

## VIOLÊNCIA SEXUAL EM CONFLITO ARMADO, COMO EXEMPLO DE CRIMES DO ISIS

### *SEXUAL VIOLENCE IN ARMED CONFLICT, AS AN EXAMPLE OF ISIS CRIMES*

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#### RESUMO

**Objetivo:** Este estudo visa analisar criticamente as complexidades legais que envolvem a violência sexual em zonas de conflito, com um enfoque específico no Iraque e na Síria, países que não são signatários do Estatuto de Roma do Tribunal Penal Internacional.

**Método:** Por meio de uma análise legal comparativa, o estudo examina a discrepância entre os crimes delineados no Estatuto de Roma e as leis domésticas do Iraque e da Síria, como o Código Penal Iraquiano de 1969. Investiga como essas disparidades afetam a acusação e a caracterização dos crimes de violência sexual cometidos em conflitos armados.

**Resultados:** Os achados destacam uma lacuna significativa no arcabouço legal, mostrando que as leis domésticas do Iraque e da Síria não criminalizam adequadamente atos de violência sexual conforme delineado no Estatuto de Roma. Esta lacuna legal representa desafios na persecução penal dos perpetradores e na entrega de justiça às vítimas. Além disso, o estudo revela as práticas atuais e limitações dentro do sistema judiciário iraquiano no tratamento desses crimes.

**Contribuições:** O estudo contribui para a compreensão dos desafios legais na persecução da violência sexual em zonas de conflito, especialmente em países não signatários do Estatuto de Roma. Oferece percepções sobre as reformas legais necessárias e a cooperação internacional para preencher a lacuna entre os padrões internacionais e as leis nacionais. A pesquisa também fornece recomendações valiosas para a adaptação dos sistemas judiciários a fim de abordar e penalizar de forma mais efetiva esses crimes hediondos, avançando assim a luta global contra a violência sexual em conflitos armados.

**Palavras-chave:** Violência sexual, crimes de organizações terroristas do ISIS, crimes internacionais.



## ABSTRACT

**Objective:** This study aims to critically analyze the legal complexities surrounding sexual violence in conflict zones, with a specific focus on Iraq and Syria, countries not party to the Rome Statute of the International Criminal Court.

**Method:** Through a comparative legal analysis, the study examines the discrepancy between the crimes outlined in the Rome Statute and the domestic laws of Iraq and Syria, such as the Iraqi Penal Code of 1969. It investigates how these disparities affect the prosecution and characterization of sexual violence crimes committed in armed conflicts.

**Results:** The findings highlight a significant gap in the legal framework, showing that the domestic laws of Iraq and Syria do not adequately criminalize acts of sexual violence as outlined in the Rome Statute. This legal gap poses challenges in prosecuting perpetrators and delivering justice to victims. Additionally, the study uncovers the current practices and limitations within the Iraqi judicial system in addressing these crimes.

**Contributions:** The study contributes to the understanding of the legal challenges in prosecuting sexual violence in conflict zones, particularly in non-Rome Statute countries. It offers insights into the necessary legal reforms and international cooperation needed to bridge the gap between international standards and national laws. The research also provides valuable recommendations for adapting judicial systems to more effectively address and penalize these heinous crimes, thereby advancing the global fight against sexual violence in armed conflicts.

**Keywords:** Sexual violence, ISIS terrorist organization crimes, international crimes.

## 1 INTRODUCTION

Sexual violence constitutes a blatant violation of the principles of international humanitarian law when committed during international or non-international armed conflicts. Under such circumstances, all commitment is evident in the provisions of the Geneva Conventions and their two Additional Protocols. Sexual violence is a terrifying tactic of war condemned for undermining international security and peace. In addition to the severe suffering experienced by victims, including guilt, shame, disgrace, and fear of retaliation, it also deeply affects families and communities. Sexual violence during armed conflicts has occurred throughout history and across continents (Prokhorova, 2022), persisting widely in contemporary conflicts. Upon examining the rules of international humanitarian law, specifically the Third Geneva Convention of



1949 concerning the protection of war prisoners, provisions addressing the protection of women during captivity and transit from such violations are evident. Additionally, Article 27 of the Fourth Convention prohibits rape and any form of sexual assault, providing special protection for women. The same principle is reiterated in Article 76, paragraph 1, of the First Additional Protocol, emphasizing the need to respect women, especially against rape, coercion into prostitution, and any form of indecent treatment. The Second Additional Protocol, in Article 4, paragraph 2(h), further prohibits acts such as rape, coercion into prostitution, and any acts that violate personal dignity.

## 2 METHODS

This study relied on a comparison between the rules of international criminal law and the position of the current Iraqi Penal Code and the Anti-Terrorism Law in explaining the legal compatibility of crimes of sexual violence committed by the terrorist organization ISIS. Will be divided into two sections. The first section will delve into sexual violence and violations that have occurred in Iraq. The second section will focus on the legal adaptation of sexual violence crimes amidst armed conflicts and the extent to which existing legislation in Iraq aligns with this adaptation.

## 3 RESULTS

1. Iraqi criminal laws lack definitions for crimes of sexual violence and gender-based violence against women and girls in times of conflict, their prevention, punishment, and comprehensive treatment. They also lack legal texts addressing international crimes, including genocide, crimes against humanity, and war crimes, except as stated in the statute of the Supreme Criminal Court.
2. Currently applicable Iraqi laws, some of which date back fifty years, such as the Penal Code enacted in 1969, have not been amended to align their texts with new forms and manifestations of crimes, including international crimes.
3. The Iraqi judicial system's attempt to address these gaps in the legal system by applying the Terrorism Law No. 13 of 2005, which is in effect for crimes committed by members of this organization, and the Yazidi Survivors Law No. 8 of 2021 and its instructions No. 4 of 2021.



## 4 DISCUSSION

### Section One: Violations by ISIS in Iraq

The conflicts in Iraq had severe economic and social repercussions for Iraqi women. However, the most alarming impact was the sexual violence inflicted upon women and girls, including abduction, rape, imprisonment, human trafficking, and forced marriage. These atrocities resulted in a loss of security and immense suffering due to the grave violations. Additionally, many of these women and girls were deprived of assistance from their families, exacerbating their struggles as they lacked the necessary resources for self-sufficiency. The weak law enforcement prevalent in most areas under the control of these terrorist organizations allowed perpetrators to escape punishment, further discouraging survivors from reporting the violence committed against them. In June 2014, ISIS invaded northern Iraq. Since then, the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have issued six reports on the protection of civilians amid the conflict in Iraq. These reports documented violations and breaches that affected men, women, and children of various ethnic and religious minorities, including Christians, Yazidis, Kakais, Sabaeans, Shabaks, Shia Arabs, and Turkmen. The violations included heinous acts such as abduction, rape, and other forms of sexual violence perpetrated by ISIS against these vulnerable groups. The impact of these violations extended beyond immediate physical harm, causing profound psychological and societal consequences. The absence of effective law enforcement in regions controlled by these terrorist groups facilitated the escape of perpetrators and hindered survivors from reporting the committed violence. The gravity of these crimes necessitates a comprehensive legal response to hold the perpetrators accountable and provide justice to the survivors (Nations & Mission, 2015). These communities were systematically targeted and subjected to persecution by ISIS as part of an ongoing policy aimed at the suppression and expulsion. The finality or destruction of many of these communities in the areas controlled by ISIS (Houge, 2016). Among the most prominent forms of violations documented by the commission were various types of violence, including killings, physical and psychological harm, and sexual violence.



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## 5 CONCLUSION

Thus, the 2020 Constitutional Amendments laid the constitutional and doctrinal foundations of lawmaking and further developed the Russian legislation. Without undergoing any fundamental changes, these grounds become more complicated, establishing new institutions (the preliminary constitutional control of laws adopted by the federal and regional parliaments, etc.) and introducing new terms (public authority, etc.). The digital technologies that have developed in recent decades have a decisive impact on Russian lawmaking and legislation. It refers to new aspects of lawmaking and legislative activity. It is necessary to dwell on the adopted constitutional innovations and improve the concept of Russian lawmaking in connection with the development of digital technologies.

### **Title: First Section - Direct Instances of Violence Perpetrated by ISIS**

"ISIS has targeted the Yazidi community and other minorities in particular, expressing its desire to completely or partially destroy them." (Captured & Controlled, 2017). Translated to English, your statement says:

"Since the beginning of August 2016, sources have estimated that the number of Yazidi casualties at the hands of ISIS since August 3, 2014, ranges between 2,000 and 5,500 people (Nations et al., 2019). According to the Ministry of Endowments and Religious Affairs, Yazidi Affairs Department, between August 3, 2014, and July 2, 2017, ISIS abducted approximately 6,417 individuals from the Yazidi community (3,547 women and 2,870 men). In early July, reports indicated that 3,048 individuals (1,092 women, 334 men, 819 girls, and 803 boys) had managed to escape from ISIS captivity. At the same time, around 3,369 individuals from the Yazidi community remained in ISIS captivity, including 1,636 women and girls, and 1,733 men and boys (Captured & Controlled, 2017). The violence inflicted on these minorities has manifested in the following ways:

Firstly, brutal and degrading treatment: Women and girls under the control of ISIS, especially those belonging to the Yazidi community or other minorities, have been subjected to various forms of violations and breaches related to international human rights law and international humanitarian law. This includes forced displacement, abduction, loss of freedom, enslavement, cruel and inhumane treatment, and coercion



to abandon their religions and embrace another faith ((UNHC), 2016).

Secondly, sexual violence: Women, girls, men, and children in those villages and cities have been subjected to various forms of sexual violence, including rape, sexual slavery, and trafficking, as well as other forms of sexual violence mentioned earlier. However, the impact of armed conflict on women and girls has been different from others, as it has exacerbated their vulnerability, hindered their access to essential humanitarian services, and led to the neglect of their specific needs ((UNHC), 2016). Despite all the efforts made, ensuring proper care and protection for these individuals has posed a significant challenge for many governmental entities and humanitarian organizations.

### **The second demand - indirect images of violence committed by ISIS**

In addition to what has been mentioned, there are scattered reports indicating that civilians in areas subjected to ISIS attacks have faced other forms of violence, including:

#### **Firstly, harassment by armed groups fighting against ISIS.**

Some international reports have shown that individuals believed to support or have been affiliated with ISIS may face retaliatory attacks and, in some cases, punishment. There have been reports of retaliatory operations purportedly committed against members of families suspected of providing support to ISIS (Captured & Controlled, 2017). The situation has exposed women and children, in particular, to the risk of discrimination, marginalization, and physical harm.

#### **Secondly, the escalation of domestic violence has been exacerbated by internal displacement due to the armed conflict in Iraq**

leading to an increased risk of sexual violence crimes within displaced communities (Carter Center, 2015). Experiences of women have shown that gender-based violence occurs both within and outside armed conflicts, indicating a continuity and a relationship between the two. The World Health Organization estimates that globally, 35% of women have experienced some form of sexual or physical violence (Captured & Controlled, 2017). The who and what of this violence continues to vary, leading to diverse types of sexual and gender-based crimes (Violence, n.d.). And an



increase in the rates of violence against women in post-conflict societies (Iraq, 2017). The common factors between both contexts must be acknowledged. What is certain is that the social, political and economic system in Iraq before the conflict with ISIS gangs occurred is not a gender-neutral system, and the possibility of the outbreak of political violence and the common gender dynamics within it is a reality on the ground.

### **Third - Children born to individuals belonging to ISIS gangs**

The Office of the United Nations High Commissioner for Human Rights has announced since December 2016 that there are approximately 800 children whose births were registered by ISIS members in the areas under its control. Documents issued by ISIS are generally not accepted by the Government of Iraq or the Kurdistan Regional Government. In areas under ISIS control, they had no documents at all. To obtain a new birth certificate, the parents are required to provide proof of marital status, and two witnesses to confirm the birth of the child. In such cases, the father is often unknown or has a false name, or the pregnancies have occurred as a result of rape or any other form of sexual violence (García-Moreno et al., 2013). This is what prompted some women to abandon their children because of the stigma that afflicts them and their families if they continue to hold on to their children.

### **The second section - the legal description of crimes of sexual violence during armed conflicts.**

The international legal system has evolved towards focusing on protecting women from acts of sexual violence with the entry into force of the First and Second Optional Protocols to the four Geneva Conventions in 1977. The First Protocol, which applies to international armed conflicts, and the Second Protocol, which applies to non-international armed conflicts, affirmed the prohibition of Criminalizing attacks on people's lives, health, and physical and mental integrity, especially murder and torture, as well as violations of personal dignity (Guimarães, Severo & Dorion, 2022), especially humiliating and degrading treatment, rape, forced prostitution, and everything that might offend modesty. It should be noted that non-international armed conflicts are characterized using sexual violence. As a type of method used in such wars and conflicts, this type of violence has become a deadly method and approach that is used



by the parties in this type of conflict, knowingly, blindly, and often at the urging of the leaders of those conflicting parties.

### **The first requirement - the position of international law on crimes of sexual violence in armed conflicts**

Sexual violence as an international crime often amounts to a grave violation of international humanitarian law. Accordingly, several opinions have been put forward regarding the legal characterization of crimes of sexual violence in armed conflicts. However, these opinions have been summarized, which is to consider it a crime of torture, a war crime, or a crime against humanity. Finally, it has been Describing it as a crime of genocide.

#### **First - adapting the crime of sexual violence as a crime of torture**

The fact that most human rights conventions do not contain a specific prohibition of sexual violence does not mean that they do not prohibit rape and other forms of sexual violence. However, the International Convention for the Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment constitutes a strong basis for always prohibiting all forms of sexual violence (Territory, 2018). This is because rape always causes suffering and severe pain, and moreover, it is always committed intentionally. It may have a specific purpose, such as obtaining information or for any other reason (Manjoo & McRaith, 2011). It always aims to coerce the victim, and it can be noted that the last element of coercion is inherent in situations of armed conflict (Captured & Controlled, 2017). The Convention against Torture also stipulates that torture is committed with the direct participation, to one degree or another, of an official. However, this does not mean that torture, if committed by an ordinary individual, does not raise questions about human rights. States are obligated to protect individuals from torture by private individuals (Melzer, 2017). The Special Rapporteur on torture had already noted in 1986 that sexual abuse was one of the various methods of physical torture (Bassiouni, 1997). The case law of human rights bodies provides several concrete examples in which sexual violence has been considered to amount to torture and other cruel, inhuman or degrading treatment or punishment. Rape has often been considered torture, for example, in the case of its circumstances occurred in Peru. The Inter-American Commission on Human Rights considered that the rape by a Peruvian





soldier of a woman suspected of belonging to a subversive group - whose husband had been kidnapped by the Peruvian army - amounting to torture according to the Inter-American Convention to Prevent and Punish Torture, because it was committed intentionally by an official. In order to punish her personally and intimidate her, it is interesting that the Commission relied, among other things, on international humanitarian law in support of its argument that: Current international law requires that sexual abuse committed by members of the security forces, whether as a result of a deliberate practice encouraged by the State or as a result of the State's failure to prevent The occurrence of this crime constitutes a violation of the human rights of the victims, especially the right to physical and mental integrity (Gaggioli, 2014).

The European Court of Human Rights concluded in the case (Aydin) v. Turkey on September 25, 1997, which related to the rape of a 17-year-old girl, who was detained by security forces on suspicion of her or her family members collaborating with members of the Kurdistan Workers' Party. That rape (and other forms of ill-treatment that accompanied it: the plaintiff was blindfolded, beaten, stripped, placed in a car tire, and sprayed with high-pressure water) for the purpose of obtaining information amounts to torture (RIGHTS, 2003). Also, the case law of the international criminal tribunals for the former Yugoslavia (Evans, 2017), Rwanda has also confirmed that rape amounts to torture (Wilson, 2000).

### **Second: Classifying the crime of sexual violence as a war crime.**

The classification of the crime of sexual violence as a war crime was addressed for the first time in the International Criminal Tribunal for the Former Yugoslavia in its ruling in the "Selebići" case, stating that there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international humanitarian law. The court considered that rape constitutes an assault of a sexual nature committed against a person in circumstances characterized by coercion. As for the International Criminal Tribunal for Rwanda, it also addressed, in the case of the Attorney General against (John Paul Akayesu), the systematic rape and sexual violence inflicted on Tutsi women, and this is not only on the basis of Paragraph (g) of Article 4, which relates to war crimes. No consideration These acts may constitute torture that affects a person's dignity and physical, mental and health integrity (Knox, 2017).

Article Eight of the Statute of the Permanent International Criminal Court



stipulates war crimes, which have been classified into four groups. The first group includes grave violations of the four Geneva Conventions of 1949, and the second group includes other grave violations of the laws and customs of war applied to international armed conflicts. The third group dealt with grave violations of Article 3 common to the Geneva Conventions of 1949. As for the last group, it dealt with grave violations of the laws and customs of war applied in non-international conflicts. Rape and sexual crimes stipulated in Paragraph (2b) were included, which It concerns grave violations of the laws and customs of war applied in international armed conflicts, and within paragraph (2.e.6) regarding grave violations of the laws and customs of war applied in non-international armed conflicts. These acts are war crimes if they meet the conditions included in the opening paragraph of Article 8, which stipulates that these crimes be committed within the framework of a general plan or policy, or within the framework of a large-scale attack operation (Jassim, 2020). Therefore, these violations must fall within the framework of a plan or policy drawn up by senior leaders or officials who are lower in rank than them, in order to achieve specific goals, such as expelling people and urging them to abandon their homes, or obtaining information from them, or taking revenge on them or others, etc. That's one of the purposes.

### **Third: Adapting the crime of sexual violence as a crime against humanity.**

Not long ago, sexual violence was considered merely an assault on a woman's honor, which led to a reduction in the seriousness of the criminal act compared to other international crimes, as it was often not punished internationally or nationally. However, the grave violations that occurred in the modern era in particular In both Yugoslavia and Rwanda (Nasira, 2013), Likewise, before that, the crimes committed during World War II by the Nazis made crimes of sexual violence against women during international and non-international armed conflicts considered a crime against humanity. This was confirmed by the Court of the Former Yugoslavia in the Tadic case, stating that "the crimes Against humanity does not require connection with an international armed conflict that has now become an established norm of customary international law." (Shraga & Zacklin, 1994). While the Rwandan Court stipulated that the crime of sexual violence be committed within the framework of a planned plan to exterminate the Tutsi community and destroy it completely or partially, and that the perpetrator be aware of the attack and that the attack be planned and targeted, as lack



of knowledge and ignorance of the attack may absolve the perpetrator of responsibility. Violence Sexual acts practiced against women are based on discrimination because they belong to a distinct sect or ethnicity, and with the intention of eliminating a large number of these women as a form of humiliation and insult to their religion (Abdelkader, 2007).

As for the International Criminal Court Law, the introduction to Article Seven stipulates the following: "For the purpose of this Statute, any of the following acts constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any group of the civilian population with knowledge of the attack: ". The text does not require that these crimes be linked to war crimes or crimes against peace, nor does it matter from the perspective of this paragraph whether there is a conflict or not, or whether its nature is international or internal.

The magnitude and extent of the practice of sexual violence by armed groups constitutes a humiliating violation of the human dignity of women. These acts also entail a great danger that threatens humanity, and their danger lies in their repetition and occurrence on a wide scale.

#### **Fourth: Adapting the crime of sexual violence as a crime of genocide.**

Sexual violence may amount to an act of genocide if it is committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, and thus rape and other forms of sexual violence may fall into different categories of acts of genocide (Al-Tijani, 2008). In particular (inflicting serious physical or mental harm on members of the group) and (deliberately subjecting the group to living conditions intended to bring about its actual destruction in whole or in part) or (imposing measures aimed at preventing births within the group (United New Book House, Beirut, 2003). (The most famous case in which sexual crimes were considered acts of genocide is the Akayesu case (Scharf, 2008). Jean-Paul Akayesu, the mayor of Taba in Rwanda from April 1993 to June 1994, was convicted of crimes against humanity and acts of genocide, especially since he knew that members of the Interahamu group had regularly committed acts Rape and other forms of sexual violence against Tutsi girls and women, and that he ordered, instigated, aided and encouraged these acts to occur, and did nothing to prevent them (Statute, 1993). The court found what confirms the truth and according to what has settled in its conscience that they constitute genocide in the same way as any other criminal act as long as it was committed with the specific intention of



completely or partially destroying a specific group targeted in this way (Arsanjani, 1999).

The accused members of the Bosnian Serb Army and Serb forces were also convicted of genocide for regularly raping, torturing and enslaving Muslim women and girls (Lippman, 2017). They kept them in a state of slavery in the context of and in furtherance of the ethnic cleansing of the Foca region (Al-Abad, 2016) .

As for the International Criminal Court system, it is inferred from Article 6 related to genocide that it includes some forms of sexual violence in Paragraph (B) by saying: "Causing serious physical or psychological harm to members of the group," and Paragraph (D) by saying: "Imposing measures aimed at preventing birth within community (Salem, 2010).

In order for the charge of genocide to be met, it is necessary to prove that the victims were not targeted individually, but rather that they were chosen primarily based on the group to which they belong, whether these acts were committed by the same person who committed the crime or by other persons affiliated with him.

### **"The Second Demand - The Iraqi Law and Judiciary's Position on ISIS Sexual Violence Crimes.**

The legal characterization of the ongoing conflict in Iraq with the ISIS organization is significant in understanding the jurisdiction of international criminal justice and the challenges faced by national legal systems in prosecuting individuals for crimes such as sexual violence .As well as, the stance of Iraqi law and the judiciary regarding individuals who commit crimes, including sexual violence, within the context of the conflict with ISIS needs to be examined. National legal systems are considered the primary entities responsible for prosecuting individuals for these crimes. The Iraqi legal framework, however, may face challenges in adequately addressing and defining sexual violence crimes in accordance with international criminal law standards .However, the absence of a clear legal framework defining and addressing sexual violence crimes in accordance with international criminal law in Iraq poses a challenge. Furthermore, the lack of jurisdiction by international courts over Iraqi territory complicates efforts to hold perpetrators accountable for such crimes at the international level.

### **Firstly, the legal description of the conflict in Iraq with ISIS**

The conflict involving elements of the ISIS organization differs from previous conflicts involving Al-Qaeda, Al-Qaeda consisted of scattered, geographically



independent cells carrying out terrorist attacks sporadically over time and space. These attacks, while acts of terror, did not easily fit the legal definition of armed conflict. In contrast, ISIS operates with a more organized structure, exhibiting effective control over a significant geographic area, engaging in continuous military operations against opposing forces, and deploying heavy weaponry and air power. This indicates that the armed confrontation with ISIS meets the criteria for a non-international armed conflict under international law.

In conclusion, the ongoing conflict in Iraq with ISIS is legally characterized as a non-international armed conflict, meeting the criteria set by international law. However, the absence of a clear legal framework for addressing sexual violence crimes and the limited jurisdiction of international courts over Iraqi territory highlight the need for national legal systems to address and prosecute individuals for such crimes within the framework of international legal standards (Morsi, 2010). And what confirms this direction is the report of the international team tasked with documenting the violations of human rights by the ISIS organization. The team visited Iraq based on an authorization from the United Nations Human Rights Council according to its resolution (1/22/S). In its report, this international team classified the confrontation with the terrorist organization ISIS as an armed conflict of a non-international character, in which ISIS and the terrorist groups supporting it are considered parties. And the government security forces, the army, and the supporting entities represent the other party (Ishraqiyeh, 2016).

"The crimes committed by the ISIS organization have varied, including deliberate killings, genocide, rape, forced displacement of populations, and others, categorizing these actions under the concept of international crime. These crimes span between genocide, crimes against humanity, and war crimes, as indicated by United Nations Security Council Resolution 2379 on September 21, 2017, which addresses the classification of ISIS crimes in Iraq (Madi et al., 2018).

"However, this ongoing armed conflict against the ISIS organization in Iraq and Syria ultimately leads to a result indicating that it is a non-international armed conflict involving international elements, yet with a prevailing internal character. It is subject to Common Article 3 of the Geneva Conventions. Those captured by government forces do not benefit from the treatment accorded to prisoners of war but are instead referred to the competent national courts for prosecution for the crimes they have committed. All



of this indicates that this armed conflict is subject to Iraqi national laws, and therefore, it is unequivocally under Iraqi national sovereignty and the jurisdiction of Iraqi courts and judiciary."

Secondly, Iraqi law and judiciary concerning sexual violence crimes

The sexual violence crimes outlined in Iraqi law differ significantly from the international legal framework in attributing the characteristics mentioned in the previously mentioned international criminal courts. These crimes are considered domestic offenses subject to the provisions of Iraqi Penal Code No. 111 of 1969, as amended (Iraqi Local Government Law Library, 1969). Therefore, these crimes, in terms of elements, legal description, and penalties, do not fall under the provisions and legal texts of international law. Thus, their establishment or proof does not require adherence to the common elements of international crimes mentioned earlier.

In the context of armed conflicts, as mentioned earlier, Iraq is not a member of the Rome Statute establishing the International Criminal Court. Consequently, the crimes defined by the Rome Statute are not criminalized under Iraqi law as they are in international law. Additionally, Iraq has not accepted the jurisdiction of the International Criminal Court under the current situation, according to Article 12, paragraph 3, of the Rome Statute. This adds complexity, and the Iraqi criminal legal system and the judiciary have not remained silent regarding such crimes. The Iraqi penal system is characterized by efficiency in addressing issues of impunity, compensating victims, and reforming the judicial system to ensure neutrality, independence, and the guarantee of access to justice for all individuals.

For example, the Criminal Court of Nineveh convicted the accused (H. K. S.) under Article 4/1 of the Anti-Terrorism Law No. 13 of 2005. He was found guilty of raping a 14-year-old Yazidi girl for three months and then selling her in the slave market to the terrorist known as Abu Omar for a sum of two hundred US dollars. The court issued a death sentence by hanging (Council & States, 2017). Additionally, the Iraqi judiciary has taken necessary steps to conduct a confidential and comprehensive investigation into human rights violations that occurred under the control of ISIS elements in Iraqi territories, especially the International Joint Team to Determine the Facts, based on United Nations Security Council Resolution (2379) of the year 2017. The judicial system in Iraq is considered one that enjoys independence and non-subordination, and the effective Iraqi laws include legal provisions that facilitate access to justice for individuals



without any obstacles (Adain, 2022). Even though it may differ in legal descriptions and classifications from what is present under international law, the Central Criminal Court specialized in terrorism cases sentenced the accused (L. M. Q) to death. This judgment was based on Article 4/1 and in accordance with the implications of Article 2/3 of the Anti-Terrorism Law, sentencing her to death for offering her daughters for sexual jihad with members of the terrorist organization ISIS (Nations, 2015). Thus, the Iraqi judicial system has relied on local courts and applied the Iraqi Anti-Terrorism Law No. 13 of 2005 to prosecute ISIS members accused of sexual violence crimes. This has been done despite objections raised by some international organizations. Many judgments have been issued regarding perpetrators of sexual violence crimes based on the provisions of this law (UnWomen, 2019).

"Ensuring individual criminal accountability for those who committed or contributed to sexual violence and other forms of violence against women and children by the terrorist organization ISIS is of utmost importance. This is especially crucial given the existing loopholes in the current legal frameworks within the criminal justice system, which may be inadequate at times in ensuring appropriate respect for women and children who have experienced sexual violence and other forms of violence. Providing suitable protection for them is essential (Shakti, 2007). This necessitates legislative and institutional changes to facilitate access to justice, care for survivors, and ensure their protection. These changes are crucial for ensuring appropriate accountability and reparative measures. This led to the enactment of the Yazidi Survivors Law No. 8 of 2021, through which the criminal justice system in Iraq sought to compensate survivors of sexual violence crimes committed by ISIS since August 3, 2014. The law also aims to rehabilitate and provide necessary care for the survivors by creating opportunities for employment, education, and offering medical and psychological support. "We also find that Article 7/1 of this law stipulates that the crimes committed by the ISIS organization against the Yazidis and other components (Turkmen, Shabak, and Christians) are considered genocide and crimes against humanity. This means that this law did not recognize the crimes committed by this organization as war crimes. Additionally, Article 9 of this law explicitly states that perpetrators of these crimes are not included in any general or special amnesty, and that crimes involving abduction and sexual violence cannot be dropped under any circumstances. The state is obligated to provide protection for witnesses and victims (The Genocide Network, 2017).



However, in our opinion, all of this is not sufficient on its own. The Iraqi legal system is almost devoid of provisions specifically addressing accountability for sexual violence associated with conflicts. There is a lack of legal adaptation for such crimes (Survivors et al., 2021). Furthermore, there is insufficient enforcement of the law at the national level to ensure the judicial pursuit and prosecution of those involved in the most dangerous crimes committed by the ISIS organization, except for what is mentioned in the previously referenced Counter-Terrorism Law. Even though perpetrators of these crimes are prosecuted under this law, which stipulates the punishment of death or life imprisonment, most of them are tried on charges of belonging to ISIS without highlighting the heinous nature of the committed acts, particularly those related to sexual violence. This is even though sexual violence is the most prominent and egregious crime, violating the rights of the victims of these crimes. The application of the effective Counter-Terrorism Law, through Iraqi judicial practices, has ensured the imposition of the harshest penalties on the perpetrators of these crimes (Organisations et al., 2021). However, it is unable to highlight the gravity and heinous nature of the acts committed by members of these armed groups through acts of sexual violence characterized by the utmost cruelty and vileness. This makes them the most severe and atrocious crimes in terms of magnitude committed in the present era. Therefore, describing them solely as terrorist crimes does not give these crimes their true size and danger. This leads us to consider the opinion that classifies these crimes legally as war crimes, crimes against humanity, or genocide. Moreover, the current Iraqi Penal Code does not provide a definition for these crimes (genocide, crimes against humanity, war crimes) in a general manner (Iraqi Supreme, 2005). As it lacks deterrent and preventive measures to confront such crimes committed against women and girls from all components, especially in the context of armed conflicts. It is the duty of the state, in accordance with existing laws and basic international treaties related to human rights that Iraq has joined, to ensure access to justice and compensation for all victims and survivors of these violations. It is also necessary to commit to holding perpetrators of these crimes accountable through trials conducted before independent and impartial courts in accordance with the law and fair trial standards. Furthermore, the state must ensure that all procedures are carried out in a way that considers gender differences, so as not to continue undermining women and girls who have been subjected to these crimes or to repeat such attacks on them or cause them harm.





## 5 CONCLUSION

1. Develop mechanisms to facilitate women and children's access to justice, and adopt a legislative framework to grant local courts jurisdiction over international crimes.

2. Address the social stigma associated with survivors of gender-based violence, considering its destructive impact on individuals and societies accompanying sexual violence crimes.

3. Develop appropriate policies to ensure the respect and protection of women and children in all these measures and facilitate these procedures. The state should respect and protect women by aiding and support to pregnant women and girls in full recognition of their reproductive rights and by providing services to help them make informed choices, especially victims of sexual violence.

4. Conduct proceedings in the best interest of women or children as the highest priority, ensuring the provision of services, support for livelihood needs, compensation for survivors, and children born because of rape.

5. Ensure accountability for perpetrators of sexual violence through individual criminal accountability for individuals who committed or contributed to sexual violence and other forms of violence against women and children during the dominance of the ISIS organization in Iraq and Syria.

6. Develop specialized training programs for judges, prosecutors, and law enforcement officers on international human rights law, international humanitarian law, criminal law, forensic medicine methodology, and the investigation of sexual violence crimes."

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