

**MULTI-DONOR TRUST FUND FOR
UN ACTION AGAINST SEXUAL VIOLENCE IN CONFLICT¹**

UN TEAM OF EXPERTS: RULE OF LAW/SEXUAL VIOLENCE IN CONFLICT

INTERIM NARRATIVE REPORT COVER PAGE

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| <p>Participating UN Organization(s): UNDP</p> | <p>Project² Title: Project Initiation Plan – Addressing Conflict-Related Sexual Violence in Iraq</p> <p>Project Number: UNA056</p> |
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¹ Only relevant if project is more than one fiscal year (i.e. 1 January - 31 December)

² The term “project” is used for projects, programmes and joint programmes

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| <p>UN Action pillar of activity:</p> <p><input type="checkbox"/> Advocacy <input type="checkbox"/> Knowledge building <input checked="" type="checkbox"/> Support to UN system at country level</p> | <p>Reporting Period: 1 April 2018 – 31 March 2019</p> |
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Interim Narrative Report

I. Background

In 2014, the so-called Islamic State of Iraq and the Levant (ISIL) captured Mosul and took broad swathes of the Ninewa plains region of northern Iraq. At the time, ISIL committed both widespread and systematic attacks against the civilian population in these regions using rape, sexual slavery and other forms of sexual violence of comparable gravity. Iraq, in conjunction with the Global Coalition to Defeat Da'esh, declared the defeat of ISIL on the battlefield in December 2017. However, many of the thousands of detainees who are believed to have committed or witnesses serious international crimes, including acts of sexual violence, remained to be investigated or prosecuted as a result of these operations.

Despite the commission of widespread sexual violence by the ISIL, at the time of the writing of this report, there have been no prosecutions of any ISIL perpetrators of sexual violence crimes by authorities in Iraq or elsewhere in the world. Instead, authorities in Iraq and the Kurdistan Region have used counterterrorism laws exclusively to try ISIL suspects for membership in or affiliation with ISIL. To remedy this gap and to assist in the full implementation of the Joint Communiqué between the United Nations and the Republic of Iraq on the Prevention and Response to Conflict-Related Sexual Violence (2016) and its provisions on accountability, the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict (TOE) developed a project to assist the Government of Iraq to investigate and prosecute “pilot cases” involving conflict-related sexual violence committed by ISIL perpetrators before Iraqi or Kurdistan regional courts.

Following the contribution of US\$400,000 in March 2018 by the Government of Japan to this project, the Government of Iraq requested the TOE to postpone its activities in Iraq pending the outcome of the elections and the formation of Government. During this period, the TOE took the opportunity to further identify the pool of victims seeking to file criminal complaints, refine the substantive and procedural legal analysis that will underpin the “pilot cases”, and negotiate and facilitate the transfer of funds to UNDP (Iraq) and arrange for the recruitment and placement of a P4 expert within UNDP (Iraq) to enable project implementation and coordination on the ground.

In late 2018, following the formation of the new government, the Government of Iraq requested the TOE to return to Iraq in 2019 to continue its work on the ground.

II. Objective

The objective of this project is to strengthen the capacity of justice stakeholders in Iraq and establish, in close coordination with national and international partners, the groundwork for a longer-term justice and accountability program in Iraq relating to conflict-related sexual violence and other serious crimes committed in the context of violent extremism. This includes assisting Iraqi and Kurdish regional government authorities in investigating and prosecuting cases of conflict-related sexual violence in national/regional courts that are compliant with international standards of due process and fair trial.

It is important to note that in accordance with United Nations policy established by the UN Secretary-General, no United Nations entity, including the TOE, can support or assist with any criminal proceeding where the death penalty may be imposed. Therefore, any assistance provided by the TOE to the Government

of Iraq must be in relation to criminal proceedings that do not lead to the imposition of the death penalty.

III. Progress/Results

Output: The investigation and prosecution (including through trial and appeal) of conflict-related sexual violence crimes committed by ISIL in accordance with Iraqi law is enhanced.

Activity 1: Analyse existing legislation, official bodies, and initiatives aimed at investigating and prosecuting ISIL's crimes, including conflict-related sexual violence, and following existing cases within justice systems.

As noted above, there have been no cases brought regarding sexual violence committed by ISIL by authorities in Iraq or elsewhere in the world. Indeed, cases against ISIL in Iraq are being tried and sentenced to death primarily based on Article 4 of the Iraqi counterterrorism law (2005). The Kurdistan region similarly has used its counterterrorism law to try perpetrators. This occurs even when the perpetrator may have committed crimes of conflict-related sexual violence or other serious crimes.

In order to support Iraqi authorities in bringing cases of rape and other forms of sexual violence, the TOE conducted a detailed analysis of Iraqi criminal law and procedure. Beyond the penal code and criminal procedure code, this involved research into Iraqi Constitutional law, the Public Prosecutor Law, the Judicial Power Law, the Personal Status Law and the new Victims and Witness Protection Law, as well as Kurdish law and its variations.

During the reporting period, the TOE worked with Iraqi judges, civil society, academics and practitioners to analyse existing legislation related to criminal offenses, criminal procedure, evidence, judicial cooperation, and victims and witness protection to refine its approach to “pilot cases” under Iraqi law. This resulted in the creation of a framework document of potential substantive charges that could be brought against alleged perpetrators of sexual violence located in Iraq in which the alleged perpetrators would not be subject to the death penalty, such as rape, which only carries a penalty of imprisonment and other similar crimes. The TOE also explored the possibility facilitating cases in the Kurdistan region where there is currently a moratorium imposed for the death penalty. Another approach being considered is to facilitate cases for rape or other forms of sexual violence against alleged perpetrators already convicted of terrorism related charges and sentenced to a term of imprisonment rather than the death penalty.

Based on the TOE's substantive and procedural analysis of the relevant Iraqi laws, particularly considering the protection and support needs of victims and witnesses, the TOE determined that the most appropriate approach would be to select the pool of victims from third States rather than those in Iraq. Based on this approach, the TOE actively engaged with the Government of Germany to identify potential victims and perpetrators that matched the legal profile that the TOE developed and explain to victims what the TOE project can do under UN rules and what it may not do. During this period, the TOE identified victims who have expressed interest in filing complaints and has also obtained a preliminary list of potential perpetrators. The next step will be to match victims with perpetrators and identify potential “pilot cases” with Iraqi and/or Kurdish authorities.

Activity 2: Facilitate coordination amongst official bodies and initiatives to enhance the investigation and prosecution of conflict-related sexual violence.

During the reporting period, the TOE engaged with several bodies and initiatives focused on enhancing

accountability for conflict-related sexual violence in Iraq, including the United Nations Investigative Team for the Accountability of Da'esh/ISIL (UNITAD) and the Special Quota Project, as detailed below, among others.

Regarding international partners, the TOE engaged with the UNITAD mechanism which was established pursuant to resolution 2379 (2017) that is designed to collect, store and preserve evidence of international crimes committed by ISIL. The TOE is working with UNITAD to ensure coherence and complementarity between the respective mandates. The TOE also has throughout 2018 engaged with the human rights section of UNAMI including the Senior Women Protection Adviser as well as UNODC. Furthermore, the TOE participated in three events in 2018 organized by the League of Arab States, UNDP and UN Women to discuss regional approaches to accountability for sexual violence that could benefit survivors in Iraq (and elsewhere in the region).

The TOE has held multiple meetings with State authorities in Baden-Wurttemberg, Germany where nearly 1,000 survivors of ISIL's sexual and gender-based violence and their children have been re-located, as well as the Office of the Federal Prosecutor handling structural investigations of international crimes under universal jurisdiction in order to identify potential victims who wish to file complaints in Iraq against alleged perpetrators under ordinary domestic law and travel to Iraq if necessary for short durations. By choosing survivors in third States for its project, the TOE aims to minimize the inherent risk to survivors' safety and security and ensure appropriate support in trials of this nature.

In September, October and November 2018, the TOE also participated in three workshops in Germany to inform Yazidi women of their legal rights both in Germany and abroad. These workshops were organized by the State of Baden-Wurttemberg and the German NGO AMICA, and involved victims who had testified in the International Criminal Tribunal for the former Yugoslavia and Yazidi women who have been relocated to Germany. During these sessions, Yazidi women were advised on steps in a legal process, issues related to engagements with the media, and the role of legal representatives if they chose to move forward in a court of law. These workshops have yielded more women interested in filing criminal complaints with Iraqi authorities.

Finally, the TOE has worked with International Organization for Migration on its UN Action Against Sexual Violence funded project designed to assist Iraqi and Kurdish authorities on providing victims assistance and reparation in accordance with existing Iraqi law as well as improving these legal frameworks for the future.

At the national level, the TOE continues to engage with its focal points for the implementation of the Joint Communiqué at federal and regional level as well as its focal points in the High Judicial Council. It also continues to liaise closely with the Permanent Mission of Iraq to the United Nations and the Iraqi Ministry of Foreign Affairs.

Activity 3: Strengthen the technical capacity of existing institutions to investigate and prosecute sexual violence crimes.

Given the delay in project implementation as a result of the request of the Government of Iraq, the TOE was unable to complete this project in the time allotted. However, with a funding mechanism established within UNDP and with the ongoing recruitment of a dedicated TOE expert, the TOE expects to be able to move forward. Further, members of the TOE from Headquarters will undertake a mission in the second quarter of 2019 to work with Iraqi and Kurdish regional government counterparts and other partners to ensure that the project can proceed without further delay.

IV. Conclusion

As noted in our letter of 14 March 2019 requesting a no-cost extension, there were unexpected delays in implementing the project due to the election and delays in the formation of the new Government. In this context, the TOE launched and refined its “pilot case” project during the reporting period by initially identifying potential groups of victims and alleged perpetrators who may be brought for prosecution in accordance with international due process standards and UN policies. Further the TOE negotiated and facilitated the transfer of funds to UNDP (Iraq) and arranged for the recruitment and placement of a P4 expert within UNDP (Iraq) to further enable project implementation and coordination on the ground. The TOE headquarters staff will continue to engage in project-based activities to ensure that the project moves forward pending the recruitment of the P4 expert.

Finally, as with all judicial proceedings, the TOE’s “pilot case” project will be a multi-year project whose outcome cannot be guaranteed. As a result, the TOE remains grateful to the Government of Japan for its continued funding and the TOE is actively soliciting funds from other international donors to ensure its work is sustainable.