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Promotion and Protection of Rights of Victims of Sexual Violence Captured by ISIL/or in Areas Controlled by ISIL in Iraq

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A. Introduction

1. Large numbers of women and girls but also some men and boys, mainly from Iraq's ethnic and religious communities, have been subjected to conflict-related sexual violence¹ by the so-called Islamic State of Iraq and the Levant (ISIL).
2. ISIL has subjected women, girls, men and boys to various forms of sexual violence such as rape and sexual enslavement, physical and psychological violence and trafficking. Women and girls have suffered differentially from the impact of armed conflict in general. It increased their vulnerability and impaired their access to basic humanitarian services as well as disregarded their specific needs. Regardless of the efforts made, ensuring appropriate care and protection for them remains challenging.
3. Victims have to be reintegrated into their families and communities; perpetrators of sexual violence should be held accountable; and policies should be implemented to empower women and girls in the political, social, cultural and economic spheres.
4. This paper canvases the challenges faced by women and girls who have been subjected to rape and other forms of sexual violence including physical and psychological violence. It proposes a number of recommendations that the Government of Iraq should consider in order to promote the respect for, and the protection of the rights of women and girls at all times and in all circumstances.
5. This paper is based on information obtained directly from survivors and witnesses of violations and abuses of international human rights law and/or serious violations of international humanitarian law gathered by UNAMI human rights investigators.
6. Information was also obtained from a variety of sources, including Government and non-government agencies and organizations, and United Nations entities. The violations and abuses contained in this paper demonstrate the trends of conflict-related sexual violence perpetrated by ISIL.
7. Victims referred to in this paper include direct survivors of conflict-related sexual violence and their children, parents and families who were indirectly affected by such acts.

B. Context

8. In June 2014, ISIL swept across northern Iraq. Since then, UNAMI and OHCHR have issued six reports² on the protection of civilians in relation to the ongoing conflict in

¹ The term conflict-related sexual violence is defined under para. 21.

Iraq, documenting violations and abuses against men, women and children from all ethnic and religious communities, including Christians, Faili Kurds, Kaka'e, Sabaeans, Shabak, Shi'a Arabs, and Turkmen. These communities have been systematically targeted and persecuted by ISIL as part of an ongoing policy that aims to suppress, permanently expel, or destroy many of these communities within ISIL areas of control.³ UNAMI/OHCHR has repeatedly noted that many of the crimes committed by ISIL may amount to war crimes, crimes against humanity and may also possibly amount to genocide.⁴ This remains to be determined by an independent and competent court.

9. ISIL targeted the Yezidi community in particular and demonstrated its intent to destroy them, in whole or in part.⁵ As of August 2016, sources estimated that between 2,000 and 5,500 persons from the Yezidi community have been killed by ISIL since 3 August 2014.⁶ According to the Ministry of Endowment and Religious Affairs, Office of Yezidi Administrative Affairs, between 3 August 2014 and 2 July 2017, approximately 6,417 persons from the Yezidi community were abducted by ISIL members (3,547 women and 2,870 men). By early July 2017, 3048 individuals from the Yezidi community had reportedly managed to escape from ISIL captivity (1,092 women; 334 men; 819 girls; 803 boys). At the same time, some 3,369

² From 5 June to 5 July 2014, 6 July to 10 September, 11 September to 10 December 2014, 11 December 2014 to 30 April 2015, 1 May to 31 October 2015, and 1 November 2015 to 30 September 2016. Reports are available on www.ohchr.org/EN/Countries/MENARegion/Pages/UNAMIHRReports.aspx

³ UNAMI/OHCHR will continue to document the violations and abuses perpetrated against these communities and publish its findings in future reports.

⁴ In line with UNAMI/OHCHR findings as well as of the OHCHR Fact Finding Mission (report A/HRC/28/18 of March 2015). In addition, in August 2014, the Special Representative of the Secretary-General (SRSG) on Sexual Violence in Conflict expressed grave concern at "continued reports of actions of violence, including sexual violence against women and teenage girls and boys belonging to Iraqi minorities," and reminded parties to the conflict "that acts of sexual violence are grave human rights violations can be considered as war crimes and crimes against humanity." See <http://www.un.org/sexualviolenceinconflict/press-release/iraq-un-officials-call-for-immediate-end-to-sexual-violence-against-iraqi-minorities/>. Annual reports of the Secretary-General on Conflict-Related Sexual Violence in Conflict have also noted the use of sexual violence against Iraqi minorities. See, most recently, the Report of the Secretary-General on conflict-related sexual violence, 22 June 2016, S/2016/361/Rev.1, paras. 40-41, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/361/Rev.1.

⁵ In reference to the Yezidi (whom ISIL refer to as *mushirkin* - those who commit the sin of idolatry/paganism (*shirk*)), ISIL has made its intentions clear to destroy the population or forcibly convert them, both through its actions by directly targeting them, as well as in its publications. These have been examined in greater detail in OHCHR's report "A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL", August 2016, available at http://www.ohchr.org/Documents/Countries/IQ/UNAMIRreport12Aug2016_en.pdf. See also "They came to destroy": ISIL Crimes Against the Yazidis, A/HRC/32/CRP.2, http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf.

⁶ OHCHR, "A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL," pg. 7

individuals from the Yezidi community remained in ISIL captivity, including 1636 woman and girls and 1733 men and boys.⁷

10. Women and girls under the control of ISIL, in particular women from the Yezidi and other minority communities, have been especially vulnerable to abuses of human rights and violation of international humanitarian law, including, *inter alia*: forced displacement; abduction; deprivation of liberty; slavery;⁸ cruel, inhumane and degrading treatment; forced religious conversion; and sexual assault, rape and other forms of sexual violence. As a result of ISIL targeting of civilians and mass killings, many women and girls who have survived such abuses are deprived of the material and psychosocial support of their families, and are ill-equipped to survive on their own. Women who were raped and subjected to sexual slavery and other forms of sexual violence by ISIL, and children born as a result, are also stigmatized by their own communities upon their return. In addition to abuses by ISIL, it must also be borne in mind that the displacement of civilians has exacerbated already high levels of domestic violence that existed before the armed conflict in Iraq, and increase the risk of sexual violence.⁹
11. Additionally, there are also sporadic reports of civilians being abused by armed groups fighting against ISIL. This includes reports that individuals who are believed to have supported or to have been affiliated with ISIL are being subjected to reprisals, revenge attacks, and in some cases punishments. Of significant concern, reprisals have been reported against the family members of individuals who have been accused or are suspected of having supported ISIL. This exposes women and children particularly to considerable risk of discrimination, marginalization, and physical harm
12. In October 2016, Iraqi national forces, Kurdish security forces and affiliated militias launched a campaign to retake Mosul, the last major city held by ISIL in Iraq. As of 24 January 2017, Iraqi officials announced that the eastern part of Mosul had been liberated from ISIL and the battle would now shift to the western bank of the Tigris River. Operations to retake west Mosul commenced on 17 February 2017. Between 17 October 2016 and 3 August 2017, the International Organization for Migration

⁷Statistics provided by the Ministry of Endowment and Religious Affairs, Office of Yezidi Administrative Affairs, 2 July 2017.

⁸ ISIL itself confirmed that sexual slavery was acceptable regarding female captives. ISIL refers to them as 'slaves' or 'spoils of war' in several public statements, using the phrase *ma malakat aymanukum* "that which your right hand possesses." For instance, see ISIL Dabiq, 1435, Issue 4: 'The Failed Crusade', p. 14, available at <http://media.clarionproject.org/files/islamic-state/islamic-state-isis-magazineIssue-4-the-failedcrusade.pdf>.

Additionally, in around October 2014, ISIL issued a pamphlet entitled "Questions and Answer on Taking Captives and Slaves". The document states that it is permissible to have sexual intercourse with a girl who has not reached puberty, and that the "slave" is considered as merely property of the owner that, after his death, could be distributed as part of his estate. The document is cited in English translation on the following website: <https://www.hrw.org/news/2015/09/05/slavery-isis-rules>.

⁹ There are no statistics on levels of sexual and gender-based violence in Iraq with the exception of the KR-I, where there has been a proactive effort by the KRG to encourage women to come forward to report incidents of such violence and to provide them with protection and support.

estimated 837.900 individuals, and 139.650 families)—some of whom are women and children—have been displaced from the area as a result of the conflict.¹⁰

13. With significant areas under the control of ISIL having been reclaimed, it is now urgent to consider what steps need to be taken to ensure the protection, recovery, reintegration and redress for the thousands of women and girls who have been subjected to rape and other forms of sexual violence including physical and psychological violence. Equally important, steps must also be taken to ensure the active participation and engagement of women and girls in ending conflict, in building peace for the future and supporting and facilitating their full and equal participation in the public, political, and economic life in a post-ISIL Iraq.

C. Legal framework

International law

14. United Nations Security Council resolution 1325 (2000) on Women, Peace, and Security provides the normative framework on conflict-related sexual violence. Numerous subsequent Security Council resolutions, such as resolutions 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), and 2122 (2013) have addressed such topics as conflict-related sexual violence (CRSV), the special needs of women and girls in conflict and post-conflict situations, and the important roles that women and girls can play in maintaining security and post-conflict peacebuilding.
15. Most recently, the Security Council adopted resolution 2331 (2016) on Trafficking and Sexual Violence, in which it took special note of crimes committed by ISIL. Resolution 2331 calls for greater accountability and access of survivors to adequate services and support, including reparation programs. It also calls for increased action by and among States and the relevant United Nations entities, including information sharing and judicial cooperation, to prevent and punish such crimes.
16. Iraq is a party to eight of the nine core international human rights instruments, including: ICCPR (since 1971); CEDAW (since 1986); CRC (since 1994, and its Optional Protocol on the involvement of children in armed conflict since 2008); ICPPED (since 2010); and CAT (since 2011).
17. Iraq is not a party to the Rome Statute of the International Criminal Court (ICC), and the international crimes defined in the Rome Statute are not criminalized under its domestic law. Iraq has not accepted the ICC jurisdiction over the current situation under article 12(3) of the Rome Statute.
18. The conflict in Iraq between ISIL and other affiliated armed groups, on one side, and Iraqi security forces and pro-Government forces, on the other, constitutes a non-international armed conflict. Accordingly, the parties are required to comply with international humanitarian law, in particular common article 3 to the Geneva Conventions and rules of customary international law applicable to non-international

¹⁰ The IOM statistics at <http://iraqdtm.iom.int/EmergencyTracking.aspx>, last accessed 3 August 2017.

armed conflict. The parties are further required to refrain from direct attacks against civilians, and respect the key principles of international humanitarian law, including the prohibition of indiscriminate attacks; the obligation to respect the principle of proportionality; and the obligation to take all feasible precautions to protect the civilian population against the effects of attacks. The parties are also required to ensure special protection for women and children.

19. Irrespective of the ongoing armed conflict and the application of international humanitarian law, Iraq remains fully bound by its international human rights law obligations.
20. International human rights law provides safeguards against sexual violence, including protection from sexual violence as a form of torture or ill-treatment and as a result of gender-based discrimination. These standards recognize all forms of sexual violence as a human rights violation, which require States to exercise due diligence to prevent, investigate and prosecute such acts perpetrated by State or non-State actors.¹¹ Moreover, depending on the circumstances, conflict-related sexual violence can constitute war crimes, crimes against humanity, genocide or gross violations of human rights.¹²
21. The term conflict-related sexual violence (CRSV), for Security Council Resolution 1960 (2010) listing purposes, “refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. ... The term also encompasses trafficking in persons when committed in situations of conflict for the purpose of sexual violence/exploitation.”¹³

National and regional laws

22. The 2005 Constitution of Iraq guarantees fundamental rights to Iraqi citizens, men and women, including equality before the law, equal treatment before the law (Article 14); treatment with justice in judicial proceedings (Article 19(6)); participation in public affairs (Article 20); right to work (Article 22); and the preservation of the family, the protection of motherhood, childhood and old age, and the prohibition of child labor and violence in the family (Article 29). The Constitution also guarantees to all Iraqis, “especially women and children,” “social and health security,” “basic requirements for living a free and decent life,” and

¹¹ See for example: CCPR/C/119/D/2245/2013, CAT/C/37/D/262/2005 (2007); CAT/C/37/D/279/2005 (2007); and CEDAW, General Recommendation No. 35 (July 2018) on gender-based violence against women, updating general recommendation No. 19 and CEDAW, General Recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations.

¹² See articles 6, 7 and 8 of the Rome Statute of the International Criminal Court.

¹³ Report of the UN Secretary-General on Conflict-Related Sexual Violence (S/2017/249), 15 April 2017, para 2.

income and housing (Article 30), as well as health care (Article 31), care for the persons with disabilities (Article 32), and education (Article 34).

23. With respect to specific legislation, it is noted that the draft Family Protection Law, the text of which as currently stands substantively fails to meet Iraq's obligations under international law, remains pending before the Council of Representatives. The draft shelter policy for victims of domestic violence is also still under review. The Criminal Code No. 111 of 1969 continues to permit "honour" as a lawful defense in crimes alleging violence against women and family members, even when it is reported that many hundreds of women die from so-called "honour" killings each year. Additionally, it allows perpetrators to marry their rape victims to quash a criminal case. The Iraqi Criminal Procedures Code (ICPC) no. 23 of 1971 views the initiation of criminal proceedings in relation to a number of crimes as the personal right of the victim – and it is arguable under Article 3 of ICPC that this includes allegations of rape. In conservative societies such as Iraq, women who have been subjected to rape and other forms of sexual violence may be unwilling to initiate such proceedings.
24. In September 2016, the United Nations, through the Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict, and the Government of Iraq signed a Joint Communiqué on Prevention and Response to Conflict-Related Sexual Violence. The Communiqué represents an opportunity for structured collaboration between the United Nations and Iraq on six priority areas: a) supporting legislative and policy reform to strengthen protection from, and service response for, sexual violence crimes and to facilitate documentation, return and reintegration of IDPs; b) ensuring accountability for sexual violence; c) ensuring the provision of services, livelihood support and reparations for survivors and children born of rape; d) engaging tribal and religious leaders, and civil society as well as women human rights defenders in the prevention of sexual violence crimes and facilitating the return and reintegration of survivors; e) ensuring that considerations related to sexual violence are adequately reflected in the work of the Iraqi Counter-Terrorism Commission, including enhancing the role of women in counter-terrorism efforts; and f) raising awareness and deepening knowledge related to CRSV, including through engagement with media and public awareness campaigns. Within the Joint Communiqué, the Government of Iraq also requested the assistance of the United Nations Team of Experts on the Rule of Law/Sexual Violence in Conflict to provide capacity support on investigating and prosecuting crimes of sexual violence.
25. The Iraqi Federal Government and the Kurdistan Regional Government (KRG) have designated high-level focal points on CRSV to cooperate with the United Nations in developing the implementation plan of the Joint Communiqué and will convene relevant national authorities, including security institutions, justice authorities, social services, health authorities and others. Both focal points have the support of Prime Minister al-Abadi and KRG Prime Minister Barzani and are located strategically in the

Council of Ministers and High Council of Women's Affairs in Baghdad and Erbil respectively. UNAMI has also deployed a Senior Women Protection Advisor with funding provided by the interagency network UN Action Against Sexual Violence in Conflict to support the efforts of the Iraqi Government and the United Nations in addressing CRSV. Further, in July 2017, two workshops were co-organized by UNAMI and the Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict that took place in Baghdad and Erbil to discuss the implementation of the Communiqué with relevant governmental entities.

26. In the Kurdistan Region of Iraq (KR-I), a number of laws and amendments to Iraqi legislation aimed at strengthening regional provisions related to human rights have recently been proposed or adopted or have entered into force. These include the Law of Protection of the Right of Components in KR-I No. 5 of 2015 (which addresses the rights of ethnic and religious minorities); the first reading by the Kurdistan Parliament of the draft law on Combating Human Trafficking in KR-I; and the repeal of Article 409 of the Penal Code, which minimized penalties for the killing on the basis of "honour" by male relatives. These laws and proposed amendments are part of a series of concerted efforts over recent years to promote the rule of law in KR-I, specifically relating to the protection of women and children from all forms of violence. Despite these positive steps, laws are not often supported by implementation mechanisms, and economic conditions have severely restricted the availability of resources for implementation. Furthermore, it must be noted that a political impasse in the KR-I Parliament has caused the legislative process to be put on hold indefinitely.

Kurdistan Region Government mechanisms

27. The KRG has established a number of entities that have competence to promote the respect and protection of women's rights and to address the needs of women who have suffered from abuses at the hands of ISIL. These include the establishment by the Ministry of Martyrs and Anfal Affairs of a High Committee for Identification of Genocide Crimes against Residents of the Kurdistan Area, tasked with receiving complaints from victims, investigations the cases, maintaining a data base and providing psychosocial support to victims. Other entities include mechanisms within the Ministry of Health, the Ministry of the Interior, the Ministry of Labor and Social Affairs and the Ministry of Endowment and Religious Affairs, in particular its Office of Yezidi Administrative Affairs.

D. Tribal and religious attitudes towards women subjected to sexual violence, including rape

28. In March 2016, representatives of the main tribes in Ninewa Governorate reached a "Tribal Agreement," endorsed by the Provincial Council of the governorate, which purports to apply traditional justice mechanisms and customs. The Agreement includes a provision for the forced eviction of families connected to ISIL and the transfer of their property to victims as reparations. In discussions with UNAMI/OHCHR, tribal representatives said that the seizure of property would help

to mitigate other forms of retribution against families who supported ISIL, and that the redistribution of property would serve as “mental therapy” to victims and facilitate the return of displaced persons from Ninewa. UNAMI/OHCHR highlighted that the forced eviction of families of ISIL suspects amounts to a form of collective punishment and is contrary to Iraqi and international law. The Tribal Agreement also provides for the death penalty in the case of “serious crimes,” and considers that crimes committed against women must not be covered by any amnesty. The Tribal Agreement requires that those who committed less serious crimes should be imprisoned, including financial supporters/fundraisers of ISIL activities, those who destroyed cultural and religious sites, and collaborators. Finally, the Tribal Agreement specifies that reconciliation initiatives in Ninewa must take place in consultation with tribal leaders.

29. In February 2017, a group of Iraq’s Sheikhs and tribal leaders issued an “Iraqi Tribes Document for Communal Peace.”¹⁴ Among other provisions relating to post-conflict reconciliation, the document encourages a “remedy for societal injustice imposed on the raped women.” It expresses that women who have been raped or who have been subjected to other forms of sexual violence are “victims who deserve support from the humanitarian organizations and community (psychological and moral support) and sympathy because their will [has been] stolen.”
30. Also in February 2017, Iraq’s Diwan of Sunni Endowments, Iraqi Supreme Council of Fatwa, issued a ruling entitled “Islam’s Position on Raped Women.”¹⁵ It provides religious commentary on the roles of men (i.e., those who commit rape), women who have been raped, and society’s relation to both. With respect to a man who commits rape without believing it was ‘religiously permissible,’ he is to be considered “a fornicator who is further practicing banditry and mischief against society,” and so should be subject to the relevant Quranic punishments. Further, a man who commits rape while believing it was religiously permissible is to be considered “a disbeliever and apostate whose killing is authorized.” With respect to women who have been raped, the ruling reiterates that a woman who has been forced “in any form” cannot be considered as ‘sinful’ nor should she be punished in any way; “rather, she must be sympathized with.” Finally, the ruling states that society and the families of victims should: i) protect them and take measures to mitigate the effects of the attack, such as psychological and medical care, ii) refrain from blaming the victim, and iii) stop “bringing reproach” upon the victim or “disgracing her /their family(ies).”

¹⁴ Iraqi Tribes Document for Communal Peace, Para. 18

¹⁵ Islam's Position on Rape of Women, Republic of Iraq, Dewan of Sunni Endowments, Iraqi Supreme Council of Fatwa, Ref. : 1, 10 February, 2017, Part 4

E. Human rights concerns

Women and girls under the control of ISIL

31. UNAMI/OHCHR has consulted with local community leaders to understand their views regarding the treatment of women and girls who were married to ISIL members. According to them, where a woman consented to the marriage, the matrimonial contract could be confirmed subsequently in the federal court if needed; this would serve not to recognize ISIL as an entity that had originally endorsed the contract, but rather to recognize the contract of marriage between two consenting adults in the presence of two witnesses under Iraqi law. While such confirmation may be controversial both in terms of the law and Shari'a, religious leaders have noted that the failure to do so could lead to accusations of adultery against people who were 'married' in areas under the so-called 'authority' of ISIL (as these marriages would not be recognized under Iraqi law unless ratified by civil courts) and would potentially lead to children of such marriages being classed as 'illegitimate' under Iraqi law.
32. Where a woman was forced to marry a member of ISIL against her will, even where a marriage contract was signed, such a contract would not be valid unless it was consummated by sexual intercourse.¹⁶ If the marriage was consummated, the contract could be annulled by a federal civil court under article 16 of the Personal Status Law of 1917. In this case, the woman could have the marriage contract confirmed by a civil court, register any children born pursuant to that contract, and then have the contract annulled in a second subsequent court case.

Victims of sexual violence including rape and enslavement

33. With respect to women and girls who have been subjected to sexual enslavement, rape and other forms of sexual violence, the primary concern is to ensure their access to appropriate medical, psychosocial, financial and other means of support. Following these immediate needs, Iraq has the duty, pursuant to domestic law and to core international human rights instruments to which is a party, to ensure that all victims of these violations have access to justice and reparations.¹⁷
34. This obligation includes ensuring accountability of the alleged perpetrators of such crimes through trials conducted before independent and impartial tribunals established by law in accordance with the law and facts of the case and in full respect of due process and fair trial standards. In addition, the State must ensure that

¹⁶ This refers to situations where a woman signs a marriage contract against her will or where a contract is signed "on behalf" of a woman by her family members. Consummation by sexual intercourse is then required to "concretize" the marriage contract. However, the couple may not necessarily live together or immediately consummate the marriage by sexual intercourse, in which case the contract remains invalid.

¹⁷ These include, for example, Iraq's Law No. 28 of 2012 Combating Trafficking in Persons, and the right of equal protection of the law under Article 26 of the International Covenant on Civil and Political Rights. The obligations of States with respect to reparations have been further examined in "Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence," June 2014, available at <http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>.

all proceedings are conducted in a gender sensitive manner so as not to perpetuate the victimization or to 'revictimize' women and girls subjected to such crimes. This includes ensuring: i) that mechanisms are put in place that facilitate women's and children's access to justice; ii) that female police officers undertake interviews with women and children who have been subjected to sexual violence; iii) appropriate policies are in place to ensure that women and children are respected and protected throughout such proceedings; iv) that the proceedings are conducted with the best interests of the woman or child as the primary consideration, and v) that the women and children concerned have access to appropriate psycho-social, medical and other appropriate support and means of protection.

35. Ensuring individual criminal accountability for persons accused of perpetrating or having contributed to sexual and other forms of violence against women and children under ISIL will be of paramount importance. However, in light of the existing gaps in the legal and policy frameworks of the criminal justice system, which largely fails to ensure the appropriate respect and protection of women and children who have been subjected to sexual and other forms of violence, significant legislative and institutional changes are needed to facilitate access to justice, and the care and protection of victims through such proceedings. In this regard, informal justice mechanisms which are fully compliant with relevant international human rights standards may be considered to complement formal justice as a means to ensuring adequate accountability and reparations processes.
36. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,¹⁸ adopted by the General Assembly in 2005, provide a normative framework in this regard. The Guidelines address, *inter alia*, treatment of victims, access to justice, reparations, access to information, and non-discrimination. In particular, the Guidelines elaborate the right to reparations in the form of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
37. With respect to the tribal agreements mentioned above, UNAMI/OHCHR expresses serious concerns with those aspects of the Tribal Agreement that call for acts amounting to collective punishments (including against women suspected of assisting ISIL), exile, and the death penalty. Those aspects of the Tribal Agreement, which focus on ensuring the rehabilitation of women who have been subjected to sexual and other forms of violence by ISIL are welcomed, as is the rejection of amnesty for crimes committed against women. However, the Agreement must be applied carefully to ensure that it does not further victimize women and girls who were victimised in areas under the control of ISIL.

¹⁸ A/RES/60/147, 16 December 2005, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

38. UNAMI has come across cases where families who paid for the release of women who had been enslaved by ISIL, were suffering from crushing economic burdens. In some of these cases, it was found that the stress incurred by this financial burden resulted in increased levels of domestic violence. Vocational training, microfinance, and material support should be made available in order to mitigate this occurrence. Additionally, it will be necessary for the Government of Iraq to consider amending legislation and developing other policies that will ensure women and children (or their legal guardians) can claim reparations from the State, including reimbursement for any funds paid for their release.
39. Women who have been enslaved may need special assistance, in addition to medical and psychosocial care, to facilitate their repatriation or reunification with their families and communities. This refers, for example, to assistance with the reissuance of official or legal documentation that may have been lost or destroyed, and travel related expenses.
40. Women and girls must be fully respected and protected by their families, communities, and the Government of Iraq. Where there is a risk of harm from family or community, including so-called honour crimes, women and children must be given immediate protection whether through relocation, shelter accommodation or other appropriate options.

Reprisals and acts amounting to collective punishment

41. Women who were married to members of ISIL, with or without their consent, may be subject to discrimination and forms of collective punishment based on the suspicion of having cooperated with ISIL. In this respect, assistance will be required at the local level, including engagement with tribal leaders, to ensure that women who were married to members of ISIL are not automatically treated as accomplices, and that any women who are accused of supporting ISIL are treated fairly and on the basis of establishing individual criminal responsibility. In this respect, UNAMI/OHCHR expresses concern with the tribal customs observed throughout Iraq relating to the forced eviction of families of persons suspected of collaborating with ISIL.
42. Similarly, with respect to the March 2016 Tribal Agreement described above, UNAMI/OHCHR considers unlawful its provisions providing for the exile of persons suspected of assisting ISIL, and the seizure and distribution of their property, insofar as this amounts to collective punishment. Other tribal agreements have been also endorsed, including July-2016 Anbar Covenant endorsed by representatives of the western tribes of Anbar Governorate, November-2016 Heet Covenant endorsed by tribal leaders in Heet sub-district of Anbar, and May-2017 al-Sabaawi agreement endorsed by al-Sabaawi tribal representatives in al-Qayyarah sub-district of Mosul district. These agreements include provisions of a traditional and tribal nature,

known historically in Iraq for settling criminal affairs away from any judicial oversight¹⁹.

43. Provisions include vague interpretations of ‘accusations’ and ‘punishments’ brought against ‘suspects’, which could lead to serious breaches of the constitutional rights of Iraqi citizens, as well international human rights obligations in relation to fair trials and equality before the law. Some agreements furthermore establish committees composed of legal experts who would assess cases brought before them, and decide on the fate of the ‘accused’ persons. These committees constitute parallel entities to the judicial and extra-judicial State mechanisms that would provide for ‘decisions’ against accused persons amidst lack of any referral to an Iraqi judicial or legal body. As they stand, these tribal agreements undermine the rule of law in a post ISIL fragile phase, may amount to collective punishment against thousands of persons, and fuel a cycle of violence and hatred that would halt attempts of a genuine and sustainable reconciliation.
44. In a positive development, in March 2017, Prime Minister al-Abadi stated in a press conference that ISIL families are protected and that perpetrators would be treated under the umbrella of rule of law.

Health care and pregnancy

45. In its capacity as a State party to the CEDAW and other international treaties, and in accordance with the health-related rights enshrined in Articles 30 and 31 of the Iraqi Constitution, the Government of Iraq has obligations pertaining to health care towards women and girls. . As part of these obligations, the Government of Iraq therefore must provide access to the full range of medical and psychological support and sexual and reproductive health information to women and girls; to guarantee full, unhindered access to services, information and assistance without discrimination; and to ensure that third parties do not obstruct enjoyment of the right to health by women and girls. In every respect, the Government of Iraq should focus on appropriate forms of psychosocial, medical, financial, and other forms of support, meaning community-based care, which empowers women and girls to reach their maximum potential.
46. Iraq must also respect, protect and fulfil the right of women to access specific educational information to ensure the health and wellbeing of their families, including information and advice on family planning. Assistance and support must be offered to pregnant women and girls on the full range of their reproductive rights and make available services to assist them with whatever choices they make. With

¹⁹ These agreements stipulate, in particular, that families perceived to be affiliated with ISIL be forcibly evicted out of their places of origin towards unspecified locations or to displacement camps. They also prevent active members of ISIL and their families from returning to their places of origin.

respect to the latter, the Government of Iraq needs to clarify what law is applicable to the termination of unwanted pregnancies for women and girls who were subjected to sexual violence, ensuring that the law and its implementation are in accordance with the rights of women and girls under national and international law.

Children born to women under the control of ISIL

47. The Iraqi Government must ensure that children born to women who were married to persons affiliated with ISIL are not subject to, and are fully protected from, discrimination, marginalisation and/or other forms of violence and abuse.. This includes policies to ensure the appropriate registration of birth (without discriminatory registration relating to the father's identity, such as "ISIL terrorist", or registering a child as "Muslim" when the mother comes from a non-Muslim community based on assumptions of the religion of the father, etc.) in order to ensure that such children have all the legal rights and protections owed to any citizen and to prevent other risks such as statelessness, abuse, marginalization, exploitation, and trafficking. In addition, it is essential that the Government consider policies to support caregivers, such as enabling and supporting foster care and orphanages, particularly those that are providing care for children who may have special needs.
48. As of December 2016, UNHCR had identified nearly 800 children whose births had been registered by ISIL in areas under its control. Documentation issued by ISIL is generally not accepted by the Government of Iraq or the Kurdistan Regional Government. It is expected that many more children born to women in areas that were under the control of ISIL will have no documentation at all. To obtain a new birth certificate, it is required for parents to present proof of marital status, and for two witnesses to confirm the birth of the child. This procedure makes it exceedingly difficult to register the birth of children born to women in areas that were under the control of ISIL, particularly (i) in cases where documents were issued by ISIL or lost or destroyed; (ii) where either parent is dead or otherwise absent or missing; (iii) where the identity of the father remains unknown, such as in cases of rape or other forms of sexual violence (iv) where a child has been abandoned due to stigma; v) where mobility is restricted (such as in IDP camps or where no civil status offices or courts operate); or (vi) where families lack funds to either travel to locations where civil status offices and courts operate, or pay for the necessary legal fees. It is also noted that additional requirements for registration, such as blood samples, are not consistent across locations.

F. Recommended Actions

General

Ensuring accountability and ending impunity, and actions to enhance the protection of women and children from sexual violence, and facilitating the appropriate care and protection of women and children subjected to such violence

The Government of Iraq should consider:

- Becoming party to the Rome Statute of the International Criminal Court and referring the current armed conflict in Iraq to the Court's jurisdiction
- Adopting a legislative framework to allow domestic courts to have jurisdiction over international crimes and prosecute perpetrators of most serious crimes, namely, war crimes, crimes against humanity and genocide.
- Amending the criminal justice legislation and enacting other laws and policies to ensure that due process and fair trial standards (as required by the Constitution of Iraq and International law binding on Iraq) are respected and protected
- Reviewing and amending the existing Criminal Justice laws and policies to facilitate access to justice by women and children who have been subjected to rape, and other forms of sexual and physical violence. Fully criminalizing the acts committed by the perpetrators and adopting laws and policies that promote their care and protection and guarantee their access to appropriate support services, and which also facilitate and promote the return and reintegration into their families and communities in full respect and protection of their rights
- Reviewing and repealing existing criminal laws and policies that permit "honour" as mitigation for crimes of violence committed against women and children and other family members, as well as other provisions that operate discriminatorily against women and children or that impair, hinder or prevent their access to justice
- Instituting judicial panels charged with documenting crimes and serious human rights violations and abuses perpetrated in connection with the ongoing armed conflict in Iraq based on judicial standards so as to support prosecutions where the perpetrators can be identified (and fall within the State's jurisdiction), and which will facilitate the referral of victims of such crimes, human rights violations and abuses, particularly women and children who have been subjected to rape, sexual violence, and other forms of physical and psychological violence, to appropriate medical, psychosocial, financial and other appropriate support services
- Instituting specialized training programmes for judges, prosecutors and law enforcement officials on international human rights, humanitarian, and criminal law; forensic methodology; investigation of SGBV; and protection of victims of SGBV
- Instituting specialized training programmes for judges, prosecutors and law enforcement officials on gender aspects of law enforcement and on specialized procedures for dealing with victimised children, and on policies providing improved access to justice by women and children
- Instituting specialized training programmes for judges, prosecutors and law enforcement officials on fair trial rights, due process, and conditions of detention to ensure that women suspected (or convicted) of assisting ISIL are screened and/or

detained in a manner consistent with their rights, and that their families are not subjected to any form of retaliation or collective punishment

- Establishing a network of lawyers and law students trained to provide pro bono legal services and advice for victims of SGBV
- Supporting the establishment of intra-communal networks of women subjected to SGBV and other forms of violence as a means of supporting outreach and facilitating their access to vocational training and general support services
- Providing training for medical and psychological professionals, school teachers, and caregivers on the human rights and special needs of child victims of SGBV, particularly children fathered by ISIL members; in addition to training of traditional/community based caregivers such as midwives, on human rights and special needs of women victims of SGBV.
- Streamlining procedures to facilitate access by survivors to legal, humanitarian and other support services
- Implementing public information campaigns to raise public awareness of the availability of, and accessibility to, specialized services for women and children victims of SGBV and other forms of sexual violence, including the establishment of telephone hotlines for counselling and support services; implement public information campaigns to raise public awareness on SGBV and domestic violence, aimed at protecting women and children at risk, and promote accountability
- Establishing information and counseling services to facilitate the reunification of and support to separated families
- Harmonising relevant laws on adoption, safe termination of unwanted pregnancy, marriage registration and childbirth in accordance with international standards and best practices
- Supporting efforts for reconciliation among ethnic groups centered on human rights and confidence building measures between conflicting communities and between those communities and the Government, with a particular focus on the integration of marginalized groups within these communities, women and children, and persons with disabilities
- Instituting gender awareness training for Iraqi Security forces and Kurdistan Region Security forces as well as other law enforcement authorities
- Implementing fully the commitments set out in the Joint Communiqué between the Government of Iraq and the United Nations on the Prevention and Response to Conflict-Related Sexual Violence.

Protecting children from discrimination and adverse treatment

The Government of Iraq should consider:

- Streamlining, simplifying, and systematizing the rules and regulations in relation to registration of births across all locations and consider institutional reforms to facilitate access to documentation
- Expanding the availability of alternative civil status offices where applications for documentation or registrations can be made
- Ensuring that children can be registered with the status (in terms of personal status and national identity law) of their mothers to avoid negative social ramifications, discrimination and potential exploitation of children born out of wedlock or who were fathered by persons affiliated with ISIL (whether the marriage was consensual or not)
- Refraining from recording the religion of a child based on assumptions about the religion of the father (for example, recording children as “Muslim” based only on the belief that the fathers were ISIL members)
- Refraining from recording on a child’s birth certificates information about the father that could expose the child to discrimination, marginalization and potential violence (for example, that the father was an ISIL fighter)

END

Promotion and Protection of Rights of Victims of Sexual
Violence Captured by ISIL/or in Areas Controlled by ISIL
in Iraq

UNAMI/OHCHR

Baghdad, Iraq

www.uniraq.org/www.ohchr.org