

# Accountability for Domestic violence in Iraq:

Promoting justice and non-discrimination



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## I. Executive Summary

Domestic violence is a form of discrimination that seriously inhibits women's ability to enjoy their rights and freedoms on a basis of equality with men. Iraq has adopted two national strategies which address this issue as well as other positive steps such as the creation of Directorate of Family and Child Protection against Domestic Violence (DFCPDV)<sup>1</sup> and the assignment of specifically nominated judges in Misdemeanor courts to preside over domestic violence cases. However, the judicial response to domestic violence remains limited, with acts of criminal violence carried out inside the home generally treated as mere family disputes.

This report, *Accountability for Domestic Violence in Federal Iraq: Promoting justice and non-discrimination*, prepared by the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), reviews the handling of domestic violence by the criminal justice system and is based on information obtained through trial monitoring, interviews with survivors and their families, interviews with authorities and relevant stakeholders, review of court judgements, and statistical analysis. A draft of the report was shared with relevant ministries through the Minister of Foreign Affairs and their comments have been taken into account in the final version.

The report highlights four key areas of concern:

- **Inadequate legislative framework:** While Iraqi law criminalizes physical assault and other forms of violence, it allows “the disciplining of a wife by her husband” and provides mitigating circumstances for so called “honour killings”.
- **Underreporting of domestic violence cases:** Underreporting by survivors is a significant obstacle to achieving accountability for domestic violence. It is facilitated by factors such as social stigma, fear of reprisal, prioritization of family unity, survivor-blaming, the inaccessibility of DFCPDV due to geographical distances, and negative attitudes displayed by officials, including some DFCPDV investigative officers towards survivors.

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<sup>1</sup> Established on 1 April 2009 by Circular No.13966 issued by the Under-Secretary for Police Affairs in the Ministry of the Interior, the Directorate of Family and Child Protection against Domestic Violence consists of specialized police units under the Ministry of Interior tasked with investigating cases of domestic violence and providing support to survivors of domestic violence. The investigative jurisdiction of DFCPDV is limited to offences that do not go beyond a jail term of five years.

- **The lack of thorough investigations into domestic violence:** Investigations of domestic violence cases remain limited in scope and effectiveness. This is exacerbated by delays in investigation processes, external interferences, capacity constraints and lack of proper training of investigative authorities.
- **The inefficiency of court processes in handling cases of domestic violence:** This is manifested in various ways, including by the low priority assigned to domestic violence cases within Misdemeanor courts, the limited accessibility of Misdemeanor courts especially for those in rural areas, judicial leniency towards perpetrators, and protracted delays in case resolution.

These factors make it difficult, if not impossible, to deliver justice, adequate remedies, and protection for survivors and those at risk.

The report provides concrete and evidence-based recommendations, based on international human rights standards, aimed at improving the reporting of domestic violence cases, and promoting accountability by improving investigations and court processes. The report calls specifically for a comprehensive and survivor-centered approach that includes reforms in legislation, training for law enforcement and judicial personnel, improved survivor support services, and increased public awareness campaigns on the nature and impact of domestic violence.

By implementing these measures, the justice system can be strengthened to uphold the rights of survivors and provide accountability for perpetrators while acting as a deterrent to potential offenders, ultimately contributing to a safer family environment for all domestic violence survivors.

## II. Mandate

This report was prepared pursuant to Security Council Resolution 2682 (2023) which mandates UNAMI to ‘promote accountability and the protection of human rights, and judicial and legal reform, with full respect for the sovereignty of Iraq, in order to strengthen the rule of law in Iraq [...]’.

Through its Human Rights Office, UNAMI/OHCHR undertakes a range of activities, including human rights monitoring and reporting, in support of efforts to strengthen the rule of law and promote accountability for human rights violations in Iraq.

### **III. Methodology**

The report is based on trial hearing observations, analysis of court judgements, meetings with judges, lawyers, prosecutors, DFPCPDV officials, survivors and/or members of their families, and other relevant interlocutors, such as non-governmental organizations (NGOs) and civil society organizations (CSOs). UNAMI/OHCHR monitored 100 domestic violence court cases in Baghdad, Kirkuk and Mosul between April and December 2022. The cases were initiated in the judicial system in 2021 and 2022.

UNAMI/OHCHR also analyzed legislation and information from official documents and reports. The Office engaged with a limited number of survivors, primarily because various factors like stigma, shame, and cultural norms discouraged them from openly discussing domestic issues outside the family sphere. Considering the “do no harm” principle, the Office also minimized direct contact with survivors to avoid potential retaliation from perpetrators, should the disclosure of violence and any subsequent interaction come to their knowledge.

### **IV. Legal and Policy Framework**

#### **a. International legal framework**

International treaties to which Iraq is a party prohibit all forms of discrimination against women and girls and compel the State to take action to ensure the equal enjoyment of all human rights by women and men, prevent and eliminate violence and other harmful practices against women, provide reparations and assistance to survivors, and ensure accountability for perpetrators.

Iraq is party to the International Covenant on Civil and Political Rights, which in Articles 2, 3 and 26 sets out the key human rights principles of equality before the law, non-discrimination, and equal protection of the law. These principles obligate Iraq to ensure that all women, including domestic violence survivors, enjoy all civil and political rights set forth in the Covenant, including the rights to liberty and security of person and the right to a fair trial. These protections encompass the obligation to provide survivors with equal protection

under the law, before, during and after the legal process. This is further acknowledged by the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>2</sup>

Iraq is also party to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Articles 2 (c), 3, and 15 of the Convention relate to access to justice. Articles 15-17 establish obligations for ensuring women's equality before the law and preventing all forms of discrimination against women regarding education, social and economic life, and equality of women's rights in family life.<sup>3</sup> Article 2 (e) of the Convention provides that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise.

The Committee on the Elimination of Discrimination against Women has stated that this obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole, and accordingly States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish, and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women.<sup>4</sup> According to the CEDAW Committee's interpretation, therefore, Iraq would be required, as a State party to the Convention, to exercise due diligence in cases of gender-based violence, such as severe domestic violence and so called "honour killings", irrespective of whether these are carried out by private or State actors.

While CEDAW does not explicitly mention violence against women, its General Recommendations 12, 19 and 35 do make such direct reference.<sup>5</sup> General Recommendation 19 defines violence against women as "acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty". The Recommendation also emphasizes state responsibility setting out that "States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken".

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<sup>2</sup> UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, principles 4 and 5.

<sup>3</sup> It should be noted that on its accession to CEDAW, Iraq entered a reservation stating that it is not bound by the provisions of Article 16 of the Convention. Article 16 provides that state parties "shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations".

<sup>4</sup> CEDAW General Recommendation No. 35 (2017) on violence against women (updating General Recommendation No. 19), para. 24.

<sup>5</sup> CEDAW General Recommendation No. 12: Violence against women, 1989; CEDAW General Recommendation No. 19: Violence against women, 1992.

Article 4 (c) and (d) of the United Nations Declaration on the Elimination of Violence against Women<sup>6</sup> also provides for the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

## b. National legislation

Iraq's Constitution prohibits all forms of violence in the family, school, and society<sup>7</sup>, and guarantees the right to life.<sup>8</sup> According to Article 14, Iraqis are equal before the law without discrimination based on sex, race, ethnicity, nationality, origin, color, religion, sect, belief, or opinion, or economic or social status.

The Iraqi Penal Code<sup>9</sup> criminalizes physical assault, battery, and other forms of violence. Article 41 (1) states, however, that there is no crime if the violence is committed while exercising a legal or customary right, including “the disciplining of a wife by her husband”.

Despite the efforts of many, including relevant UN entities and other organizations, courts have repeatedly upheld this law. In 2019 and 2022, the Federal Supreme Court rejected cases seeking a ruling declaring Article 41 unconstitutional.

Additionally, Article 409 of the Penal Code, provides mitigating circumstances for the sentence for so called “honour killings”. This provision reduces a murder sentence to a maximum of three years, equating so called “honour killing” to a misdemeanor offence. The provision also refers to killing women (even those not legally married) caught in *flagrante delicto*.

In November 2019, in its concluding observations while reviewing Iraq’s compliance with CEDAW, the CEDAW Committee recommended the repeal of all sex-discriminatory provisions in the Penal Code, the Code of Criminal Procedure and other legislation, regulations and directives. Additionally, the committee urged the enactment and implementation of the draft Anti Domestic Violence Law.

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<sup>6</sup> UN General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993.

<sup>7</sup> Article 29 (4) of the Iraqi Constitution 2005.

<sup>8</sup> Ibid Article 15.

<sup>9</sup> Law 111 of 1969.

While the Kurdistan Region of Iraq repealed Article 409 of the Penal Code in 2015 and adopted a law on combating domestic violence in 2011, a draft Anti-Domestic Violence Law has been pending before the Iraqi Council of Representatives since 2012 owing to objections raised by the parliamentary committee on religious endowments and a number of political parties. In the most recent development, in September 2023, the Chairperson of the Parliamentary Committee for Women, Family, and Child Affairs formally requested the Speaker to withdraw the draft law from the agenda of Parliament to allow for further review of its provisions. This request was based on the assertion that the draft law “does not conform to religious and moral values, societal norms, and Iraqi constitutional principles”. This delay only further impedes the protection of women from violence and limits the remedies available to them.

For any country, including Iraq, it is important to prioritize the development and implementation of effective preventive strategies and policies to safeguard the well-being of its citizens and to fulfill its obligations under international human rights law.

### c. Policy framework

Iraq has established two national strategies specifically addressing the issue of violence against women and girls.

The Iraq National Strategy for Combating Violence Against Women and Girls (2018-2030),<sup>10</sup> launched in 2018 and led by the Women Empowerment Directorate within the Council of Minister's Secretariat, offers a comprehensive guiding framework that empowers policymakers and decision-makers to implement tangible measures for the protection of survivors and the prevention of violence against women and girls. It demonstrates political commitment to reduce violence against women and girls, and combat discrimination. The strategy leverages existing national plans and strategies to provide vital support for women and girls. Goal 2, on Protection, focuses on creating a protective environment for women and girls, emphasizing the need for accelerated enactment of a law to protect families from domestic violence and a review of existing laws that perpetuate discrimination against women.

As part of implementing the Strategy, the Ministry of Interior has also developed Standard Operating Procedures to strengthen DFCPDV and to run shelters.

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<sup>10</sup> Available at [UNFPA Iraq | The National Strategy to Combat Violence against Women and Girls 2018-2030](#)



The National Strategy for Iraqi Women (2023-2030) launched in 2022 and led by the Directorate of Women Empowerment, is designed with a central objective to empower women in areas where they are most susceptible to vulnerability, marginalization, and exclusion.

A pivotal component of this strategy is the Government's commitment to address and combat violence against women and girls. It includes key initiatives such as the development of a comprehensive Anti-Domestic Violence law and extensive awareness campaigns focused on domestic violence, aiming to foster a society that is well-informed about and vigilant against this phenomenon. These efforts among others, aim to facilitate women's access to justice and avenues for redress, ultimately ensuring that those who perpetrate acts of violence are held accountable through legal sanctions.

The objectives of both strategies are positive, but successful implementation of national plans and strategies require proper legislation as well as adequate financial resources and specialized human resources dedicated to women's issues.

## **V. Key Findings**

### **a. Reporting of domestic violence cases**

#### **1. Legal framework**

A major obstacle to reporting domestic violence is the inadequate domestic legal framework. Although there are DFPCPDV within the Ministry of the Interior and judges for domestic violence in Misdemeanor courts, there is no specific law that criminalizes domestic violence in Iraq. As a result, the Iraqi Penal Code is used to charge perpetrators. It also contains a provision that gives the legal right to husbands to “discipline their wives”. Furthermore, the provisions of the law that criminalize violence are not consistently interpreted to prioritize the welfare of victims and survivors.

#### **2. Limited awareness of survivor rights and mistrust in law enforcement**

UNAMI/OHCHR observed that some survivors were not aware of their rights or the legal avenues available to them. In one of the interviews, a survivor at Dora court in Baghdad described challenges in securing legal representation and displayed lack of understanding of the legal process or her rights. Another survivor informed the Office that she felt lost when her

case was referred to a court and emphasized her dependence on her lawyer to comprehend her legal rights.

Moreover, some survivors do not trust the police to provide them with adequate protection. UNAMI/OHCHR engaged in discussions and conducted interviews with some survivors who recounted instances of enduring verbal abuse and ridicule as well as sexual harassment from some male personnel at DFPCPDV. According to some survivors, there have been instances where the DFPCPDV personnel have occasionally insinuated that they might expedite procedures if sexual favours materialized.

In a positive development, DFPCPDV in Karkh have addressed these concerns by predominantly assigning investigations to female officers, leading to a noticeable increase in reported cases by survivors.

### 3. Cultural and societal factors

In Iraq, domestic violence is often perceived as a private matter that should be resolved within the confines of the family or community without resorting to legal avenues. As a result, reporting incidents of domestic violence to the DFPCPDV and other law enforcement agencies is significantly challenging. (See also Section V(b)). These challenges stem from various factors, including a lack of trust in law enforcement, fear of retribution from the perpetrator, and cultural and societal attitudes towards domestic violence.

### 4. Data Deficiency

It is also important to note that the data published by the Ministry of Interior on domestic violence does not include a detailed categorization of incidents. This deficiency creates significant challenges in gaining a comprehensive understanding of both the scope and specific characteristics of domestic violence. Without a clear categorization of incidents, it is challenging to understand various aspects of the problem and to identify trends, patterns, and risk factors that could inform prevention efforts and support services.

### 5. Difficulty accessing DFPCPDV.

Reporting of cases by survivors and those at risk is difficult because each governorate has only one DFPCPDV in the main city, except for Baghdad which has two. When cases are reported to other police stations, survivors are often turned away and redirected to the DFPCPDV. This creates additional hurdles, as survivors must consider factors such as distance, transportation

costs, and obtaining permissions to travel, all while potentially leaving behind dependent children or finding care. These obstacles lead many survivors to abandon the reporting process altogether. Moreover, even if they do report, there is no guarantee of police initiating an investigation.

Multiple Iraqi NGOs in different governorates reported that they receive domestic violence cases from survivors, but most of these cases are not reported to DFPCPDV. For instance, an NGO in Anbar receives 10-15 monthly cases, but few are referred to the authorities due to societal norms and fear of retaliation. Similarly, a Babil NGO receives around 15 monthly cases, with only about 12 per year reaching the police and courts due to survivors' concerns about lengthy legal procedures and revenge from spouses. In Diwaniya, an NGO received 35 cases in 2021, but reported that only 3 were officially reported due to intimidation concerns.

#### 6. Hotline congestion and privacy concerns

Hotlines have proven to be a valuable resource for reporting instances of domestic violence. When a complaint is registered through these dedicated phone lines, it is routed to the appropriate department or governorate division for action. Nevertheless, survivors have described challenges due to frequent instances of the hotline being engaged.<sup>11</sup> They also raised concerns that, upon finally getting their calls answered, there is often a cacophony of voices in the background, causing them to feel uneasy about sharing their cases.

#### 7. Limited resources for DFPCPDV

Furthermore, DFPCPDV themselves operate under challenging circumstances, grappling with the impact of limited resources. Inadequate funding, insufficient staffing<sup>12</sup>, and limited access to essential equipment and technology impede their ability to effectively respond to cases of domestic violence and other forms of abuse. These factors further compound the barriers faced by survivors and reduce the likelihood of prompt and effective interventions.

#### 8. Referral to reconciliation mechanisms

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<sup>11</sup> UNAMI HRO received information that the hotline is not adequately funded and is linked to only three devices within the Ministry of Interior. It serves as a centralized point for receiving calls from all governorates of Federal Iraq, subsequently redirecting them to the appropriate DFPCPDV.

<sup>12</sup> To illustrate, the DFPCPDV in Kirkuk consists of four investigative officers (all men), the DFPCPDV in Mosul has three investigative officers (all men), while the two DFPCPDV in Baghdad (Rusafa and Karkh) have seven (five women and two men) and five (two women and three men) investigative officers respectively. Investigative assistants in most locations are female. They do not investigate but rather receive cases and prepare files for investigative officers.

A significant number of cases reported to DFCPDV are referred to reconciliation mechanisms, prioritizing the preservation of family stability and unity. Others are dropped due to family pressure. The Head of one DFCPDV informed UNAMI/OHCHR that his office receives an average of 30 to 40 allegations of domestic violence daily, and of those which are referred to courts, less than five percent of the perpetrators receive jail sentences. Instead, most perpetrators are referred to reconciliation mechanisms, given fines, or are simply verbally cautioned. Remarkably, only one or two cases per month are forwarded to the Criminal court while others are referred to the Misdemeanor courts. While not every claim of domestic violence should automatically result in the most severe criminal sanctions being imposed on the perpetrator, the DFCPDVs' hesitancy to appropriately address domestic violence perceived as minor offences may contribute to an escalation of violence, often culminating in severe physical harm.

#### 9. Inadequate number of shelters.

The other impediment to reporting is the lack of a place of safety after reporting cases of domestic violence, particularly considering the increased risk of violence to survivors who return home to continue living with the perpetrator after reporting such cases. The government has established a limited number of “protection centers” (shelters)<sup>13</sup> in Karbala, Anbar, Diwaniya and Kirkuk governorates but they are inadequately funded and operate in a legal vacuum, as the draft law on domestic violence which would legalize their establishment has been pending before parliament since 2012. In 2019, the judiciary took a step to encourage referral to shelters by issuing a directive to investigative judges when they determine that the survivor is in imminent danger. However, survivors without a court-issued order are not granted admission into shelters and must explore alternative safety options, leaving them at risk of potential harm, including returning to the perpetrators.

### b. Investigations into domestic violence cases

#### 1. Limited scope and ineffectiveness of domestic violence investigations

One of the major challenges in investigating domestic violence cases is the lack of capacity and proper training of investigative authorities, which hinders methodologically sound collection of evidence on cases of domestic violence, thereby significantly reducing the likelihood of successful prosecutions.

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<sup>13</sup> Private shelters are currently not prohibited in Iraq but also not explicitly regulated by law.

For example, in instances where a woman died under suspicious circumstances, UNAMI/OHCHR observed that investigative authorities were quick to dismiss other plausible explanations and often declared the case a suicide. They repeatedly failed to diligently investigate other possible causes beyond suicide, including murder. The lack of necessary skills and knowledge to effectively investigate domestic violence cases repeatedly resulted in poor documentation of evidence and weak cases.

## 2. Delays in investigations and survivor frustrations

The length of investigations has also emerged as a significant factor contributing to the frustrations experienced by survivors, resulting in a loss of confidence in the investigative processes and placing the survivor at risk of further violence. In some cases, several DFCPDV officers informally acknowledged to UNAMI/OHCHR intentionally delaying the investigation process so as to induce the abandonment of the case. In other cases, DFCPDV officers stated that they advise survivors to provide additional evidence, fully aware of the difficulties in obtaining such evidence, and again with the intention of delaying the investigative process. Such delays are often accompanied by pressure on survivors, both from DFCPDV officers and/or the perpetrator's family, to reconcile with their abusers, and thereby avoid legal consequences for the perpetrator of domestic violence.

## 3. External interference in investigations

UNAMI/OHCHR has observed interference with ongoing investigations and court proceedings, compromising the fair and transparent resolution of cases. These incidents are often accompanied by threats and intimidation from the perpetrators' families, aimed at pressuring survivors to withdraw their cases.

In one example from April 2022, a husband violently assaulted his wife in the presence of her family due to her insistence on obtaining a divorce. Subsequently, the survivor lodged a formal complaint with the police. The authorities directed the complainants to seek medical evaluation, which resulted in a medical report documenting various injuries to the wife's face, head and body. The case was forwarded to the Court of Investigation and subsequently to the Misdemeanor court in June 2022. During the initial court session, the defendant requested reconciliation, while the complainant vehemently rejected the proposition. However, in

December 2022, the complainant withdrew her case due to tribal pressure to resolve the case through reconciliation and payment of compensation to her family by her husband.

In another case from January 2022, a husband violently attacked his wife and her sister, subjecting them to severe physical harm. The survivors obtained medical reports consistent with their allegations of physical assault and subsequently initiated legal proceedings against the perpetrator. The perpetrator sought tribal intervention which successfully applied pressure on the survivors' family to withdraw the case.

These cases underscore the complex dynamics surrounding domestic violence cases, where familial and tribal influences can significantly impact the pursuit of justice for survivors.

#### 4. Rare referral of domestic violence cases to Criminal court

Very few cases referred by the DFPCPDV to the courts were categorized by the investigative judges as criminal cases to be referred to the Criminal court - including those cases resulting in severe physical harm. By law, only cases which involve death or serious physical harm leading to permanent disability receive such referral. Out of 100 cases monitored by UNAMI/OHCHR, only eight were referred to the Criminal court. UNAMI/OHCHR monitored cases involving serious physical harm in which the trials were delayed until the recovery of the survivors, sometimes taking up to two years, to rule out 'permanent disability' which would have required the case to be heard by the Criminal court.

### c. Court procedures

#### 1. Domestic violence judges in Misdemeanor courts

Although in Iraq there is no specific law which explicitly criminalizes domestic violence, the country has taken steps to address the issue, including through assigning specifically nominated judges in Misdemeanor courts to preside over domestic violence cases using the existing legal framework. The aim of assigning such judges is to facilitate their increased focus on domestic violence, thereby ensuring they provide a safe and supportive environment for survivors to seek justice, while also holding perpetrators accountable for their actions. Misdemeanor courts are not domestic violence courts and the judges in those courts were given the responsibility of handling domestic violence cases in addition to all types of misdemeanor cases. Regardless of the presence of these judges with specific responsibility for these cases, several challenges remain that contribute to continued impunity for perpetrators of domestic violence.

Judges who preside over domestic violence in Misdemeanor courts often lack specialization and adequate training in handling such cases. Additionally, they are responsible for dealing with a range of other civil and criminal cases, often resulting in an enormous backlog. This in turn results in less time being devoted to critical cases of domestic violence. The amount of time and prioritization of domestic violence cases have significant impact on the resolution of these cases. If cases are not given adequate attention by the courts, this leads to dissatisfaction with formal judicial systems and increases the likelihood that survivors resort to informal dispute resolution which further undermines the effectiveness of the formal legal mechanisms.

UNAMI/OHCHR's monitoring of trials involving domestic violence indicates that such cases are frequently not given priority and are typically heard last, when judges are fatigued and have limited time to conclude the court sessions. UNAMI/OHCHR observed domestic violence cases that were adjourned multiple times before final legal resolution, which often occurred two to three years after the case first came to court. Survivors conveyed frustration and disillusionment with the process, and some even abandoned their cases, notwithstanding the obstacles and difficulties they experienced in bringing their case before the court.

## 2. Access to justice

There is also limited accessibility to Misdemeanor courts that have domestic violence judges. The courts are only situated in cities, which makes it particularly difficult for survivors from the rural areas. Other factors that limit survivors' access to justice include lack of awareness regarding their rights and available legal avenues, as well as illiteracy, again particularly in rural areas. Furthermore, interpretations of religious or cultural norms may also be used to justify abusive conduct and discourage women from seeking legal recourse. Economic dependence on their partners or families is another contributing element. The fact that Iraqi law does not specifically criminalize domestic violence makes it difficult for judges to prosecute perpetrators.

## 3. Resource constraints

Courts in Iraq often operate with limited resources, which impacts their ability to effectively handle the high volume of cases they receive. During their interactions with UNAMI/OHCHR during the preparation of this report, justice officials consistently stated that insufficient funding, staffing shortages, and inadequate training for judges and court staff, all limit their ability to properly manage domestic violence cases.

#### 4. Data storage and case management

Domestic violence case files are not kept separate but rather mixed with other cases handled by Misdemeanor courts. This makes it difficult to ascertain the number of domestic violence cases in the system and the requisite follow up needed to have them disposed of. Consequently, it also hinders the effective development of policies and programmes.

#### 5. Judicial leniency and delays

UNAMI/OHCHR observed that almost all cases of domestic violence, whether they involved ‘serious physical harm’, were referred by investigative judges to Misdemeanor courts. Although the judges did not explicitly state that domestic violence cases should be addressed at a lower level, nearly all of them emphasized the significance of maintaining family unity.

During the monitoring of trials, UNAMI/OHCHR further observed that in comparison to other cases presided over by the same judges, perpetrators of domestic violence were given comparatively light sentences. The judges justified this approach by expressing concerns that imposing strict penalties on the husband might jeopardize family cohesion, potentially fostering animosity or retaliation. In most cases of domestic violence, judges issued light fines as opposed to other more severe sentences. For example, in a case where the survivor sustained a broken nose, the case took three years to be disposed of and the perpetrator was fined 150,000 IQD (100 USD). In another case where the survivor sustained a broken arm, the case took two years, and the perpetrator was given a fine of 250,000 IQD (166 USD).<sup>14</sup> In both cases, the court had to wait for the Disabilities Committee to give its report on whether the survivors had sustained permanent disabilities.

Notably, these fines are not compensation to the survivor but go to the State. If the survivor wants compensation, they must file another suit in court. UNAMI/OHCHR found that this is rarely done by survivors, as they would need to initiate a separate legal process by filing another suit in a court. Considering the lengthy proceedings of the initial suit coupled with the complexities of compensation claims, and the fact that a financial compensation suit involves additional legal costs, time and emotional stress, survivors rarely pursue this legal action.

Cases of serious physical harm are especially complex and require additional procedures. For example, the investigative court usually delays concluding the case as it requests a medical

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<sup>14</sup> Article 143 (2)a of the Iraqi Penal Code provides that the maximum punishment applicable to anyone convicted of an assault resulting in a broken bone is three years imprisonment.



report from the Disabilities Committee. This is the report on which the Misdemeanor court bases its decision to either preside over the case itself or refer it to the Criminal court.

The above process is necessitated by Article 412 (1) of the Penal Code, which states that, “any person who willfully assaults a person by wounding or beating with intent to cause permanent disability<sup>15</sup> is punishable by a term of imprisonment not exceeding 15 years, and where there was no intent, under Article 412 (2), the penalty will be a term of imprisonment not exceeding seven years”. In both cases, if it is proven by the Disabilities Committee that the survivor sustained permanent disability, the case will be heard by the Criminal court. However, in instances where the survivor is not found to have sustained permanent disability, the case will remain under the Misdemeanor court until recovery of the survivor.

For example, in the Karkh court of Misdemeanors in Baghdad, UNAMI/OHCHR monitored two cases where the survivors suffered serious physical injuries. One survivor had a broken arm, and another sustained a broken nose. These cases took three years and two years respectively, to be adjudicated while the court waited for the survivors to heal. These delays only add to the suffering and hinder access to justice.

#### 6. Forced reconciliation and dropping of cases.

UNAMI/OHCHR noted that 37 of the 100 cases monitored both at the investigative stage as well as in courts, were dropped due to ‘reconciliation’, while another 23 were dismissed for insufficient evidence or absence of the complainant.

In one instance, in May 2022, a woman reported to the DFCPDV a case against her husband for severe physical assault and threatening her with a gun. After the case was referred to the Karkh court of Misdemeanor, she was prevented from appearing in court by her husband. Her lawyer revealed to UNAMI/OHCHR that the complainant faced tribal pressure to reconcile with her husband, leading her to drop the case in August 2022.

In a similar case, in June 2022, a wife reported to the DFCPDV that her husband had violently hit her and pushed her against a wall, resulting in severe injuries to her right hand. The husband

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<sup>15</sup> Under Article 412 (1) of the Iraqi Penal Code, there is permanent disability if the act results in the severance or amputation of a limb or part thereof or the loss or diminution of the benefit of such limb or madness or mental disability or permanent loss in whole or part of any of the senses or bodily disfigurement that is not expected to disappear or imminent danger to life.

attempted to force reconciliation with his wife, but when these efforts failed, he enlisted her family to coerce her. Eventually, the case was dropped in December 2022.

These two cases illustrate a concerning pattern where survivors of domestic violence face interference to withdraw their complaints and reconcile. Such interference undermines the pursuit of justice and may perpetuate a cycle of violence, leaving survivors vulnerable and without legal recourse.

#### 7. Challenges in witness requirements

While no legal obligation exists for domestic violence to be corroborated by multiple witnesses, in practice, judges typically demand the testimony of at least two independent witnesses. This arbitrarily imposed evidential requirement makes it difficult to successfully prosecute perpetrators, as domestic violence usually takes place in the confines of the home, with witnesses (if any) not willing to testify against their own. UNAMI/OHCHR monitored nine cases which were dismissed for lack of witnesses to the crime. For example, in four different cases where the survivors were severely beaten (including one woman who suffered a miscarriage), the cases were dismissed for lack of evidence because the survivors were the only witnesses, even though they had medical reports showing that they had sustained injuries consistent with the alleged attack.

#### d. Sentencing statistics

According to statistics provided to UNAMI/OHCHR by the High Judicial Council, in 2021 and 2022 the Investigative courts received a total of 27,042 complaints of domestic violence (12,738 in 2021 and 14,304 in 2022).

Of the 27,042 complaints received, the Investigative courts referred 13,589 cases for judicial review (6,226 in 2021 and 7363 in 2022). This consisted of 299 cases referred to the Criminal courts and 13,290 cases referred to the Misdemeanor courts.<sup>16</sup>

However, during this same period (2021-2022) the courts only issued guilty verdicts in 3,456 domestic violence cases. Whilst the number of convictions handed down in any given calendar year cannot be precisely correlated with the number of cases referred to the courts in that same year (as the statistics include cases which were referred to the courts in one calendar year and

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<sup>16</sup> The statistics provided by the High Judicial Council contain no information on the status of nearly half of the complaints received by the Investigative courts, with 13,453 complaints (6,512 out of 12,738 received in 2021 and 6,941 out of 14,304 received in 2022) unaccounted for.

adjudicated in the next), the low number of convictions for domestic violence compared to the overall number of cases considered by the courts on a year-on-year basis is of note.

To illustrate, in 2021 and 2022, a total of 13,290 domestic violence cases were referred to the Misdemeanor courts for trial. However, over the same period the Misdemeanor courts issued guilty verdicts in only 3,398 domestic violence cases. Similarly, in 2021 and 2022, 299 domestic violence cases were referred to the Criminal courts, but only 58 resulted in guilty verdicts.

In addition to the significant number of acquittals in domestic violence cases during 2021-2022 (248 in the Criminal court and 4,829 in the Misdemeanor courts), the statistics also show that no verdicts were issued in 2,937 cases (29 in the Criminal court and 2,908 in the Misdemeanor court). The reason for the lack of verdicts in these cases is not specified in the statistical overview provided by the High Judicial Council.

## **VI. Conclusion**

The absence of a clear legal protection framework poses significant challenges, both in terms of ensuring justice for criminal violence inside the home as well as protection from further abuse. Moreover, the absence of a law on domestic violence contributes to a lack of understanding and awareness, further compounding the difficulties in effectively preventing and responding to cases of domestic violence.

It is also clear that the judicial processes require reform. Survivors deserve a justice system that prioritizes their safety, holds perpetrators accountable, and ensures that their voices are heard.

Addressing domestic violence requires a multi-pronged approach that addresses legal, social and cultural factors, as well as resources and support to survivors.

Efforts have been made by the Government and civil society organizations to prevent domestic violence as well as to increase reporting of cases.

The adoption and implementation of the National Strategy to Combat Violence against Women and Girls (2018-2030) and the National Strategy for Iraqi Women (2023-2030), the establishment of a hotline and a limited number of shelters to provide survivors with support

and assistance, have all positively impacted prevention and the reporting processes. Awareness-raising campaigns have also been conducted by relevant government institutions such as the Women Empowerment Directorate and DFPCPDV, including in cooperation with UN agencies and civil society, to educate the public about prevention and services available to domestic violence survivors. In addition, DFPCPDV collaborated with the Training & Rehabilitation Directorate, Women Training Institute, Civil Society Organizations, and UN Organizations to conduct comprehensive training courses for its staff on domestic violence, criminal investigation, and other relevant topics, aiming to enhance the competence of its personnel in addressing and managing these critical issues.

Despite these positive efforts, much more is required to create a safe and supportive environment for survivors of domestic violence, to improve the reporting of domestic violence cases and to ensure accountability.

UNAMI/OHCHR stands ready to support the implementation of the recommendations of this present report, including through the provision of technical assistance and capacity building support.

## VII. Recommendations

UNAMI/OHCHR makes the following recommendations aimed at improving the reporting of domestic violence cases and promoting accountability. These recommendations are addressed to a range of responsible entities, including the Council of Representatives, the Ministry of the Interior, the Ministry of Justice, the Ministry of Labour and Social Affairs, the Ministry of Culture, and the High Judicial Council.

### a. Improving reporting of domestic violence.

1. **Strengthening the legal framework:** This includes repealing discriminatory provisions in the Iraqi Penal Code that allow perpetrators to invoke the defence of “honour” as a mitigating circumstance for homicide (articles 128, 130, 131 and 409), as well as the provision which legalizes disciplining of wives by husbands (article 41(1)). It also includes enacting an Anti-Domestic Violence Law in conformity with international standards that criminalize domestic violence, provides adequate penalties for offenders, and ensures that survivors have access to justice. The law should also provide for adequately funded safe

spaces for survivors to seek refuge in cases where their lives are in danger. The Government is encouraged to also reconsider and withdraw its reservations to CEDAW.

2. **Strengthening the DFPCPDVs:** The Ministry of Interior to strengthen and empower the DFPCPDVs to prevent and respond to domestic violence. This can be done by, inter alia, increasing the number of family protection units across federal Iraq including in rural areas to ensure that all segments of the population have access to support and assistance; increasing the number of personnel that serve in DFPCPDV including by recruiting and deploying more female investigative officers who are trained to handle domestic violence cases; and providing them with the necessary training and resources, including sufficient office space and equipment. Additionally, the Ministry of Interior to encourage collaboration between the DFPCPDV and other relevant agencies such as healthcare providers, legal authorities, and social services to ensure a holistic approach to addressing domestic violence, with a focus on survivor protection and perpetrator accountability.
3. **Training law enforcement officials and service providers:** The Ministry of the Interior to continue to train law enforcement officials on how to recognize and respond to cases of domestic violence with a focus on increasing the participation of women in these training programs. This includes training on how to interview survivors, gather evidence, and provide support. Service providers such as healthcare workers and social workers also need specialized training to identify and respond to domestic violence cases.
4. **Monitoring and evaluating progress:** In addition to regularly monitoring and evaluating progress in addressing domestic violence, The Ministry of Interior/ DFPCPDV to implement a periodic, transparent reporting mechanism for domestic violence incidents, which includes a comprehensive breakdown into various categories. This data publication will serve the critical purpose of shedding light on different dimensions of the issue, facilitating the recognition of trends, patterns, and risk factors. Such insights would then be leveraged to inform targeted prevention initiatives and enhance the provision of support services in a systematic and informed manner.
5. **Providing safe reporting mechanisms:** The Ministry of Interior to strengthen confidential and safe reporting mechanisms, including providing confidential spaces in which survivors can freely express their problems both while using hotlines and when reporting in person, together with other mechanisms such as online reporting. The Ministry of Interior also increase funding for the hotline and increase the number of devices and staff used to receive complaints. Drop-in centres to be established to ease reporting. These mechanisms should

be available 24/7 and accessible to all survivors and those at risk, including those in rural areas.

6. **Providing legal and psychosocial support:** The Ministry of Justice (MOJ) and Ministry of Labour and Social Affairs (MOLSA) to provide legal aid, raise awareness on legal procedures, counseling, and psychological support services for survivors of domestic violence. These services should be free, accessible, and widely available.
7. **Encouraging community involvement:** Community leaders can play a significant role in encouraging reporting and supporting survivors of domestic violence. The Ministry of Interior, Ministry of Education (MOE), Ministry of Culture, and MOLSA to engage with community, tribal and religious leaders to raise awareness, promote safe reporting mechanisms and facilitate access to justice for women survivors of domestic violence.

b. **Improving investigations of domestic violence cases.**

1. **Training investigative judges:** The High Judicial Council to give priority to augmenting the representation of women among investigative judges and ensure that investigative judges receive specialized training in conducting domestic violence investigations. This training should include interviewing survivors, collecting and preserving evidence, and responding to the emotional needs of survivors.
2. **Using a survivor-centered approach:** The Ministry of Interior and the High Judicial Council to ensure that investigations into domestic violence prioritize the safety and well-being of the survivor. This means treating survivors with respect and sensitivity and securing the availability of emotional support.
3. **Collecting and preserving evidence:** Investigators to be conscientious in ensuring the thorough and effective collection, preservation and documentation of all evidence relevant to domestic violence investigations. Undue interference from the perpetrators or their representatives not to be tolerated. In addition, investigators to collaborate with healthcare providers to collect medical records, document injuries, and gather forensic evidence which could serve in the successful prosecution of cases.
4. **Expediting investigations:** The Ministry of Interior and the High Judicial Council to provide investigators with the necessary tools and resources to conduct investigations effectively, assign specialized investigators who can prioritize high-risk cases, and collaborate with other agencies such as healthcare providers and social services, with a view to expediting investigations.

c. **Improving court processes on domestic violence.**

1. **Improving survivor safety:** The safety of the survivor should be the top priority in any domestic violence case. The court to provide access to resources such as protective orders, counseling services and emergency shelters, and to establish support centres to help survivors access these resources. These measures would make survivors feel safer in reporting their cases and in pursuing their cases through the legal system.
2. **Increasing awareness:** The High Judicial Council to increase awareness of domestic violence and educate judges, lawyers, and court personnel on the issue. This would help to reduce social stigma, improve understanding of the dynamics of domestic violence, and increase support for survivors by, for example, supporting witnesses that choose to testify in court. Education can be provided through training, workshops, and court-house-based information campaigns.
3. **Improving collaboration between key actors:** The High Judicial Council and Ministry of Interior to improve collaboration between courts, law enforcement, and community organizations to improve the response to domestic violence, including by sharing information, coordinating services, and providing training to those involved in the court process.
4. **Increasing funding to courts:** The High Judicial Council to secure sufficient funding to courts that handle domestic violence. The additional funds could be used to establish separate domestic violence courts and hire additional judges and court staff to work specifically on domestic violence cases. Providing adequate resources will help to ensure that survivors receive the support they require.
5. **Establishing legal aid clinics:** The High Judicial Council and the Iraqi Bar Association to set up legal aid clinics that specialize in providing legal assistance to domestic violence survivors. These clinics should provide legal representation, advice, and other forms of support to survivors who might otherwise be unable to access the justice system.