



Middle East
Centre



CONFLICT
RESEARCH
PROGRAMME

Research at LSE

CHALLENGING NARRATIVES OF 'FATE AND DIVINE WILL'

ACCESS TO JUSTICE FOR GENDER-BASED VIOLENCE IN IRAQ

Taif Alkhudary, Marwa Abdul Ridah,
Anfal Abed and Amal Kabashi



About the Middle East Centre

The Middle East Centre builds on LSE's long engagement with the Middle East and provides a central hub for the wide range of research on the region carried out at LSE.

The Middle East Centre aims to enhance understanding and develop rigorous research on the societies, economies, politics and international relations of the region. The Centre promotes both specialised knowledge and public understanding of this crucial area and has outstanding strengths in interdisciplinary research and in regional expertise. As one of the world's leading social science institutions, LSE comprises departments covering all branches of the social sciences. The Middle East Centre harnesses this expertise to promote innovative research and training on the region.



Challenging Narratives of 'Fate and Divine Will': Access to Justice for Gender-Based Violence in Iraq

Taif Alkhudary, Marwa Abdul Ridah, Anfal Abed and Amal Kabashi

About the Authors

Taif Alkhudary is an Iraq-focused Research Officer at the LSE Middle East Centre. Previously, she conducted strategic litigation on civil and political rights in Iraq and the Gulf.

Marwa Abdul Ridah is a lawyer and founder of Baghdad-based legal advocacy NGO 'For Her'.

Anfal Abed is Projects Director of Public Aid Organisation (PAO), Iraq. Previously, she worked on gender-based violence in conflicted-affected areas in Iraq.

Amal Kabashi is a feminist activist and the coordinator of the Iraqi Women Network. She is leading the advocacy campaign to legislate an anti-domestic violence law in Iraq.

Acknowledgements

This paper is indebted to Zeynep Kaya, who drafted the initial research concept, to Güley Bor and Viraj Rajdev who generously provided feedback on research design and to the two anonymous reviewers for their constructive criticism. We would also like to thank Hana Hamood and the team at PAO for their excellent management of the field research in difficult circumstances. We are grateful to Yasmine Kherfi for her work on the literature review, Jack McGinn and Ribale Sleiman Haidar for editing and designing this report, and Haneen Naamneh for translating it. Finally, we would like to thank Sandra Sfeir, Toby Dodge and Hayder Al-Shakeri for their support and encouragement.

Abstract

This study draws on data collected from 34 interviews to examine access to justice for gender-based violence (GBV) in the family and criminal law systems of federal Iraq. It finds that it remains near impossible for women to access effective protection, with the government of Iraq (GoI) falling short of every one of the six components identified by the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) as essential for women's access to justice. It highlights the urgent need for the GoI to work with civil society to enact the draft anti-domestic violence law. It also recommends that the GoI take broader, longer-term holistic measures, including tackling high-level and petty corruption and providing gender-sensitivity training to all law enforcement professionals, highlighting the detrimental impact of gender stereotyping on the impartiality and independence of justice systems and the rule of law.

About the Conflict Research Programme



The Conflict Research Programme (CRP) is a three-year programme designed to address the drivers and dynamics of violent conflict in the Middle East and Africa, and to inform the measures being used to tackle armed conflict and its impacts. The programme focuses on Iraq, Syria, DRC, Somalia and South Sudan, as well as the wider Horn of Africa/Red Sea and Middle East regions.

The Middle East Centre is leading the research on drivers of conflict in Iraq and the wider Middle East. Our partners in Iraq are the Institute of Regional and International Studies at the American University of Iraq, Sulaimani, as well as Al-Bayan Center for Planning and Studies, Al-Amal Association, Public Aid Organisation and the Iraqi Women Network in Baghdad.

For more information about the Centre's work on the CRP, please contact Taif Alkhudary (t.alkhudary@lse.ac.uk).



This material has been funded by UK aid from the UK government; however, the views expressed do not necessarily reflect the UK government's official policies.

XCEPT

**CROSS-BORDER CONFLICT
EVIDENCE / POLICY / TRENDS**

Support for this work also came from the Cross-Border Conflict Evidence, Policy and Trends (XCEPT) research programme.

Key Findings and Recommendations

To the Government of Iraq:

- The main obstacles to the elimination of *de jure* gender discrimination, include women's lack of real decision-making power in the legislative and executive branches of government and the civil service. This is compounded by the dominance of heteropatriarchal political parties and their use of patriarchal interpretations of religion and culture as a means of blocking reforms of discriminatory laws and the introduction of pro-women policies and legalisation. The GoI should therefore create an enabling environment for women to participate in public and political life, including by actively promoting feminist interpretations of religious doctrine through giving a platform to women jurists in particular. It is also recommended that the GoI work with civil society to bring the draft anti-domestic violence law in line with international standards and to adopt it expediently. This would largely help address gaps in legal protections for GBV, including ensuring the provision of shelters and enshrining the establishment of domestic violence courts in law. In addition, the GoI should repeal discriminatory legal provisions, including articles 41(1), 128, 130, 131, 398 and 409 of the Penal Code No.111 of 1969 (as amended in 2010), as well as remove statutory limitations for the prosecution of human rights violations, including GBV. It should also amend articles 1, 3 and 6 of the Criminal Procedure Code in order to allow groups with interest to lodge petitions, as well as repeal statutory limitations for the prosecution of human rights violations.
- Corruption and government dysfunction mean that initiatives and policies conducive to women's rights are not implemented, followed up on or properly resourced. At the ground level, petty corruption means that professionals across the criminal and family law systems do not meet international standards of competence, independence and impartiality, with bribes and undue interference from political parties and tribes being common practice. The GoI should therefore take concrete steps to bolster the independence of the Integrity Commission so that it can tackle corruption more effectively. This could include setting up a fund that is earmarked for women's rights initiatives and financed by money recovered through the Commission's work. The GoI should tackle petty corruption by ensuring that all court procedures and judicial and law enforcement proceedings are transparent and efficient. This can be achieved by strengthening resources available across the justice system and ensuring that all salaries are in line with living standards and paid on time. The GoI should provide adequate training for law enforcement practitioners on their respective standards of conduct, national and international legislation on corruption, as well as the discharge of their duties.
- The high cost of filing petitions and administrative and transport costs continue to deter women from accessing judicial and quasi-judicial mechanisms. This is exacerbated by the stigma surrounding filing criminal complaints in police stations, particularly due their reputation as being seedy and unprofessional places where women are systematically subjected to gender-based violence. In order to combat this, the

GoI should ensure that women are aware of existing legal aid services and can access them, including by lifting bureaucratic barriers that require women provide proof of their financial situation. It should also set up a fund to cover transport and other administrative costs. In addition, it should work with civil society to run a campaign aimed at combating stigma around women lodging criminal complaints, to establish 'one-stop' legal and social services centres for survivors of GBV, and ensure that these are distinct from police stations.

- This report also identifies a clear and widespread gap in accountability and oversight, which has hindered the development of infrastructure to improve access to justice for GBV and left both survivors and those advocating for gender equality vulnerable to attack. This is compounded by the lack of women at all levels across the justice system and systematic gender stereotyping in decisions taken by law enforcement officials. To tackle this, the GoI should immediately suspend, pending full, open and impartial investigation, any public official who has been accused of corruption or has threatened, attacked or incited violence against women – whether politicians, activists or women lodging or following up on complaints in police stations or courts. If charged, they should be held to account through fair and transparent trials. In addition, the GoI should develop and implement codes of conduct for law enforcement officials and ensure that they are widely available. These should clearly set out standards for the correct, honourable and proper performance of public functions. It should also ensure the equal participation of women in all justice systems and quasi-judicial bodies at all levels, including the introduction of temporary special measures. Finally, the GoI should work with civil society to undertake awareness raising and capacity building for law students and professionals across the justice system, on international human rights standard, GBV, as well as the negative impact gender stereotyping has on upholding women's rights and the rule of law.

To the International Community:

- The international community should use its diplomatic channels to put pressure on the GoI to amend the draft anti-domestic violence law and adopt it expediently, as well as to implement measures to effectively tackle corruption. It should also provide technical support and share best practices to this end. In addition, it should open investigations into the conduct of Iraqi politicians with dual nationality who have been accused of corruption and smuggling money abroad. If charged, they should be held to account through fair trials, their assets should be frozen and the recovered funds should be returned to Iraq. Finally, the international community should allocate financial resources to support the domestic violence fund and initiatives working to provide legal aid and medical and social services to survivors of GBV. It should ensure that funding sources are sustainable and allow for institutional autonomy in the long term.

Introduction

This study examines access to justice for gender-based violence (GBV) in the criminal and family law systems of federal Iraq.¹ It is well established in the literature that *de jure* discrimination² against women is systematic in the country,³ in violation of its obligations under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which it ratified in 1986.⁴ However, in-depth examinations of the obstacles that women in Federal Iraq face when trying to access justice for GBV in practice are less prevalent.⁵ Through data collected from 34 semi-structured interviews, this study attempts to go some way towards filling this gap. It does so through analysing Iraq's performance against six inter-related components – justiciability, availability, accessibility, good-quality, provision of remedies and accountability of justice systems – identified by CEDAW

¹ The definition of gender-based violence (GBV) used in this report follows the one provided by the CEDAW Committee in its General Recommendation No.35. It refers to violence that disproportionately affects women and that is rooted in gender-based factors. It can occur throughout a person's lifecycle and therefore this definition also includes girls. It is a social problem that requires comprehensive interventions beyond specific cases of GBV and is exacerbated by other intersecting factors, including, but not limited to, age, geographic location and ethnicity. According to the CEDAW Committee, GBV can take many forms and includes 'acts and omissions, intended or likely to cause or result in death, physical, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion or arbitrary deprivation of liberty.' In addition, both the occurrence of GBV and the response to it is shaped by 'cultural, economic, ideological, technological, political, religious, social and environmental factors.' It takes place in all spheres of human interaction, including public and private spaces, the family, the community and the workplace, among others. However, it is beyond the scope of this paper to examine access to justice for GBV in the context of armed conflict. For more see: Committee on the Elimination of All Forms of Discrimination Against Women, 'General Recommendation No.35 on Gender-Based Violence Against Women, updating General Recommendation No.19, CEDAW/C/GC/35', UN Office of the High Commissioner for Human Rights, 14 July 2017, available at: <https://bit.ly/3D2zGgw> (accessed 18 March 2021).

² This paper uses the term '*de jure* discrimination' to refer to discrimination against women in Iraqi laws, in contrast to '*de facto* discrimination' which refers to the discrimination that women face in practice, although the two are often linked.

³ See for example: Mishkat Al-Moumin, 'Constitutional and Legal Rights of Iraqi Women', *The Middle East Institute*, 1 April 2008, available at: <https://bit.ly/3B8T89J> (accessed 19 March 2021); Bnar Ariany, 'The Conflict Between Women's Rights and Cultural Practices in Iraq', *The International Journal of Human Rights* 17/4 (2013), pp. 530–66; 'Iraq's Criminal Laws Preclude Justice for Women and Girls', *Global Justice Centre*, March 2018, available at: <https://bit.ly/37TFri8>, (accessed 19 March 2021); 'Iraqi Women Challenges of Security, Peace and Justice, Shadow Report to CEDAW Committee', *Iraqi Women Network*, 2019, available at: <https://bit.ly/37WaZnB> (accessed 19 March 2021); Equality Now, the Baghdad Women Association, the Iraqi Women's League, the Coalition of Women MPs from Arab Countries to Combat Violence Against Women and the Global Campaign for Equal National Rights, 'Information on Iraq for Consideration by the Committee on the Elimination of Discrimination against Women at its 74th Session', 30 September 2019, available at: <https://bit.ly/3svuhJP> (accessed 19 March 2021).

⁴ This is also in violation of Iraq's obligations under articles 2 and 33(2) of the Arab Charter on Human Rights, the provisions of the Beijing Declaration and Plan for Action and the UN General Assembly Declaration on the Elimination of Violence Against Women.

⁵ For a similar study of *de facto* obstacles that women face when trying to access justice in the Kurdistan Region of Iraq, see: Adel Bakawan and Danièle Joly, 'Women in Kurdistan-Iraq: Issues, Obstacles and Enablers', *The International Journal of Human Rights* 20/7 (2016), pp. 956–77.

as essential to ensuring access to justice for women.⁶ It also provides recommendations aimed at influencing policymaking and advocacy.⁷

Methodology

Interviews for this study were conducted between August 2020 and February 2021 and include 12 women's rights activists, seven legislators and politicians, four judges, seven lawyers, one tribal leader and two sheikhs. A key principle of feminist research is to centre the experiences of those impacted by the topics under examination. However, for this particular study, a decision was made not to recruit survivors of GBV on the basis of the 'do no harm' principle.⁸

Discrepancies in the numbers of interviewees in each category is due to the difficulty of accessing some informants. Due to the COVID-19 pandemic, interviews were carried out online, over the phone and in-person in Baghdad whenever possible. For the most part, informants were recruited through researchers' network of contacts. The only exception were the four sitting judges interviewed for this paper, who were preassigned to researchers by the president of the Rusafa Appeals Court.⁹

While the approach to sampling used in this study was useful in gaining access to informants, a key disadvantage is that by relying on researchers' networks there is a possibility of only interviewing individuals with similar opinions and experiences.¹⁰ However, this was mitigated to some extent through recruiting informants from different professions, which allowed for a more diverse range of perspectives.¹¹ In addition, a slightly different set of inter-linked questions were posed to each category of informants. Each set was ranked by order

⁶ Committee on the Elimination of All Forms of Discrimination Against Women, 'General Recommendation No.33 on Women's Access to Justice, CEDAW/C/GC/33', *UN Office of the High Commissioner for Human Rights*, 23 July 2015, available at: <https://bit.ly/3mnd04OI> (accessed 18 March 2021), paragraph 14.

⁷ Güley Bor, 'Response to and Reparation for Conflict-Related Sexual Violence in Iraq: The Case of the Shia Turkmen in Tel Afar', *LSE Middle East Centre Report*, October 2019, available at: <https://bit.ly/3xUXz5S> (accessed 18 March 2021).

⁸ This is because we could not guarantee that interviews would not re-traumatise survivors or cause them emotional distress, nor could we confidently refer them to effective support services. For more on this, see: 'Basic Investigative Standards for International Crimes', *Global Rights Compliance*, 2019, available at: <https://bit.ly/3D5PcIj> (accessed 11 June 2021); Mazedra Hossain and Alys McAlpine, 'Gender Based Violence Research Methodologies in Humanitarian Settings', *Research for Health in Humanitarian Crises*, July 2017, available at: <https://bit.ly/3AWJmaj> (accessed 11 June 2021); Sara Ferro Ribeiro and Danaé van der Sraten Ponthoz, 'International Protocol on the Documentation and Investigation of Sexual Violence in Conflict', March 2017, available at: <https://bit.ly/3D5PL4T> (accessed 11 June 2021); Federica D'Alessandra et al. (eds), 'Handbook on Civil Society Documentation of Serious Human Rights Violations', *Public International Law & Policy Group* (2016), available at: <https://bit.ly/3zL1gNm> (accessed 2 September 2021).

⁹ Also known as the Rusafa branch of the Central Criminal Court.

¹⁰ Gill Hague, Aisha K. Gill and Nazand Begikhani, "'Honour'- Based Violence in Kurdish Communities', *Women's Studies International Forum* 35/2 (2012), p. 79.

¹¹ *Ibid.*

of importance and accompanied by a list of possible follow-up questions that researchers could use, with the alternative option of developing them during each interview. As such, informants were able to both describe and interpret social behaviour and phenomena.¹² Recordings of interviews were then transcribed, mapped according to themes and analysed.

This paper is shaped by the positionalities of the researchers who contributed to it. Of particular importance is the positionality of the researchers who carried out the interviews for this project, as Iraq-based women's rights activists, as well as the principal investigator's position as a UK-based researcher and member of the Iraqi diaspora also involved in social justice activism. This sometimes made it difficult to accept the highly patriarchal perspectives of some informants. Nevertheless, we have benefited from the insights that such interviews gave us into the functioning of the judicial system.

Background

In Iraq, as elsewhere, the dominant social roles attributed to women and girls and stereotypes about 'proper conduct' are central to gender inequality. The primary duty of women and girls is seen to be carrying out domestic labour, having and looking after children or siblings, as well as taking care of elderly or sick relatives.¹³ Women are also expected to financially depend on male members of their families, who play a decisive role in shaping key decisions in their lives. In addition, women and girls' value is tied up with their 'modesty' and 'virginity', which are perceived to be key to guarding the 'honour' and dignity of their families.¹⁴ Consequently, women and girls have a lower social status than men, and are forced to carry the burden of conforming to rigid ideas about how they should behave. As Cynthia Cockburn argues, while this may not always result in physical assault, it attests to the structures of power and the uneven distribution of resources, which justify violence and limit women's potential.¹⁵ This gendered violence flows through periods of war and peace and the experiences of women during each period cannot be seen as totally distinct from each other.¹⁶

¹² Ibid.

¹³ While this report does not specifically focus on access to justice for GBV during the COVID-19 pandemic, it is important to note that these roles have been entrenched further by the pandemic due to the fact that the burden of domestic labour imposed on women has increased as men have had to stay at home during lockdowns. For more, see: Oxfam, 'Gender Analysis of The Covid-19 Pandemic in Iraq', 22 June 2020, available at: <https://bit.ly/3z1FNiJ> (accessed 19 March 2021) and 'Al Nisa' Wa Al Fatayat Fi Zal Ja'ihat Covid-19: Dirasa Hala Lil-mohafadhat, Baghdad, Ninewa, Kirkuk, Al Anbar, Salah Al Din' [Women and Girls in Light of the Covid-19 Pandemic: A Case Study of Baghdad, Ninewa, Kirkuk, Al Anbar and Salah Al Din Provinces], *Women Leadership Institute – Iraq*, 2020.

¹⁴ Bakawan and Joly, 'Women in Kurdistan-Iraq: Issues, Obstacles and Enablers'.

¹⁵ Cynthia Cockburn, 'The Continuum of Violence: A Gender Perspective on War and Peace', in *Sites of Violence: Gender and Conflict Zones*, eds Wenona Giles and Jennifer Hyndman (Berkeley: University of California Press, 2004), p. 30. It is also important not to homogenise women's experiences and to recognise that they vary depending on social class, political orientation, place of residence and professional background, among other factors. For more, see Nadjie Al-Ali, 'Iraqi Women and Gender Relations: Redefining Difference', *British Journal of Middle Eastern Studies* 35/3 (2008), p. 406.

¹⁶ Cockburn, 'The Continuum of Violence', p. 43.

To contextualise the report findings, we draw on Nadjé Al-Ali's and Nicola Pratt's work on the impact of socio-economic, political, cultural and ideological changes over time on women in Iraq and their susceptibility to GBV.¹⁷ As they show, initially the Baathist regime sought to rule not only by repression, but also by providing a prosperous socio-economic context.¹⁸ This included welfare and both educational and work opportunities for women, which challenged traditional attitudes regarding gender roles.¹⁹ However, this began to change during the Iran-Iraq war and the subsequent sanctions period, whereby women were being pushed back into the so-called 'private sphere' and new laws were introduced to control their bodies and health.²⁰ At the same time, due to the collapse of public services and hyperinflation, the state was no longer able to provide childcare services for women who worked, leaving them with no option other than to stay home with their families and (due to the lower status of women and girls) put the little money they had towards educating their sons, rather than daughters.²¹ This was coupled with a rise in societal distrust, as Saddam Hussein increasingly pursued discriminatory and anti-women policies, leading many women to adopt conservative modes of dress.²²

The US and UK-led invasion of Iraq only exacerbated the deterioration of state institutions and led women to further retreat from public life. It saw the imposition of a political system comprised of competing ethno-sectarian factions, who have systematically embezzled funds from public coffers as a means of increasing their enrichment and power at the expense of rebuilding the state's infrastructure.²³ Women have been disproportionately impacted by the lack of public service provision. They have had to take on the labour of caring for their families often in female-headed, single-parent households in the absence of jobs, training opportunities and access to land and capital,²⁴ whilst also navigating the day-to-day difficulties of water and electricity shortages.

The post-invasion political system also worked to empower heteropatriarchal political parties, who have used their platforms to impose discriminatory laws and provisions jus-

¹⁷ Nadjé Al-Ali and Nicola Pratt, *What Kind of Liberation? Women and the Occupation of Iraq* (Berkeley, University of California Press, 2009).

¹⁸ Nadjé Al-Ali, 'Iraqi Women and Gender Relations: Redefining Difference', *British Journal of Middle East Studies* 35/5 (2008), p. 412.

¹⁹ Ibid.

²⁰ Ibid, p. 413.

²¹ Ibid.

²² Ibid, p. 415.

²³ For more, see: Toby Dodge, 'Corruption Continues to Destabilize Iraq', *Chatham House*, 1 October 2019, available at: <https://bit.ly/3DHYLOb> (accessed 21 March 2021); Toby Dodge, 'The Failure of Peacebuilding in Iraq: The Role of Consociationalism and Political Settlements', *Journal of Intervention and State Building*, December 2020, pp. 1-17; Toby Dodge and Renad Mansour, 'Politically Sanctioned Corruption and Barriers to Reform in Iraq', *Chatham House*, 17 June 2021, available at: <https://bit.ly/2WHNKeA> (accessed 19 July 2021); Zaid Al-Ali, *The Struggle for Iraq's Future: How Corruption, Incompetence and Sectarianism Have Undermined Democracy* (New Haven, Connecticut: Yale University Press, 2014).

²⁴ Cockburn, 'The Continuum of Violence', p. 40.

tified in the name of culture and religion.²⁵ In addition, these parties, which continue to dominate Iraqi politics, used their armed wings to solidify and expand their stake in the post-invasion settlement, resulting in a devastating civil war with professional women becoming the targets of kidnapping and assassinations.²⁶ As a consequence, women were too afraid to leave their homes to go to work or to pursue education.²⁷ Public spaces also fell under the control of rival paramilitaries, who used them to expand their territorial control and as a means of generating income.²⁸ As a result, women have been increasingly forced to conform to traditional gender roles to protect themselves from harassment and violence in the streets.

Research Findings: Challenging Narratives of 'Fate and Divine Will'

Justiciability

The CEDAW Committee defines justiciability as women's ability and empowerment to claim their legal rights.²⁹ A detailed analysis of how domestic Iraqi laws fall short of international standards³⁰ is beyond the scope of this report, instead I examine here some key obstacles to the elimination of *de jure* discrimination against women in Iraq.

Informants interviewed for this study argued that one of the central reasons for the continued discrimination against women in Iraqi law is the nature of the political system. Iraq has a parliamentary gender quota, awarding women at least 25% of the seats in the Council of Representatives.³¹ However, informants pointed out that both the government and the civil service continue to be dominated by male communal leaders who uphold patriarchal and traditional ideas about women's roles. In part, this means that women are appointed to positions on the basis of their ethnic and sectarian affiliation or family connections, as opposed to their competence or qualifications. This also means, as one informant put it, that women politicians are meant to be 'decorative and must not interfere' nor criticise the politics of the parties to which they owe their positions.³² The informant

²⁵ On personal status, see: Noga Efrati, 'Negotiating Rights in Iraq: Women and the Personal Status Law', *Middle East Journal* 59/4 (2005) pp. 577–95; Nadjé Al-Ali and Nicola Pratt, 'Women in Iraq: Beyond the Rhetoric', *Middle East Report* 36/239 (2006), pp. 18–23; Zahra Ali, *Women and Gender in Iraq: Between National Building and Fragmentation* (Cambridge: Cambridge University Press, 2018), pp. 224–248.

²⁶ Toby Dodge, *Iraq: From War to a New Authoritarianism* (Abingdon: Routledge, 2012).

²⁷ Nadjé Al-Ali, 'Iraqi Women and Gender Relations: Redefining Difference', *British Journal of Middle Eastern Studies* 35/3 (2008), p. 415.

²⁸ Charles Tripp, 'Militias, Vigilantes, Death Squads', *London Review of Books*, 25 January 2007, available at: <https://bit.ly/3DA185z> (accessed 19 March 2021).

²⁹ 'General Recommendation No.33 on Women's Access to Justice, CEDAW/C/GC/33', paragraph 14(a).

³⁰ See footnote 3.

³¹ This is enshrined in Article 49(4) of the Constitution. The Council of Representatives is the country's legislative body which has the competence to enact, repeal and amend laws.

³² Interview with women's rights activist 17, Baghdad, 2020. For safety reasons, the names of all informants have been kept confidential and they will instead only be identified by number and profession throughout this report.

elaborated, stating that if women leave their parties and try to run independently, they are ‘out of the game’ and unable to create change even if they win parliamentary seats, due to the dominance of the main ethno-sectarian political parties.³³ Denying women real decision-making power in government and state institutions makes it more difficult to push for the enactment of laws that protect their rights, or for discriminatory laws to be amended or repealed.

Informants also consistently highlighted political parties’ use of patriarchal interpretations of Islamic law as a means of giving legitimacy to their own conservative agendas. As one informant put it:

Those who interpret religion are the same men who put in place [patriarchal] customs and traditions, for [interpretations of religion] are meanings that a person derives, which become a conviction. Then it turns into a habit and through repetition it becomes a known and widespread custom and then it turns into an issue of ‘fate and divine will’ imposed on society, that we unfortunately cannot get rid of. These convictions were established by a patriarchal society and when we negotiate with men and women parliamentarians, we receive the same answer from them; ‘this is what religion says’ – with the observation that they have misinterpreted religion and they do not now know what God wants, and they use the veil of religion to justify patriarchal authority.³⁴

The institutionalisation of religion means that discriminatory interpretations become more difficult to challenge as they acquire credibility with the weight of both religion and the state behind them.³⁵ As a consequence, a number of informants called for the separation of religion and state in favour of a civil state, which research has shown tends to adopt more egalitarian family law.³⁶ For others, however, the issue was not the institutionalisation of religion but finding ways to ensure that religious doctrine is interpreted in line with international human rights standards, including through the provision of a wider variety of interpreters and opinions in order to allow for the development of moderate interpretations.³⁷

Culture is also often used alongside religion as a means of advancing the patriarchal agendas of the political elite. This is clear in current debates surrounding legislating an

³³ Ibid.

³⁴ Interview with women’s rights activist 1, Baghdad, 2020. The notion of ‘fate and divine will’ is also often recorded as the motive behind honour crimes by courts. For more, see: Anfal Abed, ‘Violence Against Women in Iraq: Between Practice and Legislation’, *LSE Middle East Centre Blog*, 8 July 2019, available at: <https://bit.ly/2Yptv6t> (accessed 16 June 2021).

³⁵ Mala Htun and Laurel S. Weldon, ‘Religious Power, the State, Women’s Rights, and Family Law’, *Politics and Gender* 11/3 (30 September 2015), pp. 451–77.

³⁶ Ibid, p. 452.

³⁷ For more on issues around this, see: Abdullahi A. An-Na’im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse, NY: Syracuse University Press, 1996); Nisrine Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (London: British Institute of International and Contemporary Law, 2008).

anti-domestic violence law in Federal Iraq.³⁸ Despite widespread campaigns by women's rights organisations, the bill has been rejected by the Council of Representatives on at least three occasions since 2015, on account of objections from various parties within parliament who have argued that it is incompatible with religion and 'Iraqi culture'. These debates have been led by the Islamist Virtue Party and supported by the Fatah Alliance and the State of Law Coalition.³⁹ In particular, they have argued that the law promotes Western values, would destabilise the Iraqi family, interfere in private family matters (such as the right to discipline children in accordance with 'national and religious values') and is contrary to the constitution and Islam.⁴⁰ Moreover, women politicians, who have advocated for the law to be passed, have been subjected to threats and violence.⁴¹ Ironically, while politicians evoke the 'private sphere' to argue that women's rights are a family matter that should not be discussed in public, they do so from the heart of the political establishment. In this way, they use the construct of the 'private sphere' as a means of promoting heteropatriarchal gender discourses. This is bolstered by references to religion which are used to shut down debate, as it is considered blasphemous to challenge them.

Furthermore, informants identified a lack of political will to implement and follow-up on policies and initiatives aimed at ending gender discrimination. This is because both secular and religious political parties are primarily concerned with increasing their wealth and power.⁴² Within this context, women's rights are either disregarded altogether or used as bargaining chips in negotiations, where parties are willing to either support or oppose them depending on what they are offered in return.⁴³ This means that vital infrastructure, such as the Ministry for Women Affairs, has been abolished. Moreover, there is a lack of financial and human resources for gender issues,⁴⁴ as well as a lack

³⁸ The two bills currently in circulation are: 'Protection from Domestic Violence' from the Council of Ministers and 'Combatting Domestic Violence' from the President's Office. For an analysis of the latter, see: 'Commentary on the Draft Law on Anti-Domestic Violence in Iraq', *Human Rights Watch*, 19 March 2017, available at: <https://bit.ly/3yEuL1J> (accessed 21 March 2021).

³⁹ For more, see: 'Qanun Al 'Unf Al Usari bain Al Tharourat Wa Arakeel Ahzab Al Solta' [The Domestic Violence Law in Iraq stuck between the needs of the community and obstacles by political parties], *Al-Quds Al-Arabi*, 12 September 2020, available at: <https://bit.ly/3raavF8> (accessed 18 June 2021); 'Ahzab Montafitha Takif Fee Wajh Qanon Al Unf Al Awsari Wa Tarfoth Hmayat Al Mara Wa Al Tifal' [Influential parties stand in the way of the domestic violence law and refuse to protect women and children], *Al-Mada*, 6 March 2019, available at: <https://bit.ly/3yypIQs> (accessed 18 June 2021).

⁴⁰ For more see: Mustafa Saadoun, 'Islamist Parties Challenge Iraqi Domestic Violence Draft Law', *Al Monitor*, 17 August 2020, available at: <https://bit.ly/2VdkVq6> (accessed 19 March 2021).

⁴¹ Ali Hussein, 'Al A'mod Al Tamin: Hizb Al Fadila Wa O'kdat Al Nisa' [The Eighth Column: The Virtue Party and the Women Complex], *Al-Mada*, 6 May 2019, available at: <https://almadapaper.net/view.php?cat=218388> (accessed 19 March 2021).

⁴² For more on this see: Toby Dodge, 'Gramsci Goes to Baghdad; Understanding the Iraqi State Beyond Collapse, Failure or Hybridity', forthcoming 2022; Lina Khatib and Renad Mansour, 'Where is the State in Lebanon and Iraq?', 21 April 2021, available at: <https://www.chathamhouse.org/2021/04/where-state-iraq-and-lebanon> (accessed 18 June 2021).

⁴³ Interview with politician 28, Baghdad, 2020.

⁴⁴ 'The National Strategy to Combat Violence against Women and Girls', *UN Population Fund and Directorate of Women's Empowerment*, 2020, available at: <https://bit.ly/3FO1Lc1> (accessed 19 March 2021).

of gender responsive public budgeting.⁴⁵ Consequently, even when laws, initiatives and policies conducive to women's rights are adopted, they lack the resources and political will necessary to be implemented properly.⁴⁶

In order to tackle obstacles that continue to hinder the *de jure* equality of women, the GoI should create an enabling environment for women to participate in public and political life, including raising awareness of the fact that full and equal political participation is a vital component of women's human rights.⁴⁷ They should also immediately suspend, pending a full, open and impartial investigation any public official who has threatened or incited violence against women politicians or activists, as well as any politician who has been accused of corruption. If charged, they should be held to account through fair and transparent trials.

Moreover, the GoI should work with civil society to expediently amend the draft anti-domestic violence bill to bring it in line with international standards and enact it. It should also repeal article 41(1) of the Penal Code No.111 of 1969 (as amended in 2010), which stipulates that no crime has been committed when a husband 'disciplines' a wife, providing legal exemptions for domestic violence, as well as article 398 which exempts an offender who has committed rape from prosecution if they marry their victim and articles 128, 130, 131 and 409, which allow perpetrators to invoke 'honour' as a mitigating circumstance for homicide. The international community should urge the GoI to amend and pass the draft anti-domestic violence law and to repeal the aforementioned discriminatory articles of the Penal Code.

The GoI should bolster the independence of the Integrity Commission so that it can tackle corruption more effectively. This could include passing legislation to expand the Commission's mandate to allow it to allocate funds recovered through its activities to development projects, including establishing a fund earmarked for women's rights initiatives.⁴⁸ The GoI should also reinstate the Ministry of Women Affairs, adopt gender sensitive public budgets and earmark resources for the effective implementation and follow-up of gender policies, frameworks and initiatives. Finally, it should actively promote feminist interpretations of religious doctrine through giving a platform to women jurists in particular.

⁴⁵ 'Women's Economic Empowerment in Iraq', *World Bank*, 17 January 2019, available at: <http://pubdocs.worldbank.org/en/589791574443330880/pdf/Iraq-WEEAP-Jan-17-2019-en.pdf> (accessed 19 March 2021).

⁴⁶ This extends to Iraqi Kurdistan, where despite the passing of a domestic violence law in 2011, there is still a lack of adequate human, technical and financial resources necessary for its implementation on the part of the Kurdish authorities. For more, see: Committee on Elimination of All Forms of Discrimination Against Women, 'Concluding Observations on the Seventh Periodic Report of Iraq, CEDAW/C/IRQ/CO/7', *UN Office of High Commissioner for Human Rights*, 12 November 2019, available at: <https://bit.ly/3yIQZzz> (accessed 19 March 2021).

⁴⁷ Committee on the Elimination of All Forms of Discrimination Against Women, 'General Recommendation No. 23: Political and Public Life, A/52/38', *UN Office of the High Commissioner for Human Rights* (1997), available at: <https://bit.ly/3DKvBgO> (accessed 19 March 2021).

⁴⁸ *Ibid.*

The international community should use its diplomatic channels to put pressure on the GoI to amend and adopt the draft anti-domestic violence law and implement measures to effectively tackle corruption. It should also provide technical support and share best practices to achieve this. In addition, it should open investigations into the conduct of Iraqi politicians with dual nationality who have been accused of corruption and smuggling money abroad. If charged, they should be held to account through fair trials, their assets should be frozen and recovered funds returned to Iraq.

Availability and Accessibility

The CEDAW Committee has stipulated that the 'availability' of justice requires the establishment, maintenance and funding of courts and other quasi-judicial bodies in urban, rural and remote areas.⁴⁹ These must also be secure, affordable and physically accessible to all women.⁵⁰

Survivors of GBV who want to lodge a criminal complaint can either do so directly at the Investigations Court or the local police station. If they choose the first route, the judge will assign a court investigator to the case or refer it to a police station for investigation. The case will then be either dismissed or referred to the Assizes or Misdemeanor Court.⁵¹ If survivors choose to file a complaint at a local police station, the latter will conduct an investigation before referring the case to the Investigations Court to assess whether it has *prima facie* merit and should go to trial. According to the Supreme Judicial Council, there are Investigations and Misdemeanor Courts in each city in every Iraqi governorate and a Assizes Court in each governorate.⁵² Muslim women can also file a petition directly at the Personal Status Court, of which there is one available in each governorate. For non-Muslims, petitions can be lodged directly at the Personal Matters Court, which are affiliated with the Courts of First Instance in every governorate.⁵³

Provisions on standing in domestic Iraqi law mean that women have to lodge petitions themselves, or in the case of girls, a petition has to be lodged on her behalf by a guardian on the paternal side of her family.⁵⁴ This can potentially result in their re-traumatisation and means that groups with interest cannot lodge petitions on their behalf, allowing for early intervention in cases where survivors might not otherwise be able to access justice themselves. For girls in particular, the laws on standing leave them at the mercy of male members of their family, who could well be the perpetrators of GBV. In addition, Article

⁴⁹ 'General Recommendation No.33 on Women's Access to Justice, CEDAW/C/GC/33', paragraph 14(b).

⁵⁰ Ibid, paragraph 14(c).

⁵¹ Crimes that carry a punishment of less than five years are referred to the Misdemeanour court, whereas crimes that carry a punishment of over five years are referred to the Assizes court. 'The Judicial System in Iraq', *Supreme Judicial Council*, available at: <https://www.hjc.iq/Judicial-system-en.php> (accessed 19 March 2021).

⁵² Criminal cases can be appealed at the governorate's Court of Appeal.

⁵³ Ibid. Petitions filed at Personal Status Courts can be appealed at the Court of Appeal and Court of Cassation depending on the nature of the verdict.

⁵⁴ Criminal Procedure Code No.23 of 1971 (as amended on 14 March 2010), available at: <http://hrlibrary.umn.edu/research/Egypt/Criminal%20Procedures.pdf>, articles 1 and 3.

6 of the Criminal Procedure Code stipulates that complaints must be submitted within three months of the ‘date when the aggrieved party became aware of the offence or from the disappearance of any compelling excuse that prevented the submission of the complaint.’⁵⁵ The short window within which a petition can be lodged is likely to obstruct access to justice for a large number of survivors. Moreover, the vague wording of Article 6 leaves it open to arbitrary interpretation and abuse.

Iraqi courts and police stations do not have any mechanisms in place to allow women to file petitions online, to attend hearings remotely or to protect their anonymity.⁵⁶ This deters women from reporting due to the shame associated with lodging petitions. Since a woman’s worth, eligibility for marriage and family’s honour is seen to be tied up with her ‘virginity’, informants suggested that her ‘reputation’ might be compromised if she has to interact with men outside of her family, who might have to contact her to follow-up on her case, or if she is seen coming out of a court or police station – with the latter having a reputation for being a seedy and unprofessional place where women are systematically subjected to GBV.⁵⁷ In addition, lodging a petition against family members or a husband challenges patriarchal norms that see women as subordinate and the family as sacrosanct and off-limits to government interference.⁵⁸

Informants also emphasised the difficulty that women face in accessing courts in rural and remote areas, as well as the lengthiness of proceedings due to lack of resources. This has been exacerbated by the COVID-19 pandemic, with courts operating at 25–50 percent capacity and no duty judge available between Friday and Sunday.⁵⁹ This means that women, including those living in urban areas, sometimes have to travel long distances to lodge and follow-up on complaints in police stations and courts, incurring transport costs that many cannot afford. As a result, many women abandon their complaints altogether. This is compounded by the fact that 88% of Iraqi women are unemployed and therefore unlikely to have access to independent financial resources.⁶⁰ Informants stressed that due to stigma, often survivors’ families refused to support them emotionally or financially during court proceedings. Therefore, the lack of availability of courts and costs associated with lodging petitions renders them inaccessible for the vast majority of Iraqi women.

In addition, the costs for hiring an attorney remain extremely high. For example, a criminal lawyer can charge up to \$1000 US just to request the investigation papers from the

⁵⁵ Ibid.

⁵⁶ Interview with lawyer 34, Baghdad, 2021.

⁵⁷ This was constantly repeated by informants from across the professions interviewed for this paper.

⁵⁸ This is contrary to Iraq’s obligation to ‘protect’ under international human rights law, which means that states are responsible for acts of GBV, including acts carried out by private individuals and non-state actors. The obligation to ‘protect’ also renders the state responsible for cases in which it knew or should have known, that a woman is at risk and it did not take measures to prevent, investigate or prosecute. See: ‘Women’s Access to Justice for Gender-Based Violence: A Practitioner’s Guide’, *International Committee of Jurists*, February 2016, available at: <https://bit.ly/3FJiirp> (accessed 19 March 2021).

⁵⁹ Interview with Lawyer 34, Baghdad, 2021.

⁶⁰ ‘Iraq: Female Labor Force Participation Rate, 1990–2019’, *The Global Economy*, 2019, available at: https://www.theglobaleconomy.com/Iraq/Female_labor_force_participation/ (accessed 19 March 2021).

court and consider whether to take a case on.⁶¹ This is because they expect to pay bribes throughout proceedings and to have to deal with interference from tribes due to the shame associated with women lodging criminal complaints. In Personal Status Courts, where bribes and interference from families are less common, costs incurred can vary between \$140–400.⁶² According to the Supreme Judicial Council, legal aid is available, however in practice this is virtually never provided and women face protracted bureaucratic hurdles accessing it. This includes having to procure documentation regarding their financial situation from municipal councils in order to prove their eligibility.⁶³ In addition, lawyers who have offered their services free of charge in the past have been threatened with disbarment and pro-bono legal services provided to women by civil society organisations are limited to a small number of cases, and usually only in Personal Status Courts.⁶⁴ Furthermore, informants emphasised that since the beginning of the pandemic, funding for pro-bono legal services has been directed elsewhere and that they have only been able to operate at half capacity.⁶⁵ As a consequence, many women do not have access to the expertise necessary to file a petition, represent themselves during trials or follow-up on court proceedings. In addition, since men are much more likely to have the means to hire a lawyer and pay court administration fees, women are denied their right to equality of arms, rendering trials inherently unfair.

Furthermore, the Supreme Judicial Council issued an order in February 2021 reinstating Domestic Violence Courts after they were abolished by its former president in 2017. Despite this, at the time of writing, the Domestic Violence Court only has branches in the Rusafa and Kharakh Courts of Appeal in Baghdad and lack of publicity and knowledge about how it works means that few complaints have been filed. In addition, in 2009, the Ministry of Interior established the Family and Child Protection Directorate. As part of its mandate, the Directorate is supposed to be staffed with female cadres and have a separate building affiliated with police stations in all governorates as a way of encouraging women to report domestic violence. After a complaint is lodged cadres in these units are meant to 'diagnose problems in a practical way, find suitable solutions and take legal actions according to the law.'⁶⁶ Informants suggested that in practice the directorate plays an intermediary role and its cadres usually encourage women to reconcile with spouses before even considering recording their complaints.⁶⁷ In addition, while few of these units

⁶¹ Interview with Lawyer 34, Baghdad, 2021.

⁶² Ibid.

⁶³ 'Legal Aid..A Principle that Exempts the Poor from Court Fees and the Costs of Lawsuits' [المعونة القضائية.. مبدأ يعفي الفقراء من رسوم المحاكم وكلف الدعاوى], *Supreme Judicial Council*, available at: <https://bit.ly/3DQFzgC> (accessed 21 October 2021).

⁶⁴ Interview with Lawyer 34, Baghdad, 2021.

⁶⁵ For more, see: 'Covid 19 and Gender Justice: Feminists in MENA Defying Global Structural Failure', *Women's International League for Peace and Freedom*, 2020, available at: <https://bit.ly/3xk1YR8> (accessed 10 June 2021).

⁶⁶ 'Agency of Ministry for Police Affairs/Directorate of Family and Child Protection from Domestic Violence' [Wakalat Al Wizara Lashawn Al Sharta/Modereat Hemayat Al Osra Wal Atfal Min Al 'Unf Al Osary], *Iraqi Ministry of Interior*, available at: <https://moi.gov.iq/index.php?name=Pages&op=page&pid=111> (accessed 19 March 2021).

⁶⁷ As far as researchers could tell, the Family and Child Protection Directorate does not assist women in filing criminal complaints.

exist in the main cities, they are rare in rural and remote areas and informants could not identify any police stations with separate buildings allocated to the Directorate.

Passing the draft anti-domestic violence law would allow civil society groups to lodge petitions on behalf of survivors of domestic violence and enshrine the establishment of Domestic Violence Courts in law, making them more difficult to abolish. The GoI should also amend articles 1, 3 and 6 of the Criminal Procedure Code, in order to allow groups with interest to lodge petitions, as well as repeal statutory limitations for the prosecution of human rights violations, including GBV.⁶⁸

Furthermore, the GoI should take steps to provide courts and quasi-judicial mechanisms in rural and remote areas, including the use of mobile courts and setting up infrastructure to allow women to lodge petitions and participate in court proceedings remotely.⁶⁹ It should also ensure that women are aware of existing legal aid services and can access them, including through removing bureaucratic barriers. It should additionally set up a fund dedicated to covering transport and other administrative costs for all survivors of GBV, particularly those from lower income backgrounds and facing multiple forms of discrimination. Furthermore, the GoI should work with civil society groups to run a wide-ranging campaign aimed at combating stigma around women lodging criminal complaints. The GoI should also expediate and allocate adequate resources to the establishment and maintenance of a Domestic Violence Court in every governorate. Information on the creation of the courts and clear instructions on how to access their services should be widely disseminated. Finally, the GoI should work with civil society to establish 'one-stop' legal and social services centres for survivors of GBV and ensure that these are distinct from police stations.⁷⁰

Good quality

The CEDAW Committee defines good quality of justice systems as ensuring that they 'adhere to international standards of competence, efficiency, independence and impar-

⁶⁸ Article 1(a) of the Code of Criminal Procedure provides, 'Criminal proceedings are initiated by means of an oral or written complaint submitted to an investigative judge, a [judicial] investigator, a policeman in charge of a police station, or any crime scene officer by an injured party, any person taking his place in law, or any person who knows that the crime has taken place. In addition, any one of those listed can notify the Public Prosecution unless the law says otherwise. In the event of a witnessed offence the complaint may be submitted to whichever police officers or sub-officers are present.' Article 3(a) provides 'the complaint can only be set in motion on the basis of a complaint from the aggrieved party or someone taking his place in law in relation to the following offences: adultery or polygamy in contravention of the law of personal circumstances, slander, verbal abuse, divulging secrets, threats or slight injury provided that the offence was not committed against someone in the performance of a public service or because of it, theft, rape, breach of trust, fraud, or acquisition of items by these means'. Article 6 provides: 'a complaint, as detailed in Article 3 of this law, will no longer be accepted once three months have passed from the date when the aggrieved party became aware of the offence or from the disappearance of any compelling excuse which prevented the submission of the complaint; and the right to submit the complaint will be dropped in the event of the death of the aggrieved party unless the law stipulates to the contrary'.

⁶⁹ 'General Recommendation No.33 on Women's Access to Justice, CEDAW/C/GC/33', para.16(a).

⁷⁰ Ibid, paragraph 17(f).

tiality, as well as to international jurisprudence.⁷¹ As part of this, states should 'ensure that evidentiary rules, investigations and other legal and quasi-legal procedures are impartial and not influenced by gender stereotypes and prejudice'.⁷²

Informants consistently highlighted how the lack of women in all areas of the justice system deters survivors from reporting GBV. According to statistics by the Supreme Judicial Council, only 4% of judges and 18% of prosecutors are women.⁷³ In a conservative society where women generally do not mix with men outside of their own families, they feel unable to share intimate details of their lives with male justice system officials. Those that do report, might withhold from fully articulating the reasons behind their complaints, putting them at a disadvantage during proceedings and making it less likely for judges to rule in their favour. This is precisely what a sheikh interviewed as part of this study told researchers:

There are details that we cannot find out through asking women directly. About two months ago, I sought assistance from a woman to find out the details that led [another] woman to ask for a divorce. The woman asked for a divorce from her husband, but she was silent about her family and husband...so I received the assistance of a woman in order to find out all the precise details and made an excuse in order to grant the divorce, so that her secret was not revealed. For this reason, we need women in this field and in all fields.⁷⁴

In addition, informants pointed out that increasing the number of women in the justice system would perhaps work towards removing the stigma associated with them visiting police stations and courthouses, making families more open to the idea of women lodging criminal petitions for GBV.

Furthermore, the Iraqi judiciary does not meet international standards of competence, independence or impartiality. In criminal courts lawyers have to pay bribes throughout proceedings and tribes are more likely to interfere and put pressure on judges to dismiss petitions in comparison to Personal Status Courts. Informants also complained of interference from political parties in instances where the accused was affiliated with a particular party. This also extends to the process of hiring and training judges, where judges are sometimes appointed on the basis of their connections and ethno-sectarian affiliations, and individuals are only accepted onto the judicial training course with the endorsement of a political party and on the basis of ethno-sectarian quotas. The lack of impartiality and independence of judges violates principles 2, 4 and 10 of the Basic Principles on the Independence of the Judiciary, which stipulate that the judiciary shall decide matters

⁷¹ Ibid, paragraph 18(a).

⁷² Ibid, paragraph 18(e).

⁷³ 'The Judicial System in Iraq', *Supreme Judicial Council*. In addition, In the latest round of recruitment, out of the 29 people accepted onto the judicial training course only one was a woman. See: 'Al Ma'had Al Kadai Ya'lin Asma' Al Makbolyeen fee Al Dirasa Ll'am Al Dirasee' [The Judicial Institute Announces the Names of those Admitted to Study for the Academic Year], *Supreme Judicial Council*, 22 February 2021, available at: <https://www.hjc.iq/institute.68030/> (accessed 19 March 2021).

⁷⁴ Interview with Sheikh 31, Baghdad, 2021.

before them impartially without improper influence or interference and that individuals appointed as judges shall have the proper qualifications and not be appointed as a result of ‘improper motives.’⁷⁵

Informants also pointed to outside interference from political parties and tribes in law enforcement proceedings. A women’s rights activist’s account of the impact this had on a complaint lodged by a survivor of GBV is telling:

The woman went [to the police station] and asked the investigator if he had transferred her papers to the court, because she went to the court and they said to her that your papers are not here. The officer said to her “your brother came with members of your tribe and they told me ‘stop the complaint process, as we will reconcile with the girl.’ So, I waited a few days to see if there was a reconciliation”.⁷⁶

The officer seems to put the desire of the complainant’s family for reconciliation above her right to accountability and the efficient handling of the case. Officers’ lack of professionalism also means that they do not have secure filing systems, sometimes losing irreplaceable documents such as medical exams which tend not to be stored electronically in public hospitals in Iraq, are slow to investigate (if they do so at all), are unwilling to follow up on cases and are known to leak information about complaints to family members. Corruption is also rampant, with officers asking for bribes in order to keep complaints confidential, process or close cases, conceal evidence and even to forge documents. Furthermore, informants reported that at police stations, women and girls are routinely subjected to violence at the hands of officers, including those affiliated with the Family and Child Protection Directorate. In addition to violating women’s human rights, this is contrary to principles 2 and 3 of the International Code of Conduct for Public Officials, which stipulates that public officials shall perform their duties efficiently, fairly and impartiality.⁷⁷ It is also in violation of articles 2, 4 and 7 of the Code of Conduct for Law Enforcement Officials which stipulate that police officers should maintain and uphold human rights of all persons, keep matters of confidential when necessary and not commit corruption.⁷⁸

Stereotyping is systematic in decisions taken by law enforcement officials. This is rooted in gender inequality and reinforced by attacks against the status of women and girls in society. It is exacerbated by the fact that professionals across all justice systems in Iraq, including those associated with the Family and Child Protection Directorate, lack adequate training on GBV and gender sensitivity. Articles 5(a) and 10(c) of the CEDAW provide that stereotyped ideas about the roles of men and women should be eliminated at all levels. In addition, the CEDAW Committee has provided that ‘stereotyping compromises the

⁷⁵ ‘Basic Principles on the Independence of the Judiciary’, *UN General Assembly*, 1985, available at: <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx> (accessed 19 March 2021).

⁷⁶ Interview with women’s rights activist 18, Baghdad, 2020.

⁷⁷ ‘Handbook on Police Accountability, Oversight and Integrity’, *UN Office on Drugs and Crime*, July 2011, available at: <https://bit.ly/3l3gebS> (accessed 19 March 2021).

⁷⁸ ‘Code of Conduct for Law Enforcement Officials’, *UN General Assembly*, 17 December 1979, available at: <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx> (accessed 19 March 2021).

impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimisation of complainants.⁷⁹ This extends beyond the judiciary and includes prosecutors and law enforcement officials, who 'often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence, with stereotypes undermining the claims of the victim/survivor and simultaneously supporting the defences advanced by the alleged perpetrator.'⁸⁰

Informants told researchers that women are often subjected to victim blaming when reporting GBV to the police or judiciary. In addition, a higher burden of proof in comparison to men before the law is placed on women due to the lack of credibility given to their voices. This means that they are often asked to produce witnesses for crimes which take place in private settings, rendering their cases inadmissible without it. In Personal Status Courts, a woman witness is valued as being the equivalent of half a male witness, therefore making it more difficult for women to produce witnesses given that they are more likely to be supported by female members of their families during divorce petitions. What is more, in both Criminal and Personal Status Courts, laws are applied inconsistently and on the basis of the pre-conceived beliefs and whims of judges, as opposed to facts of the case resulting in the misapplication and misinterpretation of laws.⁸¹

Informants also stressed time and again, that police officers and judges pressured women into reconciliation, as opposed to filing for divorce or criminal petitions. When they did this, they used a variation of the following narratives: 'this is your husband and the father of your children, you must tolerate the situation',⁸² 'you are siblings! And our religion advised that we protect the family and that there be patience and tolerance in the way that we treat our siblings',⁸³ 'tolerate him, reconcile and give him a second chance'⁸⁴ and 'this is the will of God'.⁸⁵ Others told stories of a judge, who congratulated a defendant accused of committing an honour crime⁸⁶ and another who asked a woman filing a GBV complaint whether she was 'with him or against him' as a means of intimidating her.⁸⁷ Similar stories were recalled by the vast majority of informants interviewed for this study. They demonstrate that the focus of the justice system is not protecting the rights of survivors, but rather reconciliation and family cohesion above all else.

Due to the lack of efficiency of the criminal and family law systems, distrust of the police and courts and stigma, women tend to turn to alternative dispute resolution mechanisms particularly in cases of domestic violence. The CEDAW Committee has called on state parties to guarantee that the use of alternative dispute mechanisms does not restrict women's access to 'judicial and other remedies in all areas of the law and does not lead to

⁷⁹ 'General Recommendation No.33 on Women's Access to Justice, CEDAW/C/GC/33', paragraph 26.

⁸⁰ Ibid, paragraph 27.

⁸¹ Ibid, paragraph 26.

⁸² Interview with women's rights activist 16, Baghdad, 2020.

⁸³ Interview with women's rights activist 18, Baghdad, 2020.

⁸⁴ Interview with lawyer 12, Baghdad, 2021.

⁸⁵ Interview with women's rights activist 9, Baghdad, 2020.

⁸⁶ Interview with lawyer 12, Baghdad, 2021.

⁸⁷ Interview with women's rights activist 3, Baghdad, 2020.

further violations of their rights'.⁸⁸ It has also explicitly prohibited the use of such mechanisms as 'a means of addressing criminal responsibility for domestic violence,' as it is contrary to equality before the law that some serious crimes are removed from the remit of ordinary legal systems.⁸⁹

Dispute resolution mechanisms are run by heads of tribes, religious leaders or influential men in women's families. The workings of these mechanism are not homogenous, but rather vary depending on the religion, area, the tribe and even the neighbourhood. Their influence tends to be greater in areas where tribes have a much stronger presence than the state. Informants told researchers that women are almost never afforded their rights in dispute resolution mechanisms as cases are decided according to the discriminatory beliefs of dominant men within the community. In addition, women are not given the opportunity to adjudicate or participate in proceedings, and instead are represented by their brothers, fathers or uncles, therefore denying them equal opportunities with men to prepare, conduct and respond to cases and their outcomes.⁹⁰ Moreover, the lack of women's participation results in the reinforcement of stereotypes about men as figures of authority and women as lacking moral worth and unable to exercise responsibility.⁹¹

The GoI should therefore take measures to ensure the equal participation of women in all justice systems and quasi-judicial bodies at all levels, including through the introduction of temporary special measures.⁹² In order to combat judicial stereotyping, the government should undertake awareness raising and capacity building for all law enforcements personnel on GBV, gender stereotyping and its negative impact on justice systems, as well as training on international human rights standards, including the CEDAW.⁹³ The GoI should also revise the rules on burden of proof to ensure equality between parties, and that women can lodge complaints without needing witnesses.

In relation to the use of alternative dispute resolution mechanisms, women should be informed of all justice avenues open to them, including 'their rights to use mediation, conciliation, arbitration and collaborative resolution of dispute processes.'⁹⁴ Dispute resolution mechanisms should include women as adjudicators, aim to uphold human rights, should not restrict women's access to judicial or other remedies and ensure equality of arms between women and perpetrators.⁹⁵

The GoI should also ensure the impartiality and the independence of the judiciary, and tackle corruption. It should ensure that all court procedures and law enforcement proceedings are transparent and efficient in order to prevent corruption and to increase

⁸⁸ 'General Recommendation No.33 on Women's Access to Justice, CEDAW/C/GC/33', paragraph 58(b).

⁸⁹ 'Women's Access to Justice for Gender-Based Violence: A Practitioner's Guide', *International Committee of Jurists*, p. 137.

⁹⁰ Ibid.

⁹¹ Ibid, p. 138.

⁹² 'General Recommendation No.33 on Women's Access to Justice, CEDAW/C/GC/33', paragraph 56(c).

⁹³ Ibid, paragraph 29(a).

⁹⁴ 'Women's Access to Justice for Gender-Based Violence', *International Committee of Jurists*, p. 136.

⁹⁵ Ibid, pp. 135–9.

public trust in these mechanisms.⁹⁶ The GoI should also strengthen the resources available to the judiciary and law enforcement, by ensuring good working conditions for law enforcement officials, and that all salaries are adequate and paid on time. Finally, the GoI should raise public awareness across justice systems regarding the importance of judicial independence, autonomy and integrity.⁹⁷ It should also provide adequate training for law enforcement professionals on their standards of conduct and national and international legislation on corruption and the proper discharge of their duties, as well as international human rights law.⁹⁸ The international community should support in the delivery of effective training in these areas for officials across the justice system.

Provision of Remedies and Accountability

The CEDAW Committee has stated that access to remedies requires that women receive 'from justice systems viable protection and meaningful redress for any harm that they may suffer.'⁹⁹ The obligation to provide adequate reparations also includes the establishment of effective protection, support and rehabilitation services, as well as the need to address pre-existing stereotypes, patriarchal norms and discrimination that enable violations to occur.¹⁰⁰ As for accountability, this is ensured through monitoring and oversight of the functioning of, and professionals working within, justice systems to ensure that they meet the principles of justiciability, availability, accessibility, good quality and provision of remedies.¹⁰¹

There are currently no state-run shelters for survivors of GBV. As a consequence, when women report GBV, they are either placed in prisons or returned to abusive situations and risk further violence.¹⁰² In addition, Informants could not identify any psychosocial support services provided by the state for GBV survivors. While this gap has been filled to a limited extent by civil society organisations, who provide some shelters and listening centres, these are concentrated in urban areas. Shelters provided by civil society organisations have to move constantly due to fear of attack and threats and have faced hostility from some government officials.¹⁰³ Moreover, women are reluctant to access psychological services due to stigma associated with seeking support for mental health.¹⁰⁴

⁹⁶ 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaut, A/67/305', *UN General Assembly*, 2012, available at: <https://digitallibrary.un.org/record/734340?ln=en> (accessed 19 March 2021), paragraph 41.

⁹⁷ *Ibid*, paragraph 78.

⁹⁸ *Ibid*, paragraph 67.

⁹⁹ 'General Recommendation No.33 on Women's Access to Justice, CEDAW/C/GC/33', paragraph 14(e).

¹⁰⁰ Rashida Manjoo, 'Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, A/HRC/14/22', *UN General Assembly*, (2010), available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/14/22 (accessed 6 September 2021).

¹⁰¹ 'General Recommendation No.33 on Women's Access to Justice, CEDAW/C/GC/33', paragraph 14(f).

¹⁰² Human Rights Watch, 'Commentary on the Draft Law on Anti-Domestic Violence in Iraq'.

¹⁰³ Committee on Elimination of All Forms of Discrimination Against Women, 'Concluding Observations on the Seventh Periodic Report of Iraq, CEDAW/IRQ/CO/7', *UN Office of the High Commissioner for Human Rights*.

¹⁰⁴ Interview with women's rights activist, Baghdad, 2020.

Oversight and accountability mechanisms remain weak. There are currently no clear procedures as to how to lodge a complaint against professionals across the justice system for misconduct. In addition, researchers could not find any publicly available code of conduct for police officers.¹⁰⁵ According to informants, at most if a woman experiences harassment or physical violence at a police station, she can report this directly at an investigations court. However, according to informants, lack of availability of investigators at courts means that often women are referred back to the police stations where GBV took place in order to open an investigation. This not only potentially exposes women to further violence, but also gives power to officers to delay or refuse to open up investigations and allows perpetrators to act with impunity.

If adopted, the anti-domestic violence law would provide for a dedicated fund to support survivors of domestic violence, including a fund allocated to supporting, developing and maintaining shelters. The GoI should also make medical and psychological support services freely available to all survivors of GBV. These should be properly resourced, and the quality of services checked regularly.¹⁰⁶ It should also undertake awareness raising campaigns to combat stigma around mental health.¹⁰⁷ The international community should allocate financial resources to support this fund and initiatives working to provide legal aid and medical and social services to survivors of GBV. It should ensure that funding sources are sustainable and allow for autonomy in the long term.¹⁰⁸

In order to eliminate pre-existing discrimination, the GoI should work with civil society to develop a wide-ranging campaign aimed at raising awareness and educating the general public, communal leaders and media professionals about the negative impact of patriarchal norms and stereotyping.¹⁰⁹ The GoI should also develop and make the code of conduct for law enforcement widely available, giving the public an opportunity to understand minimum standards and participate in the oversight of judicial systems.¹¹⁰ This should clearly set out correct, honourable and proper performance of public functions.¹¹¹ What is more, it should work with relevant stakeholders to develop and widely publicise procedures for making complaints against all professionals working in the justice system for misconduct, taking special care to account for the obstacles that women face when making such complaints.

¹⁰⁵ While informants said that they had seen code of conducts used during trainings, they do not seem to be publicly available, and researchers could not find them online.

¹⁰⁶ Committee on Elimination of All Forms of Discrimination Against Women, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Iraq, CEDAW/C/IRQ/CO/4-6', *UN Office of the High Commissioner for Human Rights*, 10 March 2014, available at: <https://bit.ly/3nNTIpf> (accessed 19 March 2021), paragraph 29(c).

¹⁰⁷ 'Commentary on the Draft Law on Anti-Domestic Violence in Iraq', *Human Rights Watch*.

¹⁰⁸ Bor, 'Response to and Reparation for Conflict-Related Sexual Violence in Iraq', p. 6.

¹⁰⁹ Committee on Elimination of All Forms of Discrimination Against Women, 'Concluding Observations on the Seventh Periodic Report of Iraq, CEDAW/C/IRQ/CO/7', *UN Office of the High Commissioner for Human Rights*, 2019, paragraph 20(a).

¹¹⁰ *Ibid*, paragraph 78.

¹¹¹ Gabriela Knaul, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, A/67/305', *UN General Assembly*, paragraph 76.

Conclusion

This study has shown that it remains near impossible for women to access effective protection for GBV in the criminal and family law systems of Federal Iraq, with the state falling short of every one of the six components identified by the CEDAW as essential for women's access to justice. It has also highlighted the urgent need for the GoI to work with civil society to amend the draft anti-domestic violence law in order to bring it into line with international standards and to enact it. If adopted, the law would go a long way towards addressing shortfalls in access to justice for women in federal Iraq, including enshrining the establishment of domestic violence courts in law, making provisions for shelters and a dedicated fund to support survivors of domestic violence. The GoI should also take broader, longer-term holistic measures, including tackling high-level and petty corruption and providing gender-sensitivity training to law enforcement officials, highlighting the detrimental impact of gender stereotyping on the impartiality and independence of justice systems and the rule of law.

Conflict Research Programme–Iraq Papers

Al-Kaisy, Aida, 'A Fragmented Landscape: Barriers to Independent Media in Iraq', *LSE Middle East Centre Report* (June 2019).

Al-Kaisy, Aida, 'Disinformation in Iraqi Media', *LSE Middle East Centre Paper Series* 55 (October 2021).

Al-Jaffal, Omar and Safaa Khalaf, 'Basra Governorate: A Locality in Crisis - Local Government Crisis and Conflict with the Federal Government', *LSE Middle East Centre Paper Series* 49 (May 2021).

Al-Jaffal, Omar and Safaa Khalaf, 'Basra is Burning: The Protests in Basra Governorate: 2018–20', *LSE Middle East Centre Paper Series* 54 (October 2021).

Al-Khafaji, Hayder, 'Iraq's Popular Mobilisation Forces: Possibilities for Disarmament, Demobilisation and Reintegration', *LSE Middle East Centre Report* (November 2019).

Al-Mawlawi, Ali, 'Public Payroll Expansion in Iraq: Causes and Consequences', *LSE Middle East Centre Report* (October 2019).

Al-Mawlawi, Ali and Sajad Jiyad, 'Confusion and Contention: Understanding the Failings of Decentralisation in Iraq', *LSE Middle East Centre Paper Series* 44 (January 2021).

Al-Rubaie, Azhar, Michael Mason and Zainab Mehdi, 'Failing Flows: Water Management in Southern Iraq', *LSE Middle East Centre Paper Series* 52 (July 2021).

Bor, Güley, 'Response to and Reparations for Conflict-Related Sexual Violence in Iraq', *LSE Middle East Centre Report* (October 2019).

Dodge, Toby, Zeynep Kaya, Kyra Luchtenberg, Sarah Mathieu-Comtois, Bahra Saleh, Christine van den Toorn, Andrea Turpin-King and Jessica Watkins, 'Iraq Synthesis Paper: Understanding the Drivers of Conflict in Iraq', *LSE Middle East Centre Report* (October 2018).

Gotts, Isadora, 'The Business of Recycling War Scrap: The Hashd al-Sha'abi's Role in Mosul's Post-Conflict Economy', *LSE Middle East Centre Paper Series* 34 (May 2020).

Hamilton, Alexander, 'The Political Economy of Economic Policy in Iraq', *LSE Middle East Centre Paper Series* 32 (April 2020).

Hamilton, Alexander, 'Is Demography Destiny? The Economic Implications of Iraq's Demography', *LSE Middle East Centre Paper Series* 41 (November 2020).

Jiyad, Sajad, 'Protest Vote: Why Iraq's Next Elections are Unlikely to be Game-Changers', *LSE Middle East Centre Paper Series* 48 (April 2021).

Kaya, Zeynep, 'Iraq's Yazidis and ISIS: The Causes and Consequences of Sexual Violence in Conflict', *LSE Middle East Centre Report* (November 2019).

Mansour, Renad, 'Iraq's 2018 Government Formation: Unpacking the Friction Between Reform and the Status Quo', *LSE Middle East Centre Report* (February 2019).

Mansour, Renad and Christine van den Toorn, 'The 2018 Iraqi Federal Elections: A Population in Transition?', *LSE Middle East Centre Report* (July 2018).

Robin-D'Cruz, Benedict, 'The Social Logics of Protest Violence in Iraq: Explaining Divergent Dynamics in the Southeast', *LSE Middle East Centre Paper Series* 53 (August 2020).

- Saleem, Zmkan Ali and Mac Skelton, 'Assessing Iraqi Kurdistan's Stability: How Patronage Shapes Conflict', *LSE Middle East Centre Paper Series 38* (July 2020).
- Sirri, Omar, 'Destructive Creations: Socio-Spatial Transformations in Contemporary Baghdad', *LSE Middle East Centre Paper Series 45* (February 2021).
- Skelton, Mac and Zmkan Ali Saleem, 'Iraq's Disputed Internal Boundaries after ISIS: Heterogeneous Actors Vying for Influence', *LSE Middle East Centre Report* (February 2019).
- Watkins, Jessica, 'Iran in Iraq: The Limits of "Smart Power" Amidst Public Protest', *LSE Middle East Centre Paper Series 37* (July 2020).
- Watkins, Jessica, Falah Mubarak Bardan, Abdulkareem al-Jarba, Thaer Shaker Mahmoud, Mahdi al-Delaimi, Abdulazez Abbas al-Jassem, Moataz Ismail Khalaf and Dhair Faysal Bidewi, 'Local Policing in Iraq Post-ISIL: Carving Out an Arena for Community Service?', *LSE Middle East Centre Paper Series 51* (July 2021).
- Watkins, Jessica, 'Satellite Sectarianisation or Plain Old Partisanship? Inciting Violence in the Arab Mainstream Media', *LSE Middle East Centre Paper Series 11* (April 2019).

Publications Editor

Jack McGinn

Cover Image

A protester stands outside Nasb Al-Hurriyah Monument in Tahrir Square, Baghdad, during the October 2019 protests.

Source: Ali Dab Dab

The views and opinions expressed in this publication are those of the author(s) and do not necessarily represent those of the London School of Economics and Political Science (LSE), the Middle East Centre or the UK Department for International Development (DFID). This document is issued on the understanding that if any extract is used, the author(s) and the LSE Middle East Centre should be credited, with the date of the publication. While every effort has been made to ensure the accuracy of the material in this paper, the author(s) and/or the LSE Middle East Centre will not be liable for any loss or damages incurred through the use of this paper.

The London School of Economics and Political Science holds the dual status of an exempt charity under Section 2 of the Charities Act 1993 (as a constituent part of the University of London), and a company limited by guarantee under the Companies Act 1985 (Registration no. 70527).



Middle East Centre
London School of Economics
Houghton Street
London, WC2A 2AE

 [LSEMiddleEast](#)

 [Isemiddleeastcentre](#)

 [Ise.middleeast](#)

 [Ise.ac.uk/mec](#)