



# Kurdistan Center for International Law (KCIL)

## Statement for the 48<sup>th</sup> UPR Pre-Session - Iraq

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### Introduction

The Islamic State in Iraq and Syria (ISIS) emerged from the ash of unsolved political, religious and sectarian conflicts in Iraq, then ISIS became the greatest threat to the humanity in recent years. It started invading a big swath in Iraq and committing most core international crimes, including the crime of genocide against Yazidi community, war crimes, crimes against humanity, specifically sexual and gender-based violence, abduction, use of prohibited weapons, extrajudicial killings, torture, indiscriminate attacks, recruitment and use of children, attacks against religious and ethnic groups, and displacing civilian people.

United Nations Security Council (UNSC) in 2017 in response of Iraq<sup>1</sup> adopted Resolution 2379,<sup>2</sup> and created the United Nations Investigative Team to Promote Accountability for Crimes Committed by Daesh (UNITAD),<sup>3</sup> to support domestic efforts to hold ISIS accountable by collecting evidences in Iraq of acts to war crimes, crimes against humanity and genocide committed by ISIS. UNITAD operated for seven years (2017 – 2024), Resolution 2379 mandated UNITAD to collect, preserve, and archive evidence and use it for ISIS accountability core international crimes. While UNITAD focused primarily on gathering evidence of ISIS crimes, it published 12 lengthy reports during its operation.<sup>4</sup>

### Insufficient accountability of ISIS core crimes

Iraqi and the KRI courts prosecuted tens of thousands of the ISIS fighter without using any UNITAD evidences,<sup>5</sup> the prosecutions were based on the both Anti-Terrorism laws in Iraq,<sup>6</sup> and the KRI,<sup>7</sup> There have been some reports that during the trial process, even the minimum human rights standards have been violated. UNITAD did not share any evidence with Iraq and KRI courts which lead to trials due to

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<sup>1</sup> <https://documents.un.org/doc/undoc/gen/n17/259/92/pdf/n1725992.pdf>

<sup>2</sup> <https://documents.un.org/doc/undoc/gen/n17/296/25/pdf/n1729625.pdf>

<sup>3</sup> <https://www.unitad.un.org/>

<sup>4</sup> <https://www.unitad.un.org/content/library>

<sup>5</sup> <https://shorturl.at/BgzJ9>

<sup>6</sup> <https://kc-interlaw.org/Detail.aspx?jimare=236>

<sup>7</sup> <https://shorturl.at/aGtwG>

capital punishment in both Iraqi and KRI judicial. All the UNITAD did globally that contributed and supported just 15 case indictments.<sup>8</sup>

According to a research that the Kurdistan Centre for International Law (KCIL) conducted in 2021,<sup>9</sup> The application of the Anti-Terrorism Law in the KRI was prolific, In 2020. in the Committee of Felony in the Kurdistan Court of Cassation, there were 521 out of 1190 cases that were related to the Anti-Terrorism Law, equivalent to 44% of all criminal cases in 2020.

In 2021, in the Committee of Felony in the Kurdistan Court of Cassation, there were 410 out of 1430 cases that were related to the Anti-Terrorism Law, equivalent to 29% of all criminal cases in 2021. In 2020, in the Committee of Juvenile Committee in the Kurdistan Court of Cassation, there were 72 out of 300 cases that were related to the Anti-Terrorism Law, equivalent to 24% of all criminal cases in 2020.

### **Failure to establish a special court for ISIS crimes**

The KRI begun an initiation in 2021 for establishment a special court for ISIS crimes,<sup>10</sup> the draft law of the intended special court,<sup>11</sup> with some modifications was borrowed from the Iraqi High Tribunal (IHT),<sup>12</sup> which was established for prosecuting former Iraqi regime, the jurisdiction of the IHT was covered crimes of genocide, war crimes and crimes against humanity committed during the period from 17 July 1968 to 1 May 2003.

The Kurdistan Parliament started its efforts for consultation with its stakeholders for receiving the views on the matter,<sup>13</sup> while the Parliament was within the mid of the consultation, the Iraqi Ministry of Foreign Affairs instructed the Iraqi Federal Supreme Court, on 27 May 2021, regarding the submission of the legislative authorities in KRIa draft law to the Parliament to establish a court competent with genocides, crimes against humanity and war crimes to prosecute ISIS fighters in the KRI. For issuing a verdict on constitutionality and unconstitutionality of the draft law, that the intended court may appoint non-Iraqi judges and prosecutors and may issue verdicts including death penalty and might have jurisdiction over Iraqi and non-Iraqi citizens. The Ministry requested an explanation of the extent to which the establishment of the court contradicts with Article (95) of the Constitution. After reviewing what was stated in the letter by the Iraqi Federal Court, the Court decided establishing a Special Court for ISIS crimes by the KRI is unconstitutional.<sup>14</sup>

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<sup>8</sup> <https://www.unitad.un.org/content/promoting-accountability-globally>

<sup>9</sup> <https://kc-interlaw.org/Detail.aspx?jimare=276>

<sup>10</sup> <https://shorturl.at/sFeGO>

<sup>11</sup> <https://kc-interlaw.org/DetailActivities.aspx?jimare=159&title=Projects>

<sup>12</sup> <https://kc-interlaw.org/Detail.aspx?jimare=237>

<sup>13</sup> <https://kc-interlaw.org/DetailActivities.aspx?jimare=126&title=Activities>

<sup>14</sup> <https://kc-interlaw.org/Detail.aspx?jimare=232>

## **Domestication of international criminal law**

Iraqi civil society organizations demanded accountability for ISIS crimes and reparations for ISIS crime's victims,<sup>15</sup> they are continuing to push for accountability, for putting the evidence that has been gathered to their intended use, and supporting all calls for justice and reparations, both on the Iraqi and the KRI levels, the KCIL is implementing a comprehensive project for finding legal bases for domesticating International Criminal Law (ICL) in both Iraq and KRI,<sup>16</sup> this by exploring the main problems of this process, such as the complexity and distinctive elements of ICL, as well as the practical and technical aspects in this regard. According to research that the KCIL conducted to criminalize core international crimes in the KRI,<sup>17</sup> this legislative process goes beyond ratifying international conventions since Iraq is a dualist state and requires that domestic legislation is enacted to give effect to ratified treaties. Iraq has ratified various multilateral conventions, such as the Geneva Conventions and the Genocide Convention, but Iraq (including the KRI) has, nonetheless, failed to enact the required domestic laws to deal with these crimes within its domestic setting effectively. The KCIL has drafted a law for criminalizing core international crimes within Iraq and the KRI criminal justice system.<sup>18</sup>

## **Recommendations:**

- Abolish capital punishment to use the collected evidence of UNITAD for ISIS prosecutions.
- Establish a national center for dealing with collected evidence of UNITAD.
- Criminalize core international crimes within Iraqi and the KRI judicial system.
- Criminalizing hate speech and enacting a law for encountering discrimination.
- Incorporating international criminal law within the curriculum of judicial institute.
- Ratifying Rome Statute to be a member of the International Criminal Court (the ICC).

## **About KCIL**

**Kurdistan Center for International Law (KCIL)** is a non-governmental, non-partisan, non-profit, and independent center with a primary focus on research and analysis of the international law pertaining to Kurdistan's communities. The KCIL combines advocacy with legal analysis to protect, promote and fulfill the fundamental principles of international human rights law, international humanitarian law, and international criminal law. The KCIL focuses on the study of law, conflict, peace strategies, survey and policy brief, KCIL aims to combine the theoretical and practical expertise of leading academics and policymakers to deliver strategic projects. For more, visit [www.kc-interlaw.org](http://www.kc-interlaw.org)

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<sup>15</sup> [https://www.seedkurdistan.org/wp-content/uploads/2024/08/10-Demands-10-Years-After-the-Genocide-by-ISIL\\_English.pdf](https://www.seedkurdistan.org/wp-content/uploads/2024/08/10-Demands-10-Years-After-the-Genocide-by-ISIL_English.pdf)

<sup>16</sup> <https://kc-interlaw.org/DetailActivities.aspx?jimare=161&title=Projects>

<sup>17</sup> <https://kc-interlaw.org/Detail.aspx?jimare=287>

<sup>18</sup> <https://kc-interlaw.org/DetailActivities.aspx?jimare=183&title=Projects>