Human Rights Situation in Iraq* at ¶ 76, U.N. Doc. A/HRC/28/18 (March 20).

¹⁸⁴ 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), Nov. 15, 2000, 2237 U.N.T.S. 319 (Iraq acceded to the Protocol on February 9, 2009).

V. ARTICLES 15: THE IRAQI GOVERNMENT’S RAIDS AND CLOSURE OF SEVERAL INDEPENDENT RADIO STATIONS THAT ADVOCATED FOR PEACE, TOLERANCE, AND EQUALITY IN THE IRAQI SOCIETY.

Article 15 of the Covenant recognizes the right of all individuals to participate in cultural life, and benefit from creative activity. In explanation, the Special Rapporteur in the field of Cultural Rights, Farida Shaheed, describes cultural rights as “the rights of each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their worldview and the meanings they assign to their existence and development, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life.”¹⁸⁵

Importantly, in its preamble, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions recognizes that the diversity of cultural expressions is integral to enabling individuals to express and share their ideas and values with others.¹⁸⁶ Furthermore, Article 2 states that “[C]ultural diversity can be protected and promoted only if human rights and fundamental freedom, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed.”¹⁸⁷

Therefore, in view of this principle, the Special Rapporteur in the field of Cultural Rights verifies growing global concerns regarding policies and regulations that restrict and silence cultural expression and artistic freedoms, and confirms the potentially adverse impact of States’ monitoring and censorship of electronic and print media, radio and television broadcasting on cultural and artistic freedoms.¹⁸⁸ Furthermore, she asserts that such restrictive measures most often ensue political, religious, cultural, moral or economic interests, or a combination of them.¹⁸⁹

A. Iraqi Government’s Crack Down on Media Networks

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.¹⁹⁰

¹⁸⁵ United Nations, General Assembly, *Report of the Special Rapporteur in the Field of Cultural Rights*, ¶ 1-8, U.N. Doc. A/HRC/23/34 (March 14, 2013).

¹⁸⁶ United Nations Educational, Scientific and Cultural Organization, *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, October 20, 2005, available at http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹⁸⁷ *Id.* at Article 2(1)

¹⁸⁸ United Nations, General Assembly, *Report of the Special Rapporteur in the Field of Cultural Rights*, ¶ 1, U.N. Doc. A/69/286 (August 8, 2014).

¹⁸⁹ *Id.* in Summary

¹⁹⁰ Human Rights Watch, Iraq; Cancel Revocations of TV Station Licenses: Licenses Suspended Amid Rising Death Toll, Civil War Fears, (Apr. 13, 2013), available at <http://www.hrw.org/news/2013/04/30/iraq-cancel-revocations-tv-station-licenses>

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 combating 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.¹⁹¹

One provision instructed the media 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." 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. 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.¹⁹²

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.¹⁹³ 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."¹⁹⁴

However, as mentioned above, many of the closed radio stations, including Al-Mousawaat Radio Stations, 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

(The government-controlled Communications and Media Commission (CMC) is the primary body responsible for regulating broadcast media.). *Id.*

¹⁹¹ Freedom House, *Freedom of the Press 2015 - Iraq*, (Aug. 2015), available at: <http://www.refworld.org/docid/55dad73a11.html>

¹⁹² Freedom House, *Freedom of the Press 2015 - Iraq*, (Aug. 2015), available at: <http://www.refworld.org/docid/55dad73a11.html>

¹⁹³ Human Rights Watch, *World Report 2014: Iraq* (2014), available at: <https://www.hrw.org/world-report/2014/country-chapters/iraq>

¹⁹⁴ Freedom House, *Freedom of the Press 2015 - Iraq*, 21 August 2015, available at: <http://www.refworld.org/docid/55dad73a11.html>

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,¹⁹⁵ while Government and political parties influenced, funded¹⁹⁶, or outright controlled media means are still broadcasting freely, without threats, harassment or interruption.¹⁹⁷

Finally, the closures were unlawful. An Iraqi senior official has admitted that the suspensions are not in compliance with the law.¹⁹⁸ However, the CMC continues to refuse to renew the licenses or issue additional frequencies for the radio stations that were unlawfully shut down.

Recommendations to the Government of Iraq

1. 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 immediately reverse the license suspensions for and issue additional frequencies to allow them to continue broadcasting.

¹⁹⁵ 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, (Jan. 31, 2014), available at: <http://www.pfaaiq.com/?part=47&id=20>

¹⁹⁶ Freedom House, *Freedom of the Press 2015 - Iraq*, 21 August 2015, available at: <http://www.refworld.org/docid/55dad73a11.html>

¹⁹⁷ 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>

¹⁹⁸ See Human Rights Watch Press Statement, <http://www.hrw.org/news/2013/04/30/iraq-cancel-revocations-tv-station-licenses>