



# International Journal of Multidisciplinary Research and Growth Evaluation.

## ISIS rape crimes of Yazidis

**Dr. Ibrahim Ahmed Abed Al Samaraee**

Assistant Professor of Public Int'l Law, Cihan University-Erbil, Iraq

\* Corresponding Author: **Dr. Ibrahim Ahmed Abed Al Samaraee**

---

### Article Info

**ISSN (online):** 2582-7138

**Volume:** 05

**Issue:** 04

**May-June** 2024

**Received:** 11-06-2024;

**Accepted:** 13-07-2024

**Page No:** 935-943

### Abstract

Historically, women have been marginalized by the prevailing cultures and their rights have been violated. Since the events of the former Yugoslavia, Rwanda and Sierra Leone in the nineties of the last century, violations have increased, the most serious of which was rape, in a way that constitutes a phenomenon that deserves research and investigation, especially since it has now been repeated in ISIS's rape of Yazidis in Mosul, in numbers that reached thousands, in a systematic manner and general behavior directed at ISIS in a brutal manner, including minors of ages (12) Twelve years with torture and selling in the markets and keep them away from their families and change their faith.

The rape committed by ISIS represents a gross violation of the most important rules of H.Rs that have settled among nations since the sixties of the last century, and then turned from being legal rules to becoming strict rules. Violators are exposed to the most severe legal penalties through special procedures for the most serious violations of international law and fall within the jurisdiction of the criminal judiciary.

Int'l law without the need for the consent of the state, as is traditionally known, which requires special procedures to punish the perpetrators and achieve justice. It also requires taking into account the difficult psychological conditions that the victims were subjected to and rehabilitating them to return to normal citizens and get rid of the devastating effects they suffer from.

**DOI:** <https://doi.org/10.54660/IJMRGE.2024.5.4.935-943>

**Keywords:** ISIS, rape, Yazidis, violation, crime

---

### 1. Introduction

Historically, women have been marginalized by the prevailing cultures and their rights have been violated. Since the events of the former Yugoslavia, Rwanda and Sierra Leone in the nineties of the last century, violations have increased, the most serious of which was rape, in a way that constitutes a phenomenon that deserves research and investigation, especially since it has now been repeated in ISIS's rape of Yazidis in Mosul, in numbers that reached thousands, in a systematic manner and general behavior directed at ISIS in a brutal manner, including minors of ages (12) Twelve years with torture and selling in the markets.

And keep them away from their families and change their faith.

The rape committed by ISIS represents a gross violation of the most important rules of human rights that have settled among nations since the sixties of the last century, and then turned from being legal rules to becoming strict rules. Violators are exposed to the most severe legal penalties through special procedures for the most serious violations of international law and fall within the jurisdiction of the criminal judiciary.

International without the need for state approval as it is traditionally known.

What is the crime of rape?

What is the legal basis for the crime of rape?

And how did the crime of rape turn into a woman rule?

What are the international efforts to confront the crime of rape?

Are there criminal justice procedures to punish offenders?

Finally, how to achieve transitional justice for the victims?

During this research, we will try to respond to the above questions in an objective and scientific manner based on the latest research, studies, int'l decisions and litigation procedures before Int'l courts in order to enrich this research and cover all its requirements.

## Search Plan

### Introduction

#### 1. The crime of rape and sexual violence

##### 1.1. The concept of the crime of rape

##### 1.2. The concept of sexual violence

##### 1.3. ISIS rape of Yazidis

#### 2. The legal basis for the crime of rape

##### 2.1. The crime of rape in international conventions

##### 2.2. The crime of rape in the systems of international courts

##### 2.3. The crime of rape in the resolutions of the UN Security Council

#### 3. Int'l efforts on the crime of rape

##### 3.1. Int'l conferences, reports and announcements

##### 3.2. Guiding principles and principles of Pristina

##### 3.3- Int'l fact-finding and investigation committees

#### 4. The transformation of the crime of rape into a rule of law

##### 4.1. The relationship between the crimes of rape and torture

##### 4.2. The effects of considering the crime of rape as a norm

#### 5. Social justice measures

##### 5.1- The delay in the requests of the rape victims

##### 5.2. The expansion of the prosecution of rape crimes

#### 6. Transitional justice

##### 6.1. Increasing the effectiveness of the role of women

##### 6.2. The Issuing of new legislation

##### 6.3- The role of civil society organizations

#### 7. Conclusion and recommendations

#### 8. Sources

##### 1. The crimes of rape and sexual violence:

The concept of the crime of rape is mixed with the crime of sexual violence because of their involvement in some of the

constituent elements of both crimes that have their own elements, making each crime distinct from the other, which requires their clarification.

##### 1.1. The concept of the crime of rape;

The crime of rape is distinguished from other sexual violations in that it has a legal and legitimate concept.

From a legal point of view, the crime of rape is achieved by forcing a woman financially or morally to have sex in any way from one or more persons in a way that humiliates her dignity and affects her honor <sup>[1]</sup>.

The material pillar consists of an act of material or moral coercion that leads to actual sex, whatever its method, whether it is usual or abnormal <sup>[2]</sup>.

The moral element is achieved by the existence of the intent to have sex, which causes insult to dignity and dishonor by detracting from the most important moral values that a person maintains. From a legal point of view, the crime of rape is an indecent assault, and it is more severe than the crime of adultery. With this definition, the crime of rape has a broader Sharia concept than the legal concept, and it does not require actual sex, but it is sufficient to remove clothes or touch some body parts without the consent of the victim <sup>[3]</sup>.

There are other violations of sexual violence, but they don't reach the level of the crime of rape, such as violent acts or attempts of a sexual nature, as their concept has evolved into the crime of sexual violence.

##### 1.2. The concept of the crime of sexual violence

The crime of sexual violence is defined as a harmful act that targets individuals or groups on the basis of their gender. It includes any sexual act, attempted sex, sexual comments, offers of unwanted sexual activity, or acts aimed at trafficking in sex or targeting a person because of his or her sexual orientation by coercion and issued by any person regardless of his relationship with the victim and whatever the method of its commission <sup>[4]</sup>.

Sexual violence includes the crime of rape, sexual abuse, forced pregnancy, forced sterility, forced abortion, forced prostitution, trafficking, sexual slavery, forced circumcision, forced nudity, domestic violence, forced and early marriage, and harmful traditional practices <sup>[5]</sup>.

Thus, sexual violence is broader than the crime of rape, which is one of the agreed upon int'l crimes. As for other acts of sexual violence, there is no agreement on them in terms of being int'l crimes, or is it sufficient for national sanctions against the perpetrators? <sup>[6]</sup>.

##### 1.3. ISIS rape of Yazidis

The testimonies of the Yazidi victims and other evidence

<sup>1</sup> Sommers, Isaac Conard Herrera (2020), Importance of an Intersectional Perspective on Gendered Religious Persecution in Int'l L., Harv.I.L.J., Vol.61, No.2, P.515

<sup>2</sup>Gray, Harriet & Others (2019), Torture & Sexual Violence In War & Conflict : The Unmaking & Remarking of Subjects of Violence, Rev. of Int'l Studies RIS, PP.1-20

Also, Dolly, Mohamed (2000) Int'l Crimes, Concept & Elements - a book entitled (Crimes that are within the jurisdiction of the Criminal Court int'l), ICRC, p. 192

<sup>3</sup> John, Marie Henkerts & Lopez Dunwald (2009), Customary Int'l Humanitarian Law, ICRC, p. 517

Also, Dosterveld, Valerie (2018), The ICC Policy Paper on Sexual & Gender - Based Crimes: A Crucial Step for Int'l Crim.L., William & Mary

J. of Women & The Law, Vol.24:443, PP.443-459

<sup>4</sup> Hellman, Deborah (2020), Sex, Causation, & Algorithms : How Equal Protection Prohibits Compounding Prior Injustice, Washinton Uni. Law Review, Vol.98, P.519

<sup>5</sup> Gray, Herrier & Others (2019), Torture & Sexual Violence in War & Conflict : The Unmaking & Remarking of Subjects of Violence, Review Int'l Studies Oct., P.P.1-20

<https://www.researchgate.net/publication/337398997>

<sup>6</sup> - Posted on the Dabiq website, where a young Yazidi woman was sold for (165) one hundred and sixty- five dollars, and the price decreased as it increased.

Travis, Hannibal (2016), Why Was Benghazi "Saved," but Sinjar Allowed to Be Lost? New Failures of Genocide Prevention, 2007-2015, Genocide Studies Int'l, Vol. 10, No. 2, Non-State Aspects of Genocide, P.P. 139-182

were not the only evidence that ISIS committed rape, but rather what was confirmed by the statements of their officials that they had lost control over their elements, and therefore they put in place a system that does not allow taking the mother, daughter, sister, and her sister, and allowing sexual intercourse with the Yazidi minors. Rape was accompanied by acts of torture, and some of them were raped and had abortions, and many of them didn't reach (13) thirteen years of age.

They used rape for the purpose of satisfying their whims, humiliating, persecuting and punishing Yazidis, torturing them, violating their dignity and destroying them psychologically.

The atrocities committed by ISIS offend the basic HRs that deserve full protection as an integral part of the human entity [7].

The rape crimes committed by ISIS have caused bad psychological effects on the raped women and their future lives in light of societies that adhere to the values of honor and dignity, and it isn't easy to accept them and forget what they were subjected to, and that is why many of them committed suicide [8].

Because of customs and traditions, many of the raped women did not provide information about the crimes of rape they were subjected to, and they kept their secrets for fear of the bad reputation that they would be exposed to.

That the rape crimes that took place were carried out systematically and with the knowledge and approval of their officials and their organization, and that they involved large numbers of Yazidis amounting to thousands, which makes it a phenomenon on a large scale and not individual cases, [9] the raped women were transported from one place to another, sold, gifted, and one of them was raped by several men, with Knowledge & encourage their commandants, In addition to the crime of rape, it also constitutes a crime of human trafficking [10].

## 2. The legal basis for the crime of rape

Because of the importance and seriousness of the crime of rape, int'l efforts have been focused through int'l agreements, the establishment of int'l courts concerned with it, and the issuance of many resolutions by the UNSC, all of which have established a legal basis for this crime.

### 2.1. The crime of rape in int'l conventions

Increased int'l interest in the crime of rape after the end of World War II and the accompanying tragedies, scourges and violations involving civilians, especially women and children among them, by codifying it in major int'l agreements and referring to it explicitly as serious violations of int'l law whose perpetrators must be subjected to the most severe int'l criminal penalties [11].

Among the most important int'l conventions that stipulate the crime of rape or use a phrase indicating it, such as the violation of honor, dignity and human values, as follows:

1. Geneva Convention of 1949 [12].
2. Common Article 3 of the four Geneva Conventions of 1949.
3. Convention on the Elimination of Discrimination against Women of 1971 [13].
4. The First Additional Protocol to the Geneva Conventions of 1977 [14].
5. Statute of the Int'l Criminal Court of 1998 [15].

Thus, the inclusion of the crime of rape in these int'l conventions and the fact that its violation constitutes an int'l crime deserving of int'l legal sanction makes it an int'l legal basis agreed upon in all the wills of states, which still constitute an important basis for int'l law [16].

### 2.2. The crime of rape in int'l court systems

It isn't enough that the crime of rape has a basis in int'l legal rules, but rather requires the application of these legal rules through int'l or national judicial systems, and because of the widespread commission of this crime, it reached hundreds of thousands in Africa and dozens of Thousands in Yugoslavia during the nineties of the last century, the int'l community has confronted this criminal phenomenon that targeted women who are the weak link in the int'l community and who deserve protection and provision of judicial guarantees, [17] in order to take revenge on criminals and achieve justice, int'l courts appeared with specific jurisdiction over a specific dispute, and among their competences was the prosecution of those who committed the crime of rape under a legal system approved by the UN SC in accordance with its powers to maintain int'l peace and security, as follows:

- A. The former Yugoslavia court system [18].
- B. Rwanda court system [19].

<sup>7</sup> Murphy, Sean D. (2016), Protection of Persons in the Event of Disasters & Other Topics, AJIL, Vol.1, P.730

<sup>8</sup> Simic, Olivera (2018), Silenced Victims of Wartime Sexual Violence, Abingdom, Oxon: Routledge, NY, PP.13-40  
<https://www.routledge.com/Silenced-Victims-of-Wartime-Sexual-Violence/Simic/p/book/9780367893675>  
 Also, Conte, Alex (2010), Counter- Terrorism & H.Rs., Research Handbook in Int'l L. by Sarah Joseph & Adam McBeth, MPG Books Group, UK, P.517

<sup>9</sup> Meger, Sera (2016), Rape Loot Pillage :The Political Economy of Sexual Violence in Armed Conflict, Oxf. Studies in Gender & Int'l Relations, Uni. P.101

Also, Abu Al-Wafa, Ah Abu Al-Wafa, Ahmed (2013) The General Theory of Int'l Humanitarian Law, Cairo, P.P. 50-51 med (2013) The General Theory of Int'l Humanitarian Law, Cairo, PP. 50-51

<sup>10</sup> Krsmanovic, Elena (2020), Media Framing of Human Trafficking Sexual Exploitation, A Study of British, Dutch & Serbian Media, eleven (online), P.10

<sup>11</sup> Shelton, Dinah & Geroge Washington (2017), Intl Protection of H.Rs, UN, P.4

Also, Murphy, Sean D., Op. Cit., P.719

<sup>12</sup> Article (27/4) & Article (4/174) thereof

<sup>13</sup> Article (8) thereof

<sup>14</sup> Articles (75b1) & (46b1) thereof

<sup>15</sup> Articles (7 & 8) thereof

<sup>16</sup> Jain, Neha (2016), Judicial Lawmaking & General Principles of Law in Criminal Law, 11 Harv. ILJ, Vol.57, Issue1, P.112

Also, Sassoli, Marco & Antoine Bouvier (2011), How Law Provides Protection in War, ICRC. ILJ, P. 332

<sup>17</sup> Lobba, Poalo (2017), Judicial Dialogue on H.Rs, UN-Bologns, P.8

Also, Matheson, Michael J. & Natalie L. Reid (2016), Symposium on the Intl Criminal Tribunal for the Former Yugoslavia & Rwanda, AJIL, Vol.3, p.171, Symposium on the Intl Criminal Tribunal

<sup>18</sup> It was approved by the UNSC in Res. No. 827 ( 1993)

Considered the case of (Fuka), which is the first trial for the crime of rape in the int'l judiciary.

<sup>19</sup> Approved by the UNSC in Res. No. 955 ( 1994). The case of (Akayesu) was considered, which is the first trial for a crime sexual violence.

Sassoli, Marco & Antoine Bouvier (2011), Op. Cit., P. 303

- C. Sierra Leone court system <sup>[20]</sup>.  
 D. Lebanon court system <sup>[21]</sup>.

The establishment of these special courts was a basic prelude to work on the establishment of the Int'l Criminal Court, <sup>[22]</sup> One of its specializations was the trial of the crime of rape <sup>[23]</sup>

### 2.3. The crime of rape in the Res. of the UNSC

The UNSC has dealt with the crime of rape through its Res <sup>[24]</sup>. Despite the dispute over the legitimacy of SC Res. and their acceptance as a source of int'l law, they are undoubtedly of a binding nature and are applied by all states in accordance with the provisions of the Charter of the UN, which gives them a more realistic and effective value than the rules of int'l law itself <sup>[25]</sup>.

We include below the most important headlines related to the crime of rape, and the UNSC has issued Res. in this regard:

1. Women and peace <sup>[26]</sup>.
2. The plight of civilians and crimes of rape in Darfur <sup>[27]</sup>.
3. United Nations investigations into rape crimes <sup>[28]</sup>.
4. Rape crimes in Darfur <sup>[29]</sup>.
5. Sexual violence and humiliation <sup>[30]</sup>.
6. Establishment of a group of experts concerned with the rule of law and sexual
7. Violence during armed conflict <sup>[31]</sup>.
8. Women and Peace <sup>[32]</sup>.

### 3. Int'l efforts on the crime of rape

Not only did the int'l community legalize the crime of rape and establish temporary and permanent judicial bodies to prosecute its perpetrators, but int'l efforts continued in various forms towards int'l mobilization against the perpetrators of this serious crime that violates basic H.Rs. that cannot be attacked under any circumstances.

#### 3.1. Int'l conferences, reports and announcements

The meeting of representatives of countries, international organizations and experts to discuss the crime of rape or sexual violence and agree on decisions related to how to confront this crime, treat the victims and take justice from the perpetrators, will have a positive impact to reduce this crime and mitigate its effects <sup>[33]</sup>.

In addition, the int'l reports issued by int'l organizations shed light on this crime and push the int'l community to take measures commensurate with the seriousness of this crime

and put plans and programs to confront it <sup>[34]</sup>.

In addition, the issuance of declarations or int'l statements about the crime of rape clarifies the nature of this crime and the reasons for its commission, and what are the appropriate treatments to reduce or reduce it and how Achieving justice, and what are the duties of states and int'l organizations regarding it, will be the basis for the subsequent steps in establishing int'l legal rules in the form of agreements binding on its parties <sup>[35]</sup>.

#### 3.2. Pristina Guidelines and Principles

The Kosovo region witnessed the rape of more than (20,000) twenty thousand women by the Serbian forces. Given the extent of the gross violation of women's rights <sup>[36]</sup>. The UN Interagency Committee has reached guidelines aimed at addressing sexual violence in humanitarian emergencies, as follows:

1. Investing in national systems and capabilities.
2. Support capacity development in the area of prevention and response to sexual and gender-based violence.
3. Addressing specific cases of concern in the field of prevention of sexual and gender-based violence, such as early marriage, forced marriage, and others.
4. Strengthening the mobilization of joint support.
5. Prevention of sexual and gender-based violence.
6. Improve data collection and analysis.
7. Develop global initiatives.

In addition to the foregoing, the horrific incidents of rape in the former Yugoslavia prompted the United Nations and international organizations to endorse the principles of Pristina <sup>[37]</sup>. This is to address the effects of the crimes that occurred on women and try to bring them back to normal life through the following:

1. Women's right to participate in political, economic and social life, and to have a share in government leadership and business management.
2. Contacting women leaders locally and regionally.
3. The media contribute effectively to women's issues.
4. Victory for women's issues and support them globally.

#### 3.3. Truth commission and int'l investigation

The information related to rape crimes is accompanied by misinformation, illusions and exaggeration, and positions

<sup>20</sup> It was approved by the UNSC in Res. No. 1315 (2000)

<sup>21</sup> It was approved by the Int'l UNSC in its Res. No. 1664 (2006)

<sup>22</sup> Marshall, Katharine A. (2010), *Prevention & Complement in the Intl Criminal Court: A*

*Positive Approach*, H.Rs Brief, Issue 2, P.23

<sup>23</sup> Al-Mahdi, Muhammad Amin (2000), *The modern establishment of the int'l criminal judiciary, in a book entitled (The crimes that concern it Int'l criminal court) ICRC*, P. 32

Also, Faragallah, Semaan Boutros (2000), *Crimes against humanity, prostitution, war crimes & the evolution of their concepts, in A book entitled (Studies in Int'l Humanitarian Law)*, ICRC, P. 427

<sup>24</sup> Abdel Dhaher, Ahmed I (2012), *The role of the SC in the int'l criminal system*, Cairo, p. 92

<sup>25</sup> Sahban, Adel (2013), *The Applicability of Int'l Standards to the Sanctions of the UNSC*, Hague Year Book Int'l L., Vol.26, P.244

Also, Galbraith, Jean (2015), *Ending SC Res.*, AJIL, Vol. 4, P.807

<sup>26</sup> Res. No. 1325 (2000)

<sup>27</sup> Res. No. 1556 (2004)

<sup>28</sup> Res. No. 1693 (2005)

<sup>29</sup> Res. No. 1820 (2008)

<sup>30</sup> Res. No. 1880 (2009)

<sup>31</sup> Res. No. 2122 (2013)

<sup>32</sup> Beijing conference on women in 1995

<sup>33</sup> The UN report for the year 1999 that (50,000) fifty thousand women were tortured, raped and mutilated in war Rwanda and (1600) one thousand six hundred girls were kidnapped and subjected to sexual slavery during the (5) five years following the war. In 1993 alone, 2,000 women were raped and subjected to forced pregnancy Amnesty International's 2004 report on rape and the plight of civilians in Darfur.

Report of the Secretary-General of the UN for the year 2005 on rape crimes in Darfur

<sup>34</sup> Report of the Secretary-General of the UN for the year 2016 on sexual violence.

<sup>35</sup> The 1993 Vienna Declaration and program on the protection of H.Rs..

*Declaration on the elimination of violence against women in 1993*

Appointment of a special rapporteur on Violence Against Women in 1994

<sup>36</sup> A study of the Office of the High Commissioner for H.Rs. (UNHCR) entitled (*Prevention of and response to gender-based violence in Refugee cases in the Middle East and North Africa*) (2015).

<sup>37</sup> Valaj, Elizabeth (2015), *Sexual Violence during the Kosovo War*, Gonzaga JIL, Vol.19, Issue1, P.48

intended to offend are adopted by contradictory parties trying to undermine each other<sup>[38]</sup>. Therefore, fact-finding and international investigation will lead to the purification of information related to rape crimes, in addition to encouraging victims to submit their information to neutral and independent parties, if What we know is that rape crimes usually take place in an atmosphere of chaos, the absence of official authorities, and under the control of irregular armed groups, such as ISIS and mercenaries of armed conflicts, and that raped women are subjected to great social pressure that prevents them from disclosing their information.

By reviewing the cases decided by the former Yugoslavia court and the Rwanda court, we find that they are numbered and not commensurate with the number of alleged rape crimes, which exceed thousands.

All of this requires the establishment of fact-finding and international investigation committees whose number is commensurate with the number of crimes committed<sup>[39]</sup>.

And the first duties of the Iraqi government after the liberation of the cities that were subject to ISIS will be to enable the raped women to provide their information and obtain any evidence proving the commission of rape crimes<sup>[40]</sup>.

The information that will be documented about these crimes will be the basis for court procedures that will be considered in the future, which prompts the responsible authorities to act early & with int'l participation<sup>[41]</sup>.

#### 4. Turning the crime of rape into a woman rule:

The development of int'l law from its reliance on the approval of the subjects of int'l law and deriving its strength from the voluntary basis to the transformation of many of its rules into imperative rules<sup>[42]</sup>. It derives its strength from its nature because it is linked to achieving the common interest of the int'l community. Among the many int'l rules were basic H.Rs. rules, foremost of which was the crime of rape. And turning the crime of rape into a rule of law will give it executive power in the int'l and national judiciary.

#### 4.1. The relationship between rape and torture

The crime of torture has been established as a rule due to its violation of basic rules of H.Rs. that may not be violated under any circumstances<sup>[43]</sup>.

The elements of the crime of rape in terms of coercion to have sex and the accompanying humiliation, contempt, and torture, especially if it is committed on a large scale and systematically, such as what ISIS committed with the

Yazidis, or what the Serbs did with the Kosovar women, are crimes similar to the crimes of torture, enslavement, war crimes, and crimes against humanity. This is what the int'l judiciary went to when prosecuting the criminals of rape, that it is genocide, a crime against humanity, torture, persecution, enslavement and a war crime<sup>[44]</sup>.

Rape is continuous torture and a violation of human dignity and values, and it is often done under the threat of death or mutilation. It is undoubtedly a violation of the peremptory rules that protect the basic human rules that are indivisible from human life and personal freedom. It is a means of degradation, deprivation, humiliation, discrimination, punishment, domination, destruction of the person, lack of personality in choice, encroachment on the human body and its independence, and hurts the sense of humanity that has an indefinite value<sup>[45]</sup>. It deals with man in a degenerate and exploitative manner and deprives him of self-determination, and these elements are available in int'l crimes that were considered among the peremptory norms, as they are like slavery, torture and a crime against humanity<sup>[46]</sup>.

#### 4.2. The effects of considering the crime of rape as a norm

The increase in int'l attention to rape crimes and the int'l judiciary dealing with it on the basis that it is a rule of thumb has provided the victims with a great opportunity for redress in terms of facilitating referral procedures and without the need for the approval of the countries to which the accused belong, in addition to the solidarity of the int'l community and the speedy resolution of cases and the achievement of justice, which contributes to the suppression of These violations and to prevent the recurrence of its tragedies.

Since the nineties of the last century, int'l judicial applications have led to the provision of the greatest level of protection for victims of rape crimes, as it is a global trend towards treating them on the basis that they are imperative rules. According to this consideration, states exercise their jurisdiction over rape crimes, and the state is not responsible for not confronting int'l crimes and preventing violations of jus cogens<sup>[47]</sup>.

This positivity in the face of rape crimes has proven that the national judiciary will play an important role in retaliating against those who commit these crimes and will help in achieving peace between nations and retaliation not only from the direct perpetrators but also from their leaders and officials who allowed them or knew of their perpetration without taking appropriate action to prevent or punish them perpetrators<sup>[48]</sup>.

Also, Jean, Neha, Op. Cit., P.120

<sup>43</sup> Article (5) Article (53) of the Vienna Convention on the Law of Treaties. This article was criticized for not including a crime Rape with other int'l crimes.

<sup>44</sup> Lupu, Yonatan (2017), Explaining H.rs. Abuses: Comparing Contemporary Factors & Historical Factors, Virg. JIL, Vol.56, No.2, P.490

Also, Murphy, Sean D., Op.Cit.,P.720

Also, Hamdi, Salah El-Din Ahmed(2013), Studies in Int'l Criminal Law, Zain Law Library, P.P. 54, 70

<sup>45</sup> Valaj,Elizabeth, Op. Cit., P.56

<sup>46</sup> Shelton, Dinah (2016), Peremptory Int'l Law - Jus Cogens, AJIL, Vol.2, P.401

<sup>47</sup> Sloom,James & Christian J. James (2013), The Development of Int'l Law by ICJ, Hague Year Book Int'l Law,Vol.26, P.225

<sup>48</sup> - Kucher,Olena & Aleksey Petrenko (2015), Int'l Crime Responsibility after Katanga : Old Challenges, New Solutions, Russian Law J., Vol. III, Issue 1, P.145

<sup>38</sup> Smith,Ross(2021), CORPORATE VIOLATIONS OF H.RS. : ADDRESSING THE COORDINATE SURVEILLANCE &PERSECUTION OF THE UYGHUR PEOPLE BY THE CHINESE STATE & CHINESE CORPORATIONS. GA. J. INT'L & COMP. L. Vol. 49:641

<sup>39</sup> Belcerzak, Filip (2017), Investor – State Arbitration & H.Rs., WSB UN), PP.5-7.

Also, Henkerts, Marie & Lopez Doswald, Op. Cit. -P. 451

Also, Al-Makhzoumi, Omar Mahmoud (2008), Int'l Humanitarian Law in the Light of the Int'l Criminal Court, Amman, PP. 78-80

<sup>40</sup> Kosar, David & Lucas Lizinski (2015), Domestic Judicial Design by Int'l H.Rs. Courts, AJIL, Vol.4, P.720

Also, Sandu, Eva(2000), Towards the enforcement of int'l humanitarian law, in the book (Studies in Int'l Humanitarian Law) ICRC,P. 535

<sup>41</sup> Kolisetty, Akhila (2015), Int'l Criminal Courts & Tribunals: Successes & Challenges, Harv.HRJ, P.222

Also, Abu Al-Wafa, Ahmed, Op. Cit. P. 135

<sup>42</sup> Nowak, Manfred (2004), Protection Provided by Int'l Law, H.Rs. Brief, Issue 4, P.3

The knowledge of the victims that the national and int'l judicial system will not tolerate the perpetrators of rape crimes as peremptory rules will prompt them to provide their information about what they have been subjected to, in the belief that justice will be achieved, some of their rights will be restored, and retribution will be taken from the perpetrators who they believed will not be punished<sup>[49]</sup>.

Also, the belief of individuals that they should be punished if they committed the crime of rape as a rule of law, whether they were the perpetrators of the crime or ordered it, will lead to the prevention of the crime for fear of the responsibility that will be imposed on them by the national and int'l judiciary<sup>[50]</sup>.

## 5. Criminal justice procedures

There is no benefit from int'l legal rules, even if they become imperative rules in int'l law, without putting them into practice through specific procedures to adopt the requests of victims of rape crimes and to facilitate litigation before national and int'l courts, especially since the int'l judiciary has presented models of int'l trials that deserve to be examples and formulas in how to obtain retribution. Of the perpetrators of rape, despite the obstacles that accompanied the litigation procedures.

### 5.1. Delayed requests for rape victims

Past experiences in the former Yugoslavia, Rwanda, and Sierra Leone show that rape victims did not provide all their information about the crimes they were subjected to, for fear of powerful parties on the one hand, and to preserve their reputation and dignity in conservative societies, on the other. The biggest problem for the Yazidi rape victims is that they moved to more than one place until some of them arrived in Syria and Turkey, or they were with ISIS in Mosul until the last moments to liberate it, which made it impossible for them to submit their requests to responsible parties that do not exist yet in Mosul.

In order to facilitate the submission of victims of ISIS crimes, the Iraqi government should set up specialized offices to receive these requests, then provide evidence and obtain confessions from some ISIS who surrendered in the battle to liberate Mosul or in other places, and work on carrying out confrontations between these and rape victims in order to document information and complete it.

### 5.2. Expanding the prosecution of rape crimes

It has been confirmed through past events that rape crimes are among the most serious int'l crimes, as evidenced by their transformation into an imperative rule in int'l law, which is at the forefront of the pyramid of int'l rules. It is not enough for special int'l courts to prosecute them, as happened in many countries. It shall have a general int'l jurisdiction that always includes all Countries<sup>[51]</sup>.

Double prosecution at the level of each country and at the level of the int'l community is the best solution to confront these crimes.

In order to implement the aforementioned, the prosecution of ISIS for rape crimes should be handled by the Iraqi judiciary first, because it has the legal capabilities in terms of specialized courts, criminal procedures, and their specialized agencies, which enable victims to submit their requests and information about the rape crimes they were subjected to, and then the information is collected and verified<sup>[52]</sup>. Then comes the mandate of the int'l judiciary to take revenge on the perpetrators whom the national judiciary was unable to deal with, and thus the judicial department is completed in confronting rape crimes, which are sometimes committed under the guidance and organization of the responsible authorities in retaliation against a sect, nationality or religion, as happened with the Yazidi women<sup>[53]</sup>.

The emergence of such an int'l commitment, especially in times of war, and that there is a national and int'l judiciary waiting for the perpetrators that can prevent and stop the occurrence of rape crimes. When the victims are allowed to resort to the judiciary, it is a step in the right direction that guarantees the punishment of the perpetrators and guarantees that such crimes will not be repeated because of the fear of a fair judiciary<sup>[54]</sup>.

## 6. Transitional Justice

The effects of rape crimes on the victims and society are great and devastating, and constructive steps are needed that include increasing the effectiveness of the role of women in society, making them participate in all sectors without exception, and finding an appropriate legal cover to ensure the full participation of women on an equal basis with men. The presence of civil society organizations also has a major role in providing opportunities and providing support to women, all of which will have a role in removing or mitigating the effects of rape crimes on the victims who were subjected to harsh and inhumane conditions, as happened to the Yazidis in Mosul.

### 6.1. Increasing the effectiveness of the role of women

It will reflect positively on development by increasing the effectiveness of women's role in political, social, economic and cultural life, as well as making them feel their importance, restoring self-confidence, and making them forget the tragedies of rape crimes<sup>[55]</sup>. The relationship between maintaining world peace and preventing sexual violence has also been confirmed<sup>[56]</sup>.

In 2014, women in Kosovo occupied responsible positions that enabled them to ask the Prime Minister to document the rape crimes that took place during the Kosovar-Serbian conflict, and in light of this, the victims receive health and social care and treatments that qualify them as natural citizens

<sup>49</sup> Shelton, Dinah, Op. Cit., P.400

<sup>50</sup> Henkerts, John - Marie and Lopez Doswald, Op. Cit. – PP. 453-454

<sup>51</sup> Steplin, R (2015), Corporate Responsibility for H.Rs. Violations, Gonzaga JI. L., Vol.18, Issue 2 (2015)P.50

<sup>52</sup> Vedier, Pierre Hugues & Milaversteeg (2015), Int'l Law, National Legal Systems: An Empirical Investigation, AJIL, Vol.4.,P.515

<sup>53</sup> Mcrudden,Christopher (2015), Why Do National Court Judges Refer to H.Rs.

Treaties? AJIL, Vol.4, P.595

Also, Evan J. Griddle(2016), H.Rs. in Emergencies, Cambridge Uni., P.11

<sup>54</sup> Meron,Theodor(2011), The Making of Int'l Criminal Justice, Oxford Uni., P.336

Also, Ambos, Kal (2013), Norms & Challenges of Int'l Criminal Law, Oxford Uni

<sup>55</sup> Nenova,Stela(2010), 15 Years of Walking but How Many Steps? Transitional Justice &The Role of the Print media in Bosnia & Herzegovina, Int'l J. of Rule of L., Trans. Justice & H. Rs., P. 86

<sup>56</sup> Freedman,Rosa(2018), UN accountable: A New Approach to Peacekeepers & Sexual Abuse, EIJL. Vol.29, No.3, PP.961-985

[57].

## 6.2. Issuing new legislation

The modern stage requires a reconsideration of domestic legislation in proportion to the seriousness of rape crimes in terms of their bad effects on the victims and that they are committed in circumstances of armed conflicts of an ethnic, sectarian or religious nature.

In these legislations, which include even the constitution, the crime of rape is determined in accordance with int'l agreements, decisions and declarations, and in the light of what has been reached through the int'l judiciary, which included countries such as the former Yugoslavia, Rwanda, Sierra Leone and the Darfur region, and it should also be issued in the Iraqi legislation after the crimes of ISIS.

The crime of rape is now considered an int'l crime and is treated as peremptory rules in int'l law. All of this should cast a shadow over the national legislation in terms of the mechanism of the judiciary and the rapid reaction in the investigation and response to the requests of the victims and the reservation of evidence, especially since in the case of ISIS rape of the Yazidis we are facing the reality of killing most of the ISIS or their fleeing to other countries, so we should take into account the responsibility of the countries that To which they belong, there are int'l statistics on the affiliation of ISIS to specific countries that should share responsibility and help in arresting, investigating, and extraditing criminals or prosecuting them [58].

The issue is common between national law and int'l law, so the int'l community should contribute to approving agreements that put in place solutions to determine the responsibility of the countries to which they belong, and what are their responsibilities in pursuing the crimes of their citizens from ISIS in Mosul and other places in the world [59].

## 6.3. The role of civil society organizations

Addressing the effects of rape crimes requires the concerted efforts of all governmental and societal capabilities and capabilities. Undoubtedly, civil society organizations (NGOs) can play a positive role in removing the effects of rape crimes through its programs of training and assistance by specialists in all fields who are able to promote the victims of rape crimes and move to a normal life and forget the past. Civil society organizations can play a role in laying down the rules of H.Rs. and emphasizing gender equality, as an argument for women to take their role and their share in participating in all aspects of life, even if it is necessary to follow the quota system as a transitional stage.

These organizations played an important role in enabling victims of rape crimes to submit requests and follow up on investigations and litigation procedures, because most women fear retaliation from perpetrators who usually work in military, security or influential agencies [60].

Efforts to reform, rebuild, achieve justice, and deal with the

effects of crimes after the end of conflicts need tremendous efforts, and through the experiences of others in the former Yugoslavia and in Africa & Israel, we find that these organizations had a pioneering & advanced role during the transitional phase after the end of the conflict [61]. In Mosul and other areas that will be liberated from ISIS, civil society organizations can play an important and influential role if they join efforts with state agencies, and they will be of assistance to them, especially women's associations that can dive into the depths of rape victims.

There is no doubt that the organs of the UN Human Rights Organization play an important role in combating sexual violence, in particular the work of the human rights council, which appointed an independent expert on protection from violence and discrimination based on sexual orientation and gender identity [62].

## 7. Conclusion and recommendations

The ISIS rape of Iraqi Yazidi women is one of the most heinous int'l crimes that took place in the twenty-first century, and it is considered a violation of the imperative rules of int'l law, meaning that it is one of the most serious crimes and deserves the maximum penalties and should be confronted in the national and int'l courts in a way that does not allow any of the perpetrators to evade And the movement to hold their countries responsible for their citizens who participated in these crimes, and there is no longer a dispute about their legal basis and that they are an imperative rule in int'l law, through the int'l efforts that have been made in their regard. Criminal justice also requires attention to rape victims and facilitating application, investigation and prosecution procedures.

The effects of these crimes on the victims still require the achievement of transitional justice and for women to have the status they deserve through new legislation, and for civil society organizations to play their role in this regard.

We include below our most important recommendations to confront the crimes of ISIS rape of Yazidis:

- Introducing national organs and courts specialized in rape crimes.
- Move at the int'l level, especially before the Int'l Criminal Court, and open a case for these crimes.
- Raising int'l responsibility on the countries to which ISIS belong and did not take the necessary measures to prevent and prosecute them.
- Develop a complete program on how to deal with rape victims and how to remove its effects and return them to society as natural individuals.
- To move through international organizations and civil society organizations to remove the effects of these crimes and work to prevent their recurrence in the future.

<sup>57</sup> - Under the Treaty (Kumunovo) Kosovar women got all the powers to play an important role in various aspects of life after the events of the war.

Also, Valaj, Elizabeth, Op. Cit., P.49

<sup>58</sup> Aolain, Fionnuala Ni & Others (2015), Transforming Reparations for Conflict Sexual

Violence: Principles & Practice, Harv. Int'l L.J., Vol.28, PP.1-44

<sup>59</sup> Meron, Theodor (2019), Closing The Accountability Gap: Concrete Steps Toward Ending Impunity for Atrocity Crimes, A. Society Int'l L., Vol.112, Issue 3, PP.433-451 <http://doi.org/10.1017/ajil.2018.53>

<sup>60</sup> von Bernstorff, Jochen (2021), New Responses to the Legitimacy Crisis of International Institutions: The Role of 'Civil Society' and the Rise of the Principle of Participation of 'The Most Affected' in Int'l Institutional Law, EJIL, Vol.31, No.1, P.155

<sup>61</sup> Simic, Olivera (2018), Op. Cit., PP.127-147

<sup>62</sup> Report of H.Rs. Council (2022), G.A.(77Session), Extension 53, P.242

## 8. References

1. Ambos K. Norms & Challenges of International Criminal Law. Oxford University Press; c2013.
2. Aolain FN, *et al.* Transforming reparations for conflict sexual violence: Principles & practice. Harvard International Law Journal; c2015:28.
3. Belcerzak F. Investor-State arbitration & human rights. WSB University in Poznań; c2017.
4. Conte A. Counter-terrorism & human rights. In: Joseph S, McBeth A, editors. Research Handbook in International Law. MPG Books Group; c2010.
5. Dosterveld V. The ICC policy paper on sexual & gender-based crimes: A crucial step for international criminal law. William & Mary Journal of Women and the Law. 2018;24:443.
6. Freedman R. UN accountable: A new approach to peacekeepers & sexual abuse. European Journal of International Law. 2018;29(3).
7. Gray H, *et al.* Torture & sexual violence in war & conflict: The unmaking & remarking of subjects of violence. Review of International Studies; c2019.
8. Griddle EJ. Human rights in emergencies. Cambridge University Press; c2016.
9. Hellman D. Sex, causation, & algorithms: How equal protection prohibits compounding prior injustice. Washington University Law Review; 2020:98.
10. Hugues PV, Milaversteeg. International law, national legal systems: An empirical investigation. American Journal of International Law; 2015:4.
11. Jain N. Judicial lawmaking & general principles of criminal law. Harvard International Law Journal; 2016:57(1).
12. Khoury-Bisharat H. The unintended consequences of the Goldstone Commission of Inquiry on human rights organizations in Israel. European Journal of International Law; 2019:30(3).
13. Kolisetty A. International criminal courts & tribunals: Successes & challenges. Harvard Human Rights Journal; c2015.
14. Kosar D, Lizinski L. Domestic judicial design by international human rights courts. American Journal of International Law; 2015:4.
15. Kucher O, Petrenko A. International crime responsibility after Katanga: Old challenges, new solutions. Russian Law Journal; 2015:3(1).
16. Layne SR. Corporate responsibility for human rights violations. Gonzaga Journal of International Law; 2015:18(2).
17. Lobba P. Judicial dialogue on human rights. UN Bologna; c2017.
18. Lupu Y. Explaining human rights abuses: Comparing contemporary factors & historical factors. Virginia Journal of International Law; 2017:56(2).
19. Marshall KA. Prevention & complement in the International Criminal Court: A positive approach. Human Rights Brief; 2010:2.
20. Matheson MJ, Reid NL. Symposium on the International Criminal Tribunal for the former Yugoslavia & Rwanda. American Journal of International Law; 2016:3.
21. Meger S. Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict. Oxford Studies in Gender & International Relations; c2016.
22. Meron T. Closing the accountability gap: Concrete steps toward ending impunity for atrocity crimes. American Society of International Law. 2019;112(3). <http://doi.org/10.1017/ajiL.2018.53>
23. Meron T. The Making of International Criminal Justice. Oxford University Press; c2011.
24. Mcrudden C. Why do national court judges refer to human rights treaties? American Journal of International Law. 2015;4.
25. Murphy SD. Protection of persons in the event of disasters & other topics. American Journal of International Law. 2016;1(4).
26. Nenova S. 15 years of walking but how many steps? Transitional justice & the role of the print media in Bosnia & Herzegovina. International Journal of Rule of Law, Transitional Justice & Human Rights. 2010.
27. Nowak M. Protection provided by international law. Human Rights Brief; 2004:4.
28. Sahban A. The applicability of international standards to the sanctions of the UNSC. Hague Yearbook of International Law; 2013:26.
29. Simic O. Silenced Victims of Wartime Sexual Violence. Abingdon, Oxon: Routledge; 2018. Available from: <https://www.routledge.com/Silenced-Victims-of-Wartime-Sexual-Violence/Simic/p/book/9780367893675>
30. Shelton D, George Washington. International for Human Protection Rights. UN; c2017.
31. Shelton D. Peremptory international law - Jus Cogens. American Journal of International Law; c2016:2.
32. Sloom J, James CJ. The development of international law by ICJ. Hague Yearbook of International Law; c2013:26.
33. Smith R. Corporate violations of human rights: Addressing the coordinate surveillance & persecution of the Uyghur people by the Chinese state & Chinese corporations. Georgia Journal of International & Comparative Law. 2021;49:641.
34. Sommers IC, Herrera C. Importance of an intersectional perspective on religious persecution in international law. Harvard International Law Journal; 2020:61(2).
35. Valaj E. Sexual violence during the Kosovo War. Gonzaga Journal of International Law; 2015:19(1).
36. Von Bernstorff J. New responses to the legitimacy crisis of international institutions: The role of 'civil society' and the rise of the principle of participation of 'the most affected' in international institutional law. European Journal of International Law; 2021:31(1).
37. Dhaher A. The role of the Security Council in humanitarian law. International Committee of the Red Cross; c2009.
38. Abu Al-Wafa A. The general theory of international humanitarian law. Cairo; c2013.
39. Al-Mahdi MA. The modern establishment of the international criminal judiciary. In: Crimes within the jurisdiction of the International Criminal Court. International Committee of the Red Cross; c2000.
40. Al-Makhzoumi OM. International humanitarian law in the light of the International Criminal Court. Amman; c2008.
41. UNHCR. Prevention and response to gender-based violence in refugee situations in the Middle East and North Africa region. Office of the High Commissioner for Human Rights; c2015.
42. Farajallah SB. Crimes against humanity, prostitution, war crimes and the evolution of their concepts. In:

- Studies in International Humanitarian Law. International Committee of the Red Cross; c2000.
43. Hamdi SA. Studies in international criminal law. Zain Law Library; c2013.
  44. Muhammad D. International crimes, concept and elements. In: Crimes within the jurisdiction of the International Criminal Court. International Committee of the Red Cross; c2000.
  45. Report of Human Rights Council, G.A. (77th Session), Extension; 2022:53.
  46. Sassoli M, Bouvier A. How law provides protection in war. International Committee of the Red Cross; c2011.