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Legal protection for survivors of conflict-related sexual violence

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Abstract

What is the legal protection for survivors of sexual violence related to armed conflict. In this topic, we will deal with the concept of protection, its importance, and the extent to which sexual violence is linked to armed conflicts. Therefore, this topic will be divided into two requirements: The first requirement: the concept of protection and its importance, and as for the second requirement we will address the extent of sexual violence related to armed conflict. The first requirement: the concept of protection and its importance. Protection is intended to provide legal, health and humanitarian means for survivors of sexual violence in light of the conflict of all kinds, as it is also known as humane treatment and full respect for privacy, ensuring security and preventing survivors from continuing to be attacked, in addition to their access to timely medical care to reduce the risk of diseases and the transmitted infection as a result of sexual violence, with the provision of urgent medical methods to prevent pregnancy in accordance with local law.

Protection is also defined as international and national efforts aimed at investigating the stigma associated with sexual violence at the time of conflict, whether those efforts are directed at survivors or children who are born as a result of rape, and it is also known as the necessary support for social and economic reintegration with the aim of re-establishing community cohesion after conflict. That protection for survivors of crimes of rape, sexual slavery, forced pregnancy, prostitution, abortion and unmarried women.

Satisfaction and forced sterilization, and this protection is usually directed at women survivors of violence directed by state armed groups or terrorist entities. As long as a woman has a legal status that requires her to be protected under normal circumstances and enjoys greater protection in light of armed conflicts, protection is one of the most important international principles stipulated in international conventions and charters, and it means surrounding women with the necessary means that prevent them from being unfairly affected, including protection and protection from All acts that inflict physical, mental or sexual harm or pain, or the threat of such acts, coercion, and all other aspects of deprivation of liberty. This protection is one of the issues addressed by the Convention on the Elimination of All Forms of Discrimination against Women. However, this convention did not specifically address the issue of gender-based violence although it is a fundamental issue. The Committee on the Elimination of Discrimination against Women in 1992 took an important step in expanding the scope of the ban The general public official with regard to discrimination based on sex to include gender-based violence, which Paragraph (6) defined as violence directed against women because of being a woman, or violence that

affects women unfairly, and includes acts that inflict physical, mental or sexual harm or pain to them and threats With these acts and coercion and all other aspects of deprivation of liberty because of its internationally recognized human rights, regardless of whether the perpetrator is a public official or a private person.

States bear responsibility under the convention in the event that women are subjected to any gender-based discrimination by any person, organization, or institution. Therefore, state responsibility may be invoked not only when a government employee is involved in an act of gender-based violence, but also when she does not know The second requirement: the extent to which sexual violence is linked to armed conflict. Sexual violence related to internal and international armed conflicts is one of the most heinous crimes that have spread widely in Iraq and most Arab countries, as it has become a strategy used by armed groups in order to humiliate opponents and a method aimed at torture, abuse and extracting information from women. To battlefields instead of the real enemy. This crime is one of the crimes against humanity that has drawn the attention of the international community due to its seriousness and its violation of basic human rights. The definitions of violence varied in general, so it was defined from the philosophical side as ((all severe and cruel contrary to the course of the nature of the existence of the thing or object that obtains or has this act)) or it is an unlawful or non-conforming use of the law. From the psychological point of view, it is defined as ((use The physical force to cause harm and damage to persons, property, or behavior that is characteristic of this and that it is the tradition that tends to cause physical harm or to interfere with personal freedom)). It has also been defined as behavior that expresses an emotional state that ends in inflicting harm or harm to the other and is represented by physical or verbal harm or degrading property and may amount to a threat to kill, or it is the intentionally exerting force and coercion against others, and usually leads to destruction or harm or damage Physical or intangible violence against women or others. As for special violence against women, it is any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats to carry out such acts Tribalism or arbitrary deprivation of liberty, whether this occurs in public or private life. (3) Armed conflicts affect violence against women and girls in particular, affecting displaced women, migrant women, widows, female breadwinners, and detainees belonging to a specific ethnic group.

The second requirement:

the link between sexual violence and armed conflict. The term armed conflict is one of the terms that replaced the term war, due to the demise of the traditional separation between the laws of war and the laws of peace. After the Second World War, countries began to refrain from explicitly declaring a state of war, especially after the United Nations Charter considered the aggressive war an unlawful act. War, once declared without actually taking place on the ground, while an armed conflict is an ongoing conflict. The term non-international armed conflict has also replaced the term civil war, which is a broad concept that, in addition to civil war, may include armed rebellions against the authority, as well as violent internal unrest and conflicts between non-state armed groups. Historically, the idea of the association of crimes against humanity has developed in armed conflict, and this link shows the abstract great difference between armed conflict and the commission of crimes in armed conflict, as they may be committed before, during or after it. Crimes in armed conflict. This link did not appear in light of the international tribunals' charters in

the aftermath of the Second World War in the Nuremberg Pacts, the Tokyo Charter and the Germany Oversight Council, as well as the case in the International Criminal Tribunal for the former Yugoslavia system. As for the positions of delegations at the Rome Conference, they were divided into the group supporting the requirement of crimes against humanity into conflict. The international armed conflict, the group supporting the requirement that crimes against humanity be linked to an international or internal armed conflict, and a third party in favor of not requiring any link to an armed conflict, but the practical and legal reality indicates that crimes against humanity are not required to be linked to armed conflict, and that this lack of condition achieves important results related to The work of the International Criminal Court, as it will not have to prove the existence of an armed conflict or its actual connection to this conflict, but at the same time it leads to an increase in the court's burdens in relation to the increase in the number of crimes within its jurisdiction that are committed in peacetime and which were previously not considered crimes but rather Violations of human rights, so the best option is to separate the link between crimes against humanity, including crimes of sexual violence and armed conflict. The Hague Convention on the Laws of War prohibited sexual violence, although it did not explicitly mention it, but it indicated in Article (46) of it that the contracting parties must respect the honor and rights of the family and the lives of its members and their religious beliefs, in a chapter in its preamble, which indicated the need to adhere to the principles and laws of humanity and the dictates of the public conscience, This convention has become an international norm binding even for countries not party to it. As for the Geneva Conventions of 1949 and the two Additional Protocols, they set out basic principles on the necessity of respecting the human being and his dignity and to enshrine the principle of presenting the article without discrimination to the victims of war who, due to injury, capture, or drowning, are no longer enemies, but have become mere human beings who suffer without having them.

The ability to defend themselves and these agreements include the basic rules that apply in disputes, which include the following:

- 1- Persons incapable of fighting and not taking direct part in armed operations, and have the right to respect for their lives and their physical and spiritual integrity, and to be treated humanely in all circumstances without unfair discrimination.
- 2- To collect the wounded and sick and to take care of them through the party to the conflict who are under his authority, including protection, including personnel of medical services, medical facilities, means of medical transport, and medical equipment. The emblem of the Red Cross or Red Crescent represents the mark that gives this protection and must be respected.
- 3- Family fighters and civilians who fall under the opponent's control. Their lives, dignity, personal rights and beliefs are respected. They must be protected from any act of violence or reprisals. They have the right to exchange news with their family.
- 4- All persons enjoy basic judicial guarantees. No one shall be held responsible for an act he did not commit, nor shall anyone be subjected to physical or mental torture, corporal punishment, verbal or degrading treatment.
- 5- Parties to the conflict must at all times distinguish between the civilian population and combatants in a manner that protects the civilian population and civilian objects. The civilian population as such, as well as civilians, must not be the object of attack. Attacks are limited to military objectives only. (1) As for protection from sexual violence, the Geneva Conventions stipulated in Article Three of them that in the event of an armed

conflict not of an international character in the territory of one of the High Contracting Parties, each party to the conflict must apply, as a minimum, the following provisions):

1 - It is prohibited to attack the life, safety and physical integrity of persons who do not take a direct part in the hostilities, including members of the armed forces who have laid down their weapons from them and persons who are unable to fight because of illness, wound, detention, or any other reason. They shall in all cases be treated humanely without any harmful discrimination on the elements, color, religion, belief, gender, or any other similar criteria.

2- Taking the hostages.

3- An assault on personal dignity, and in particular an offensive and degrading equation.

4- Not to make any harmful discrimination on the basis of gender.

5-Treating women with all the special consideration due to their gender

The second topic:

International protection mechanisms. There are many mechanisms for international protection for women survivors during and after the armed conflict between international conventions and Security Council resolutions on Iraq. Therefore, we will address this discussion in two demands, the first requirement: protection in light of the state's charters. As for the second requirement: Security Council resolutions on the case of Iraq. The first requirement: protection under international humanitarian law and international conventions. Armed conflict leads women and girls to flee their homes and travel to safe areas to get rid of the harm of conflict, which leads to their exposure to violence in general, and violence and sexual exploitation in particular, whether when they leave the conflict areas or remain in them. Women are considered the land of war in most armed conflicts, and the circumstances of the conflict may force them to leave their properties and reside in densely populated areas for fear of being exposed to the effects of armed conflict. (1) This is what called on states to pay attention to providing protection for women from crimes that occur against them, and this is embodied by joining the international conventions issued in this regard. It is as follows :

- 1- The Universal Declaration of Human Rights (UDHR) for the year 1948, as it stipulated that every human being has the right to enjoy all the rights and freedoms contained in this declaration without any discrimination, such as discrimination between race, color, or sex, without any discrimination between men and women, and this is what the second article of the declaration indicated. (1) The international community has paid attention to the need to achieve this through the enjoyment by women of their rights and freedoms.
- 2- The International Covenant on Civil and Political Rights for Women of 1952.
- 3- The United Nations Convention for the Prohibition of Traffic in Persons and the Exploitation of the Prostitution of Others, 1946.
- 4- The United Nations Declaration on the Protection of Women and Children in Cases of Emergency and Armed Conflict 1974.
- 5- The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 and the Optional Protocol to the Convention of 1999.
- 6- The United Nations Declaration on the Elimination of Violence against Women of 1993 (A / RES / 48/104).
- 7- Beijing Declaration and Platform for Action 1995.

- 8- United Nations Security Council Resolution on Women, Peace and Security No. 1325 of 2000.
- 9- The United Nations Protocol to Prevent and Punish Human Trafficking, Especially Women and Children, supplementing the United Nations Convention against Non-National Organized Crime of 2003.
- 10- Secretary-General's Bulletin on Special Procedures Concerning Protection from Sexual Exploitation and Sexual Abuse, 2003.
- 11- United Nations mandate on the status of women (CSU) in 2004 and 2009.
- 12- The Joint United Nations Program on HIV / AIDS, 2009 Framework for Action on Women and Girls and Gender Equality.

The second requirement: Security Council resolutions on the case of Iraq. Conflict-related sexual violence is a violation against women and girls. It is a form of discrimination that nullifies the enjoyment by women and girls of all human rights and fundamental freedoms. (1) In Iraq, in light of the displacement crisis during ISIS attacks, sexual violence against women and girls reached very high levels due to the economic conditions and the exploitation of women and internally displaced persons in the camps, as well as the killings and revenge for rape, forced suicide and societal slavery, all of this prompted the Security Council to take important decisions in the process of preventing conflict-related sexual violence in Iraq. This is what was included in the conclusions agreed upon and approved by the Economic and Social Council in accordance with Security Council Resolution No. (29) of 2009 of July 24, 2008 as a contribution to the annual Ministerial Review and the Forum for Development Cooperation.

Following the appointment of the Official Adviser for Women's Affairs, the United Nations continues to support the Government of Iraq in building its capacity to provide victims of sexual violence with multisectoral services, whether psychological, social, medical or legal services in the liberated areas. The United Nations High Commissioner for Refugees also called for a resettlement program through which 844 victims of conflict-related sexual violence in Iraq were referred to their areas. Iraq affirmed its full commitment to implementing and responding to the joint statement on preventing and responding to the conflict-related sexual violence. Security Council Resolution No. 233 was issued in 2016, which includes continuing to address the link between trafficking in persons and conflict-related sexual violence, as well as Resolution 2388 of 2017 on the same topic, and the Security Council Committee working under Resolutions 1267 of 1999, 1989 of 2011 and 2253 of 2015 recommended that it be provided with information exclusively on the Islamic State in Iraq and the Levant (ISIS) and the individuals, groups, institutions and entities associated with them. (1) In addition, the Security Council issued a resolution regarding prosecutions for perpetrators of conflict-related sexual violence crimes and compensation for women and girls victims of ethnic and religious minorities, whose implementation was continued by the Council's team pursuant to Security Council Resolution 2379 of 2017. As for the need to issue legal legislation that would separate accountability for sexual violence Resolution (2467) of 2019 was issued allowing the Iraqi national authorities to rebuild survivors' capacities and protect them or stigmatize them and the necessity for them to obtain medical, psychological, social and legal care to promote justice for those who were subjected to sexual and gender-based violence.

In addition to ensuring the rights of Yazidi survivors of sexual violence and other components. As sexual violence committed in conflict situations is perpetrated through a

series of interconnected and repeated forms of violence against women and girls. In deterring and preventing them, he also stressed the need for civilian and military leaders to show commitment and political will to bring about sexual violence, as inaction and impunity for these crimes in conflict and post-conflict situations are two things that may suggest tolerance in the occurrence of these crimes. The resolution referred to the need for civil society, leaderships and women's organizations to contribute to the outbreak and settlement of conflicts and peace building. The third topic: protection mechanisms in Iraq. In this study, we will address the statement of the national mechanisms taken by Iraq to protect survivors of conflict-related sexual violence after ISIS terrorist attacks, in two requests. The first requirement: constitutional protection.

The constitution occupies the top of the legal hierarchy and is the supreme law of the country, as it transcends all the legal rules applied in it, and it is the only source that grants these rules their legitimacy and the source of their binding, provided that they do not violate its rules or be challenged by revocation. The Iraqi constitution in force has approved the protection of women and the protection of their families through its many provisions, and this leads to the obligation of the legislative authority in Iraq, when legislating laws, to take this into account and not prejudice their rights, otherwise the law would be unconstitutional for its violation of the provisions of the constitution. Her work is subject to cancellation as it has affected women's rights and freedoms. The constitution in force in Iraq stipulates that it is not permissible to enact a law that contradicts the basic rights and freedoms contained in it. It also affirmed that Iraqis are equal before the law without discrimination based on sex, race, nationality, origin, color, religion, sect, belief, or opinion. Individuals have the right to life, security and freedom, and these rights may not be deprived. He affirmed that the family is the basis of society and that the state is obligated to preserve its religious, moral and patriotic entity and values, and that the state must protect motherhood, upbringing and youth and prevent all forms of violence and abuse in the family, and prohibit forced labor Slavery, the women and children trade, sex trafficking and that Iraqis are free to adhere to their personal status according to their religions, sects, beliefs, or choices. These provisions constitute effective protection for women and children in particular under normal circumstances. The constitution also stipulated in Article (13) that: (Firstly, this constitution is the supreme and supreme law in Iraq, and it shall be binding in all parts of Iraq without exception. Secondly, no law may be enacted that contradicts this constitution and every text contained in regional constitutions or any Another legal text that contradicts it)). Article 46 of it also stipulates that ((Restricting or limiting the exercise of any of the rights and freedoms stipulated in this constitution shall not be restricted except by law or based on it, provided that such limitation and restriction does not affect the essence of the right or freedom)). It is also noted that the constitution has listed basic principles that constitute the protection of women's rights, including the principle of separation of powers, which is one of the constitutional principles and important guarantees for the protection of rights and freedoms for women in countries. With the inability to interfere by one of the authorities with the work of the other authority, in addition, we find that the constitution's text on judicial oversight constitutes a guarantee of human rights and freedoms. Through the judicial authority, constitutional principles are preserved and their proper application is ensured. By sub-payment granted to public bodies and individuals in filing a lawsuit before Competent courts to demand the abolition of the law in conflict with the constitution if it infringes rights and freedoms. Likewise, we find that the principle of the independence of

the judiciary, which constitutes one of the basic pillars for establishing the state of law on the one hand and protecting the fundamental rights and freedoms of its members on the other hand, has no value for the constitution or the principle of separation of powers without the impartiality, independence and ability of the judiciary to exercise judicial oversight, and this is what was confirmed by the Constitution of the Republic of Iraq of 2005 In effect in Article (87) when it was stipulated that the judiciary is independent and its judgments are in accordance with the law, as it was stipulated in Article 88 thereof that judges are independent and have no authority over them in their judgments other than the law, and no authority may interfere with judges or in matters of justice)). The second requirement: legislative and governmental protections. Legislative protections are embodied in the legal provisions for the protection of survivors of sexual violence through the enactment of laws on sexual violence, reform of legal texts, provision of legal aid and community security programs, and this can only be achieved through the concerted efforts of the authorities as a whole, as achieving justice is achieved through the rule of law and coordination with the police and courts In this regard, prisons and prisons and the importance of protecting survivors of conflict-related sexual violence. The matter is not limited to the existence of legislative texts, but rather it requires strengthening the capacities of national institutions with the utmost importance to achieve accountability for the crimes committed, but that accountability is in accordance with the law

Combating Iraqi terrorism for the lack of a special law to combat sexual violence, as well as the absence of legal texts that include international crimes. As for the principles of protection for survivors of violence during and after the armed conflict, we find that the Ministry of Labor and Social Affairs Law No. 12 of 2007 provides for shelter for survivors of sexual violence, whether in normal or exceptional circumstances, and the shelter is a safe space for women in which women and girls feel physically and emotionally safe. A safe space that leads to the absence of trauma, excessive stress, violence, or fear of violence, as well as those spaces through which women can socialize with people, rebuild their social networks, receive social support, gain context-related skills, and access multisectoral psychological, social, legal and medical response services that Be safe and not stigmatized in the area of gender-based violence and receive information on issues related to women's rights, health and services. It was stated in the report issued by the United Nations that these safe spaces take multiple names, such as women's centers, community centers for women, or listening and counseling centers, and their services are different from the safe havens, shelters, or safe spaces designated to receive survivors of violence for one specific period. With the necessity that these spaces be designed according to the age group and lead to a feeling of confidence and security to share concerns and dangers, and in line with the psychological nature of women. Despite the importance of shelter for survivors as one of their means of protection, financial support for them is very limited and does not rise to the level of resolving the crisis. As for government efforts, the Iraqi government has worked to:

Agreement on a joint statement on the sidelines of the seventy-first session of the United Nations General Assembly, and this agreement was within the framework of Security Council Resolution (2106) concerned with addressing the issue of sexual violence related to the conflict in Iraq, especially after the terrorist ISIS attack that targeted Iraqi minorities (). The United Nations and the Government of Iraq to comprehensively confront sexual violence related to the conflict in the security, justice and services sectors, as the issue of accountability for these crimes is one of the challenges facing Iraq, and the Iraqi legal

framework must be strengthened to be able to address sexual violence, and this agreement included on:

- 1- Emphasizing accountability for these crimes.
- 2- Documenting and gathering evidence about it.
- 3- Establishing compensation frameworks for victims.
- 4- Providing support by the United Nations to the national government and regional administrations\.
- 5- Providing services and livelihood support for survivors and children born from pregnancy resulting from rape.
- 6- Empowering Iraqi women.
- 7- Supporting the Iraqi national plan for implementing UN Security Council Resolution 1325, which includes elements to address conflict-related sexual violence.

Emphasizing the implementation of Resolution 2467 related to the case of Iraq. Governmental efforts have also been embodied in achieving reconciliation within local communities in order to facilitate reprisals for perpetrators of conflict-related sexual violence crimes, compensate victims, and urge solidarity with rape victims and children born as a result of this, and the Iraqi government's efforts to develop a national plan to implement Resolution 13250 had an important role in Helping survivors of violence after the liberation operations are over. This plan is to implement the United Nations Security Council Resolution 1325 on women's peace and security. However, these efforts were not completed due to the war against ISIS. As for the Kurdistan Regional Government, the government worked, with the influence of women's movements, to pass the law against domestic violence in 2010, but despite The issuance of the law, the matter lacked implementation and strategic balance. Some argue that, in order for the central government and the regional government to move to stability in dealing with the issue, violence against women in general and sexual violence in light of conflict in particular, to the following:

- 1- Establishing a budget for the National Action Plan.
- 2- Involving clansmen and clerics in educational activities that aim at directing the stigma of survivors of sexual violence and honor crimes and spreading their profound effects on society.
- 3- Coordination of laws with the articles mentioned in the effective Iraqi constitution.
- 4- Publicly acknowledging the experiences of women during war and displacement.
- 5- Education through media campaigns and social media.
- 6- Providing safe havens that provide services, legal protection, and integrated living.
- 7- Legal aid for victims and a focus on transitional justice initiatives. 8- Monitoring incidents of sexual violence and cooperation between hospitals, police forces, legal organizations and civil society organizations.

Recommendations:

- 1- The need to legislate a law to criminalize sexual violence during armed conflicts and consider the crimes committed against victims as international crimes, as there is no Iraqi law on violence against women in general and sexual violence during conflict in particular.
- 2- Rehabilitation of survivors through legal aid programs and awareness of their rights in this regard, which qualifies them to become self-reliant.

- 3- Emphasizing on the economic empowerment of survivors and the reintegration of victims and their surviving children into society with the help of tribal and tribal leaders, clerics and civil society organizations.
- 4- Emphasizing the rule of law, ensuring fair trial procedures, and compensating survivors by applying human rights and providing specialized services to victims and witnesses, and not including these crimes with a general amnesty .
- 5- Emphasizing on women's participation in peace and empowering them politically .
- 6- Providing safe havens for victims and providing them with medical, psychological and social support and for their children.
- 7- Coordination of work with all government agencies, whether the executive authority or the judiciary, the husband of the female member of the police force, and the community police support to encourage victims to report sexual violence during or after the conflict.
- 8- Organizing awareness campaigns through the media and social media emphasizing the protection of survivors of conflict-related violence .
- 9- Emphasizing attention to the rights and needs of women and girls affected by armed conflict and the need to take national measures consistent with international law to remove obstacles that prevent the granting of full rights to women and girls who are survivors of sexual violence resulting from armed conflict .
- 10- Establishing a complaints and reporting mechanism for women and girls who are survivors of violence and removing all obstacles that prevent women affected by violence during conflict from accessing justice .
- 11- Ensuring equal participation of women with men in all areas of political life and political reform at all levels of decision-making.

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- (21) See the report of the Secretary-General on conflict-related sexual violence, *ibid.*, P. 37.
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- (23) Consider Security Council Resolution 2467 (2019) adopted by the Council at its meeting held April 23, 2019, posted on the United Nations website at the website: undocs.org, date of visit 2/28/2020.
- (24) See Dr. Ihssan Hamid Al-Mafraji, and Dr. Kataran Zughair blessing and d. Raad Al-Jedda, *General Theory of Constitutional Law and the Constitutional Order in Iraq*, The Legal Library, Baghdad, 1990, p.
- (25) See Dr. Abd al-Ilah Muhammad Salem, *Guarantees of the Accused*, 3rd Edition, Wael Publishing House, Baghdad, 2006, p.10.
- (26) The enforceable constitution of the Republic of Iraq for the year 2005 considers Articles (2, 14, 15, 29, 37, 41).
- (27) See Dr. Ahmed Mansour, *Judicial Protection of Human Rights*, Arab Thought House, Cairo, 2003, p. 7.
- (28) See the report issued by the United Nations published on the website: <http://www.unfpa.org/sites/default/filesresources>. p. 41 Date of visit July 2019.
- (29) See Dr. Muhammad Abd al-Fattah al-Mahdi, *Women's Mental Health*, Dar Al-Yaqin for Publishing and Distribution, Egypt, Mansoura, First Edition, 2007, p. 23.
- (30) See the Security Council Report, previous source, pg. 2/43.
- (31) Henriette Johansen considers, "Breaking the cycle of violence against women in Iraq," an article published on the website: www.meri-k.org//09ublication on May 15, 2019, p. 1, visit date 2/27/2020. United Nations, posted on the website: <http://news.un.org/ar/storoty2016/9/260912>, pp. 2 and 3.
- (32) See the report of the Secretary-General of the Security Council, previous source, pg. 17.
- (33) Henriette Johansen, previous source, p. 3, and in this regard also see the report of the International Committee of the Red Cross, published on the website: <http://www.icrc.org>. P1 The date of the visit 2/22/2020.