التحالف للتعويضات العادلة
Coalition for Just Reparations
هاوپەیمانی بۆ قەرەبووکردنەوەی دادپەروەرانە

Yazda

Jiyan Foundation for Human Rights

Closing the Accountability Gap

A Commentary to the 2026 Iraqi Draft Law on the Prosecution of Core International Crimes

Contents

Context 3

How were these recommendations developed? 4

What are the Coalition's key recommendations? 4

How to use this commentary? 5

ABOUT Yazda 5

ABOUT C4JR 5

ABOUT Jiyan Foundation for Human Rights 6

Draft Law on International Crimes 7

Chapter I: Definitions, Objectives, and Scope of Application 7

Chapter II: Criminal Responsibility 11

Chapter III: The Crime of Genocide 13

Chapter IV: Crimes Against Humanity 14

Chapter V: War Crimes 15

Section 1: War Crimes Committed Against Persons 15

Section 2: War Crimes Related to Property 16

Section 3: War Crimes Related to Methods and Means of Warfare 17

Chapter VI: The Crime of Aggression 19

Chapter VII: Establishment of the Court 19

Chapter VIII: International Judicial Cooperation 22

Chapter IX: Concluding Provisions 23

REASONING STATEMENT 27

A Commentary on the drating of an Iraqi Law on the Prosecution of Core International Crimes 29

I. REASONS FOR ENACTMENT OF THE LAW ON CORE INTERNATIONAL CRIMES 30

II. SURVIVOR-CENTRED PROCEEDINGS 30

III. A SPECIALIST COURT 32

IV. JURISDICTION 34

V. DEFINITIONS OF THE CRIMES 37

VI. FORMS OF CRIMINAL RESPONSIBILITY 37

VII. PENALTIES 38

VIII. APPLICABLE LAW AND SOURCES TO BE USED IN INTERPRETATION OF THE LAW 38

IX. SOURCES OF EVIDENCE 39

Context

In 2014, the terrorist organisation Islamic State of Iraq and the Levant (ISIL/Daesh) seized large areas of Iraq and committed widespread and systematic atrocities against civilians. These crimes included the genocide of the Yazidi community, as well as crimes against humanity and war crimes committed against Yazidis and other communities, including Christians, Turkmen, Shabak, Kaka'i and Shi'a Muslims. Thousands of people were killed, subjected to sexual violence and enslavement, forcibly displaced, arbitrarily detained, tortured, or disappeared. The effects of these crimes continue to be felt by survivors, their families and affected communities.

Although Iraq has made significant efforts to hold ISIL members accountable, prosecutions have overwhelmingly been brought under counter-terrorism legislation rather than for genocide, crimes against humanity or war crimes. As a result, the nature and gravity of the atrocities committed, the specific harms suffered by victims and survivors, and the collective impact on targeted communities have not been fully recognised through the criminal justice process. The absence of legislation criminalising core international crimes has also limited Iraq's ability to contribute to the development of an accurate historical record and to fulfil its obligations under international law to investigate and prosecute these crimes.

Why is legislation on core international crimes needed now? The rapid enactment of an Iraqi law to enable prosecution of core international crimes in Iraqi courts is both vital and timely. The adoption of the Yazidi Survivors Law in 2021 marked an important milestone by recognizing the crimes committed by ISIL against Yazidis and other affected communities as genocide and crimes against humanity and committing Iraq to initiate criminal proceedings against the perpetrators. In the years since, some Iraqi judges have begun relying on the Yazidi Survivors Law to acknowledge the genocidal nature of ISIL's crimes while prosecuting defendants under anti-terrorism legislation. This emerging judicial practice demonstrates both the willingness of Iraqi judges to prosecute ISIL's crimes in a manner that reflects their true nature and the urgent need for legislation providing them with the legal basis to do so. Although the Iraqi government has signaled its intention to adopt such legislation for several years, it has yet to do so.

In the meantime, the only meaningful avenue for justice for these crimes has been prosecutions in foreign courts. Those responsible for ISIL atrocity crimes committed in Iraq and against Iraqis are being prosecuted in Germany, Sweden, Kosovo, The Netherlands, Belgium and France for those crimes, but not in Iraq. Ten years on from the genocide, the survivors are still waiting for action to deliver accountability in their home country.

Against this backdrop, the transfer of thousands of alleged ISIL affiliates from Syria to Iraq earlier this year presents a unique opportunity to prosecute them for genocide, crimes against humanity and war crimes, in recognition of the full gravity and systematic nature of their actions and the terrible impact on the individuals and communities affected. Coming at a time when hate speech against minorities is resurgent, this would also send a clear signal demonstrating Iraq’s commitment to preventing and punishing atrocity crimes going forward.

How were these recommendations developed?

This commentary builds on the Coalition for Just Reparations' longstanding engagement on accountability for ISIL's atrocity crimes in Iraq. In 2023, the Office of the Prime Minister prepared a draft Law on the Prosecution of Core International Crimes, but it did not progress through the legislative process. Following the publication of the Coalition's Position Paper on ISIL Accountability Mechanism in Iraq in August 2022, the Coalition continued to advocate for the adoption of legislation enabling Iraqi courts to prosecute genocide, crimes against humanity and war crimes. With the circulation of the current draft law, the Coalition undertook a comprehensive review of its provisions and developed the proposed amendments and commentary set out in this document.

The proposals on the draft law set out below are the outcome of six months of desk research and consultations with Iraqi civil society, survivors of the ISIL atrocity crimes and legal experts and reflect their views and preferences to the greatest extent possible. The amendments to the draft law that are proposed below are also aligned with international standards and best practices in prosecuting international crimes globally.

The development of these proposals was initiated and coordinated by Yazda, a member of the Coalition for Just Reparations, with technical legal support from an expert affiliated with Justice Rapid Response (JRR).

What are the Coalition's key recommendations?

The Coalition welcomes the draft law, which would effectively incorporate most core international crimes into Iraqi law with related provisions concerning jurisdiction, responsibility and allocation of cases to competent courts.

The Coalition urges the Iraqi Government and Parliament to prioritise this Law and ensure its rapid consideration and adoption, while consulting with relevant stakeholders. Involving survivors, civil society and other stakeholders in designing and implementing a criminal accountability mechanism for serous international crimes is an essential precondition for any successful effort to provide justice for genocide and other mass atrocity crimes.

In the present document, the Coalition would like to propose a number of key provisions that it considers crucial in order to enable the Law to achieve its purposes:

- First, provisions needed in order for the Law to win the confidence of survivors of ISIL atrocities and their communities and ensure that they can safely engage with the criminal justice process, as well as to ensure the Law can achieve its dual purpose to bring those responsible for atrocity crimes in Iraq from 2014 to justice, and to send a message that such crimes will not be tolerated in future. Provisions relating to reparation, protection and support to victims and witnesses and a broad statement of the purposes of the law are crucial. The Coalition urges that the interests and views of victims and survivors be taken into account in the finalisation of this Law, as well as in relation to decisions relating to its implementation going forward, such as any procedures relating to extradition where a foreign jurisdiction initiates proceedings for international crimes against individuals also falling under Iraqi jurisdiction.

- Second, provisions to recognize the fact that genocide, crimes against humanity and war crimes are not ordinary crimes that can just be added to the list of crimes that Iraqi courts can hear. Experience in Iraq and elsewhere shows that investigators, prosecutors, judges and others involved will need to be equipped with specialist knowledge and skills, and the regular criminal procedures will need to be adapted in order to deal with crimes with large numbers of victims, complex evidence and international components such as where evidence or suspects are located abroad. Special infrastructure will be needed to ensure the protection and well-being of victims and witnesses, effective evidence gathering and case building, and coordination of trials with other measures aimed at dealing with ISIL's crimes.
- Third, the Coalition suggests that as legislation intended to give effect to international law, the Law be drafted so as to ensure that Iraqi law is in line with international law, and that the stated purposes of the Law can be effectively achieved. This requires careful drafting of provisions relating to jurisdiction, definitions of the crimes, forms of criminal responsibility, penalties, applicable law and sources of evidence.

How to use this commentary?

This document reproduces the text of the 2026 draft Law on the Prosecution of Core International Crimes. The Coalition's proposed amendments are shown in **red** within the text of the draft law. Explanatory commentary setting out the rationale for each proposed amendment is provided in **blue text boxes** immediately below the relevant article.

Red text — proposed addition	~~Struck text~~ — proposed deletion	**Blue box** — explanatory commentary

ABOUT Yazda

Yazda is a non-governmental, non-profit organization that was established in 2014 in response to the genocide committed by the self-declared Islamic State (ISIS) against the Yazidis and other minorities in Iraq. Yazda manages a portfolio of humanitarian, justice, advocacy, and development-related projects, all of which are community and survivor-centered in terms of design and implementation. Since its inception, Yazda has been working with local and international partners to provide humanitarian, accountability, and advocacy services to vulnerable minority groups in Iraq in their post-genocide recovery. The organization has been operating in Iraq since October 2014 and has main offices in Duhok in the Kurdistan Region of Iraq and a branch office in Sinjar in Nineveh Province. Yazda is registered as a non-profit organization in the United States, the United Kingdom, Iraq, Kurdistan Region of Iraq. Since its creation, Yazda has received support from numerous donors, both institutional and individual, and has reached tens of thousands of direct and indirect beneficiaries through its programs and initiatives.

ABOUT C4JR

Coalition for Just Reparations (C4JR) is an alliance of 34 Iraqi civil society organizations committed to the cause of reparative justice for civilian victims of atrocity crimes perpetrated during the ISIS conflict in Iraq. C4JR, established in November 2019, uses international human rights and national law to support reparation claims of survivors and encourage Iraqi authorities to provide reparations to victims of gross

human rights violations in keeping with Iraq´s international obligations. C4JR main bodies are: Secretariat: provides technical, expert, and administrative support to the C4JR; appointed by the Coordinating Committee; independent and represents C4JR only. Coordinating Committee: C4JR´s executive body; consists of 7 qualified representatives of member organizations elected by the General Meeting for two years. General Meeting: has supreme authority over all affairs of the C4JR; consists of all C4JR members, meets annually or more often, according to need.

ABOUT Jiyan Foundation for Human Rights

Jiyan Foundation for Human Rights is a charitable organization that supports survivors of human rights violations, defends fundamental freedoms, and promotes democratic values worldwide. In addition to human rights awareness-raising and advocacy, Jiyan Foundation provides mental health and medical treatment, as well as other support services, to survivors of trauma, terror, domestic violence, and other human rights violations across the Kurdistan Region of Iraq, Iraq, and Syria.

Draft Law on International Crimes

IN THE NAME OF THE PEOPLE
THE PRESIDENCY OF THE REPUBLIC

In accordance with what has been approved by the Council of Representatives and ratified by the President of the Republic, pursuant to the provisions of Clause (First) of Article (61) and Clause (Third) of Article (73) of the Constitution:

The following Law is hereby enacted:

Law No. ( ) of the Year 2026

LAW ON INTERNATIONAL CRIMES

OVERALL COMMENT ON SOURCES OF INTERNATIONAL LAW

In preparing this commentary on the draft Law, the Coalition has drawn on the main sources of international law relating to the definitions and application of international crimes. These include: crimes defined in international treaties to which Iraq is party (such as the Geneva Conventions of 1949 and their Additional Protocol I, the International Convention on the Suppression and Punishment of the Crime of Apartheid 1973) as well as the draft Convention on Crimes Against Humanity which is currently being considered by the UN and in which Iraq is participating in the preparatory meetings (see for example this statement of Iraqi Ambassador to the UN Lukman Al-Faily in January 2026) and the Rome Statute of the ICC, as well as the rules of customary international law applicable to all States, according to authoritative sources such as the International Committee of the Red Cross (ICRC) and jurisprudence of international courts and tribunals.

The Coalition would also like to clarify that the Rome Statute of the ICC is used throughout this commentary as a major reference point for the definition of international crimes and general principles of international criminal law because it is considered to reflect the current state of international law applicable to all States, regardless of whether or not a particular State has chosen to become party to the Statute.

Chapter I: Definitions, Objectives, and Scope of Application

Article 1

For the purposes of this Law, the following terms and expressions shall have the meanings corresponding to them below:

- **First – International Crimes:** Any act that constitutes a crime under this Law, which includes the Crime of Genocide, Crimes Against Humanity, War Crimes, and the Crime of Aggression.
- **Second – Extermination (in the context of Crimes Against Humanity):** The intentional infliction of conditions of life, inter alia, the deprivation of access to food, water, and medicine, calculated to bring about the destruction of part of a population.
- **Third – Enslavement:** The exercise of any or all of the powers attaching to the right of ownership over a person, including the trafficking in persons, or enslaving them, particularly women, children, the elderly, the incapacitated, the disabled, and persons with special needs.

- **Fourth – Deportation or Forcible Transfer of Population:** Forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.
- **Fifth – Torture:** The intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the physical control of the accused.
- **Sixth – Forced Pregnancy:** The unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
- **Seventh – Persecution:** The intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity on political, racial, national, ethnic, cultural, religious, or gender grounds.
- **Eighth – Apartheid:** Inhumane acts of a character similar to those referred to in the clauses of this Article, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups, and committed with the intention of maintaining that regime.
- **Ninth – Enforced Disappearance:** The arrest, detention, or abduction of persons by, or with the authorization, support, or acquiescence of, a State or a political organization, followed by a refusal to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law.
- **Tenth – International Armed Conflicts:** A state of declared war or any other armed conflict which may arise between two or more of the States, even if the state of war is not recognized by one of them, as well as all cases of partial or total occupation of the territory of a State, even if the said occupation meets with no armed resistance. This includes armed conflicts in which peoples are fighting against colonial domination, alien occupation, and racist regimes in the exercise of their right of self-determination, as defined by Article (2) common to the four Geneva Conventions of 1949 and Article (4) of Additional Protocol I of 1977.
- **Eleventh – Non-International Armed Conflicts:** Armed hostilities occurring within the territory of a State between its armed forces and organized armed groups, or between such groups. This does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, or other acts of a similar nature.
- **Twelfth – Protected Persons in Armed Conflicts:** Civilians who do not take a direct part in hostilities, or members of the armed forces who have laid down their arms or have been placed *hors de combat* by sickness, wounds, detention, or any other cause, as well as medical and religious personnel, and humanitarian or medical relief personnel.
- **Thirteenth – Civilian Objects:** Buildings and facilities dedicated to religious, educational, scientific, artistic, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, and infrastructure, provided they are not being utilized for military purposes.

COMMENT ON ARTICLE 1:

The Coalition notes that some of the definitions in Article 1 do not fully reflect generally accepted international law.

Given that the purpose of the law is to incorporate existing crimes under international law into Iraqi law, the Coalition proposes that these definitions be amended so as to bring them into line with international standards in order to prevent problems for Iraqi courts when looking to draw on international sources of law in interpreting and applying this Law, and to prevent inconsistency in the prosecution of international crimes globally.

Fourteenth – Person: a natural or legal person

EXPLANATION OF PROPOSED AMENDMENT TO ARTICLE 1:

Natural and Legal Persons

The Coalition suggests that, for the avoidance of doubt, the draft Law specifies that the term "person" in this Law includes legal persons as well as natural persons. A legal person is any entity recognized by law as having legal personality including corporations and organisations. This is consistent with the position under general Iraqi law.

Article 2

This Law aims to eliminate or reduce the crimes of genocide, crimes against humanity, and war crimes, and to punish the perpetrators thereof.

COMMENT ON ARTICLE 2:

The Coalition has proposed language in the Rationale section at the end of this draft Law, with a view to capturing the broader objectives of the legislation which are important to survivors and affected communities.

Article 3

The provisions of this Law shall apply retroactively from **May 2, 2003**, under the following circumstances:

- **First:** If the crime is committed in the territory of the Republic of Iraq, which includes all areas under its sovereignty, including its territorial sea, airspace, and Iraqi vessels and aircraft. The crime is deemed committed therein if any of its constituent acts take place in Iraq, or if its consequences are realized or intended to be realized therein. This provision applies to any person who participates as a principal perpetrator or an accomplice in a crime committed wholly or partially within the Republic of Iraq, even if their participation occurred abroad.
- **Second:** Every Iraqi citizen who, while abroad, commits an act that makes them a principal perpetrator or an accomplice in the crimes defined under this Law. This provision applies whether the perpetrator acquired Iraqi nationality after committing the crime or possessed it at the time of the crime and subsequently lost it.

- **Third**: If the victim holds Iraqi nationality or resides in the Republic of Iraq. This includes stateless persons present on the territory of the Republic of Iraq.
- ~~Third~~**Fourth:** Crimes committed by the terrorist organization ISIS (Daesh) and other terrorist organizations or individuals, which have not been subject to a final and binding judicial ruling.
- ~~Fourth~~**Fifth:** Any person found within the Republic of Iraq after committing any of the crimes stipulated in this Law outside Iraq, whether as a principal perpetrator or an accomplice, regardless of their nationality. In this case, criminal proceedings shall not be initiated except with the approval of the President of the Supreme Judicial Council or his authorized representative.

EXPLANATION OF PROPOSED AMENDMENT TO ARTICLE 3:

Addition of Jurisdiction based on nationality of the Victim

As currently drafted, the Law establishes jurisdiction based on where the crime is committed (territorial application) and by whom (adopting the so-called 'active personality' basis of jurisdiction under international law).

However, an important basis of jurisdiction recognized under international law – including under treaties Iraq is party to - has not been included: jurisdiction based on the nationality of the victim (so-called 'passive personality' basis of jurisdiction under international law). This basis of jurisdiction has been widely adopted globally in national legislation on international crimes. The Coalition has proposed draft language to incorporate this additional basis of jurisdiction to ensure that Iraqi courts are able to play their full part in combatting impunity for these crimes.

COMMENT ON TEMPORAL JURISDICTION:

RETROACTIVITY

Iraq's Constitution, like many others, prohibits the application of substantive criminal law retroactively: no one should be punished for an act that the law had not criminalized at the time it was committed.

However, numerous international and national criminal courts since the Nuremberg Tribunal in the aftermath of World War II have nevertheless tried people for genocide, crimes against humanity and war crimes on the basis they were already considered offences under international law at the time they were committed, so they can be prosecuted without offending the principle of legality. Among other sources, courts have relied on Article 15 of the International Covenant on Civil and Political Rights, which states that the principle of non-retroactivity should not prevent prosecution for "any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations." There is precedent for retroactive application of criminal law to prosecute international crimes in Iraq itself: the Iraqi High Tribunal was given jurisdiction over certain crimes committed since 17 July 1968.

The Coalition strongly agrees that this Law should confer retroactive jurisdiction for prosecuting ISIL/Da'esh's crimes of the past. At the same time, it is essential that Iraq incorporates the most serious crimes of international concern into its law in order to join the community of States that have signaled that such crimes will not be tolerated, and that *anyone* who commits such crimes in the future will be punished. The Coalition therefore agrees that this Law on International Crimes should:

a) Provide retroactive application based on Iraq's international law obligations, at least for crimes committed by ISIL/Da'esh, AND

b) Establish jurisdiction over international crimes committed in the future, no matter who commits them

Chapter II: Criminal Responsibility

Article 4

- **First:** A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of this Law committed by forces under his effective command and control, or effective authority and control, as the case may be, as a result of his failure to exercise control properly over such forces, where:
  - **A –** That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
  - **B –** That military commander or person failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- **Second:** The provisions of Clause (First) of this Article shall apply to any person effectively acting as a commander within terrorist organizations.
- **Third:** A superior other than one described in Article 4 First shall be criminally responsible for any of the crimes set forth in this law committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, in the following cases:
  - **A** - The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
  - **B** - The crimes concerned activities that were within the effective responsibility and control of the superior; and
  - **C** - The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

EXPLANATION OF PROPOSED AMENDMENT TO ARTICLE 4:

Responsibility of Non-military Commanders

The Coalition notes that Article 4, as drafted, deals with the responsibility of military commanders only, and omits civilian superiors. The application of the same principles to both military and civilian superiors is well established under customary international law and reflected, for instance, in Article 28(b) of the Rome Statute of the ICC and in the authoritative Customary International Humanitarian Law Study of the International Committee of the Red Cross (at Rule 153).

Article 5

- **First:** Official or official capacity shall not be recognized in the event that a person commits any of the acts constituting a crime under this Law, as a ground for exempting them from criminal responsibility or reducing their sentence.

- **Second:** Immunities or diplomatic status, whether under national or international law, shall not prevent the competent court from exercising its jurisdiction over persons accused of committing the crimes stipulated under this Law.

Article 6

The commission of a crime stipulated in this Law pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve a person of criminal responsibility, unless the following conditions are met:

- **First:** The person was under a legal obligation to obey orders of the Government or the superior in question;
- **Second:** The person did not know that the order was unlawful; and
- **Third:** The order was not manifestly unlawful. For the purposes of this Article, orders to commit genocide or crimes against humanity are manifestly unlawful.

Article XX

Criminal responsibility for crimes under this law applies to a natural person who has completed eighteen years of age at the time of committing the act.

EXPLANATION OF PROPOSED ADDITIONAL ARTICLE RELATING TO CRIMINAL RESPONSIBILITY:

Age of criminal responsibility under the Law

The Coalition proposes that jurisdiction for core international crimes be limited to persons aged 18 or over at the time the crimes were committed. This is consistent with the practice of international and national criminal tribunals dealing with international crimes elsewhere, which have largely treated children as victims, and prosecuted adults who recruit children to fight in armed groups (a war crime also included in the Iraqi draft Law). Such an approach is called for by international child rights standards and international human rights protections that Iraq is committed to, which provide strong protections for children in criminal justice systems. Further, UNITAD did not collect evidence and build case files against perpetrators under the age of 18. Child perpetrators can be dealt with in alternative ways in line with international standards.

Article XX

If a person has previously been tried by an Iraqi or foreign court for acts constituting international crimes, this does not prevent the person being prosecuted for international crimes by a competent court in Iraq under this Law where the previous proceedings did not genuinely address the nature of the conduct as an international crime and where there is sufficient evidence before the competent court that the acts constitute an international crime under this Law, provided that any punishment previously imposed be taken into account during sentencing.

EXPLANATION OF PROPOSED ADDITIONAL ARTICLE RELATING TO CRIMINAL RESPONSIBILITY:

Ne bis in idem / double jeopardy

The principle that no person should be prosecuted for the same crime twice (known as the double jeopardy rule, or *ne bis in idem*), is well established both in Iraq and international law, and enshrined in Article 19.5 of the Iraqi Constitution, which provides: "The accused may not be tried for the same crime for a second time

after acquittal unless new evidence is produced". This principle would prevent a person being tried for a second time for an international crime (unless new evidence were to be produced). But it would not prevent them from being prosecuted for a different crime even if based on the same act. For instance, they could be prosecuted for an international crime if they had already been tried for an ordinary crime (such as murder) for the same act, or for a crime such as membership in a terrorist organisation which would encompass neither the same crime nor the same act.

As an example, the Statute for the International Criminal Tribunal for the former Yugoslavia provides in Article 10.2 that:

"A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only if:

(a) the act for which he or she was tried was characterized as an ordinary crime; or

(b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted."

Given that some ISIL members who come under Iraqi jurisdiction may already have been prosecuted, either in Iraq or abroad, for a variety of offences, the Coalition considers it necessary to clarify the circumstances in which they can be tried for international crimes once this Law is enacted.

Chapter III: The Crime of Genocide

Article 7

The penalty of **imprisonment for a specified number of years or life imprisonment** ~~**Death**~~ shall be imposed, and **a fine** may be imposed, upon anyone who, in times of peace or war, commits any of the following acts with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such~~, provided that the act is committed in the context of a manifest pattern of similar conduct directed against that group or that the conduct could itself effect such destruction~~:

- **First:** Killing members of the group.
- **Second:** Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
- **Third:** Causing serious bodily or mental harm to members of the group.
- **Fourth:** Imposing measures intended to prevent births within the group.
- **Fifth:** Forcibly transferring children of the group to another group.

EXPLANATION OF PROPOSED AMENDMENTS TO ARTICLES 7 TO 13:

Sentencing

The Coalition calls for removal of the death penalty from the punishments that can be imposed under the Law. Many in the international community consider the death penalty – and certainly its mandatory application - to be inconsistent with international human rights standards and will not support criminal prosecutions that may result in its imposition. It follows that retaining the death penalty as a punishment would rule out international cooperation, including the sharing of key evidence in the possession of third countries and international bodies such as the UN. Removing the death penalty may also act as an incentive to perpetrators to confess to acts amounting to international crimes, thereby contributing to truth and justice that are so important to survivors.

The Coalition recommends that life imprisonment be indicated as a maximum sentence, but not as mandatory, for each of the crimes included in the Law. Since the law envisages different forms of complicity in the crimes, in some cases a sentence of imprisonment for a number of years less than life would be appropriate, and the Court should impose sentences based on the gravity of the specific conduct, the impact on the victims and other relevant factors, which could be specified in the Law.

In addition to terms of imprisonment, the Coalition proposes that the Court should be empowered to impose fines as part of the punishment of persons convicted of crimes. This is distinct from, and additional to, the provision the Coalition is proposing in Article 24 relating to the confiscation of a convicted person's property and instruments used in the commission of a crime.

EXPLANATION OF PROPOSED AMENDMENTS TO ARTICLE 7:

Definition of the Crime of Genocide

The proposed deletion of the language in the introduction to the crime of genocide ("provided that the act is committed in the context of a manifest pattern of similar conduct directed against that group or that the conduct could itself effect such destruction") is intended to ensure consistency with the language in the Genocide Convention of 1948, to which Iraq is a party. The Genocide Convention, reproduced exactly in the Rome Statute of the ICC, does not contain any such limiting language in the definition of the crime. While similar language appears in the ICC's "Elements of Crimes" document, this is intended to assist the Court in interpreting and applying the crimes and is not intended to create additional constitutive elements as such (see General Introduction to the ICC Elements of Crimes).

Chapter IV: Crimes Against Humanity

Article 8

The penalty of ~~Death~~ **imprisonment for a specified number of years or life imprisonment** shall be imposed, and **a fine** may be imposed, upon anyone who commits any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- **First:** Wilful killing.
- **Second:** Extermination.
- **Third:** Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

~~Article 9~~

- ~~**First:** The penalty of **Life Imprisonment** shall be imposed upon anyone who commits any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:~~
  - ~~A~~ **Fourth** – Enslavement.
  - ~~B~~ **Fifth** – Deportation or forcible transfer of population.
  - ~~C~~ **Sixth** – Torture.

- ~~D~~ **Seventh –** Enforced disappearance of persons.

- ~~**Second:** A penalty of **Imprisonment for a term of not less than (10) ten years** shall be imposed upon anyone who commits any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:~~
  - ~~A~~ **Eighth–** Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.
  - ~~B~~ **Ninth –** Persecution.
  - ~~C~~ **Tenth –** The crime of apartheid.
  - **Eleventh –** Other inhumane acts of a similar character causing great suffering, or serious injury to body or to mental or physical health.
- ~~**Third:** The penalty shall be **Death** if the acts stipulated in this Article result in the death of the victim.~~

EXPLANATION OF PROPOSED AMENDMENTS TO ARTICLES 8 AND 9:

Definitions of Crimes Against Humanity

Rather than categorizing the underlying acts of crimes against humanity according to the sentence to be imposed, which appears to create a hierarchy of gravity that is neither warranted nor grounded in international law, the Coalition has proposed that the acts be included in a single list, with a general provision regarding sentencing commensurate with the gravity of the specific conduct so as to allow the Court to apply an appropriate sentence taking into account relevant factors, as already suggested above.

The Coalition has also proposed adding one underlying act ("other inhumane acts of similar character") that had been omitted. Dating back to the Agreement for the Nuremberg Tribunal, this has been part of the definition of crimes against humanity ever since. The formulation has proved important, for instance, in allowing several international criminal tribunals to prosecute individuals for crimes of sexual violence such as forced marriage not yet codified as a distinct crime.

Chapter V: War Crimes

Section 1: War Crimes Committed Against Persons

Article 10

The penalty of ~~Death~~ **imprisonment for a specified number of years or life imprisonment** shall be imposed, and **a fine** may be imposed, upon anyone who commits any of the following acts against protected persons, when committed in the context of and associated with an international or non-international armed conflict, particularly when committed as part of a plan or policy or as part of a large-scale commission of such crimes:

- **First:** Wilful killing.
- **Second:** Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence constituting a grave violation of the laws and customs of war.

- **Third:** The ~~P~~passing of sentences and the carrying out of ~~mass~~ executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensible.~~against civilian populations or carrying them out.~~

Article 11

- ~~First~~**Fourth:**
  - ~~**A –** The penalty of **Life Imprisonment** shall be imposed upon anyone who commits any of the following acts against protected persons in the context of and associated with an international or non-international armed conflict, particularly when committed as part of a plan or policy or as part of a large-scale commission of such crimes:~~
    1. Torture or inhuman treatment, including biological experiments.
    2. Wilfully causing great suffering, or serious injury to body or health.
    3. Subjecting persons to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical treatment of the person concerned, resulting in death or seriously endangering their health.
    4. Killing or ~~W~~wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion.
  - ~~**B –** The penalty of **Imprisonment** shall be imposed upon anyone who commits any of the following acts against protected persons in the context of and associated with an international or non-international armed conflict:~~
    1. Committing outrages upon personal dignity.
    2. Unlawful confinement.
    3. Taking of hostages.
    4. Deportation or unlawful transfer.
    5. Compelling a prisoner of war or a protected person to serve in the forces of a hostile Power.
    6. Wilfully depriving a prisoner of war or a protected person of the rights of fair and regular trial.
    7. Declaring abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.
- ~~**Second:** The penalty shall be **Death** if the acts stipulated in Clause (First) of this Article result in the death of the victim.~~

Section 2: War Crimes Related to Property

Article 12

The penalty of ~~**Death**~~ **imprisonment for a specified number of years or Life Imprisonment** shall be imposed, and **a fine** may be imposed, upon anyone who commits any of the following acts against property or civilian objects, including cultural or religious property, whether state-owned or privately owned, which are not being used for military purposes, when committed in the context of and associated

with an international or non-international armed conflict, particularly when committed as part of a plan or policy or as part of a large-scale commission of such crimes, without military necessity:

- **First:** Extensive destruction of property.
- **Second:** Seizure of public or private property.
- **Third:** Pillaging a town or place, even when taken by assault.

Section 3: War Crimes Related to Methods and Means of Warfare

Article 13

- **First:** The penalty of ~~**Death**~~ **imprisonment for a specified number of years or Life Imprisonment** shall be imposed, and **a fine** may be imposed, upon anyone who commits any of the following acts in the context of and associated with an international or non-international armed conflict, particularly when committed as part of a plan or policy or as part of a large-scale commission of such crimes:
  - **A –** Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.
  - **B –** Intentionally directing attacks against civilian objects.
  - **C –** Intentionally directing attacks against personnel, installations, material, units, or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the law.
  - **D –** Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
  - **E –** Launching an attack in the knowledge that such attack will cause widespread, long-term, and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
  - **F –** Attacking or bombarding, by whatever means, towns, villages, dwellings, or buildings which are undefended and which are not military objectives.
  - **G –** Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the United Nations, as well as the distinctive emblems, resulting in death or serious personal injury.
  - **H –** Declaring that no quarter will be given.
  - **I –** Intentionally directing attacks against buildings or medical units, or transport vehicles using the distinctive emblems of the Geneva Conventions in conformity with international law.
  - **J –** Employing poison or poisoned weapons, asphyxiating, poisonous, or other gases, and all analogous liquids, materials, or devices.
  - **K –** Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not quite cover the core or is pierced with incisions.

- **L –** Employing weapons, projectiles, or materials and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of international law of armed conflict, provided that such weapons, projectiles, and methods are subject to a comprehensive prohibition.

- **Second:** A penalty of **Imprisonment for a** ~~**term of not less than (10) ten years**~~ **specified number of years or life imprisonment** shall be imposed, and **a fine** may be imposed, upon anyone who commits any of the following acts in the context of and associated with an international or non-international armed conflict, particularly when committed as part of a plan or policy or as part of a large-scale commission of such crimes:
  - **A –** Utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces immune from military operations (human shields).
  - **B –** Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies.
  - **C –** Conscripting or enlisting children under the age of (18) eighteen years into the armed forces or using them to participate actively in hostilities, or using them as human shields.
  - **D –** Ordering the displacement of the civilian population for reasons connected with the conflict, unless the security of the civilians involved or imperative military reasons so demand.
- ~~**Third:** The penalty shall be **Death** if the acts stipulated in this Article result in the death of one or more persons.~~

EXPLANATION OF PROPOSED AMENDMENTS TO ARTICLES 10-13:

Definitions of War Crimes

There are different ways of classifying war crimes, and the Coalition simply notes that the draft Law chooses to organize them under the headings of crimes committed against persons, crimes related to property and crimes relating to methods and means of warfare in armed conflicts.

The Coalition is, however, concerned about the following two issues:

First, as with genocide and crimes against humanity, the Coalition proposes that rather than categorizing war crimes according to the sentence to be imposed, which appears to create a hierarchy of gravity that is neither warranted nor grounded in international law, the same general provision regarding sentencing should be adopted as proposed above. That is, sentencing would be commensurate with the gravity of the specific conduct so as to allow the Court to apply an appropriate sentence taking into account relevant factors.

Second, the definitions of some of the war crimes listed in Articles 10-13 differ somewhat to their definitions in international instruments, and a small number are missing entirely. The Coalition proposes that the relevant additions or amendments be made, with a view to ensuring that the Law is fully in line with currently recognized definitions under international law, as reflected in the Rome Statute of the ICC, as amended. The Coalition would draw attention in particular to the following:

- Article 10 Third appears intended to reflect the following provision in Common Article 3 to the Geneva Conventions and included as Article 8.2(c)(iv) of the Rome Statute: “The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are generally recognized as indispensable”
- In Articles 11, 12 and 13, several of the crimes are drafted slightly differently to their international definitions, and three crimes added to the Rome Statute in 2017 - adding weapons using microbial or

other biological agents or toxins, weapons that injure using fragments and laser weapons designed to cause permanent blindness to the list of prohibited weapons - are omitted entirely.

Chapter VI: The Crime of Aggression

Article 14

Any person in a position effectively to exercise control over or to direct the political or military action of a State, who plans, prepares, initiates, or executes an act of aggression which, by its character, gravity, and scale, constitutes a manifest violation of the Charter of the United Nations, shall be punished by ~~death or~~ **imprisonment for a specified number of years or life imprisonment,** and **a fine** may be imposed. Any of the following acts, regardless of a declaration of war, shall qualify as an act of aggression:

- **First:** The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.
- **Second:** Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State.
- **Third:** The blockade of the ports or coasts of a State by the armed forces of another State.
- **Fourth:** An attack by the armed forces of a State on the land, sea, or air forces, or marine and air fleets of another State.
- **Fifth:** The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement.
- **Sixth:** The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State.
- **Seventh:** The sending by or on behalf of a State of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed in this Article, or its substantial involvement therein.

Chapter VII: Establishment of the Court

Article 15

The Supreme Judicial Council shall establish the competent courts to apply the provisions of this Law and define their jurisdiction in accordance with the Judicial Organization Law No. (160) of 1979 (as amended) or any law replacing it.

The Supreme Judicial Council shall ensure that judges appointed to such courts, and other personnel, have the specialist knowledge necessary to adjudicate serious international crimes and shall, where necessary, ensure relevant training and support.

In appointing judges, due consideration will be given to including female judges and judges from minority communities.

EXPLANATION OF PROPOSED AMENDMENTS TO ARTICLE 15:

A Specialist and Representative Court

Adjudicating international crimes requires specialist knowledge and skills, which domestic judges and lawyers would not have obtained as part of their regular training or practice. Consequently, steps will be needed to enable judges appointed to courts dealing with these crimes, as well as legal support staff and other personnel, to acquire the necessary specialist knowledge and skills. Specialist training should be organised for all judges and other personnel, based on their needs. Other countries that have assigned jurisdiction to their courts to deal with core international crimes have introduced such requirements, including Colombia, Uganda, the Central African Republic and Kosovo.

For the Coalition, it is vital that such specialist knowledge and skills would not only cover legal issues, but also cultural, social and contextual matters such as good practices in engaging with victims and survivors, including survivors of sexual violence, in accordance with international standards.

The court should also be representative. In order for justice to be perceived as legitimate and win the confidence of survivors, affected communities and other minorities in Iraq, it is important to ensure that as far as possible, judges adjudicating cases regarding these crimes reflect Iraqi society as a whole. Many countries have introduced provisions intended to promote such inclusion. For example, the Constitution of South Africa provides that: "The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed".

Article 16

The competent court ~~may~~ shall seek reliance on evidence admitted by international bodies and may draw upon national or international expertise for the purpose of applying the provisions of this Law.

The Court may receive, obtain and consider evidence, including but not limited to: witness testimonies, forensic material, crime scene artefacts, digital or AI generated outputs; collected, verified and stored by the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD), as well as evidence collected by other competent national or international authorities, subject to the applicable rules governing the admissibility and evaluation of evidence. Evidence collected, verified and stored by UNITAD shall be considered as possessing legal status equivalent to evidence obtained under the Criminal Procedure Law No. 23 (1971), and evidence collected by other competent national or international authorities may be so considered.

The Court may receive and consider relevant information and materials collected by other sources, including non-governmental organizations, subject to the applicable rules governing admissibility.

The Court shall take appropriate measures, where necessary and in accordance with the applicable legal framework, to secure international cooperation, including for the preservation, transmission, collection, or authentication of evidence.

After reviewing the evidence, documents, information, and other materials available to it, the Court shall collect additional evidence where necessary to establish the facts and determine criminal responsibility, in accordance with this Law and applicable procedural safeguards.

EXPLANATION OF PROPOSED AMENDMENTS TO ARTICLE 16:

Sources of Evidence and Cooperation

The Coalition welcomes the provision that Iraqi courts dealing with international crimes may seek assistance from experienced international bodies and call on relevant expertise, including from outside the country. The Coalition believes this is so important that it should be mandatory ("shall"). For the reasons set out in the comment to Article 15, domestic judges and other personnel dealing with international crimes for the first time cannot be expected to possess the necessary knowledge and skills, and at least initially, may need to call upon outside expertise. This is particularly the case given that they will likely be dealing with evidence collected by other national law enforcement agencies and international bodies such as UNITAD.

EXPLANATION OF PROPOSED AMENDMENTS TO ARTICLE 16:

Sources of Evidence and Cooperation

The Coalition believes it necessary to include provisions establishing a clear legal basis for crucial evidence which may already have been collected by UNITAD, or by other formal investigative authorities such as national law enforcement agencies or Investigating Judges from other countries, to be received and considered by Iraqi courts when applying this Law. Genocide, crimes against humanity and war crimes are crimes of concern to the international community as a whole and in prosecuting them, Iraq will be exercising a shared responsibility. Further, such cases often relate to acts committed many years previously and across borders, so crucial evidence may have been collected by other agencies, whether national authorities or bodies appointed by the international community to investigate international crimes.

Other countries have procedural routes for information collected by international investigative mechanisms or bodies such as the ICC, or foreign law enforcement agencies, to be received and used in national criminal proceedings, in accordance with their relevant national rules and procedures. Approaches to this issue vary widely: for instance, while Kosovo has a specific provision in its Criminal Procedure Code (Article 215(6)) providing that evidence from foreign governments, law enforcement agencies, prosecutors or courts shall be admissible in its courts if certain conditions are fulfilled, the German Federal Constitutional Court in an Order of 2024 (paragraph 96) has confirmed that the regular framework for use of evidence in criminal proceedings applies to use of evidence sourced abroad and introduced into German criminal proceedings.

UNITAD was established by resolution of the UN Security Council and worked for seven years with unique access to crime scenes in Iraq to collect and analyse evidence regarding ISIS crimes, including forensic data and physical evidence. According to Resolution 2379(2017) UNITAD was to apply UN best practices and relevant international law based on standards for the collection, preservation and storage of evidence set out in detail in its Terms of Reference, in order "to ensure the broadest possible use before national courts", with Iraq the primary intended recipient. In other words, its role was designed specifically for use in Iraqi national criminal proceedings. Its work has been relied upon in several European courts exercising universal jurisdiction such as in Germany and Portugal, sometimes in cooperation with the Iraqi judiciary. It is vital that Iraqi courts, when exercising its jurisdiction on behalf of the international community as a whole, are able to benefit from such evidence collection efforts.

Further, the Law should specify that Courts applying this Law may receive and consider relevant information and material already collected by other sources. This may include evidence based on information provided by others such as non-governmental organisations (NGOs) who have been on the ground with communities affected by international crimes in Iraq since 2014. Prosecutors in several countries have relied upon information from Iraqi NGOs to identify and locate key witnesses and lead them to other evidence, and have recognized such cooperation as essential in securing prosecutions of ISIL members on the basis of universal jurisdiction outside Iraq (this is described in a 2022 article: 'The role of humanitarian actors in the world's first

conviction for genocide against the Yazidi'). Using statements already given by survivors - if properly collected and preserved - is also an important safeguard against retraumatising survivors by asking

EXPLANATION OF PROPOSED AMENDMENTS TO ARTICLE 16:

Seeking new evidence

The Coalition suggests it should be specified that courts should be proactive both in seeking out evidence from international sources and in seeking new evidence where necessary. For that purpose, the Iraqi courts should be able to rely on specialised investigative units which will need to be established to support the investigation and prosecution of crimes under this Law.

Article 17

The competent court, in interpreting and applying the provisions of this Law, ~~may~~ shall draw upon international treaties and conventions, applicable principles and rules of international law, and the jurisprudence of international or national courts, as the case may be.

EXPLANATION OF PROPOSED AMENDMENTS TO ARTICLE 17:

Sources to be used in interpretation and application of the Law

The Coalition proposes that, as in previous drafts of this Law, the mandatory 'shall' be adopted. This is necessary in order to ensure consistency and coherence between Iraqi and international interpretation and application of this Law, the purpose of which is to incorporate into Iraqi law crimes that are already established as crimes under international law.

In the interests of legal certainty and completeness, the Coalition also proposes expressly mentioning that Iraqi courts will draw on the wide body of case law that exists in the practice of national as well as international courts applying international criminal law. Just as Iraqi courts will be interpreting international law when applying this Law, other national courts around the world have been doing so – including in relation to crimes committed in Iraq or against Iraqi nationals by ISIS/Da'esh.

Chapter VIII: International Judicial Cooperation

Article 18

The National Center for International Judicial Cooperation within the Supreme Judicial Council shall serve as the national authority responsible for international judicial cooperation, in coordination with the relevant institutional authorities pursuant to applicable legislation and laws. The Center shall exercise its powers without prejudice to judicial independence or the jurisdiction of courts, ensuring respect for the Constitution, national sovereignty, and human rights.

Article 19

The National Center for International Judicial Cooperation within the Supreme Judicial Council shall undertake the following:

- **First —** Receiving and sending requests for mutual legal assistance.
- **Second —** Coordinating requests for extradition of wanted persons.
- **Third —** Facilitating the formation of joint investigation teams when necessary.
- **Fourth —** Exchanging information and evidence with foreign judicial authorities in coordination with international and regional organizations.
- **Fifth —** Establishing a national database for judicial cooperation in international crimes to follow up on the execution of international rogatory letters.

Article 20

All judicial, investigative, and relevant government entities shall cooperate with the National Center for International Judicial Cooperation within the Supreme Judicial Council and provide it with necessary information and documents to complete cooperation requests in accordance with the law.

Chapter IX: Concluding Provisions

Article 21

- **First —** Pursuant to this Law, a fund named the "International Crimes Victims Compensation Fund" shall be established, structured at a level below a General Directorate, possessing legal personality as well as financial and administrative autonomy. It shall be funded by grants and assistance provided by States, international, and regional organizations, as well as compensation and funds obtained by the Republic of Iraq resulting from lawsuits and claims related to international crimes.
- **Second —** The tasks, affiliation, structure, leadership, expenditure avenues, and all other operational matters of the Fund shall be regulated by a regulation issued by the Council of Ministers.

Article 22

An attempt to commit any of the crimes specified in this Law shall be punishable by the penalties prescribed for the completed crime.

Article 23

Any person who incites, agrees upon, or assists in the commission of any of the crimes specified in this Law shall be punished by **imprisonment for a specified number of years, and a fine may be imposed,** ~~**term of not less than (10) ten years**~~, even if such incitement, agreement, or assistance produces no effect.

Article 24

- **First —** Criminal actions and penalties provided for in this Law shall not be subject to any statute of limitations, nor shall they be subject to general or special amnesty provisions.
- **Second —** Civil claims arising from the crimes specified in this Law shall not be subject to any statute of limitations.

Article XX

First – In all cases, the Court shall decide on appropriate reparation to victims and survivors when a person is convicted of any crimes, and shall be responsible for the issuing and implementation of orders of reparation. In accordance with international law applicable to gross violations of human rights law and serious violations of international humanitarian law, reparation may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In deciding on appropriate reparations, the Court shall invite, and consider, requests and submissions from victims and survivors.

Second - In all cases, the Court shall order the confiscation of movable and immovable property of the convicted persons, as well as the instruments used or prepared for use in the commission or attempted commission of any crime stipulated in this Law. Such property and assets, as well as any assets collected by way of fines imposed on a convicted person, shall be used for the purposes of providing reparations to victims.

Third: In all cases, the Court shall take appropriate measures to ensure the safety, well-being, dignity and privacy of victims and survivors, including special protections and support while giving evidence. A special unit for victims and witnesses shall be established and given responsibility to propose and implement such measures to the Court, and to ensure appropriate support to victims and survivors participating in proceedings as witnesses or civil parties.

Fourth: In all cases, the Court shall take effective measures to ensure the effective participation of victims as complainants and civil parties at all stages of proceedings, including their legal representation.

EXPLANATION OF PROPOSED AMENDMENT TO ARTICLE XX First and Second:

Reparation

The Coalition welcomes the establishment, in Article 21 of this Law, of an International Crimes Victims Compensation Fund. This makes it all the more important that the courts dealing with crimes under this Law order reparations to victims following a conviction. The ICC, for instance, has established a Trust Fund for Victims, which implements reparations awards made by the Court, supplements awards where the convicted person does not have sufficient means, and raises funds for the benefit of victims (see Article 79 of the Rome Statute and Rule 98 of its Rules of Procedure and Evidence). The Trial Chambers assess the harm suffered by the victims and determine the forms of reparation to be awarded and the liability of the convicted person.

The Coalition therefore calls for the Law to make it mandatory for courts dealing with international crimes to decide on reparation rather than to leave victims and survivors to seek compensation in a civil court. Despite the central importance of reparation to survivors, experience has shown that it is extremely challenging for them to submit civil claims, so in practice it is very rare. Having the criminal court deal with reparation is also in the interests of judicial efficiency since it allows evidence relevant to reparation to be collected during a trial and a court already familiar with the case to determine appropriate reparation in each case. It also allows for the development of specialist knowledge on types and enforcement of reparation, bearing in mind that according to international law, reparation in cases of atrocity crimes may include not only compensation, but also restitution, rehabilitation, satisfaction and guarantees of non-repetition (see UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law).

Insofar as this may be considered a departure from Article 10 of the Criminal Procedure Code, the Coalition recommends that the specific code of procedure for the competent court dealing with international crimes recommended would establish procedures for the competent court to deal with reparations.

The Coalition also calls for addition of a provision, included in previous drafts of the Law, that courts will order the confiscation of property of a convicted person. It important to specify that such assets, as well as any assets collected from fines, would be used for the purpose of providing reparations to victims.

The Coalition also considers that it would be preferable not to wait until a conviction to take such measures, which may be too late as a suspect will have had time to move or hide them. Ideally, the Court should order assets to be traced, frozen and/or seized at an earlier stage, in order that they may be confiscated in the event of a conviction, and returned in the case of acquittal.

EXPLANATION OF PROPOSED AMENDMENT TO ARTICLE XX Third:

Victim and Witness Support and Protection

When the Coalition consulted survivors of the ISIL atrocities about what they wanted to see in the Law, their priority was safety and protection. While they expressed their wish to participate in ISIL trials as witnesses and civil parties, they also expressed strong concerns about how they would be protected from retaliation, and about the psychological impact of giving evidence in court.

The Coalition believes it is essential that when Iraqi courts deal with international crimes, they are able to take measures to enable survivors to take part in a safe and dignified manner. This includes special measures to ensure confidentiality. There is considerable experience from international, regional and national courts dealing with serious crimes about how to ensure the protection and well-being of victims and witnesses before, during and after trials. Experience shows that this can only be done through the establishment of a specialized unit, with specialised staff trained to provide different types of advice and support both to the court and to survivors, including relating to crimes of sexual violence.

This is consistent with Iraqi practice in dealing with international crimes: the Iraqi High Tribunal Statute called for measures of protection and mandated the President of the Tribunal to draft Rules of Procedure and Evidence (RPE) to govern protection of victims and witnesses. To implement this, the Tribunal's RPE established a special victims and witnesses unit. The functions given to the Unit established under the RPE (Rule 15) included: providing recommendations to the tribunal regarding protection and security measures for victims and witnesses; developing plans for and providing protective measures and security arrangements for victims and witnesses; and ensuring that victims and witnesses receive appropriate support, consultation and other appropriate medical assistance, physical and psychological rehabilitation. Rule 15 further provided that the Unit will develop relevant expertise and cooperate, if necessary, with non-governmental and international organisations.

EXPLANATION OF PROPOSED AMENDMENT TO ARTICLE XX Fourth:

Victim Participation

While Iraqi criminal procedure allows victims to be legally represented and provides them with various rights as complainants and civil parties, the Coalition calls for these rights to be clearly set out in the Law as well as in the special procedural rules that the Coalition is recommending must be developed under the Law (see Article 25 below). Such rules would need to cover, at a minimum, matters such as the process for victims to be recognized as victims, their legal representation and notification of proceedings, and the modalities of participation at different phases.

Specific provision for victim participation is necessary not only to provide a legal basis for victims to exercise these rights in a court applying international law, but also to determine how victim participation will work in a context so different from regular crimes, due to the number of victims, the nature and impact of the crimes and the particular international regime that applies to participation in proceedings relating to violations of international human rights and humanitarian law (reflected, for instance, in Article 68.3 of the Rome Statute

of the ICC and Rules 89-93 of its Rules of Procedure and Evidence). Most importantly, the Coalition believes that making specific provision for effective victim participation is essential in order to secure the trust of survivors, without which they may not agree to cooperate with proceedings under the Law.

Article 25

The competent court shall apply a set of Rules of Procedure and Evidence that will be developed for criminal proceedings for crimes under this Law. Until such special procedural rules are developed, ~~T~~the provisions of the Penal Code No. (111) of 1969, the Law of Criminal Procedure No. (23) of 1971, the Military Penal Code No. (19) of 2007, the Internal Security Forces Penal Code No. (14) of 2008, and the Anti-Terrorism Law No. (13) of 2005, the Law No. (58) of 2017 on the Protection of Witnesses, Experts and Victims, the Mass Graves Affairs Law No. (5) of 2006, or any law amending or replacing them, shall apply to all matters for which no specific provision is made in this Law. The competent court shall have regard to Law No. (8) of 2021, the Yazidi Survivors Law and shall seek to cooperate with the General Directorate of Survivors' Affairs established under that Law, and to Law No. (12) of 2019 on the Rights of the Martyrs of the Crime Committed at the Pilot Majid Al-Tamimi Air Base.

EXPLANATION OF PROPOSED AMENDMENT TO ARTICLE 25:

Establishment of procedural rules

The Coalition strongly recommends the adoption of a specific code of procedure for the competent court assigned under this Law. Experience in Iraq and elsewhere has shown that prosecuting international crimes is different in important respects to prosecuting ordinary crimes. Differences include the scale and nature of the crimes, their cross-border nature with both evidence and victims and witnesses located abroad, the unique types and volume of evidence, and the number of victims and witnesses and their need for protection and support. Special rules regarding evidence may be needed, including to reflect the large amounts of digital evidence often involved in international crimes cases.

For the same reason, there will be a need for special protocols and procedures on the conduct of investigations of crimes under this Law, and the establishment of special units to investigate these crimes. In recognition of their special nature, many countries have established specialised war crimes units to investigate and prosecute international crimes (examples include Guatemala, South Africa, Canada and most European states). For Iraq, establishing such a unit would bring many advantages including mutual capacity-building and the possibility to cooperate with war crimes units elsewhere and even the establishment of formal Joint Investigative Teams. These are international cooperation agreements between the competent authorities of two or more states for the purpose of carrying out criminal investigations, commonly made up of prosecutors, law enforcement authorities and judges. They are particularly useful in investigations involving evidence and suspects across several countries (see for example this description by Eurojust). Some countries have also established specialised criminal chambers to try international crimes applying special procedural rules (examples include Tunisia, Uganda, Bosnia and Herzegovina and Bangladesh as well as Iraq itself).

Another important reason to adopt a specific code of procedure for competent courts dealing with crimes under this Law is in order to establish clear procedural rules regarding reparation, which the Coalition has recommended should be determined by the same court (see proposal relating to Article 19 above). Since this would be a departure from the ordinary rules established under Article 10 of the Criminal Procedure Code, such procedural rules would be needed to clarify the relationship between criminal liability and reparations, including the procedures for submitting claims, participation of victims, standards of proof, enforcement of

awards and the position of victims who choose not to pursue claims. For similar reasons, special procedural rules will be needed to govern how victims will participate in proceedings, as explained above.

Iraq's own previous experience has shown that a special procedural regime is necessary: the Iraqi High Tribunal adopted special Rules of Procedure and Evidence in 2005 governing, among other things, the conduct of investigations, rules of evidence – including special rules in cases of sexual assault - organisation of different stages of proceedings, defence, and measures for the protection and support of victims and witnesses. These can be drawn upon in developing rules for the competent court dealing with international crimes.

EXPLANATION OF PROPOSED AMENDMENT TO ARTICLE 25:

Applicable law

If it is considered necessary to include a reference to existing Iraqi laws applicable to this Law, the Coalition considers that there are other laws that should be listed as applicable, including Law No. 58 of 2017 on the Protection of Witnesses, Experts and Victims. Reference should also be made to Law No. 8 of 2021, the Yazidi Survivors Law, which assigns responsibilities relating to criminal proceedings against perpetrators of crimes committed by ISIL, and establishes the General Directorate for Survivors' Affairs (GDSA) whose goals include:

"Coordination with investigative and judicial bodies and international committees concerned with investigation and gathering evidence, and providing them with all statistics, data and evidence that contribute to documenting and establishing crimes committed by ISIL in a way that helps prosecute the perpetrators of these crimes" (Article 5.9, Yazidi Survivors Law).

In addition, reference should be made to Law No. 12 of 2019 known as the Camp Speicher Massacre Law, which explicitly conditions recognition of the atrocity as genocide and crimes against humanity on a judicial determination (Article 7.1, Law No. (12) of 2019 on the Rights of the Martyrs of the Crime Committed at the Pilot Majid Al-Tamimi Air Base).

Article 26

This Law shall enter into force from the date of its publication in the Official Gazette.

REASONING STATEMENT

For the purpose of achieving criminal justice in accordance with the provisions of the 2005 Constitution of the Republic of Iraq, in alignment with international obligations contained in international conventions ratified or acceded to by the Republic of Iraq as well as the principles of customary international law, to fill the legislative vacuum in Iraqi penal laws, to grant national courts jurisdiction to adjudicate acts representing the most serious crimes affecting national and international peace and security that threaten human life with annihilation or danger and deprive individuals of their fundamental rights, meeting international standards for prosecuting international crimes, and in order to uncover the truth, promote reconciliation between different groups in Iraq, avoid future atrocities, protect the rights of victims and provide survivor-centered justice, and to limit the commission of such crimes, to prevent their recurrence, to prosecute and punish their perpetrators, and to prevent them from finding a safe haven—this Law has been enacted.

EXPLANATION OF PROPOSED AMENDMENTS TO THE REASONING STATEMENT

The Coalition considers that the Statement of Reasons is a vitally important element of the Law as it signals how Iraq intends to deal with both crimes of the past and the future. In terms of crimes of the past, it is important to set criminal prosecution in a context of broader justice: its purpose is not only to bring those guilty to account, but also to uncover the truth, promote reconciliation between different groups in Iraq and not just to conduct trials but to provide justice that is meaningful to survivors and affected communities. For the future, it is crucial to signal that this Law is also a statement of intention to prevent future atrocities, tackle the root causes that allow them to occur, and to act decisively should they occur, whoever they are committed by and against. The resurgence of hate speech targeting minorities in recent years has created fear, anxiety and painful memories of past violence, making communities affected by the ISIL crimes in 2014 feel constantly threatened and in fear of renewed atrocities.







Closing the Accountability Gap

A Commentary on the drating of an Iraqi Law on the Prosecution of Core International Crimes

I. REASONS FOR ENACTMENT OF THE LAW ON CORE INTERNATIONAL CRIMES

The Coalition considers that the Rationale articulated in the Law is a vitally important element of the Law as it signals how Iraq intends to deal with both crimes of the past and the future. In terms of crimes of the past, it is important to set criminal prosecution in a context of broader justice: its purpose is not only to bring those guilty to account, but also to uncover the truth, promote reconciliation between different groups in Iraq and not just to conduct trials but to provide justice that is meaningful to survivors and affected communities. For the future, it is crucial to signal that this Law is also a statement of intention to prevent future atrocities, tackle the root causes that allow them to occur, and to act decisively should they occur, whoever they are committed by and against. The resurgence of hate speech targeting minorities in recent years has created fear, anxiety and painful memories of past violence, making communities affected by the ISIL crimes in 2014 feel constantly threatened and in fear of renewed atrocities.

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

Among the purposes of the Law that should be specified are:

- To uncover the truth, promote reconciliation between different groups in Iraq, avoid future atrocities, protect the rights of victims and provide survivor-centered justice.
- To prosecute the terrorist organization Islamic State of Iraq and the Levant (ISIL/Daesh) and other terrorist organizations
- To enable the prosecution in Iraq of international crimes committed in the future, no matter who commits them
- To prevent impunity for any person committing the crimes enumerated in this Law, and facilitate their international pursuit meeting international standards for prosecuting international crimes

II. SURVIVOR-CENTRED PROCEEDINGS

Reparation

The Coalition calls for the Law to make it mandatory for courts dealing with international crimes to decide on reparation rather than to leave victims and survivors to seek compensation in a civil court. Despite the central importance of reparation to survivors, experience has shown that it is extremely challenging for them to submit civil claims, so in practice it is very rare. Having the criminal court deal with reparation is also in the interests of judicial efficiency since it allows evidence relevant to reparation to be collected during a trial and a court already familiar with the case to determine appropriate reparation in each case. It also allows for the development of specialist knowledge on types and enforcement of reparation, bearing in mind that according to international law, reparation in cases of atrocity crimes may include not only compensation, but also restitution, rehabilitation, satisfaction and guarantees of non-repetition.[1]

[1] See UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Article IX, UN General Assembly resolution 60/147, 16 December 2005, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation

Insofar as this may be considered a departure from Article 10 of the Criminal Procedure Code, the Coalition recommends that the specific code of procedure for the court dealing with international crimes, recommended below, would establish procedures for the court to deal with reparations.

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

- "In all cases, the Court shall decide on appropriate reparation to victims and survivors when a person is convicted of any crimes, and shall be responsible for the issuing and implementation of orders of reparation. In accordance with international law applicable to gross violations of human rights law and serious violations of international humanitarian law, reparation may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In deciding on appropriate reparations, the Court shall invite, and consider, requests and submissions from victims and survivors."

In order to enable implementation of reparations awarded by the courts, the Coalition recommends inclusion of a provision that courts will order the confiscation of property of a convicted person, and specify that such assets, as well as any assets collected from fines, would be used for the purpose of providing reparations to victims.

The Coalition also considers that it would be preferable not to wait until a conviction to take such measures, which may be too late as a suspect will have had time to move or hide them. Ideally, the Court should order assets to be traced, frozen and/or seized at an earlier stage, in order that they may be confiscated in the event of a conviction, and returned in the case of acquittal.

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

- "In all cases, the Court shall order the confiscation of movable and immovable property of the convicted persons, as well as the instruments used or prepared for use in the commission or attempted commission of any crime stipulated in this Law. For this purpose the Court may, from the beginning of the proceedings, order the tracing, freezing and/or seizure of such property and assets. Such property and assets, as well as any assets collected by way of fines imposed on a convicted person, shall be used for the purposes of providing reparations to victims."

Victim and witness support

When the Coalition consulted survivors of the ISIL atrocities about what they wanted to see in the Iraqi Law on international crimes, their priority was safety and protection. While they expressed their wish to participate in ISIL trials as witnesses and civil parties, they also expressed strong concerns about how they would be protected from retaliation, and about the psychological impact of giving evidence in court.

The Coalition believes it is essential that when Iraqi courts deal with international crimes, they are able to take measures to enable survivors to take part in a safe and dignified manner. This includes special measures to ensure confidentiality. There is considerable experience from international, regional and national courts dealing with serious crimes about how to ensure the protection and well-being of victims and witnesses before, during and after trials. Experience shows that this can only be done through the establishment of a specialized unit, with specialised staff trained to provide different types of advice and support both to the court and to survivors, including relating to crimes of sexual violence.

This is consistent with Iraqi practice in dealing with international crimes: the Iraqi High Tribunal Statute called for measures of protection and mandated the President of the Tribunal to draft Rules of Procedure

(RPE) to govern protection of victims and witnesses. To implement this, the Tribunal's RPE established a special victims and witnesses unit. The functions given to the Unit established under the RPE (Rule 15) included: providing recommendations to the tribunal regarding protection and security measures for victims and witnesses; developing plans for and providing protective measures and security arrangements for victims and witnesses; and ensuring that victims and witnesses receive appropriate support, consultation and other appropriate medical assistance, physical and psychological rehabilitation. Rule 15 further provided that the Unit will develop relevant expertise and cooperate, if necessary, with non-governmental and international organisations.

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

- "In all cases, the Court shall take appropriate measures to ensure the safety, well-being, dignity and privacy of victims and survivors, including special protections and support while giving evidence. A special unit for victims and witnesses shall be established and given responsibility to propose and implement such measures to the Court, and to ensure appropriate support to victims and survivors participating in proceedings as witnesses or civil parties."

Victim Participation

While Iraqi criminal procedure allows victims to be legally represented and provides them with various rights as complainants and civil parties, these rights should be clearly set out in the Law as well as in the special procedural rules that the Coalition is recommending must be developed under the Law. Such rules would need to cover, at a minimum, matters such as the process for victims to be recognized as victims, their legal representation and notification of proceeding, the modalities of participation at different phases. This is necessary not only to provide a legal basis for victims to exercise these rights in a court applying international law, but also to determine how victim participation will work in a context so different from regular crimes, due to the number of victims, the nature and impact of the crimes and the particular international regime that applies to reparation and participation in proceedings relating to violations of international human rights and humanitarian law[2] (reflected, for instance, in Article 68.3 of the Rome Statute of the ICC and Rules 89-93 of its Rules of Procedure and Evidence). Most importantly, the Coalition believes that making specific provision for effective victim participation is essential in order to secure the trust of survivors, without which they may not agree to cooperate with proceedings under this Law.

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

- "In all cases, the Court shall take effective measures to ensure the effective participation of victims as complainants and civil parties at all stages of proceedings, including their legal representation."

III. A SPECIALIST COURT

A specialist and representative judiciary

Adjudicating the most serious international crimes requires specialist knowledge and skills, which domestic judges and lawyers would not have obtained as part of their regular training or practice.

[2] See the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation mentioned above, and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse

Consequently, steps will be needed to enable judges appointed to courts dealing with these crimes, as well as legal support staff and other personnel, to acquire the necessary specialist knowledge and skills. Specialist training should be organised for all judges and other personnel, based on their needs. Other countries that have assigned jurisdiction to their courts to deal with core international crimes have introduced such requirements, including Colombia, Uganda, the Central African Republic and Kosovo.

For the Coalition, it is vital that such knowledge and skills would not only cover legal issues, but also cultural, social and contextual matters, such as good practices in engaging with victims and survivors, including survivors of sexual violence, in accordance with relevant international standards.[3]

Second, in order for justice to be perceived as legitimate and win the confidence of survivors, affected communities and other minorities in Iraq, it is important to ensure that as far as possible, judges adjudicating cases regarding these crimes reflect Iraqi society as a whole. Many countries have introduced provisions intended to promote such inclusion. For example, the Constitution of South Africa provides that: "The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed".

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

- "The Supreme Judicial Council shall ensure that judges appointed to such courts, and other personnel, have the specialist knowledge necessary to adjudicate serious international crimes and shall, where necessary, ensure relevant training and support. In appointing judges, due consideration will be given to including female judges and judges from minority communities."

Establishment of special procedural rules

The Coalition strongly recommends the adoption of a specific code of procedure for the competent court assigned under this Law. Experience in Iraq and elsewhere has shown that prosecuting international crimes is different in important respects to prosecuting ordinary crimes. Differences include the scale and nature of the crimes, their cross-border nature with both evidence and victims and witnesses located abroad, the unique types and volume of evidence, and the number of victims and witnesses and their need for protection and support. Special rules regarding evidence may be needed, including to reflect the large amounts of digital evidence often involved in international crimes cases.

For the same reason, there will be a need for special protocols and procedures on the conduct of investigations of crimes under this Law, and the establishment of special units to investigate these crimes. In recognition of their special nature, many countries have established specialised war crimes units to investigate and prosecute international crimes (examples include Guatemala, South Africa, Canada and most European states). For Iraq, establishing such a unit would bring many advantages including mutual capacity building and the possibility to cooperate with war crimes units elsewhere and even the establishment of formal Joint Investigative Teams. These are international cooperation agreements between the competent authorities of two or more states for the purpose of carrying out criminal investigations, commonly made up of prosecutors, law enforcement authorities and judges. They are particularly useful in investigations involving evidence and suspects across several countries.[4] Some

[3] Such as the Murad Code, available at: https://www.muradcode.com

[4] See for example this description by Eurojust: https://www.eurojust.europa.eu/judicial-cooperation/instruments/joint-investigation-teams

countries have also established specialised criminal chambers to try international crimes applying special procedural rules (examples include Tunisia, Uganda, Bosnia and Herzegovina and Bangladesh as well as Iraq itself).

Another important reason to adopt a specific code of procedure for competent courts dealing with crimes under this Law is in order to establish clear procedural rules regarding reparation, which the Coalition is recommending should be determined by the same court. Since this would be a departure from the ordinary rules established under Article 10 of the Criminal Procedure Code, such procedural rules would be needed to clarify the relationship between criminal liability and reparations, including the procedures for submitting claims, participation of victims, standards of proof, enforcement of awards and the position of victims who choose not to pursue claims. For similar reasons, special procedural rules will be needed to govern how victims will participate in the proceedings, as explained above.

Iraq's own previous experience has shown that a special procedural regime is necessary: the Iraqi High Tribunal adopted special Rules of Procedure and Evidence in 2005 governing, among other things, the conduct of investigations, rules of evidence – including special rules in cases of sexual assault - organisation of different stages of proceedings, defence, and measures for the protection and support of victims and witnesses. These can be drawn upon in developing rules for the competent court dealing with international crimes.

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

- "The competent court shall apply a set of Rules of Procedure and Evidence that will be developed for criminal proceedings for crimes under this Law."

IV. JURISDICTION

Retroactive application

Iraq's Constitution, like many others, prohibits the application of substantive criminal law retroactively: no one should be punished for an act that the law had not criminalised at the time it was committed. However, numerous international and national criminal courts since the Nuremberg Tribunal have nevertheless tried people for genocide, crimes against humanity and war crimes on the basis they were already considered offences under international law at the time they were committed, so they can be prosecuted without offending the principle of legality. Among other sources, courts have relied on Article 15 of the International Covenant on Civil and Political Rights, which states that the principle of non-retroactively should not prevent prosecution for "any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations." There is precedent for retroactive application of criminal law to prosecute international crimes in Iraq itself: the Iraqi High Tribunal was given jurisdiction over certain crimes committed since 17 July 1968.

There is a solid legal basis for enabling states to exercise retroactive jurisdiction for genocide, crimes against humanity and serious war crimes. Customary International law already obliged Iraq to prosecute these crimes prior to 2014, and Iraqi law has been party to international treaties that oblige parties to prosecute war crimes (the four Geneva Conventions of 1949, ratified on 14/2/1956, their Additional Protocol I of 1977, ratified on 01/04/2010) and genocide (the Convention on the Prevention and Punishment of the Crime of Genocide, ratified on 20/01/1959).

The Coalition therefore proposes that the law is drafted so as to clearly apply this exception to the principle of non-retroactivity for crimes under international law by specifying that Iraqi courts will be able to prosecute such crimes, at least those committed by ISIL/Daesh already recognized as international crimes prior to 2014.

Future application

The Coalition strongly believes that this should not only be a law for prosecuting ISIL's crimes of the past. It is essential that Iraq incorporates the most serious crimes of international concern into its law in order to join the community of states that have signalled that such crimes will not be tolerated, and that anyone who commits such crimes in the future will be prosecuted.

For the Coalition, this is an essential element of the purpose of this Law: it is crucial to signal that this Law is a statement of intention to prevent future atrocities, tackle the root causes that allow them to occur, and to act decisively should they occur, whoever they are committed by and against. The resurgence of hate speech targeting minorities in recent years has created fear, anxiety and painful memories of past violence, making communities affected by the ISIL crimes in 2014 feel constantly threatened and in fear of renewed atrocities.

The Coalition therefore proposes that the law is drafted so as to clearly establish jurisdiction over international crimes committed in the future, no matter who commits them.

Bases of jurisdiction

The Coalition believes that the Law should incorporate all bases of jurisdiction over international crimes that are recognized under international law. Such laws are now widely adopted globally: according to the Justice Beyond Borders Project,[5] 148 UN Member States have laws that allow them to investigate and prosecute at least one international crime, even when the crime was committed beyond their borders. These are:

- Crimes committed in Iraq (territorial basis). Crimes should be deemed to have been committed in Iraq if any of their constituent acts occurred within Iraqi territory, if their consequences were realized therein, or if such consequences were intended to be realized therein, or if the crime occurs in places under the sovereignty of the Republic of Iraq, including locations belonging to the Iraqi Armed Forces wherever they may be, such as ships, aircraft, vehicles, buildings, camps, facilities, deployment areas, training grounds, and operational sites.
- Where either the perpetrator or the victim holds Iraqi nationality or resides in the Republic of Iraq (active and passive personality basis). This also includes stateless persons present on the territory of the Republic of Iraq.
- Any person found in the Republic of Iraq who has committed a crime stipulated in this Law outside Iraq, whether as a principal perpetrator or an accomplice, regardless of their nationality (universal jurisdiction).

[5] Available at: https://cfj.org/the-docket/justice-beyond-borders/

Natural and Legal Persons

The Coalition suggests that, for the avoidance of doubt, the Law specifies that the term "person" includes legal persons as well as natural persons. A legal person is any entity recognized by law as having legal personality including corporations and organisations. This is consistent with the position under general Iraqi law.

Age of criminal responsibility under the Law

The Coalition urges that jurisdiction for core international crimes be limited to persons aged 18 or over at the time the crimes were committed. This is consistent with the practice of international and national criminal tribunals dealing with international crimes elsewhere, which have largely treated children as victims, and prosecuted adults who recruit children to fight in armed groups (a war crime in itself, that should also be included in the Law). Such an approach is called for by international child rights standards and international human rights protections that Iraq is committed to, which provide strong protections for children in criminal justice systems. Further, UNITAD did not collect evidence and build case files against perpetrators under the age of 18. Child perpetrators can be dealt with in alternative ways in line with international standards.

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

- "Criminal responsibility for crimes under this law applies to a natural person who has completed eighteen years of age at the time of committing the act."

Ne bis in idem / double jeopardy

The principle that no person should be prosecuted for the same crime twice (known as the double jeopardy rule, or ne bis in idem), is well established both in Iraq and international law, and enshrined in Article 19.5 of the Iraqi Constitution, which provides: "The accused may not be tried for the same crime for a second time after acquittal unless new evidence is produced". This principle would prevent a person being tried for a second time for an international crime (unless new evidence were to be produced). But it would not prevent them from being prosecuted for a different crime even if based on the same act. For instance, they could be prosecuted for an international crime if they had already been tried for an ordinary crime (such as murder) for the same act, or for a crime such as membership in a terrorist organisation which would encompass neither the same crime nor the same act. As an example, the Statute for the International Criminal Tribunal for the former Yugoslavia[6]provides in Article 10.2 that:

> "A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only if:
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> the act for which he or she was tried was characterized as an ordinary crime; or
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> the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted."

[6] Available here: https://www.icty.org/en/documents/statute-tribunal

Given that some ISIL members who come under Iraqi jurisdiction may already have been prosecuted, either in Iraq or abroad, for a variety of offences, the Coalition considers it necessary to clarify the circumstances in which they can be tried for international crimes once this Law is enacted.

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

- "If a person has previously been tried by an Iraqi or foreign court for acts constituting international crimes, this does not prevent the person being prosecuted for international crimes by a competent court in Iraq under this Law where the previous proceedings did not genuinely address the nature of the conduct as an international crime and where there is sufficient evidence before the competent court that the acts constitute an international crime under this Law, provided that any punishment previously imposed be taken into account during sentencing."

V. DEFINITIONS OF THE CRIMES

The purpose of the Law is to incorporate into Iraqi law crimes that are already considered crimes under international law. As such, the Coalition believes that the definitions of the three crimes in the Law should fully conform to the definitions generally accepted as reflecting international law. This includes crimes defined in international treaties to which Iraq is party (such as the Geneva Conventions of 1949 and Additional Protocol I, the International Convention on the Suppression and Punishment of the Crime of Apartheid 1973) as well as the draft Convention on Crimes Against Humanity which is currently being considered by the UN and in which Iraq is participating in the preparatory meetings[7]and the Rome Statute of the International Criminal Court (ICC), or are norms considered by the International Committee of the Red Cross (ICRC) as constituting rules of Customary International Law applicable to all states.[8] If not in full conformity with definitions and interpretations accepted by the international community of States, this could cause problems for the Court when looking to draw on international sources of law on matters of interpretation and application and lead to inconsistency in application of the law.

The Coalition emphasises that the Rome Statute of the ICC should be used as the main reference point for definitions of the crimes and associated principles of international criminal law because it is widely considered to reflect the current state of international law applicable to all States, regardless of whether or not a particular State has chosen to become party to the Statute.

VI. FORMS OF CRIMINAL RESPONSIBILITY

The Coalition suggests that in order to leave no room for doubt that the Law fully captures all forms of complicity in committing international crimes, all the forms of responsibility set out in Article 25 of the Rome Statute of the International Criminal Court (ICC) should be specifically set out, in order to provide that a person will be criminally responsible if that person:

- Commits the crime individually, in collaboration with others, or through another person, regardless of whether that other person is criminally responsible or not.

[7] See for example statement of Iraqi Ambassador to the UN Lukman Al-Faily in January 2026, available at: https://mofa.gov.iq/newyork/?p=8477&lang=en

[8] See for example the ICRC's Customary International Humanitarian Law database, available here: https://www.icrc.org/en/law-and-policy/customary-ihl

- Orders, persuades, or incites the commission of a crime that has actually occurred or been attempted.
- For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.
- Contributes in any other way to the commission or attempted commission of such a crime by a group of persons acting with a common purpose.
- In respect of the crime of genocide, directly and publicly incites others to commit genocide.
- Attempts to commit a crime under the Law

Similarly, the responsibility of military as well as civilian commanders and superiors should reflect all the grounds of responsibility set out in Article 28 of the Rome Statute. Commanders and superiors should be criminal responsible for crimes committed by those under their effective command or authority and control if they knew or should have known those subordinates committed or were about to commit crimes and failed to take all necessary and reasonable measures within their power to prevent or repress their commission.

VII. PENALTIES

The Coalition calls for removal of the death penalty from the punishments that can be imposed under the Law. Many in the international community consider the death penalty to be inconsistent with international human rights standards and will not support criminal prosecutions that impose it. It follows that retaining the death penalty as a punishment would rule out international cooperation, including the sharing of key evidence collected by third countries and international bodies such as UNITAD. Removing the death penalty may also act as an incentive to perpetrators to confess to acts amounting to international crimes, thereby contributing to truth and justice that are so important to survivors.

The Coalition recommends that life imprisonment be indicated as a maximum, but not as mandatory for each of the three crimes. Punishments should be commensurate with the relevant crime, taking into account the gravity of the specific conduct, the impact on victims and other relevant factors, which could be specified in the Law. Since the law envisages different forms of complicity in the crimes, in some cases a sentence of imprisonment less than life might be appropriate.

In addition to imprisonment, the Coalition proposes that courts should be able to impose fines as part of the punishment of persons convicted of crimes. The Coalition is also recommending that the Law provides for the confiscation of movable and immovable property of a convicted person, as well as instruments used or prepared for use in the commission or attempted commission of a crime; while this provision is necessary, it is targeted narrowly at assets linked to the crime, whereas a fine is part of a punishment targeting the convicted person, so the Coalition believes that both need to be included as options for the court.

VIII. APPLICABLE LAW AND SOURCES TO BE USED IN INTERPRETATION OF THE LAW

The Law aims to incorporate into Iraqi law crimes that are already established as crimes under international law and have been subject of extensive application and interpretation in national, regional

and international courts as well as in interntional instruments and authoritative commentaries by organisations such as the International Committee of the Red Cross.

The Coalition proposes that the Law specifies that Iraqi courts applying this law draw on these in the interpretation and application of the Law.

If it is considered necessary, in the interests of legal certainty, to list existing Iraqi laws that are applicable as regards matters not expressly regulated in the Law, the Coalition that such list should include Law No. 8 of 2021, the Yazidi Survivors Law, which assigns responsibilities relating to criminal proceedings against perpetrators of crimes committed by ISIL, and establishes the General Directorate for Survivors' Affairs (GDSA) whose goals include:

> "Coordination with investigative and judicial bodies and international committees concerned with investigation and gathering evidence, and providing them with all statistics, data and evidence that contribute to documenting and establishing crimes committed by ISIL in a way that helps prosecute the perpetrators of these crimes" (Article 5.9, Yazidi Survivors Law).

In addition, such a list should include Law No. 58 of 2017 on the Protection of Witnesses, Experts and Victims, the Mass Graves Affairs Law (No.5) of 2006, Law No. 12 of 2019 known as the Camp Speicher Massacre Law, which explicitly conditions recognition of the atrocity as genocide and crimes against humanity on a judicial determination (Article 7.1, Law No. (12) of 2019 on the Rights of the Martyrs of the Crime Committed at the Pilot Majid Al-Tamimi Air Base).

Consequently, the Coalition proposes inclusion of wording along the following lines in the Law:

- "The competent court shall, in the interpretation and application of the provisions of this Law, have regard to the applicable international treaties and conventions, as well as the principles and rules of international law, including the principles of Customary International Law, General Principles of Law and judicial decisions of international or national courts.
- Until special procedural rules are developed for criminal proceedings under this Law, the provisions of the Penal Code No. (111) of 1969, as amended, the Criminal Procedure Code No. (23) of 1971, as amended, the Military Penal Code No. (19) of 2007, as amended, the Anti-Terrorism Law No. (13) of 2005, and the Iraqi High Criminal Court Law No. (10) of 2005, as amended, the Law No. (58) of 2017 on the Protection of Witnesses, Experts and Victims, the Mass Graves Affairs Law No. (5) of 2006, or any law that may subsequently amend or replace any of them, shall apply to all matters not expressly regulated by this Law. The competent court shall have regard to Law No. (8) of 2021, the Yazidi Survivors Law and shall seek to cooperate with the General Directorate of Survivors' Affairs established under that Law, and to Law No. (12) of 2019 on the Rights of the Martyrs of the Crime Committed at the Pilot Majid Al-Tamimi Air Base."

IX. SOURCES OF EVIDENCE

Experience shows that international crimes can be challenging to adjudicate, as criminal prosecutions may occur years after the events and may concern acts committed outside the borders of Iraq. Further, the nature of the crimes means they are often committed on a large scale, involving large numbers of victims and conduct by multiple actors, and involving complex and varied types and sources of evidence. This might include witness testimonies, forensic material, crime scene artefacts, digital or AI generated

outputs, and information provided by survivors, witnesses, insider witnesses, experts and a variety of entities that have conducted investigations that may be relevant.

In cases involving international crimes by ISIL/Da'esh, crucial evidence may already have been collected by entities such as UNITAD, or by investigative authorities such as national law enforcement agencies or Investigating Judges from other countries. Genocide, crimes against humanity and war crimes are crimes of concern to the international community as a whole and in prosecuting them, Iraq will be exercising a shared responsibility, and crucial evidence may have been collected by other agencies, whether national authorities or bodies appointed by the international community to investigate international crimes. In order to provide a clear legal basis for such evidence to be received and considered by Iraqi courts applying the Law, the Law should specify that it shall be considered as having equivalent legal status to evidence obtained in accordance with the Criminal Procedure Law No. 23 (1971).

Other countries have procedural routes for information collected by international investigative mechanisms or bodies such as the ICC, or foreign law enforcement agencies, to be received and used in national criminal proceedings, in accordance with their relevant national rules and procedures. Approaches to this issue vary widely: for instance, while Kosovo has a specific provision in its Criminal Procedure Code[9] providing that evidence from foreign governments, law enforcement agencies, prosecutors or courts shall be admissible in its courts if certain conditions are fulfilled, the German Federal Constitution Court[10] has confirmed that the regular framework for use of evidence in criminal proceedings applies to use of evidence sourced abroad and introduced into German criminal proceedings.

UNITAD was established by resolution of the UN Security Council and worked for seven years with unique access to crime scenes in Iraq to collect and analyse evidence regarding ISIS crimes, including forensic data and physical evidence. According to Resolution 2379(2017), UNITAD was to apply UN best practices and relevant international law based on standards for the collection, preservation and storage of evidence, set out in detail in its terms of Reference, in order "to ensure the broadest possible use before national courts", with Iraq the primary intended recipient. In other words, its role was designed specifically for use in Iraqi national criminal proceedings. Its work has been relied upon in several European courts exercising universal jurisdiction such as in Germany and Portugal, sometimes in cooperation with the Iraqi judiciary.[11] It is vital that Iraqi courts, when exercising its jurisdiction on behalf of the international community as a whole, are able to benefit from such evidence collection efforts.

Further, the Law should specify that Courts applying this Law may receive and consider relevant information and material already collected by other sources. This may include evidence based on information provided by others such as non-governmental organisations (NGOs) who have been on the ground with communities affected by international crimes in Iraq since 2014. Prosecutors in several countries have relied upon information from Iraqi NGOs to identify and locate key witnesses and lead them to other evidence, and have recognized such cooperation as essential in securing prosecutions of

[9] Article 215(6) of the Criminal Procedure Code 2022, available here: https://cjad.nottingham.ac.uk/en/legislation/1627/

[10] Order of 1 November 2024, paragraph 96, available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2024/11/rk20241101_2bvr068422en.html

[11] UN Iraq Press Release, 'A triumph for accountability efforts', 3 March 2024, available here: https://iraq.un.org/en/262188-triumph-accountability-efforts-how-iraq-and-unitad-supported-portugal's-first-conviction#:~:text=Other%20significant%20convictions%2C%20which%20UNITAD's,as%20child%20soldier%20by%20ISIL.

ISIL members on the basis of universal jurisdiction outside Iraq.[12] Using statements already given by survivors - if properly collected and preserved - is also an important safeguard against retraumatising survivors by asking them to provide statements again, consistent with a survivor-centred approach (see for example the Murad Code).[13]

The Coalition therefore proposes that the Law specifies the following:

- The Court may receive, obtain and consider evidence, including but not limited to: witness testimonies, forensic material, crime scene artefacts, digital or AI generated outputs; collected, verified and stored by the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD), as well as evidence collected by other competent national or international authorities, subject to the applicable rules governing the admissibility and evaluation of evidence. Evidence collected, verified and stored by UNITAD shall be considered as possessing legal status equivalent to evidence obtained under the Criminal Procedure Law No. 23 (1971), and evidence collected by other competent national or intrnational authorities may be so considered.
- The Court may receive and consider relevant information and materials collected by other sources, including non-governmental organizations, subject to the applicable rules governing admissibility.

Prosecutors in several countries have relied upon information from Iraqi NGOs, who have been on the ground since 2014, to identify and locate key witnesses and lead them to other evidence, and have recognized such cooperation as essential in securing prosecutions of ISIL members on the basis of universal jurisdiction outside Iraq.[14] Using statements already given by survivors - if properly collected and preserved - is also an important safeguard against retraumatising survivors by asking them to provide statements again, consistent with a survivor-centred approach.[15]

Further, it should be specified that courts should be proactive both in seeking out evidence from international sources and in seeking new evidence where necessary.

The Law should provide as follows:

- The Court shall take appropriate measures, where necessary and in accordance with the applicable legal framework, to secure international cooperation, including for the preservation, transmission, collection, or authentication of evidence.
- After reviewing the evidence, documents, information, and other materials available to it, the Court shall collect additional evidence where necessary to establish the facts and determine criminal responsibility, in accordance with this Law and applicable procedural safeguards.

The Coalition notes that specialised investigative units will need to be established in order to support the investigation and prosecution of crimes under this Law.

[12] Described in 'The role of humanitarian actors in the world's first conviction for genocide against the Yazidi', Centre for Humanitarian Action, 19 January 2022, available at: https://www.chaberlin.org/blog/the-role-of-humanitarian-actors-in-the-worlds-first-conviction-for-genocide-against-the-yazidi/

[13] Available in several languages at: https://www.muradcode.com

[14] See for example 'The role of humanitarian actors in the world's first conviction for genocide against the Yazidi', Mais Masdeh, 19 January 2022, available at: https://www.chaberlin.org/blog/the-role-of-humanitarian-actors-in-the-worlds-first-conviction-for-genocide-against-the-yazidi/

[15] See for example the Murad Code