

IRAQ

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

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Amnesty International submits this briefing to the UN Committee on the Elimination of Discrimination against Women (the Committee) in advance of its preparation of the List of Issues in February 2025. This submission focuses on the legislative framework in Iraq including the Kurdistan Region of Iraq (KR-I) in relation to gender-based violence, as well as existing reporting and protection mechanisms for survivors of gender-based violence. It should not be considered an exhaustive account of the organization’s concerns in Iraq.

1. INTRODUCTION

Amnesty International submits this briefing to the UN Committee on the Elimination of Discrimination against Women (the Committee) in advance of its preparation of the List of Issues in February 2025. This submission focuses on the legislative framework in Iraq including the Kurdistan Region of Iraq (KR-I) in relation to gender-based violence, as well as existing reporting and protection mechanisms for survivors of gender-based violence. It should not be considered an exhaustive account of the organization's concerns in Iraq.

2. NATIONAL LEGISLATION REGARDING GENDER-BASED DISCRIMINATION AND VIOLENCE

2.1 LEGISLATIVE FRAMEWORK IN IRAQ

The legislation in Iraq perpetuates gender-based discrimination, lacks critical protections against gender-based violence, undermines justice for women and girls and fuels impunity for these crimes.

Iraq's **Penal Code No. 111 of 1969**¹, which also applies in the KR-I, criminalizes rape and other forms of sexual violence. It defines rape as an act committed by "any person who has sexual intercourse with a female without her consent or commits sodomy with any person without their consent," punishable by up to 15 years of imprisonment.² However, **Article 398** of the Penal Code nullifies all legal proceedings against perpetrators if they marry their victim, with any previously imposed conviction and sentence being annulled. This provision effectively condones sexual violence by allowing perpetrators to escape accountability, undermines justice, and perpetuates harm against survivors. It fosters societal victim-blaming attitudes and reinforces patriarchal norms that stigmatize rape survivors as "unmarriageable," forcing them into unwanted and abusive marriages with their attackers.³ Another concern is the failure of the law to explicitly define consent, as well as the age of consent.

The crime of rape itself is defined as an "offence against the public welfare" and as "moral indecency" rather than a violent act against the person.

Further, **Paragraphs 2 and 3 of Article 393 of the Penal Code**, outline aggravating circumstances that increase punishments for rape⁴, while **Paragraph 4** stipulates that if the victim was a virgin, she must receive compensation, a provision that discriminates against survivors and highlights societal emphasis on virginity, leading to invasive inquiries into the victim's sexual history and unethical practices like hymen testing. These provisions reinforce gender-based inequalities by linking a woman's societal value to her virginity and ignoring critical aspects like power dynamics. The Penal Code also fails to criminalize **marital rape**.

¹ Henceforth referred to as the Penal Code.

² Penal Code, Article 396. This definition is not fully consistent with the comprehensive definition of rape according to international law and standards, which includes all non-consensual oral, vaginal or anal penetration, however slight, of a sexual nature of the body of another person by any object or any bodily part.

³ Article 398 of the Iraqi Penal Code sets forth the relevant language permitting a sexual offender to evade punishment through marriage to his victim: "If the offender mentioned in this Section (Rape, 'sodomy', indecent assault) then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed. Legal proceedings will resume, or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behaviour within 3 years following the cessation of the proceedings."

⁴ These include such factors as if the victim was under 18, a relative or subordinate of the offender, or if the offender abused a position of authority or collaborated with others to commit the crime multiple times. Additional aggravating factors include the victim contracting a venereal disease, losing her virginity as a result of the crime, or the offence leading to her death, in which case life imprisonment is imposed.

Articles 128⁵ and 409 of the Penal Code provide leniency for killings carried out under the pretext of preserving "family honour"⁶ reducing the punishment for men who kill or injure their female relatives or their partners accused of adultery or being caught in a "compromising situation". For instance, while premeditated murder carries the death penalty⁷, in cases of "honour killings", the perpetrator might face a significantly lighter sentence of a maximum of three years, not proportionate to the gravity of the offence. This legal framework perpetuates gender inequality and enables the justification of violence against women and girls under the guise of "honour".

Lastly, Iraq's Penal Code **Article 41** exonerates acts of violence against women and children under specific mitigating circumstances. This article allows "discipline by a husband against his wife" or by parents and teachers against minors, provided it aligns with "customary law." This provision is often interpreted broadly, enabling the justification of physical violence in the name of discipline or cultural norms. For instance, a husband who harms his wife under the claim of exercising disciplinary authority might face reduced legal repercussions, as his actions could be considered within the scope of acceptable conduct under this article. This article has entrenched acceptance of domestic violence and perpetuated patriarchal control, leaving women and children particularly vulnerable to abuse while offering abusers a legal shield to escape full accountability.⁸

Despite the launch of the National Strategy to Combat Violence Against Women (2018–30), which was updated in 2020⁹, and the formation of the Directorate of the Family and Child Protection Against Domestic Violence (DFCPDV) in the Ministry of Interior in 2009¹⁰, to date, Iraq has failed to pass a law specifically criminalizing acts of domestic violence despite continuous efforts by Iraqi civil society and the glaring need for such a law and monitoring, reporting and protections institutions. A draft law criminalizing domestic violence was introduced in 2015 that included provisions that aim to establish legal protections for survivors, including restraining orders, penalties for violations, and shelters for women fleeing abuse. However, it has faced significant opposition from some lawmakers who argue that it conflicts with religious and societal values. These objections have stalled its progress in parliament for years.¹¹ It was last tabled and debated in the Iraqi Parliament in 2019 and 2020.¹²

DRAFT LAWS THE UNDERMINE RIGHTS AND PROTECTIONS FOR WOMEN AND GIRLS

On 4 August 2024, members of the Iraq Parliament introduced and held the first reading of a draft bill of Personal Status Law and Its Amendments (1959)¹³ that proposed changes to give religious authorities greater control over marriage, divorce, and inheritance matters for Muslim Iraqis¹⁴. The law would grant religious councils of the Sunni and Shia sects of Islam in Iraq the authority to develop their own "code of Sharia rulings on personal status matters" within four months of the passing of the law to be presented to Parliament. Parliament in turn would be obliged to approve those within 30 days but it remains unclear if Parliament would be permitted to challenge the content.

⁵ Article 128 defines mitigating circumstances, allowing reduced penalties if a crime was committed in a "fit of rage" caused by an "unjust provocation" by the victim. This provision is often invoked in cases of so-called "honour killings."

⁶ Amnesty International, "Iraq: Action must be taken on gender-based violence after murder of Tiba Ali by her father," 3 February 2023, www.amnesty.org/en/latest/news/2023/02/iraq-action-must-be-taken-on-gender-based-violence-after-murder-of-tiba-ali-by-her-father/

⁷ Amnesty International opposes the death penalty in all circumstances.

⁸ Anfal Abed, "Violence Against Women in Iraq: Between Practice and Legislation", 8 July 2020, London School of Economics,, www.blogs.lse.ac.uk/mec/2020/07/08/violence-against-women-in-iraq-between-practice-and-legislation/

⁹ Government of Iraq and the UNFPA, *The National Strategy to Combat Violence against Women and Girls 2018-2030*, 14 August 2020, www.iraq.unfpa.org/en/publications/national-strategy-combat-violence-against-women-and-girls-2018-2030

¹⁰ Executive order No.13966 issued by the Under-Secretary for Police Affairs in the Ministry of the Interior.

¹¹ United Nations Assistance Mission for Iraq (UNAMI) and Office of the United Nations High Commissioner for Human Rights (OHCHR), *Accountability for Domestic violence in Iraq: Promoting justice and non-discrimination | HRO Report*, 7 March 2024, www.iraq.un.org/en/262546-accountability-domestic-violence-iraq-promoting-justice-and-non-discrimination-hro-report

¹² Al-Aalem Al-Jadeed, "Alarming Rise in Domestic Violence Cases in Iraq Amid Stalled Law", 9 June 2024, www.al-aalem.com/en/alarming-rise-in-domestic-violence-cases-in-iraq-amid-stalled-law/

¹³ Henceforth referred to as the Personal Status Law.

¹⁴ The Personal Status Law applies to all Iraqis irrespective of their religion. The proposed amendments to this law would only apply to Iraqi Muslims.

While welcome changes have been made to the initial draft since the first and second reading¹⁵ following outcries by women's rights defenders- notably reaffirming the current legal minimum age of marriage of 18 or 15 with the approval of a judge with no objection from guardians, withdrawing proposals that would have potentially permitted girls as young as nine to be married. If passed, however, the proposed amendments would still seriously undermine the right to equality before the law as its provisions stipulate the application of the rules of the sect of the husband where it differs from the wife's. The proposed amendments also risk enabling the recognition of unregistered marriages, which are often informal contracts conducted by religious leaders without state oversight, and which facilitate child marriage.¹⁶

RECOMMENDATIONS

Amnesty International recommends that the authorities in Iraq:

- Repeal Articles of the Penal Code that consider "honour" as a mitigating circumstance for murder or other violent crimes against women and girls and introduce legislative reforms to ensure that perpetrators of gender-based and sexual violence and so-called "honour killings" are held fully accountable with penalties proportionate to the gravity of the crimes, without resort of the death penalty.
- Pass a domestic violence law that is in line with international human rights law and standards and Iraq's international obligations.
- Reject entirely the bill of amendments to the Personal Status Law to ensure that the safety, dignity and rights of women and girls are not jeopardized and remain a state obligation under international human rights law.
- Authorities at the highest level should make clear that law enforcement and judicial authorities must reject customary, traditional, religious and gendered norms that discriminate against women and girls when invoked by suspects of domestic violence and/or their families to justify, deny and evade responsibility for that violence.

2.2 KURDISTAN REGION OF IRAQ

Though positive steps had been taken by the parliament of the KR-I to combat gender-based violence, including domestic violence, ambiguities and inconsistencies in the law continue to undermine protection and justice, allowing perpetrators to evade accountability.¹⁷

Law No. 8 to Combat Domestic Violence, 2011,¹⁸ includes a non-exhaustive list of examples of domestic violence, notably encompassing violence against adult family members and marital rape. Despite provisions under **Article 8 of the Domestic Violence Law** allowing judges to apply harsher penalties through other legal statutes, the lack of clear guidance on when such measures should be invoked raises concerns about the adequacy of the law in addressing severe cases of violence. Moreover, while **Article 3** of the law mandates the establishment of specialized courts for domestic violence cases, only one such court exists in KR-I, operational since January 2022 in Sulaimaniya city, due to a shortage of qualified judges and perceived political inertia. These systemic gaps, coupled with gender-based stereotypes in judicial practices, undermine the law's ability to ensure proportional penalties. The treatment of marital rape as a misdemeanour highlights the disparity between the gravity of the offence

¹⁵ On 3 September 2024, Iraq's parliament attempted to hold a second reading of the draft bill but opposing MPs had waged a boycott campaign that succeeded in breaking quorum, but a second reading nonetheless took place on 16 September 2024.

¹⁶ Amnesty International, "Iraq: Reject changes to Personal Status Law which would allow child marriage and further entrench discrimination", 10 October 2024, www.amnesty.org/en/latest/news/2024/10/iraq-reject-changes-to-personal-status-law-which-would-allow-child-marriage-and-further-entrench-discrimination/

¹⁷ Amnesty International, *Daunting and Dire: Impunity, Underfunded Institutions Undermine Protection of Women and Girls From Domestic Violence in the Kurdistan Region of Iraq* (Index: MDE 14/8162/2024), 3 July 2024, www.amnesty.org/en/documents/mde14/8162/2024/en/

¹⁸ Henceforth referred to as the Domestic Violence Law.

and the imposed sanctions. Another concern is that **Article 5** forces women and girls who bring criminal cases under this law to undergo a mandatory reconciliation process with the suspect prior to legal proceedings. It states that the investigative judge must send the case to a reconciliation committee comprising social workers, lawyers, a women's protection NGO as well as representatives from the authorities. This seriously undermines a survivor-centered approach to domestic violence, as it treats survivors and abusers as equally culpable, limiting access to justice. In practice, survivors are often pressured into accepting outcomes that dismiss their autonomy and rights.

RECOMMENDATIONS

Amnesty International recommends that the authorities in the Kurdistan Region of Iraq:

- Reform the current legislative framework to ensure that reconciliation and mediation processes are not a prerequisite for criminal proceedings.
- As stipulated in the Domestic Violence Law, establish domestic violence courts, including in administration areas outside those that are overseen by judges dedicated solely to cases of domestic violence
- Collect and publish data regarding complaints, prosecutions and sentences of domestic violence and make use of these data to inform policies aimed at tackling impunity.
- Implement comprehensive training for law enforcement and judicial officials to eliminate discriminatory attitudes and strengthen support mechanisms for survivors of violence
- Implement survivor-centred support systems and public awareness campaigns to combat stigma and challenge harmful cultural attitudes.
- Raise public awareness of domestic violence and other forms of gender-based violence, including its structural causes rooted in gender-based stereotypes, discrimination and oppression.

3. REPORTING AND SHELTER MECHANISMS FOR WOMEN AND GIRL SURVIVORS OF DOMESTIC AND OTHER FORMS OF GENDER-BASED VIOLENCE

3.1 IRAQ

In central Iraq, there is no centralized institution for reporting instances of gender-based violence as envisioned in the National Strategy to Combat Violence against Women and Girls 2018-2030.¹⁹

According to a report by United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), "protection centres" or shelters for survivors of domestic violence have been established by the authorities in some areas in Iraq but exist in a legal vacuum given the lack of legislation regulating their establishment, management and protection. There is little publicly available information on the numbers of operational shelters, their capacity and services provided to survivors.²⁰ While the establishment of NGO-run shelters, in place of government-run shelters, is not criminalized, they also operate without clear legal protections. According to information available to Amnesty International, directors and workers at NGOs operating these shelters or safe houses have been subject to judicial harassment for their work including in one case facing accusation of running an illegal brothel.

¹⁹ Government of Iraq and UNFPA, *The National Strategy to Combat Violence against Women and Girls 2018-2030*, (previously cited), pp.12

²⁰ UNAMI and OHCHR, *Accountability for Domestic violence in Iraq* (previously cited), pp.11

RECOMMENDATIONS

Amnesty International recommends that the authorities in Iraq:

- Enact legislation to establish, recognize and protect shelters, including those run by non-governmental organizations.
- Urgently establish shelters for different age groups, genders and survivors of threats of varying levels of severity and ensure that they are adequately resourced and staffed.
- Ensure access to shelters to all who want such protection and provide this protection as soon as possible without judicial prerequisites such as filing a criminal complaint.

3.2 KR-I: UNDERFUNDED AND INADEQUATE STATE INSTITUTIONS

Unlike the rest of Iraq, the Domestic Violence Law enacted in the KR-I in 2011 establishes and recognizes reporting and protection institutions for survivors of gender-based and domestic violence but these remain woefully underfunded and deprioritised by the Kurdistan Regional Government (KRG).²¹

The Directorate for Combating Violence Against Women (DCVAW), part of the KRG's Ministry of Interior and established in 2007²², serves as the main entity for reporting and investigating abuse.²³ However, it suffers from critical budget shortages, with no allocated annual budget, and faces societal resistance. This financial and societal strain limits its ability to assist survivors effectively, leaving many to navigate lengthy and expensive legal processes alone.

A similar strain is put on the only three permanent shelters and one temporary shelter that exist in KR-I and which are accessible only to women and girls at immediate risk of severe harm or death. Entry to these shelters requires a court order, which necessitates filing a criminal complaint—something many survivors avoid due to fear of retaliation and societal stigma. Once in the shelters, survivors face severe restrictions on movement, communication, and personal freedom, which Amnesty International has deemed as amount to arbitrary deprivation of liberty.

During field visits in March and September 2023, Amnesty International has observed that shelters are overcrowded, understaffed, and in disrepair, lacking essential services like vocational training, education, or psycho-social support. This leaves survivors unprepared to support themselves if family reintegration is not an option. This neglect stems from insufficient political will to address gender-based violence beyond lip-service by high-level KRG officials.

Many survivors contemplating seeking help are also deterred by the fact that exit from a shelter is only granted through court approval, often contingent on dropping charges or on when a judge and team of shelter workers deem it safe to exit. This is compounded by lengthy court process which have led many women and girls to exit the shelter pre-maturely to re-enter abusive situations. In some cases documented by Amnesty International, such women forced into pre-mature exits were killed or exposed to further violence by their abusers.

RECOMMENDATIONS

Amnesty International recommends that the KR-I authorities:

²¹ Amnesty International, *Daunting and Dire* (previously cited).

²² Article 3(5) and 3(6) of the Domestic Violence law respectfully recognize the DCVAW as the “competent authority to follow up on domestic violence issues” and state that Ministry of Interior shall form a special police unit made up of mostly female officers to deal with domestic violence issues, now part of the DCVAW.

²³ Amnesty International, *Daunting and Dire* (previously cited).

- Allocate sufficient resources to the implementation of Act No. 8 of 2011 on Combating Domestic Violence in the Kurdistan Region (the Domestic Violence Law), including by ensuring that the Directorate for Combating Violence Against Women and the Family (DCVAW) receives sufficient funding to carry out its mission and provide effective protection of survivors and avoid staff burnout.
- Amend laws and practices to ensure shelters are adequately staffed; protect survivors of domestic violence; ensure their access to health services, including counselling and other services; and ensure that the shelters can adopt a survivor-centred approach.
- Urgently end the arbitrary restrictions on liberty of women and girls in shelters, including by ending the requirement for a survivor to have a court order to leave the shelter.
- Improve the living conditions in shelters to ensure that women and girls can live in dignity and do not feel forced to drop charges against their abusers in order to leave the shelter.

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