

# Crimes Against Religious Minorities in Iraq: Is the Future of Accountability for ISIL Crimes Domestic?

By Evelyn Anoya and Amal Nassar  
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## 1. Introduction

Iraq, widely known as ‘the cradle of civilization’, is a country of great diversity and home to religious, ethnic and linguistic minorities including Christians, Shabak, Yazidis, Kaka’i, and Sabeen-Mandean. Since the 2003 United States’ (‘US’) invasion, power dynamics shifted with the dismantling of the Ba’ath Party which had been in power since 1968. The security situation rapidly deteriorated and the country was soon engulfed in sectarian crisis, notably between the three bigger groups: Sunnis, Shi’ah and Kurds.<sup>1</sup> Reconciliation has been stagnant, and the political process has largely been shaped by sectarian identities.

Since the fall of Saddam Hussein in 2003 and the subsequent elections that led to Shi’ah majority parties dominating the government and Shi’ah-led coalitions remaining in control, Sunnis felt marginalized, leading to an increase in radicalization and the formation of extremist, insurgent Sunni groups. Amongst them is the ‘Islamic State of Iraq’, which in 2013 became the Islamic State in Iraq and the Levant (‘ISIL’, ‘Da’esh’ or ‘ISIS’), a terrorist-designated armed group that unleashed extremist ideology and violence in Iraq, Syria and other parts of the world starting 2014.<sup>2</sup> While all segments of Iraqi society fell victim to ISIL’s crimes, religious minority groups were particularly targeted in an effort to eradicate religious diversity. The already challenged domestic justice system was also targeted by ISIL, further weakening its capacity to respond to these crimes and deliver justice for thousands of victims.

Religious minority groups continue to suffer the effects of these crimes, the ongoing threats of violence, and the absence of effective remedies. Many continue to live in displacement or seek to leave Iraq altogether. Yazidis, for instance, face precarious conditions in returning to Sinjar, and around 120,000 have left Iraq after 2014.<sup>3</sup> The Christian population in Iraq has decreased from over a million in the 1990s to approximately 350,000 in 2015.<sup>4</sup> Should the situation persist, Iraq’s diversity will gradually be erased.

## 2. The ‘Islamic State in Iraq and the Levant’: A Brief Timeline

The origins of ISIL can be traced to insurgent Sunni armed groups with allegiance to al-Qaeda, active in the aftermath of the 2003 US’ military intervention in Iraq. These insurgent groups carried out attacks against US forces and the Iraqi government, the latter being Shi’ah dominated, before being weakened and operating on a lower scale under the name ‘Islamic State of Iraq’.<sup>5</sup>

<sup>1</sup> See Harith Hasan Al-Qarawee, “Iraq’s Sectarian Crisis: A Legacy of Exclusion”, Carnegie Middle East Center, 23 April 2014.

<sup>2</sup> The United Nations (‘UN’) designated ISIL as a terrorist group in 2014. See UN Security Council (‘UNSC’) Resolution 2170 (2014), UN Doc. S/RES/2170, 15 August 2014 (<https://www.legal-tools.org/doc/01e0d9/>).

<sup>3</sup> Inci Sayki, “Where are the Yazidis Today, Almost a Decade After ISIS’ Genocidal Campaign?”, *Frontline*, 13 March 2024.

<sup>4</sup> Minority Rights Group *et al.*, “Between the Millstones: The State of Iraq’s Minorities Since the Fall of Mosul”, 2015, p. 4; Miriam Puttick, “From Crisis to Catastrophe: The Situation of Minorities in Iraq”, Minority Rights Group International and Ceasefire Centre for Civilian Rights, October 2014, p. 5.

<sup>5</sup> International Federation for Human Rights, “Sexual and Sexual and Gender-based Crimes against the Yazidi Community: The Role of ISIL Foreign Fight-

ers”, 2018, p. 9.

In 2013, Abu Bakr al-Baghdadi, who led the group from 2010, decided to defy al-Qaeda and expand operations into Syria, rebranding the group under a new name: the ‘Islamic State in Iraq and the Levant’.<sup>6</sup> In 2014, ISIL announced its goal of establishing a ‘caliphate’ and started gaining territorial control over towns and governorates in Syria and Iraq.<sup>7</sup> In Iraq, ISIL captured Fallujah, Mosul (Iraq’s second largest city and home to several religious minorities), and Tikrit before carrying out attacks on other locations, including Sinjar, an area inhabited predominantly by members of the Yazidi religious minority. Territorial gains were also made in neighbouring Syria.

ISIL’s brutality prompted a response from the international community. In September 2014, then US President Barack Obama created the Global Coalition to Defeat ISIS, comprising 89 partners, the majority of which are states (including Iraq) as well as regional bodies and international organizations.<sup>8</sup> In addition to its military campaign, the Coalition prioritized weakening ISIL’s financing and economic infrastructure and propaganda and on countering the flow of foreign fighters seeking to join the group.<sup>9</sup>

In December 2017, Iraq’s Prime Minister declared victory over ISIL after reclaiming all territories once held by the group, including the Iraqi-Syrian border.<sup>10</sup> While no longer controlling territory in Iraq, ISIL transformed into a covert network and continued to carry out occasional mass-casualty attacks, targeted assassinations, bombings, and attacks on areas, including those inhabited by religious minorities.<sup>11</sup> Challenges also arose from the return and relocation of ISIL’s foreign fighters, estimated in 2015 to reach 30,000 fighters from over 80 countries.<sup>12</sup>

## 3. The Targeting of Minorities and Other Religious Dissent

The criminal brutality of ISIL reached all segments of the Iraqi population as the group sought to establish a ‘caliphate’, implementing an ideology by which it sought to ‘purify’ the territory by targeting all those that the group considered as ‘disbelievers’ or ‘apostates’. As early as the first issue of ISIL’s magazine, ‘Dabiq’, the group’s leader, al-Baghdadi, wrote that the world is divided into two camps: “The camp of Islam and faith and the camp of Kufr (disbelief) and hypocrisy”.<sup>13</sup> In later publications, ISIL placed disbelievers into two categories: “original disbelievers” – a category

ers”, 2018, p. 9.

<sup>6</sup> “Qaeda Chief Annuls Syrian-Iraqi Jihad Merger”, *Al Jazeera*, 9 June 2013.

<sup>7</sup> See Wilson Center, “Timeline: The Rise, Spread, and Fall of the Islamic State”, 28 October 2019.

<sup>8</sup> See web site of the Global Coalition against Da’esh.

<sup>9</sup> *Ibid.*

<sup>10</sup> “Iraq Declares War with Islamic State is Over”, *BBC News*, 9 December 2017.

<sup>11</sup> See European Union Agency for Asylum, “The Islamic State of Iraq and the Levant (ISIL)”, January 2021 (available on its web site).

<sup>12</sup> Soufan Group, “Foreign Fighters: An Updates Assessment of the Flow of Foreign Fighters into Syria and Iraq”, European Parliament Briefing No. PE 579.080, 1 December 2015, p. 4.

<sup>13</sup> UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (‘UNITAD’), “Contextual Elements of Crimes Against Humanity Committed by ISIL (Da’esh) in Iraq”, September 2024, para. 55.

ry encompassing religions falling under ‘people of the book’ and other religious groups including the Yazidis; and ‘apostates’, encompassing those who once entered Islām but then left it either openly or through actions deemed by ISIL to be in disagreement with Islām.<sup>14</sup> Treatment and crimes inflicted upon these groups stemmed from this fundamentalist ideology.

Religious minority groups were specifically targeted by the criminal brutality of ISIL given that ISIL’s ideology viewed Christians (Assyrian/Syriacs, Chaldeans and Armenians), Yazidis, Kaka’i, and Sabean-Mandean as ‘non-believers’. Additionally, religious minorities were impacted given that they predominantly inhabited areas heavily affected by the insurgency of ISIL, including Nineveh, Şālah al-Dīn and Kirkuk.<sup>15</sup>

As ISIL reached and began to gain control over Mosul and the Nineveh Plains starting June 2014, Christians who lived in this area started fleeing, with some returning shortly after to get their belongings.<sup>16</sup> The subsequent treatment of Christians followed a policy that was laid clear in multiple ISIL publications, chief amongst them is a widely circulated document titled the ‘Ultimatum’.<sup>17</sup> According to this document, Christians were to choose between converting to Islām or paying for protection, and failing both, “the sword will it be then”, meaning that they would be killed.<sup>18</sup> Alternatively, Christians had a choice of leaving ISIL-controlled territories within two days. The Ultimatum was repeated a month later. While many Christian families left Mosul after these documents were issued, some could not leave due to physical disabilities or lack of means.<sup>19</sup> After taking control over Mosul, ISIL then attacked areas in the Nineveh plains including Qaraqosh, Bartella and Karamlesh where Christians were rounded up, men and women separated, forcefully transferred to other locations or subjected to forced conversions. Many Christians, mainly men, went missing at the hands of ISIL in multiple locations, with UNITAD concluding that they likely were killed.<sup>20</sup> In line with ISIL’s Mosul Covenant, ISIL members were instructed to destroy churches, with UNITAD documenting 10 sites where churches and monasteries were burned, vandalized, looted or used for military training or as courts.<sup>21</sup> Based on UNITAD’s findings, the crimes perpetrated by ISIL against Christians amount to multiple war crimes and crimes against humanity, including persecution and other inhumane acts, with prominence given to acts of forced religious conversion.<sup>22</sup>

After taking over Mosul and other territories, ISIL launched on 3 August 2014 a co-ordinated attack on the Sinjar region, where the majority of the world’s Yazidis reside, and whose religion ISIL viewed as pagan. According to ISIL’s ideology, shared openly in its publications, the existence of Yazidis was a matter to be addressed either by forcing them to convert, or killing those who did not. With ISIL approaching, Yazidis started fleeing to the arid mountains with ISIL imposing a siege, cutting off all escape routes, and capturing those who had not yet fled or failed to flee. Captured Yazidis were separated based on gender.<sup>23</sup> Subsequently, men and pubescent boys who refused to convert to Islām were executed immediately or after a short period of time.<sup>24</sup> Those who converted were allowed to reunite with their families, but were executed at a later stage.<sup>25</sup> Women and girls were subjected to a meticulously organized system of enslavement, where they were distributed to ISIL members, sold, abused sexually, physically and emotionally, and forced to convert.<sup>26</sup> Pubescent boys were forcibly recruited into the ranks of ISIL.<sup>27</sup> Thousands of enslaved Yazidi women and

<sup>14</sup> *Ibid.*, para. 56.

<sup>15</sup> UN Human Rights Council, Report of the Special Rapporteur on Minority Issues on her Mission to Iraq, UN Doc. A/HRC/34/53/Add.1, 9 January 2017, para. 7 (‘Minority Issues Report’).

<sup>16</sup> UNITAD, “Summary of Factual and Legal Assessment of ISIL (Da’esh) Crimes against the Christian Community in Iraq”, September 2024, para. 9.

<sup>17</sup> *Ibid.*, paras. 14, 15 and 34.

<sup>18</sup> *Ibid.*, paras. 6 and 14.

<sup>19</sup> *Ibid.*, para. 16.

<sup>20</sup> *Ibid.*, paras. 27, 31 and 33.

<sup>21</sup> UNITAD, “Damage and Destruction of Cultural Heritage by ISIL (Da’esh) in Iraq”, September 2024, paras. 32–61.

<sup>22</sup> *Ibid.*; “Iraq’s Oldest Christian Monastery Destroyed by Islamic State”, *BBC News*, 20 January 2016.

<sup>23</sup> UNITAD, “The ISIL Attack on Sinjar in August 2014 and Subsequent Acts Committed Against the Yazidi Community in Iraq”, September 2024, para. 202.

<sup>24</sup> *Ibid.*, paras. 100–164.

<sup>25</sup> *Ibid.*, paras. 176–183.

<sup>26</sup> *Ibid.*, paras. 265–312.

<sup>27</sup> *Ibid.*, paras. 342–362.

children continue to be missing. An estimated 68 Yazidi religious sites, including temples and shrines, were destroyed.<sup>28</sup> UNITAD found that ISIL’s crimes against Yazidis may amount to genocide, as well as numerous war crimes and crimes against humanity.<sup>29</sup>

Sunnis and Shī’ah, the two major religious groups in Iraq, also fell victim to ISIL. Findings by UNITAD show that from 2001 until at least 2016, ISIL and its predecessors maintained a consistent and uniform genocidal policy against the Shī’ah of Iraq.<sup>30</sup> Sunnis too were victimized and punished, with ISIL viewing Sunnis who refused to pledge allegiance to ISIL as apostates, and those supporting, working with, or helping the Iraqi government or persons affiliated with it as ‘traitors’.<sup>31</sup>

Survivors and victim communities soon demanded not only condemnation of ISIL’s crimes, but also justice. Civil society and survivor-led groups emerged to advocate for concrete accountability. Nadia Murad, a Yazidi survivor, became a global voice for action.<sup>32</sup> As noted by the UN Special Rapporteur on Minority Issues, accountability is crucial for rebuilding trust in the government and preventing recurrence of such crimes.<sup>33</sup> Given the scale of ISIL’s atrocities and doubts about Iraq’s judicial capacity, appeals were made to the international community to support Iraq’s efforts to ensure meaningful justice for affected minority groups.

#### 4. Background and Capacity of the Iraqi Justice System

Today, Iraq prosecutes terrorism under national law but lacks legislation for core international crimes. A 2020 draft law criminalizing such crimes remains pending,<sup>34</sup> limiting accountability for atrocity crimes, including ISIL’s acts. Iraq’s justice system has deep roots in Shari’ah and Ottoman law, and was later shaped by British, French and Egyptian influences. Post-First World War, the British introduced common law elements, with secular courts for civil and criminal cases and religious courts for personal status matters. After independence in 1932, Iraq adopted a codified civil law system. From 1968 to 2003, the Ba’athist regime enacted new laws to centralize state control, including the 1969 Penal Code and 1971 Criminal Proceedings Law.

After the 2003 US-led invasion, Iraq’s legal system was overhauled. The Coalition Provisional Authority (‘CPA’) dissolved Ba’athist institutions and appointed new judges. Existing laws, including the 1969 Penal Code and 1971 Criminal Proceedings Law, were amended.<sup>35</sup> A new Constitution was adopted in 2005 which declared Islām the official religion and source of legislation, while guaranteeing “full religious rights to freedom of religious belief and practice of all individuals”.<sup>36</sup> Arabic and Kurdish were recognized as official languages, but Iraqis retained the right to “educate their children in their mother tongue, such as Turkmen, Syriac and Armenian”.<sup>37</sup> Other languages could gain official status *via* referendum. Chapter Three of the 2005 Constitution established the Higher Juridical Council (‘HJC’) to oversee the judiciary.<sup>38</sup> The Judicial Institute, respon-

<sup>28</sup> UNITAD, 2024, para. 74, see *supra* note 21.

<sup>29</sup> UNITAD, 2024, pp. 99–149, see *supra* note 23.

<sup>30</sup> UNITAD, “Camp Speicher: A Pattern of Mass Killing and Genocidal Intent”, June 2024, para. 16; UNITAD, “Factual and Legal Assessment of Acts Committed by ISIL (Da’esh) in Iraq During the Attack on Badush Central Prison on 10 June 2014”, September 2024, para. 7(i).

<sup>31</sup> See UNITAD, “Summary of Factual and Preliminary Legal Assessment of Crimes Committed by ISIL Against the Albu Nimr Tribe in Anbar 2014–2016”, September 2024; UNITAD, “ISIL (Da’esh) Crimes Committed in Tikrit, al-Alam, al-Dour and al-Dhuluiya”, August 2024.

<sup>32</sup> See, for example, one of the first interventions by Nadia Murad before the UN, Yazda, “Nadia: A 20 years Yazidi girl freed from captivity speaks at UN in Geneva”, *YouTube*, 26 November 2015. Nadia Murad went on to establish her own organization, Nadia’s Initiative, and lead various other international engagements.

<sup>33</sup> Minority Issues Reports, 2017, para. 70, see *supra* note 15.

<sup>34</sup> See Security Council Report, “December 2023 Monthly Forecast”, 30 November 2023 (available on its web site).

<sup>35</sup> See Iraq, Coalition Provisional Authority Order Number 7, “Penal Code”, 7 June 2003 (<https://www.legal-tools.org/doc/m0j7lswj/>); Iraq, Coalition Provisional Authority Order Number 31, “Modifications of Penal Code and Criminal Proceedings Law”, 10 September 2003 (<https://www.legal-tools.org/doc/firfth9/>).

<sup>36</sup> Iraq, Constitution of Iraq, 15 October 2005, Article 2 (‘2005 Constitution’) (<https://www.legal-tools.org/doc/ag2u6a08/>).

<sup>37</sup> *Ibid.*, Article 4.

<sup>38</sup> For more details, see Iraq, Law of the Supreme Judicial Council, 26 September 2017.

sible for the training of judges, was placed under the HJC, which, with UN and European Union support, adopted a Judicial Code of Conduct in 2022 to promote integrity and impartiality.<sup>39</sup>

The courts in Iraq include the Federal Supreme Court (for constitutional matters), Court of Cassation, and Central Criminal Court. However, the Kurdistan judiciary is semi-autonomous and operates in parallel to Iraq's federal justice system.<sup>40</sup> Iraq's justice system follows an inquisitorial criminal procedure, beginning with a pre-trial investigation and then a trial before a bench of three judges. Investigative judges play a central role, with broad authority to collect evidence and conduct hearings. They decide whether to dismiss a case or refer it to trial. The trial court relies heavily on the pre-trial dossier, making the trial phase typically brief.<sup>41</sup> Rather than playing an active role, the prosecutor only represents the public and ensures that the procedures are followed correctly.<sup>42</sup> Trial decisions can be appealed to the Court of Cassation, and cases involving serious crimes (as terrorism), death sentences, or prison terms over five years are automatically reviewed.<sup>43</sup>

In response to security threats, Iraq enacted the Federal Anti-Terrorism Law ('FATL') in 2005,<sup>44</sup> which was followed by Kurdistan's own law in 2006 ('KATL').<sup>45</sup> These laws grant victims standing to file complaints (triggering investigations) and participate as 'civil complainants' with legal representation. However, the absence of a victim and witness protection programme hinders participation, particularly for survivors of sexual violence. While the laws aimed to strengthen judicial and security institutions, they do not prioritize survivor participation. The coexistence of federal and regional laws highlights a legal overlap. ISIL's 2014 attacks in Iraq tested the system's capacity and the effectiveness of these counter-terrorism measures.

### 5. Application of Counter-Terrorism Laws in Post-ISIL Iraq

ISIL's rapid expansion exposed weaknesses in Iraq's security forces and governance. After the group's declared defeat in December 2017, Iraq's justice system struggled to restore its credibility and authority. ISIL systematically destroyed courthouses (which had to be rebuilt), court records, and intimidated staff who feared returning to work.<sup>46</sup> Years of conflict left the system with a shortage of qualified judges, prosecutors and legal personnel. Courts faced overwhelming case backlogs and lacked the administrative and technological infrastructure needed for efficient case management.

After ISIL's defeat, Iraq's weakened justice system struggled to meet the demands of survivors, especially minority groups like Yazidis, Christians, Shabaks, Turkmen, and Sabean-Mandaeans. Courts focused on prosecuting ISIL members under broad anti-terrorism laws, with acts qualifying as genocide, war crimes or crimes against humanity left unaddressed due to legislative gaps. Without the legal framework or capacity to address patterns of ethnic or religious persecution or genocidal intent, the system failed to deliver recognition or restitution, leaving cultural, material and emotional harms suffered by minorities largely unacknowledged.<sup>47</sup> The

<sup>39</sup> See UN Development Programme, "Strengthening Judicial Integrity in Iraq: New Judicial Code of Conduct Launched Today", Press Release, 22 November 2022.

<sup>40</sup> Iraq-Kurdistan, Decree No. 11, published in *Perleman* (Official Gazette), 15 September 1992, no. 1; Iraq-Kurdistan, Law No. 14 on Establishment of the Jurisdiction of the Kurdistan Region, December 1992 (<https://www.legal-tools.org/doc/3nsz19qo/>), replaced by Iraq-Kurdistan, Law No. 23 on the Kurdistan Region – Iraq Judicial Authority, 2007 (<https://www.legal-tools.org/doc/2l0soq48/>).

<sup>41</sup> Iraq, Criminal Procedure Code, 23 November 1971, Article 130 ("Criminal Procedure Code") (<https://www.legal-tools.org/doc/79e5e5/>).

<sup>42</sup> Iraq, Public Prosecution Law, 13 November 2017 (<https://www.legal-tools.org/doc/orddvsn8/>).

<sup>43</sup> *Ibid.*, Articles 5 and 10; Criminal Procedure Code, Article 257(b), see *supra* note 41.

<sup>44</sup> Iraq, Law on Combating Terrorism, 7 November 2005 (<https://www.legal-tools.org/doc/c65c32/>).

<sup>45</sup> Iraq-Kurdistan, Law No. 3 for Anti-Terrorism in the Kurdistan Region – Iraq, 2006 (<https://www.legal-tools.org/doc/e5661uo2/>).

<sup>46</sup> The World Bank approved USD 400 million in financial assistance to help rebuild priority infrastructures and public services, such as the courthouses of Mosul and other liberated areas in Iraq, see World Bank Group, "\$400 Million for the Reconstruction of Mosul and Newly Liberated Areas in Iraq", 31 October 2017.

<sup>47</sup> UNITAD, 2024, para. 5, see *supra* note 21: "From around 10 June 2014, when ISIL took over Mosul, until 26 August 2017, when the Iraqi forces recaptured Tal Afar from ISIL, ISIL damaged and/or destroyed at minimum several dozens

FATL also did not refer to fair trial standards, whereas the KATL stated that the "accused persons should be treated fairly in accordance with the law during interrogation, including through the provision of a lawyer".<sup>48</sup> From January 2018 to October 2019, the UN Assistance Mission for Iraq ('UNAMI') reported that the Iraqi judiciary processed over 20,000 terrorism-related cases, with thousands remaining pending.<sup>49</sup>

While Iraq lacks a legal framework for international crimes, it continues to prosecute atrocities under other existing national laws, showing a willingness to pursue accountability. However, as seen elsewhere, ISIL fighters can be cumulatively prosecuted for terrorism and international crimes.<sup>50</sup> ISIL is not only a terrorist group but was also a party to a non-international armed conflict. Justice efforts should recognize the full scope of crimes committed and provide appropriate redress for the diverse harms suffered by victims.

### 6. International Accountability Efforts and Support to Iraq

In a letter dated 9 August 2017 and addressed to the President of the UNSC, Iraq asked the international community to provide assistance in prosecuting ISIL crimes while maintaining Iraq's sovereignty, retaining Iraqi jurisdiction, and respecting Iraqi law.<sup>51</sup> In response, the UNSC adopted, on 21 September 2017, Resolution 2379 in which it requested the Secretary General to establish an Investigative Team to support domestic efforts to hold ISIL accountable by "collecting, preserving, and storing evidence [...] to the highest possible standards [and] to ensure the broadest possible use before national courts, and complementing investigations being carried out by the Iraqi authorities, or investigations carried out by authorities in third countries at their request".<sup>52</sup>

It was clear that UNITAD was to operate in full respect of Iraq's sovereignty and jurisdiction, and that Iraq should be the primary intended recipient of evidence collected and stored.<sup>53</sup> Evidence may be shared with other actors on a case-by-case basis and in agreement with Iraq.<sup>54</sup> After six years of operations, Iraq requested the UNSC to extend UNITAD's mandate for one year only without the possibility of extension, bringing its mandate to an end on 17 September 2024.

UNITAD's achievements in its relatively short period of operations are summarized on its archival web site.<sup>55</sup> It collected and preserved a diverse range of evidence, including from mass graves, based on which it formulated factual, and where appropriate, legal findings.<sup>56</sup> The outputs included 21 'case assessments and analytical reports' containing analysis of ISIL acts committed against Christian, Kaka'i, Sunni, Shi'ah, Turkmen and Yazidi communities, and which may amount to war crimes, crimes against humanity and genocide.<sup>57</sup> Twenty of these outputs were shared with Iraqi authorities. Still, and as explored in the earlier sections, no prosecutions for war crimes, crimes against humanity or genocide took place in Iraq due to barriers in the legal framework and other challenges.

Prosecutions of such crimes have therefore primarily taken place in third countries, and mostly before jurisdictions in Europe. Competent jurisdictions in third countries benefited from UNITAD's support, which responded to 302 requests for assistance from 21 countries and contributed to at least 19 indictments and 15 convictions.<sup>58</sup> A significant number of these cases are based on the active personality principle with the suspects being foreign nationals who joined ISIL and subsequently returned or were expatriated to their countries. Other cases were brought under the prin-

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of Shi'a, Sunni, Christian, Yazidi and Kaka'i cultural heritage sites".

<sup>48</sup> UNAMI and the Office of the UN High Commissioner for Human Rights, "Human Rights in the Administration of Justice in Iraq: Trials under the Anti-Terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL", January 2020, p. 5.

<sup>49</sup> *Ibid.*, p. iv.

<sup>50</sup> See Eurojust, "Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-related Offences", May 2020.

<sup>51</sup> UNSC, Letter Dated 14 August 2014 from the Charge d'affaires *a.i.* of the Permanent Mission of Iraq to the United Nations Addressed to the President of the Security Council, UN Doc. S/2017/710, 16 August 2017.

<sup>52</sup> UNSC Resolution 2379 (2017), UN Doc. S/RES/2379, 21 September 2017, para. 2 (<https://www.legal-tools.org/doc/1510b4/>).

<sup>53</sup> *Ibid.*, para. 3.

<sup>54</sup> *Ibid.*

<sup>55</sup> See the 'Achievements' tab on UNITAD's archival web site.

<sup>56</sup> *Ibid.*, 'Investigative Results' tab.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, 'Promoting Accountability Globally' tab.

principle of universal jurisdiction which views international crimes as offenses against all humankind, regardless of where they were perpetrated, making accountability for them similarly borderless. Collectively, these prosecutions have made significant strides towards justice for ISIL crimes even if they do not provide comprehensive accountability. In Germany alone, at least 30 cases have been brought against former ISIL members for a range of charges including war crimes, crimes against humanity, genocide and membership in a foreign terrorist organization. The case against Taha A.J., an Iraqi national, secured the first conviction for genocide against the Yazidi community.<sup>59</sup> Similar prosecutions have taken place in Finland, Sweden, France, Hungary, Belgium, the Netherlands, Portugal, Canada and the US. A significant number of these cases cover crimes perpetrated against Yazidis, with some jurisdictions focusing a part of their structural investigations on ISIL's attack against Sinjar.<sup>60</sup> There are limited cases covering crimes against other religious minorities, such as the Christians.

Iraq's persecuted minorities have sought justice not only through prosecutions but also by demanding reparations and the right to return to their ancestral lands. To develop a reparations system for personal and material losses, Iraq initially amended its existing Law No. 20 in 2015.<sup>61</sup> However, its implementation has been criticized for being too complicated and very slow.<sup>62</sup> In response to the specific atrocities committed by ISIL, Iraq passed Law No. 8 of 2021 (Yazidi [Female] Survivors Law)<sup>63</sup> to provide reparations, public-sector jobs, housing, education, psycho-social aid, *et cetera*, for the Yazidis, Turkmen, Christians and Shabak survivors.<sup>64</sup> However, the Iraqi government later instituted a requirement that the victim must first file a judicial complaint in order to be eligible for the benefits, which has been criticized for being contrary to the survivors' best interest.<sup>65</sup> This reflects a broader persistent failure to deliver impactful accountability measures for the atrocities committed by ISIL.

## 7. Conclusion

Meaningful accountability for ISIL crimes in Iraq includes (1) strengthening the national legal framework and judicial capacity, (2) fostering trust-based co-operation with international partners, and (3) strengthening victim-centric approaches to justice processes, including reparations, aimed at engaging with all victim communities including religious minorities.

Despite some progress, Iraq's accountability efforts are limited by an overreliance on counter-terrorism laws, which focus on affiliation with terrorist groups rather than crimes like genocide, sexual slavery, or crimes against humanity. Expanding national laws to cover international crimes is essential, though political will appears lacking.<sup>66</sup> Iraq fears that by expanding the law it will also allow the prosecution of Iraqi's security forces

<sup>59</sup> Doughty Street Chambers, "German Court Hands Down First Genocide Conviction Against ISIS Member", 30 November 2021.

<sup>60</sup> Trial International, "Universal Jurisdiction Annual Review 2021", April 2021, p. 51.

<sup>61</sup> Iraq, Law on Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations, 28 December 2009 (<https://www.legal-tools.org/doc/wf6uw29c/>).

<sup>62</sup> Human Rights Watch, "Iraq: Compensation for ISIS Victims Too Little, Too Late", 9 May 2023.

<sup>63</sup> Iraq, Yazidi Female Survivors Law, 2 March 2021 (<https://www.legal-tools.org/doc/gput904p/>).

<sup>64</sup> See *ibid.*, Article 1, stating that the law applies to female Yazidi, Turkmen, Christian and Shabak survivors of crimes of sexual violence, Yazidi children under the age of 18 years at the time of their kidnapping, and Yazidi, Turkmen, Christian, and Shabak survivors of ISIL mass killings and mass elimination, including male victims.

<sup>65</sup> Human Rights Watch, "Iraq: Flawed Implementation of Yazidi Compensation Law", 14 April 2023.

<sup>66</sup> Human Rights Watch, "Why Accountability for Iraq's Militias Matters", 27 May 2017.

and militias who participated in the fight against ISIL.<sup>67</sup> However, effective justice must be inclusive and non-selective. Without legal reform, Iraq's ability to deliver accountability for ISIL crimes remains incomplete, eroding public trust and prompting minority groups to fear for their safety and seek refuge outside the country.

The international community has tried to support Iraq's efforts to ensure accountability. UNITAD completed its investigative efforts, and an important part of the archive was handed over to the Iraqis.<sup>68</sup> With the conclusion of its mandate in 2024, the responsibility now fully shifts to Iraqi authorities. Iraq must ensure that justice is done for all victims of the ISIL crimes.

A preliminary step will be to preserve the evidence it has received from UNITAD, which also included digital databases of ISIS-related evidence.<sup>69</sup> An important step was taken in February 2025: the HJC created a National Center for International Judicial Cooperation Unit within its authority to ensure that evidence is archived in accordance with international standards, and used in a fair and transparent trial. In addition, its aim is to complete the work of UNITAD by supporting efforts to collect evidence and document violations committed by the terrorist entity Da'esh, in line with international humanitarian law.

In parallel, Iraq must reform its reparation system to provide timely, accessible and meaningful redress. While Laws No. 20 and No. 8 offer frameworks, implementation is overly bureaucratic. The requirement to file a judicial complaint places an unfair burden on survivors and should be removed. The procedures should be simplified and the reparation system must be adequately funded and staffed. The process must be survivor-centred, with safeguards to prevent re-traumatization, ensure dignity and privacy, and protect against discrimination throughout the reparation process.

The extent to which these new efforts succeed depends on Iraq's commitment to legislative reform, judicial independence, and the prioritization of survivors' rights within all facets of justice and accountability. It also depends on targeted and purposeful international support and assistance that fully take into account the structure of the Iraqi criminal justice system, the progress made, and the many remaining needs for improvement.

*Evelyn Anoya is an international legal expert with over two decades of experience in international human rights law, institutional reform, and multilateral diplomacy. She holds advanced degrees in law and Middle East studies, and has served with the UN, international tribunals, and academic institutions, advising on justice sector reform in conflict-affected regions. Amal Nassar is an international legal researcher and analyst working on justice processes for core international crimes and the rights of victims, with a focus on gender-based crimes and crimes against or affecting children. She holds an advanced degree in law and has served with the UN and civil society organizations in conflict and post-conflict settings.*

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