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THE APPLIED STATE OF VIOLATION OF WOMEN'S RIGHTS IN ARMED CONFLICTS: YAZIDI WOMEN DURING THE ISIS WAR IN IRAQ

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Abstract: *On 3 August 2014, fighters from the Islamic State in Iraq and al-Sham (ISIS) attacked the Yazidi minority of Sinjar in Kurdistan-Iraq. The Yazidi community was the main target of ISIS fighters, including Yazidi women. The ISIS group has committed violence against Yazidi women in several ways. This study aims to show the crimes committed by the group ISIS against Yazidi women and to highlight the problem of violence against women in war through recent living examples, such as women in the ISIS war between 2014-2017. The second part of this study identifies the legal deficiencies related to the regulations that guarantee the protection of women's rights in Iraq. Through a content analysis approach, qualitative methodologies are used. Also, based on a thematic analysis of semi-structured interviews, this paper found that the Yazidi women and girls have been subjected to the most heinous crimes involving international crimes. Furthermore, despite various legal provisions in Iraqi laws and the constitution relating to protecting women's rights, these laws have several legal deficiencies. The Iraqi legal authority has not attempted to guarantee sufficient protection for women's rights in armed conflicts.*

Keywords: *Violation; Women's Rights; Armed Conflict; Yazidi Women; ISIS; Legal Protection*

INTRODUCTION

Women have suffered the most from armed conflicts (ACs) (Zhianpour *et al.* 2015). During armed conflict, women face the same receding tide and movement that are violations of international humanitarian law (IHL) as a whole: torture, summary executions, arbitrary arrests, forced transfer, hostage-taking, threats, and intimidation. Sexual violations such as rape, forced prostitution, sexual slavery, and forced vaccinations must be prohibited for these women and all women (Bennoune 2007). This paper aims to discuss the violation of women's rights in ACs by using a new and conspicuous example. This paper focuses on women from the Yazidi minority during Iraq's (ISIS) war from 2014 to 2017.

Furthermore, the paper, through data analysis, provides an answer to the legal deficiencies of the Iraqi legal framework for protecting women's rights in the context of Yazidi

women in Iraq. The first part of this study empirically discusses the major violations committed by ISIS fighters against Yazidi women. Then, by focusing on the Yazidi women victims of the ISIS war, this study assesses Iraqi laws and regulations related to protecting or reducing violations of women's rights in war and ACs. However, despite various laws and several attempts to protect women's rights in Iraq, there is still a lack of legal protection and security for women. Additionally, these laws have several legal deficiencies that protect women's rights in Iraq. This is a serious concern, particularly in Iraq, which is always prone to war and armed conflict. Thus, to discuss these issues, the current study attempts to answer the following research questions:

(RQ1): What are the main violations committed against Yazidi women and girls by the fighters of the terrorist group ISIS?

(RQ2): What are the legal deficiencies in the Iraqi legal framework for protecting women's rights in the context of Yazidi women in Iraq?

METHODOLOGY

This current research is socio-legal in nature and qualitative in approach. In legal research, the doctrinal methodology is the method for answering research questions. However, Socio-legal research is an investigation into the legal principles and rules and their application to people (Aynalem 2009). Based on the framework of this study, the researcher aims to combine doctrinal and empirical research methodologies (referred to as socio-legal research methodology). However, the socio-legal approach combines the conventional legal approach with an empirical investigation of some of the problems and questions of social nature (Yaqin 2007a). In addition, the findings will be based on human experience, which is one of the leading causes why qualitative studies are considered beneficial over quantitative studies (Maxwell 2008). Thus, this research meets these conditions by studying the situation of women's rights in Iraq. Also, the study examines the rules and principles of Iraqi local laws governing the protection of Iraqi women's rights in ACs. Based on the established research objectives, it can be inferred that a qualitative study is suitable for executing the proposed study because it allows women's rights violation issues to be examined in-depth and in detail.

DATA COLLECTION METHOD

Due to the nature of the study, both primary and secondary data collection methods are used to conduct this study. Primary data, in this case, were collected using interviews, which has the advantage of allowing the researcher to have significant control of the research process (Bengtsson 2016). Secondary data sources encompass published data in journals, articles, and books (Bogdan and Biklen 2006). Also, a semi-structured interview was used (Yaqin 2007b). Therefore, the responses of the respondents involved in this by grouped according to the themes of the research. Face-to-face interviews were held with two groups. The first group is four Iraqi legal experts. This study uses their responses to examine the adequacy of the Iraqi legal framework for protecting women's rights in ACs. The second group is eight Yazidi women survivors to emphasize the reality of violation against women by taking Yazidi women suffering. The main reason for selecting a semi-structured interview is that it always comes in a written

form (Yaqin 2007b). Also, a semi-structured interview encourages the interviewer to prepare in advance and guide the conduct of the interview. Secondary data would be beneficial by supporting the established findings, identifying trends, and creating points of argument.

However, this study analyses the interview data produced from the transcript thematically. It is worth noting that thematic analysis is the most common method of study in qualitative research (Greg *et al.* 2014). Mainly, the study relies on the Yazidi refugee camp in Duhok, North Iraq. As a result of the Covid-19 pandemic and the long distance between the researcher and interviewers, the interviews were held online (via Zoom meeting) in coordination with the Public Aid Organization (PAO).[1] The location of the interviews is the PAO office at the Yazidi campus in Dohuk-Iraq.

Meanwhile, the study collected qualitative data from four respondents. The respondents are coded R1, R2, R3, and R4, respectively. The study coded these respondents to protect their privacy (Creswell 2014). This is in line with Creswell's idea that the researcher can code respond enters by giving them aliases or pseudonyms (Frost *et al.* 2010). Table 1 shows the group of legal respondents of this study.

Table 1: Table of Respondents (Source: Authors' compilation)

Respondent	Current Place of Work	Rank/Specialization	Date of Interview
Respondent No.1 (R1)	Kurdistan Parliament, Erbil, Iraq.	Yazidi women legal expert. Current Member of Kurdistan parliament.	3 January 2022
Respondent No.2 (R2)	Iraqi Federal Parliament, Baghdad, Iraq.	Yazidi women legal expert. Current member of the Iraqi federal Parliament. Ph.D. holder in international law and politics area. She is a Yezidi women activist who has a vast role in the Iraqi Parliament in advancing the case of the Yazidi genocide.	6 January 2022
Respondent No.3 (R3)	Kurdistan regional government (KRG). Erbil, Iraq/Salahaddin University, College of Law and Political Science.	Assistant professor in law with a particular interest in international law and women's rights. Ministry of Parliamentary Affairs.	28 December 2021
Respondent No.4 (R4)	Lebanese French University-Erbil Kurdistan-Iraq.	Assistant lecturer- master of human rights law.	12 February 2022

Regarding Yazidi women's privacy, this study does not provide the women's specific names and addresses, similar to the other group. However, the women respondents are coded as Yazidi women survivors 1 to 8, as reported in Table 2.

[1]For more information see: https://www.pao-iq.org

Table 2: Yazidi Women Respondents (Source: Authors' compilation)

Respondents	Age	Single	Married	Date of Interview
Yazidi women survivor N1	33		✓	23 December 2021
Yazidi women survivor N2	40		✓	23 December 2021
Yazidi women survivor N3	48		✓	23 December 2021
Yazidi women survivor N4	61		✓	23 December 2021
Yazidi women survivor N5	54		✓	23 December 2021
Yazidi women survivor N6	32	✓		23 December 2021
Yazidi women survivor N7	20	✓		23 December 2021
Yazidi women survivor N8	18	✓		23 December 2021

THE YAZIDI MINORITY: IDENTITY AND RELIGION

The Yazidis (Êzidî) are a Kurdish religious minority living in Kurdistan, the north of Iraq (Allison 2017). They adhere to Yezidism, a non-Abrahamic religion conveyed orally. That shares common characteristics with Christianity, Islam, and other monotheistic religions (Allison 2017). According to the resources and calculations, the Yazidis are estimated at around 700.000 people now (Alfahham 2020), 12% of the Kurdistan Region population (Omer 2016). UN entities and non-governmental organizations have documented ISIS's breaches of human rights against the Yazidis. For example, on 3 August 2014, ISIS assaulted Yazidis in a small settlement near Mount Sinjar. However, ISIS had been actively targeting the Yazidi minority group since the commencement of the attack.

Approximately 50,000 Yazidis escaped to Sinjar Valley, where ISIS terrorists kidnapped and held them. The Office of the High Commissioner for Human Rights highlighted human rights breaches against ethnic and religious communities targeted by ISIS, particularly the Yazidis, in March 2015. According to the Commissioner, there is a "clear pattern of attacks on the community, whose identity is based on religious belief." According to the Commissioner, if verified, the conduct would amount to genocide, war crimes, and crimes against humanity. According to the Human Rights Council report (they came to destroy), in 2016, ISIS committed war crimes against over 3,200 Yazidi women and girls, including rape, sexual abuse, sexual enslavement, forced marriage, death, and forced pregnancy (Human Rights Council 2016).

VIOLATIONS OF YAZIDI WOMEN'S RIGHTS BY ISIS

In Article 1 of the UN Declaration on the Elimination of Violence against Women, the term 'violence against women' (VAW) is defined as: "Any act of gender-based violence that results in or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life" (United Nations General Assembly 1993, 2).

The violation of women's rights occurs before, during, and after armed wars (Davis 2016). ISIS began targeting ethnic and religious minority groups and other Muslims who differed from

their view of Islam. This happened in 2014, shortly after taking over a substantial chunk of Sunni-dominated Iraq. In the town of Sinjar, this included a considerable number of Yazidis.

Any Yazidi who refused to convert to Islam was executed. In addition, Yazidi women were taken as 'jihadi brides' by ISIS. Among other atrocities, ISIS captured thousands of women and girls and sold many of them into sexual slavery. Over 40,000 Yazidis were displaced due to these atrocities, and hundreds of thousands of women and children were killed. UNHCR decelerated that by March 2015, 500,000 Yazidis had been displaced, primarily from Sinjar District, with the vast majority fleeing to the Kurdistan Region of Iraq (KR-I), mainly Dohuk Governorate (United Nations High Commissioner for Refugees 2019). In response to a query on the causes of violence against Yazidi women is related to religious differences and background or the reason they are women, Respondent No.1 (R1) of this study on the issue goes as follows:

> Indeed, the women and the entire Yezidi community were exposed to violence. Men and children were also subjected to violence, men were subjected to psychological and physical violence, and children were used as human shields and trained in violence, killing and blowing themselves up and entering into battles and brainwashing them. In Sinjar, where there were all sorts of religious and denominational diversity, no other women were kidnapped, only the Yazidi women, which is clear evidence. The goal of ISIS was to erase the Yazidi religion, rape and enslave the women of the Yazidi community, sell them in slave markets, and violate their dignity.

Additionally, the R2 gave her answer to the same question above in the following words:

> Captivity, kidnapping, and rape of Yezidi women were carried out for religious reasons and following religious rulings. Because they regarded women as among the conquests' spoils, they imagined awful chapters of history represented by invasions, massacres, and enslavement. Women, unfortunately, suffered greatly and were always passive rather than active.

According to article 7 of the Rome Statute (1998), ISIS committed "inhumane acts of a similar character intentionally causing great suffering or serious injury to body or mental or physical health" (p. 3). In addition, the Yazidi women survivor in this study who were interviewed has shared responses to the question of what the ISIS war left behind. For example, the survivor-woman N7 lived in the Yazidi campus in Duhok with six people from her family; she said:

> Let my face appear, let my name come out; what should I be ashamed of? And be ashamed of my pain? Let every one in every corner of the world hear the story of the tragedy and the endless suffering of Yezidi women. What we, as Yezidi women, have seen is an awful experience. All inhumane treatment has been done against us. Anything I can talk about is easy to say. You can't feel me because you haven't had an authentic experience. I am now like a lifeless body that wishes for death every day. ISIS took everything from me, family, hope, dignity, girlhood, and finally, life.

Meanwhile, the survivor-woman N8 expressed her feelings as follows:

> ISIS came on a summer night and destroyed everything, our homes and lives, our dear people, and our lives would never be the same as before. When I was a child, I didn't feel so much pain. But, as I grow older, I feel what I have lost as a girl, committing violence against women in every way. They did not have any human emotion; as a child at that time, I have been bought and sold many times.

Also, the 54-year-old surviving woman N5, who lived with a part of her family, said: "We were not guilty. We were only Yezidis. Our homes were destroyed, and I lived happily with my husband and children. ISIS destroyed everything. God will not accept the injustice we were perpetuated".

Women's violations can be used as a deliberate and systematic tool in genocide and ethnic cleansing. Groups like ISIS justify violence using specific gender norms that intersect with perceptions and prejudices toward particular religious or ethnic groups (United Nations General Assembly 2017), and this was confirmed by R2, who said: "ISIS did not come to kill women and girls, but to utilize them as spoils of war, as things to be sold cheaply or given away for free as a systematic tool against the Yazidi religious minority. Their cruelty was not only petty. They had one goal: to destroy the Yazidi identity by force".

To back up R2's assertion, according to the report from the UN in 2016, the violence varied 'based on the gender and age of the victims' although the entire community was targeted. Furthermore, these genocide-related acts of cruelty were carried out based on ISIS' interpretation of gender roles within extreme religious ideologies, in which men were considered leaders or combatants and women as 'spoils of war'.[2] The R1 shared almost similar kinds of violations above; R1 claimed: "Yazidi women were subjected to the most heinous crimes of enslavement, sexual slavery, torture and violation of their dignity by ISIS, and the kidnapped Yazidi women considered them as spoils of war". Furthermore, concerning crimes committed against Yazidi women, the European Parliament issued Resolution No. 2971, in which, in clause (A), they state that:

> ISIS has committed numerous atrocities, including crimes against humanity, mass killings, and executions ordered by self-appointed IS courts. Sexual violence against women and children, enslavement, rape, forced marriages, human trafficking, displacement, and abduction have caused a catastrophic humanitarian crisis and the displacement of large numbers of people from the areas under their control.

In regards to the form of violations conducted against Yazidi women, R3 claimed:

> ISIS has committed war crimes and crimes against humanity against Yazidi women. There is also evidence that ISIS has committed crimes against humanity, including murder, forcible deportation, imprisonment, torture, rape, sexual slavery, and other forms of sexual violence and persecution perpetrated by the group as part of a widespread and systematic attack against Yazidi community cruel treatment, torture, and extrajudicial killings, in addition to attacks directed against women,

[2]For more details see UN News, Global Perspective Human stories at: https://news.un.org/en/story/2016/06/532312-un-human-rights-panel-concludes-isil-committing-genocide-against-yazidis

> religious sites, and historic buildings, rape, and sexual slavery and sexual violence, child recruitment, and the displacement of the civilian population.

The explanation mentioned above has underlined that ISIS's violations against Yazidi women and girls included a variety of patterns of violation. In the following sections, three major violations against Yazidi women will be discussed in greater depth and detail below.

SEXUAL VIOLENCE, RAPE, AND TORTURE

Following the law on reparations for victims of conflict-sexual violence by the UN:

> Conflict-related sexual violence refers to incidents or patterns of sexual violence against women, men, girls, or boys occurring in a conflict or post-conflict setting that have direct or indirect links with the conflict itself or that occur in other situations of concern, such as in the context of political repression (Freizer 2016).

Sexual violence resulting from armed conflict can take many forms, including rape, forced pregnancy, forced sterilization, forced abortion, forced prostitution, sexual exploitation, trafficking, sexual enslavement, forced circumcision, castration, forced nudity, or any other form of sexual violence of comparable gravity. Depending on the circumstances, it could be deemed a war crime, a crime against humanity, genocide, torture, or other grave human rights abuses (Global Network of Women Peacebuilders 2020). UNICEF estimates that 120 million girls under the age of twenty have been forced into some form of sexual violence worldwide (Greaser 2018). For example, ISIS fighters systematically rape Yazidi women and girls as young as nine. There is evidence of such rapes from survivors who have undergone both physical and psychological wounds. To further the cruelty of ISIS's sexual crimes, the survivor women N1, N3 and N6, shared a similar view, they said:

> All forms of sexual violence have been committed against us, rape, buying and selling, sexual slavery, forced marriage, and many other Cruel deals. However, I will never forget that the group of women I was in, including girls aged only 9 and 10, were being sold, raped, and sexually harassed.

In March 2015, the Office of the High Commissioner for Human Rights (OHCHR) published a report on human rights violations committed by ISIS against ethnic and religious communities. The OHCHR report states that ISIS members have raped girls as young as six. Nonetheless, the young Yazidi females have been profoundly traumatized, with some victims alleging that ISIS members have raped them many times (OHCHR 2015). Although ISIS evaluated the prerequisites for the selection of Yazidi women according to their beauty, youth, and attractiveness of women, according to witnesses, older women were subjected to less sexual violence. Instead, they were enslaved and subjected to everyday affairs (Charpenel 2016).

This was confirmed by survivor-woman N5. She was 68 years old, a merciful and highly respected woman. She was called a mother by the researcher; she was crying and telling her painful story and said:

> Because I was older and not beautiful, ISIS fighters separated us from young women and older people who were given more hard daily work. Still, two of my daughters were subjected to forced rape and marriage, as well as buying and selling, which have still had a physical and psychological impact on them.

The surviving woman, N4, was 54 years old and lived with two sons in the Yazidi camp in Duhok-Iraq. Her husband and two daughters are still missing after the ISIS war, and according to her speeches, every day, she looks at the door desperately waiting for them to return. She shared a similar view:

> After our arrest by ISIS fighters, we were divided into groups. I was separated from my daughter and daughter-in-law because I was old and not young like the others, and they put me in groups of elders. For the benefit of the ISIS members' families, they enslaved us as hard workers, despite giving hard work, such as raising children of ISIS fighters and cleaning houses. In addition, most of the women of my age faced great punishment, such as murder, rape, and beatings.

Capturing Yazidi women and girls and torturing them has been a longstanding practice of ISIS, as mentioned above. Elderly Yazidi women, on the other hand, are deemed unfit for sexual servitude because they are incapable of bearing children and producing new generations of Jihadists, so they are just slain. Furthermore, a mass grave of Yazidi mothers and grandmothers was discovered after Sinjar was liberated, indicating that ISIS may be conducting genocide by killing older Yazidi women (Global Justice Center 2020).

SEXUAL SLAVERY

Sexual slavery is when the offender believes he owns the victim's body and thus has the right to do whatever he wants with it, including rape or other forms of sexual crime (Prasetya 2018). When ISIS declared its Caliphate on 29 June 2014, it stated that it would work to implement Sharia Law, which is the body of Islamic law. However, abducting 3000 Yazidi girls and women, legitimizing enslavement, and legislating enslavement were the most prominent principles that legitimized the caliphate members, known for unreasonable genocide, sexual desires, and sexual jihad. ISIS considers the Yazidi women and girls they capture spoils of war and systemically forces them into slavery (Greaser 2018). To achieve their purpose, ISIS established slave marketplaces known as 'Soq Al Sabay' (the market of slaves/spoils of war), where Yazidi women and girls were traded. To facilitate the viewing and selling of women and girls, a central body called the 'Committee for Buying and Selling of Slaves' was founded (Global Network of Women Peacebuilders 2020). Thus, R1 claimed that:

> ISIS did not stop at killing, burning, and burying the Yazidis from Sinjar in mass graves; thousands of people were captured. In addition, several Yazidi women and girls were taken as war captives and sold as 'slaves' in the slave markets. These markets were opened in Mosul, Fallujah, and the Syrian Raqqa. For this reason, dozens of women committed suicide differently to avoid being raped and sold as

> sexual slaves. This type of violence to which Yazidi women are subjected can be called all kinds of violence (psychological, physical, and sexual) with all its details.

According to reports, prices per woman increased from around USD 100 to USD 1,000. Some women and girls were resold eight times, sometimes for as little as a pack of cigarettes. Bride and sex slave pricing were determined by various factors, including age, physical maturity, marital status, perceived beauty, and the number of children; younger women were generally sold for more (Global Network of Women Peacebuilders 2020). Moreover, concerning the number of women who have been captured and victims of sexual slavery at the same time, there are numerous alternative estimations by Yazidi female members of the Iraqi Parliament who continue to work on the Yazidi women case in the Iraqi Parliament, including both of respondent's number 1 and number 2 of this study. For example, R2, in her statements, estimated as follows:

> Except for Yazidi women and children sold in slave markets due to religious disagreements, enslavement and slavery did not exist throughout Kurdish history. However, more than 5000 Yazidi women were deported to military camps and sold as slaves in Mosul's slave markets, where they were referred to as 'nonbelievers' or 'Sabia' (slaves).

In addition, after the ISIS war, most returnees experienced additional trauma upon realizing the living conditions in the IDP camps in which they have to live; the experience of the Yazidi community has left lifelong scars, trauma, and hostility. Nonetheless, it has had unforeseen consequences for gender relations within the community (Kaya 2019). As R1 mentioned:

> The situation of the Yazidi women survivors is very tragic. After their liberation, they returned to the camps that lacked the most necessities of living and faced many psychological difficulties, especially after what they had been subjected to from rape, buying and selling in slave markets, all of which made her injured double, in addition to losing her close relatives such as her sisters or her father, so when I met them, I feel that the world in its twenty-first century is more backward than its middle ages. Human rights are lost under the banner of revenge for God's rights, while God's rights are preserved, and human dignity is lost.

FORCED MARRIAGE

Forced marriage violates human rights, but under the Genocide Convention, it can also be used as a genocidal weapon. Forced marriage causes significant physical and emotional trauma, living conditions designed to kill the victim group, and birth control tactics (O'Sullivan 2011). Forced marriage is among the most prominent crimes against Yazidi women by ISIS jihadists. In certain circumstances, emirs order ISIS fighters to marry women or force them to marry Yazidi prisoners to avoid buying them (Counter Extremism Project 2017).

When asking about the type of violence that ISIS has committed against Yezidi women, specifically regarding forced marriages, the R2 has this to say:

> ISIS has executed hundreds of Muslim women and their relatives for refusing to marry ISIS fighters. ISIS has a brutal disregard for women within its territorial control. Firsthand accounts indicate that ISIS repeatedly abuses and mistreats women in its territory, enslaving and molesting non-Muslim women and girls and abusing and restricting the movements of Muslim women and girls. According to rulings issued by ISIS, all females within ISIS-held territory - slaves and non-slaves alike - can be married to ISIS militants as young as nine years old.

Because Yezidism is not a missionary religion, others cannot convert to Yezidism and join their faith. In Yazidi culture, marrying someone with different faiths is forbidden; such conduct is embarrassing to the entire family. Honor killings have been committed against women and girls suspected of having connections with men of different faiths in the past. As a result, all Yazidis should be Yazidis from birth. Yazidi spiritual leader Baba Sheikh asked Yazidi followers not to punish or ostracize victims of sexual violence, forced marriage, or forced conversion after the first Yazidi girls and women escaped ISIS captivity (Rovera 2014). Regarding Baba Sheikh's speech, R1 mentioned this: "The Yazidi survivors are in a very dire situation, suffer from a difficult psychological condition, and have not been properly rehabilitated. Some Yazidi women survivors have requested their families to kill them after being raped, forced to marry, and converted to Islam".

Although many women and girls have been abused, some data show that the stigma persists, with survivors hiding the abuse from their families and fearing severe social implications for the future of these women and children. As a result, ISIS's systematic rape, sexual slavery, and forced marriage of Yazidi women and girls may be considered genocide because they purposefully created living conditions designed to kill Yazidis (Global Justice Center 2020).

PROTECTION OF WOMEN'S RIGHTS WITHIN THE FRAMEWORK OF IRAQI LAWS AND CONSTITUTION

Iraq has an estimated population that exceeds 39 million. Women account for half of the population in Iraq and head one in ten Iraqi households (Vilardo and Bittar 2018). Yazidi women are considered Iraqi women and bearers of Iraqi identity. Regarding women's security in Iraq, it applies to all women, regardless of ethnicity or religious affiliation (Kaya 2019). Within the scope of Iraqi legislation, Iraqi constitutions and laws enshrine women's rights so that the Iraqi constitution advocates the protection of women's rights and gender equality.

However, some laws that punish or justify specific acts of violence against women are still in place. But the lack of specific guidelines to handle other forms of violence weakens Iraq's responsibility to protect women's rights. Furthermore, even though laws exist, crimes against women are seldom openly reported and are not prioritized in the court system, resulting in deficient levels of prosecution (Global Network of Women Peacebuilders 2020). R3 of this study on the issue goes as follows:

> Domestic and other forms of gender-based violence are common in Iraq, as is legal, political, institutional, and socioeconomic discrimination, as well as unequal access to education and work. This is the case even though Iraq has a strong and

> resilient women's rights movement led by women who continuously face losses and lack political support. Furthermore, discriminatory clauses in Iraq's constitution of 2005, Iraqi Personal Status Law, and Iraqi Penal Code further harm women's rights.

In regards to Iraq's constitution of the year 2005, for the first time in Iraq's history, the 2005 constitution guarantees fundamental rights to all Iraqi women.

Furthermore, in its preamble, the Iraqi constitution of 2005 stated the protection of women's rights and children's issues and the promotion of a diverse culture (Efrati 2012).

Despite the above provisions to protect women's rights in the Iraqi constitution, there are legal and political obstacles that Iraqi women face when they try to exercise their rights, as stated in the 2005 constitution. In that case, some potential constitutional pitfalls threaten to render all rights meaningless, such as vagueness and discrimination. The legal deficiency in protecting Iraqi women's rights in armed conflict and promoting sectarianism (Moumin 2007). Accordingly, in response to the question of whether there is a legal loophole in the Iraqi constitution that protects the rights of Iraqi women, therefore R3 has this to say:

> While Iraq's 2005 constitution provides citizens with a wide range of rights, including specific provisions protecting women from violence, it also contains many contradictory clauses that can detract from these rights, depending on how they are interpreted. Moreover, the constitution's provisions often conflict with existing legislation that still restricts women's rights in practice. However, the constitution includes provisions regarding equality and non-discrimination among Iraqis and the care of women and children. However, still, these provisions remain general and not applied in practice.

The vagueness of the Iraqi constitution is one of the obstacles in the articles referring to protecting women's rights. For example, Article 14 of the Constitution provides that: "Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status" (p. 7). This signifies that the constitution considered all members of Iraqi society, regardless of their distinctions, such as gender. This is evidence of equality before the law between men and women, yet it violates some sections in the current Iraqi Penal Code (111) of 1969. Furthermore, concerning political rights, Article 20 of Iraq's Constitution (2005) stipulates that: "Iraqi citizens, men, and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office" (p. 9). This article established equality between the sexes in terms of political rights, such as election and nomination. Also, under this provision, women enjoy the right to run for office and vote.

However, the interim constitution's provision for a 25% quota[3] for women's representation in all decision-making bodies was shifted from the Chapter on Duties and Rights

[3]The term 'quota' is a Latin American term intended for a share or quota. It was first used in the United States of America on the policy of compensation for the disadvantaged groups (black minority) in the sixties of the last century. See: Electoral Gender Quota Systems and their implementation in Europe (International Institute for Democracy and Electoral Assistance 2003).

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to the Chapter on Transitional Laws, which means that the quota might be abolished at any time in the future. Without the quota, which the women's movement has long desired, Iraqi women will find it extremely difficult to engage in politics due to male dominance (Efrati 2012).

Another obstacle to the Iraqi constitution is discrimination. For example, the constitution states in Article 2 that: "Islam is the official religion of the state and is a basic source of legislation" and "No law can be passed that contradicts the undisputed rules of Islam" (Iraq's Constitution 2005, 4). While talking about the article mentioned above and getting into the framework of protecting women's rights in the Iraqi federal constitution, R3 followed her remarks about the discrimination of the provisions and pointed out:

> The effect of these provisions is limited or likely to conflict with other provisions of the constitution, which led to discrimination, such as Article 2. At the same time, the same article states that legislation that contravenes democratic values or the constitution's rights and fundamental freedoms cannot be passed. Because it is unclear who has the power to interpret Islam, this article is problematic. Some clergy, for example, believe that husbands have the right to discipline their wives and that Islam does not mandate a minimum age for marriage, and hence oppose legislation criminalizing domestic abuse or child marriage. Furthermore, it is unclear what action should be taken if the provisions of Islam appear to conflict with the constitution's guaranteed rights and freedoms or vice versa. In practice, some laws align with constitutional rights and freedoms but are viewed as contradicting Islam or reflect Islamic jurisprudence but conflict with constitutional rights.

On the other hand, despite Iraq's legal commitments under international conventions and the Iraqi Constitution to achieve gender equality, the Iraqi Penal Code of 1969, which contains sections that overtly discriminate between men and women, remains in force. The Penal Code effectively excuses or legitimizes various forms of domestic violence against women. Furthermore, it allows perpetrators of heinous crimes against women, like 'honor' killings, to obtain reduced penalties (United Nations Development Programme 2018). Article 41 of the Penal Code states: "The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom" (Iraq Penal Code No. 111, 1969, 11). This article considers the punishment of a wife by her husband, within certain limits prescribed by law or by custom, to be a 'legal right' and, therefore, not a criminal act. This provision effectively legalizes domestic violence. Moreover, the boundaries of this 'punishment' are vaguely defined, potentially allowing for a wide range of violations of different severity (Puttick 2015). R3 provides more information on the legal deficiencies in the Iraqi penal code that affect women's rights in Iraq as:

> Regarding violations of women's rights under Iraqi criminal law, however, the legal deficiency is not only the lack of law or lack of implementation of articles but a part of that also a set of legal deficiencies, including gender inequality Violations of women's rights and the existence of violence have made the crimes committed by the woman to be more challenging to sentence. The woman will be a victim and pays double the price of the crime, and under some articles of the Iraqi penal

> code, gender inequality and violations of women's rights are seen despite the Iraqi Penal Code law's duty to punish the offender for their crime regardless of race, religion, or any other reason.

'Honor' killings remain widespread in Iraq due to a lack of legislation to prevent and punish them, as well as penal code clauses that all but encourage them by providing reduced sentences for murder in certain circumstances. In 2017, the Iraqi Ministry of Interior's Family and Child Protection Unit reported 272 'honor' crimes to the police and submitted them to the courts. However, due to a lack of reporting, figures on 'honor' killings are likely undercounted, and they are usually misclassified as accidents or suicides to avoid prosecution (United Nations Human Rights Committee 2020). Accordingly, Article 128 states that:

> First: 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 offense with honorable motives or in response to the severe and unjustified provocation of a victim of an offense is considered a mitigating excuse. Second: The court must identify in its decision the excuse that discharges a person from a penalty (Iraq's Penal Code No. 111, 1969, 34).

Furthermore, Article 128 specifies that if an offense is done based on 'honor' or in reaction to the victim's provocation, then it constitutes grounds for mitigation (Puttick 2015). Furthermore, according to Article 130, the corresponding penalty is considerably lowered when a mitigating excuse exists for an offense. The death penalty is reduced to a term of no less than one year in imprisonment, and a life sentence is reduced to a sentence of no less than six months in prison. These Penal Code sections provide legal justification for murder and other violent crimes against women on various grounds and allow perpetrators of such crimes to obtain significantly reduced terms (United Nations Human Rights Committee 2020).

With the rise of ISIS, the legal and cultural norms that enable 'honor' killings in Iraq have worsened the severe rates and varieties of gender-based violence against women and girls (Davis 2016). While responding to a question on the practical problems associated with Iraqi legal norms to protect Yazidi women's rights after the ISIS war in Iraq, R1 said:

> Many women victims are still at risk of 'honor' killings if they return home after the fight with ISIS due to the perceived 'dishonor' they bring to their families and communities. In general, crimes committed by ISIS fall under more than one legal sanction, yet the trial and punishment of ISIS criminals remain an outstanding issue. As legal experts from the Yazidi community, we are concerned about all these legal shortcomings in the Iraqi Penal Code. Regarding the discrimination in the legal articles that punish ISIS prisoners, the Iraqi government and the legislative and judicial authorities must deal transparently with the crimes committed by the terrorist organization ISIS without ignoring the changes in provisions.

Many Yazidi families are concerned that abducted women will be barred from marrying and unable to sustain themselves (Rovera 2014). As a result, numerous local women's rights

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organizations have begun to provide services to displaced people, including peer-to-peer education programs to identify sexual violence survivors and facilitate access to secure housing and psychosocial care. These same advocates also run educational outreach programs to dispel damaging stereotypes about women and honor (Davis 2016).

IRAQ'S REPARATION LAW FOR YAZIDI FEMALE SURVIVORS

On 1 March 2021, the Iraqi Parliament passed the Yazidi Survivors Law, which provides a compensation framework for many survivors of ISIS crimes, including women and girls who have been sexually abused, as well as child survivors who have been abducted before the age of 18 (Amnesty International Iraq 2021). The statute provides a monthly salary, a plot of land or dwelling unit, support for re-entering school, access to psychological and other health treatments, and other critical aid (Amnesty International Iraq 2021). About the Yazidi survivors, R2 and R4 pointed out:

> The Yazidi Survivors Law, which the Iraqi Parliament approved, would have been good for their justice. If the law is fully implemented, it may contribute to their reintegration, end some of their sufferings and give them material assistance to live with dignity, facilitate their affairs even a little, and support them psychologically by opening specialized rehabilitation centers and other things. The law has essential points, including opening a special directorate in the name of Yazidi survivors and an academic Yazidi runs it. The law also aims to (compensate survivors, rehabilitate and care for survivors, provide educational attainment opportunities, provide job opportunities, search for the kidnapped, provide a monthly stipend, tacit admission of genocide, and no general or special amnesty for perpetrators of crimes).

The Yazidi Female Survivors Law for 2021 is a good step toward material and spiritual compensation for women and girls victims of the ISIS war. Still, despite the Iraqi government's efforts, Iraqi legal experts have criticized the law, claiming that it contains many legal gaps and deficiencies that do not address the problems faced by Yazidi women survivors after the ISIS war (Bor 2019). In regards to legal deficiencies in the law R3 mentioned that:

> The law on Yazidi women survivors passed by the Iraqi Parliament is a tiny step in the hundreds of actions the Iraqi government has all three powers (legislative, executive, judicial) to take. The most crucial compensation to heal the wounds of women survivors of ISIS was to prosecute members of the terrorist group ISIS so they could be punished. This is one of the legal gaps in this law because punishing the perpetrators of ISIS is far ahead of compensating the Yazidi women victims.

Just as R3 pointed out above, one of the legal deficiencies in Iraq's reparation law for Yazidi female survivors is the lack of links to other Transitional Justice Mechanisms. Reparation programs should go hand in hand with criminal justice, institutional reform, and truth-seeking . The Iraqi government should have guaranteed justice at the domestic and international levels, which is the main compensation for Yazidi women victims of violence, such as the Iraqi authorities' attempt to establish a national court to try ISIS prisoners. The Iraqi government

should pay attention to internationalizing the Yazidis case and recognizing ISIS's atrocious crimes as crimes against humanity and war crimes (Bor 2019).

Another legal deficiency of this law is that children born as a result of sexual violence by IS members and their mothers' needs are not officially mentioned in the law. This is a critical omission that must be remedied to ensure that all Yezidi survivors receive justice because children born under ISIS captivity from a Yazidi mother and ISIS member face a lack of valid identity documents(Amnesty International Iraq 2021). As R4 said: "There are many legal barriers to obtaining documentation for children born due to ISIS rape and in ISIS territory in Iraq, which is very difficult and generally referred to as a significant barrier to parenting. It is also an obvious problem facing the Iraqi authorities at present".

Article 19 para 2 of Iraq's National Identity Card Law, No. 3 of 2016, which the Parliament passed on 27 October 2015, states that: "The name of the baby born is considered complete if it includes the person's abstract name, his father's age, the correct grandfather's name, and the surname if any" (p. 15). According to this National Identity Card Law article, a child born must follow the father's name. Unfortunately, reliance on this legal article creates a legal gap when most children born due to sexual violence on the ISIS father do not know precisely who their birth father is.

Furthermore, Article 26 para 2 of Iraqi National Identity Card Law 2016 indicates that: "children follow the religion of Islam from the Muslim parents" (p. 18). Therefore, the Yazidi community does not accept these children because only children born to two Yazidi parents can be considered to belong to the community. Thus, the Iraqi authorities must address the plight of these women and children by explicitly providing compensation for children born to sexual violence and taking all necessary measures to ensure that these women and children can live together safely. But this law has not addressed this issue, and it remains pending until this study is conducted. As the R4 of this study topped up his remarks as follows:

> Under current Iraqi standards, Yazidi women who have given birth due to rape by ISIS fighters must register their children as Muslim. Otherwise, their children are left undercounted, prohibiting them from registering for school and receiving other basic services. Previous draft versions of the law had articles seeking to address this issue, but these articles were removed from the draft of the bill due to a lack of consensus. As a result, a fundamental issue confronting the community remains unaddressed.

As R4 mentioned, the previous bill, through some articles, attempted to indicate the issue of children born from Yazidi mothers and ISIS militant members. For example, the bill mentioned such as: "The legal situation of children born of surviving mothers following the law" and that "the existing laws shall apply to the newborn of a Yazidi female survivor" (Ceasefire Centre for Civilian Rights 2021). However, due to a lack of consensus, this material was omitted from the final version.

FINDINGS

As expressed by Yazidi women survivors of ISIS, this study found that between 2014 to 2017, the ISIS terrorist group committed violence against Yazidi women in several ways, including capture, murder, transfer, sexual violence, sexual slavery, forced marriage, forced pregnancy, rape, women trafficking, displacement and abduction. Additionally, this study found that Yazidi women and girls have been subjected to the most heinous crimes involving genocide, war crimes, and crimes against humanity, as stipulated under Articles 6, 7, and 8 of the Rome statute of the ICC. Accordingly, the jurisdiction and functioning of the court shall be governed by the provisions of this statute.

Thus, despite several legal provisions in the Iraqi laws and constitution related to protecting women's rights, these laws contain several legal deficiencies. The Iraqi legal authority has made no effort on this issue. This study found that the latest Yazidi Female Survivors Law, an attempt by the Iraqi Parliament to compensate Yazidi women, victims of the ISIS war, contains many legal shortcomings and ambiguities and does not include the necessary legal compensation mechanisms. Also, the law has not decided the fate of children born to ISIS fathers and Yazidi mothers during the ISIS war, and there is no specific law that officially guarantees their fundamental civil rights, especially the right to register and issue documents related to identity and Iraq's national identity cards.

Based on the findings and despite Iraq's membership in several international treaties and agreements on the issue of establishing national security and protection, there is no provision under the laws to protect women's rights during armed conflicts.

RECOMMENDATIONS AT THE INTERNATIONAL LEVEL

The international community should make every effort to refer the Yazidi women violations case as genocide, war crimes, and a crime against humanity by the Security Council to the International Criminal Court Directly under Article (13) of the court system, which has the right to refer the case to the court under Chapter VII of the United Nations Charter. Furthermore, it would be advisable to create an international protection mechanism and rehabilitate conflict-affected areas in Sinjar in partnership with Iraqi and Kurdish authorities while supporting ongoing efforts to achieve criminal and social justice for Yazidi women and girls. These are critical measures for ensuring the Yazidi community's survival in Iraq and allowing them to envision a future in the country.

Moreover, the international community needs humanitarian intervention, especially those working to protect women's rights, by forcing the Iraqi Parliament and government to amend or enact new laws related to protecting women's rights in peace and war. Another essential attempt is for the international and civil organizations must ensure that documentation efforts with survivors of sexual violence and slavery include psychosocial support mechanisms to provide preliminary assistance to witnesses and survivors, as well as train staff on ethical trauma-informed treatment of survivors, including ensuring that services are provided without prejudice, particularly against ethnic and religious minorities, to return to society a better version of themselves.

RECOMMENDATIONS AT THE NATIONAL LEVEL

The Iraqi government should take all necessary measures and make all efforts, in strict compliance with applicable international law, including international humanitarian law and human rights law, to put an end to human rights violations committed by ISIS and protect Iraqi women from the effects of these violations.

Moreover, the Iraqi government should Repeal or fundamentally reform discriminatory laws against women within the Iraqi legal system following international standards. Furthermore, the Yazidi Female Survivors law needs further development, especially on weighty issues related to the principle of punishment, and compensation for Yazidi women must meet their needs. Therefore, more needs to be done to address the stigmatization of children fathered by ISIS members by law; it is a duty of all three of Iraq's powers (legislative, executive, judicial) to reform Iraqi legislation to protect the rights of all Iraqi women and their children, to integrate better the children born of the ISIS conflict into society, and to avoid marginalization which may render them vulnerable to terrorist radicalization and recruitment. Iraqi authorities must take active measures to terminate and prevent the acts of retributive justice that seek to punish members of ISIS and their affiliates collectively.

For the Iraqi government and authorities to prevent the repetition of such crimes and further violence, issues related to violence against women, especially sexual violence in conflict, there is a need to pass a special law to protect women's rights in armed conflicts and war circumstances. Furthermore, the government should be committed to the Iraqi National Action Plan (INAP) to effectively implement the United Nations Security Council Resolution (1325) on Women, Peace, and Security (WPS). Finally, the Iraqi government should provide a decent life for the Yazidi women survivors of the war against ISIS who currently live in camps in the Kurdistan Region.

CONCLUSION

Women and girls are targeted and victimized during armed conflicts and mass atrocities. To strike at them is at the heart of a culture and society. Today, the problem of violence against women is receiving substantial media coverage, and it has occupied the international community in connection to the phenomenon of ISIS. The use of sexual violence, rape, sexual and other forms of slavery, and other forms of violations, is widespread among them. This study highlighted the problem of violence against women in war through recent living examples, such as women in the ISIS war from 2014 to 2017 .Through empirical data in the first part of this study, the main forms of violence against women and the painful stories of Yazidi women were identified in detail through qualitative interviews with Yazidi women and girls who survived the ISIS war. Also, this study analyzed the legal framework for protecting Iraqi women's rights through a Yazidi women case in the ISIS war in Iraq. The study used primary and secondary data, such as qualitative interviews (semi-structured) with Iraqi legal experts, to achieve the second research objective of the study.

The qualitative data strengthened the views of legal scholars who argued that Iraq does not have an adequate legal framework to protect women's rights during war and peacetime. The

second section critically analyzes the legal and structural framework of Iraqi laws and bills related to women's rights violations. Nevertheless, it serves as another evidence of how woefully flawed the current judicial system is for defending the rights of Iraqi women, with significant flaws and legal loopholes. In light of international and local best practices explored by this paper, the Iraqi legal authority must promptly address the laws protecting women's rights and special needs during and after armed conflicts.

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