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The Permanent Mission of the Republic of Iraq to the United Nations Office and other International Organization at Geneva presents its compliments to the Office of the High Commissioner for Human Rights, Special Procedures Branch, and with reference to the letter from the Special Rapporteur on violence against women its causes and consequences dated on 23 June 2020, concerning the impacts of COVID-19 on violence against women and on the criminalization of rape, has the honor to convey herewith the response of the Government of Iraq in Arabic and English version (23 pages) on the above-mentioned issue.

The Permanent Mission of the Republic of Iraq avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, Special Procedures Branch the assurances of highest consideration.

Geneva, January 2021

Office of the High Commissioner for Human Rights,
Special Procedures Branch



Answers to the questionnaire of the Special Rapporteur on violence against women, its causes and consequences

Definition of criminal law

1-With regard to Paragraph (1), we have listed below the penal legal articles for the crime of rape

First: Amended Iraqi Penal Code No. (111) of 1969

- Article 393 amended according to the decision of the dissolved Revolutionary Command Council states:

1-(Any person who has sexual intercourse with a female without her consent, or who has sex with a male or female without her consent or consent, shall be punished with life imprisonment or temporary imprisonment).

2-It is considered an aggravating circumstance if the act occurs in any of the following cases:

A - If the person against whom the crime is committed has not reached the age of eighteen years.

B - If the perpetrator is a relative of the victim to the third degree, or if he is responsible for his upbringing or observation, or someone who has authority over him, or he was his servant or one of the aforementioned.

C - If the perpetrator is a civil servant or person assigned to a public service, or a cleric or a doctor, and exploits his position, profession, or confidence in him

D - If two persons or more participated in the commission of the act, who cooperated in overcoming the victim's resistance or were punished for the act.

E - If the victim became infected with a venereal disease as a result of the act.

F - If she becomes pregnant or her virginity is broken as a result of the act.

3- If the act results in the death of the victim, the penalty is life imprisonment.

4- If the victim was a virgin, then the court shall award her an adequate compensation (The dissolved Revolutionary Command Council issued a decision No. 488 on 11/4/1978, with death penalty for whoever has sexual intercourse with a female relative to the third degree without her consent, and she has completed the fifteenth of Age, and the act resulted with her death, or led to pregnancy).

-Article (395) also stipulated (Whoever seduces a female who has completed eighteen years of age with a promise to marry, then breaks her down and then refuses to marry her, he shall be punished with imprisonment).

- Article 394 states: -

1- He shall be punished with imprisonment for a period not exceeding seven years or with imprisonment for a non-marital woman with her consent or sodomize male with his or female with her consent if the person against whom the crime is committed has completed fifteen years of age and not yet eighteen ,the penalty will be imprisonment for a period not exceeding ten years if the person against whom the crime is committed is under fifteen years of age.

2- It is considered an aggravating condition if the act occurred in one of the cases stipulated in Paragraph (2) of Article 393.

3-If the victim is a virgin, then the court must award appropriate compensation,

-With regard to the issue of the victim's marriage to the perpetrator, Article 398 stipulates (If a valid marriage is concluded between the perpetrator of one of the crimes mentioned in this chapter and the victim, the action of the case shall be suspended, the investigation thereof, and other procedures, and if a judgment has been issued in the case, the enforcement of the judgment shall be suspended).

The lawsuit or execution procedures shall be resumed if the marriage ends with a divorce made by the husband without a legitimate reason or a divorce ruled by the court for reasons related to the husband's mistake or his misconduct before the lapse of three years after the suspension of the procedures.

The public prosecution, the accused, the victim, and everyone with an interest may request the suspension of the case, the investigation, the procedures and the execution of the judgment or the request to resume its progress or the execution of the judgment

Second: Code of Criminal Procedure No. 23 of 1971

- In submitting a criminal complaint, Article 9 states:

A - Submitting a complaint includes a criminal claim, which is a request for criminal measures to be taken against the perpetrator of the crime and the imposition of a punishment on him. The written complaint includes a case for civil rights unless the complainant declares otherwise.

- On the subject of the case's statute of limitations, Article 6 states:

"Complaints regarding the crimes set forth in Article 3 of this Law shall not be accepted after the elapse of three months from the day the victim became aware of the crime or the disappearance of the compulsory excuse that prevented the submission of the complaint, the right to complain shall be dismissed by the death of the victim unless Law stated otherwise).

- With regard to litigation capacity, Article (11) states (if the person who has suffered harm from the crime is not eligible to litigation civilly, he shall be legally represented on his behalf, and if he is not present, then the investigation judge or the court must appoint a person to prosecute the civil right on his behalf).

-In submitting a complaint to the police and members of the judicial police, Article 41 stipulates: - (Judicial officers are mandated in the areas of their jurisdiction to investigate crimes and accept complaints that are received about them and they must provide assistance to investigative rulers, investigators, police officers and commissioners and provide them with information they receive about crimes and arrest the perpetrators thereof. And handing them over to the competent authorities, and they must prove all the procedures that they take in the written minutes signed by them and those present in which they indicate the time and place of the measures taken and send these complaints, information, minutes, other papers and the seized materials to the investigating judge immediately.)

- Article 43 stipulates that (a member of the judicial investigation within his competence set forth in Article (39) ,if he is informed of a witnessed crime or heard about it , he must inform the investigating judge and the public prosecution about crime occurrence and move immediately to the crime scene of the accident ,recording the testimony of the victim and ask the accused about the accusation against him Verbally, seizing the weapons ,everything that appears to have been used in the commission of the crime, looking into and preserves its material effects, taking down the description of the condition of people and places, and all that is useful in discovering the crime scene and hears the statements of whoever was present or from whom it is possible to obtain clarifications regarding the incident and its perpetrator, and a record of that is prepared).

regarding informing police, Article 49 states:

A - Any official at the police station, upon receiving the complaint of a felony or misdemeanor, must immediately write down the informant's statements, take his signature on them, and send a report on that to the investigating judge or investigator. If the compliant is about a seen felony, then he must take the measures set forth in Article (43).

B - If the complaint was about a violation, he must submit a brief report on it to the investigator or the investigating judge, including the name of the informant, the names of the witnesses, and the legal article applicable to the incident.

C - In all cases, the official at the police station must record in the station's notebook a summary of complaint about each crime and the time in which the incident occurred.

- In hearing witnesses, Article (85) states: (It shall have initiated within investigation to record the testimony of the complainant or informant, then the testimony of the victim and other prosecution witnesses and those who request to litigate to hear their testimonies. As well as the testimony of someone who presents on his own will to give his statement if it is useful to the process of investigation and the testimony of the people who reached to the knowledge of the judge or investigator whom that they have information relevant to the accident.)

On the subject of assignment, Article (9) states:

A - The one who filed the complaint has the right to withdraw it, and if there are many complainants, the assignment of some does not apply to others.

F - Waiver of the complaint entails the complainant's waiver of his penal right, and his waiver of the civil right does not entail unless he declares that.

H - Waiver of the complaint or the civil right case is prohibited from renewing the right assigned to before any civil or penal court.

I - The complainant's relinquishment of the complaint prevents the criminal court from considering the civil lawsuit, and it does not prevent the complainant from going to the civil court to claim the civil right unless he declares that he waived it.

Regarding the article 2, Based on the wording of those provisions, is the provided definition of rape :-

a-Gender Specific, covering women only /No

b-Gender neutral, covering all persons /yes

c-based on the lack of consent of victim /yes

d-based on the use of force or threat / yes

e-some combination of the above /No

f-does it cover only vaginal rape? yes

g-does it cover all forms of penetration? Yes

<<Article 393 mentioned above was covering all the referred above>>

h-is the marital rape in this provision explicitly included? No

i-is law silent on the marital law? Yes

J-is the marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? No.

K-is marital rape excluded in the provisions, or is marital rape not considered as a crime? Yes.

3-Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator lived together in sexual relationship ?

Answer:- The legal Provisions mentioned above do not exclude the criminalization of perpetrator at any ways unless the victim's non- consent.

4-Regarding paragraph 4(what is the legal age for sexual consent)?

Answer / The Personal Status Law No. 188 of 1959 determined the legal age of marriage, as it was stipulated that the completion of eighteen years of age was required. and if the person is fifteen years old, the judge requesting the agreement of the legal guardian, as for the sexual relationship out of the legal marriage , the Iraqi laws do not regulate such matter , since Islam is the is forbidding such relations.

5-paragraph 5 (Are there provisions that differentiate for sexual activity between peers?)

Answer / There are no legal articles related to homosexuality in illegal relations, and that the Penal Code did not mention specific groups, but it rather came outright , besides that the Iraqi constitution stipulated on non-discrimination in Article (14):(Iraqis are equal before the law without discrimination based on gender, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status).

6- With regard to Paragraph (6), which includes (providing you with information about the criminal sanctions prescribed in the law for the crime of rape.

Answer / All the penal legal articles were mentioned in paragraph (1) above

7- With regard to Paragraph (7), which includes (What does the legislation in your country concerned with reparations for victims of rape or victims of violence after the perpetrator's conviction, and is the crime of rape that results in marriage excluded in those legal articles)?

Answer / The legal legislation regarding reparation for the victim is in Article (394, Paragraph/ 3) of the Penal Code, and Article (9) of the Criminal Procedures Law, mentioned above.

8- Regarding paragraph8 (Does the law foresee aggravating circumstances when sentencing rape cases, if so what are they?

A- Is the rape by more than one perpetrator, an aggravating circumstance? (Yes)

B- Is the rape of particularly vulnerable individual an aggravating circumstance or imbalance of power between the alleged perpetrator and victims, for example (the doctor and the patient), (the teacher and student (the age difference)? (Yes)

C- Is rape by spouse or intimate partner an aggravating circumstance? (No)

9-regarding paragraph 9/ Does the law foresee mitigating circumstances for the purposes of punishment? No

10-regarding paragraph 10/ is reconciliation between the victim and the perpetrator allowed as part of a legal response? Yes

This is through a waiver of the criminal case and as mentioned in Article (9) above, or through a valid marriage contract between the perpetrator and the victim.

11-regarding paragraph 11/ is there any provision in the criminal code that allows for the non –prosecution of perpetrator? Yes

-A/ if the perpetrator marries the victim of rape? Yes (article 398 referred)

B-if the preparatory loses his socially dangerous character or reconciles with the victim? Yes (The aforementioned article)

Likewise, Article (60) of the Iraqi Penal Code stipulates: - "Whoever was criminally responsible at the time of the crime lacked consciousness or will due to insanity or mental disability or because he was drunk or drugged as a result of intoxicating or narcotic substances that were given to him by force or without his knowledge"

Prosecution

12-is rape reported to the police prosecuted ex-officio (public prosecution)? Yes

13-is rape reported to the police prosecuted ex –parte (private prosecution)? No

14-Are plea bargain or friendly settlement of a case allowed in cases of rape of women? Yes, In the case of assigning the case or marrying the victim.

15-Are plea bargain or friendly settlement of a case allowed in cases of rape of children? Yes , In the event that the criminal case is waived by someone who legally represents the child.

16- please provide information on the statute of limitations for prosecuting rape?

Answer / Article 6 of the Criminal Procedures Law stipulated on restricting crimes that are subject to statute of limitations, and that the crime of rape is not included, meaning that the crime of rape does not lapse by prescription.

17-which are the provisions allowing a child who was the victim of rape and to report it after reaching adulthood, if any?

Yes, and that through the filing of a criminal complaint after the age of puberty, as the crime is lapse by statute of limitations, or he can file a complaint by legal representation if he does not reach the age of puberty.

18-Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? Yes, As stipulated by Article (85) of the Criminal Procedures Code mentioned above.

19- regarding paragraph 19, are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? **No.**

"Judges have access to medical reports within a short period of the occurrence the crime to establish the facts, as well as listen to witnesses and defense attorneys. The law allows them to view everything related to the facts of the criminal complaint."

20-Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? **Yes**

The Iraqi constitution stated in Article 19 that: -

Sixth: Everyone has the right to be treated fairly in judicial and administrative procedures.

Seventh: Court sessions are public unless the court decides to make them secret.

Article 152 of the Code of Criminal Procedure states:

(The trial sessions must be public unless the court decides that all or some of them are secret and not attended by anyone other than those involved in the case, in compliance with concerns of security or for the preservation of morals, and the court may prevent certain groups of people from attending sessions).

War or conflict

21- regarding paragraph 21 (is rape criminalized as a war crime or crime against humanity ?)**No, Because it is based on the Iraqi penal code as regular crime .**

22-regarding paragraph 22(is there a statute limitation for prosecuting rape in war or in conflict contexts? **No**

23- Regarding paragraph 23 (is there explicit provisions excluding statute of limitations for rape committed during war and armed conflict ? No.

24- Has the statute of the international criminal court been ratified? No.

25-please provide data on the number of cases of rape that were reported, prosecuted and sanctioned , for the past two to five years? **We would like to state to you that our department has no statistics, data on the numbers of rape cases , this is the jurisdiction of Higher Judicial Council .**

26- please explain any particular and additional barriers to the reporting and prosecution rape and to the accountability of perpetrators in your legal and social context not covered by above? **Regarding this paragraph, this is not included with our department competence, supreme judicial council shall be more helpful for such information.**

Questionnaire by the Special Rapporteur on question of Violence Against Women during (Covid 19)

1-with regard to the first question that includes (to what extent violence against women, especially domestic violence, increase in the wake of the health ban of the Corona pandemic? Please provide us with available data on the increase in violence against women? Including domestic violence and the killing of women and all those cases recorded since the beginning of the Corona pandemic crisis.

Answer / We would like to clarify that there is no doubt that violence against women has increased, especially domestic violence due to quarantine, as psychological, social and economic pressures have increased on all the family, especially women, as it is their responsibility to care for the family and take the necessary precautions to prevent the epidemic as well as the burden of the home and raising children. Concerning the data, we enclose table including assaults on women reported to police stations during (March, April , May , June , July)

2 - With regard to the second question that includes (Are there hotlines adopted by the government or civil society? Is there an increase in the numbers of those connected to this in the context of the emergence of the Corona pandemic?

Answer / Community police at the Ministry of the Interior have devoted a hotline to receiving reports and complaints from women who have experienced domestic violence. As for civil society organizations, some organizations have dedicated hotlines to provide legal advice and help women in obtaining their violated rights.

Likewise, the Department of Family and Child Protection from Domestic Violence affiliated to the Ministry of Interior, receives complaints and intelligence from abused women over 24 hours, and is in the following ways: -

A- Register complaints when the abused woman attends to the department.

B - Conducting an interview with abused woman, taking into account the gender of the victim, where women are interviewed by female officers within a room prepared for this purpose.

C- Sending and examined victims to the medical examination and attaching medical reports that support their abuse in investigative cases.

Furthermore , Women can also resort to the Independent Commission for Human Rights, as among its goals and methods of work are to :-

A- Receive complaints from individuals, groups, and civil society organizations about past and subsequent human rights violations.

B- Conduct preliminary investigations of human rights violations based on information.

C- Ensure that complaints received by the Commission are correct and conduct preliminary investigations if necessary.

D-Moving the cases related to human rights violations and refer them to the public prosecutor to take legal measures and notify the commission with the results.

3-Are women victims of violence excluded from restrictive measures to stay in segregation if they experienced domestic violence?

Answer/ The governmental institutions that are excluded from the measures of quarantine and curfew are the security agencies and service institutions that provide services to citizens. In the event that women are exposed to any domestic violence, they can go to the community police or any police station to file the complaint.

4-Are shelters open and available? Are there any alternatives to available shelters if they are closed or not available?

Answer / yes, are available as the Ministry of Labor and Social Affairs has provided shelters to receive women who have experienced domestic violence

5 - Are protection orders available and obtainable in the context of the Corona pandemic?

Answer / Security, health, judicial and social protection orders can be obtained by women and there is no restriction or exception on them during the (Covid 19) pandemic period. In addition to what we mentioned above in the aspect of protection, procedures for implementing orders issued by the investigating judges have resumed for all departments of family and child protection from domestic violence.

6- What are the impacts on women's access to justice? Are the courts open and providing protection decisions in cases of domestic violence?

Answer / Iraqi courts continued to perform their work partly under the health ban and curfew and to consider cases of women who have been subjected to domestic violence however, the issue of abuses against women have become a public opinion that has been called by civil society organizations and human rights activists to mount the pressure on the Iraqi parliament to expedite the legislation of Anti Domestic Violence Bill.

7- What are the impacts of the current restrictive measures on women's access to health services? Please specify to us whether those services provided are suspended or discontinued, especially with regard to reproductive services?

Answer / The health ban does not include health institutions, hospitals, health centers, private hospitals and pharmacies, accordingly, Therefore, women can enjoy all health services, including childbearing, during the imposition of preventive measures of the COVID-19 pandemic.

8-Please give us examples of the obstacles encountered women to combat domestic violence during the COVID-19 lockdown.

Answer / Among the obstacles and challenges facing women, are the tribal customs and traditions that do not allow women in the event of being subjected to violence by the husband, father or brother to go to the security authorities to protect them, in addition to that fact , many women are unaware of their legal rights and do not know how they have to act in the event of violence fearing of leaving the home under complete prohibition and curfew ,as well as the economic conditions that could impacted the woman and her economic inability, all of these challenges constitute an obstacle for women to fight domestic violence.

9- Please provide us with examples of good practices to prevent and combat violence against women and the accompanying domestic violence to combat the effects of gender discrimination that the government is taking in light of the COVID-19 pandemic.

Answer / Among the good practices what the government carries out through the community police, which tracing cases of domestic violence and provides guidance and community awareness to prevent and combat violence against women, through audio and visual media, in which aiming to discard the culture of domestic violence and how to deal with it in a manner that guarantees the necessary legal protection for abused women.

10- Please provide us with examples of good practices to prevent and combat violence against women and the accompanying domestic violence to combat the effects of discrimination on the basis of gender taken by NGOs, human rights institutions or their counterparts.

Answer / civil society organizations hold awareness-raising workshops and seminars to prevent and combat domestic violence against women and present studies and recommendations in this regard.

Table on the abused, displaced, survivors, from domestic violence (March-April-May-June-July)

Total	July			June			May			April			March			Type of abuse	Abused Displaced survivors	Governorate	No.	
	Remaining	Completed	Registered	Remaining	Completed	Registered	Remaining	Completed	Registered	Remaining	Completed	Registered	Remaining	Completed	Registered					
																				Remaining
158	31	195	24	12	36	20	12	32	60	0	66	14	4	1	40	3	43	Baghdad/Karkh	1	
48	0	48	9	0	9	11	0	11	12	0	12	7	0	7	9	0	9			Abused women and survivors
45	2	47	11	0	11	5	0	5	11	0	11	4	1	5	14	1	15			
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	Abused women and survivors		
10	0	10	3	0	3	2	0	2	2	0	2	1	0	1	2	0	2		Abused women and survivors	
30	4	34	2	2	4	3	1	4	21	1	22	2	0	2	2	0	2			Abused women and survivors
335	43	378	157	7	144	65	9	74	65	20	85	53	1	54	45	6	51	Abused women and survivors		
132	17	149	50	3	53	18	5	23	37	7	44	14	0	14	13	2	15		Abused women and survivors	
12	3	15	4	0	4	2	1	3	2	1	3	1	0	1	3	1	4			Abused women and survivors
2	0	2	0	0	0	0	0	0	1	0	1	0	0	0	1	0	1	Abused women and survivors		
8	1	9	3	0	3	2	0	2	2	1	3	1	0	1	0	0	0		Abused women and survivors	
18	2	20	5	0	5	2	0	2	3	1	4	0	0	0	8	1	9			Abused women and survivors
93	13	106	29	0	29	14	0	14	27	8	35	18	0	18	5	5	10	Abused women and survivors		
20	0	20	5	0	5	6	0	6	7	0	7	1	0	1	1	0	1		Abused women and survivors	
34	11	45	8	0	8	1	0	1	12	5	17	9	0	9	4	6	10			Abused women and survivors
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	Abused women and survivors		
																			Holy City of Najaf	
																				Abused women and survivors
																		Abused women and survivors		

30	0	30	11	0	11	1	0	1	13	0	13	3	0	3	2	0	2	Economical abuse					
	7	7	5	0	5	0	0	0	1	0	1	1	0	1	0	0	0	Other					
14	5	19	10	2	12	2	1	3	0	1	1	1	0	1	1	1	2	Physical abuse		AL-Anbar	4		
10	1	11	0	0	0	2	0	2	5	0	5	0	0	0	3	1	4	Psychological abuse	Abused women and survivors				
5	2	7	3	1	4	1	0	1	0	0	0	0	0	0	1	1	2	Verbal abuse					
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	Sexual abuse					
0	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	Economical abuse					
	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	Other					
43	15	58	11	2	13	10	0	10	8	8	16	5	0	5	9	5	14	Physical abuse					
16	8	24	7	3	10	1	0	1	4	1	5	2	1	3	2	3	5	Psychological abuse	Abused women and survivors		Kirkuk	5	
13	3	16	3	1	4	5	0	5	3	1	4	0	1	1	2	0	2	Verbal abuse					
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	Sexual abuse					
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	Economical abuse					
1	5	6	0	0	0	0	0	0	0	0	0	0	1	1	1	4	5	Other					
48	114	162	15	50	65	20	40	60	5	16	21	3	4	7	5	4	9	Physical abuse					
26	49	75	9	10	19	4	6	10	7	25	32	2	3	5	4	5	9	Psychological abuse	Abused women and survivors				
38	93	131	6	25	31	7	16	22	11	40	51	4	4	8	10	9	19	Verbal abuse		AL-Diwaniya	6		
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	Sexual abuse					
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	Economical abuse					
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	Other					
56	40	96	10	11	21	14	3	17	13	13	26	14	7	21	5	6	11	Physical abuse	Abused women and survivor				
22	12	34	2	2	4	3	0	3	4	5	9	10	1	11	3	4	7	Psychological abuse					
32	18	49	10	5	14	11	5	16	7	3	10	0	0	4	5	9	9	Verbal		Maysan			