

2016

Iraqi Women Confronting ISIL: Protecting Women's Rights in the Context of Conflict

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**IRAQI WOMEN CONFRONTING ISIL:
PROTECTING WOMEN’S RIGHTS IN THE
CONTEXT OF CONFLICT**

*Lisa Davis**

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I. INTRODUCTION

In 2014, as Iraq was undergoing a steady rise in sectarian violence, the Islamic State of Iraq and the Levant (ISIL) took control of several major cities.¹ As militants moved into the country's second largest city, Mosul, they immediately imposed their extremist agenda directly on the bodies of women, ordering them to fully cover themselves and stay at home.² Within days, credible reports began emerging of ISIL fighters abducting and raping women.³

ISIL militants have carried out grave human rights violations including execution, dismemberment, rape, sexual slavery, and flogging.⁴ Clerics affiliated with ISIL have issued *fatwas* calling for the “gifting” of women to the new Caliphate fighters, under the ISIL decree imposing “Jihad al-Nikah”.⁵ If the occupiers’ mission succeeds, a large part of Iraq and Syria

¹ Joint Written Statement: Hum. Rts. Council, U.N. Gen. Assembly, 22d Special Sess., Sept. 1, 2014, 2, U.N. Doc. A/HRC/S-22/NGO/13 (Aug. 31, 2014). ISIL is also known as the Islamic State of Iraq and Syria (ISIS) and the Islamic State (IS).

² Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 2.

³ *Id.*; see also Jeffrey Marcus, *U.N. Report Details ISIS Abuse of Women and Children*, N.Y. TIMES, Oct. 3, 2014, <http://www.nytimes.com/2014/10/04/world/middleeast/un-report-isis-abuse-women-children.html>; Hajer Naili, *Iraq Women's Shelter Responds to Growing Crisis*, WENEWS (Jun. 19, 2014), <http://womensenews.org/story/war/140618/iraq-womens-shelter-responds-growing-crisis>.

⁴ Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 2; see also Office of the High Comm’r for HUM. RTS. (OHCHR) & U.N. Assistance Mission for Iraq (UNAMI), Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July – 10 SEPTEMBER 2014, 5-7, 11-15 (2014); *Iraq: ISIS, Militias Feed Cycle of Abuses*, HUM. RTS. WATCH (Feb. 2, 2015), <https://www.hrw.org/news/2015/02/02/iraq-isis-militias-feed-cycle-abuses>.

⁵ Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 2; see also *ISIS Issues Orders in Mosul: Give Over Girls for “Sex Jihad,”* THE CLARION PROJECT (June 29, 2014), <http://www.clarionproject.org/news/isis-issues-orders-mosul-give-over-girls-sex-jihad>.

would be ruled by a brutal militia that uses murder, torture, and cruel, inhuman, and degrading treatment against those it deems as not adhering to its extremist interpretation of religion.⁶

ISIL's rise comes against a backdrop of long-running armed conflicts in Iraq and Syria where gender-based violence⁷ has been continuously present.⁸ Threats posed by ISIL and other militia groups should be understood as part of a continuum of violence and discrimination, in which gender rights suffer before, during, and after armed conflicts.⁹ These conflicts have not only increased the vulnerability of thousands of displaced persons to gender-based violence, they have also further entrenched structural and cultural violence against women and other marginalized persons.¹⁰ While all Iraqis face insecurity caused by terrorism and civil strife, women and girls experience additional, targeted abuse because of their gender.¹¹

Comprehensively addressing the rights and humanitarian needs of women and girls fleeing ISIL-controlled territories requires addressing pre-existing threats embedded in laws and social norms. Such a contextual analysis enables us to understand the ways that armed actors manipulate vulnerabilities created by prevailing gender-based discrimination to achieve their strategic ends. It also sheds light on sustainable solutions to long-standing human rights violations that have been exacerbated by conflict.

⁶ Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 2; Rukmini Callimachi, *Enslaving Young Girls, the Islamic State Builds a Vast System of Rape*, N.Y. TIMES, Aug. 14, 2015, A1 (noting that “the ISIS leadership has emphasized a narrow and selective reading of the Quran and other religious rulings to not only justify violence, but also to elevate and celebrate each sexual assault as spiritually beneficial, even virtuous”); Yifat Susskind, *What Will It Take to Stop ISIS Using Rape as a Weapon of War?*, THE GUARDIAN (Feb. 17, 2015), <http://www.theguardian.com/global-development/2015/feb/17/disarm-isis-rape-weapon-war>.

⁷ The term gender-based violence in this article includes violence based on sexual orientation, gender, and gender identity, and accordingly includes violence against women. See Julie Goldscheid, *Gender, Neutrality, the “Violence against Women” Frame, and Transformative Reform*, 82 UMKC L. REV. 623 (2014), for a discussion on the way gender violence is framed in law, policy, and popular rhetoric.

⁸ See Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 2; Bassem Mroue, *Women Stoned to Death in Syria for Adultery*, HUFFINGTON POST, Aug. 9, 2014, http://www.huffingtonpost.com/2014/08/09/women-stoned-adultery-syria_n_5664828.html. But see *Iraq 10 Years On: Women Yet to Regain Their Place*, IRIN (May 6, 2013), <http://www.irinnews.org/report/97976/iraq-10-years-on-women-yet-to-regain-their-place>.

⁹ See Comm. on the Elimination of Discrimination Against Women, Rep. on Gen. Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, Oct. 18, 2013, ¶¶ 34–36, U.N. Doc. CEDAW/C/GC/30 (Oct. 31, 2013).

¹⁰ See Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 2.

¹¹ *Id.*

This article is based on extensive conversations and interviews with local Iraqi women's rights activists, who are working to address and prevent gender-based violence and discrimination within the context of the conflict and in greater Iraq.¹² It reflects their perspectives and strategies for addressing both immediate needs and long-term systemic change to enhance gender rights and protections. Local women's rights organizations commonly work on critical issues in times of conflict, forging practical solutions, from law reform and implementation to changing societal norms and rebuilding a more just and sustainable society. They are comprised of women's rights activists; lesbian, gay, bisexual, and transgender (LGBT) rights activists; journalists; service providers; lawyers; judges; academics; and human rights advocates.¹³ The women and men who come together through these organizations have survived war, political repression, and systemic discrimination.¹⁴ They possess unique expertise that allows them to best identify, meet the needs of, and to advocate for women, LGBT persons, and members of other marginalized communities they serve.¹⁵ They recognize that women are critical as civil society representatives and their work is often based on an analysis that bridges solutions for immediate violations with systemic root causes, producing a more lasting outcome.¹⁶ Yet, women throughout the world are rarely included in either formal conflict resolution or reconstruction processes facilitated by the international community.¹⁷ Iraq is no exception.

The Iraqi government admits that, where women are concerned, the "legislative guarantees enshrined in the Constitution and the laws in force have proved insufficient to enable women to effectively enjoy equality," and attributes this to a lack of implementation stemming from ongoing

¹² Interviews were conducted through the International Women's Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law from 2011 to 2015. Information based on interviews or conversations footnoted in this article are cited to the most recent documentation but may be reflected in numerous interviews and conversations that took place over a four-year span.

¹³ See *supra* note 12 and accompanying text.

¹⁴ See *id.*

¹⁵ See Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 2-3.

¹⁶ See *supra* note 12 and accompanying text.

¹⁷ U.N. WOMEN, WOMEN'S PARTICIPATION IN PEACE NEGOTIATIONS: CONNECTIONS BETWEEN PRESENCE AND INFLUENCE, 2 (2009) (finding that out of 21 major peace processes only 2.4% of signatories to the peace agreements were women); see WILPF, ICAN, HUM. RTS. WATCH, KVINNA TIL KVINNA, OXFAM, AND DEMOCRASHE, ENSURING THE EFFECTIVE PARTICIPATION AND RIGHTS OF WOMEN IN THE SYRIAN PEACE AND MEDIATION PROCESS 1 (2013) (finding that peace negotiations that meaningfully involve civil society greatly reduce the risk of failed peace agreements).

conflict and cultural resistance.¹⁸ Whatever the reasons, states are not permitted to abandon their responsibilities to protect human rights, even in times of crisis including internal armed conflict.¹⁹ Moreover, the problem is not confined to the outbreak of conflict or cultural barriers.²⁰ The problem is also a matter of law and its implementation.²¹

During times of conflict, women, girls, and other marginalized persons are at greater risk of gender-specific harms, as pre-existing impunity and social stigma surrounding gender-based violence worsens armed conflict's impacts.²² Survivors or victims²³ often face blame for crimes committed against them, such as domestic violence, forced marriage, rape, or attempted "honor" killings, often resulting in abusive treatment by investigators, police, judges, and the general public.²⁴ This creates an urgent need to address structural violence and prevent the exacerbation of such harm while meeting the needs of those who have already endured gender-based abuses.

The sharp increase in sectarian violence in Baghdad and other cities signals a return to the worst days of the sectarian fighting in Iraq.²⁵ The safety of marginalized and at-risk populations has become more threatened, as these groups have historically been targeted by extremists during sectarian strife as part of campaigns to "cleanse" the social fabric of society.²⁶ Such campaigns have also sought to silence the voices of progressive organizations and citizens who call for a culture of human rights over sectarianism.²⁷

¹⁸ Hum. Rts. Comm., Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Iraq, 5th Periodic Repts. of States Parties Due in 2000, Oct. 16, 2013, ¶ 62, U.N. Doc. CCPR/C/IRQ/5 (Dec. 12, 2013).

¹⁹ Hum. Rts. Comm., Gen. Comment No. 28: Article 3 (*The Equality of Rights Between Men and Women*), ¶¶ 7-8, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 29, 2000).

²⁰ *Id.* at ¶ 21.

²¹ See Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 2.

²² See Comm. on the Elimination of Discrimination Against Women, *supra* note 8, at ¶¶ 34-36.

²³ This article utilizes the term "survivor," except where appropriate, utilizes the term "victim" as a legal term to identify an individual harmed by a criminal act and entitled to legal redress.

²⁴ Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 3.

²⁵ *Id.* at 2.

²⁶ See, e.g., The Editorial Board, *Iraq's Imperiled Minorities*, N.Y. TIMES, Jul. 23, 2014, <http://www.nytimes.com/2014/07/24/opinion/Iraqs-Imperiled-Minorities.html>; Timothy Williams and Tareq Maher, *Iraq's Newly Open Gays Face Scorn and Murder*, N.Y. TIMES, Apr. 7, 2009, <http://www.nytimes.com/2009/04/08/world/middleeast/08gay.html>; James Glanz, *Iraq Toll at 250 in the Deadliest Attack of the War*, N.Y. TIMES, Aug. 16, 2007, http://www.nytimes.com/2007/08/16/world/middleeast/16iraq.html?pagewanted=all&_r=0.

²⁷ See, e.g., Michael Slackman, *A Mideast Triangle*, N.Y. TIMES, Mar. 20, 2011, at WK1.

Exacerbation of human rights violations in the context of conflict creates a renewed impetus for amending harmful policies or practices—albeit often under the premise of being temporary—that impede protections and services. As local women’s rights organizations work on the front lines to support those most in need, they are also working to create policy protections, not only for the marginalized communities they serve, but also for their service and advocacy work, which often must occur outside boundaries of legal recognition in Iraq.²⁸ In this way, conflict presents a political and cultural opening for change.

By understanding conflict as a continuum, instead of as an expression of a particular form of mass violence in the context of war, we can recognize that human rights violations persist outside of, and are magnified by, conflict, instead of being created by it. This understanding is important in the context of transitional justice and peace negotiations because it encourages systemic change and redress to eliminate persistent impunity, and it builds long lasting protections through a human rights framework. It also calls on international actors to support a ground-up approach to addressing human rights violations through a gendered lens.²⁹ Moreover, this framework demands that support for such change continue once conflict is over and promotes recognition of the root causes of human rights abuses from the pre-conflict context.³⁰

The first section of this article discusses some of the major forms of gender-based violence committed in Iraq, as identified by local Iraqi women’s rights organizations.³¹ This section will demonstrate how these violations are part of a simmering continuum that erupted with the 2003 U.S.-led invasion of Iraq and are exacerbated by the current conflict. This article starts its analysis in the post-2003 Iraq human rights context, since it served as a key moment in civil society organizing efforts for the inclusion of gender rights protections into the rapidly changing political environment. Today, women’s rights organizations continue to underscore the need to address long-standing gender-based violence and discrimination as part of decisions made during reconstruction and peace-building processes. The five main violations Iraqi women’s rights advocates report and that this

²⁸ See *supra* note 12 and accompanying text.

²⁹ See, e.g., CEDAW, *supra* note 9, at ¶¶ 29-30.

³⁰ See *id.* ¶¶ 75-76.

³¹ For an in-depth discussion about women’s human rights violations in Iraq and Syria, see *CUNY Law and Sorensen Center Host Women Confronting ISIS Symposium*, CUNY SCHOOL OF LAW (Mar. 16, 2015), <http://www1.cuny.edu/mu/law/2015/03/16/cuny-law-and-sorensen-center-host-women-confronting-isis-symposium/>.

article discusses are sexual violence, “honor” killings, trafficking, domestic violence, and forced and underage marriages.

The second section of this article will discuss the compounding effect of human rights violations on minority women, LGBT persons and gender nonconforming persons—or those perceived as such—in Iraq. The third section will describe targeted advocacy strategies and policy changes that Iraqi women’s rights groups and their international counterparts are spearheading to address gender-based violence and discrimination. The strategies in this section exemplify ways in which conflict presents an opportunity for these initiatives to create sustainable change. This article concludes that the international community should prioritize addressing gender-based violence and protecting minority rights including LGBT and women’s rights during times of conflict, and construct solutions based on a continuum analysis of these rights, instead of through the siloed context of armed conflict.

II. OLD PATTERNS: GENDER-BASED VIOLENCE AND ISIL IN IRAQ

While gender-based violence and discrimination against women and girls has been a longstanding and pervasive problem in Iraq,³² it peaked dramatically with the invasion of U.S.-led forces in 2003.³³ More than 400 Iraqi women were abducted and raped within the first four months of the occupation.³⁴ Within a year, Iraqi women identified a breakdown in security and public order as their primary concern,³⁵ as human rights and fundamental freedoms continued to degrade. Local activists attributed much of the violence to social disintegration, criminal activity and the rise of fundamentalism.³⁶ The sharp increase in abductions, rapes, and sexual slavery left women afraid to leave their homes.³⁷ Girls were removed from

³² MADRE & Organization of Women’s Freedom in Iraq (OWFI), *Violence and Discrimination Against Women in Iraq*, Submission to the United Nations Universal Periodic Review, 20th Session of the Working Group on the UPR, Hum. Rts. Council ¶ 2 (2014), http://www.madre.org/uploads/misc/1397079969_Violence%20and%20Discrimination%20Against%20Women%20in%20Iraq.pdf.

³³ MADRE, *Promising Democracy, Imposing Theocracy: Gender-Based Violence and the US War on Iraq 1* (Mar. 2007) [hereinafter MADRE, *Promising Democracy*].

³⁴ Agence Fr.-Presse, *More than 400 Iraqi Women Kidnapped, Raped in Post-war Chaos*, RELIEFWEB (Aug. 24, 2003), <http://reliefweb.int/report/iraq/more-400-iraqi-women-kidnapped-raped-post-war-chaos-watchdog>.

³⁵ MADRE, *Promising Democracy*, *supra* note 33, at 7.

³⁶ *Id.*

³⁷ *Id.*

schools.³⁸ Male doctors were warned not to treat female patients, and female doctors were threatened to not treat male patients.³⁹ It became a crime for women to wear pants or appear in public without a headscarf.⁴⁰ By the summer of 2003, Islamist “misery gangs” started patrolling the streets, harassing and beating women who were not behaving or dressing “properly.”⁴¹

The threats to civilians, including women and girls, posed by ISIL and other militia groups should be understood as a continuing outgrowth of the deterioration of women’s human rights since the 2003 invasion.⁴² In Iraq today, women contend with myriad forms of discrimination and gender-based violence.⁴³ While all Iraqi citizens face daily insecurity due to terrorism and civil strife, women and girls experience additional and unique forms of violence and discrimination because of their gender.⁴⁴ Despite numerous provisions under Iraqi law that aim to protect women’s rights, violence against women remains egregious and widespread.⁴⁵

Iraqi women’s rights groups note that a widespread lack of awareness of women’s rights and the revival of conservative tribal practices are critical factors in perpetuating a culture of violence and other forms of discrimination against women.⁴⁶ Women have become increasingly vulnerable to trafficking and forced prostitution in Iraq and its neighboring countries.⁴⁷ Domestic violence, forced, underage, and temporary marriages

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Sarah El Deeb, *Iraqi Women Deal With Mixed Legacy*, ASSOCIATED PRESS, Jan. 26, 2004, Westlaw.

⁴² See MADRE, *Promising Democracy*, *supra* note 33, at 7 (explaining that violence against women is a “primary weapon” to impose political agenda on society).

⁴³ *Id.*; see generally MADRE & OWFI, *supra* note 32 (describing human rights violations of Iraqi women due to gender-based violence and discrimination).

⁴⁴ MADRE, *Promising Democracy*, *supra* note 33, at 2.

⁴⁵ MADRE & OWFI, *supra* note 32, at ¶ 9.

⁴⁶ Interview with Iraqi women’s rights activists, in Istanbul, Turk. (Jan. 22, 2015) (on file with Author); Wassim Bassem, *Underage Marriages Growing in Iraqi Cities*, AL-MONITOR, Feb. 14, 2014, <http://www.al-monitor.com/pulse/originals/2014/02/underage-marriage-iraq-continues.html#>. See generally Wassim Bassem, *In Iraq, Honor Crimes Spread to Cities*, AL-MONITOR, Oct. 11, 2013, (reporting the widespread occurrence of honor crimes in Iraqi cities), <http://www.al-monitor.com/pulse/originals/2013/10/iraq-honor-crimes-increase.html#>.

⁴⁷ U.S. STATE DEP’T, *TRAFFICKING IN PERSONS REPORT 202* (2013), <http://www.state.gov/documents/organization/210739.pdf>.

remain a reality for many women and girls.⁴⁸ Compounding this problem is the fact that 28.2% of women aged twelve years or older are illiterate; more than twice the male rate of 13% illiteracy in Iraq.⁴⁹

According to Ivan Simonovic, the UN Assistant Secretary-General for Human Rights, Iraq has long suffered from several “chronic human rights challenges,” particularly with regard to protecting the rights of women.⁵⁰ This situation has dramatically worsened with the occupation of parts of Iraq by ISIL,⁵¹ an organization labeled by the UN High Commissioner on Human Rights as “the antithesis of human rights” for “[i]t kills, it tortures, it rapes, [and] its idea of justice is to commit murder.”⁵² Both before and particularly during this conflict period, the Iraqi government has failed in its responsibility to protect the human rights of its citizens.⁵³

Iraqi women’s rights activists regularly emphasize five main areas of concern for gender rights abuses that are exacerbated by the current conflict: (a) sexual violence; (b) “honor” killings; (c) sex trafficking; (d) domestic violence in the form of spousal abuse; and (e) forced and underage marriages.⁵⁴

A. Sexual Violence

Everywhere in the world where there is conflict and disaster, there are disproportionate levels of gender-based violence and its accompanying stigma.⁵⁵ This is particularly true because in the wake of disaster and conflict, women generally have less access to resources and are often

⁴⁸ See OHCHR, Statement by the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons, Mr. Chaloka Beyani, Upon Conclusion of His Official Visit to Iraq – 9 to 15 May 2015 (2015).

⁴⁹ *Iraq 10 Years on: Women Yet to Regain Their Place*, IRIN (May 6, 2013), <http://www.irinnews.org/report/97976/iraq-10-years-on-women-yet-to-regain-their-place>.

⁵⁰ OHCHR, Tragedy of Even Greater Proportions in Iraq Should be Urgently Prevented (Oct. 20, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15189&LangID=E>.

⁵¹ *Id.*

⁵² OHCHR, (Oct. 16, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15173&LangID=E>.

⁵³ *See id.*

⁵⁴ MADRE & OWFI, *supra* note 32, at ¶ 3.

⁵⁵ *See, e.g.*, United Nations High Comm’r for Refugees (UNHCR), *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, 22, 24 (2003), <http://www.unhcr.org/3f696bcc4.html>; World Health Org. [WHO], *World Report on Violence and Health*, at 156 (2002), http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf.

excluded from decision-making processes.⁵⁶ This discrimination makes women and girls more vulnerable to the impact of such crises, including the specific conditions that give rise to sexual violence.⁵⁷ It can also leave women more susceptible to sexual exploitation, trafficking, and other forms of gender-based violence.⁵⁸ Additionally, the effects of stigmatization and related discrimination can intensify where an individual is already marginalized because of other factors such as sexual orientation, gender identity, religion, ethnicity, or socioeconomic status.⁵⁹

Stigma and discrimination related to sexual violence undermine a survivor's ability to access redress through police intervention, prosecution, adjudication, or medical assistance. Professionals in these fields, along with victims' family and community members, often lack an understanding of sexual violence, or even worse, blame the victim.⁶⁰ This prejudice toward victims impacts the legal response and remedies available.⁶¹ Police may be unwilling to investigate a case, and prosecutors may devalue a victim's account of the attack.⁶² Victims' abilities to access justice are consequently hindered and they are less likely to disclose the attack.⁶³ Survivors may also turn against themselves or self-stigmatize, blaming themselves for what they experienced.⁶⁴

When visiting health centers in Iraq, women and men seeking care after rape or for sexually transmitted infections report being ridiculed, shamed, or blamed for what has happened to them.⁶⁵ Sometimes they are turned away.⁶⁶ As a result, many rape survivors do not attempt to access medical treatment due to the deep humiliation they endure.⁶⁷ This stigma, embedded in religion, traditions, and customs, may include rejection not just by the

⁵⁶ See, e.g., Fionnuala Ni Aolain, *Women, Vulnerability, and Humanitarian Emergencies*, 18 MICH. J. GENDER & L. 1, 1-2 (2011).

⁵⁷ *Id.* at 12; see also Lisa Davis, *Still Trembling: State Obligation Under International Law to End Post Earthquake Rape in Haiti*, 65 U. MIAMI L. REV. 867, 868 (2011).

⁵⁸ Ni Aolain, *supra* note 56.

⁵⁹ See *id.* at 5-7.

⁶⁰ See UNHCR, *supra* note 55, at 24.

⁶¹ *Id.*

⁶² See *id.*

⁶³ See *id.*

⁶⁴ See *Id.*

⁶⁵ Interview with OWFI staff members, in N.Y.C., N.Y. (Mar. 12, 2015) (on file with Author).

⁶⁶ *Id.*

⁶⁷ NGO Coordination Comm. in Iraq, *Gender-Based Violence in Iraq: The Effects of Violence—Real and Perceived—on the Lives of Women, Girls, Men and Boys in Iraq* 10 (La Strada Int'l, Working Paper No. 1824), <http://lastradainternational.org/Isidocs/824%20gender%20violence%20in%20Iraq.pdf>.

family but by society as a whole.⁶⁸ It may also lead to re-victimization for “shaming the family,” by way of “honor” killing or negotiation with the perpetrator of rape to marry his victim in order to “restore her honor.”⁶⁹

In the aftermath of armed conflict, sexual violence commonly persists.⁷⁰ While combatant-perpetrated sexual violence often does decrease substantially when wars cease, there is little expectation that incidences of domestic sexual violence will decline when the fighting ends.⁷¹ More commonly, studies have shown that in the aftermath of conflict and disaster, gender-based violence often flourishes.⁷² This can be attributed to a variety of factors including pervasive stigma, weak law enforcement that existed before the conflict as well as frustrations from economic downturn.⁷³ Indeed, when male fighters demobilize, often to broken homes and unemployment, domestic violence can increase.⁷⁴

According to a 2012 survey, 46% of girls aged 10-14 have been exposed to violence at least once by a family member, and 46% of women have experienced physical violence, including sexual violence, from their spouses on a regular basis in Iraq.⁷⁵ Tellingly, more than 97% of women in one survey stated that they would not be willing to report gender-based violence to the police because of “fear of damaging their reputation” or the belief that Iraq’s law enforcement agencies would be unable to solve the problem.⁷⁶ Women who do report assault face harassment and abuse from police officers and run the risk of being accused of adultery or prostitution.⁷⁷ Women’s rights activists point out that growing religious

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See RADHIKA COOMARASWAMY, PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE: A GLOBAL STUDY ON THE IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325 (UN Women, 2015).

⁷¹ HUM. SEC. REPORT PROJECT, HUMAN SECURITY REPORT 2012: SEXUAL VIOLENCE, EDUCATION, AND WAR: BEYOND THE MAINSTREAM NARRATIVE 20-21 (Andrew Mac et al. eds., 2012).

⁷² See, e.g., Special Rapporteur on Violence Against Women, *Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women*, Comm. on Human Rights, ¶ 57, U.N. Doc. E/CN.4/2001/73 (Jan. 23, 2001) (Radhika Coomaraswamy); U.N. DEV. PROGRAMME (UNDP), GUIDANCE NOTE: GENDER-BASED VIOLENCE IN CRISIS AND POST-CRISIS SETTINGS 9 (2009).

⁷³ UNDP, *supra* note 72, at 9.

⁷⁴ HUMAN SEC. REPORT PROJECT, *supra* note 71, at 37.

⁷⁵ UNAMI, *Women in Iraq*, 2 (2013), <http://www.iau-iraq.org/documents/1864/Woman-Factsheet.pdf>.

⁷⁶ *Id.*

⁷⁷ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 36, U.N. Doc. HCR/EG/IRQ/12/03 (May 31, 2012).

intolerance has led to increased levels of gender-based violence inflicted on women and people of diverse sexual orientations and gender identities.⁷⁸ This has increased the risk of eviction from family homes and communities, unjust imprisonment, public beatings, abuse, torture, and extrajudicial killing of women, LGBT persons, and gender non-conformers who transgress gender or sexual norms.⁷⁹

Beyond the pervasive stigma and societal pressure to keep silent about sexual assault, Iraqi women's rights activists report that rape victims face several daunting obstacles if they attempt to pursue redress through the criminal justice system.⁸⁰ First, a survivor of sexual violence is at risk of tarnishing her family's reputation. Even the community she lives in may see her experience of rape as offensive and damaging to its sense of honor.⁸¹ Being raped, or suspected of having been raped, are among the "transgressions" that can leave women or girls at risk of "honor" killings.⁸² The law is of little assistance in these situations.⁸³ "Honor" killings are often treated similarly to misdemeanors rather than as serious criminal offenses under the Iraqi Penal Code.⁸⁴ Victims' lawyers commonly refuse to take on sexual assault cases out of fear of harassment or of tarnishing their professional reputations.⁸⁵ Police and judges lack adequate training, further impeding efforts to bring perpetrators to justice.⁸⁶ Assuming a survivor can convince the police to file her complaint and the prosecutor to

⁷⁸ Interview with Iraq women's and LGBT rights activists, in Baghdad, Iraq (Jan. 13, 2014) (on file with author).

⁷⁹ See OutRight Action Int'l (formerly IGLHRC), MADRE & OWFI, *When Coming Out is a Death Sentence: Persecution of LGBT Iraqis* 1-5 (2014), http://www.madre.org/uploads/misc/1417532210_ComingOutDeathSentence_Iraq.pdf. IWHR Clinic documentation on human rights violations in Iraq contributed to this report. For safety reasons at the time of the report's release, the IWHR Clinic opted to remain anonymous. The English version of this publication was released shortly after the fall of Mosul, during a time of extreme volatility nationwide. At the request of local activists, the Arabic version was not released publicly for safety concerns. *Id.* See generally HUMAN RIGHTS Watch, "No One is Safe" *The Abuse of Women in Iraq's Criminal Justice System* 2-6 (Feb. 6, 2014).

⁸⁰ See *supra* note 12 and accompanying text.

⁸¹ UNHCR, *supra* note 77, at 37. "Honor crimes" refers to killing and other violence committed, usually against women or girls, by family members who believe the victim to have transgressed social, cultural, or religious norms, thus bringing shame to their family. *Id.*

⁸² *Id.* See *infra* Part II, §B.

⁸³ *Id.*

⁸⁴ See, e.g., Penal Code No. 111 of 1969, art. 409 (Iraq).

⁸⁵ U.S. STATE DEP'T, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: IRAQ 40 (2012), <http://www.state.gov/documents/organization/204572.pdf>; see also Heartland Alliance for Hum. Needs & Hum. Rts., *Institutionalized Violence Against Women and Girls: Laws And Practice in Iraq*, 18 (2011).

⁸⁶ U.S. STATE DEP'T, *supra* note 85.

bring a case, she may need to defend her reputation in court since consideration of a victim's sexual history in rape cases is permitted under the law.⁸⁷

Even if a survivor wins her case, the Penal Code states that perpetrators of sexual assault crimes may be exonerated if they marry their victims, including after having been sentenced and in cases where the victim is under the age of eighteen.⁸⁸ Driven by social pressure and the desire to preserve traditional notions of honor, the family of a rape survivor may insist she marry her perpetrator to maintain the family's reputation.⁸⁹ If she refuses, her family could ask a judge to intervene and order the marriage to go forward, despite her objection.⁹⁰ Discouraging divorce, the law also mandates perpetrators to remain married to their victims for at least three years to avoid reinstatement of the rape charges.⁹¹ And when the survivor is raped again by her perpetrator-now-husband, she will have no recourse under the law since marital rape is not considered a crime.⁹² Not surprisingly, rape survivors are unlikely to press charges against perpetrators and statistical information on cases of rape remains almost non-existent.⁹³ Persistent sexual and gender-based violence in Iraq and its accompanying impunity has only grown worse in the current conflict.⁹⁴

B. Honor Killings

“Honor” killings can come in the form of beheadings, shootings, slayings, and burnings.⁹⁵ Perpetrators may throw victims from rooftops, or

⁸⁷ See Penal Code No. 111 of 1969, art. 393 (Iraq).

⁸⁸ See *id.* While the Iraqi government maintains that mitigation for perpetrators who marry their victims is no longer practiced, activists report that such mitigation or suspension of sentences is still practiced and allowed for under law. Interview with Iraq women's and LGBT rights activists, *supra* note 78.

⁸⁹ U.S. STATE DEP'T, *supra* note 85.

⁹⁰ *Id.*

⁹¹ Hum. Rts. Watch, *Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad*, 15 (2013), <http://www.hrw.org/reports/2003/iraq0703/iraq0703.pdf>; see also U.S. STATE DEP'T, *supra* note 85.

⁹² See U.S. STATE DEP'T, *supra* note 85.

⁹³ *Id.*

⁹⁴ OHCHR, Statement by the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons, Mr. Chaloka Beyani, Upon Conclusion of His Official Visit to Iraq – 9 to 15 May 2015 (2015).

⁹⁵ Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Promotion and Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development*, U.N. Doc. A/HRC/20/16, ¶¶ 45-46 (May. 23, 2012) (Rashida Manjoo); U.N. News Center, *Impunity for Domestic Violence, 'Honor Killings' Cannot*

they may stone or burn their victims to death, to name a few recorded methods.⁹⁶ As violence committed against women, this may happen because a woman is suspected of committing adultery, being raped, refusing an arranged marriage, or being perceived as gender non-conforming to traditional values.⁹⁷ For example, a nineteen-year-old woman was shot seven times by her in-laws for having an “unknown number” in her cell phone.⁹⁸ A seventeen-year-old girl was stoned to death in front of an angry mob of men for dating a boy outside her Yazidi tribe.⁹⁹ In 2008, police acknowledged that, on average, fifteen women per month were murdered in Basra for breaching conservative dress codes.¹⁰⁰

While there are many Islamists who speak out against the practice of killing for “honor,”¹⁰¹ some claim that “honor” killing is a religious obligation, although neither the Koran nor the Hadith condones these crimes.¹⁰² Rather, its roots can be traced back to customs predating Islam and Christianity.¹⁰³ Former UN Special Rapporteur on Violence Against Women, its Causes and Consequences, Radhika Coomaraswamy notes that “honor” is a “magic word” that cloaks the most egregious crimes.¹⁰⁴ She explains that “the concept of honor is especially powerful because it exists

Continue – UN Official, (Mar. 4, 2010), available at <http://www.un.org/apps/news/story.asp?NewsID=33971>.

⁹⁶ Assoc. Free Press, *U.N. to Meet on ISIS Killings of Homosexuals*, al-Arabiya, Aug. 14, 2015, <http://english.alarabiya.net/en/News/middle-east/2015/08/14/U-N-to-meet-on-ISIS-gay-attacks.html>.

⁹⁷ CEDAW Comm. & Comm. on the Rts. of the Child, *Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination Against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices*, U.N. CEDAW/C/GC/31-CRC/C/GC/18, ¶ 28 (Nov. 4, 2014); The U.N. Department of Information, *Unite to End Violence Against Women, United Nations Secretary-General's Campaign: Fact Sheet*, 1, DPI/2498 (Feb. 2008), available at <http://www.un.org/en/women/endviolence/pdf/VAW.pdf>; Human Rights Watch, *Honoring the Killers: Justice Denied for “Honor” Crimes in Jordan*, (Apr. 19, 2004), available at <https://www.hrw.org/report/2004/04/19/honoring-killers/justice-denied-honor-crimes-jordan>.

⁹⁸ Terri Judd, *Barbaric “Honour Killings” Become the Weapon to Subjugate Women in Iraq*, INDEPENDENT (U.K.), Oct. 22, 2011, <http://www.independent.co.uk/news/world/middle-east/barbaric-honour-killings-become-the-weapon-to-subjugate-women-in-iraq-816649.html>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *E.g.*, Newsweek Pakistan, *Pakistan Ulema Council Declares “Honor Killing” Un-Islamic*, NEWSWEEK, May 30, 2014, <http://newsweekpakistan.com/pakistan-ulema-council-declares-honor-killing-un-islamic/> (noting Islamists who speak out against crimes of “honor”).

¹⁰² MADRE, *Promising Democracy*, *supra* note 33, at 15. For more information on the interpretation of Islam as a source of dignity, justice, compassion and love for all humanity, see Muslims for Progressive Values, <http://www.mpvusa.org/who-we-are/>.

¹⁰³ MADRE, *Promising Democracy*, *supra* note 33, at 15.

¹⁰⁴ Special Rapporteur on Violence Against Women, *supra* note 72, at ¶ 27.

beyond reason and beyond analysis. But what masquerades as ‘honor’ is really men’s need to control women’s sexuality and their freedom.”¹⁰⁵

Iraqi women have stated that reporting sexual abuse and gender-based violence can trigger “honor”-based crimes and retaliation.¹⁰⁶ For example, a fifteen-year-old girl who was raped and impregnated by her brother was subsequently killed by her other brother after she was released by authorities.¹⁰⁷ An Iraqi women’s rights activist reported when she was raped at age thirteen, her family determined that she needed to be killed in order to save their honor.¹⁰⁸ She ran away from home and found refuge at a women’s shelter.¹⁰⁹ Today, she is a prominent leader in the women’s rights movement in Iraq.¹¹⁰

“Honor” killings also occur against men who step outside of the normative boundaries of gender and sexuality in Iraq.¹¹¹ An Iraqi women’s rights organization, the Organization of Women’s Freedom in Iraq (OWFI),¹¹² along with its international partners, the International Women’s Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law¹¹³ MADRE,¹¹⁴ and OutRight Action International (formerly known as the International Gay and Lesbian Human Rights Commission or

¹⁰⁵ *Id.*

¹⁰⁶ UNHCR, *supra* note 77, at 34-35.

¹⁰⁷ U.S. STATE DEP’T, *supra* note 85, at 41.

¹⁰⁸ Interview with OWFI staff members, *supra* note 65.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Press Release, *IGLHRC and MADRE Statement on Men Allegedly Executed for Sodomy by ISIS in Iraq*, OUTRIGHT ACTION INT’L (Jan. 21, 2015), <https://www.outrightinternational.org/content/iglhrc-and-madre-statement-men-allegedly-executed-sodomy-isis-iraq>.

¹¹² *See generally About Us*, THE ORG. OF WOMEN’S FREEDOM IN IRAQ, <http://www.owfi.info/EN/about/> (last visited Oct. 17, 2015). The Organization of Women’s Freedom in Iraq (OWFI) is a national women’s organization dedicated to rebuilding Iraq on the basis of secular democracy and human rights for all. *Id.* OWFI works to meet the needs of survivors of gender-based violence (GBV) and provides civic education to survivors of GBV. *Id.*

¹¹³ *See generally CUNY Law School, international women’s human rights*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/clinics/iwhr.html> (last visited Oct. 17, 2015). The International Women’s Human Rights (IWHR) Clinic focuses on gender-based violence, reproductive rights, sexual orientation and gender identity, economic and social rights, children’s rights and anti-trafficking work.

¹¹⁴ *See generally Meet MADRE*, MADRE, <http://www.madre.org/page/meet-madre-1.html> (last visited Aug. 13, 2015). MADRE is an international women’s human rights organization that works in partnership with community-based women’s groups worldwide to advance women’s human rights by meeting urgent needs in communities and building lasting solutions to the crises women face. *Id.*

IGLHRC),¹¹⁵ have documented “honor” killings and threats of “honor” killings made against real or perceived LGBT persons in Iraq.¹¹⁶

Activists note part of the problem is that the Iraq Penal Code provides for more lenient punishments for “honor” killings on the grounds of provocation or “honorable motives.”¹¹⁷ Courts may reduce a death penalty to one-year imprisonment or commute a life sentence to six months imprisonment where such mitigating factors are found.¹¹⁸ The use of mitigated sentences for so-called “crimes of honor” has parallels in other judicial systems, including in the jurisprudence of the United States, Europe, and Latin America, where perpetrators of so-called “crimes of passion” may receive reduced sentences.¹¹⁹ In Iraq, police are unwilling to investigate cases and advocates are afraid to report them, which further obscures the extent of the violence.¹²⁰ Facing immense social pressure and potential retaliation, medical examiners frequently refuse to register violent deaths as murders in cases where a body bears the marks of a typical “honor” killing, and instead label such deaths as accidents or suicides.¹²¹

“Honor” killings dramatically increased in Iraq following the U.S. invasion in 2003.¹²² For example, the southern city of Basra experienced a

¹¹⁵ See generally *Our Model for Change*, OUTRIGHT ACTION INT’L, <https://www.outrightinternational.org/how-we-work> (last visited Oct. 24, 2015). Formerly, the Int’l Gay and Lesbian Human Rights Commission (IGLHRC), OutRight Action Int’l is a leading international organization dedicated to human rights advocacy on behalf of people who experience discrimination or abuse on the basis of their actual or perceived sexual orientation, gender identity or expression. *Id.*

¹¹⁶ See *infra* Part III, §B; See also OUTRIGHT ACTION INT’L, MADRE & OWFI, *supra* note 79, at 3-8; See generally OUTRIGHT ACTION INT’L (formerly IGLHRC), MADRE & OWFI, WE’RE HERE: IRAQI LGBT PEOPLE’S ACCOUNTS OF VIOLENCE AND RIGHTS ABUSE (2014); IGLHRC, MADRE & OWFI, WHEN COMING OUT IS A DEATH SENTENCE: PERSECUTION OF LGBT IRAQIS (2014).

¹¹⁷ See Penal Code No. 111 of 1969, art. 128 (Iraq).

¹¹⁸ See *id.* arts. 128, 130, 409 (Iraq); see also Comm. Against Torture, *Concluding Observations on the Initial Report of Iraq*, ¶ 24, U.N. Doc. CAT/C/IRQ/CO/1 (Sep. 7, 2015) (noting that while the Iraqi government alleges that reduced sentences for “honor” crimes is no longer practiced in courts, activists report that such mitigation of sentences is still practiced and allowed for under law).

¹¹⁹ MADRE, *Promising Democracy*, *supra* note 33, at 15; Robert Ferrari, *Crime Passionel in French Courts*, 6(5) CAL. L. REV. 331 (1918).

¹²⁰ THE KVINNA TILL KVINNA FOUNDATION, VIOLENCE AGAINST WOMEN IN IRAQ 2 (2014); See also interview with Iraq women’s and LGBT rights activists, *supra* note 78 (discussing their work documenting “honor” killings by interviewing doctors and attendees at hospitals and morgues on unclaimed bodies and deaths resulting from typical forms of “honor” killings).

¹²¹ MADRE, *Promising Democracy*, *supra* note 33, at 7, 15.

¹²² *Id.*

seventy percent increase in “honor” killings between 2004 and 2008.¹²³ These numbers are presumably under-represented, as “honor” killings are notoriously difficult to document.¹²⁴ the Coalition Provisional Authority’s directives under L. Paul Bremer¹²⁵ did little to eliminate impunity for “honor” crimes in Iraq, and laws today continue to bolster social norms that promote “honor” killing.¹²⁶ Article 128,¹²⁷ Article 130,¹²⁸ and Article 409¹²⁹ of the Iraqi Penal Code are the most problematic laws, the combination of which allow for a mitigating defense of “honor” as a justification for the murder of women and girls and gender non-conformers killed by male relatives.¹³⁰ A mitigation defense may not only help to reduce a murder sentence to less than one year of jail time, but a judge could entirely discharge a defendant from penalty.¹³¹ Iraqi activists report that Article 41 of the Constitution is often cited to as the primary foundation for this mitigation.¹³² It states, “Iraqis are free in their commitment to their personal

¹²³ HUDA AHMED, *WOMEN’S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: PROGRESS AND RESISTANCE* 163 (Sanja Kelly & Julia Breslin eds., 2010).

¹²⁴ See Special Rapporteur on Violence Against Women, *supra* note 72, at ¶ 23.

¹²⁵ Following the 2003 U.S. invasion, L. Paul Bremer led the occupational authority of Iraq and served as head of state for the Iraqi government. JAMES DOBBINS ET AL., *RAND, OCCUPYING IRAQ: A HISTORY OF THE COALITION PROVISIONAL AUTHORITY* xiii (2009).

¹²⁶ MADRE, *Promising Democracy*, *supra* note 33, at 4, 11-12.

¹²⁷ Penal Code No. 111 of 1969, art. 128 (Iraq). Article 128 of the Penal Code states:

Legal excuse either discharges a person from a penalty or reduces that penalty. Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honourable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse.

¹²⁸ *Id.* art. 130. Article 130 of the Penal Code states:

If there exists a mitigating excuse for a felony for which the penalty is death, the penalty shall be reduced to life imprisonment or imprisonment for a term of years or detention for a period of not less than one year. If the penalty is life imprisonment or imprisonment for a term of years; the penalty shall be reduced to a period of detention of not less than 6 months unless otherwise stipulated by law.

¹²⁹ *Id.* art. 409. Article 409 of the Penal Code states,

Any person who surprises his wife in the act of adultery or finds his girlfriend in bed with her lover and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding 3 years. It is not permissible to exercise the right of legal defense against any person who uses this excuse nor do the rules of aggravating circumstance apply against him.

¹³⁰ INST. FOR INT’L L. & HUM. RTS., *WOMEN AND THE LAW IN IRAQ* 32 (2010) (noting the lack of a definition for “honourable motives” under the Penal Code results in a “very broad mitigating excuse”).

¹³¹ Penal Code No. 111 of 1969, arts. 128, 130 (Iraq).

¹³² Interview with Iraqi women’s rights activists, *supra* note 46.

status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.”¹³³

Even with mitigation, rarely are “honor” crimes settled within the courts.¹³⁴ In 2010, the Iraqi Ministry of Human Rights noted a consistent pattern of “honor” killings with eighty-seven known cases in 2008 and eighty-four known cases in 2009.¹³⁵ However, three years later, the Ministry reported that between 2012 and 2013, only ten criminal cases involving “honor” killings were tried.¹³⁶ Similarly, in 2013, the United Nations Assistance Mission for Iraq (UNAMI) reported numerous incidents of “honor” killings that took place within a five-month period—all of them were officially registered as non-homicidal deaths.¹³⁷ In some instances, the perpetrators publicly voiced responsibility for their actions, which went uninvestigated.¹³⁸

Iraq has a history of criticism from international human rights bodies concerning the continued practice and legal support of “honor”-based crimes within the country.¹³⁹ During its Universal Periodic Review with the Human Rights Council in October 2014, and previously in 2010, various nations noted and expressed concern about legislation allowing mitigated sentences for “honor”-based crimes.¹⁴⁰ Other international human rights mechanisms have also highlighted these same problematic legal mechanisms when considering Iraqi individuals’ claims for assistance or protection against such crimes.¹⁴¹ In the past two years, other treaty bodies

¹³³ Article 41, *Dustūr Jumhūrīyat al-‘Irāq* [The Constitution of the Republic of Iraq] of 2005.

¹³⁴ MADRE & OWFI, *supra* note 32, at ¶ 23; AHMED, *supra* note 123, at 168.

¹³⁵ Letter from OWFI, MADRE, and the IWHR Clinic at CUNY Law School to the U.N. Hum. Rts. Comm., U.N., OHCHR, 11 (Feb. 1, 2015).

¹³⁶ *Id.*

¹³⁷ OHCHR & UNAMI, *REPORT on Human Rights in Iraq: July – December 2013*, 15 (June 2014).

¹³⁸ *Id.*

¹³⁹ See, e.g., Comm. on the Elimination of Discrimination Against Women (CEDAW Comm.), *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, ¶ 25, U.N. Doc. CEDAW/C/IRQ/CO/4-6 (Mar. 10, 2014); Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Iraq*, ¶ 6, U.N. Doc. CCPR/C/79/Add.84 (Nov. 19, 1997).

¹⁴⁰ Working Group on the Universal Periodic Review, *Rep. of the Working Group on the Universal Periodic Review – Iraq*, 16, 21, U.N. Doc. A/HRC/14/14 (Nov. 5, 2010); Working Group on the Universal Periodic Review, *Draft Report of the Working Group on the Universal Periodic Review of Iraq* 15-16 (Hum. Rts. Council, U.N. Doc. A/HRC/WG.6/20/L.12, Nov. 5, 2014).

¹⁴¹ UNHCR, *supra* note 77, at 34-35 (noting the continued practice and legal support of “honor” based crimes in Iraq as grounds for asylum); HOME OFFICE, OPERATIONAL GUIDANCE NOTE: IRAQ, 2014, at 31 (noting “honor” killings and “honor” based crimes in Iraq as a major consideration for humanitarian protection claims and requests).

reviewing Iraq, including the Human Rights Committee, the Committee Against Torture (CAT Committee), the Committee on Economic, Social and Cultural Rights (ESCR Committee), and the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), called for the repeal of any and all laws supporting such mitigation in addition to increased prosecution and punishment of perpetrators.¹⁴²

With little protection provided by the legal system, women threatened with “honor” crimes have limited recourse should they try to flee the country.¹⁴³ For those left inside of Iraq, there are few options to seek refuge.¹⁴⁴ A few have sought out shelters or even prison.¹⁴⁵ While there are a few women’s shelters that operate openly in Kurdistan, shelters that exist in central and southern Iraq operate covertly, making them difficult to locate. All of these shelters are under-resourced.¹⁴⁶ Shelter employees have also become targets of violence themselves for providing services to survivors.¹⁴⁷

Legal and cultural norms underpinning “honor” killings in Iraq have exacerbated the extreme rates and types of gender-based violence against women and girls, particularly with the rise of ISIL.¹⁴⁸ Women and girls fleeing ISIL-controlled areas carry the additional burden of the suspicion of being raped, and face the risk of being subjected to “honor” killings when they return to their hometowns.¹⁴⁹ In a displacement camp outside of Karbala, an Iraqi women’s rights organization reported that several of the camp residents called for the Iraqi government to bomb the schools and hospitals that serve as makeshift ISIL prisons, holding women and girls who may have been raped, in order to “save the honor” of the people from

¹⁴² Hum. Rts. Comm., *Concluding Observations on the Fifth Periodic Report of Iraq*, ¶¶ 25-26(b), U.N. Doc. CCPR/C/IRQ/5 (Nov. 5, 2015); Comm. Against Torture, *supra* note 118, at ¶ 24; CEDAW Comm., *supra* note 139, at ¶¶ 26-27; The Comm. on Economic, Social and Cultural Rts. (ESCR Comm.), *Concluding Observations on the Fourth Periodic Report of Iraq*, ¶¶ 39-40, U.N. Doc. E/C.12/IRQ/CO/4 (Oct. 27, 2015).

¹⁴³ AHMED, *supra* note 123, at 167.

¹⁴⁴ See Heartland Alliance for Hum. Needs & Hum. Rts., *supra* note 85, at 10.

¹⁴⁵ See *id.*.

¹⁴⁶ See *id.*; see also Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 2.

¹⁴⁷ See U.S. STATE DEP’T, *supra* note 47, at 204; Interview with Iraqi women’s rights activists, *supra* note 46; Interview with Iraqi women’s activists, in Baghdad, Iraq (Jan. 12, 2014) (on file with Author).

¹⁴⁸ See Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 3.

¹⁴⁹ See Amnesty Int’l, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, 13, AI Index MDE 14/021/2014 (2014); Interview with Iraqi women’s rights activists, *supra* note 46.

these besieged towns.¹⁵⁰ Reports have also emerged of women committing suicide after being abducted and raped by ISIL “because they couldn’t stand the shame” they would bring to their families and communities.¹⁵¹

The sheer magnitude of sexual slavery and violence committed by ISIL has also compelled a call for abandoning some harmful beliefs and practices about sexual violence and honor.¹⁵² The Yazidi community has faced unprecedented levels of killing, rape and sexual slavery.¹⁵³ Faced with a survival crisis, Yazidi spiritual leader, Baba Sheikh, called on the community to not engage in violence in the name of “honor” against women who have escaped ISIL, and instead to welcome them back into the community, and offer these women much needed care and support.¹⁵⁴ However the stigma against real or perceived sexual violence survivors is persistent.¹⁵⁵ Many Yazidi families fear that women who have been abducted will be shunned from marriage and unable to support themselves.¹⁵⁶ In response, several local women’s rights organizations have started providing their own services to displaced persons and have implemented peer-to-peer education programs, identifying sexual violence survivors and helping to facilitate their access to safe-housing and psychosocial services.¹⁵⁷ These same advocates also conduct educational outreach campaigns countering harmful assumptions about women and honor.¹⁵⁸

¹⁵⁰ Interview with Iraqi women’s rights activists, *supra* note 46; *see also* Joint Written Statement: Hum. Rts. Council, *supra* note 1, at 3.

¹⁵¹ Interview with Iraqi women’s rights activists, *supra* note 46; Zahra Radwan & Zoe Blumenfeld, *Surging Violence Against Women in Iraq*, FOREIGN POL. IN FOCUS, Jun. 26, 2014, <http://fpif.org/surging-violence-women-iraq/>.

¹⁵² *See* Amnesty Int’l, *supra* note 149, at 4; *see also* Leila Fadel, *For Yazidi Women, Escaping ISIS Doesn’t Mean the Ordeal Is Over*, NATIONAL PUBLIC RADIO, Dec. 10, 2014, <http://www.npr.org/sections/parallels/2014/12/10/369636434/for-yazidi-women-escaping-isis-doesnt-mean-the-ordeal-is-over>.

¹⁵³ Amnesty Int’l, *supra* note 149, at 4.

¹⁵⁴ Interview with OWFI staff members, *supra* note 65; *see also* Amnesty Int’l, *supra* note 149, at 4.

¹⁵⁵ *See* Amnesty Int’l, *supra* note 149, at 13-14.

¹⁵⁶ Lizzie Dearden, *Yazidi Sex Slaves Undergoing Surgery to ‘Restore Virginity’ After Being Raped by ISIS Militants*, THE INDEPENDENT (U.K.), Apr. 27, 2015, <http://www.independent.co.uk/news/world/middle-east/yazidi-sex-slaves-undergoing-surgery-to-restore-virginity-after-being-raped-by-isis-militants-10207352.html>.

¹⁵⁷ Lisa Davis, *Lifting the Ban on Women’s Shelters in Iraq: Promoting Change in Conflict*, OPEN DEMOCRACY, Oct. 14, 2015, <https://www.opendemocracy.net/5050/lisa-davis/lifting-ban-on-women-s-shelters-in-iraq-promoting-change-in-conflict>.

¹⁵⁸ *See id.*

C. Trafficking

The massive growth of human trafficking in Iraq during recent years resulted from the economic destabilization and depression in the region.¹⁵⁹ The 2003 U.S. invasion of Iraq brought with it a significant military presence, which created a lucrative environment for sex and labor trafficking—including by privately operated U.S. military contractors.¹⁶⁰ Since then, Iraq has increasingly become a major source and destination for trafficked persons in the region.¹⁶¹ As a result of the economic destitution and military conflicts over the last decade, many women have been both forced and trafficked into prostitution,¹⁶² or have turned to survival sex¹⁶³ as a result of chronic hunger and deprivation.¹⁶⁴

Ongoing instability coupled with a renewed internal displacement and refugee crisis caused by the ISIL conflict has aggravated this trend, with multiple reports of women and girls from Iraq subject to forced labor and forced prostitution.¹⁶⁵ Migrants from surrounding countries are also at an increased risk of trafficking and exploitation.¹⁶⁶ Women from countries such as Uganda, Bangladesh, Nepal, and the Philippines have been trafficked into Iraq by force or under false promises of legitimate

¹⁵⁹ Hum. Rts. Watch, *At a Crossroads: Human Rights in Iraq Eight Years After the US-Led Invasion*, 11 (2010).

¹⁶⁰ Heartland Alliance for Hum. Needs & Hum. Rts., *Human Trafficking in Iraq: Patterns and Practices in Forced Labor and Sexual Exploitation*, 19 (2007); see also LIEZL TOMAS REBUDIO, NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM, RIGHTS TO SURVIVAL AND MOBILITY: AN ANTI-TRAFFICKING ACTIVIST'S AGENDA 6 (2008).

¹⁶¹ See U.S. STATE DEP'T, *supra* note 47, at 202; see also Heartland Alliance for Hum. Needs & Hum. Rts., *supra* note 160, at 19-24.

¹⁶² This article uses the term "prostitution" when referring to a legal definition, legislative or treaty provision.

¹⁶³ This article defines "survival sex" as the exchange of sex for "food, shelter, protection or other essential goods." SUSAN DAVIS AND RAVEN BOWEN, LABOR ON THE MARGINS: SEX INDUSTRY SAFETY AND STABILIZATION 6 (2007). This lack of opportunity has been attributed to poverty, predatory violence, criminalization of negotiation, abusive relationships and so on. MADRE, IWHR CLINIC AT CUNY LAW SCHOOL ET AL., STRUGGLING TO SURVIVE: SEXUAL EXPLOITATION OF DISPLACED WOMEN AND GIRLS IN PORT AU PRINCE HAITI 6 (2012). Survival sex includes the exchange of sex for food, clothes, money, shelter, the ability to attend school, make rent, or other survival needs. *Id.* Consequently, the environment of survival sex has been described as "one that minimizes or eliminates a worker's right to refuse work and otherwise imposes emotional or psychological pressure forcing the surrender of will." Davis & Bowen, *supra* note 163.

¹⁶⁴ See Hum. Rts. Watch, *supra* note 159, at 11-12.

¹⁶⁵ See, e.g., U.S. STATE DEP'T, *supra* note 47, at 202; see also HAFAZA INT'L, COMBATING HUMAN TRAFFICKING: IRAQ INITIATIVE 21 (2013).

¹⁶⁶ See U.S. STATE DEP'T, *supra* note 47, at 202.

employment.¹⁶⁷ One woman trafficked from Uganda recounted that she endured broken ribs from abuse, starvation, and sexual violence in the homes of her employer.¹⁶⁸

In April 2012, Iraq saw the passage of comprehensive anti-trafficking legislation designed to protect victims and prosecute offenders.¹⁶⁹ However, weak governance and low enforcement have nevertheless helped to further entrench Iraq as a regional trafficking hub.¹⁷⁰ Part of the problem also lies with the conflation among the terms transactional sex,¹⁷¹ survival sex,¹⁷² sexual exploitation,¹⁷³ and sex trafficking.¹⁷⁴ Women who are forced into prostitution as a common form of trafficking are frequently confused in the judicial system with women who engage in survival sex as a means of economic survival.¹⁷⁵ This leads to the misapplication of prostitution as a criminal offense to trafficking cases.¹⁷⁶

In 1988, Iraq passed the Repression of Prostitution Act No. 8, which provides for a minimum sentence of three months and a maximum sentence of two years for women convicted of prostitution.¹⁷⁷ In its 2013 report to the Human Rights Committee, the Iraqi government points to the Anti Prostitution Law as a key step in its efforts to respond to human trafficking.¹⁷⁸ The CEDAW Committee recognizes that the ways in which the Iraqi government criminalizes sex work¹⁷⁹ not only harms women engaged in it for economic survival, but also harms victims of sex

¹⁶⁷ *Id.*

¹⁶⁸ Interview with OWFI staff members, *supra* note 65.

¹⁶⁹ Trafficking of Persons Law No. 28 of 2012, art. 3, §§1, 3-4 (Iraq).

¹⁷⁰ See HAFAZA INT'L, *supra* note 165, at 19-20.

¹⁷¹ This article defines "transactional sex" as the exchange of sexual services for compensation "where both parties consent and negotiate the details of the transaction." DAVIS & BOWEN, *supra* note 163.

¹⁷² See the definition of "survival sex," *supra* note 163.

¹⁷³ This article defines "sexual exploitation" as the practice by which a person in a position of power or authority achieve sexual gratification or profit monetarily, socially or politically through sexual acts provided in exchange for goods or services, "thus abrogating the victim's human rights to dignity, equality, autonomy, and physical and mental wellbeing." MADRE, IWHR CLINIC AT CUNY LAW SCHOOL ET AL., *supra* note 163.

¹⁷⁴ This article follows the definition of 'trafficking' as proscribed under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. G.A. Res. 55/25, art. 3, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

¹⁷⁵ Hum. Rts. Watch, *World Report 2014: Events of 2013* (2014).

¹⁷⁶ See Heartland Alliance for Hum. Needs & Hum. Rts., *supra* note 85, at 19.

¹⁷⁷ Combating Prostitution Law No. 8 of 1988 (Iraq).

¹⁷⁸ See Hum. Rts. Comm., *supra* note 18, at ¶ 107.

¹⁷⁹ "Sex work" in this article is defined as sex for remuneration.

trafficking.¹⁸⁰ In 2014, the CEDAW Committee noted its concern that women and girls continue to be subject to trafficking, as well as face harsh prison sentences for engaging in prostitution.¹⁸¹ Consequently, the Committee called on Iraq to decriminalize prostitution, ensure women in the sex trade are not punished, and provide them with alternative livelihood opportunities.¹⁸²

Since prosecutors and judges are often ignorant about the trafficking law, courts continue to prosecute trafficking victims.¹⁸³ As a consequence, trafficking survivors languish in jail, are fined, or are otherwise penalized for unlawful acts committed as a direct result of being trafficked while their perpetrators go free.¹⁸⁴ For example, a girl who was forced to work in a brothel was convicted and sentenced to six months imprisonment.¹⁸⁵ Some NGOs (non-governmental organizations) have posed the question of whether victims are incentivized to remain silent about being trafficked with promises of early or assisted release by their traffickers.¹⁸⁶

Deeply rooted cultural notions of honor and shame, coupled with fear of retaliation remain pervasive obstacles to victims coming forward and seeking justice.¹⁸⁷ In other cases, women have been arrested and sentenced to jail for prostitution, despite explaining that they were forced or coerced.¹⁸⁸ When survivors attempt to report trafficking abuse, they commonly find police reluctant to investigate cases of sexual violence, trafficking, or abductions.¹⁸⁹ In many cases, authorities blame the victims.¹⁹⁰ According to reports, perpetrators have included not only criminal networks or individuals, but Iraqi police and security forces as well.¹⁹¹

After serving sentences for prostitution convictions, women can rarely return to their families and are likely at risk of “honor” killing upon

¹⁸⁰ See CEDAW Comm., *supra* note 139, at ¶¶ 31-32.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Interview with Iraqi women’s rights activists, *supra* note 46; see also Hum. Rts. Watch, *supra* note 175.

¹⁸⁴ See Hum. Rts. Watch, *supra* note 159, at 14; U.S. STATE DEP’T, *supra* note 47, at 204.

¹⁸⁵ See Hum. Rts. Watch, *supra* note 159, at 15.

¹⁸⁶ See, e.g., Heartland Alliance for Hum. Needs & Hum. Rts., *supra* note 85, at 19.

¹⁸⁷ Interview with Iraqi women’s rights activists, *supra* note 46; Heartland Alliance for Hum. Needs & Hum. Rts. *supra* note 85, at 24-25, 27.

¹⁸⁸ See Hum. Rts. Watch, *supra* note 159, at 14-15.

¹⁸⁹ Interview with Iraqi women’s rights activists, *supra* note 46; Hum. Rts. Watch, *supra* note 159, at 15; see also Hum. Rts. Watch, *supra* note 91, at 10-11 (noting encounters between victims and police).

¹⁹⁰ Interview with Iraqi women’s rights activists, *supra* note 46; Hum. Rts. Watch, *supra* note 159, at 15-16; see also Hum. Rts. Watch, *supra* note 91, at 10-11.

¹⁹¹ U.S. STATE DEP’T, *supra* note 47, at 202.

release.¹⁹² For this reason, outreach is a critical part of Iraqi women's rights organizations' work, as many women exiting trafficking or prison are unaware of available services or are too afraid to seek them out.¹⁹³ In 2015, at the request of UNAMI, staff members from OWFI visited the women's prison in Basra and met with about fifty women, many who were charged with prostitution.¹⁹⁴ With the anticipation that many women had release dates coming up, UNAMI asked for OWFI's assistance with reintegration assistance and protection from the threat of "honor" killing.¹⁹⁵

One consequence of systemic victim-blaming and inadequate services for prevention or survivor support has been minimal enforcement by The Iraqi government of its legislation to address trafficking.¹⁹⁶ The Iraqi government has not documented (or at least has not made publicly available) any official statistics about human trafficking in Iraq or about victim assistance since the passage of the Trafficking in Persons Act.¹⁹⁷ There is also no information as to whether the government has designated a specific budget for victim protection or assistance.¹⁹⁸ Despite reports of persistent human trafficking, in 2013, Iraq reportedly identified zero trafficking victims, representing a decrease in efforts from 2012.¹⁹⁹ In comparison, during the previous year, state officials reported initiating at least eleven investigations of human trafficking.²⁰⁰ While the Iraqi government conducted some investigations and at least one prosecution under the Anti-Trafficking Law, Iraqi courts did not issue any rulings in human trafficking cases in 2013.²⁰¹ Moreover, Iraq has consistently failed to investigate or punish government officials who face allegations of complicity in trafficking-related offenses.²⁰²

Interestingly, the Iraqi government does not claim to provide adequate psychological treatment, medical care, shelters, and other necessary

¹⁹² Conversation with Yanar Mohammed, in N.Y.C., N.Y. (Oct. 13, 2015).

¹⁹³ Interview with Iraqi women's rights activists, *supra* note 46; Marina Tzvetkova, *NGO Responses to Trafficking in Women*, 10(1) GENDER & DEV. 60, 63-64 (2002).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See Hum. Rts. Watch, *supra* note 159, at 15-17.

¹⁹⁷ Interview with Iraqi women's rights activists, *supra* note 46.

¹⁹⁸ *Id.*

¹⁹⁹ See U.S. STATE DEP'T, *supra* note 47, at 204; see also U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT 210 (2014).

²⁰⁰ *Id.*

²⁰¹ U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT, *supra* note 199, at 211.

²⁰² *Id.*

services to victims of trafficking or forced prostitution.²⁰³ Although the state opened its first temporary shelter for victims of trafficking in 2013, the facility has remained empty.²⁰⁴ It comes as no surprise that as of 2014, Iraq's new "anti-trafficking hotline" has yet to receive a single phone call.²⁰⁵ In the fall of 2015, when asked about available shelter by the ESCR Committee, government representatives shockingly responded that OWFI was providing shelter.²⁰⁶ Government representatives explained that OWFI was "taking measures" to address the sharp rise in violence against women through providing comprehensive services for victims of violence including shelter.²⁰⁷ When questioned about Iraq's policy forbidding local NGOs from providing shelter, government delegates declined to answer.²⁰⁸

To meet the need, women's rights organizations continue to provide desperately needed shelter to survivors, despite the prohibition on NGO-run shelters in central and southern Iraq.²⁰⁹ These organizations face the threat of security raids and are unprotected against threats by violent extremists.²¹⁰ They have also taken on the burden of trying to adequately and effectively identify, document, and assist victims of trafficking and sexual exploitation in the midst of the Iraqi government's failure to do so.²¹¹

Within the last year, OWFI organized the Anti-Trafficking Coalition to meet and discuss methods to document instances of trafficking and push for legal reform.²¹² During the most recent Coalition meeting, over thirty-seven partner organizations were represented—all committed to addressing and ending the trafficking epidemic in Iraq, in addition to other human rights violations.²¹³ While the 2012 Anti-Trafficking Law is an important step

²⁰³ Interview with Iraqi women's rights activists, *supra* note 46; Interview with Iraqi women's rights activists, IWHR Clinic, in Sulaymaniyah, Iraq (May 15, 2014) (on file with Author).

²⁰⁴ U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT, *supra* note 199, at 212 (omitting any information on government service provisions to victims).

²⁰⁵ *Id.* at 212-13.

²⁰⁶ See ESCR Comm., *Concluding Observations on the Fourth Periodic Report of Iraq*, ¶ 39, U.N. Doc. E/C.12/IRQ/CO/4 (Oct. 27, 2015).

²⁰⁷ *See id.*

²⁰⁸ *See id.*

²⁰⁹ IWHR CLINIC, MADRE, OWFI, et al., *Seeking Accountability and Demanding Change: A Report on Women's Human Rights Violations in Iraq Under the U.N. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 28* (2015), <http://www.law.cuny.edu/academics/clinics/iwhr/publications/ICCPR-Iraq-Shadow-Report-GBV-ENG-PDF.pdf>.

²¹⁰ U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT, *supra* note 199, at 212; *see also* Interview with Iraqi women's rights activists, *supra* note 46.

²¹¹ *See id.*

²¹² Interview with OWFI staff members, *supra* note 65.

²¹³ *Id.*

forward as it focuses on penalizing perpetrators, preventing human trafficking, and providing services to victims,²¹⁴ this law has yet to be made operational or receive funding.²¹⁵ The Coalition proposed a resolution to the government, outlining the necessary steps to adequately and effectively address trafficking in Iraq.²¹⁶ These include better prevention strategies, documentation of cases, legal trainings for more effective prosecution of perpetrators, and direct service support for victims.²¹⁷ It also includes amending Iraq's policy prohibiting local NGOs from providing shelter.²¹⁸ As of yet, the Coalition has received no official response.²¹⁹

D. Domestic Violence

Domestic violence receives widespread societal acceptance in Iraq, according to Iraqi women's rights activists.²²⁰ Traditional attitudes tend to regard relations within a marriage or family home as a private matter outside of the jurisdiction of the Iraqi legal system.²²¹ While violence within families is grossly underreported in Iraq,²²² one study placed the prevalence of women suffering physical violence at the hands of their husbands at roughly one in five.²²³ Another study found that 56% of Iraqi men believe they have a right to beat their wife if she disobeys.²²⁴ When law enforcement does act, legal personnel have faced harassment and threats by victims' family members seeking to terminate legal proceedings.²²⁵

While the Iraqi Constitution expressly prohibits "all forms of violence and abuse in the family,"²²⁶ the Penal Code codifies impunity for domestic violence.²²⁷ Article 41 permits a husband to use physical violence against

²¹⁴ See Trafficking of Persons Law No. 28 of 2012, art. 3 (Iraq).

²¹⁵ CEDAW Comm., *supra* note 139, at ¶¶ 31-32.

²¹⁶ Interview with Iraqi women's rights activists, *supra* note 46.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Conversation with Yanar Mohammed, in N.Y.C., N.Y. (July 10, 2015).

²²⁰ Interview with OWFI staff members, *supra* note 65; Interview with Iraqi women's rights activists, *supra* note 46.

²²¹ AHMED, *supra* note 123, at 170; MADRE & OWFI, *supra* note 32, at ¶ 15.

²²² UNAMI, *supra* note 75, at 3.

²²³ Amnesty Int'l, *Iraq: Decades of Suffering: Now Women Deserve Better*, 15, AI Index MDE 14/001/2005 (Feb. 2005).

²²⁴ World Health Org. (WHO), *Iraq Family Health Survey Report*, 25 (2007).

²²⁵ UNHCR, *supra* note 77, at 34.

²²⁶ Article 29, *Dustūr Jumhūriyat al-'Irāq* [The Constitution of the Republic of Iraq] of 2005.

²²⁷ Penal Code No. 111 of 1969, art. 41 (Iraq).

his wife “within certain limits prescribed by law or by custom.”²²⁸ In 2011, women’s rights organizations in northern Iraq successfully campaigned for the Kurdish Regional Government to pass a law prohibiting domestic violence along with other forms of family and marital violence, including physical and psychological abuse, female genital mutilation and rape.²²⁹ Despite this legislative milestone, domestic violence remains a widespread problem in the Kurdistan region.²³⁰ For example, in 2013, human rights advocates noted dozens of cases of abuse and killings of women by their male family members in the region.²³¹

Women in both Kurdistan and central Iraq who are contemplating divorce in situations of domestic violence are faced with the harsh realities of life as a divorcée.²³² Less likely to have an education or professional work experience, particularly in Iraq’s rural regions, women are often dependent on male relatives for survival.²³³ Many opt to stay in abusive relationships rather than risk violent reprisals, crippling social stigma, and financial isolation created by leaving their spouses.²³⁴ Not surprisingly, the problem of domestic violence, including the barriers to prevention and redress, commonly increase during and post-conflict and are intensified by both preexisting deficiencies and the onslaught of economic deprivation.²³⁵

E. Forced and Underage Marriages

Iraqi women’s rights organizations report that since 2003, forced, underage, and temporary marriages have become increasingly problematic.²³⁶ One study concluded that, in 2011, 25% of women between twenty and twenty-four years of age were married before their eighteenth birthday.²³⁷ “Uneven” and underage marriages, once largely limited to rural

²²⁸ *Id.*

²²⁹ UNHCR, *supra* note 77, at 35.

²³⁰ *Id.*

²³¹ Hum. Rts. Watch, *supra* note 175.

²³² UNHCR, *supra* note 77, at 35.

²³³ *Id.*

²³⁴ See Heartland Alliance for Hum. Needs & Hum. Rts., *supra* note 85, at 29.

²³⁵ See generally ELISABETH REHN & ELLEN JOHNSON SIRLEAF, WOMEN, WAR AND PEACE: THE INDEPENDENT EXPERT’S ASSESSMENT ON THE IMPACT OF ARMED CONFLICT ON WOMEN AND WOMEN’S ROLE IN PEACE BUILDING, Chap. 1, (Gloria Jacobs ed., Progress of the World’s Women, 2002).

²³⁶ Interview with Iraqi women’s rights activists, *supra* note 46; Interview with Iraqi women’s rights activists, *supra* note 203.

²³⁷ FARZANEH ROUDI-FAHIMI AND SHAIMAA IBRAHIM, POLICY BRIEF: ENDING CHILD MARRIAGE IN THE ARAB REGION, POPULATION REFERENCE BUREAU (PRB) 1 (May 2013). This attests to the

areas, are now more common in cities as religious and tribal codes gain traction in Iraq.²³⁸

According to Iraqi women's rights groups, forced marriage may include "bride exchanges" among families, or can arise in the aftermath of a rape; a criminal trial may be suspended if the rapist agrees to marry the victim.²³⁹ Women are particularly likely to suffer abuse in a forced marriage as part of *diyya* (blood money) settlements, whereby a woman from the killer's family is forced to marry into the family of the deceased.²⁴⁰

Despite the widespread nature of forced, semi-forced, or arranged marriages in tribal custom, the Iraqi legal system has few provisions for their prevention or prohibition enforcement.²⁴¹ The most relevant law in the nation's Personal Status Law holds that forced marriage is a crime punishable by up to three years imprisonment.²⁴² However, forced marriages are not addressed in courts unless a woman files a complaint, whereby she must prove that she was subject to coercion.²⁴³ Because the law does not afford legal immunity or assurances of safety following a formal complaint, women and girls are often vulnerable to retribution from more powerful family members.²⁴⁴ Under this law, once a court-recognized marriage has been consummated, it is no longer subject to challenge.²⁴⁵

Recent legislative initiatives threaten to worsen this problem. The pending *Ja'afari* law would lower the marrying age for girls to nine years old.²⁴⁶ It would also officially legalize marital rape, stating that a husband is

limited enforcement of the Personal Status Law No. 188 of 1959 (Iraq), which sets the official minimum age of marriage for men and women at 18 years, but gives judicial discretion for girls as young as 15 to be married in "urgent" cases. *But see* Bassem, *supra* note 51 (noting that the Iraqi Ministry of Planning, in 2013, found 11% of all married women were married underage).

²³⁸ See Dlovan Barwari, Iraqi Women Victimized by Tribal Marriage Customs, AL-MONITOR, Sept. 12, 2013, <http://www.al-monitor.com/pulse/originals/2013/09/iraq-women-forced-marriage-tribal-customs.html#>.

²³⁹ *Id.*; Interview with Iraqi women's rights activists, *supra* note 46; Interview with Iraqi women's rights activists, *supra* note 203.

²⁴⁰ Barwari, *supra* note 239.

²⁴¹ *See id.*

²⁴² Personal Status Law, *Al-Waqqeh al-Iraqia* [Iraqi Official Gazette] No. 188 of 1959, 650 (Iraq).

²⁴³ Penal Code No. 111 of 1969, art. 427 (Iraq).

²⁴⁴ UNHCR, *supra* note 77, at 36.

²⁴⁵ Personal Status Law, *supra* note 242. Article 9(1) states, "[t]he contract of a forced marriage is considered void if the marriage has not been consummated." *Id.* Under Article 40(4), either spouse can ask for separation if "the marriage was concluded outside the court by coercion and the marriage was consummated." *Id.*

²⁴⁶ Hum. Rts. Watch, *Iraq: Don't legalize Marriage for 9-Year-Olds*, 3 (2014); see Personal Status Law, *supra* note 242 and accompanying text.

entitled to have sex with his wife, regardless of her consent.²⁴⁷ Additionally, this proposed law would prevent a woman from leaving her home without permission from her husband.²⁴⁸ It would automatically grant custody of children over the age of two to the father in divorce cases and significantly limit a woman's rights to inheritance.²⁴⁹ Justice Minister Hassan al-Shammari introduced the proposed law to the Council of Ministers on October 27, 2013, and it is still currently pending, despite strong opposition from Iraqi civil society including some religious leaders.²⁵⁰ Some conclude that the proposed legislation was introduced to curry political support and was never intended to be enacted into law.²⁵¹ Despite this, the threat of the proposed bill becoming law remains a serious concern for many activists.²⁵²

In March 2014, honoring International Women's Day, OWFI organized a peaceful demonstration in Tahrir Square, Baghdad.²⁵³ Activists directed their chants against the pending *Ja'afari* Law to Hassan al-Shammari, the then-Minister of Justice and primary driver for the proposed law, and his political party, Hizb al-Fadilah al-Islami.²⁵⁴ A counter protest ensued against OWFI comprised of Hizb al-Fadilah al-Islami's political supporters.²⁵⁵ Counter protesters harassed the OWFI demonstrators, calling them names including "whores" and "non-believers."²⁵⁶ The police eventually told OWFI demonstrators to disperse on the pretense that the event was not properly licensed.²⁵⁷ While the proposed law appears to have been tabled as a result of the current ISIL crisis, many believe its passage is imminent upon government operations returning to "normal."²⁵⁸

²⁴⁷ Hum. Rts. Watch, *Iraq: Don't Legalize Marriage for 9-Year-Olds*, *supra* note 246.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ Interview with Iraqi women's rights activists, *supra* note 46.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ Interview with Iraqi women's rights activists, *supra* note 46; Interview with Iraqi women's rights activists, *supra* note 203; *see generally* THE PARLIAMENT OF REPUBLIC OF IRAQ, *The Parliament Encouraged Balancing the Budget, Finished the Reading of Two Bills, and Honored Um Qussai* (Jul. 28, 2015) (noting that at the outset of the Parliamentary session, President al-Jubouri presented on behalf of the House of Representatives hottest condolences to the deputy Hassan al-Shammari of the death of the late mother, Um Qussai. Hassan al-Shammari now serves as a Member of Parliament).

²⁵⁴ *Id.*

²⁵⁵ Interview with Iraqi women's rights activists, *supra* note 46; Interview with Iraqi women's rights activists, *supra* note 203.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ Interview with Iraqi women's rights activists, *supra* note 46; Letter from OWFI, MADRE, and IWHR Clinic, *supra* note 135.

III. WHEN CONFLICT EXACERBATES ABUSES AGAINST MARGINALIZED GROUPS

A. Women Minorities

In the context of the current conflict, minority groups in Iraq face ongoing threats from ISIL and other militias.²⁵⁹ Targeted minorities include lesbian, gay, bisexual and transgender²⁶⁰ individuals; women and children with disabilities; ethnic and religious minorities, including Yazidis, Turkmens, Kakai Kurds, Sunnis, Christians, and Afro-Iraqis as well as those who experience conflict-related gender-based violence.²⁶¹ Minority communities are severely impacted due to a lack of rights-based legal protections, which has given rise to increased vulnerability in the conflict.²⁶² Women minority members face double discrimination because of both their minority status and their gender.

While Iraq's 2003 Constitution marked a substantial advancement for minority groups, barriers to the realization of a fully rights-based society still loom large.²⁶³ For example, Article 49 of the Iraqi Constitution assigns only one seat in Parliament for every 100,000 members of the population, which is problematic for small or dispersed minorities.²⁶⁴ Article 41 of the Iraqi Constitution, which governs family concerns, recognizes religious freedom—a positive advancement for minorities.²⁶⁵ However, it also presents barriers for women who are members of Muslim and non-Muslim communities that operate under patriarchal and oppressive traditions of their own sects.²⁶⁶

Increasingly, women suffer violence, threats, and intimidation linked to both their minority status and gender.²⁶⁷ Women report being denied employment and educational opportunities if they are non-Muslim, or if they do not dress in accordance with conservative Islamic norms or follow other strict interpretations of religious rules governing public behavior.²⁶⁸ A

²⁵⁹ See OHCHR & UNAMI, *supra* note 137.

²⁶⁰ See OUTRIGHT ACTION INT'L, MADRE & OWFI, *supra* note 79.

²⁶¹ UNHCR, *supra* note 77.

²⁶² *See id.*

²⁶³ See MUMTAZ LALANI, STILL TARGETED: CONTINUED PERSECUTION OF IRAQ'S MINORITIES, (Minority Rights Group International, 2010).

²⁶⁴ Art. 49, § 3, Doustour Joumhouriat al-Iraq [The Constitution of the Republic of Iraq] of 2005.

²⁶⁵ *Id.* at Art. 41 § 2.

²⁶⁶ See MUMTAZ LALANI, *supra* note 264.

²⁶⁷ *See id.*

²⁶⁸ *See id.* Interview with Iraqi women's rights activists, *supra* note 46.

few extreme fundamentalists have espoused a belief that rape of an “unbeliever” constitutes an act of purification and is therefore not unlawful.²⁶⁹ While Iraqi advocates and journalists have documented violence committed on grounds of sexual orientation, gender identity, gender expression, and religious or ethnic differences, discriminatory attitudes against minorities within the police and judiciary system make it difficult for victims to report violence and gain state protection.²⁷⁰

With the ISIL invasion, the situation for minorities in Iraq has grown exponentially worse. In March 2015, the Office of the High Commissioner for Human Rights (OHCHR) reported on human rights violations committed against ethnic and religious groups targeted by ISIL including Yazidis, Christians, Turkmen, Kurds, and others.²⁷¹ The OHCHR noted that the intent of ISIL is to destroy the Yazidi people as a group, and points out that these crimes may amount to crimes against humanity or war crimes.²⁷² Women and girls who escaped from ISIL recount the systematic process by which they were raped and enslaved.²⁷³ Reports have also noted that ISIL fighters have raped girls as young as six years old.²⁷⁴ The OHCHR made several recommendations to the Iraqi government in light of ISIL’s extreme gender-based human rights violations. It called on the government to investigate allegations that its armed forces have failed to protect certain communities. It also called for the government to provide essential services to victims of sexual slavery and rape, including psycho-social services and medical care.²⁷⁵

Local Iraqi women’s rights activists recognize that mitigating the impact of conflict on minority communities means strengthening democratic governance, gender equality, minority rights protections, and political participation—all of which require empowering minority women leaders.²⁷⁶ Minority women leaders see ways in which advocacy efforts for legal, social, and political reforms could address conflict-related harms, and

²⁶⁹ Mumtaz Lalani, *supra* note 264, at 14.

²⁷⁰ Interview with Iraq women’s and LGBT rights activists, *supra* note 79; *see also* OUTRIGHT ACTION INT’L, MADRE & OWFI, *supra* note 79, at 10-11.

²⁷¹ OHCHR, Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, ¶ 15, U.N. Doc. A/HRC/28/18 (Mar. 2015).

²⁷² *Id.*

²⁷³ *Id.* at ¶ 37.

²⁷⁴ *Id.* at ¶ 40.

²⁷⁵ *Id.* at ¶ 79.

²⁷⁶ Interview with Iraq women’s and LGBT rights activists, *supra* note 79.

also could be expanded to meet the needs of minorities.²⁷⁷ Women leaders assert that creating sustainable minority political participation begins with empowering such women, who can raise their communities' concerns to key stakeholders and increase public awareness.²⁷⁸ Indeed, Iraqi NGO coalitions are working together to fortify alliances with progressive allies in the local and national government, as well as among journalists and other prominent civil society members.²⁷⁹ These alliances are working to create a unified advocacy and public education platform that demands an end to violence and discrimination and promotes truly effective and inclusive governance.²⁸⁰ This platform includes informing minority communities of policy initiatives affecting their communities, and finding ways to meaningfully gain their input for better implementation.²⁸¹ This two-way flow of information ensures that minority political participation is at the forefront of advocacy strategies.²⁸²

*B. Iraq's LGBT Community*²⁸³

In 2009, an outburst of violence against marginalized groups tore through Iraq, resulting in the public exposure of brutal torture and murder of LGBT Iraqis by religious extremists.²⁸⁴ Yanar Mohammad, Founder and Executive Director of OWFI and a prominent Iraqi women's rights activist, helped break the story.²⁸⁵ In a widely-broadcast interview, she told the United Arab Emirates-based media network, *Alarabiya*, about a torture campaign against Iraqi homosexuals, in which a very strong form of adhesive, known as "Iranian Gum," was being used to fuse shut the anuses of homosexual men.²⁸⁶ Some of the victims sought life-saving treatment in

²⁷⁷ Interview with Iraqi women's rights activists, *supra* note 46; Interview with Iraqi women's rights activists, *supra* note 203.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ The LGBT section of this article draws largely from the author's written work, presented in a Submission to the 2014 Universal Periodic Review of Iraq. See Email correspondence from Lisa Davis to MADRE & OutRight Action Int'l (on file with author).

²⁸⁴ *Id.*

²⁸⁵ See generally *Shows Featuring Yanar Mohammed*, DEMOCRACY NOW!, http://www.democracynow.org/appearances/yanar_mohammed (last visited Nov. 8, 2015).

²⁸⁶ See *Iraq: Torture, Cruel, Inhuman, and Degrading Treatment of LGBT People*, OUTRIGHT ACTION INT'L, <https://www.outrightinternational.org/content/iraq-torture-cruel-inhuman-and-degrading-treatment-lgbt-people> (last visited Nov. 8, 2015).

hospitals, but were refused.²⁸⁷ In response, many human rights organizations, including OutRight Action International, decried the killings and torture.²⁸⁸

Thousands of Iraqis are at risk of violence as a result of their real or perceived sexual orientation, gender identity, or nonconformist social behavior.²⁸⁹ They are deprived of their human rights, ostracized, and face severe discrimination and violence including brutal forms of murder.²⁹⁰ Some militia members and vigilante groups have waged systematic campaigns of discrimination, violence, torture, and execution of LGBT persons.²⁹¹ Youth, and those referred to as “emo,”²⁹² are particularly at risk because of their alternative forms of personal expression. Much of Iraqi society continues to tolerate “honor” killings of women and men whose sexual orientation, gender identity, or gender expression transgress tribal or religious codes of conduct.²⁹³

A report by the UN High Commissioner for Human Rights (UNHCR) and UNAMI noted that high levels of violence and discrimination against individuals based on their actual or perceived sexual orientation, and impunity for such crimes, continued throughout 2010.²⁹⁴ The international community called on Iraq to take proper measures to address this crisis.²⁹⁵ However, in response to the Universal Periodic Review of Iraq at the Human Rights Council’s hearing, “Iraq expressly and officially rejected calls by UN member states to act to protect persons on account of their sexual preferences...to investigate homophobic hate crimes and to bring perpetrators to justice.”²⁹⁶

The beginning of 2012 brought a wave of violence against young people perceived as “emo,” including individuals who were perceived as or may have been confused with LGBT persons. Many were murdered in

²⁸⁷ See *id.*

²⁸⁸ See *id.*

²⁸⁹ See Amnesty Int’l, Hum. Rts. Watch & IGLHRC, *Iraq: Investigate ‘Emo’ Attacks - Official Impunity Enables Violent Intimidation Campaign* (2012) [hereinafter *Emo*].

²⁹⁰ See Hum. Rts. Watch, “*They Want Us Exterminated*” - *Murder, Torture, Sexual Orientation and Gender in Iraq* (2009) [hereinafter *Exterminated*].

²⁹¹ *Id.*

²⁹² “In English, ‘emo’ is short for ‘emotional,’ referring generally to self-identified teens and young adults who listen to alternative rock music, often dress in black, close-fitting clothes, and cut their hair in unconventional ways.” *Emo*, *supra* note 290.

²⁹³ *Exterminated*, *supra* note 291.

²⁹⁴ See UNAMI & OHCHR, 2010 REPORT ON HUMAN RIGHTS IN IRAQ 34 (Jan. 2011).

²⁹⁵ See *id.* at 43.

²⁹⁶ *Id.*

Baghdad and other Iraqi cities.²⁹⁷ Government officials characterized “emo” sub-culture as “Satanist” and militias publicly posted names of non-conformers, targeting them for execution.²⁹⁸

According to local human rights advocates, in November 2013, members of the *Asa'ib Ahl al-Haq* (League of the Righteous) militia brutally attacked a man believed to be homosexual, gluing his anus shut.²⁹⁹ Activists report this as a common form of torture used against real or perceived LGBT persons in Iraq.³⁰⁰ Perpetrators of violence against LGBT persons have also reportedly injected kerosene into the blood of people perceived as gay or transgender, causing an extremely painful death.³⁰¹ Prompted by the ongoing conflict, the Iraqi government coordinates with *Asa'ib Ahl al-Haq* to fight alongside state armed forces against ISIL,³⁰² further reinforcing impunity for such acts.³⁰³ Security forces not only fail to intervene and protect LGBT people from torture or violence, they also participate in abuses against LGBT individuals.³⁰⁴ For example, there have been reports of sexual exploitation and sexual assault of LGBT persons at checkpoints in Baghdad, as well as sexual abuse committed against individuals who are perceived as gender non-conforming by state police and soldiers.³⁰⁵

With regard to “honor” crimes, women, men, and members of the LGBT community alike remain at serious risk of violence on the basis of conduct perceived to be contrary to traditional gender mores.³⁰⁶ According to the U.S. Department of State’s *2011 Human Rights Report: Iraq*, “[h]onor killings remained a serious problem throughout all parts of the

²⁹⁷ *Emo*, *supra* note 290.

²⁹⁸ *Emo*, *supra* note 290; OUTRIGHT ACTION INT’L, MADRE & OWFI, *supra* note 79, at 17.

²⁹⁹ IRAQUEER, MADRE, IWHR CLINIC, OUTRIGHT ACTION INT’L, DYING TO BE FREE: LGBT HUMAN RIGHTS VIOLATIONS IN IRAQ 6 (2015), <http://www.law.cuny.edu/academics/clinics/iwhr/publications/ICCPR-Iraq-Shadow-Report-LGBT-ENG.pdf>.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² See David D. Kirkpatrick, Shiite Militias Pose Challenge for U.S. in Iraq, N.Y. TIMES, Sept. 17, 2014, at A1, A8.

³⁰³ *See id.*

³⁰⁴ Interview with Iraqi LGBT rights activists, *supra* note 78.

³⁰⁵ *Id.*; OUTRIGHT ACTION INT’L, MADRE & OWFI, *supra* note 116, at 1, 11.

³⁰⁶ *See* DANISH IMMIGRATION SERVICE, HONOR CRIMES AGAINST MEN IN KURDISTAN REGION OF IRAQ (KRI) AND THE AVAILABILITY OF PROTECTION (2010) [hereinafter HONOR CRIMES]; Interview with Iraqi women’s rights activists, *supra* note 46; Interview with Iraq women’s and LGBT rights activists, *supra* note 78.

country. The [Iraqi] [P]enal [C]ode of 1969 permits honor considerations to mitigate sentences.”³⁰⁷ A 2010 report by the Danish Immigration Service notes that “male victims of honour disputes are much less likely than women to find assistance and protection from the police and/or from authorities as well as NGOs. Basically, men who are under threat of honour crime...only have the option to flee the country.”³⁰⁸ Similarly, Amnesty International reports that “[g]ay men face similar discrimination as women under the legislation that provides for lenient sentences for those committing crimes with an ‘honourable motive.’”³⁰⁹

As a result of tolerant attitudes and legislation, police arrests of those accused of committing “honor” crimes are rare, and in the few cases where perpetrators are prosecuted, judges frequently hand down exceedingly lenient sentences, including for murder.³¹⁰ Clemency on the part of the justice system sends a message to society at large that such gross acts of violence will be met with impunity.³¹¹ Furthermore, such institutionalized gender inequality threatens the fabric of a truly democratic Iraq.³¹²

Access to protection, assistance and justice is scarce for at-risk groups.³¹³ In the absence of these services, those threatened with “honor” crimes have limited recourse: some are forced to flee the country with no guarantee of safe haven, and some, feeling a sense of deep injustice and powerlessness, commit suicide.³¹⁴ Under former Prime Minister Nouri al-Malik,³¹⁵ the Iraqi government created an LGBT Committee, tasked with

³⁰⁷ U.S. STATE DEP’T, 2011 HUMAN RIGHTS REPORTS: IRAQ 35 (May 2012).

³⁰⁸ HONOR CRIMES, *supra* note 307, at 9.

³⁰⁹ Amnesty Int’l, IRAQI Civilians Under Fire 21 (2010).

³¹⁰ *See id.* at 6.

³¹¹ *Id.* at 20.

³¹² Margaret Owen, See As the Clock Turns Back, THE GUARDIAN, Jul. 28, 2005, <http://www.theguardian.com/world/2005/jul/28/iraq.gender>.

³¹³ *See id.*; Interview with Iraqi women’s rights activists, *supra* note 46.

³¹⁴ Interview with Iraqi women’s rights activists, *supra* note 46; Interview with Iraq women’s and LGBT rights activists, *supra* note 78.

³¹⁵ See Ali Khedery, Why We Stuck With Maliki - and Lost Iraq, WASH. POST, July 3, 2014, http://www.washingtonpost.com/opinions/why-we-stuck-with-maliki-and-lost-iraq/2014/07/03/0dd6a8a4-f7ec-11e3-a606-946f632f9f1_story.html (with the backing of the United States, Nouri al-Maliki assumed power following the U.S. invasion in 2003. After 2011, when the U.S. could not come to Status of Forces agreement with the Iraq government, Obama pulled U.S. troops out of the country); *see Obama: All U.S. Troops Out of Iraq by the End of the Year*, NBC NEWS, Oct. 21, 2011, http://www.nbcnews.com/id/44990594/ns/world_news-mideast_n_africa/t/obama-all-us-troops-out-iraq-end-year/#.ViwHRhCrT3A (following their leave, Maliki continued to fuel sectarian tensions and violence, which among other things lead to the Sunni uprising in 2014 and made way for the ISIL invasion); *see Iraq’s Sunnis: Rebels with a Cause?*, AL JAZEERA, Dec. 31, 2013, <http://www.aljazeera.com/indepth/opinion/2013/12/iraq->

the promotion and protection of LGBT people's rights in Iraq.³¹⁶ While the Committee could be a powerful force in eradicating violence and discrimination against LGBT and gender non-conforming individuals, it has yet to produce any policy recommendations or conduct any research on the issue.³¹⁷ Moreover, activists who have met with the Committee report that some of its members cite to myths about sexual orientation and gender identity, including that homosexuality is a perversion or a medical disorder.³¹⁸

Today, the vast majority of LGBT individuals in Iraq almost exclusively keep their sexual orientation and non-conforming gender identities secret, and live in constant fear of rejection by family members, and of discrimination, violence, and death.³¹⁹ In the face of the pervasive threats of violence, discrimination, and injustice, marginalized and at-risk Iraqis in Baghdad and other cities are in urgent need of physical security and emergency assistance. Local activists are calling for greater protections and support.³²⁰ Since LGBT advocacy work is highly dangerous and puts advocates and their families' lives at risk, less than a handful of groups currently engage in addressing discrimination and protecting LGBT persons in Iraq.³²¹ When asked why they engage in such risky work, such human rights defenders respond that all Iraqis have rights, and that working toward the implementation of human rights in Iraq means protecting the rights of all Iraqis.³²²

Establishing and maintaining safe spaces for responsive organizations in Iraq that provide essential services and human rights trainings to marginalized and at-risk Iraqis is critically needed, according to local NGOs.³²³ Such spaces for support are essential to protect marginalized populations from physical violence and discrimination, and to aid people in

sunnis-rebels-with-cause-2013122781113301705.html (no longer supported by the United States nor by most governments in Europe and the Arab world, by August 2014, Malik was dismissed from office and replaced by Haidar al-Abadi); see Adam Taylor, *Meet Haider al-Abadi, the man Named Iraq's new prime minister*, WASH. POST, Aug. 11, 2014, <http://www.washingtonpost.com/news/worldviews/wp/2014/08/11/meet-haider-al-abadi-the-man-named-iraqs-new-prime-minister/>.

³¹⁶ IRAQUEER, MADRE, IWHR CLINIC, OUTRIGHT ACTION INT'L, *supra* note 300, at 1, 11.

³¹⁷ Interview with Iraqi LGBT rights activists, *supra* note 78.

³¹⁸ *Id.*

³¹⁹ *Id.*; Interview with Iraqi women's and LGBT rights activists, *supra* note 78; Interview with Iraqi women's rights activists, *supra* note 46.

³²⁰ Interview with Iraqi women's and LGBT rights activists, *supra* note 78.

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

their recovery from the trauma of experiencing violence and constant fear.³²⁴ Furthermore, these spaces serve as safe places to reinforce and uphold the dignity, fundamental freedoms, and human rights of persons under the constant threat of violence, as well as forums for Iraqis to build coalitions to advocate for sexual, gender, and democratic rights.³²⁵

IV. PROMOTING CHANGE IN THE CONTEXT OF CONFLICT: TARGETED POLICY CHANGES IN IRAQ

The current conflict presents a strategic opening for dismantling long-term structural violence through policy changes that would help enhance efforts to address immediate needs. Practical mechanisms to prevent and address systemic gender-based violence are already woven into the framework of local NGOs' direct service and advocacy work. In the absence of government-sponsored services and legal remedies to address gender-based violence, local Iraqi women's rights NGOs are at the forefront of providing necessary services.³²⁶ Creating lasting positive change requires strengthening and supporting the capacity of Iraqi women's rights organizations that are committed to ending gender-based violence and to building a rights-based society in which democratic norms can supplant sectarianism.³²⁷ Despite immense practical challenges presented by the ongoing conflict, Iraqi women's rights groups are organizing together and have coalesced around key strategic policy changes that would strengthen women's, girls', LGBT persons', and other marginalized Iraqis' human rights, and increase protections and services for such individuals. These strategies include: (a) creating access to shelter; (b) removing barriers to legal identification for women; (c) eliminating barriers to accessing healthcare; (d) exposing all conflict related human rights abuses; (e) lifting the ban on independently-run radio stations; and (f) building a national movement promoting these strategies.

A. *Creating Access to Shelter*

Even before ISIL's invasion, Iraqi NGOs and women's rights defenders seeking to assist women and girls in need encountered regular

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ Letter from MADRE & Women's Int'l League for Peace and Freedom (WILPF), *The Threat of ISIL and the Situation of Women in Iraq*, to U.N. Gen. Assemb., Hum. Rts. Council, U.N. Press Release A/HRC/S-22/NGO/13 (Sept. 1, 2014).

³²⁷ *See id.*

harassment, arbitrary surveillance, and warrantless searches.³²⁸ Many human rights organizations are forced to operate their activities clandestinely, including providing shelter to persons fleeing violence, which remains illegal for NGOs in central and southern Iraq.³²⁹ Only government-run shelters are allowed, although outside of Kurdistan, they either sit vacant or do not exist.³³⁰ Amending the shelter provision to allow NGOs to run shelters for displaced families and individuals in central and southern Iraq would greatly aid the local women's rights organizations already mobilizing an emergency response to protect at-risk individuals.³³¹

According to Yanar Mohammed, "Shelters are thought of as encouraging women to disobey their husbands and daughters to disobey their parents. This leads to the presumption that a shelter—a place where a group of immoral women reside without a male guardian—is likely a brothel."³³² This harmful misconception of women's shelters, one that not only misrepresents what shelters are but also relies on immense societal stigma around sex work,³³³ exists in other countries as well.³³⁴

When Iraqi women's rights activists called on the government to permit women's organizations to run domestic violence shelters, the demands were rejected by the Ministry of Women, which stated, "women are governed by tribal customs and habits, which they cannot disobey."³³⁵ Local women's rights activists explain that if a battered spouse flees to a shelter she could face harassment by her family and potential ostracism, abuse or death for bringing shame to her husband's family.³³⁶ Responding to the Iraqi government's refusal to grant legal license for civil society organizations to open shelters for battered women, the Deputy Chairman of the Committee for Women and Family in the Parliament, Haifa El-Hilfi,

³²⁸ *See id.*

³²⁹ Davis, *supra* note 157; *see also* Interview with Iraqi women's rights activists, *supra* note 78.

³³⁰ Davis, *supra* note 157.

³³¹ *Id.*

³³² Conversation with Yanar Mohammed, *supra* note 220.

³³³ *See supra* note 179.

³³⁴ *See, e.g.,* Dean Nelson, *Afghan Women in Shelters are Prostitutes, says Justice Minister*, TELEGRAPH (Jun. 21, 2012), <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/9346779/Afghan-women-in-shelters-are-prostitutes-says-justice-minister.html> (describing Baroness Ashton, a EU foreign minister, as "deeply troubled" after Habibullah Ghaleb, Afghanistan's justice minister, alleged that Afghan women in domestic violence shelters are prostitutes).

³³⁵ Amal Saqir, *No Shelters for Women who are Subject to Violence in Iraq, and the Authorities Offer Religious Counseling Instead*, AL-MONITOR (Dec. 9, 2013) <http://www.al-monitor.com/pulse/originals/2013/12/iraq-women-violence-shelters-government.html#>.

³³⁶ *See id.*; *see also* Interview with OWFI staff members, *supra* note 65.

stated, “[T]he fear of the establishment of these houses would lead the majority of women to exploit the role and leave their families.”³³⁷ This, she described, would be “the real danger that will lead to the dismantling of many Iraqi families.”³³⁸ However, the right to shelter exists under Iraqi Law in the recently codified the *Combating Trafficking of Persons Law of 2012*³³⁹ and is supported in sections 5.2³⁴⁰ and 6.2³⁴¹ of the *Iraq National Action Plan for the Implementation of the UN Security Council Resolution 1325 on Women, Peace and Security* (known as the National Action Plan or NAP).

In the climate of the current conflict, the need for NGO-run shelters continues to become exponentially greater.³⁴² Addressing displacement issues now will reduce new problems that displacement often leads to. Women’s organizations not only provide shelter for the most vulnerable displaced persons, they also provide other supportive services including health care and psycho-social support.³⁴³ They help children attend school.³⁴⁴ When appropriate, they offer assistance for reunification with family members.³⁴⁵ This helps to reduce illiteracy, the spread of disease,³⁴⁶ and chips away at the number of women and children left vulnerable to trafficking, domestic violence, early and forced marriage, and other forms of gender-based violence.³⁴⁷ It also helps alleviate the economic burdens placed on local governorates left scrambling to address the displacement

³³⁷ Saqir, *supra* note 336.

³³⁸ *Id.*

³³⁹ Penal Code No. 28 of 2012, Article 11 ¶¶ 7-8 (Iraq), *Combating Trafficking of Persons Law of 2012*.

Concerned State directorates shall commit (while taking into consideration the needs of the babies) to assisting the victims of human trafficking with special consideration to children needs, as follows: Seventh: Provide financial assistance and a temporary shelter based on gender and age classification; Eight: To provide social, psychological, and physical rehabilitation by establishing specialized rehabilitation centers or care houses based on special program to reintegrate the victims in society.

³⁴⁰ THE FEDERAL GOVERNMENT OF IRAQ AND KURDISTAN REGIONAL GOVERNMENT, IRAQ: NATIONAL ACTION PLAN FOR IMPLEMENTATION OF THE UNITED NATION SECURITY COUNCIL RESOLUTION 1325 WOMEN, PEACE AND SECURITY 2014 – 2018, 11 (2014).

³⁴¹ *Id.* at 15 § 6.2 (noting the specific objective of eliminating violence against women and to increasing the existence of safe houses for victims of violence).

³⁴² *Id.* at 11-12 § 5.2

³⁴³ Interview with Iraq women’s rights activists, *supra* note 46.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *New humanitarian appeal for Iraq vital to meet rising health needs among displaced – UN*, UN NEWS CENTRE (Jun. 2, 2015), <http://www.un.org/apps/news/story.asp?NewsID=51032>.

³⁴⁷ See Letter from MADRE, *supra* note 327.

crisis.³⁴⁸ Changing Iraq's shelter policy to allow NGO-run shelters would not only help save lives, it would also increase international funding directly to local organizations and spur community-based jobs.³⁴⁹

In the absence of government-sponsored services and legal remedies to address gender-based violence, Iraqi women's NGOs are at the forefront of providing necessary services, despite having to operate shelters clandestinely.³⁵⁰ By amending the shelter restriction policy to help meet the needs of conflict-related displacement, women's rights groups can reach more people in need and can more effectively assist those both directly and indirectly affected by the crisis. Most importantly, they can reach those left most vulnerable to gender-based violence, including minority women and LGBT persons escaping ISIL, trafficking, domestic violence, and other forms of violence.³⁵¹

The policy prohibiting local NGOs from running safe houses also puts those fleeing "honor" crimes directly at great risk when private shelters are exposed.³⁵² Shelter administrators report being accused of "harboring prostitutes" or "running brothels."³⁵³ They have experienced threats of imprisonment by police and death threats by militias.³⁵⁴ There have been numerous reports of shelter raids.³⁵⁵ For example, in 2013, an Iraqi women's shelter was raided by a local police force.³⁵⁶ A police officer asked to see identification from all of the women who were present and became suspicious of their purpose for being at the residence when he discovered that the women were not related to one another.³⁵⁷ The officer decided to let the women go, but only after insisting that each contact their parents, putting those fleeing the threat of "honor" killing at grave risk.³⁵⁸ Following the raid, the organization decided to close the shelter until some time had passed.³⁵⁹

³⁴⁸ See *id.*; Davis, *supra* note 160.

³⁴⁹ See Letter from MADRE, *supra* note 327; see also Davis, *supra* note 160.

³⁵⁰ *Id.*

³⁵¹ OUTRIGHT ACTION INT'L, MADRE & OWFI, *supra* note 79.

³⁵² *Id.* at 9, 17.

³⁵³ Interview with Iraq women's and LGBT rights activists, *supra* note 78.

³⁵⁴ *Id.*; Interview with Iraq women's rights activists, *supra* note 46.

³⁵⁵ Interview with Iraq women's and LGBT rights activists, *supra* note 78.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ The shelter administrators were able to keep the female residents out of harm. *Id.*

³⁵⁹ *Id.*

Yanar Mohammed from OWFI testified to the dangers caused by the anti-shelter policy during the CAT Committee's review of the Iraqi government in July and to the Human Rights Committee in October 2015. She called for the Iraqi government to permit local NGOs to run shelters, as the ban puts women's lives at risk of violence and torture. While in some instances the CAT Committee has found that the absence of shelters can facilitate the risk of torture and may violate a state's obligation to protect and prevent against foreseeable torture, this responsibility is left to the discretion of the state to remedy. In other words, it is within the states' discretion to determine how to enact shelters, including whether shelters are government-provided or allowed to be privately run.

OWFI and other Iraqi women's organizations, along with MADRE and IWHR Clinic attorneys, explained through legal submissions and oral testimony that, if women are discovered being housed in a privately run shelter, they are put in serious risk of harm.³⁶⁰ Specifically, they noted the risk of government authorities sending survivors back to their families who have sought to kill them for reasons of "honor."³⁶¹ In this sense, it is not only the lack of available shelter, but the policy prohibiting privately operated shelters itself that puts women and other at-risk persons in jeopardy of torture or death.³⁶² Activists and their advocates also pointed out that in the Kurdistan region, the operation of shelters by NGOs is permitted, but that the same provision is not considered valid in central and southern Iraq.³⁶³

In an unprecedented decision, the CAT Committee issued its *Concluding Observations* to the Iraqi government, calling on the state to "[e]nact comprehensive legislation... including a law permitting privately run shelters."³⁶⁴ Shortly following, the Human Rights Committee expressed its concern with the Iraqi government's prohibition of local NGO-run shelters for victims of gender-based violence,³⁶⁵ and specifically demanded that the Iraqi government facilitate access to NGO-run shelters across the

³⁶⁰ See, e.g., IWHR CLINIC, MADRE, OWFI, ET AL., *supra* note 210, at 3-5, 20; OWFI, IWHR CLINIC & MADRE, SEEKING ACCOUNTABILITY AND DEMANDING CHANGE: A REPORT ON WOMEN'S HUMAN RIGHTS VIOLATIONS IN IRAQ UNDER THE U.N. CONVENTION AGAINST TORTURE 6-7 (2015), <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Seeking-Accountability-and-Demanding-Change.pdf>.

³⁶¹ IWHR CLINIC, MADRE, OWFI, ET AL., *supra* note 210, at 3-5.

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ Comm. Against Torture, *Concluding Observations on the Initial Report of Iraq*, *Advanced Unedited Version*, ¶ 23 (d) (Aug. 14, 2015).

³⁶⁵ Human Rts. Comm., *Concluding Observations on the Fifth Periodic Report of Iraq*, ¶ 25, U.N. Doc. CCPR/C/IRQ/5 (Nov. 5, 2015).

country.³⁶⁶ Activists plan to utilize both committees' *Concluding Observations* in their advocacy work and call on the Iraqi government as well as donor states and UN agencies to support a policy change that would make way for much-needed, NGO-run shelters.

Women's rights organizations have also enjoyed some local advocacy success. For example, OWFI negotiated agreements with local officials and tribal leaders from the Karbala and Samara governorates permitting them to provide temporary housing and to assist with other concerns related to the humanitarian crisis.³⁶⁷ While OWFI is working on obtaining agreements with other affected townships, OWFI and its international partner organization, MADRE, have started working with key embassies in Baghdad and UN experts to advocate for the central government to adopt a legal framework allowing for NGOs to operate shelters on a national level. The Sorensen Center for International Peace and Justice and the IWHR Clinic at CUNY Law School are helping to provide documentation on the benefits.³⁶⁸ With no end in sight to the conflict, these agreements could remain in perpetuity and help normalize the concept of sheltering in Iraq.³⁶⁹

B. Removing Barriers to Accessing Legal Identification for Women

Women fleeing conflict areas and gender-based violence cannot obtain legal identification in the absence of a male family member who can verify their identity.³⁷⁰ The Iraqi Civil Status Identification Document and Nationality Certificates are essential to access public services, including food assistance, healthcare, employment, education, and housing as well as to obtain a passport.³⁷¹ Inability to provide these documents denies a large number of women and children these basic services.³⁷² Women cannot travel, secure housing, or receive national health care services without certificates.³⁷³ Children cannot receive vaccines or enroll in school.³⁷⁴ As a

³⁶⁶ *Id.* at ¶ 26 (a).

³⁶⁷ *Id.* at 8.

³⁶⁸ Law students and attorneys working with the Sorensen Center for International Peace and Justice and in the International Women's Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law have assisted Iraqi women's rights organization with a variety of projects including developing legal submissions to UN human rights mechanisms and member states as well as developing safety and security protocols.

³⁶⁹ Davis, *supra* note 160.

³⁷⁰ IWHR CLINIC, MADRE, OWFI, et al., *supra* note 210, at 12-13.

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

result, women are left more vulnerable to violence, trafficking, and discrimination.³⁷⁵ Lack of legal access to an identification card paves the way for traffickers aided by sophisticated criminal networks to forge documents and pay corrupt officials to remove impediments in order to traffic women and children.³⁷⁶

In response to the influx of Yazidi women and girls fleeing ISIL-controlled areas, the Kurdistan Regional Government has issued temporary identification cards³⁷⁷ to a number of displaced persons in Dohuk who can prove their identities.³⁷⁸ Proof is accepted in the form of food assistance forms or other recognized forms of Iraqi identification (ID).³⁷⁹ If they do not have IDs, individuals may receive a letter of support from refugee camp management.³⁸⁰ If they do not live in a camp, they may bring a relative (male or female) who lives in a camp, or who has ID, in order to prove their identity.³⁸¹ This ID verification system could be followed by all of the governorates in Iraq. The Iraqi Minister of the Interior could issue a decree allowing displaced women and girls to obtain temporary Civil Status Identification Documents in the absence of a male family member to verify their identity for a temporary term. If after three years there are no disputes as to the ID holder's identity, the governorate could replace the temporary identification card with permanent ones.³⁸² Local women's rights groups that aid displaced women could help facilitate greater access to this process.³⁸³

In 2015, local activists and their advocates raised this issue with the Committee Against Torture, which called on the Iraqi government to explicitly allow women to receive identity documents without authorization or verification from a male family member.³⁸⁴ Similar to advocacy efforts

³⁷⁵ *Id.*

³⁷⁶ *Id.* See generally Smuggling of Migrants: The Harsh Search for a Better Life, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <http://www.unodc.org/toc/en/crimes/migrant-smuggling.html> (last visited Nov. 1, 2015).

³⁷⁷ *Id.*

³⁷⁸ See e.g., DANISH IMMIGRATION SERVICE, ENTRY PROCEDURES AND RESIDENCE IN KURDISTAN REGION OF IRAQ (KRI) FOR IRAQ NATIONALS 30 (2010).

³⁷⁹ *Id.*

³⁸⁰ INTERNAL DISPLACEMENT MONITORING CENTRE, (IDMC), IRAQ: IDPS CAUGHT BETWEEN A ROCK AND A HARD PLACE AS DISPLACEMENT CRISIS DEEPENS (Jun. 30, 2015).

³⁸¹ See e.g., LANDINFO, IRAQ: TRAVEL DOCUMENTS AND OTHER IDENTITY DOCUMENTS 24-25 (Jan. 23, 2014).

³⁸² See generally *id.*

³⁸³ See *id.* at 21.

³⁸⁴ Comm. Against Torture, *supra* note 118, at 7.

aimed at amending the shelter policy, activists plan to use the Committee's *Concluding Observations* to bolster their efforts in removing barriers to accessing identification cards for women.

C. *Creating Access to Healthcare*

Survivors of sexual violence in Iraq often lack access to healthcare services due to pervasive stigma associated with such violence.³⁸⁵ When visiting a health clinic, female and male rape survivors have reported being ridiculed, shamed or blamed for what has happened to them.³⁸⁶ Sometimes they are turned away.³⁸⁷ As a result, many men and women do not attempt to access medical treatment following sexual violence due to the severe stigma attached to it.³⁸⁸ This stigma, embedded in religion, traditions, and customs, facilitates rejection by families and society, re-victimization (i.e. "honor" crimes) for "shaming the family," and negotiation with perpetrators to marry their victims so as to restore families' "honor."³⁸⁹ The situation in conflict-affected areas has grown exponentially worse as local health services are overstretched and under-resourced due to the high influx of internally displaced persons.³⁹⁰

Women's rights organizations that conduct outreach and provide assistance to sexual violence survivors confirm that survivors not only experience crippling trauma, they also face high barriers to receiving medical treatment, and also lack psychosocial care.³⁹¹ For this reason, OWFI's strategy includes reaching out to and working with healthcare professionals that are sympathetic to the vulnerabilities and needs of marginalized and at-risk Iraqis and can provide crisis-intervention counseling.³⁹² Since marginalized and at-risk Iraqis with injuries from violent attacks have been refused care at hospitals, OWFI staff members

³⁸⁵ Interview with Iraqi women's rights activists, *supra* note 203.

³⁸⁶ IWHR CLINIC, MADRE, OWFI, et al., *supra* note 210, at 8-9.

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ Iraq, HEALTH EMERGENCY HIGHLIGHTS (World Health Org., Geneva, Switz.), Aug. 2014, at 1; Interview with Iraqi women's rights activists, *supra* note 46).

³⁹¹ IWHR CLINIC, MADRE, OWFI, et al., *supra* note 210, at 8-9; Interview with Iraqi women's rights activists, *supra* note 46; Interview with Iraqi women's rights activists, *supra* note 203.

³⁹² Interview with Iraqi women's rights activists, *supra* note 46; Interview with Iraqi women's rights activists, *supra* note 203.

accompany survivors to hospitals and advocate for their treatment, when necessary.³⁹³

To ensure systemic change, local Iraqi women's rights organizations are calling on the Iraqi Ministry of the Health to issue a decree calling on doctors to uphold the Hippocratic Oath and provide services to sexual violence survivors.³⁹⁴ They are also calling on the international community to work with the Iraqi government and fund trainings for healthcare providers in Baghdad's four main hospitals on stigma associated with sexual violence and on treatment protocols for how to provide appropriate care for survivors of sexual violence.³⁹⁵ Lastly, they are calling for the creation and staffing of hospital emergency room liaisons specifically tasked with meeting and assisting sexual violence survivors when they go to hospitals and seek care.³⁹⁶ This would not only help facilitate access to healthcare for female rape survivors but also for male rape survivors and LGBT community members.³⁹⁷

Once again, in response to the lack of adequate health care for women and LGBT persons fleeing violence, the CAT Committee called on the Iraqi government to "provide adequate redress to victims, including those fleeing ISIL-controlled areas, in particular ensuring that women fleeing such violence have access to shelter, medical and psychological care and rehabilitation and public services, and are able to access such services without discrimination on the basis of gender or other status."³⁹⁸

D. *Exposing All Conflict-Related Human Rights Abuses*

Documentation yields not only credible information on grave human rights abuses from first hand witnesses and survivors, it also unveils key information about perpetrators and their larger criminal networks.³⁹⁹ In concert with this work, many documenters in Iraq also provide safe passage and shelter to those at imminent risk of sexual slavery or death, including

³⁹³ Interview with OWFI staff members, *supra* note 65.

³⁹⁴ IWHR CLINIC, MADRE, OWFI, et al., *supra* note 210, at 16.

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ See generally *id.* at 8-9 (illustrating how protocols on sexual violence treatment and designated hospital liaisons will facilitate healthcare access to rape survivors); see also IRAQUEER, MADRE, IWHR CLINIC, OUTRIGHT ACTION INT'L, *supra* note 300 (illustrating the healthcare provided to LGBT people when there are no protocols in place for healthcare providers to follow).

³⁹⁸ Comm. Against Torture, *supra* note 118, at ¶ 12.

³⁹⁹ UNHCR, *Report of the Officer of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*, 5, 7-8, 10-11, U.N. Doc. A/HRC/28/18 (2015).

those living under ISIL-controlled or contested areas.⁴⁰⁰ Community or peer-driven documentation brings ordinary people into a broader movement against injustice, building a culture of peace, tolerance, and respect for human rights as well as civic engagement. Additionally, providing credible documentation to the international community not only raises visibility and educates key stakeholders about specific human rights violations against marginalized and at-risk individuals, it also helps to ensure that these crimes are included in the redress mechanisms and policy formations under future tribunals and transitional justice processes.⁴⁰¹

Human rights violations committed against marginalized victims frequently go undocumented.⁴⁰² When such violations in conflict are not exposed, history teaches that they are often left out of the human rights discourse and future transitional justice processes.⁴⁰³ For this reason, Iraqi grassroots organizations incur great risk documenting human rights violations committed by government forces, ISIL, and other militias.⁴⁰⁴ They have been documenting cases of abuse before and during the current crisis and are building a historical record of human rights violations committed against marginalized and at-risk Iraqis by perpetrators from all sides of the conflict.⁴⁰⁵

Such accounts include brutal shootings, beheadings, stonings, and burnings of women and those perceived as LGBT or gender non-conforming.⁴⁰⁶ For example, in June 2012, in the city of Samarra, the burning remains of two young men in their late teens were left in the street of a busy public intersection for over two hours.⁴⁰⁷ The family members of the two men were seen standing in the street holding pistols in their hands

⁴⁰⁰ Interview with Iraqi women's rights activists, *supra* note 46; Interview with Iraqi women's rights activists, *supra* note 203; Interview with Iraq women's and LGBT rights activists, *supra* note 78.

⁴⁰¹ *See generally* U.N. Sec'y-Gen., The rule of law and transitional justice in conflict and post-conflict societies, 4, 17, U.N. Doc. S/2004/616 (2004) [hereinafter U.N. Sec'y-Gen] (illustrating the value of international documentation and effects on human rights violation).

⁴⁰² *See* MADRE, IWHR CLINIC AT CUNY LAW SCHOOL, WILPF, SEEKING ACCOUNTABILITY AND DEMANDING CHANGE: A REPORT ON WOMEN'S HUMAN RIGHTS VIOLATIONS IN SYRIA BEFORE AND DURING THE CONFLICT 1 (2014); *see generally* OHCHR & UNAMI, *supra* note 137.

⁴⁰³ *See generally* U.N. Sec'y-Gen, *supra* note 404, at 7 (noting that without public awareness and education reform will not be secured).

⁴⁰⁴ Interview with Iraqi women's rights activists, *supra* note 46. *See generally* IWHR CLINIC, MADRE, OWFI, ET AL., *supra* note 210, at 22.

⁴⁰⁵ Interview with OWFI staff members, *supra* note 65.

⁴⁰⁶ IRAQUEER, MADRE, IWHR CLINIC, OUTRIGHT ACTION INT'L, *supra* note 300, at 4-5, 9.

⁴⁰⁷ *Id.* at 9.

as they watched the young men's bodies burn.⁴⁰⁸ Witnesses confirmed that the two men were killed by their own families for their perceived gender non-conformity.⁴⁰⁹ It was suspected that these two men were gay.⁴¹⁰ Members of the Security Forces of the Ministry of the Interior were reported to have been informed of the incident in advance, and were seen standing near the families at the crime scene.⁴¹¹ However, no investigation was conducted.⁴¹²

Similar cases of brutal violence and killings have been documented in ISIL-controlled areas as well.⁴¹³ In September 2014, documenters interviewed several witnesses, reporting that ISIL executed a local and well-known lawyer and human rights activist in a public square in Mosul.⁴¹⁴ Witnesses believe the woman was executed because of her criticism of ISIL on social networks, calling it a "Non-Islamic State."⁴¹⁵ In January 2015, documenters reported that women and children were forced out of their homes by ISIL fighters and detained in Tikrit.⁴¹⁶ They reported witnessing ISIL using the women and children as human shields to protect themselves from airstrikes by lining them up around a building being used as a makeshift headquarters.⁴¹⁷ OutRight Action International maintains a timeline recording numerous incidences of ISIL's executions of persons accused of "immoral behavior" such as sodomy.⁴¹⁸

Conflict also brings new challenges and risks in sharing such information. Navigating the international terrain while limiting the exposure of documenters' personal identities and the identity of their organizations or how they slip in and out of ISIL-controlled areas remains challenging for

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ *Id.*

⁴¹² *Id.* Iraqi women's rights activists report that official condoning of anti-LGBT "honor" killings is common practice, especially where tribal leaders hold greater influence than local government officials. Interview with Iraqi women's rights activists, *supra* note 46. Activists also report that informing security forces ahead of time ensures that no officials would intervene with the killing. *Id.*

⁴¹³ IWHR CLINIC, MADRE, OWFI, ET AL., *supra* note 210, at 44-45. For a list of ISIL executions see, OutRight Action International, *Timeline of publicized executions for "indigent behavior" by IS militias* <https://www.outrightinternational.org/dontturnaway/timeline> (last visited Nov. 19, 2015).

⁴¹⁴ *Iraqi women targeted for execution by IS*, AL-MONITOR, Oct. 10, 2014, <http://www.al-monitor.com/pulse/security/2014/10/islamic-state-execution-women-iraq.html>.

⁴¹⁵ *Id.*

⁴¹⁶ IWHR CLINIC et al., *supra* note 210, at 44-45.

⁴¹⁷ *Id.*

⁴¹⁸ OutRight Action International, *supra* note 416.

most local organizations.⁴¹⁹ Knowing who to trust can be even more challenging.⁴²⁰ This is where law school human rights clinics can play a vital role. For example, the IWHR Clinic at CUNY Law School represents local organizations in Iraq and takes on the role of negotiating with interested donor states.⁴²¹

In this role, the IWHR Clinic has provided key UN bodies and legal advisors in The Hague with documented cases of gender-based human rights abuses, including cases based on sexual orientation, gender, and gender identity.⁴²² Such documentation may help to lay the foundation to include, for the first time, the persecution of LGBT persons within the scope of international crimes prosecuted by future tribunals or under the Rome statute.⁴²³

E. Lifting the Ban on Independently-Run Radio Stations

From March to June 2014, in response to anti-government demonstrations, the Iraqi government-run Communication and Media Commission (CMC) revoked the licenses and effectively shut down OWFI's radio station, Al-Mousawaat, along with over twenty other radio stations, many of which were independent, non-partisan, and primarily advocates for social equality and justice.⁴²⁴ CMC officials failed to provide a legal basis for the suspensions, falsely alleging that the stations were suspended for promoting violence and sectarianism.⁴²⁵

OWFI's Al-Mousawaat radio station is an integral mechanism for disseminating messages of peace, tolerance, and respect for human rights and for combating societal discrimination.⁴²⁶ It is the only radio station of

⁴¹⁹ See generally CUNY School of Law, International Women's Human Rights Clinic, *Current Projects: Promoting the Rights, Protection, and Physical Security of Marginalized and At-Risk Iraqis*, <http://www.law.cuny.edu/academics/clinics/iwhr/projects.html> (last visited Nov. 25, 2015).

⁴²⁰ Interview with Iraqi women's rights activists, *supra* note 46.

⁴²¹ See generally, *supra* note 420.

⁴²² See *id.* Submissions include those made on behalf of MADRE and OutRight Action International to UN human rights mechanisms. Often the IWHR Clinic chose to omit its name from such reports for safety reasons.

⁴²³ See generally THE OFFICE OF THE PROSECUTOR, DRAFT POLICY PAPER ON SEXUAL AND GENDER BASED CRIMES 6 (2014), <http://www.icc-cpi.int/iccdocs/otp/OTP-draft-policy-paper-February2014-Eng.pdf>.

⁴²⁴ See Hum. Rts. Watch, Iraq: Cancel Revocations of TV Station Licenses: Licenses Suspended Amid Rising Death Toll, Civil War Fears, (Apr. 13, 2013), <http://www.hrw.org/news/2013/04/30/iraq-cancel-revocations-tv-station-licenses>.

⁴²⁵ IWHR CLINIC, MADRE, OWFI, *supra* note 210, at 49-51.

⁴²⁶ Interview with OWFI staff members, *supra* note 65.

its kind in Iraq that regularly and openly promotes the rights of women and other at-risk and marginalized groups.⁴²⁷ Call-in sessions engage listeners in discussions of human rights issues affecting women and LGBT persons.⁴²⁸ Radio skits dramatize complicated human rights scenarios and model progressive conclusions.⁴²⁹ Informational shows address topics such as the importance of pluralism.⁴³⁰ The station also conducts much-needed outreach to vulnerable individuals by broadcasting information about the services and support OWFI provides, and informing marginalized and at-risk populations that allies are within reach.⁴³¹

Currently, the future of all the independent commissions, including the CMC, is being negotiated between the political blocs and parties.⁴³² National and international radio stations operating in Iraq have been working with Parliament members on a legal reform initiative that, if passed, would bring the CMC under the supervision of Parliament, and thus allow for an opportunity to institute fair and transparent licensing procedures.⁴³³

The Sorensen Center for International Peace and Justice at CUNY Law School and MADRE are working in collaboration with local Iraqi organizations and donor states advocating for the CMC to reissue broadcasting rights to local radio stations, including Al-Mousawaat.⁴³⁴ Representatives from supportive embassies in Baghdad have already met with CMC members at these organizations' request.⁴³⁵ In the interim, OWFI is collaborating with currently operating radio stations in order to broadcast Al-Mousawaat programming.⁴³⁶

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² Interview with OWFI staff members, *supra* note 65.

⁴³³ *Id.*

⁴³⁴ MADRE, One Year After ISIS Invasion: Women's Rights Activists Demand Right to Broadcast Lifesaving Information, (Jun. 10, 2015), <http://www.madre.org/page/madre-statements-210/news/one-year-after-isis-invasion-womens-rights-activists-demand-right-to-broadcast-lifesaving-information-1010.html>.

⁴³⁵ Interview with OWFI staff members, *supra* note 65; *see also* Ahmed Hussein, PM Meets Delegation from CMC, IRAQI NEWS (Nov. 24, 2014), <http://www.iraqinews.com/baghdad-politics/pm-meets-delegation-from-cmc/>.

⁴³⁶ Interview with OWFI staff members, *supra* note 65.

F. Building a National Movement

Following extensive advocacy by Iraqi women's rights groups, in February 2014, the Iraqi government launched its *National Action Plan*.⁴³⁷ The plan acknowledges the special vulnerabilities of women during conflict, noting that they face the "double trauma" of sexual assault as well as the stigma attached to it.⁴³⁸ The plan also recognizes the increased levels of domestic violence in the aftermath of conflict.⁴³⁹ Additionally, it points out many of Iraq's discriminatory legal provisions and describes their harmful impact on women.⁴⁴⁰ The plan lists a variety of proposed solutions for remedying the nation's legal system, including: prohibiting courts from allowing defendants to use "honor" as a defense to mitigate sentences; barring coerced marriages; conducting a general review of Iraq's legal obligations toward women with regard to treaties it has ratified; and introducing national laws to ensure adherence to treaty obligations.⁴⁴¹ The plan also calls for the creation of shelters for women escaping violence, stating as a goal that the government will work to create an "Amendment to the Act of the Federal Ministry of Labor on Shelters, taking the example of Law 2/2011 in [Kurdistan]." ⁴⁴² With Iraq having passed the National Action Plan, the challenge is now to imbue this legislative victory with real impact by creating robust monitoring and implementation mechanisms.⁴⁴³

Similar to the 2012 Anti-Trafficking Law, and despite the urgency of issues facing women and girls in Iraq, this action plan has yet to be funded.⁴⁴⁴ In October 2014 and 2015, Iraqi women's rights activists called on the UN Security Council to urge the Iraqi government to uphold its duty to ensure UN Security Council Resolution 1325's mandates are

⁴³⁷ See generally UNAMI, Government of Iraq Launches its National Action Plan on UN Security Council Resolution 1325 (2014-2018), UNITED NATIONS IRAQ (Feb. 6, 2014), http://www.uniraq.org/index.php?option=com_k2&view=item&id=1617:government-of-iraq-launches-its-national-action-plan-on-un-security-council-resolution-1325-2014-2018&Itemid=605&lang=en.

⁴³⁸ THE FED. GOV'T OF IRAQ AND KURDISTAN REG'L GOV'T, IRAQ: NAT'L ACTION PLAN FOR IMPLEMENTATION OF THE U.N. SEC. COUNCIL RESOLUTION 1325 WOMEN, PEACE AND SECURITY 2014-2018 6 (2014) [hereinafter NAP REPORT].

⁴³⁹ *Id.*

⁴⁴⁰ See generally *id.* at 7-10.

⁴⁴¹ *Id.* at 13-14.

⁴⁴² See *id.* at 15-16.

⁴⁴³ See *id.* at 16-17.

⁴⁴⁴ IWHR CLINIC, MADRE & OWFI, WOMEN'S HUMAN RIGHTS VIOLATIONS IN IRAQ: IN RESPONSE TO THE FOURTH PERIODIC REPORT OF THE REPUBLIC OF IRAQ 10 (2015).

incorporated into the nation's legal framework.⁴⁴⁵ By law, 25% of Members of Parliament (MPs) must be women.⁴⁴⁶ However, the turbulent political situation, lack of rule of law, and the absence of checks and balances for political parties means that women MPs are unable to advance a women's rights agenda or raise pressing women's human rights concerns.⁴⁴⁷ The same is true at municipal and local levels of governance.⁴⁴⁸ Moreover, MPs demonstrate limited understanding of international treaties and state obligations regarding women's rights or the women, peace, and security paradigm.⁴⁴⁹ There is a clear need to raise MPs' awareness and educate civil society.

The national Anti-Trafficking Coalition, started by OWFI and comprised of over thirty-seven Iraqi NGOs, academics, lawyers, and other activists, works on a broad range of women, gender, and human rights issues and does not exclusively focus on trafficking issues.⁴⁵⁰ Together with Iraq's UN Security Council Resolution (UNSCR) 1325 Coalition, which recently merged with the UNSCR 1325 Network,⁴⁵¹ these two coalitions offer a diverse grassroots membership and extensive legislative advocacy experience, and are well positioned to conduct public education and advocacy for the promotion of women's rights, and more broadly, gender rights.

With diverse membership, strong ties to policy makers, and a commitment to gender justice and human rights, the Anti-Trafficking Coalition and the 1325 Coalition are well situated to lead a nation-wide human rights advocacy campaign.⁴⁵² They also share many of the same priorities as their concerns naturally overlap.⁴⁵³ Women fleeing conflict-related, gender-based violence are particularly at risk of being subjected to forced labor and sex trafficking—punishable offenses under the Anti-

⁴⁴⁵ See Suaad Allami, Statement to the UN Security Council Open Debate on Women, Peace and Security, "Displaced Women and Girls: Leaders and Survivors (Oct. 28, 2014), http://womenpeacesecurity.org/media/pdf-NGOWG_Statement_28oct2014.pdf; Yanar Mohammed, Statement to the UN Security Council Open Debate on Women, Peace and Security, (Oct. 13, 2015) http://womenpeacesecurity.org/media/pdf-NGOWG_Statement_OpenDebate_Mohammad_Oct2015_EN.pdf.

⁴⁴⁶ See Suaad Allami, *supra* note 446, at 11.

⁴⁴⁷ See *generally id.* at 11-13.

⁴⁴⁸ *Id.* at 11.

⁴⁴⁹ Interview with Iraqi women's rights activists, *supra* note 46; see also NAP REPORT, *supra* note 439, at 11.

⁴⁵⁰ Interview with Iraqi women's rights activists, *supra* note 46.

⁴⁵¹ Conversation with Khanim Latif, Executive Director of Asuda, via Skype (Feb. 2, 2014).

⁴⁵² *Id.*

⁴⁵³ See IWHR CLINIC, MADRE & OWFI *supra* note 445, at 9-10.

Trafficking Law.⁴⁵⁴ The National Action Plan is also a fertile document for promoting advocacy for equality.⁴⁵⁵ The NAP states that it applies equally to all Iraqis, without any discrimination based on gender, language, origin or religion, or ideological beliefs.⁴⁵⁶ In addition to bolstering the rights of women, the NAP and Anti-Trafficking Law could be utilized to advocate for the protection of gender transgressors and all those who are exposed to conflict-related, gender-based violence.⁴⁵⁷ The 1325 Coalition and Anti-Trafficking Coalition are Iraq's foremost advocates for these key legislative and policy initiatives.

V. CONCLUSION

Advancing human rights by supporting the work of women's rights activists is an essential driver for sustainable peace. In the context of conflict, women's rights activists are first responders to grave human rights violations, particularly those inflicted with impunity upon women, gender non-conformers, and other marginalized or at-risk persons. Local organizations are in the best position to reach displaced families in conflict "hot zones" and to provide shelter and aid to those at the margins of society. They are also advocates for human rights, and experts on which policy changes are critical to addressing abuses spurred by conflict and achievable to amend for systemic change. They also work to empower civil society's participation in decision-making processes. Yet, social and legal barriers limit these advocates' full participation in legal mechanisms, government institutions, and peace negotiations and hinder women's contribution to conflict resolutions.

This is why the threats to civilians, including women, girls, and LGBT persons, posed by ISIL and other militia groups should be understood as part of a continuum of violence and discrimination, in which gender rights deteriorate before, during, and after conflict. This broader analysis of the current crisis in Iraq leads to more sustainable solutions for addressing gender-based violence and discrimination within the context of immediate humanitarian needs while helping to dismantle long-term structural violence. It is also why women's rights advocates working on the front lines of crisis need to be involved in conflict resolution and transitional justice

⁴⁵⁴ See NAP REPORT, *supra* note 439, at 2.

⁴⁵⁵ *Id.* at 2-6.

⁴⁵⁶ See *id.*

⁴⁵⁷ See *id.*

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processes as well as reconstruction, as mandated by international law.⁴⁵⁸ By formulating strategies based on a comprehensive gender analysis of the rights discourse, we begin to identify and enact conflict-related opportunities with potentially long-lasting positive change to enhance the rights and protections for all those who experience gender-based oppression in Iraq.

⁴⁵⁸ See S.C. Res. 1325 U.N. Doc. S/RES/1325 (Oct. 31, 2000).