



seed foundation
Social Educational Economic Development

Legal Framework

For Gender-Based Violence in the Kurdistan Region of Iraq 2021



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SEED Foundation is a local NGO in the Kurdistan Region of Iraq, committed to protecting, empowering, and supporting the recovery of survivors of violence and others at risk. Our approach to this mission is integrative and holistic. We provide quality and comprehensive services, including mental health and psychosocial support (MHPSS), legal, protection, and shelter services; training and education to those working to protect and serve survivors; and policy and advocacy to strengthen laws, policies, practices and protections for vulnerable people, and promote social change.

This Gender-Based Violence (GBV) Legal Framework provides an analysis and overview of the primary laws in Iraq and the Kurdistan Region of Iraq that provide legally binding protections against GBV for survivors and those at risk of GBV. The first section of the Framework provides an overview of protections by law and the second section provides an overview of protections by crime. SEED created the Framework to be used as a resource for first responders, government actors, lawyers, NGOs, and others working to protect survivors and those at risk of GBV, or for policy and advocacy work with the ultimate goal of increasing protections and improving services for survivors and those at risk of GBV, and helping them claim their lawful rights. This document was developed with the support of the United States Government.

The Law of Combating Domestic Violence in Kurdistan Region - Iraq 8/2011

Defined & Penalized Criminal Behaviors

This law prohibits domestic violence defines as *“every act and speech or threat of doing so based on gender within family relationships constituted on marriage or blood to the fourth degree or whoever is legally included in the family, which may harm an individual physically, sexually and psychologically and deprive his/ her freedom and liberties.”*

This law **prohibits physical, sexual, psychological, socio-economic violence and harmful traditional practices perpetrated within families** (up to fourth degree of kinship based on law, marriage, or blood), including but not limited to:

- Exchange marriage
- Marriage of minors
- Marriage in exchange of ransom (blood money)
- Female Genital Mutilation/ Cutting
- Forced divorce
- Cutting off family/ kinship or disowning family members
- Husband forcing his wife to engage in immoral acts or prostitution
- Forcing family members to resign from their jobs without their consent
- Forcing children to work, beg or drop out from school
- Suicide due to domestic violence
- Miscarriage caused by domestic violence

- Battering children and family members under any justification
- Humiliation, insulting or cursing family members, looking down upon, hurting or psychological pressuring, violating their rights
- Marital rape (Article 2)

This law guarantees protection to survivors of domestic violence. It provides the following protections:

1. Protection Order: (Article 4)

- A pledge from the defendant not to stand against the survivor and family members (not to perpetrate violence against survivor and other family members)
- Referral and transfer of survivor for medical treatment where necessary and/ or requested by the survivor
- Court order for a specified duration to prevent the defendant from entering into the family home where there is a risk to the survivor and/ or other family members.

2. Confidentiality (Article 2(2))

- The procedures pertaining to investigation and trial in cases of domestic violence will be confidential.

Supplementary Notes

Additional Information on the Law

- This law encompasses the legal framework for gender-based violence within the domestic scope (including parents, spouses, siblings, aunts, uncles, cousins, and grandparents) including any physical, psychological violence and harmful traditional practices that are considered a misdemeanor. It also includes protection provisions, such as protection orders and right to referrals to shelter.
- A GBV case is prosecuted under the Law of Combating Domestic Violence if:
 - it was perpetrated within the family. Family are those who have kinship to fourth degree, or in marriage or legally recognized as family members and;
 - it was perpetrated on the basis of gender, and;
 - it is a misdemeanor (where the penalty is less than 5 years).

Related Laws:

- Some of the crimes specified under this law are also covered under the Penal Code 111/1969, the Personal Status Law 188/1959, Combating Prostitution Law 8/1988 and the Law of Combating Trafficking in Persons 28/2012 enforced in Kurdistan region by the law 6/2018. At the discretion of the judge, **whichever law specifies the greatest penalty for the committed crime will be deemed as applicable.**

Under Iraqi laws:

- A **felony** is a crime punishable by 5 years or more
- A **misdemeanor** is a crime punishable by less than 5 years.
- The law **prohibits physical violence** perpetrated by a family member, which are considered infringement of a person's right to life, liberty and security. This type of violence could include: violence or neglectful acts that cause bodily injury, pain,

impairment, or discomfort. **Examples:** hitting, slapping, choking, cutting, shoving, grabbing, pinching, biting, hair pulling.

- This law **prohibits sexual violence and rape** by a spouse. Particularly, it prohibits rape within a marriage and other sexual violence. Sexual violence means any form of non-consensual sexual contact that does not result in penetration. **Examples:** attempted rape, unwanted kissing, fondling, or unwanted touching of genitals and buttocks with body parts or other objects.
- This law **prohibits psychological violence** by a family member. This is an infliction of mental or emotional pain or injury that is intended to frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure or wound. Examples: threats of physical or sexual violence to self, survivor or children or to her family or friends, intimidation, humiliation, forced isolation from family, friends or work, stalking, harassment, unwanted attention, remarks, gestures or written words of a sexual and/or menacing nature, destruction of cherished things.

NOTE: it is compulsory for health, education and other officials to report when they become aware of a domestic violence case (Law of Combating Domestic Violence Article 2(3/2)) Mandatory reporting is against a survivor centred approach, including respect for the wants and wishes of the survivor, as well as preservation of confidentiality.

NOTE: this law mandates a special committee to reconcile between a survivor and the perpetrator during the legal investigation stages. Reconciliation and mediation mechanisms sometimes could be against best practices and a survivor centred approach. Additionally, any mechanism designed to encourage a survivor to 'drop legal charges' promotes legal impunity and is harmful both to the survivor, society and weakens the criminal justice system.

Iraqi Penal Code 111/1969

Defined & Penalized Criminal Behaviors

This Code rules on crimes, offenses, and their punishment. It prohibits the following:

Physical Violence

- **Physical assault:** Physical assault is defined as wounding, beating, use of force, or use of harmful substances that cause a permanent disability or cause harm/illness (Articles 412 – 413), assaulting a pregnant woman (Article 419), or where the act leaves no mark or trace on the body (Article 415).
- **Assault by carelessness:** Assault by carelessness is defined as causing harm to another through negligence, thoughtlessness, or lack of due care and attention, or disregard for the law (Article 416).
- **Murder:** Murder with intent is prohibited and punishable by life imprisonment (Articles 405). Honor is not a legal excuse or mitigating circumstance (Law No. 14 of 2002).
- **Assault leading to death:** someone wilfully assaulting another by any unlawful act without intent to kill that person, but the assault leads to death (Article 410).
- **Manslaughter:** Manslaughter is killing or causing the death of a person as a result of negligence, thoughtlessness, lack of due care and attention, or lack of regards for the law (Article 411).
- **Suicide:** Encouraging, assisting, causing or inciting suicide is prohibited whether or not it results in death (Law 42/2004). There is no punishment for **attempted suicide for the attempt survivor** (Article 408). Apart from the Iraqi Internal Security Forces Penal Code No. 14 of 2008, which is enforced in the Kurdistan Region by the Law No. 14 of 2011, according to that law, attempting or inciting suicide considers to be a crime if it is carried out by an employee of the local security forces (Article 21).
- **Kidnapping or depriving another of their liberties:** This includes offenses affecting the freedom of an individual and the deprivation of such freedom (Articles 421 – 425).
- **Causing miscarriage:** all physical violence or commission of an unlawful act against a pregnant woman that results in a miscarriage is prohibited. (Article 419)

Psychological Violence

- **Psychological violence:** Psychological violence is defined as threatening another with the commission of a felony, or any threats by words or actions, in written or spoken reference, or through a third party (Articles 430 – 432). Psychological violence also includes defamation or insult directed at another in private or public space (Article 435).

Sexual Violence

- **Rape:** Rape is defined as sexual intercourse with a female without her consent, or sodomy with any person without their consent (Article 393). Consent for sexual contact is not accepted for a minor (outside of a legal marriage). Sexual intercourse, including sodomy, is prohibited with a family member (i.e. Mahram) even with consent. (Article 385)
- **Seduction:** Seduction with the false promise of marriage for the purpose of sexual intercourse (Article 395) or consummating a marriage with the knowledge that it is a void union and concealing such information from the wife is prohibited (Article 376)
- **Sexual assault:** Sexual assault or the attempt of such with the use of force, menaces, deception, or other means (Article 396).
- Committing an **immodest act without consent** of the other in private or public settings (Article 400).
- **Sex with a minor:** Sex with someone under 18 years old even with consent is prohibited (Article 394).
- **Sexual assault of a minor:** Sexual assault of someone under 18 years old or attempt of such with or without use of force, menaces, deception and other means (Articles 396 – 397).
- **Inciting or assisting a minor to engage in sexual intercourse:** Inciting or assisting someone under 18 years old to engage in sexual intercourse outside of marriage or in prostitution (Article 399).
- **Indecent advances:** Indecent advances to, or assailing another with words, actions or signs, particularly in public regarded as crime (Article 402/1).

Supplementary Notes

Additional Information on the Law

- This code was amended in the Kurdistan Region of Iraq (KRI) a number of times in 2001, 2002, 2004 and 2008 in favor of human rights and gender equality. In 2002, amendments were introduced to ensure that ‘honor’ is no longer considered a mitigating circumstance in instances of a crime.
- This code encompasses the **legal framework for criminal behavior**, including misdemeanor violence and **any other violence** considered a felony, although no specific reference is made to violence on the basis of gender. **The code prohibits sexual assault, rape, physical violence, amongst other types of violence.**
- A GBV case is prosecuted under the Penal Code if it is considered:
 - a felony that is perpetrated by a family member
 - a felony that is perpetrated by a non-family member
 - a misdemeanor perpetrated by a non-family member
 - where this code provides for the greater penalty for the crime committed

NOTE: This code makes it compulsory for public servants to report cases where there is/ or suspicion of a commission of an offense. Any crime that is not specified under Article 3 of the Criminal Procedure Code 23/1971 or not exempted by a specific law, will be considered a ‘public right’, and hence, a member of the public has the right to report/ inform and it is mandatory for public servants to report

(Criminal Procedure Code 23/1971 Article 48). Mandatory reporting is against a survivor centred approach, including respect for the wants and wishes of the survivor, as well as preservation of confidentiality.

NOTE: In cases where the perpetrator commits rape and sexual assault of another adult or child, but marries the survivor, it is considered mitigating circumstances(Article 398). This is a cause for concern as it may promote legal impunity for and increases the risk of sexual violence.

Confidentiality:

- This code prohibits breach of confidentiality by “**any person who by reason of his office, profession, trade or the field of nature of his work is privy to confidential information and who discloses such information in circumstances other than those prescribed by law**” (Article 437)
- The code prohibits **publishing any information pertaining to an investigation, proceeding or trial in relation to cases of gynecology, marriage, inheritance, adultery, or the names and/ or photographs of survivors of sexual violence and juvenile defendants.** (Article 236)

Iraqi Personal Status Law 188/1959

Defined & Penalized Criminal Behaviors

This law rules on marriage, divorce, custody of children, inheritance, dowry, and other personal status matters, including but not limited to:

- **Marriage outside of the court is prohibited** (The Law of Amending Implementation of the Amended Personal Status Law in Kurdistan Region- Iraq 15/2008).
- Marriage is defined as ‘**a voluntary contract between a man and a woman**’ (Amendment 15/2008, Article 1 (1))
- **This law prohibits a third party from coercing another into marriage without their consent.** Forced marriage shall be considered void if unconsummated. If consummated, it shall be suspended. **Right to choose who you marry is permitted and no person is permitted to stop this marriage** (Law 15/2008 Article 6).
- **The legal age for marriage is 18**, unless under special circumstances where a request to marry is made, the ‘wali Al-sharai’ (Sharia guardian) consent and a medical committee assessment of the physical and mental capacity of the minor. The final decision is made by the judge (Law 15/2008, Article 5).
- **Polygyny is permitted only in exceptional circumstances where the case meets a set of five strict requirements, which the husband must provide documentation of for the court** (Law 15/2008, Article 1). Polygamous marriage entered into outside of the court is prohibited and punishable (Law 15/2008).
- **Divorce and separation are the right of both the man and the woman in a marriage** (Articles 40 – 50). Both men and women have the right to ask for separation/divorce.
- **Child custody and guardianship rights, dowry, inheritance, and alimony rights are also laid out** under this law.

Supplementary Notes

Additional Information on the Law:

- Polygyny is prohibited unless under very special circumstances as specified by law. The burden of proof that these requirements are met is on the man.
- **Divorce and separation is permitted although the grounds are not equal for women and men.** Similarly, custody and guardianship rights are not shared equally.

Legal History:

- This law was amended in the KRI multiple times to **enhance gender equality and empower women**, most notably in 2008 underpinned by “civil society’s aspirations” (Amendment 15/2008)
- There are complementary laws in relation to personal status, including the Rights of Divorced Wife in Housing 77/1983, Personal Status Law for Foreigners 78/ 1931 in relation to personal status cases of foreign nationals.

Application:

- The law is widely used by those who work with survivors of GBV in the KRI, including DCVAW and the Law of Combating Domestic Violence Court.

The Law of Combating Prostitution Law 8/1988

Defined & Penalized Criminal Behaviors

This Law prohibits **brokering, assisting, exploiting, facilitating prostitution** by whatever means (Article 3).

Prostitution is defined as: The practice of fornication or sodomy with more than one person in exchange of payment.

Brokering is defined as: The mediation between two persons with the intention of facilitating the act of prostitution in any way. This includes the incitement even with the consent or request of one of them. It also includes the exploitation for prostitution of a person whether complicit or under duress. (Article 1)

- If the person prostituted is found to have been **tricked, coerced, forced or threatened into prostitution, they shall be fairly compensated** (Article 5).
- The person(s) perpetrating this crime against a survivor is punishable by imprisonment and **if the survivor is under 18 years old, it is considered an aggravated crime** (Article 5).

Supplementary Notes

Additional Information on the Law

- A sex worker held against their will or by deception must be treated as **a survivor** and rightfully compensated.
- The law provides severe penalties against those brokering, assisting, exploiting, facilitating prostitution.

Additional Information on the Crime

- Forced or coerced sex in exchange for material resources, services and assistance targets vulnerable women and girls who are unable to meet basic human needs for themselves and/or for their families.
- Forced prostitution can be perpetrated by any person perceived as powerful, in a privileged position, in possession of money, or in control of material resources and services.

NOTE: It is important that the criminal justice system focuses on bringing those responsible for brokering, assisting, exploiting sex workers to justice. Sex-work, including commercial sex-work, is highly exploitative. The criminal justice system should **accurately identify and treat sex workers as victims of a crime by default, and provide the necessary protection and response services in accordance with this and other Kurdistan Region of Iraq laws to allow for healing, recovery, and reintegration.**

NOTE: Under the Penal Code 111/1969 convicted individuals will stay under police supervision after release from prison, and in some circumstances including where the convicted is a 'habitual offender' (Articles 108-109). This may act as a deterrent for those engaging in exploitative sex-work brokering.

Iraqi Labor Code 71/1987

Defined & Penalized Criminal Behaviors

This code ensures the right to access equal employment opportunities and the right to equal work conditions guaranteed without discrimination on the basis of sex, race, language or religion (Article 2).

- This code ensures the right to equal and adequate pay for equal work (Article 4). Due wages/salary cannot be withheld from the worker (Article 51).
- This applies to all workers in the **private, mixed and co-operative sectors** (Article 8).
- The rights set therein are **considered minimum standards** and supplementary rights and benefits can be given (Article 9).
- **Working conditions and employment rights are laid out**, including right to breaks, paid holidays, maximum working hours, paid and unpaid leave, sick leave, maternity leave (Articles 54 – 65).
- **Specific provisions are laid out for the protection of female workers** including maternity and nursing leave, obligation to display all protections related to female workers on a notice board, etc. (Articles 80 – 89).
- Where an employee has committed a **misdemeanour or crime against another worker or a member of the family**, the employer can terminate his/her contract unilaterally without notice (Article 37(2))

Supplementary Notes

Additional Information on the Law

- This is an extensive code that lays out the **rights and obligations of all laborers, including equal right and opportunity of employment, equal payment for equal work, equal rights at the workplace, paid maternity leave, unpaid leave for working mothers, paid time off for nursing mothers, etc.**

Application

- This code is only applicable to the Kurdistan Region of Iraq, while the area outside of the KRI is governed by the more recent Labor Law 2015.
- In the Kurdistan Region of Iraq, there are specialized labor courts to adjudicate legal disputes concerning employment and workers whose employment rights are believed to have been violated.

NOTE: While it is positive that the code provides some protections for women, such as paid maternity leave and nursing leave, **the code also includes laws that discriminate against women**, including the prohibition of women from working in certain sectors and women working overnight in some sectors.

NOTE: Immediate termination of a contract can come where a person is found guilty of a misdemeanor, including GBV, at work or domestically.

Combating Trafficking in Person Law 6/2018

Defined & Penalized Criminal Behaviors

This law is an enactment of the Law of Combating Trafficking in Persons No. 28 of 2012 that was legislated in Iraq

This law prohibits human trafficking, which is defined as an act of recruitment, transportation, transfer, housing, or receipt of persons through threat or use of force or other forms of coercion, kidnapping, fraud, deception, misuse of power, exchange of money, or privileges to an influential person in order to sell and exploit the trafficked individuals by means of:

- Prostitution
- Sexual abuse
- Forced labor
- Enslavement
- Beggary
- Trading of human organs
- If the survivor is a minor, a woman, or is disabled, one or more of these alone is aggravating circumstances and calls for more severe punishment (Article 6)
- **Consent** by a survivor to human trafficking **shall not be accepted as a defense** (Article 10).
- **The State has ultimate responsibility** to provide the necessary assistance to survivors of trafficking (Article 11).

Supplementary Notes

Additional Information on the Law

- This law **protects many basic fundamental rights** including the right not to be held in slavery and servitude, the right not to perform forced or compulsory labor, the right of security of person, and the right to not be the subject of inhuman or degrading treatment or punishment.
- This law consists of 14 articles that cover the stiff penalties for anyone who engages in human trafficking.

Additional Information on the Crime

- Trafficking in Persons refers to a crime whereby **traffickers exploit and profit at the expense of adults or children by compelling them to perform labor or engage in commercial sex**. When a person younger than 18 years old is used to perform a commercial sex act, it is a crime regardless of whether there is any force, fraud, or coercion.

Application

- In the Kurdistan Region of Iraq, **the Directorate of Combatting Human Trafficking is responsible for implementing this law and dealing with all trafficking cases**. According to the KRG/Ministry of Interior's instruction No. 3 of 2018

NOTE: this law provides for a range of services and protections for survivors of trafficking to be provided by the KRG. Response services to survivors of trafficking and GBV are critical for their healing, recovery and reintegration.

Combating the Misuse of Telecommunication Equipment Law 6/2008 in Kurdistan region - Iraq

Defined & Penalized Criminal Behaviors

This law prohibits anyone from misusing any telecommunication devices and/ or the internet, for the purpose of:

- threatening
 - Spreading rumors
 - Spreading misinformation
 - Using profanity
 - Spreading information that creates fear or makes room for gossip
 - Using videos or photos, or SMS that counters public values
 - Taking a photograph of something/someone without permission
 - Any conduct that hurts the honor or incites a crime/immoral act
 - Spreading information private to an individual or family through whatever means, even if they are true, if as a result of their dissemination/sharing defames or causes harm to another (Article 2)
- This law prohibits **harassment** via any telecommunication device and/ or the internet. (Article 3)
 - If as a result of misuse of telecommunication equipment (as defined under the Law) a crime is committed, then the person responsible for the crime under the Telecommunication Law would be considered a partner to that crime (Article 4)

Supplementary Notes

Additional Information on the Crime

- This law covers **technology facilitated gender-based violence**, including a variety of behaviors including image-based sexual abuse, online stalking, sexual and other harassment, cyber stalking, cyberbullying, doxing/ sharing private photos without consent, trolling and other abuse carried out using computer and/ or mobile phone technology and internet. Technology facilitated GBV can be used to sexually exploit someone else, including using threat, coercion, blackmail for sex or financial gains.
- This type of violence can be perpetrated by anyone including individuals or groups, known or unknown to those who are targeted. Girls and women are disproportionately affected by this type of violence in the cultural context of shame and honor; they are particularly exposed to social stigmatization, marginalisation by their friends/ community, survivor blame, and further violence from their families.
- It is considered an aggravated circumstance where a person committing the crimes listed in the Misuse of Telecommunications Equipment Law 6/2008 is a member of the armed and security forces, or uses confidential information obtained as a result of their work (Article 5)

| By Crime

Physical Violence

Definitions & Examples

Physical violence is any act of physical violence, that is not sexual, that causes bodily injury, pain, impairment or discomfort.

Examples: hitting, slapping, choking, cutting, shoving, grabbing, pinching, biting, hair pulling, burning, strangulation, shooting, acid attacks or use of any weapons. This also includes forced pregnancy, forced abortion, knowingly transferring sexually transmittable infections (STIs), denial of medical care.

Applicable Laws

Criminal behavior is generally classified in different ways in the criminal law, but in this booklet the crimes are divided on the basis of physical, sexual and psychological violence.

Homicide: The act of killing another person with the intention to do so (Penal Code 111/1969, Articles 405 – 406).

Honor-based killing: ‘Honor’ as a motive to commit a crime is not a mitigating circumstance in the Kurdistan Region (Law No. 14/2002, Article 1).

Manslaughter: Accidental killing of another without premeditation or intent to kill through negligence, thoughtlessness, lack of due care or regard for the law (Penal Code 111/1969, Articles 410 - 411).

Assault without intent to kill but results in killing: Willfully assaulting another by striking or wounding with the use of force or harmful substances or by committing another unlawful act with no intention to kill (Penal Code 111/1969, Article 410).

Suicide/attempted suicide: Encouraging, assisting, causing or inciting suicide (Law No. 42/2004, Article 1). There is no punishment for attempted suicide for the attempt survivor (Article 408). However, according to the Iraqi Internal Security Forces Penal Code No. 14 of 2008, which is enforced in the Kurdistan Region by the Law No. 14 of 2011, attempting or inciting suicide considers to be a crime if it is carried out by an employee of the local security forces (Article 21).

Within the family: those who cause suicide through acts of domestic violence are punishable (Law of Combating Domestic Violence in Kurdistan Region- Iraq 8/2011, Article 2(1)).

Physical assault: Willfully assaulting another by wounding/beating with the use of force or harmful substance or by committing another unlawful act with or without intent to cause permanent disability, illness, or injury. (Penal Code 111/1969 Articles 412 – 413). Within the family: battering of the children or family members under any justification is specifically prohibited (Law of Combating Domestic Violence 8/2011 Article 2).

Assaulting a pregnant woman: Assaulting a pregnant woman by beating or injuring her, with the use of violence or by administering to her toxic substances or by committing another unlawful act with or without the intent to cause a miscarriage. (Penal Code 111/1969, Article 419). Within the family: causing a miscarriage as a result of domestic violence is penalized (Law of Combating Domestic Violence 8/2011, Article 2).

Minor assault: Minor assault or injury which leaves no trace on the victim’s body is punishable (Penal Code 111/1969, Article 415).

Assault by carelessness: Causing another harm or to become ill through negligence, thoughtlessness, or lack of due care and attention, or disregard for the law (Penal Code 111/1969, Article 416).

Sexual Violence

Definitions & Examples

Sexual violence is sexually abusive behaviour or sexual act forced upon another who is perceived by the attacker to be weaker/more vulnerable than them. Sexual violence takes many forms, including rape, sexual slavery and/or trafficking, forced pregnancy, sexual harassment, sexual exploitation and/or abuse, forced abortion, and technology facilitated GBV.

Rape: Non-consensual penetration (however slight) of the vagina or anus, with a penis.

Sexual assault: Any form of non-consensual sexual contact that does not include penetration. Examples: attempted rape, unwanted kissing, fondling, or unwanted touching of genitalia and buttocks with body parts or other objects.

Child sexual abuse: Any act where a child is used for sexual gratification including any sexual relations/interactions with a child. Child sexual abuse can be perpetrated by someone the child trusts, or anyone in a position of power, authority, and control over a child.

Sexual exploitation: Any abuse of a position of vulnerability, differential power or trust for sexual purposes, including, profiting monetarily, socially, or politically from the sexual exploitation of another. Forced/ coerced prostitution and human sex-trafficking are both underpinned by sexual exploitation to varying degrees as one party (third party) often benefits/ benefits from by stripping rights and dignity from another person.

Forced prostitution: This is forced or coerced sex of a person in exchange for material resources, services, and assistance, usually targeting highly vulnerable women or girls who are unable to meet basic human needs for themselves and/or for their family. This term is an euphemism for human-trafficking.

Trafficking in persons: A crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor or engage in commercial sex.

- When there is any force, fraud, or coercion of an adult 18 years or older to engage in sex-work and a third party is involved, it is considered human sex-trafficking.
- When a person younger than 18 years old is used to perform a commercial sex act, it should be considered a human-trafficking crime regardless of whether there is any force, fraud, or coercion.

Sexual harassment: This is unwanted and unwelcome sexual comments, advances, or requests for sexual favors, and other verbal or physical conduct of a sexual nature that humiliates, threatens, or embarrasses a person. It often involves a continuous pattern of harassment ranging from uninvited touching, sexist remarks, and/or jokes.

NOTE: the line between these types of crimes can often be blurry, it helps to understand the nature of the crime and how the law defines each of these crimes to help make a distinction.

NOTE: preserving confidentiality in all cases of GBV is incredibly important, as any breach of confidentiality can cause undue harm to the survivor and/ or the family and others. Confidentiality in cases of sexual violence is particularly important, where the survivor can oftentimes be blamed by the family and/ or community for the violence they were subject to and where the notion of 'honor' is at play. Breach of confidentiality is prohibited by the Penal Code:

- This code prohibits breach of confidentiality by "any person who by reason of his office, profession, trade or the field of nature of his work is privy to confidential information and who discloses such information in circumstances other than those prescribed by law" (Article 437)
- The code prohibits publishing any information pertaining to an investigation, proceeding or trial in relation to cases of gynecology, marriage, inheritance, adultery, or the names and/ or photographs of survivors of sexual violence and juvenile defendants. (Article 236)

Applicable Laws

Rape:

- Non-consensual sexual intercourse between husband and wife is prohibited (Anti-Domestic Violence Law 8/2011, Article 2(1)(13)).
- Non-consensual sexual intercourse (i.e., rape) is prohibited (Penal Code 111/1969, Article 393).

Rape is defined as sexual intercourse with a female without her consent, or sodomy with any person without their consent. This is a narrow definition of rape. Aggravating circumstances to the crime, which increase the punishment for the perpetrator, include: if the survivor is under 18 years old, if the perpetrator is a family/relative, if there is sexual exploitation by someone in a position of power, etc.

NOTE: In cases where the perpetrator commits rape and sexual assault of another adult or child, but marries the survivor, it is considered mitigating circumstances if the perpetrator marries the survivor (Article 398). This is a cause for concern as it promotes legal impunity for and increases the risk of sexual violence.

Sexual violence:

- Sexual assault of another (or attempt of) with the use of force, menaces, deception, and other means is prohibited (Penal Code 111/1969, Article 396).

Child sexual abuse:

- Sexual intercourse with a minor under the age of 18 years is prohibited. 'No consent' is implied in all instances where the survivor is a minor (Penal Code 111/1969, Article 394).
- Sexual assault of a minor (or attempt of) with/without consent and with/without the use of force, menaces, depiction and other means is prohibited (Penal Code 111/1969, Articles 396(2) – 397).

Sexual exploitation:

- Sexual abuse of another is an aggravated crime if the perpetrator is in a position of power such as a parent/guardian of a child, anybody who has authority over the survivor, or if the perpetrator is a public official, religious leader, doctor and used their position of power or trust afforded to them in order to take advantage of another sexually.

- A false promise of marriage for the purpose of seduction (i.e., sexual intercourse) is prohibited (Penal Code 111/1969, Article 395).

Forced prostitution: Inciting or assisting a minor to engage in sexual intercourse or prostitution (Penal Code 111/1969, Article 399). Brokering, assisting, exploiting, facilitating prostitution by whatever means is prohibited (Combating Prostitution Law 8/1988, Article 3).

Trafficking in Persons: Recruiting, transporting, housing, or receiving individuals by force, threat to use force, or other means, including by coercion, kidnapping, fraud, deception, misuse of power, exchange of money, or privileges to an influential person in order to sell and exploit the trafficked individuals by means of prostitution, sexual abuse, unpaid labor, forced labor, enslavement, beggary, trading of human organs, medical experimentation (Combating Trafficking in Persons Law 6/2018, Article 1). Consent by the survivor is not accepted as a defense (Article 10). The survivor will have suffered from material or moral damage and must be assisted and protected.

NOTE: contrary to international law and best practices, a minor's engagement in commercial sex is not automatically classified as a human trafficking crime in KRI and is not explicitly labelled as such. However, the Penal Code labels inciting or assisting a minor to engage in prostitution as an aggravated crime when there is exploitation involved (i.e. someone in a position of power/ authority who exploits the minor for monetary gains) (Article 399).

The same is true for the Combating Trafficking in Persons Law (Article 6), which lays out that where the survivor is a minor, a woman, or is a person with a disability, then it is considered an aggravated circumstance.

Sexual harassment:

- Committing an immodest act with another without their consent is prohibited both in private and in public settings (Penal Code 111/1969, Articles 400 – 401).
- Making indecent advances to another or assailing a woman in public in an immodest manner with words, actions, or signs is prohibited. (Penal Code 111/1969, Article 402).

Technology Facilitated GBV

Definitions & Examples

Technology-facilitated violence is the use of electronic communication devices and/or internet to perpetrate gender-based violence against someone. Technology facilitated GBV can be used to sexually exploit someone else, including using threat, coercion, blackmail for sex or financial gains.

Examples: Image-based sexual abuse (for example, revenge porn, slut-shaming), unwanted sexual remarks, non-consensual posting of sexual media, threats, doxing, cyberstalking, cyberbullying and harassment etc.

Applicable Laws

Technology facilitated GBV:

- Using telecommunication equipment and/or internet for the following purposes is prohibited:
 - Spreading rumours or misinformation, or information that creates fear or makes room for gossip
 - Use of profanity, or use videos/photos/SMS that counters public values,
 - Taking a photograph of something/someone without permission
 - Any conduct that hurts the honor of another/incites a crime/immoral act
 - Spreading information private to individual and family through whatever means, even if they are true, if as a result of their dissemination/sharing defames or causes harm to another (Combatting the Misuse of Telecommunication Equipment Law 6/2008, Article 2).
- Publishing a picture, remark, or information of another's private and family life where such publication causes the survivor offense/harm is prohibited (Penal Code 111/1969, Article 438).

Psychological Violence

Definitions & Examples

Psychological violence is the infliction of mental or emotional pain/injury that is intended to frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure or wound. Psychological violence is insulting, degrading, demeaning the survivor; for example, compelling the survivor to engage in humiliating acts, denying basic expenses for family survival, or undermining self-worth and self-esteem of the survivor.

Examples: Threats of physical or sexual violence and harm to self/ survivor/children/family/friends, intimidation, humiliation, forced isolation from family/friends/school, stalking, harassment, unwanted attention, remarks, gestures or written words of a sexual and/or menacing nature, causing fear by intimidation, destruction of pets/property/cherished items.

Applicable Laws

Psychological violence:

- All psychological violence is prohibited within the family (Law of Combating Domestic Violence 8/2011, Article 2).
Examples: humiliation or insulting the survivor, insulting their family and relatives, looking down on or hurting or pressuring the survivor psychologically, infringing their rights, cutting off kinship or family ties
- Threatening another with a commission of a felony is prohibited (Penal Code 111/1969, Article 430).
- Threatening another by word, action, either in written or spoken form either directly or indirectly is prohibited (Penal Code 111/1969, Article 432).
- Insulting and defaming another in public or in private space is prohibited (Penal Code 111/1969, Articles 433 – 435).

Socio-Economic Violence

Definitions & Examples

Socio-economic violence is the denial of rightful access to economic resources/assets or economic opportunities, education, health or other social services. Economic violence in particular is making or attempting to make the survivor financially dependent by maintaining control over financial resources and decisions, withholding access to money, or forbidding participation in education and/ or economic opportunities. Socio-economic violence can also be embedded in the gender discriminatory laws and policies of a country that deny women and girls access to income, services, resources, or opportunities of advancement.

Examples: a widow prevented from receiving an inheritance, denial of property rights, earnings forcibly taken by an intimate partner or family member, a woman prevented from using contraceptives, or accessing health assistance, a girl prevented from attending school, etc.

Applicable Laws

Socio-economic violence:

- Socio-economic rights without discrimination are laid out under the Iraqi Constitution and the enforced laws in Iraq and the Kurdistan Region of Iraq.
- Within the family, socio-economic violence is prohibited. In particular, reference is made to the prohibition of infringing rights of another family member, forcing family members to resign from their jobs, forcing family members to work, forcing children (girls and boys) to work, and denying children (girls and boys) the right to education (Law of Combating Domestic Violence 8/2011, Article 2).

Harmful Traditional Practices

Definitions & Examples

Harmful traditional practices are forms of violence which are committed on the basis of gender in certain communities or societies that have been carried out for so long that they are presented as part of the accepted (or expected) cultural practice. These acts can also be included in other categories of GBV and they are primarily perpetrated against women and girls in societies where this gender is severely undervalued, considered secondary to men, and have fewer rights. In the context of the Kurdistan Region of Iraq, some harmful traditional practices exist, all of which are prohibited and/or restricted by law.

Examples:

- Honor based violence: In order to 'restore' family 'honor', violence, maiming, or murdering of a woman or girl as punishment for acts considered inappropriate for her gender that are believed to bring shame on the family or community. In order to 'preserve' the 'honor' of the family (ie. as a redemption for an offense committed by a male member of the family).
- Forced marriage: Facing physical pressure to marry (for example, threats or actual emotional, physical, sexual violence) or emotional and psychological pressure (ie. if they're made to feel like they're bringing shame on their family). A person has the right to choose to who, when and if s/he marries. In forced marriage, there is no consent and the marriage is arranged against the survivors wishes. Examples: marriage to settle a family debt, marriage exchange, marriage for financial reasons, marriage to settle family dispute/ feud, marrying your rapist, child marriage (consent of children insufficient).
- Child marriage: An arranged marriage of a girl or boy under the legal age of consent. Child marriage refers to both formal marriages and informal unions in which children under the age of 18 live with a partner as if married. Child marriage puts girls at heightened risk of sexual, physical, and emotional violence throughout her life, deprives her of education, limits her power, and renders her extremely vulnerable to abuse. There are also health risks attached to child marriage including death or fistula related to early pregnancy.
- Female Genital Mutilation/Cutting: Mutilation of the female genital organs for non-medical reasons, usually done at a young age. It ranges from partial cutting to total removal of the genitals and stitching. Female Genital Mutilation (FGM) is an act of violence that impacts sexual organs, and as such can be classified as sexual assault and physical assault. FGM carries immediate health risks including severe pain, haemorrhage, infection, urinary retention, injury and damage to adjacent tissue and other organs, emotional and psychological shock. In some cases, FGM can lead to death. In the long term, it can lead to recurrent sexual, psychological and physiological problems, including problems during childbirth and stigma from the survivor's community.
- Polygamy: The practice of marrying and having more than one spouse. Polygamy which is wholly restricted to polygyny in the Kurdistan Region of Iraq, violates the dignity of women. International research has linked polygyny with higher prevalence mental health and psychotic disorders in polygynous women.

Applicable Laws

In the Kurdistan Region of Iraq, the Law of Combating Domestic Violence 8/2011 recognizes the criminality of harmful traditional practices as a form of domestic violence on the basis of gender. Particularly, the Law of Combating Domestic Violence criminalizes forced marriage, child marriage, marriage exchange, marriage to settle ransom, forced divorce, and FGM.

Honor killing:

- 'Honor' cannot be used as a legal excuse, and cannot be considered a mitigating circumstance when committing a crime. Therefore, honor killing or any honor motivated violence is considered a crime in its own right as defined under the Penal Code or other applicable laws (Law 14/2002, Article 1).
- Where the victim is driven to suicide by his/her family, those responsible for encouraging, assisting, causing, or inciting suicide are punishable (Law No. 42/2004, Article 1) (Law of Combating Domestic Violence 8/2011, Article 2).
- Other honor crimes recognized by the law include disowning/cutting off kinship (Law of Combating Domestic Violence 8/2011).

Forced marriage:

- Marriage should be consensual and voluntary. Those who coerce another into marriage are punished. (The Law of Amending Implementation of the Amended Personal Status Law in Kurdistan Region- Iraq 15/2008, Article 1(1))
- Forced marriage shall be considered null and void if not consummated. Forced marriage shall be suspended if consummated (Law 15/2008, Article 6).
- Divorce and separation are the right of both the man and the woman in a marriage (Personal Status Law 188/1959, Articles 40 – 50). Divorce forced by a family member is prohibited (Law of Combating Domestic Violence 8/2011, Article 2).

Child marriage:

- The minimum age for legal marriage is 18 years old (Personal Status Law 188/1959, Article 7).
- A judge can permit any person over the age of 16 years old who requests to marry, if it transpires that they have mental and physical capacity (referral for a professional assessment) and has parental consent to do so. The judge can override parental consent/lack of consent and make a final decision on whether or not to permit the marriage (Personal Status Law Amendment 15/2008, Article 5(1)).

NOTE: the Personal Status Law permits marriage by a 15 year old where the judge find it 'absolutely necessary' (Article 8(2)). Any marriage under the age of 18 years, is considered a child marriage/ marriage of minors, which is prohibited in the Law of Combating Domestic Violence 8/2011 (Article 2), with the exception of Article 8 of the Personal Status Law as described above.

Female Genital Mutilation:

- Female Genital Mutilation involves the cutting of the skin and is therefore constitutes wilful assault which is prohibited (Penal Code 111/1969, Articles 412 – 414).
- FGM is also prohibited where the perpetrator is a family member (Law of Combating Domestic Violence 8/2011, Article 2).

Polygamy:

- Polygyny is prohibited unless the husband meets a set of strict requirements set out under the law. (Law 15/2008 Article, 1(2)).
- Entering into a marriage outside of the court is prohibited, and the punishment is even more severe when a man enters into a polygamous marriage outside of court (Law no. 15/2008.).



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