



IRAQ

Gender Justice & The Law

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Gender Justice

Assessment of laws affecting gender equality and protection against gender-based violence

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	UN Committee on the Elimination of Discrimination against Women
ESCWA	Economic and Social Commission for West Asia
FGM/C	female genital mutilation / cutting
GBV	Gender-based violence
ILO	International Labour Organization
IOM	International Organization for Migration
NGO	Non-government organization
OECD	Organisation for Economic Co-operation and Development
SDGs	Sustainable Development Goals
UNDP	United Nations Development Programme
UNESCWA	United Nations Economic and Social Commission for West Asia
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees (UN Refugee Agency)
UNICEF	United Nations Children's Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WHO	World Health Organization
Arabic terms	
fatwa	Ruling or pronouncement on a point of Islamic law
'idda	The period a woman must observe after the death of her spouse or after a divorce during which she may not remarry
khalwa	Social mingling of men and women who are unrelated
khul'a	Divorce process initiated by the wife requiring return of her mahr
mahr	Mandatory payment by the groom or his father to the bride which then becomes her property
talaq	Repudiation; divorce process whereby the husband repudiates his wife
'urf	Custom
wali	Guardian
wilaya	Guardianship
zina	Unlawful sex, including adultery and sex between two persons neither of whom are married

INTRODUCTION

Scope

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted a study on Gender Justice and the Law to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in the Arab states region.

The study is composed of an introductory piece that describes the background, rationale, analytical framework and methodology, and a total of 18 country profiles. Each country profile maps the country's key legislative and policy developments regarding gender justice.

This country profile presents the findings of the study relating to Iraq. It provides an analysis of whether the country's laws and policies promote or impede equality between women and men before the law, and whether they provide protection against gender-based violence.

This country profile includes analysis of the following areas of the law:

- Constitutional guarantees of gender equality and constitutional protections against gender-based violence
- Status of penal codes and whether the country has domestic violence laws that address gender-based violence
- Status of personal status codes and how they impact gender equality
- Status of nationality laws and whether they ensure that women and men enjoy equal rights in relation to citizenship
- Status of labour laws and whether they provide protection from discrimination and gender-based violence in the workplace

Methodology and acknowledgements

The study was conducted in two phases:

1. A literature review was conducted between January 2016 and June 2017 of the various laws, regulations, policies, and law enforcement practices related to gender justice in each of the 18 countries, which then formed the basis of draft country profiles.
2. Realizing the limitations of desk-based literature reviews, country validation processes for each of the draft country profiles were led by UN Country Teams and national consultants. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country profile. These sought the views of government partners and other key national stakeholders.

Drafts of this country profile were informed by consultations on Gender Justice held in Baghdad (29 November 2017) under the auspices of the Department of Women Empowerment and in Erbil (12 December 2017) under the auspices of the High Council for Women Affairs. These consultations were organized by UN Women in partnership with the United Nations Population Fund (UNFPA) and the United Nations Development Programme (UNDP) and were assisted by Dr. Rozhan Dizayee (Lecturer at the Lebanese French University at the College of Law and International Relations) and Dr. Sabah Sami Daoud (Head of the Department of Criminal Law, Faculty of Law, University of Baghdad). The contributions of Laila Hatahet (UN Women), Dina Zorba (UN Women), Eri Taniguchi (UNFPA), Dr. Sundus Abass (UNDP) and Florin Gorgis (KRG High Council of Women's Affairs) in finalizing this country profile are also gratefully acknowledged.

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DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

The colour-coded representation below provides a comparison of the laws identified in the country profile with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women and country recommendations under the country's respective Universal Periodic Reviews.

YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Iraq acceded to CEDAW in 1986 and maintains reservations to Articles 2(f), 2(g) (policy measures; modification of laws), Articles 9(1) and 9(2) (nationality), Article 16 (marriage and family life), and Article 29(1) (administration of the convention; arbitration of disputes).

Constitution

Article 14 of the 2005 Constitution provides that Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, colour, religion, creed, belief or opinion, or economic and social status.

NATIONALITY LAW

NATIONALITY

Iraqi women can pass their citizenship to their children born inside Iraq in the same way as men. There are some restrictions that apply to women if their children are born outside Iraq. A married Iraqi woman cannot pass citizenship to a foreign spouse on an equal basis with a married Iraqi man.

CRIMINAL LAWS

Domestic violence

Women and girls in Iraqi Kurdistan Region (IKR) are protected by the Law to Combat Domestic Violence in IKR, Law No. 8 of 2011. There is no federal domestic violence law. Article 41 of the Iraqi Penal Code of 1969 states that the punishment of a wife by her husband is the exercise of a legal right.

Abortion for rape survivors

Article 417 of the Penal Code criminalizes abortion. There is no specific exception permitting abortion for rape survivors. It is considered a legally mitigating circumstance for a pregnant woman to procure an abortion because of shame.

Female Genital Mutilation / Cutting (FGM/C)

There is no national law prohibiting FGM/C. Article 6 of the Domestic Violence Law of IKR defines FGM/C as a form of domestic violence and criminalizes FGM/C.

Marital rape

Marital rape is not criminalized by the Penal Code.

Sexual harassment

Sexual harassment in the workplace is prohibited by the Labour Law. Some forms of sexual harassment are prohibited by Articles 400 and 402 of the Penal Code. These offences include committing an immodest act, making indecent advances, or assaulting a woman in a public place in an immodest manner.

Human trafficking

The Law on Combating Trafficking in Humans No. 28 of 2012 prohibits human trafficking and addresses prevention and protection measures.

Rape (other than of a spouse)

Rape and sexual assault are criminalized by the Penal Code, Law No. 111 of 1969, Articles 393 and 396. The death penalty may apply in some cases where there are aggravating circumstances.

Honour crimes: Mitigation of penalty

Article 128 of the Penal Code provides for a reduced sentence for perpetrators of honour crimes. Article 409 provides mitigation for a person who surprises his wife in the act of adultery and kills or assaults her. Reduced penalties for honour killings do not apply in IKR.

Sex work and anti-prostitution laws

Prostitution is prohibited by the Anti-Prostitution Law No. 8 of 1988.

Exoneration by marriage

Article 398 of the Penal Code allows a perpetrator of rape to escape punishment by marrying the woman he raped. If the offender lawfully marries the survivor, the legal action becomes void, any investigation is discontinued, and any sentence that has already been passed is quashed.

Adultery

Adultery is an offence under Article 377 of the Penal Code. Adultery by a woman is a misdemeanour punishable by a sentence of three months to five years. The same penalty applies if the husband commits adultery, but only if he commits adultery in the family home.

PERSONAL STATUS LAWS

Minimum age of marriage

According to Article 7 of the Personal Status Law, No. 188 of 1959, the legal age of marriage is 18 years for both men and women. The age can be lowered to 15 years with the guardian's consent and judicial permission.

Guardianship of children

The father is the legal guardian of his minor children.

Male guardianship over women

Adult women are not required to have a male marriage guardian. Iraq has also abolished the role of a male marriage guardian, except for approval of underage marriages.

Custody of children

In cases of divorce, women have custody of children up to the age of ten, which may be extended up to the age of 15.

Marriage and divorce

The Personal Status Law requires the husband to maintain the wife. The wife owes obedience to the husband. A husband can divorce by repudiation (talaq). A wife has the right to divorce on specified grounds. She can also apply for a khul'a divorce without grounds if she forgoes financial rights.

Inheritance

Under the Personal Status Law, women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

Polygamy

Polygamy is permitted by the Personal Status Law, subject to judicial authorization. The conditions for polygamy are stricter in IKR under the Personal Status Law as amended for IKR.

LABOUR LAWS

Right to equal pay for the same work as men

The right to equal pay is provided by Article 53 of the Labour Law No. 37 of 2015.

Domestic workers

Article 3 of the Labour Law states that the Labour Law covers domestic workers. The Labour Law provides protections to domestic workers, including by prohibiting discrimination and forced labour.

Dismissal for pregnancy

There is no provision in the Labour Code specifically prohibiting the termination of employment based on pregnancy. However, employers are prohibited from discriminating against women in employment by Article 11 of the Labour Law.

Paid maternity leave

Under Article 87 of the Labour Law, women are entitled to 14 weeks of maternity leave, which is paid by the employer.

Legal restrictions on women's work

Women may not be recruited to perform arduous work specified in accordance with executive instructions issued under the Labour Law. Women are prohibited from working at night, subject to exceptions.

The literature reviews that formed the basis of the country assessment were authored by consultants John Godwin and Nadya Khalife. They also edited the final drafts for publication after feedback from national counterparts. Their insights and hard work are recognized with gratitude. Nadya Khalife and Amr Khairy translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.

OVERVIEW

Legal framework

International law

Iraq acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1986 and maintains reservations to Articles 2(f), 2(g) (policy measures; modification of laws that discriminate against women), Articles 9(1), 9(2) (equal rights with regard to nationality), Article 16 (equality in marriage and family life), and Article 29(1) (administration of the convention; arbitration of disputes).

Domestic laws

The main laws relevant to gender justice are:

Iraq

- ☒ Personal Status Law of 1959 with amendments
- ☒ Penal Code of 1969 with amendments
- ☒ Anti-Prostitution Law of 1988 with amendments
- ☒ Constitution of 2005
- ☒ Nationality Law of 2006
- ☒ Law on Combating Trafficking in Humans of 2012
- ☒ Labour Law of 2015

Kurdistan Region of Iraq (KR-I)

The Kurdistan Parliament has enacted:

- ☒ Personal Status Law of 2008
- ☒ Law to Combat Domestic Violence of 2011

The laws of Iraq are applicable in KR-I, but the Kurdistan Parliament can enact its own laws or amend the laws of Iraq as they apply in KR-I.

- ☒ Iraq Penal Code of 1969 as amended is applied in KR-I.
- ☒ Iraq Labour Law of 1987 is applied in KR-I. Iraq Labour Law of 2015 has not been adopted in KR-I.

Constitution

The Constitution of the Republic of Iraq provides that Islam is the official religion of the State, is a fundamental source of legislation, and that no law can contradict the established provisions of Islam.¹ This provision is used to justify reservations to CEDAW.

The following Articles of the Constitution are relevant to protection from gender-based violence (GBV):

- ☒ Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, colour, religion, creed, belief or opinion, or economic and social status (Article 14).
- ☒ Every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority (Article 15).
- ☒ The family is the foundation of society; the State preserves its entity and its religious, moral and patriotic values. The State guarantees the protection of motherhood, childhood and old age and shall care for children and youth and provides them with the appropriate conditions to further their talents and abilities.... All forms of violence and abuse in

¹ Constitution of the Republic of Iraq, Art. 2.

the family, school, and society shall be prohibited (Article 29).

- ☒ Forced labour, slavery, slave trade, trafficking in women or children, and sex trafficking are prohibited (Article 37).

Article 41 of the Constitution states that Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.

Article 41 is controversial because of concerns that it permits new personal status laws to be proposed for different religious groups or sects (e.g., the draft *Ja'fari* Personal Status Law) that detract from the rights stated in the Personal Status Law No. 188 of 1959. CEDAW's concluding observations issued in 2014 recommended that Iraq repeal Article 41 because it contradicts CEDAW and the guarantee of equality before the law in the Constitution (Article 14). The CEDAW Committee also called on Iraq to withdraw the draft *Ja'fari* Personal Status Law, amend discriminatory provisions in the Penal Code, and expedite the issuance of a domestic violence law.²

Policy framework

Federal Government of Iraq

In 2013, the Government of Iraq adopted the *National Strategy to Combat Violence against Women (2013–2017)*, which focuses on enacting family protection legislation to make violence against women a prosecutable offence. It encourages the Ministry of Interior and the federal police to become involved in the effort to combat violence against women.

The Government of Iraq established the Department of Women's Empowerment in the Office of the General Secretary for the Council of Ministers. The government launched a gender coordination task force in 2014 to bring together stakeholders from across government ministries and civil society to promote women's rights.³

Iraq has adopted two National Action Plans for the implementation of UN Security Council Resolution 1325 on Women, Peace and Security.⁴ In 2014, Iraq launched the first National Action Plan on Resolution 1325. After Da'esh seized parts of Iraq, an Emergency National Action Plan on Resolution 1325 was developed in 2015, which focused on peace-building efforts and the urgent provision of legal and psychological support to women and girls who were survivors of sexual violence and gender-based violence.

Kurdistan Regional Government (KRG)

The KRG High Council of Women Affairs was established in 2010 by a By-Law of the Council of Ministers. The draft Law of the Council is on the agenda of Parliament for consideration. The KRG Ministry of the Interior formed the Directorate for Combating Violence against Women in 2007. In 2012, the Directorate's name was changed to the General Directorate for Combating Violence against Women. This Directorate submits statistics on cases of violence every six months. KRG adopted a National Strategy to Combat Violence against Women for the period 2012–2016.⁵

KRG has also adopted the Iraq National Action Plan for the implementation of Security Council Resolution 1325 on Women, Peace and Security. Six ministries of KRG in coordination with the High Council for Women Affairs contributed to this plan, which is based on the principle of gender equality and time-bound objectives. Gender Units were formed by KRG to implement the plan and all other strategies and plans for women's issues.

Legal and support services

GBV services

There are high rates of GBV in Iraq, including domestic violence, kidnapping, child and forced marriages, female genital mutilation/cutting (FGM/C), and human trafficking. The KRG courts documented around 400 cases of violence against women in 2016, but the judges believe the actual figure to be much higher because women often refrain from prosecuting the offender due to social pressures and prevailing customs.⁶

Members of the minorities of Christians, Yazidis, Turkmen, and Shabak have been subjected to displacement. Da'esh has committed inhumane practices against women and girls, including killing, kidnapping, and forcing them to change their religion. During the past three years militants kidnapped thousands of Yazidi women and girls to sell to Da'esh fighters, where they have been subjected to forced marriage,⁷ sexual slavery,⁸ rape, and domestic servitude.⁹

² United Nations, CEDAW Committee, Concluding Observations on the Committee's Fourth to Sixth Periodic Reports of Iraq (9 March 2014), CEDAW/C/IRQ/CO/4-6.

³ United States, Department of State, *Country Reports on Human Rights Practices for 2014, Iraq (2015)*.

⁴ Cross Sector Taskforce, *Masterplan: Implementation of UNSCR 1325 in Iraq 2016–2017 (Federal Government of Iraq and Kurdistan Regional Government)*.

⁵ Kurdistan Regional Government Supreme Council for Women Affairs, *National Strategy to Confront Violence against Women in Kurdistan 2012–2016 (Five Years Plan) (2012)*, http://www.ekrg.org/files/pdf/strategy_combat%20violence_against_women_English.pdf.

⁶ Ayas al-Samuk no. 16, February 2017, p. 3, <https://iraqja.iq>

⁷ Women's Security Forum on Resolution 1325 for the Middle East and North Africa, *Erbil Declaration*, (May 2015), <http://www.annd.org/data/item/pdf/269.pdf>.

⁸ Mid-term report of the Network of Iraqi Women, review of CEDAW recommendations from February 2016 to August 2016.

⁹ Ibid.

According to the Directorate for the Affairs of Kidnapped Yezidis in the Kurdistan Regional Government, the number of kidnapped is estimated at 6,000, and women constitute the largest proportion. An office has been created in the Kurdistan Region of Iraq to negotiate and pay for the return of kidnapped women and girls. Over 2,000 women and girls have been reintegrated into society. The Yezidi Centre in Baghdad and Land Centre in Kurdistan have set up programmes to reintegrate women into society. Psychological care is provided by NGOs and religious centres in Baghdad and Kurdistan.¹⁰ UNFPA, in collaboration with the Directorate of Health in Duhok, also runs a centre to provide medical, mental health, psychosocial, and legal support to Yezidi women and girls.

More than 1,000 people, mostly women and children, have been supported by a German organization (Bridge to Germany), with the cooperation of the International Organization for Migration and the German Human Admissions Program, by transferring them to Germany for treatment and rehabilitation.

Women and girls, including refugees and internally displaced persons, are trafficked for sexual exploitation by security and law enforcement officials, criminal gangs, and family members.¹¹ Reports indicate some Iraqi women and girls are sold into 'temporary marriages' for the purpose of sexual exploitation or domestic servitude in exchange for settling tribal disputes. Syrian girls from refugee camps in KR-I are also forced into early or 'temporary marriages'.¹²

Shelters for survivors of abuse are limited in number and generally services are only provided to trafficking survivors. The Law on Combating Human Trafficking of 2012 states that the Ministry of Labour and Social Affairs should provide shelters.¹³ Government officials have interpreted this policy to mean that only the government can run shelters for survivors of trafficking. The government operates a trafficking shelter in Baghdad. Some NGOs operate shelters unofficially.

Access to justice

The High Judicial Council established courts of inquiry for crimes of domestic violence and human trafficking in 2015, but later abolished them in 2017.¹⁴

According to Freedom House, access to the formal civil court system is limited in practice, and a woman's ability to defend her rights often depends on decisions by her family, tribal authorities, or the officials of her religious sect, particularly in relation to personal status disputes, which are commonly settled without recourse to a civil court.¹⁵ Where cases of GBV are reported, instead of utilizing legal remedies, authorities frequently attempt to mediate between women and their families so that the women can return to their homes.¹⁶ Marital rape or rape by a partner is not considered criminal conduct.¹⁷

The Federal Ministry of Interior maintains 16 family protection units at police stations, which aim to resolve domestic disputes. These units prioritize family reconciliation over protection and lack the capacity to provide ongoing support survivors. There is no regular referral system to provide services, such as legal aid or safe shelter. The family protection units in Basrah and Kirkuk, for example, were reported to be staffed primarily by male officers, making it difficult for women to access them.¹⁸

Legal and support services in Iraqi Kurdistan Region

The Kurdistan Regional Government administers shelters for women and provides assistance to survivors of domestic violence and Yezidi who have been rescued or released. However, space is limited. The KRG provides direct financial assistance to former captives, including Yezidis who were released or rescued, as well as some other essential services, including shelter, rehabilitation, and psychological assistance in camps for displaced people.

Since the passage of the KR-I's Domestic Violence Law in 2011, the KRG and local NGOs have educated the public about the law through the use of town hall meetings and provided training to police and judges in the handling of domestic violence cases. While KR-I has experienced some progress, including the establishment of domestic violence courts and support centres in the three provinces of Sulaymaniyah, Erbil, and Duhok, implementation of the law across the region as a whole is limited. No system has been created to disaggregate data on domestic violence cases heard in the courts. Provinces are mandated to create specialized domestic violence units within police stations, composed primarily of female officers. However, it has proved difficult to recruit women to the police force because of social traditions.¹⁹

10 United Nations, "The Committee on Economic, Social and Cultural Rights examines report of Iraq" (media release, 30 September 2015), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16538&LangID=E#sthash.TwFLFzMH.dpuf>.

11 See Dr. Sabah Sami Daoud, *Sexual Exploitation of Refugee Women*; and CEDAW Committee, *Concluding Observations*.

12 United States, Department of State, *Trafficking in Persons Report 2017*, <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271208.htm>.

13 Lisa Davis, "Lifting the ban on women's shelters in Iraq: Promoting change in conflict," *Open Democracy* (14 October 2015), <https://www.opendemocracy.net/5050/lisa-davis/lifting-ban-on-women-s-shelters-in-iraq-promoting-change-in-conflict>.

14 High Judicial Council, Statement No. 69 / S / A of 27 March 2017. These courts were established by the statement issued by the Supreme Judicial Council No. 51 / S / A on 31 May 2015.

15 Huda Ahmed, *Women's Rights in the Middle East and North Africa*, Iraq (Freedom House 2010).

16 *Ibid.*

17 Dr. Sabah Samy Dawood, "Violence Against Wife: Between Abolition and Criminalization," *Faculty of Law* (University of Baghdad, 2012).

18 United States, Department of State, *Country Reports on Human Rights Practices for 2014*, Iraq.

19 MADRE, *Violence and Discrimination against Women in Iraq*, Submission to the United Nations Universal Periodic Review (2014).

PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

A draft law on protection from domestic violence has been prepared but has not yet been endorsed. Some parliamentary blocs (the Legal Committee and the Religious Endowment Committee) are working against the issuance of this law, which has remained in draft form for more than five years.

Rape

Rape and sexual assault are criminal offences in the Penal Code,²⁰ but marital rape is not recognized as a crime. The Penal Code provides that a husband has a legal right to punish his wife under the pretext of obedience.²¹

The Penal Code prescribes penalties for rape of imprisonment not exceeding 15 years, with longer sentences applicable to gang rape.²² Order No. 31 of the Coalition Provisional Authority increased the maximum penalty for rape to life imprisonment.²³ Sexual assault may constitute a “violation of honour.” The crime of violating honour with the use of force, menace, deception, or other means is punishable by a term of imprisonment not exceeding seven years.²⁴

A perpetrator of rape or sexual assault can escape punishment by marrying the survivor of the rape or sexual assault. The Penal Code provides that if the offender lawfully marries the survivor, the legal action becomes void, any investigation is discontinued, and any sentence that has already been passed is quashed.²⁵ However, if the husband (i.e., the offender who has married the survivor) ends the marriage without any legal justification or if the court orders the divorce for any wrongdoing the husband has committed within a three year period, legal action against the offender continues at the same point it was stopped.²⁶

Incest is a crime for which no person can take a legal action unless the victim or her guardian files a lawsuit.²⁷

Some forms of sexual harassment are prohibited. It is an offence to commit an “immodest act” with a man or woman without his or her consent, punishable by a period of detention not exceeding one year and a fine.²⁸ It is also an offence punishable by a period of detention not exceeding three months and a fine to make indecent advances to another man or woman or to assail a woman in a public place in an immodest manner with words, actions, or signs.²⁹

Domestic Violence Law of KR-I

The Domestic Violence Law of KR-I was passed in 2011.³⁰ The law criminalizes domestic violence, includes a wide definition of domestic violence, provides a process for obtaining a protection order, and criminalizes FGM/C.

The key provisions of the Law are summarized as follows:

Article 1

Domestic Violence is defined as any act, statement, threat, or omission committed on the basis of gender by one member of the family against another up to the fourth degree that results in physical, psychological, sexual, or economic harm or deprivation of rights.

Article 2

Anyone who has family relations is prohibited from committing violence within the family, including physical, sexual, or psychological violence. The following acts constitute domestic violence:

- i. Forced marriage
- ii. Exchange marriage (marital exchange) and child marriage
- iii. Marriage to settle feuds
- iv. Forced divorce
- v. Cutting off social relations

20 Penal Code, No. 111 of 1969, Arts. 393, 396.

21 Ibid., Art. 41.

22 Ibid., Art. 393.

23 Coalition Provisional Authority Order Number 31 Modifications of Penal Code and Criminal Proceedings Law, http://www.iraqcoalition.org/regulations/20030921_CPAORD31.pdf.

24 Penal Code, Art. 396.

25 Ibid., Art. 398.

26 Ibid.

27 Ibid., Art. 385.

28 Ibid., Art. 400.

29 Ibid., Art. 402.

30 KR-I, Law to Combat Domestic Violence in KR-I, Law No. 8 of 2011, http://www.ekrg.org/files/pdf/combat_domestic_violence_english.pdf.

- vi. Forced prostitution
- vii. Female genital circumcision
- viii. Forcing family member to leave employment
- ix. Forcing children to beg, work, and leave school
- x. Suicide as the result of domestic violence
- xi. Abortion as the result of domestic violence
- xii. Physical punishment of family member and children under any excuses
- xiii. Humiliating, insulting, belittling, intimidating, harming, psychological pressure, violation of rights and forced sexual intercourse

Survivors of domestic violence have the right to protection. They or their legal representatives can file a complaint in court or inform an investigator, a police station, or the public prosecutor. Employees of health, education, and other public institutions must report cases of domestic violence; and investigations and court proceedings in such cases shall be confidential.

Article 3

- A specialized Court for domestic violence cases is established.
- The Ministry of Labour and Social Affairs shall provide shelter for survivors of domestic violence.
- Survivors of domestic violence shall be covered by social security.
- The Ministry of Health, in coordination with the Ministry of Labour and Social Affairs, shall provide health care and necessary rehabilitation for survivors of domestic violence.
- The General Directorate of Combating Violence against Women in the Ministry of Interior shall follow-up cases of domestic violence.
- The Ministry of Interior shall establish a specialized unit within the police force, staffed primarily by police women, to act on cases of domestic violence.
- The Ministry of Interior and all the specialized departments shall contribute to awareness-raising in relation to combating domestic violence.

Article 4

The Specialized Court whenever necessary or upon the request of family members or their representative shall issue a protection order for a specific period. The Court shall renew the order if necessary. The protection order may include the following:

1. A pledge by the defendant not to attack the plaintiff or any of her family members.
2. Referral of the survivor to the nearest hospital or health centre for treatment if necessary or requested by the survivor.
3. An order prohibiting the defendant from visiting the family home for the duration the Court deems it necessary for the protection of the survivor or other family members.

In case of violation of a protection order, the violator shall be arrested for a period no longer than 48 hours or a minimum fine of 300,000 IQDs (Iraqi dinars).

Article 5

The Court shall refer the plaintiff to a specialized committee for reconciliation before referring the case to the Court specialized in such cases, provided that the reconciliation process will not affect the protection procedures outlined in this Law.

Article 6

- Anyone promoting female genital circumcision shall be punished with a fine ranging from 1 million to 5 million IQDs.
 - Anyone administering female genital circumcision shall be punished with a prison term ranging from six months to two years and/or a fine ranging from 2 million to 10 million IQDs.
 - Anyone administering underage female genital circumcision shall be punished with a minimum one-year prison term and/or a fine ranging from 5 million to 10 million IQDs.
- The punishment shall be more severe if the perpetrator was a doctor, pharmacist, chemist, or midwife, or their assistants. The Court shall also order their professional disqualification for a maximum of three years.

Article 7

Anyone committing domestic violence shall be punished with a prison term ranging from six months to three years and/or a fine ranging from 1 million to 5 million IQDs.

An NGO monitoring report published in 2013 made a series of recommendations to strengthen implementation of the Domestic Violence Law, including:³¹

- Establishing domestic violence courts and reconciliation committees outside the major cities.
- Increasing the number of specialized domestic violence judges.
- Facilitating the work of reconciliation committees and training their members on problem-solving methods and international best practices.
- Reiterating the importance of confidentiality during the legal procedures.
- Amending the Law to make it stronger and clearer.

31 Al-Massala Organization for Human Development, Democracy and Human Rights Development Organization, and Norwegian People's Aid, Monitoring Report on the Implementation of Domestic Violence Law in Kurdistan Region (2013). <http://www.iraqicivilsociety.org/wp-content/uploads/2014/01/Law-8-English-Final.pdf>.

HONOUR CRIMES

The Penal Code provides for a reduced sentence for perpetrators of honour crimes. Defence of honour can be claimed as a legal excuse, which either reduces the penalty or discharges a person from a penalty altogether.³²

Any person who surprises his wife in the act of adultery or finds his female relative (mother, sister, daughter, etc.) in bed with her lover and kills one or both of them immediately or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding three years.³³ This is a much lower penalty than the penalty that applies in other murder cases where the victim is not a wife or female relative. In 2002, KRG suspended this Article of the Iraqi Penal Code so that it does not apply in KR-I. The KRG passed a law to abolish reduced penalties for the murder of a female family member by a male relative on grounds of family shame and dishonour.³⁴ However, honour crimes continue to be reported in KR-I despite this change in the law.

ADULTERY AND SEX OUTSIDE OF MARRIAGE

The Penal Code criminalizes adultery as a misdemeanour. An adulteress and the man with whom she commits adultery are both punishable with a sentence from three months to five years.³⁵ The same penalty applies if the husband commits adultery, but only if he commits adultery in the conjugal home.³⁶ No action for adultery may be brought if the complainant (husband or wife) is content to resume married life despite having become aware of the offence.³⁷

In 2001, KRG amended the adultery offence to hold men liable to the same extent as women, such that a married man may be charged and convicted of committing adultery whether the act is committed inside or outside the home.³⁸

The Penal Code states that “every husband who incites his wife to commit adultery, and the wife commits adultery through incitement, is punished with imprisonment.”³⁹ This means that the husband’s incitement alone is not considered a crime unless the wife actually commits adultery. This Article has been criticized because it does not punish the act of incitement unless the act of adultery is committed, which fails to protect the wife.

The existence of the adultery offence may deter a woman from reporting a rape or sexual assault because she fears that she may be prosecuted for adultery.

Consensual sex between an unmarried adult man and an unmarried adult woman is not specifically criminalized. However, the conduct may be prosecuted under laws relating to immoral conduct.

32 Penal Code, No 111 of 1969, Art. 128.

33 Ibid., Art. 409.

34 Human Rights Watch, *They Took Me and Told Me Nothing: FGM in Iraqi Kurdistan* (2010).

35 Penal Code, Art. 26.

36 Ibid., Art. 377.

37 Ibid., Art. 378.

38 *Heartland Alliance, Institutionalized Violence against Women and Girls: Laws and Practices in Iraq* (2011).

39 Penal Code, Art. 380.

ABORTION FOR RAPE SURVIVORS

Abortion is prohibited except in cases of necessity to preserve the life and health of the pregnant woman and for reasons of foetal defect. Article 417 of the Penal Code provides for the following:

- 1) Any woman who wilfully procures her own miscarriage or enables another to do so with her consent is punishable by a period of detention not exceeding one year and a fine, or one of those penalties.
- 2) The same penalty applies to any person who wilfully procures such woman's miscarriage with her consent. The penalty will be a term of imprisonment not exceeding seven years if the abortion or means to procure such abortion, even though the pregnancy is not terminated, results in the death of the victim.
- 3) If the offender is a doctor, pharmacist, chemist, midwife, or assistant of such person, it is considered an aggravating circumstance.
- 4) If a woman, having become pregnant through fornication, procures her own miscarriage out of shame, it is considered to be a legally mitigating circumstance.

FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

There is no national law that specifically prohibits FGM/C in Iraq. The Domestic Violence Law of Kurdistan defines FGM/C as a form of domestic violence and criminalizes FGM/C as follows:⁴⁰

- Anyone inciting female genital circumcision shall be punished with a fine ranging from 1 million to 5 million IQDs.
- Anyone administering or assisting female genital circumcision shall be punished with a prison term ranging from six months to two years and/or a fine ranging from 2 million to 10 million IQDs.
- Anyone administering or assisting underage female genital circumcision shall be punished with a minimum one-year prison term and/or a fine ranging from 5 million to 10 million IQDs.
- The punishment is more severe if the perpetrator is a doctor, pharmacist, chemist, or midwife, or their assistants. The Court shall also order their professional disqualification for a maximum of three years.

According to a UNICEF report, FGM/C is practiced in a few northern regions. For example, in the cities of Erbil and Sulaymaniyah the majority of girls and women have undergone the procedure.⁴¹

FAMILY MATTERS

The Personal Status Law No. 188 of 1959 covers family matters for Muslims. When the Personal Status Law was introduced in 1959, it replaced Sharia courts with a codified law and abolished the differential treatment of Sunnis and Shiites under the law. The Personal Status Law of 1959 is a unifying law that allows state-appointed judges to rule on personal matters for all Muslims.

However, Article 41 of the 2005 Constitution states that Iraqi citizens are free to determine their personal status according to their religion. The existence of Article 41 has raised concerns that women will be disadvantaged if personal status issues revert to the control of religious authorities and tribal customs. For example, proposals have been developed to introduce more conservative personal status laws for the Shi'a community.

The CEDAW Committee in 2014 expressed its grave concerns over a draft personal status law for the Shi'a (Ja'fari) community that proposed to lower the age of marriage for girls to nine years and to reintroduce the requirement that women have a male marriage guardian. The Committee recommended that the State party only allow for the marriage of minors in exceptional circumstances and that it raise the age of marriage for such exceptions to 16 rather than 15.⁴² There was also a draft bill prepared in 2014 proposing to amend the Personal Status Law of 1959 to provide special rules for the Ja'fari community.

⁴⁰ KR-I, Domestic Violence Law, Art. 6.

⁴¹ UNICEF, Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change (New York, UNICEF, 2013), p. 30, http://www.unicef.org/media/files/UNICEF_FGM_report_July_2013_Hi_res.pdf.

⁴² CEDAW Committee, Concluding Observations.

The provisions of the proposed amendment included that a pubescent girl could marry based on her religious denomination's doctrine, which in some doctrines is nine years according to the lunar calendar or even less than nine years. Several attempts to amend the law in this way have been thwarted as a result of activism from civil society organizations.

Christians are also preparing their own personal status law.

Marriage

The law considers women aged 18 or over to have reached the age of majority. Adult women are not required to have a male marriage guardian. The consent of both spouses is needed for a marriage to be legal, and the legal age of marriage is 18 years for both men and women.⁴³ The age can be lowered to 15 years with the guardian's consent and judicial permission.⁴⁴

Men who accuse their wives of not being virgins the day after marriage can request a virginity test through the courts. Iraq does not have virginity tests before marriage, but this is being proposed by the House of Representatives.

Polygamy is permitted, subject to judicial authorization. The judge may authorize polygamy if the husband has the financial capacity to provide for more than one wife, there is a "legitimate interest" in marrying another wife, and justice between the wives will be provided.⁴⁵

The conditions for polygamy are stricter under the Personal Status Law as amended for KR-I, where authorization is only given if the following conditions are met:⁴⁶

- The first wife has to agree before the court to her husband marrying a second wife.
- The husband must prove his ability to financially support the second wife.
- The husband must vow to deal with both his wives fairly and equally in terms of sexual intercourse and other marriage relations both materially and morally. Polygamy may be authorized if the wife is afflicted with a chronic incurable disease that prevents having sexual intercourse, or if the wife is infertile, but these have to be certified by a report of a specialized medical committee.
- The wife must not have included a condition in the marriage contract that her husband must not have a second wife.

KRG has amended the Personal Status Law of 1959 as it operates for Kurdish communities within the Kurdistan Region.⁴⁷

Divorce

Men have the right to divorce their wives unilaterally (repudiation), without specifying grounds.⁴⁸ Women can file for divorce based on a number of specific causes, including if her husband injures her or the children in a way that makes marital life impossible to continue.⁴⁹ Alternatively, she can obtain a *khul'a* divorce, which requires her to forgo her dowry and any future financial support.⁵⁰

Under the Personal Status Law as amended for KR-I, if a husband marries a second wife, his first wife has the right to ask for separation.⁵¹

Guardianship and custody of children

The father is the legal guardian of his minor children. In cases of divorce, women have custody of children up to the age of ten, during which the father must pay child support. This custody can be extended up to the age of 15 if it is in the child's best interests, after which time the child can decide which parent to live with.⁵²

43 Personal Status Law, No. 188 of 1959, Art. 7.

44 Ibid., Art. 8.

45 Ibid., Art. 3.

46 Personal Status Law of Iraq Kurdistan Region, No. 15 of 2008, Art. 1.

47 Law No. 15 of 2008, Law to Amend the Amended Law No. 188 of 1959, Personal Status Law in Kurdistan Region of Iraq.

48 Personal Status Law of 1959, Art. 37.

49 Ibid., Arts. 40-43.

50 Ibid., Art. 46.

51 Personal Status Law of Iraq Kurdistan Region, Art. 18.

52 Personal Status Law of 1959, Art. 57.

INHERITANCE

The Personal Status Law of 1959 granted women and men equal inheritance rights. However, subsequent amendments effectively reintroduced Sharia law as the framework for deciding on inheritance matters.⁵³ Women have the right to an inheritance. However, their share is generally smaller than that to which men are entitled. Daughters, for example, typically inherit half as much as sons.

In 2008, the Personal Status Law of 1959 was amended for KR-I to provide greater clarity on women's rights in inheritance.

NATIONALITY

The Iraqi Nationality Law No. 26 of 2006 provides that a person born to an Iraqi mother or Iraqi father shall be considered Iraqi.⁵⁴ However, where a child is born outside Iraq special provisions apply if the father is unknown or stateless. The child of an Iraqi mother may apply for Iraqi nationality within one year of reaching majority if the child's father is unknown or stateless and the child is residing in Iraq at the time of the application.⁵⁵

LABOUR LAWS

Employment relationships in Iraq (other than the Iraq Kurdistan Region) are governed by Labour Law No. 37 of 2015. The Law has not yet been adopted by the Kurdistan Parliament, so Iraq Labour Law No. 71 of 1987 still applies in the KR-I.

Entering employment

Women may not be recruited to perform arduous or harmful work specified in accordance with executive instructions issued under the Labour Law of 2015.⁵⁶ Women are prohibited from working at night, subject to exceptions. Women are permitted to work at night in administrative or commercial work and in health, recreational, transport, or communication services.⁵⁷ In other respects, the Labour Law of 2015 supports equality of opportunity for women and prohibits discrimination in hiring and recruitment.⁵⁸

53 Ahmed, *Women's Rights*, p. 20.

54 Nationality Law, Law No. 26 of 2006, Art. 3.

55 *Ibid.*, Art. 4.

56 Labour Law No. 37 of 2015, Arts. 67(3), 85.

57 *Ibid.*, Art. 86.

58 *Ibid.*, Art. 4.

Remaining in employment

The Labour Law of 2015 includes an explicit legal guarantee of equal pay for work of equal value⁵⁹ and guarantees the right to work, with equal opportunity, to all citizens who are able to work, without any discrimination on the basis of sex (and several other grounds).⁶⁰ The Labour Law also applies to domestic workers.⁶¹ The Law prescribes penalties for discrimination on the grounds of sex, including in vocational training or the terms and conditions of employment.⁶² The penalty for discrimination is imprisonment for up to six months and/or a fine of 1 million IQD.⁶³

Women are entitled to 14 weeks paid maternity leave, which is paid by the employer.⁶⁴ Women are entitled to return to the same job as they had prior to taking maternity leave or a similar position with the same pay.⁶⁵

Workplace sexual harassment

The Labour Law prohibits sexual harassment in the workplace and any other behaviour that is offensive or results in intimidation or hostility in the work environment. Penalties for sexual harassment in employment, the search for work, or vocational training are up to six months' imprisonment and/or a fine of 1 million IQD.⁶⁶ These penalties have been criticized as not commensurate with the seriousness of the act and its economic and psychological effects.⁶⁷

Sexual harassment is defined broadly to include any physical or verbal conduct of a sexual nature or other conduct based on sex, affecting the dignity of women and men, which is undesirable and unreasonable and insulting to the victim, and the rejection by any person of this conduct leading explicitly or implicitly to a decision affecting her job.⁶⁸

HUMAN TRAFFICKING

Iraq enacted the Law on Combating Trafficking in Humans in 2012, which prohibits most forms of human trafficking.⁶⁹ However, the law does not make facilitating child prostitution an act of illegal human trafficking and requires a transaction (buying and selling) for an act of trafficking to occur.

The Anti-Prostitution Law of 1988 criminalizes sexual exploitation (use of deception, coercion, force, or threat to keep a female or male for prostitution), which applies to adults as well as children. Additionally, the Penal Code criminalizes the prostitution of a child with a penalty of up to ten years' imprisonment.⁷⁰

In 2015, the chief justice appointed judges to specialize in human trafficking cases on a full-time basis. However, the special courts for trafficking cases were abolished in 2017. Official statistics confirm that over 50 per cent of trafficking cases occur in Baghdad and that most of the victims are children.

SEX WORK AND ANTI-PROSTITUTION LAWS

Selling sex is prohibited by the Anti-Prostitution Law of 1988.⁷¹ Decisions of the Revolutionary Command Council (which has since been dissolved) increased the maximum penalty against the perpetrator who regulates prostitution or sex work to the death penalty.⁷² The Anti-Prostitution Law stipulates that prostitutes are punished by detention at a facility of the Ministry of Labour and Social Affairs in order to guide and rehabilitate women.

59 Ibid., Art. 53.

60 Ibid., Arts. 1, 4.

61 Ibid., Art. 3.

62 Ibid., Art. 8.

63 Ibid., Art. 11.

64 Ibid., Art. 87.

65 Ibid.

66 Ibid., Arts. 10, 11.

67 Dr. Sabah Sami Dawood, "The crime of sexual harassment," Faculty of Law seminar, (University of Baghdad, 2012).

68 Ibid.

69 Law on Trafficking in Persons. Adnan Sbeih, Media Center of the Supreme Judicial Council, Second Year, no. 23, September 2017, p. 3.

70 Personal Status Law, Art. 399.

71 Anti-Prostitution Law of 1988, Art. 4.

72 Decree of the Revolution Command Council (dissolved) No. 234 of 2001, <http://gjpi.org/2010/02/20/combating-prostitution-law-no-8-of-1988/>.

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