

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

UN TEAM OF EXPERTS ON THE RULE OF LAW AND SEXUAL VIOLENCE IN CONFLICT

FINAL NARRATIVE REPORT COVER PAGE

<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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Final Narrative Report

I. Background

In 2017, Iraq, in conjunction with the Global Coalition to Defeat Da'esh, declared the defeat of Islamic State of Iraq and the Levant (ISIL). As part of its modus operandi, ISIL committed widespread and systematic attacks against the civilian population using rape, sexual slavery and other forms of sexual violence of comparable gravity. In the context of the military operation that led to defeat of ISIL, Iraqi forces detained thousands of ISIL members, believed to have committed and/or witnessed serious international crimes, including acts of sexual violence. In the course of 2018 and 2019, Iraq continued to receive and detain large numbers of repatriated Iraqi and non-Iraqi ISIL fighters from Syria, expected to face criminal proceedings.³

Since late 2017, the Iraqi judicial authorities have indicted and prosecuted ISIL detainees exclusively under existing counterterrorism laws. Criminal charges against these individuals have been reportedly limited to certain offences (e.g. membership, affiliation, association and support to a terrorist group) and they consistently failed to include grave violations of human rights. In 2019, in the context of its trial monitoring, UNAMI observed that, while trials proceeded in an orderly manner, there were concerns with the observance of fair trial standards: convictions relied extensively and almost exclusively on confessions (with defendants alleging that confessions were extracted under duress) and on the use of statements of anonymous informants; defense lawyers were not given enough time or access to adequately represent their clients.⁴

Most importantly, despite the numerous and well-documented acts of sexual violence committed by ISIL members and the large number of trials conducted by the Iraqi authorities against these individuals, there have been no prosecutions for crimes of sexual violence. Accordingly, the UN Secretary-General specifically urged Iraq, as well as all Member States, to prosecute ISIL operatives for their crimes, including crimes of sexual violence and trafficking in persons. Moreover, the Secretary-General urged states hosting refugee populations to ensure those who may be potential victims of ISIL are provided with access to justice.⁵

This call for justice was consistent with resolution 2467, adopted in April 2019, where the Security Council reiterated that sexual and gender-based violence can be part of the strategic objectives and ideology of, and used as a tactic by, terrorist groups, and recognized the victims of sexual violence perpetrated by terrorist groups as victims of terrorism, with the purpose of rendering them eligible for official support and redress as victims of terrorism.⁶

Also in April, and echoing the resolution earlier adopted, in Iraq, the Office of the President submitted a draft law to the Council of Representatives, aimed at recognizing and responding to the suffering of Yazidi women who were held in captivity by ISIL. The draft law contained specific provisions on, *inter alia*: rehabilitation, reintegration and economic empowerment of survivors; symbolic recognition of the atrocities

³ See: Report of the Secretary-General, S/2019/103, para. 17; Report of the Secretary-General, S/2019/365 (2 May 2019), para. 25; Report of the Secretary General, S/2019/660 (5 August 2019), para. 57.

⁴ See: Report of the Secretary-General, S/2019/365 (2 May 2019), paras. 51; para. 85; Report of the Secretary General, S/2019/660 (5 August 2019), para. 56; Report of the Secretary General, S/2019/903 (22 November 2019), para. 65.

⁵ See: Report of the Secretary-General, S/2019/365, (2 May 2019) para. 86; S/2019/103; Report of the Secretary General, S/2019/612, (31 July 2019) para. 66.

⁶ See: Security Council resolution S/2467/612 (23 April 2019) paras. 6 and 29.

committed against Yazidis; adoption of a procedure to recognize the civil status of children born of women held in captivity by ISIL.⁷ While the draft law is yet to be approved, it marks a step forward in the pathway to holistic transitional justice.

Finally, 2019 was also marked by the effective launch of the UN Investigative Team for Daesh (UNITAD), established pursuant to resolution 2379, to collect, preserve and store gather evidence of serious international crimes, including conflict related sexual violence. However, in line with its mandate, UNITAD has limited its work to the preparation of internal operational procedures that will allow the preparation of files that, as of now, cannot be shared with the Iraqi judicial authorities.⁸

While the normative and institutional progress observed in 2019 should be interpreted as positive signals, the total absence of accountability for crimes of sexual violence committed by ISIL, described above, illustrates the importance and potential impact of the project.

II. Objective

In 2016, the Government of Iraq and the United Nations signed a Joint Communiqué on the Prevention and Response to Conflict-Related Sexual Violence pursuant to Security Council resolution 2106 (2013). The current project was designed to further the justice provisions of that Communiqué and to respond to the absolute absence of accountability for conflict-related sexual violence crimes committed by ISIL.

Accordingly, the objective of this project was 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 included 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 United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict (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

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. In this context, the TOE was only able to launch this project in 2019. While several members of the TOE continued to engage in project-based activities to ensure that the project moved forward, a number of institutional challenges hindered the deployment of the TOE, in Iraq, as well as the recruitment and deployment of country-based staff. Bearing in mind these challenges, the TOE focused on attaining the project's output by prioritizing Activity 1 and Activity 2, and working on Activity 3, remotely.

⁷ See: Report of the Secretary General, S/2019/660 (5 August 2019) para. 62.

⁸ See: Third report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant, S/2019/878 (13 November 2019) paras 11, 42 and 50.

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 judicial cases containing criminal charges against ISIL members for incidents of sexual violence, either by judicial authorities in Iraq or elsewhere in the world. Indeed, judicial cases against ISIL members, in Iraq, are being tried and issued harsh sentences (including death sentences) primarily based on Article 4 of the Iraqi counterterrorism law (2005). The Kurdistan region similarly has used its counterterrorism law to try perpetrators.

Analysis and Identification of Framework for Prosecution in Iraq - In order to support Iraqi authorities in bringing cases of rape and other forms of sexual violence, the TOE conducted a detailed preliminary 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 organized a series of bilateral calls and two group discussions, in New York, to share and discuss the abovementioned analysis with relevant actors, including: Iraqi judges; local civil society and practitioners currently working with/representing survivors of sexual violence; and international non-governmental organizations currently working with the Iraqi judiciary and/or engaged in judicial monitoring. These discussions were particularly important opportunities to consider and challenge existing customs and practices that, in the past, have prevented an optimal application of the law privileging the rights of the victim. Finally these engagements led to the creation of a reference document that could be used by the relevant parties to identify 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 (the document refers specifically to existing legislation in Iraq as the criminal code and/or the anti-trafficking law).

Identification of viable cases for investigation and prosecution in Iraq - In addition to the analytical work mentioned above, the TOE worked with national authorities – in Iraq and in third countries hosting victims of ISIL - and specific survivors' groups (see also: *Activity 2/ State of Baden-Wurttemberg AMICA; Federal Prosecutor*), to identify viable conflict-related sexual violence cases for investigation and prosecution. Bearing in mind the limited security/protection made available to victims participating in criminal proceedings in Iraq, the TOE identified a limited number of victims, currently residing in a third country, who, according to existing Iraqi law, could file and pursue a case in Iraq as a party to the process. This exercise allowed for the identification of a limited number of cases that, if actively supported, may be pursued in the future.

In this context, the TOE, did provide initial assistance to the case of one Yazidi victim, residing in Germany under a special status, who positively identified her alleged perpetrator. The TOE facilitated the initial identification and contact of the victim with German authorities. However, the case was subsequently dealt with directly by the Iraqi authorities who, while tacitly acknowledging the existence of sexual violence, failed to charge the perpetrator with the relevant offences.⁹

⁹ See: *She Faced Her ISIS Rapist in Court, Then Watched Him Sentenced to Death*, New York Times, 2 March 2020.

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 focused on enhancing accountability for conflict-related sexual violence in Iraq, including: UN entities (i.e., UNITAD, IOM, UN Women, UNDP), Iraqi and German authorities.

UNITAD - The TOE engaged with the UNITAD, established pursuant to resolution 2379 (2017), to collect, store and preserve evidence of international crimes committed by ISIL. From its establishment, the TOE facilitated meetings between the Office of the SRSG on Sexual Violence in Conflict and UNITAD's Special Adviser. Following initial discussions aimed at ensuring coherence and complementarity between their respective mandates, the TOE and UNITAD explored the possibility of establishing a MOU for cooperation. While the MOU was not put in place, the TOE held a number of discussions with UNITAD and UNAMI to clarify the complementary roles to be played by the different entities in the investigation and prosecution of conflict-related sexual violence, including their roles and relationships with national judicial authorities.

UN Women, UNDP and League of Arab States - The TOE participated in three events in late 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 continued to use the established relationships, in 2019, to advocate and advance its work honing national and international support for the investigations and prosecution of conflict-related sexual violence.

International Organization for Migration - Throughout 2019, the TOE worked with the IOM team based in Iraq and Geneva, currently implementing a UN Action Against Sexual Violence in Conflict 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. Following the issuance of the draft law for Yazidi Survivors (see above, Introduction) the TOE worked with IOM to provide specific inputs on the definition of beneficiaries of the proposed law; the regulatory apparatus needed to implement the law given lessons learned from Iraq's Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions; the range of reparative measures, including rehabilitative measures; and the restoration of citizenship to children born of sexual violence.

Iraqi Officials - At the national level, the TOE continued 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 continued to liaise closely with the Permanent Mission of Iraq to the United Nations and the Iraqi Ministry of Foreign Affairs.

State of Baden-Wurttemberg/AMICA - In September, October and November 2018, the TOE 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, where nearly 1,000 survivors of ISIL's sexual and gender-based violence and their children have been re-located, and the German NGO AMICA. The workshops involved victims who had testified in the International Criminal Tribunal for the

Please note that, unlike what is suggested by the article the defendant was not charged or sentence for the any sexual violence related offence (e.g. rape or slavery). While the Iraqi authorities allowed the victim to confront the prosecutor in the court room, the victim's statement was not used to support or corroborate any of the charges the defendant was indicted for (i.e. the defendant was charged and convicted solely under articles 2/1,3 and 4/1 of the [Anti-Terrorism Law No. 13 of 2005](#)).

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.

Germany Federal Prosecutor - Throughout 2019, the TOE held multiple meetings with the Office of the Federal Prosecutor handling structural and specific investigations of international crimes under universal jurisdiction. After initial discussions about the possibility of supporting pilot cases, these discussions were focused on specific judicial cooperation and mutual legal assistance modalities that could make viable the potential sharing of information about situations (not judicial cases) where victims, currently, under German jurisdiction, would wish to file complaints in Iraq against alleged perpetrators.

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

As reported under Activity 1, the TOE conducted a preliminary detailed analysis of Iraqi criminal law and procedure, in order to understand and identify possible pathways for the investigation and prosecution before Iraqi courts and in line with Iraqi procedure.

In that context, the TOE organized several calls/discussions with Iraqi practitioners (judiciary and non-judiciary) to explore and test investigating and charging strategies. These discussions also allowed Iraqi practitioners to understand and discuss alternative judicial practices, used in the region.

As noted above, the implementation of Activity 3 was hampered by the limited deployment/access of the TOE to Iraq.

IV. Conclusion

While the promotion of accountability for conflict-related sexual violence committed by ISIL remains an outcome that cannot be immediately guaranteed, during the reporting period, and through the activities described above, the TOE actively contributed to the achievement of the project's main output: enhance the investigation and prosecution of conflict-related sexual violence crimes committed by ISIL in accordance with Iraqi law. With Iraqi national authorities, international organizations and national and international non-governmental actors, the TOE analyzed, unveiled and identified viable legal and practical ways to bring justice to victims of sexual violence committed by ISIL in Iraq today. The TOE remains committed to actively pursuing these pathways. The TOE continues to note, in line with its interim report for 2020, that progress could be greater on accountability for sexual violence crimes in Iraq with a coordinated whole-of-UN approach to justice activities in Iraq relating to ISIL and that no single entity can bring justice globally and sustainably for crimes committed by ISIL given their scale and severity.

As a result, the TOE remains grateful to the Government of Japan for its continued funding and notes that it continues to actively solicit funds from other international donors to ensure its work is sustainable.