

DOMESTIC VIOLENCE IN IRAQ

Human Rights Watch Commentary on the Draft Law
on Anti-Domestic Violence in Iraq



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Introduction

Domestic violence remains a serious problem in Iraq. The Iraq Family Health Survey (IFHS) 2006/7 found that one in five Iraqi women are subject to physical domestic violence.¹ A 2012 Ministry of Planning study found that at least 36 percent of married women reported experiencing some form of psychological abuse from their husbands, 23 percent to verbal abuse, 6 percent to physical violence, and 9 percent to sexual violence.²

While the Iraqi constitution expressly prohibits “all forms of violence and abuse in the family,” only the Kurdistan Region of Iraq has a law on domestic violence.³ Iraq’s Anti-Violence against Women Strategy (2013-2017), adopted in March 2013, and the National Strategy on Advancement of Women in Iraq, adopted in 2014, both called for legislation on domestic violence/violence against women.

Enacting and enforcing a national law to combat domestic violence that meets international standards is a critical measure for preventing and responding to these abuses. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Iraq ratified in 1986, considers violence against women a form of gender-based discrimination, and the UN Committee on the Elimination of Discrimination against Women has called on state parties to pass violence against women legislation.

The recommendations below on amending the draft Anti-Domestic Violence Law are based on international standards and best practice such as the 2012 UN Women “Handbook for Legislation on Violence against Women” (hereafter referred to as the UN Handbook) which established key elements for legislation on violence against women, including domestic violence.⁴

Our commentary focuses on the following elements:

- Definitions and criminalization

¹ Republic of Iraq, “The Iraq Family Health Survey (IFHS) 2006/7,” 2008, http://www.who.int/mediacentre/news/releases/2008/pro2/2008_iraq_family_health_survey_report.pdf (accessed March 6, 2017).

² Ministry of Planning Central Statistical Organization-CSO, “Iraq Women Integrated Social and Health Survey (I-WISH) Summary Report,” March 2012, pp. 47-48, <http://reliefweb.int/sites/reliefweb.int/files/resources/I-WISH%20Report%20English.pdf> (accessed March 6, 2017).

³ Iraq Constitution, article 29; Domestic Law no. 8 Kurdistan Region of Iraq.

⁴ UN Women, “Handbook on Legislation on Violence against Women,” 2012, http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?v=1&d=20141013T121502 (accessed March 6, 2017).

- Prioritization of reconciliation over protection and justice
- Role of law enforcement
- Role of the judiciary
- Protection orders
- Other services for survivors, including shelter
- Prevention measures

I. Definitions and criminalization

The draft law, as amended in 2016, defines domestic violence in article 1 as “any action, omission, or the threat to do so within the family, and the consequent material or moral damage.” The UN Handbook recommends legal definitions of domestic violence to include *physical, sexual, psychological, and economic violence*.⁵ We also recommend that the definitions of psychological and economic violence include “coercive control” as a key part of such acts.⁶ Coercive control “includes a range of acts designed to make victims subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behavior.”⁷

Psychological violence, as a component of domestic violence, including its scope, should then be further defined, in line with the UN Office on Drugs and Crime (UNODC) recommendation, “as controlling, coercive or threatening behavior or intentional conduct seriously impairing a person’s psychological integrity through coercion or threats.”⁸ Economic violence should also be further defined in line with UN guidance, including the UN Department of Economic and Social Affairs guidance on statistical surveys concerning violence against women.⁹ It should explain that economic violence includes an individual’s controlling, coercive or threatening behavior, or intentional conduct aimed at denying an intimate partner access to financial resources, property, and goods; deliberately failing to comply with economic responsibilities, such as maintenance or

⁵ UN Handbook, section 3.4.2.1.

⁶ UN Women, EndVAWN.org (virtual knowledge center), “Definition of Domestic Violence,” undated, <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html> (accessed January 19, 2017).

⁷ Ibid.

⁸ UN Office on Drugs and Crime (UNODC), “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” 2014, includes The Blueprint for Action: an Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women (hereinafter Blueprint for Action) which provides a framework for developing national implementation plans for the criminal justice system to respond to violence against women in line with the recommendations and provisions contained in the Updated Model Strategies and Practical Measures, p. 39, https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf (accessed March 6, 2017).

⁹ UN Department of Economic and Social Affairs, Statistics Division, “Guidelines for Producing Statistics on Violence against Women— Statistical Surveys,” ST/ESA/STAT/SER.F/110 (2014), http://unstats.un.org/unsd/gender/docs/Guidelines_Statistics_VAW.pdf (accessed March 6, 2017).

financial support for the family; denying access to employment and education; and denying participation in economic decision-making.¹⁰

The UN Handbook also recommends that laws should either explicitly state that *sexual violence against an intimate partner* (often referred to as “marital rape”) is considered a form of domestic violence or state in its definition that “[n]o marriage or other relationship shall constitute a defence to a charge of sexual domestic violence under this legislation.”¹¹

In the draft law, as amended in 2016, article 1 defines domestic violence as within the family and then defines the family as “a group of natural persons related to each other by matrimony or relatives till the fourth stage, in addition to those subject to custody or guardianship or curatorship.” This domestic violence definition does not include those in intimate relationships but who are not married, and also excludes those formerly in intimate relationships such as divorced and separated couples. The UN Handbook recommends that laws on domestic violence apply to “*individuals who are or have been in an intimate relationship, including marital, non-marital, same sex and non-cohabiting relationships; individuals with family relationships to one another; and members of the same household.*”¹² Algeria, for instance, included “former spouses” when it criminalized some forms of domestic violence, such as assault and psychological violence.¹³ By not including other forms of domestic relationships, the draft law fails to protect all victims of domestic violence.

Furthermore, while article 1 of the draft law refers to the “crime” of domestic violence, it does not provide specific penalties for it. Article 20 of the draft law provides penalties for breach of protection orders, and article 22 sets out that offenses in the law act as aggravating circumstances, but does not stipulate what they are. As such, the draft law fails to set out penalties for the crime(s) of domestic violence, and additional penalties for situations that act as aggravating circumstances.

Moreover, article 41(1) of the Penal Code provides that “the punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom” is the exercise of a legal right and as such, is not a crime. In addition, the Penal Code also provides for mitigated sentences for violent

¹⁰ Ibid., p.17.

¹¹ UN Handbook, section 3.4.3.1.

¹² UN Handbook, section 3.4.2.2.

¹³ Algeria Law no.15-19 of 30 December 2015, Modifying and Completing Ordinance no.66-156 of 8 June 1966 on the Penal Code, available at <http://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015071.pdf> (accessed March 16, 2017).

acts including murder for so-called “honourable motives” or if catching his wife or female relative in the act of adultery/sex outside of marriage.¹⁴ The Penal Code also allows perpetrators of rape or sexual assault to escape prosecution or have their sentences quashed if they marry their victim.¹⁵

The UN Committee on the Elimination of Discrimination against Women, which oversees the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in its concluding observations on Iraq in 2014, called on Iraq to “review the draft law on domestic violence with a view to ensuring that penalties are imposed on perpetrators of violence against women and harmonize the Penal Code and the Code of Criminal Procedures accordingly.”¹⁶

The UNODC guidance on sentencing also recommends that laws should specify factors that judges can take into account, including aggravating factors such as history of abuse, risk of recidivism, and rehabilitation needs which the draft law is currently silent on.¹⁷

Additionally, though the draft law maintains gender neutral language, it does not address the fact that women, both in Iraq and globally, are disproportionately affected by domestic violence.¹⁸ The UN Handbook recommends that legislation acknowledge that “violence against women is a form of discrimination.”¹⁹ It also recommends that legislation should be gender-sensitive which requires “recognizing the inequalities between men and women, as well as the specific needs of men and women.”²⁰

We recommend amending article 1 of the draft law to:

- Define domestic violence to include physical, sexual, psychological, and economic violence.

¹⁴ Articles 128(1) and 409 of the Penal Code, Law No. 111 of 1969.

¹⁵ Article 398 of the Penal Code, Law No. 111 of 1969.

¹⁶ CEDAW Committee, Concluding observations on the combined fourth to sixth periodic reports of Iraq, U.N. Doc. CEDAW/C/IRQ/CO/4-6, March 10, 2014, para. 18(d), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRQ%2fCO%2f4-6&Lang=en (accessed March 6, 2017).

¹⁷ UN Office on Drugs and Crime (UNODC), “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” 2014, pp. 16-17, https://www.unodc.org/documents/justice-and-prisonreform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf (accessed March 6, 2017).

¹⁸ World Health Organization, “Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence,” 2013, http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf (accessed March 6, 2017).

¹⁹ UN Handbook, section 3.1.1.

²⁰ UN Handbook, section 3.1.4.

- Further define psychological violence as “controlling, coercive or threatening behavior, or intentional conduct seriously impairing a person’s psychological integrity through coercion or threats.”
- Further define economic violence to include an individual’s controlling, coercive, or threatening behavior, or intentional conduct aimed at denying an intimate partner access to financial resources, property, and goods; deliberately failing to comply with economic responsibilities, such as alimony or financial support for the family; denying access to employment and education; and denying participation in economic decision-making.
- Extend the scope of domestic violence to include individuals who are or have been in an intimate relationship, including non-marital (e.g. engaged, divorced, cohabiting), same sex, and non-cohabiting relationships (e.g. married couples who are separated).
- Either explicitly state that sexual violence against an intimate partner is considered a form of domestic violence or provide that “[n]o marriage or other relationship shall constitute a defense to a charge of sexual domestic violence under this legislation.”
- Set out penalties for the crime(s) of domestic violence, and ensure it is harmonized with the Penal Code including repealing article 41 (1) which condones the use of domestic violence; removing penal code provisions allowing reduced penalties for perpetrators of honor crimes, and precluding the defense to domestic violence crimes relating to catching a wife or female relative committing adultery/sex outside of marriage; and repealing provisions that allow perpetrators of sexual assault or rape to escape prosecution or have their sentences quashed if they marry their victim.
- Recognize that domestic violence disproportionately affects women, and that violence against women is a form of discrimination.

II. Prioritization of reconciliation over protection and justice

The draft law prioritizes reconciliation over protection and justice for abused victims. One of the goals of the draft law is to “work on family reconciliation to protect families and the society as a whole.”²¹ Article 19 of the draft law states that the judge should refer the parties to the Department of Social Research for reconciliation, and where reconciliation fails, the court shall take legal action. It also provides that legal procedures to prosecute the perpetrator are to stop once reconciliation has been reached.

This approach fails to adequately protect victims of violence, punish perpetrators of crimes, and ensure access to proper redress. Domestic violence is considered a private matter in Iraq, particularly as Iraqi law considers husbands to have a right to discipline their wives, and parents of their children, and women are often under tremendous social and economic pressure to prioritize the family unit over their own protection from violence. Victims often have less bargaining power which skews the outcome of reconciliation processes.

The UN Handbook calls for mediation to be prohibited in all cases of violence against women, at all stages of legal proceedings. It provides that when mediation is offered as an alternative, “it removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability.”²²

We recommend amending the draft law to:

- Remove all references to “reconciliation” as an aim of the law and as mechanisms for domestic violence survivors (articles 2, 3(2), 7(7) (deleted), 17(5), and 19).

²¹ Article 3(2), draft Anti-Domestic Violence Law.

²² UN Handbook, section 3.9.1.

III. Role of law enforcement

The UN Handbook recommends that domestic violence laws establish concrete duties for police, prosecutors, and other officials who play a role in law enforcement or investigations in cases of violence against women.²³ The UN General Assembly's Resolution on Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (hereinafter Updated Model Strategies and Practical Measures) calls on member states to “empower and equip police, prosecutors and other criminal justice officials to respond promptly to incidents of violence against women.” It also calls for the police and other law enforcement agencies to “have, with judicial authorization where required by national law, adequate powers to enter premises and conduct arrests in cases of violence against women and to take immediate measures to ensure the safety of victims.”²⁴

The draft law, however, does not refer to police officers or outline concrete duties for police officers in responding to cases of violence against women, other than the Department of Family Protection (which sit in many police stations). This is a critical omission as police can play an important role in responding to domestic violence, and can help determine whether a victim is able to pursue remedies through the justice system or is ignored.

The UN Handbook calls for police duties to include recording domestic violence complaints, interviewing the parties and witnesses, and filing official reports.²⁵

Article 9 of the draft law provides that domestic violence victims may submit complaints to either specialized domestic violence investigative judges, the public prosecutors, investigative judges, or the Department of Family Protection. However, the law should also include the general police as an additional authority as it will allow survivors to report complaints in areas where other relevant authorities may not be available.

The draft law should also restate duties of the police as per the Criminal Procedure Code, including to require them to record domestic violence complaints, file an official report, send such reports to investigative judges, and that the police should interview the parties

²³ UN Handbook, section 3.8.1.

²⁴ UN General Assembly, Resolution A/RES/65/228, Strengthening crime prevention and criminal justice response to violence against women, annex, “Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,” March 31, 2011, paras. 15(a) and 16(i), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/228 (accessed March 6, 2017).

²⁵ UN Handbook, section 3.8.1.

and witnesses after notifying the investigative judge or public prosecutor, or on the orders of, the investigative judge.²⁶

In addition, the UN Handbook also calls for police duties to include conducting a risk assessment; advising the survivor of her rights; arranging for transport for medical treatment; providing or arranging transport for the survivor/complainant, survivor's children or dependents, if it is required or requested; and providing other protection.²⁷ The UNODC recommends similar measures, and calls on authorities to "prohibit police from engaging in informal mediation in this type of cases."²⁸

For prosecutors, the UN General Assembly's Updated Model Strategies and Practical Measures calls on member states to ensure that "the primary responsibility for initiating investigations and prosecutions lies with the police and prosecution authorities and does not rest with women subjected to violence, regardless of the level or form of violence."²⁹ The UN Handbook also recommends that domestic violence laws make clear that the responsibility for deciding whether to prosecute lies with prosecution authorities, not with survivors. It recommends that the law set minimum standards for what prosecutors must communicate to survivors, including decisions about dropping cases.³⁰

The UN Handbook recommends that governments adopt "pro-arrest" and "pro-prosecution" policies when there is probable cause to believe that a domestic violence crime has occurred. The UNODC explains that "pro-arrest" policies "highly encourage officers to make an arrest in cases of domestic violence while at the same time leaving some discretion with them. These policies should require a written report on the reasons when the policy is not followed."³¹ Under "pro-prosecution" policies, if there is probable cause to believe that a crime has occurred, prosecution is likely but not mandatory.³²

Establishing specialized investigative judges for domestic violence in the bill is a positive step as this could help build expertise in the area and increase the effectiveness of responding to domestic violence. The Department of Family Protection (which has under it

²⁶ Article 40-50, Criminal Procedure Code, Law no. 23 of 1971, as amended on March 14, 2010, <http://hrlibrary.umn.edu/research/Egypt/Criminal%20Procedures.pdf> (accessed March 6, 2017).

²⁷ UN Handbook, section 3.8.1.

²⁸ UNODC, "Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women," p. 57.

²⁹ UN General Assembly, "Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice," March 31, 2011, para. 15(b).

³⁰ UN Handbook, section 3.8.2.

³¹ UNODC, "Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women," p. 65.

³² *Ibid.*, p. 76.

Family Protection Units) currently acts as specialized police units, however, there are no specialized prosecutorial units to help build expertise which the UN Handbook calls for.³³ However, the UN Assistance Mission for Iraq (UNAMI) Human Rights Office reported that they found the Family Protection Units have a “lack of suitable premises and qualified female personnel.”³⁴ The authorities could consider also developing specialized prosecutorial units. The UN Handbook warns that an unintended consequence of establishing specialized police or prosecutorial units may result in the marginalization of women’s issues, and, as such, calls for such units to be accompanied by adequate funding and training of staff.³⁵

The UN General Assembly’s Updated Model Strategies and Practical Measures calls on member states “to provide victims of violence, where possible, with the right to speak to a female officer, whether it be the police or any other criminal justice official.”³⁶ The UN Handbook also calls for states to provide complainants/survivors “the option of communicating with female police officers or prosecutors.”³⁷ Women and girls may feel uncomfortable speaking to male officials, or in speaking with them about sexual violence or other intimate details.

Finally, the UN Handbook calls for legislation to mandate “regular and institutionalized gender-sensitivity training and capacity-building on violence against women for public officials” including police, prosecutors, and judges.³⁸ This could be added to the tasks of the Higher Committee for Anti-Domestic Violence.

We recommend amending the draft law to:

- Include investigative judges and the general police in the list of authorities under article 9(1) to which domestic violence survivors can file a complaint.
- Set out concrete duties under article 9 for the police (both general and police officers in Family Protection Units), including restating duties provided in the Code of Criminal Procedures such as recording the domestic violence complaint, filing an official report, and interviewing the parties and witnesses as per the rules

³³ UN Handbook, section 3.2.4.

³⁴ UNAMI Human Rights Office/OHCHR Baghdad, “Report on Human Rights in Iraq: January – June 2014,” August 2014, section 5.2, p. 14, http://www.ohchr.org/Documents/Countries/IQ/HRO_Jan-Jun2014Report_en.pdf (accessed March 6, 2017).

³⁵ UN Handbook, section 3.2.4.

³⁶ UN General Assembly, “Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,” March 31, 2011, para. 16(L).

³⁷ UN Handbook, section 3.2.4.

³⁸ UN Handbook, section 3.2.3.

stipulated in the Code of Criminal Procedures. In addition, the bill should also provide for additional police duties including carrying out risk assessments; advising the complainant of his or her rights; arranging for transport for medical treatment; and providing other protection. In case the victim or survivor is a person with a disability, reasonable accommodation should be provided when registering a complaint, which may include the right to record their testimony with the police in the safety of their home or at a place of their choice; or the right to assistance by a “special educator” or interpreter when the complaint is recorded.

- Direct relevant ministries to adopt “pro-arrest” and “pro-prosecution” policies under article 9 in cases of domestic violence when there is probable cause to believe a crime has occurred, in line with UN guidance.
- Clarify under article 9 that the responsibility for prosecuting domestic violence lies with prosecution authorities, not with survivors, and set minimum standards for what prosecutors must communicate to survivors.
- Mandate under article 5(8) regular training programs on combatting domestic violence in a gender sensitive manner for police, prosecutors, and judicial officials in coordination with concerned ministries and civil society organizations.
- Require funding and specialized training for police officers in the Family Protection Units and investigative judges of domestic violence under a new provision in article 5.
- Require that female police or prosecutors are made available where a victim prefers to communicate with them under article 9.

IV. Role of the judiciary

The draft law makes no reference to the types of evidence that can be admissible for domestic violence cases. The UNODC recommends that countries develop guidelines on evidence that should be admissible in court for domestic violence cases. This may include medical/forensic evidence, victim statements, photographic evidence, expert witnesses, physical evidence such as torn clothing and damaged property, and cell phone records, emergency call recordings, and other communications.³⁹

Moreover, the UN Handbook states that “medical and forensic evidence are *not required in order to convict a perpetrator*,” and that prosecution and conviction of an offender can be “*based solely on the testimony of the complainant/survivor*.”⁴⁰ This is important because such attacks tend to happen in homes behind closed doors where often there are no witnesses other than children who typically cannot testify. Sometimes there is a delay before a victim can make a complaint which may also affect the availability of evidence. While the standard should not be that victim testimony is *always* sufficient on its own for a conviction, it should be possible for courts to convict based on credible victim testimony, consistent with due process standards under international human rights law and with the evidentiary threshold required under Iraqi law to reach a guilty verdict.

We recommend amending article 15 of the draft law to:

- Include the types of evidence that are admissible in court proceedings, such as medical/forensic evidence, victim statements, photographic evidence, expert witnesses, physical evidence such as torn clothing and damaged property, and cell phone records, emergency call recordings, and other communications. It should also state that a complainant’s testimony may be sufficient evidence for a conviction. Ensure that disability, including intellectual or psycho-social disability of the victim/survivor, is not used as a justification to nullify or undervalue their testimony.

³⁹ See UNODC, “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” pp. 71-72.

⁴⁰ See UN Handbook, section 3.9.5.

V. Protection orders

The draft law provides for protection orders: an important mechanism in the fight against domestic violence. The UN Handbook describes protection orders as “among the most effective legal remedies available to complainants/survivors of violence against women.”⁴¹ The special rapporteur on violence against women noted also that “the protection order which forbids the offender from having contact with the victim and protects her home and family from the perpetrator is an important weapon in the arsenal used to fight domestic violence.”⁴² The UN General Assembly’s Updated Model Strategies and Practical Measures calls for member states “[t]o provide efficient and easily accessible procedures for issuing restraining or barring orders to protect women and other victims of violence and for ensuring that victims are not held accountable for breaches of such orders.”⁴³

However, the draft law does not distinguish between short-term emergency protection orders and longer-term protection orders, as recommended by the UN Handbook.⁴⁴ Article 18(1) of the draft law allows investigative judges on domestic violence to issue a protection order which offers victims up to 30 days of “protection” from the suspected perpetrator, and which can be renewed. The draft law originally allowed for an extension of the protection order for up to 180 days in certain cases, but this was deleted in 2016 to allow judges discretion.

Short-term emergency orders respond to situations of immediate danger, often by putting distance between the alleged abuser and the victim. Rather than placing the burden on victims to seek shelter and safety elsewhere, removal of the respondent (the suspected perpetrator) for a limited time is appropriate. In many other countries, these temporary emergency orders are issued by competent authorities designated by law and are issued *ex parte* (without all parties present) solely on the basis of a victim’s testimony.

Longer-term protection orders are typically issued by courts after notice to the respondent and an opportunity for a full hearing and a review of evidence. In many countries, these orders expire after several months, but the UN Handbook recommends that they be valid

⁴¹ UN Handbook, section 3.10.1.

⁴² Special Rapporteur on violence against women, Integration of the Human Rights of Women and the Gender Perspective, U.N. Doc. E/CN.4/2003/75, January 6, 2003, para. 30, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/101/00/PDF/G0310100.pdf?OpenElement> (accessed March 6, 2017).

⁴³ UN General Assembly, “Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,” March 31, 2011, para. 18(f).

⁴⁴ UN Handbook, section 3.10.4 and section 3.10.5.

for up to one year. The UN Handbook states that “by reducing the number of times that a complainant/survivor must appear in court, such [longer-term] orders diminish the financial, emotional and psychological burdens carried by complainants/survivors, as well as the number of times they are forced to confront the perpetrator.”⁴⁵

Another concern is the accessibility of competent authorities able to issue timely protection orders. The CEDAW Committee in its General Recommendation no.33 on Women’s Access to Justice called for states parties to “take steps to guarantee that women are not subjected to undue delays in applications for protection orders.”⁴⁶ The UN General Assembly’s Updated Model Strategies and Practical Measures also calls on members states to ensure that “the police and courts have the authority to issue and enforce protection and restraining or barring orders in cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile; to issue and enforce child support and custody orders; and to impose penalties for breaches of those orders.” It further noted that, “if such powers cannot be granted to the police, measures must be taken to ensure *timely* access to court decisions in order to ensure swift action by the court. Such protective measures should not be dependent on the initiation of a criminal case” (emphasis added).⁴⁷

The UNODC also provides that states should “[c]onsider providing powers to the police to immediately remove domestic violence perpetrators from the home, under certain circumstances, and to proactively notify victim support organization.”⁴⁸ It also calls for ensuring “that protection measures are fast and rapid irrespective of whether the powers to grant such measures are with the police or courts. If granting protection measures lies with the courts, put in place provisions to ensure timely access to court decisions and swift action, including access to courts after hours.”⁴⁹

Currently, the draft law allows only investigative judges for domestic violence to issue protection orders. The amended article 1(6) states that protection orders are issued by family courts and article 16(2) states the complainants of domestic violence who have not

⁴⁵ UN Handbook, section 3.10.5.

⁴⁶ CEDAW Committee, General recommendation No. 33 on women’s access to justice, U.N.Doc. CEDAW/C/GC/33, August 5, 2015, para. 51(j), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en (accessed March 6, 2017).

⁴⁷ UN General Assembly, “Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,” March 31, 2011, para. 15(h).

⁴⁸ UNODC, “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” p. 41.

⁴⁹ Ibid.

sought a protection order [from investigative judges for domestic violence] can still do so at the family court. Victims in crisis who are seeking short-term emergency orders that should be issued within 24 hours may face problems if there are no investigative judges for domestic violence in their area, and where they cannot access family courts easily. If the draft law designates additional authorities able to issue short-term emergency protection orders, such as other investigative judges, this would help victims without immediate access to the family courts to access emergency protection. In addition, the draft law should require the police to assist survivors to access a timely emergency order from other relevant authorities and require them to immediately assist in implementing such orders. UN Women have said that the law should “require that emergency protection orders be issued very quickly to support the goal of victim safety.”⁵⁰

The amended article 16(1) also allows a respondent to appeal the decision of the court to provide admittance to safe centers and a protection order. UN Women have also said that “the emergency or *ex parte* order should remain in effect until the longer-term protection order comes into effect after a full court hearing.”⁵¹ They also state that such legislation should provide that upon the request of the respondent, a hearing may be promptly scheduled to review the application and determine whether the order should remain in effect.”⁵² While the short-term orders could be issued *ex-parte*, the draft bill could provide that a renewal of a short-term order, or where it remains in effect beyond the expiry of the order, can be subject to appeal from the respondent. The amended draft law removed article 16(3) in the original bill that allowed for protection orders to be regarded as material evidence before courts. However, this article should be reinstated as the UN Handbook calls for legislation to allow “the issuance of a protection order to be introduced as a material fact in subsequent legal proceedings.”⁵³

The range of protection order measures currently available under article 17 in the draft law is strong, including the new addition of removing the alleged perpetrator from the home if the victim wants to stay or cannot reach a safe center.⁵⁴

However, while article 17(3) of the law initially provided for one of the protection order measures to require the perpetrator to pay the costs of the medical treatment and child

⁵⁰ UN Women, EndVAWNow.org (virtual knowledge center), “Emergency or ex parte order for protection remedy,” undated, <http://www.endvawnow.org/en/articles/411-emergency-or-ex-parte-order-for-protection-remedy.html?next=412> (accessed January 19, 2017).

⁵¹ UN Women, EndVAWNow.org (virtual knowledge center), “Emergency or ex parte order for protection remedy.”

⁵² Ibid.

⁵³ UN Handbook, section 3.10.2.

⁵⁴ UN Handbook, section 3.10.3.

support, this was amended in 2016 so that such costs should be paid as a loan, which stops following a decision by the personal status court on child support. A loan, however, suggests that the victim may be required to pay this back, when such costs should not be borne by a domestic violence survivor. It should be amended to the original wording, and include other needs. For instance, in a longer-term protection order, the respondent can be required to provide financial assistance to the complainant/survivor, including payment of medical bills, counselling fees or shelter fees, monetary compensation and, in addition, in cases of domestic violence, mortgage, rent, insurance, financial maintenance, and child support.⁵⁵ The state should ensure at all times that the survivor and her family, including children, can address their immediate financial needs, including medical bills.

Moreover, article 17(5) which prohibits contact with the victim should also include prohibiting contact with her children (and other people if appropriate) and the places that they frequent.⁵⁶

Furthermore, article 17(5) of the draft law allows for an exception to the prohibition on contact with the victim where the “intention is family reconciliation.” This exception compromises the safety and autonomy of the victim. Abusers may seek to reconcile with their victims only to be violent upon meeting or upon “reconciliation.” While this article now includes that such contact would be by a decision from the investigative judge for domestic violence and with supervision of the Department of Family Protection, there is no mention of the victim’s consent. As noted earlier in this memo, all references to family reconciliation in the draft law should be removed.

The draft bill should also address the residence of any children, and visitation, in protection order proceedings. The UN Handbook warns that “in many countries, violent offenders have used custody of children as a way to continue to abuse and gain access to survivors.”⁵⁷ Several countries have authorized courts to consider the safety of the child in protection order proceedings. The UN Handbook recommends that legislation require “Presumption against award of custody to the perpetrator; presumption against unsupervised visitation by the perpetrator; requirement that, prior to supervised visitation being granted, the perpetrator must show that at least three months has passed since the most recent act of violence, that he has stopped using any form of violence, and that he is

⁵⁵ UN Handbook, section 3.10.3.

⁵⁶ UN Handbook, section 3.10.3.

⁵⁷ UN Handbook, section 3.10.8.2.

participating in a treatment programme for perpetrators; and no visitation rights are to be granted against the will of the child.”⁵⁸

We recommend amending the draft law as follows:

- Amend and introduce two paragraphs under article 18 which establish a distinction between emergency (short-term) protection orders (article 18(1)) and longer-term orders (article 18(2)), and set a time-limit for both.
- Amend article 18(1) to:
 - Provide for emergency (short-term) protection orders (issued in situations where there is immediate danger of an act of violence), and authorize authorities, in addition to investigative judges and family courts, for domestic violence such as other general investigative judges, with the power to issue short-term emergency orders.
 - Require the police (including general police officers and police officers in Family Protection Units) to assist survivors to access a timely emergency order from other relevant authorities and to immediately implement such orders.
 - Clarify that such orders provide relevant officials with the authority to order a respondent out of the home and to stay away from the survivor.
 - Stipulate that emergency orders can be issued *ex parte* without evidence beyond a victim’s statement.
 - Stipulate that a short-term order can remain in effect until a longer-term order is issued, and provide that any renewal or the “remain in effect” beyond the expiry of the order can be subject to appeal from the respondent.
- Amend article 18(2) to:
 - Provide that domestic violence complainants can apply for longer-term orders, which should require a full hearing and review of all evidence, and a maximum time limit of up to a year, which can be renewable.
- Amend article 16(1) to remove the clause which allows “a respondent to appeal the decision of the court to provide admittance to safe centers and a protection order,” which instead should be outlined under article 18(1) that a respondent can appeal a renewal or “remain in effect” short-term emergency order (see recommendations

⁵⁸ UN Handbook, section 3.10.8.2.

- for article 18(1)), and that long-term orders require a full hearing (see recommendations for article 18(2)).
- Reinstate article 16(3) allowing the issuance of a protection order to be introduced as a material fact in subsequent legal proceedings.
 - Amend article 17(3) to remove the addition of “as a loan,” returning to the original wording under article 17(3) ordering the respondent to pay costs of medical treatment and child support and ensure the financial costs to the survivor and her dependents in longer-term orders, such as mortgage, rent, and support for daily living are provided for.
 - Amend article 17(5) to include the survivor’s children (and any other people if appropriate) on the prohibition on contact, and remove the exception of the prohibition on contact for the purposes of “reconciliation.”
 - Amend article 17 to include a new provision on longer-term protection orders, to provide a presumption that the respondent should not be granted residence (custody) of the child; the presumption that the respondent should not have unsupervised visitation; and the requirement that, prior to supervised visitation being granted, the respondent must show that at least three months have passed since the most recent act of violence, that he has stopped using any form of violence, and that he is participating in a treatment program for perpetrators; and no visitation rights are to be granted against the will of the child.

VI. Other services for survivors, including shelter

Several UN bodies including UN Women, UN General Assembly, the UN Committee on the Elimination of Discrimination against Women (CEDAW), and the UN Committee on Economic, Social and Cultural Rights (CESCR), have called on states parties to ensure that domestic violence survivors have timely access to shelter, health services, legal advice, hotlines, and other forms of support.⁵⁹ The CEDAW Committee, in its concluding observations in 2014, called on Iraq to “ensure the availability of shelters for women victims of violence through its territory, so as to strengthen both medical and psychological support services for victims, such as counselling and rehabilitation services, and ensure that they are properly resourced and that the quality of the services provided is regularly monitored.”⁶⁰

Article 8 of the draft law commits the Ministry of Labor and Social Affairs to set up shelters—referred to as safe centers following amendments in 2016—for domestic violence survivors. This is particularly important given that women’s rights NGOs, which have provided such shelter, have often been subject to physical attack and threats by perpetrators, and faced hostility by some government officials. UNAMI Human Rights Office noted in its August 2014 report in relation to the situation in Iraq from January-June 2014 that “there are few functioning shelters where women can seek protection and they are often sent to female prisons when seeking protection from domestic violence.”⁶¹

The UN Committee against Torture, in its concluding observations in 2015, called on Iraq to “provide better protection and appropriate care for such victims [of gender-based violence], including access to safe houses, State-run and private shelters...”, as well as

⁵⁹ UN General Assembly, “Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,” 2011; CEDAW Committee, General Recommendation No. 19, Violence Against Women, (Eleventh session, 1992), art. 24, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf (accessed March 6, 2017); CESCR, General Comment No.16 (2005), Substantive issues arising in the Implementation of the International Covenant on Economic, Social, and Cultural rights: The equal right of men and women to the enjoyment of all economic, social, and cultural rights (art. 3 of the International Covenant on Economic, Social, and Cultural Rights), UN Doc E/C.12/2005/4 (August 11, 2005), para. 27.

⁶⁰ CEDAW Committee, Concluding observations on the combined fourth to sixth periodic reports of Iraq, U.N. Doc. CEDAW/C/IRQ/CO/4-6, March 10, 2014, para. 29(c).

⁶¹ UNAMI Human Rights Office/OHCHR Baghdad, “Report on Human Rights in Iraq: January – June 2014,” August 2014, section 5.3, p. 14.

ensure that NGOs working to protect women and girls are protected from all forms of harassment and violence, and to include a “law permitting privately run shelters.”⁶²

The UN Handbook further recommends that, at a minimum, legislation should provide for “one shelter/refuge place for every 10,000 inhabitants, providing safe emergency accommodation, qualified counselling and assistance in finding long-term accommodation.”⁶³ They should ensure that such shelters can accommodate women and their children for emergency stays and help them to find a refuge for longer stays.⁶⁴ The authorities should also ensure that the ministry works with local women’s rights NGOs in the administration of such shelters, and that officials do not harass or attack existing NGO shelters.

Article 16(1) of the draft law is problematic as it provides that domestic violence survivors can apply to investigative judges on domestic violence for a protection order and to be admitted to a shelter, and that the respondent can appeal such an order. The draft law should not allow an appeal by the respondent against the admittance of a domestic violence survivor to a safe center. This provision strips victims of their autonomy and creates opportunities for perpetrators to further harass and intimidate the victim and may jeopardize the victim’s safety and pursuit of judicial redress. As such, firstly, this article should be amended to separate the right to shelter from the application of a protection order. Secondly, as investigative judges on domestic violence may not be easily accessible, the law should designate additional authorities who can admit victims to shelters.

The draft law provides that the Department for Family Protection propose “necessary and appropriate mechanisms for the protection of victims of domestic violence” and the Higher Committee for Anti-Domestic Violence is required to approve and adopt such proposals. We recommend the legislation itself sets out the key assistance that the victim can receive, including psychosocial, medical, legal, and financial support.⁶⁵

⁶² Committee against Torture, Concluding observations on the initial report of Iraq, U.N. Doc. CAT/C/IRQ/CO/1, September 7, 2015, para. 24, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRQ%2fCO%2f1&Lang=en (accessed March 6, 2017).

⁶³ UN Handbook, section 3.6.1.

⁶⁴ UN Women, EndVAWNow.org (virtual knowledge center), “Other important legislative provisions for assistance to complainant/survivors,” undated, <http://endvawnow.org/en/articles/401-other-important-legislative-provisions-for-assistance-to-complainant-survivors.html?next=402> (accessed March 6, 2017).

⁶⁵ Article 5(3), draft Anti-Domestic Violence Law.

The UN Committee on Economic, Social and Cultural Rights, which oversees the application of the International Covenant on Economic, Social, and Cultural Rights, calls on states parties “to provide victims of domestic violence, who are primarily female, with access to safe housing, remedies and redress for physical, mental and emotional damage.”⁶⁶

Survivors of domestic violence incur significant short-term and long-term financial costs related to pain and suffering, reduced employment and productivity, and expenditure on services. The UN Handbook calls for survivors of violence to have access to financial assistance outside of protection orders.⁶⁷

The draft law should also include other services such as a free 24-hour hotline where survivors can seek assistance and referral to other service providers, as well as access to healthcare, including reproductive healthcare.⁶⁸ The UN Handbook also calls for legislation to state “that all services for women survivors of violence should also provide adequate support to the women’s children.”⁶⁹

We recommend amending the draft law to:

- Separate the right to shelter from the application of a protection order under article 16(1), and ensure that the right to shelter cannot be subject to appeal by the respondent.
- Clarify under article 8 that there should be one shelter/refuge place for every 10,000 inhabitants, providing safe emergency accommodation for survivors and their children, qualified counselling, and assistance in finding long-term accommodation.
- Provide under article 8 that the Ministry of Labor and Social Affairs will cooperate with women’s rights NGOs in the administration, training, and running of such shelters, and permit privately run shelters for survivors of domestic violence.
- Establish under article 8 other services for domestic violence survivors including a widely-publicized 24-hour hotline for assistance and referral to service providers, access to healthcare, and legal assistance.

⁶⁶ CESCR, General Comment No. 16 (2005), Substantive issues arising in the Implementation of the International Covenant on Economic, Social, and Cultural rights: The equal right of men and women to the enjoyment of all economic, social, and cultural rights (art. 3 of the International Covenant on Economic, Social, and Cultural Rights), UN Doc E/C.12/2005/4 (August 11, 2005), para. 27.

⁶⁷ UN Handbook, section 3.6.5.

⁶⁸ Ibid.

⁶⁹ UN Handbook, section 3.6.1.

- Establish under article 8 efficient and timely provision of financial assistance to survivors in order to meet their needs.
- State under article 8 that all services for women survivors of violence should also provide adequate support to the women’s children. Ensure that all services provided to the survivors of domestic violence, including shelters, are accessible to women with disabilities on an equal basis with other women.
- Expand the types of authorities to include the police, public prosecutors, investigative judges, and other state agencies responding to a domestic violence survivor who can refer a survivor and her children to a shelter, health services, and other assistance, should they request it, and provide for this under article 9 relating to duties of authorities responding to domestic violence.

VII. Prevention measures

Article 2 of the draft law states that one of the aims of the law is to prevent and limit the spread of domestic violence. While the draft law provides that one of the tasks of the Department for Family Protection and the Higher Committee for Anti-Domestic Violence is to propose plans and programs for protection against domestic violence, its reduction, and prevention, it does not set out what such prevention measures should include.

The CEDAW Committee has stated that “[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse.” As such, the committee then stated that “[e]ffective measures should be taken to overcome these attitudes and practices” including education, and public information programs to help eliminate prejudices which hinder women’s equality.⁷⁰

The UN Handbook recommends that legislation on violence against women prioritize prevention and provide for a range of measures such as public awareness programs, sensitization of the communications media, and inclusion of material on violence against women and women’s human rights in educational curricula.⁷¹

We recommend amending article 7(2) the draft law to:

- Clarify that prevention of domestic violence should include measures such as awareness-raising activities; development of educational curricula on violence against women, women’s human rights, and promotion of healthy relationships; and sensitizing the media regarding domestic violence.

⁷⁰ Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence against Women, (Eleventh session, 1992), Compilation of General Recommendations and General Comments adopted, para.11, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (accessed March 6, 2017).

⁷¹ UN Handbook, section 3.5.1.

Human Rights Watch Recommendations on the draft Anti-Domestic Violence Law

Article No.	Text of the bill from 2015, and amendments made in 2016 (in red, with deletions in strikethrough):	Human Rights Watch recommendations:
The name of the law	Protection from Domestic Violence Law Anti-Domestic Violence Law	
Article 1		
	<p>First—The Committee: The Higher Committee for Protection from Domestic Violence</p> <p>First - The Committee: The Higher Committee for Anti-Domestic Violence</p> <p>Second—The President: The President of the Higher Committee for Protection from Domestic Violence</p> <p>Second - The President: The President of the Higher Committee for Anti-Domestic Violence</p>	
	<p>Third—The crime of domestic violence: physical, sexual, psychological or economic or intellectual assault, committed or a threatened to be committed against any member of the family. And it is considered as either a felony or a misdemeanor or infraction according to the law.</p> <p>Third - Domestic Violence: is any action, omission, or the threat to do so within the family, and the consequent material or moral damage. And it is a crime according to the law.</p>	<ul style="list-style-type: none"> • Define domestic violence to include physical, sexual, psychological, and economic violence. • Further define psychological violence as “controlling, coercive or threatening behavior or intentional conduct seriously impairing a person’s psychological integrity through coercion or threats.” • Further define economic violence to include an individual’s controlling, coercive, or threatening behavior, or intentional conduct aimed at denying an intimate partner access to financial resources, property, and goods; deliberately failing to comply with economic responsibilities, such as alimony or financial support for the family; denying access to employment and education; and denying participation in economic decision-making.

<ul style="list-style-type: none"> • Extend the scope of domestic violence to include individuals who are or have been in an intimate relationship, including non-marital (e.g. engaged, divorced, cohabiting), same sex, and non-cohabiting relationships (e.g. married couples who are separated). • Either explicitly state that sexual violence against an intimate partner is considered a form of domestic violence or provide that “[n]o marriage or other relationship shall constitute a defense to a charge of sexual domestic violence under this legislation.” • Set out penalties for the crime(s) of domestic violence, and ensure it is harmonized with the Penal Code including repealing article 41 (1) which condones the use of domestic violence; removing Penal Code provisions allowing reduced penalties for perpetrators of honor crimes, and precluding the defense to domestic violence crimes relating to catching a wife or female relative committing adultery/sex outside of marriage; and repealing provisions that allow perpetrators of sexual assault or rape to escape prosecution or have their sentences quashed if they marry their victim. • Recognize that domestic violence disproportionately affects women, and that violence against women is a form of discrimination. 		
<ul style="list-style-type: none"> • Extend the scope of domestic violence to include individuals who are or have been in an intimate relationship, including non-marital (e.g. engaged, divorced, cohabiting), same sex, and non-cohabiting relationships (e.g. married couples who are separated). 	<p>Fourth—A family is a group of natural persons including—:</p> <p>A) The husband and wife/wives and their children and grandchildren or the children of one spouse from another marriage.</p> <p>B) The parents of either spouse.</p> <p>C) The brothers and sisters of both spouses.</p>	

	<p>D) The person subject to custody or guardianship or inclusion.</p> <p>Fourth - A family is: a group of natural persons related to each other by matrimony or relatives till the fourth stage, in addition to those subject to custody or guardianship or curatorship.</p>	
	<p>Fifth - Shelters: places prepared at the Ministry of Labour and Social Affairs to receive the victims of domestic violence, who are covered by the provisions of this law.</p> <p>Fifth - Safe centers: places equipped to receive victims of domestic violence, who are covered by the provisions of this law, which operate under the Ministry of Labour and Social Affairs.</p>	
	<p>Sixth - The protection decision: a decision issued pursuant to the provisions of this law, in order to protect the victim and offer him/her help, while the violence and threats continue, and it shall be issued within a (24) twenty-four hour period, not to exceed thirty (30) days and may be extended for a period not to exceed (180) one hundred and eighty days.</p> <p>Sixth - The protection decision: a decision issued by the Family Court, pursuant to the provision of this law.</p>	
	<p>Seventh - Venue of jurisdiction: The Protection from Domestic Violence Court.</p> <p>Seventh - The venue of jurisdiction: Family Court.</p>	

	<p>Eighth - The competent judge: The investigative judge of domestic violence. Ninth - Department: The Department of Protection from Domestic Violence. Tenth - The Department of Social Research: It is a part of the Family Court.</p>	
<p>Article 2</p>	<p>This law aims to combat domestic violence and prevent it, and limiting its spread, and to punish its perpetrators:</p> <p>This law is aimed at combating the crime of domestic violence, preventing and limiting its spread, providing protection for victims of the said crime, providing them with the necessary care and rehabilitation, punishing the perpetrators, and seeking family reconciliation.</p>	<ul style="list-style-type: none"> Remove the reference to family reconciliation.
<p>Article 3</p>	<p>The goals of this law are achieved through the following means:</p> <p>First: Application of appropriate mechanisms to assist the rehabilitation of victims of domestic violence, or those causing it and to provide follow-up care for them. Second: Aiming towards the reconciliation of families, to protect the family and the community's safety. Third: The preparation and implementation of mechanisms to limit domestic violence. Article 3 (3) deleted. Fourth: Building capacities of those working in the field of domestic violence, in providing services to survivor.</p>	<ul style="list-style-type: none"> Delete article 3(2), as mediation referred to here as family reconciliation should be prohibited in all cases of violence against women, at all stages of legal proceedings.

	<p><i>Article 3(4) deleted and moved to article 5(5) of the Higher Committee's tasks.</i></p>	
<p>Article 4</p>	<p>The formation of the Higher Committee</p> <p>First - Form a higher committee called (The Higher Committee for Protection from domestic violence), headed by the Minister of State for Women's Affairs, and the membership of:</p> <p>First - Form a higher committee (called the Higher Anti-Domestic Violence Committee), headed by the Minister of Labour and Social Affairs, and the membership of:</p> <p>a) A Deputy Minister of Human Rights, a member and a vice-chairman.</p> <p>a) Deputy Minister of Interior as the Deputy Chairman of the Committee.</p> <p>b) A representative of the ministries and departments, not associated to any Ministry.</p> <p>b) A representative of the ministries and departments, not associated with the Ministry and the Council of the judiciary; their title should be not less than director general.</p> <p>1- General Secretariat of the Council of Ministers</p> <p>1. Supreme Judicial Council</p> <p>2- The Supreme Judicial Council</p> <p>2. The General Secretariat of the Council of Ministers</p> <p>3. The Ministry of Justice</p> <p>4- The Ministry of Labour and Social Affairs</p> <p>4. The Ministry of Planning</p> <p>5- The Ministry of Interior</p>	

	<p>5. The Ministry of Education</p> <p>6. The Ministry of Planning</p> <p>6. The Ministry of Health</p> <p>7. The Ministry of Education</p> <p><u>7. The Ministry of Foreign Affairs</u></p> <p>8. The Ministry of Health</p> <p>8. High Commissioner for Human Rights</p> <p>9. High Commissioner for Human Rights</p> <p>e) Two representatives from non-governmental organizations concerned with the protection of family chosen by the Council without the right to vote.</p> <p>c) Two representatives of civil society organizations, with the right to vote chosen by the Commission every two years, subject to renewal.</p> <p>d) Two experienced and competent specialists selected by the Committee for a renewable term of two years with no right to vote.</p> <p>Second - Agencies represented in this committee commit to the implementation of its decisions.</p>	
	<p>Second - The Vice Chairman replaces the Chairman during his absence for any reason.</p>	
	<p>Third - The Commission is held at the invitation of its Chairman at least once every three months, with the presence of the majority of the members, and the decisions are taken by the majority of the members present. If the votes are equal, the side with which the Chairman voted wins.</p>	

	<p>Fourth—The committee may use the assistance of one expert or more, with experience in the field of combating domestic violence. The Chairman of the Committee has the right to grant them a reward. <i>Deleted and moved up to article 4(d).</i></p>	
Article 5	<p>The Committee shall carry out the following tasks:</p> <p>First - Design the general policy to combat domestic violence in the legal, cultural, health and service fields. First - Propose public policy to combat domestic violence in the legal, cultural, health and service fields.</p> <p>Second - The approval of the plans and programs proposed by the Department of Protection from Domestic Violence.</p> <p>Third - The approval of the adoption of the necessary and appropriate mechanisms for the protection of victims of domestic violence in coordination with the ministries and relevant agencies.</p> <p>Fourth - Supervising the preparation of reports on domestic violence in the Republic of Iraq. Fourth - The preparation of reports related to domestic violence, in accordance with relevant international</p>	<ul style="list-style-type: none"> • Amend article 5(8) to include mandating regular training programs on combating domestic violence in a gender sensitive manner for police, prosecutors, and judicial officials in coordination with concerned ministries and civil society organizations. • Introduce a new paragraph requiring funding and specialized training for police officers in the Family Protection Units and investigative judges of domestic violence.

	<p>agreements, and submit them to the relevant authorities.</p> <p>Fifth - The Legalization of the field studies and surveys provided by the Department of Protection from Domestic Violence.</p> <p>- Building the capacity of workers in the field of domestic violence to provide services to survivors.</p> <p><i>(Added to Fifth— moved from article 3(3))</i></p> <p>Sixth - Following-up the performance of the Department of Protection from Domestic Violence shelters and centers.</p> <p>Seventh - The exchange of information and opening fields of coordination and cooperation with the competent authorities in the regional and international spheres.</p> <p><i>Added a new paragraph:</i></p> <p>Eighth - Develop programs and plans for the development of the workers and service providers' capabilities in the field of domestic violence in cooperation and coordination with civil society organizations.</p>	
Article 6		

	<p>First - A department shall be established (called the Department of Protection from Domestic Violence) linked to the Ministry of the Interior, managed by a civil servant, with the title of Director General. He/She must have an initial university degree, at least, in social or humanitarian sciences and must have experience in the field of family protection affairs. He/she shall be appointed from among the staff of the ministry, according to the law.</p> <p>First - The Department of Family Protection in the Ministry of Interior shall implement the tasks set forth in this law, providing it is headed by a civil servant with a title of Director General. He/she must have an initial university degree in law and must have experience in the field of family affairs for a period not less than five years. He/she shall be appointed from among the staff of the ministry, according to the law.</p>	
	<p>Second - The department's headquarters shall be in Baghdad, and has the right to open departments in Baghdad and the provinces to follow up on its work.</p>	
	<p>Third - The formations of the Department of Protection from Domestic Violence the Department of</p>	

	<p>Family Protection, and the specialties of these formations are determined by instructions issued by the Minister of Interior.</p>	
<p>Article 7</p>	<p>The Department for Family Protection conducts the following tasks:</p> <p>First - Proposing public policy to combat domestic violence in legal, cultural, health and service fields.</p> <p>Second - The proposal of plans and programs for protection against domestic violence and its reduction and prevention.</p> <p>Third - The proposal of necessary and appropriate mechanisms for the protection of victims of domestic violence.</p> <p>Fourth - The preparation of data concerning the extent of the phenomenon of domestic violence.</p> <p>Fifth - The implementation of decisions of the Commission in coordination with the relevant authorities.</p> <p>Sixth - The coordination and cooperation with non-governmental organizations, educational institutions, religious, and research centers to organize awareness and education campaigns</p>	<ul style="list-style-type: none"> • Amend article 7(2) to clarify that prevention of domestic violence should include measures such as awareness-raising activities; development of educational curricula on violence against women, women's human rights, and promotion of healthy relationships; and sensitizing the media regarding domestic violence. • While Article 7(7) is deleted upon amendment, it still calls for it to be included in the Ministry of Interior's regulations for the Department of Family Protection. In cases of domestic violence, mediation, referred to here as family reconciliation, should be prohibited in all cases of violence against women, at all stages of legal proceedings.

	<p>against the risk of domestic violence, to limit its effects and promote its prevention.</p> <p>Seventh—Make the necessary efforts of reconciliation, before the case reaches court, through forming committees for this purpose, and in the case of failing to reach reconciliation, a complaint is registered and forwarded to the court of Family Investigation in order to reach a settlement between the offender and the victim. The victim may seek the assistance of competent experts for this purpose.</p> <p><i>Article 7 shall be canceled, provided it is added to the Ministry of Interior's instructions, which this Department is part of.</i></p>	
<p>Article 8</p>	<p>The Ministry of Labour and Social Affairs commits to opening shelterssafe centers for the abused in Baghdad and the provinces for their rehabilitation, and regulates its work by instructions issued by the Minister of Labour and Social Affairs.</p>	<ul style="list-style-type: none"> • Amend article 8 to provide that the Ministry of Labour and Social Affairs will cooperate with women's rights NGOs in the administration, training, and running of such shelters, and permit privately run shelters for survivors of domestic violence. • Add a new paragraph that clarifies that there should be one shelter/refuge place for every 10,000 inhabitants, providing safe emergency accommodation for survivors and their children, qualified counselling, and assistance in finding long-term accommodation. • Add a new paragraph that establishes other services for domestic violence survivors including a widely-publicized 24-hour hotline for

		<p>assistance and referral to service providers, access to healthcare, and legal assistance.</p> <ul style="list-style-type: none"> • Add a new paragraph that establishes efficient and timely provision of financial assistance to survivors in order to meet their needs. • Add a new paragraph that states that all services for women survivors of violence should also provide adequate support to the women's children. Ensure that all services provided to the survivors of domestic violence, including shelters, are accessible to women with disabilities on an equal basis with other women.
Article 9	<p>First - Anyone subjected to domestic violence or who may legally represent the victim may file a complaint to any of-</p> <ol style="list-style-type: none"> a) The Investigative Judge for Domestic Violence. b) Prosecutor's. c) The Investigate Judge. ← d) The Department of Family Protection and its divisions and subsidiaries in the districts and areas in Baghdad and the provinces. 	<ul style="list-style-type: none"> • Amend article 9(1) to include general police in the list of authorities to which domestic violence survivors could file a complaint. • Introduce new paragraphs under article 9 which: <ul style="list-style-type: none"> ○ Expands the types of authorities to include the police, public prosecutors, investigative judges, and other state agencies responding to a domestic violence survivor who can refer a survivor to a shelter, health services, and other assistance, should they request it. ○ Set out concrete duties for the police (both general police and police officers in Family Protection Units), including restating duties provided in the Code of Criminal Procedures such as recording the domestic violence complaint, filing an official report, and interviewing the parties and witnesses as per the rules stipulated in the Code of Criminal Procedures. In addition, the bill should also provide for additional police duties including carrying out risk assessments; advising the

<p>complainant of his or her rights; arranging for transport for medical treatment; and providing other protection. In case the victim or survivor is a person with a disability, reasonable accommodation should be provided when registering a complaint, which may include the right to record their testimony with the police in the safety of their home or at a place of their choice; or the right to assistance by a “special educator” or interpreter when the complaint is recorded.</p> <ul style="list-style-type: none"> o Direct relevant Ministries to adopt “pro-arrest” and “pro-prosecution” policies in cases of domestic violence when there is probable cause to believe a crime has occurred, in line with UN guidance. o Clarify that the responsibility for prosecuting domestic violence lies with prosecution authorities, not with survivors, and set minimum standards for what prosecutors must communicate to survivors. o Require that female police or prosecutors are made available where a victim prefers to communicate with them. 		
	<p>Second—Everyone exposed to domestic violence, or was aware of the crime, may make a complaint to any of the entities set forth in paragraphs a, b and c—of the first paragraph of this article.</p> <p>Second - The civil servant or the person assigned to public service, or anyone who provided medical, educational or social service, in a case where the occurrence of a crime</p>	

	<p>of domestic violence is suspected, must report to any of the entities set forth in paragraphs (a), (b), (c), (d) paragraph 1 of this article, according to the law.</p>	
	<p>Third—Those responsible for medical services should inform about violence cases according to law.</p> <p><i>Cancelled after incorporating it into paragraph above.</i></p>	
<p>Article 10</p>	<p>The person in charge of investigation in the Protection from Domestic Violence Department shall, immediately, after being informed on the occurrence of a case of violence, or when a report is received concerning a breach of a protection decision which is in force, submit the case and the specialized judge may must take the necessary legal actions according to the law.</p>	
<p>Article 11</p>	<p>Lawsuits shall be initiated in cases of domestic violence, without being restricted to the venue of jurisdiction.</p>	
<p>Article 12</p>	<p>The receiver of the information commits not to disclose the identity of the informant, mentioned in article 9(2). and not regard him/her as a witness, unless he/she wishes to do so.</p>	
<p>Article 13</p>	<p>The investigation of domestic violence cases is conducted by the Judge of Domestic Violence, and in the case such a judge is not available, the magistrate conducts the investigation.</p>	

	<i>This article is deleted because "The investigative judge" has been added to article 9(1).</i>	
Article 14	Supreme Judicial Council forms a court of investigation into domestic violence cases in the places which it designates.	
Article 15	<p>First – The court may decide to hold secret hearings to maintain the privacy of the parties. The Court may decide to hold secret sessions at the request of one party or both parties of the case or at the request of the prosecutor or if the court deems it appropriate.</p> <p>Second – The court may take into account reports on domestic violence cases submitted to it by the competent governmental authorities. Cancelled.</p>	<ul style="list-style-type: none"> Introduce a new paragraph under article 15 that include the types of evidence that are admissible in court proceedings, such as medical/forensic evidence, victim statements, photographic evidence, expert witnesses, physical evidence such as torn clothing and damaged property, and cell phone records, emergency call recordings, and other communications. It should also state that a complainant’s testimony may be sufficient evidence for a conviction. Ensure that disability, including intellectual or psychosocial disability of the victim/survivor, is not used as a justification to nullify or undervalue their testimony.
Article 16	<p>First - Anyone who was subjected to domestic violence or his/her legal representative may apply to the competent judge for the purpose of issuing a protection decision and being admitted to a safe center. the centers prepared for accommodating, or issuing a protection decision. The court's decision may be appealed before</p>	<ul style="list-style-type: none"> Amend article 16(1) to remove the clause which allows “a respondent to appeal the decision of the court to provide admittance to safe centers and a protection order” which, instead, should be outlined under article 18(1) that a respondent can appeal a renewal or “remain in effect” short-term emergency order (see recommendations for article 18(1)), and that long-term orders require a full hearing (see recommendations for article

	<p>the criminal court in its cassation capacity within seven days from the date of notification.</p> <p>Second - If the victim did not apply for the issuance of an expedited protection decision, or if such a decision was not issued, it may be applied for, to the court of venue, during the consideration of the case.</p> <p>Third - The protection decision is regarded as material evidence before the court of venue. <i>Cancelled.</i></p>	<p>18(2)). Separate the right to shelter from the application of a protection order, and ensure that the right to shelter cannot be subject to appeal by the respondent.</p>
<p>Article 17</p>	<p>The protection order includes as follows:</p> <p>First: The offender must not harass the victim, and is not to instigate any assault against the victim or any member of their family.</p> <p>The protection decision includes obliging the offender to comply with one or more of the measures stated in the following items:</p> <p>First: Not to harass the victim and not to instigate or harass the victim or any member of his/her family or the informant.</p>	<ul style="list-style-type: none"> • Reinstate article 16(3) allowing the issuance of a protection order to be introduced as a material fact in subsequent legal proceedings.
	<p>Second: To give the aggrieved or his/her representative access to the family's house with the presence of the employee in charge to take his/her personal possessions and deliver them to the owner according to a record of receipt.</p>	
	<p>Third: The offender must pay the costs of the medical treatment and child support as a loan until a decision by</p>	<ul style="list-style-type: none"> • Amend article 17(3) to remove the addition of “as a loan,” returning to the original wording under article 17(3) ordering the respondent to pay

	<p>the court of venue is issued. provided the loan is stopped as soon as the personal status court issues a decision for child support.</p>	<p>costs of medical treatment and child support, and ensure the financial costs to the survivor and her dependents in longer-term orders, such as mortgage, rent, and support for daily living, are provided for.</p>
	<p>Fourth: the reservation of any weapon in the possession of the offender if necessary.</p>	
	<p>Fifth: Forbidding the offender from contacting the victim, whether in his/her house or place of work, or in shelters for victims of abuse, unless the intention is family reconciliation, and with a decision from the competent judge and the supervision of the Department of Family Protection.</p>	<ul style="list-style-type: none"> Amend article 17(5) to include the survivor's children (and any other people, if appropriate) on the prohibition on contact, and remove the exception of the prohibition on contact for the purposes of "reconciliation."
	<p>Sixth: Secure provide accommodation for the victim within (24) hours.</p>	
	<p>Seventh: The victim must be examined by the specialized medical and psychological committees to do what is necessary to transfer him/her to a health center for treatment.</p>	
	<p>Eighth: Restraining the offender from the family home, according to the law, if the victim does not want, or could not resort to the victim's safe place.</p> <p>Ninth: Revoke the power of attorney (general and special) granted to the offender starting from the date of submitting the request for protection.</p>	<ul style="list-style-type: none"> Amend article 17 to include a new provision that allows for a protection order to remove the alleged perpetrator from the home if the victim wants to stay or cannot reach a shelter, and to require the hand-over of essential personal effects or the use of a means of transportation to the complainant/survivor. Amend article 17 to include a new provision on longer-term protection orders, to provide a presumption that the respondent should not be

	<p>Tenth: Oblige the offender to regularly attend the rehabilitation of violent behavior classes, in one of the social welfare centers headed by the Ministry of Labour and Social Affairs, for the hours determined by the judge, subject to renewal based on the report submitted by the center.</p>	<p>granted residence (custody) of the child; the presumption that the respondent should not have unsupervised visitation; and the requirement that, prior to supervised visitation being granted, the respondent must show that at least three months have passed since the most recent act of violence, that he has stopped using any form of violence, and that he is participating in a treatment program for perpetrators; and no visitation rights are to be granted against the will of the child.</p>
<p>Article 18</p>	<p>First: The protection decision is issued by the competent judge within twenty-four hours, for a period not exceeding thirty days, renewable, according to the provisions of this law.</p>	<ul style="list-style-type: none"> • Amend article 18 into two paragraphs which establish a distinction between (1) emergency (short-term) protection orders and (2) longer-term orders, and set a time-limit for both. • Amend article 18(1) to: <ul style="list-style-type: none"> ○ Provide for emergency (short-term) protection orders (issued in situations where there is immediate danger of an act of violence) and authorize authorities, in addition to investigative judges for domestic violence and family courts, such as other general investigative judges with the power to issue short-term emergency orders. ○ Require the police (including general police officers and police officers in Family Protection Units) to assist survivors to access a timely emergency order from other relevant authorities and to immediately implement such orders. ○ Clarify that such orders provide relevant officials with the authority to order a respondent out of the home and to stay away from the survivor.

<ul style="list-style-type: none"> o Stipulate that emergency orders can be issued <i>ex parte</i> without evidence beyond a victim’s statement. o Stipulate that a short-term order can remain in effect until a longer-term order is issued, and provide that any renewal or the “remain in effect” beyond the expiry of the order can be subject to appeal from the respondent. 		
<ul style="list-style-type: none"> • Amend article 18(2) to provide that domestic violence complainants can apply for longer-term orders, which should require a full hearing and review of all evidence, and a maximum time limit of up to a year, which can be renewable. 	<p>Second: The Period of protection may be extended, providing it does not exceed (180) one hundred and eighty days, in one of the following situations:</p> <ul style="list-style-type: none"> a—If it is violated by the offender. b—If the court is convinced, that it is necessary to protect the victim or any member of his/her family. <p>Cancelled.</p>	
	<p>Third: Either of the parties of the dispute, when the decision is executed, may apply to the court in order to cancel it.</p> <p>Third: The person seeking protection or his legal representative has the right to apply to the court of venue in order to cancel the protection decision, and the court has to verify that this application is done upon the victim’s request, and is at his/her best interest.</p>	
Article 19		

	<p>First: The Department of Protection from Domestic Violence commits to refer the victim to the family reconciliation committees, in order to study the possibility of reconciliation between the victim and the offender, in cases where it is possible.</p> <p>First: The parties of the complaint are referred by the judge to the Department of Social Research for reconciliation, and he can use the assistance of arbitrators from both parties of the complaint for the purpose mentioned. The court shall take the legal actions in the event of failure to reach reconciliation.</p>	<ul style="list-style-type: none"> • Delete this article, as mediation, referred to here as family reconciliation, should be prohibited in all cases of violence against women, at all stages of legal proceedings.
<p>Article 20</p>	<p>Second: The taken legal procedures against the offender stop in the event of reconciliation between the victim and the offender.</p>	<ul style="list-style-type: none"> • Delete this article, as mediation, referred to here as family reconciliation, should be prohibited in all cases of violence against women, at all stages of legal proceedings.
	<p>First: The offender shall be punished as follows: The offender is punished for the breach of the protection decision as follows:</p> <p>a) imprisonment for a period not exceeding one year a) A fine of not less than (500,000) five hundred thousand dinars and not more than (1,000,000) one million dinars. In the case of non-payment of the fine, the punishment shall be simple imprisonment for not less than one month.</p>	

	<p>b) A fine not exceeding (1000000) one million dinars, if the protection decision or any of the conditions is breached by the offender intentionally.</p> <p>b) A fine of not less than (3,000,000) three million dinars and not more than (5,000,000) five million dinars. In case of recurrence or protection decision breach, in case of using violence against any of the people covered by the decision, and in the case of non-payment, the punishment will be severe imprisonment for a period not exceeding one year.</p> <p>c) A fine of not more than (2,000,000) two million dinars, if the protection decision breach is accompanied with the use of violence against any of the people covered by the decision.</p> <p>d) A fine of not more than (3,000,000) three million dinars if the protection decision is repeated more than twice.</p> <p>Second- The imprisonment not exceeding one year against the offender may be changed to a fine not exceeding (5,000,000) five million dinars.</p> <p><i>Cancelled.</i></p>	
Article 21	<p>The court may must rule in favor of compensation based on the victim's demand.</p>	
Article 22	<p>It is considered an aggravating circumstance to the provisions of this law:</p> <ol style="list-style-type: none"> 1- Recurrence. 2- If the crime was committed by descendants against ascendants. 	

	<p>3- If the victim is a child or a minor, an old person or pregnant, or with disabilities.</p> <p>The offenses established in this law are considered as an aggravating circumstance by the provisions of the Penal Code No. 111 of 1969.</p>	
<p>Article 23</p>	<p>The Penal Code No. (111) for the year 1969 and the Law of Criminal Procedures No. 23 of 1971 and the Juvenile Welfare Act No. 76 of 1983, are applied to all what is not mentioned in this law.</p> <p>It is prohibited to act contrary to the provisions of this law.</p>	
<p>Article 24</p>	<p>The Minister of State for Women's Affairs may issue, in coordination with the Interior Minister, instructions to facilitate the implementation of the provisions of this Act.</p> <p>The Council of Ministers may issue instructions and regulations for the implementation of this law.</p>	
<p>Article 25</p>	<p>This law will be effective once it is published in the public gazette.</p>	
<p>Reasons</p>	<p>For the purpose of protecting the family and the community from the effects of domestic violence, and in order to reduce crimes committed against the family and to rehabilitate victims and to deter offenders, this law was enacted.</p> <p>In order to reduce the manifestations of domestic violence, the elimination of its causes, the protection of the family and its members in accordance with the provisions of the Iraqi Constitution, and in respect for</p>	

	<p>Iraq's obligations toward the Arab and international conventions ratified by law, it enacted this law.</p>	
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