



Contents

1. Introduction	3
2. Eroded rights, lost freedoms	4
Massive human rights violations	5
Armed conflict and sanctions	8
3. Violence in the present armed conflict	10
Lawlessness and intimidation	10
Targeted by armed groups	10
Abuses by US-led forces	13
4. Violence in the family	16
'Honour crimes'	17
Female genital mutilation	21
Violence in marriage	22
Forced marriages	23
5. Discrimination in national law	24
The Personal Status Law	25
Impunity for violence in marriage	26
Leniency for 'honour killings'	26
Women win legal reforms in the north	27
6. Women claim their rights	27
Participation in political decision-making	28
The right to work	29
The right to education	30
The right to health	31
7. Recommendations	31
To the Iraqi authorities	32
To governments with troops in Iraq	33
To armed groups	33
Appendix: International standards on violence against women	34
International Human Rights Treaties	34
Declarations	37
International Criminal Law	37
Due diligence and abuses by private individuals and groups	37

**amnesty
international**

International Secretariat
Peter Benenson House
Easton Street
London WC1X 0DW
United Kingdom
Website: www.amnesty.org

Iraq

Decades of suffering

Now women deserve better

STOP
VIOLENCE
AGAINST
WOMEN

AMNESTY
INTERNATIONAL



1. Introduction

Women and girls in Iraq live in fear of violence as the conflict intensifies and insecurity spirals. Tens of thousands of civilians are reported to have been killed or injured in military operations or attacks by armed groups since the US-led invasion of Iraq in March 2003. The lawlessness and increased killings, abductions and rapes that followed the overthrow of the government of Saddam Hussain have restricted women's freedom of movement and their ability to go to school or to work. Women face discriminatory laws and practices that deny them equal justice or protection from violence in the family and community. A backlash from conservative social and political forces threatens to stifle their attempts to gain new freedoms. The general lack of security has forced many women out of public life, and constitutes a major obstacle to the advancement of women's rights.

In recent decades, the people of Iraq have suffered brutal repression under the government of Saddam Hussain, and the terrible consequences of war and sanctions. Many thousands of Iraqis were killed, tortured and imprisoned by the security forces. The 1980-88 Iran-Iraq war cost the lives of half a million soldiers. Thousands more died in the 1990-91 Gulf war, the suppression of Shi'a and Kurdish uprisings in 1991, and the 2003 US-led war on Iraq. Thirteen years of UN-imposed economic sanctions following

the disruption arising from years of armed conflict contributed to the early deaths of hundreds of thousands of Iraqi people, most of them children.

Under the government of Saddam Hussain, women were subjected to gender-specific abuses, including rape and other forms of sexual violence, as political activists, relatives of activists or members of certain ethnic or religious groups. War and economic sanctions had a particular effect on women. They left women and households headed by women, many of them war widows, among the poorest sectors of the population. In the 1990s the mortality rate for pregnant women and mothers increased, and became one of the worst in the world for children under the age of five.

Since the 2003 war, women's rights activists and political leaders have been threatened by armed groups and a number have been killed. Women have been subjected to sexual threats by members of the US-led forces¹, and some women detained by US forces have been sexually abused, possibly raped.

Within their own communities, many women and girls remain at risk of death or injury from male relatives if they are accused of behaviour held to have brought dishonour on the family. So called "honour

¹ The term "US-led forces" is used in this report to refer to both coalition forces (during the 2003 invasion and occupation of Iraq) and multinational forces (since the handover of power in June 2004).

crimes” are in effect condoned in Iraqi legislation, which allows the courts to hand down lenient sentences on the perpetrators. Gender discrimination in Iraqi laws contributes to the persistence of violence against women.

Violence against women is a human rights abuse. The 1993 UN Declaration on the Elimination of Violence against Women defines it as any act of gender-based violence – that is, violence directed against a woman because she is a woman or that affects women disproportionately – that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.²

In the past year, women’s rights activists have successfully campaigned against an attempt to amend the Personal Status Law to place certain family matters under the control of religious authorities. Numerous non-governmental organizations (NGOs) and other bodies working for women’s rights have been formed, including groups that focus on the protection of women from violence.

Violence against women is closely bound up and interacts with unequal power relations between men and women and gender-based discrimination. The right not to be discriminated against on the grounds of race, sex, sexual orientation, gender expression and identity, age, birth or religion, is the basis of human rights – the inherent and equal dignity of every woman, man and child.

Women’s rights NGOs in Iraq have called for measures to be taken in order to stop violence against women and to end discrimination against women. At a conference in June 2004 in Baghdad, attended by 350 delegates from women’s organizations, participants demanded that armed groups were disarmed and members of the US-led forces responsible for human rights violations brought to justice.³ They called for support for women survivors of family violence, including through the establishment of shelters for women and legislative

² UN Declaration on the Elimination of Violence against Women, para. 1; Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, 1992, UN Doc. A/47/38, para. 6.

³ The outcome of the conference has been documented in: Iraqi al-Amal Association, *The National Conference for Empowering Women in Democracy – Baghdad 16-17 June, August 2004*.

reforms to tackle “honour killings”. To address the legacy of the past, the conference demanded support for those still suffering the consequences of war or human rights violations under Saddam Hussain’s government, and investigations into the fate of the “disappeared”. The participants also called for an end to discrimination against women in law, and equal representation and participation of women in education, employment and political decision-making. They drew attention to women’s gender-specific needs, including in the health sector.

This report is part of Amnesty International’s Stop Violence Against Women campaign. It focuses on the many ways in which women and girls in Iraq have suffered from government repression and armed conflict in disproportionate or different ways from men, and also how they have been targeted as women. It also shows how discrimination is closely linked to violence against women, and the particular ways in which women have suffered from the breakdown in law and order in many parts of the country since the overthrow of the government of Saddam Hussain.

Among the recommendations made in this report, Amnesty International calls on the Iraqi authorities and members of the National Assembly to ensure that the new constitution and all Iraqi legislation contain prohibitions on all forms of discrimination against women, and that effective measures to protect women from violence are introduced and supported.

States have an obligation under international human rights law to “respect, protect and fulfil” human rights. They must ensure that human rights abuses are not carried out by public officials or other agents of the state; they must protect people against human rights abuses by others, including individuals within their own communities and families, and must adopt legislative, administrative and other measures to enable the fulfilment and realization of human rights. In particular, states should eliminate discriminatory legislation and practice that put women at risk of violence, and take steps to protect women against discrimination and violence.

2. Eroded rights, lost freedoms

From the 1960s to the early 1980s, women in Iraq achieved significant progress in gaining access to education, to employment outside the home, and to social and welfare services. Women’s rights were newly enshrined in legislation, and women claimed a greater role in political and social activities.

After the Ba'ath Party came to power in 1968, independent civil society organizations, including women's organizations, were closed. The General Federation of Iraqi Women (GFIW) was established in 1969, primarily to support the government and its policies. Nonetheless, it became an important vehicle for women's social advancement and participation in public life. Literacy and other social or educational programs for women, for example, were organized by GFIW branches across the country, including in rural areas.

By 1980 women could stand for election to Parliament and local government. Laws were enacted making education mandatory for girls and boys between the ages of six and 10, and providing literacy programmes for adults. Labour and employment laws introduced provision for equal opportunities in the civil service, equal pay for equal work for women, maternity benefits, and freedom from harassment in the work place.

The 1980s and 1990s, however, saw the gradual erosion of many of the gains made by women under the onslaught of massive and systematic human rights violations committed under the government of Saddam Hussain (1979-2003). During the 1980-88 Iraq-Iran war, women's emancipation suffered setbacks primarily as a result of the overall deterioration in the human rights situation.

Following the 1990-91 Gulf war, the government consolidated its power through alliances with conservative religious leaders and powerful tribal chiefs. A process of Islamization in Iraqi society took place alongside a similar trend in the region at large. An obvious indication of this development was the growing number of women wearing the veil. The government appeared to foster this development, for example in its "campaign to enhance the [Islamic] faith" (*al-hamlah al-imaniyyah*).

The 13 years of UN-imposed economic sanctions jeopardized the lives of hundreds of thousands of people. The deprivation and hardship had a particular impact on women. In a climate of growing conservatism and social restrictions for women, the impact of two armed conflicts and over a decade of tough economic sanctions were devastating. Women who had been left to head households when male breadwinners were killed in war or forced to seek work abroad were at the same time discouraged from

working outside the home and were even less in control of their lives and choices.

Massive human rights violations

The war between Iraq and Iran imposed enormous suffering on women, men and children. Gross human rights violations, including mass killings and expulsions, were inflicted on whole communities. Women were frequently targeted because of their family relationship with male opposition activists, and were subjected to gender-specific human rights violations such as rape and trafficking for sexual exploitation.

At the beginning of the war the government deported thousands of women, men and children to Iran, solely on the basis of their actual or alleged Iranian descent. They included Shi'a Muslim Arabs and Feyli Kurds. Entire families were stripped of their properties, possessions and Iraqi identity documents and, under armed guard, forcibly transported in trucks or buses to border areas and ordered to cross into Iran. The majority of deportees lived for years in refugee camps inside Iran. Thousands of men and boys from such families, and some women and girls, aged between about 16 and 40, were arrested and detained indefinitely in Iraq. Although many were released in subsequent years, thousands "disappeared", never to be seen again. Most were probably killed.

Tens of thousands of Kurds, including many women and children, "disappeared" or were killed in an operation by government forces known as the Anfal campaign (1987-88). It was estimated that 4,000 villages were destroyed. In a recently discovered mass grave near the village of Hadhra, south of Mosul, remains of about 300 Kurdish women and children were uncovered by a team of forensic scientists. They were believed to have been shot from close range in the back of the head or in the face before their bodies were buried in a pit.⁴

The use of chemical weapons against the Kurds of Halabja in 1988 killed an estimated 5,000 people outright and injured thousands more. By 1998 there

⁴ Thanassis Cambanis: "Grisly evidence in Iraqi desert", *The Boston Globe*, 14 October 2004. See also: Human Rights Watch, *Iraq: The State of Evidence*, November 2004, http://www.hrw.org/reports/2004/iraq1104/4.htm#_Toc86054845

were reports that growing numbers of children were dying of leukaemia and lymphoma. Women and babies were particularly affected: medical experts found increased rates of infertility, miscarriage and infant death; of babies born with disabilities; and of skin, head, neck, respiratory, gastrointestinal, breast, and childhood cancers.⁵



Iraqi Kurds in Sulimaniya, northern Iraq, January 2003, holding photos of the victims of the chemical weapons attack on Halabja in March 1988. © AP

There were also indications that senior Iraqi security officials had been involved in the trafficking of Kurdish women and girls for the purposes of sexual exploitation as part of the government's repression of the Kurds. Secret communications discovered after the overthrow of Saddam Hussain's government included a document of 10 December 1989 from the Kirkuk Intelligence Directorate to the General Intelligence Directorate that listed the names of 18 women and girls, aged between 14 and 29, who had been detained in the Anfal campaign and sent to nightclubs in Egypt.⁶

The gravity of the crime of trafficking is reflected in the fact that, in some circumstances, it may constitute a crime against humanity or a war crime. Enslavement has been included among the most serious crimes of international concern in the **Rome Statute of the International Criminal Court**, which defines it as the exercise of powers attached "to the right of ownership over a person [including] the

⁵ Christine Gosden, "Why I went, What I saw", *The Washington Post*, 11 March 1998.

⁶ KurdishMedia, *Top secret Iraqi document reveals Kurdish girls sent to harems and nightclubs in Egypt*, 2 July 2003, <http://www.kurdmedia.com/news.asp?id=4057>.

exercise of such power in the course of trafficking in persons, in particular women and children."⁷

Throughout the 1980s and 1990s, women political activists in banned or unauthorized opposition political groups such as al-Da'wa Party or the Iraqi Communist Party, and women relatives of political and religious opponents of the government, were detained, sentenced to prison terms, tortured and killed.

Amina al-Sadr, known as **Bint al-Huda**, was believed to have been killed with her brother, Mohammad Baqer al-Sadr, in April 1980. Mohammad Baqer al-Sadr, who founded the Shi'a Islamist al-Da'wa Party in 1958, was detained and placed under house arrest in 1979 after publicly supporting the Islamic revolution in Iran and Ayatollah Khomeini. Hundreds of party members were arrested and many later executed. Bint al-Huda made a speech in Najaf, calling for a demonstration in protest at her brother's house arrest and at the government crackdown on his supporters. She and her brother were detained on 5 April 1980 after al-Da'wa Party was accused of being behind an assassination attempt on the life of Deputy Prime Minister Tariq 'Aziz. They were held at the headquarters of the General Security Directorate in Baghdad. Three days later, the body of Muhammad Baqir al-Sadr was returned to his family. The whereabouts of Bint al-Huda were never disclosed, but it was widely believed that she was extrajudicially executed.

Women and their children were said to have been tortured in front of their husbands and fathers. **Ahlam al-'Ayashi**, aged 20, was arrested in 1982 because she was married to a senior member of al-Da'wa Party, Imad al-Kirawee, who was in prison. When her husband refused to give information to the security services, she was reportedly tortured to death

⁷ In the Rome Statute, enslavement is defined as a crime against humanity when committed as part of a widespread or systematic attack against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit the attack (Article 7 (1) (c) and (2) (c)); the related crime of sexual slavery is defined as a war crime when committed during an international or internal armed conflict (Article 8 (2) (b) (xxii) and (e) (vi)).

in front of him by two security officers. Three of her five brothers and Imad al-Kirawee were executed.⁸

Some women were tortured and spent years in prison because of their own or relatives' political activities. Two sisters, **Yusra Tayef Shafi'** and **Hadhin Tayef Shafi'**, were arrested on 17 July 1986 in Basra and questioned about contacts with their brothers, who were wanted by the security services as suspected members of al-Da'wa Party. The two sisters were held for 11 days at the Security Directorate in Basra, where they were blindfolded, beaten on the soles of the feet (*jalaqa*), and threatened with execution. Yusra told Amnesty International in May 2003: "During the period of interrogation it was very hard on us. Each second felt like months. We will never forget this period." After six months at the General Security Directorate in Baghdad, the sisters were tried on charges of protecting a member of an unauthorized organization, and convicted and sentenced to 20 and 15 years' imprisonment without right of appeal. The woman they were alleged to have protected, known as "**Safia**", had been arrested with them on suspicion of being the contact to a man who was to help the brothers leave the country. Sentenced to death, Safia spent nine months in solitary confinement before she was executed. The sisters served their sentences at al-Rashad women's prison in Baghdad, for the first two years incommunicado. They were released in a general amnesty at the end of 1991. Seven of their brothers, including the six who had been in hiding, are still missing.



Yusra and Hadhin Tayef Shafi' at their house in Basra, May 2003 © AI

⁸ Robert Fisk, "Revealed: The women who suffered Saddam's tyranny", *The Independent*, 23 January 2004.

After the sisters were released, people were afraid to contact or speak to them. Even family members were fearful of helping them financially. The two sisters supported themselves by working at home as seamstresses. A year after their release a security officer told Yusra that, if there was any trouble in the neighbourhood, they would be the first arrested. The harsh conditions left both sisters with poor eyesight. According to a relative, they were unable to marry because of their years in prison. The sisters told Amnesty International that they would like to see those responsible for their torture and imprisonment brought to justice and punished.⁹

During and after failed uprisings in 1991 by the Kurds and Shi'a in the north and south of Iraq respectively, thousands of people, including women and children, were killed by government forces. Women and children were also widely reported to have been used by government forces as "human shields" in military operations to quell both uprisings, and to have been killed in cross-fire between the security forces and insurgents.

Government repression continued unabated throughout the 1990s, including against women suspected of association with banned opposition groups or suspected government opponents. **Su'ad Jihad Shams al-Din**, a 61-year-old medical doctor, was arrested at her clinic in Baghdad on 29 June 1999 and detained without charge or trial for a month on suspicion of contacts with Shi'a Islamist groups. Security agents tortured her frequently, including by beating her on the soles of her feet with a cable, during interrogation at the Baghdad Security Directorate, she told Amnesty International in November 1999 after fleeing the country.

Ahlam Khadom Rammahi, a mother of six children who had left Iraq with her husband in 1982, travelled back from London to Iraq to visit her sick mother on 28 July 1999, using her British passport. She had not seen her mother since leaving Iraq. On 5 August she was arrested in Baghdad at the home of relatives and detained for a month before being released without charge on 7 September. No reason was given for her arrest, and her terrified family were unable to find out where she had been taken for several days. During one interrogation session, she told Amnesty International after her release, a security agent said: "You know our torture methods

⁹ Amnesty International interview, 7 May 2003, Basra.

don't you? We use electricity. You better tell us about your husband, your contacts with Iran, with al-Da'wa, with Saudi Arabia; your husband has criticized Saddam Hussain and the regime hasn't he? If you don't talk we will pierce your hand with a drill." She said that security officers threatened to torture her daughter in front of her if she did not confess to opposition activities in London.

Rape was used as a form of torture on women in custody because they were relatives of opposition activists or in an attempt to force Iraqi nationals abroad to cease political activities. In June 2000, a videotape showing the rape of a female relative was sent to Najib al-Salihi, a former army general who fled Iraq in 1995 and joined the opposition. Shortly afterwards he reportedly received a telephone call from the Iraqi intelligence service, asking him whether he had received the videotape and informing him that his relative was in their custody.

In 2000, women were publicly beheaded in a campaign against prostitution. Men suspected of procuring women for the purposes of prostitution were also said to have been beheaded. In October 2000, dozens of women were beheaded in Baghdad and other cities. They had been arrested on suspicion of prostitution and ill-treated in custody before their execution. Members of Fedaiyye Saddam, a militia created in 1994 by Uday Saddam Hussain, used swords to execute the women in front of their homes. Several of the killings were reportedly carried out in the presence of representatives of the Ba'ath Party and the General Federation of Iraqi Women.

An accusation of prostitution was reportedly used as a pretext to behead **Najat Mohammad Haydar**, an obstetrician in Baghdad, in October 2000. She was alleged to have been detained for criticizing corruption in the health services before the policy to behead prostitutes was introduced.

A woman known as "**Um Haydar**" was reportedly beheaded in November 2000. She was 25 years old and married with three children. Her husband had fled the country, reportedly after being sought by the security authorities for involvement in Islamist armed activities against the state. Men belonging to Fedaiyye Saddam reportedly took Um Haydar from her home in al-Karrada district of Baghdad and beheaded her in the street, in front of other residents and local members of the Ba'ath Party. They took away her remains in a plastic bag, and

detained her mother-in-law and children, whose fates were unknown.

Armed conflict and sanctions

After half a million Iraqi soldiers died in the Iran-Iraq war, and thousands of men had been executed or had "disappeared", the widows, mothers and sisters they left behind frequently had to face alone the devastating impact on the social fabric of Iraqi society. In many respects, women bore the brunt of the widespread economic hardship and shattered education and health systems that were the consequence of warfare and sanctions.

The number of female-headed households increased. Not only war widows but also women whose husbands had been imprisoned, executed or "disappeared", or had left home to find work abroad, had to cope with day-to-day privations, often for the first time on their own. Men who were left with severe disabilities had to be cared for by their families – a task that generally fell on the women of the family. The large number of women unable to marry or left destitute led to a rise in polygamous marriages.¹⁰

Following the Iraqi invasion of Kuwait on 2 August 1990, the UN Security Council imposed comprehensive sanctions that allowed Iraq to import only "supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs" (Resolution 661).¹¹ However, though the imposition of sanctions was intended as a temporary measure, they remained in force for 13 years, contributing to a severe deterioration in living conditions in Iraq. In 1995, Security Council Resolution 986 established an oil-for-food programme, which allowed Iraq to sell oil to finance the purchase of mainly humanitarian goods. There were claims that the Iraqi government deliberately manipulated the sanctions regime and oil-

¹⁰ Nadje Al Ali, *Society and Culture: Sanctions and Women in Iraq*, pages 73-84. In: Campaign against Sanctions in Iraq, *Sanctions on Iraq: Background, Consequences and Strategies, Proceedings of the Conference hosted by Campaign against Sanctions on Iraq; Conference hosted by the Campaign against Sanctions on Iraq, 13-14 November 1999*, 2000, Cambridge, <http://www.casi.org.uk/conf99/proceedings.pdf>.

¹¹ UN Security Council Resolution 661, 6 August 1990, UN Doc. S/RES/661 (1990).

for-food programme for propaganda purposes.¹² Both sanctions and the oil-for-food programme also faced strong criticisms because they lacked a monitoring mechanism to measure their impact and effect on the Iraqi civilian population.

Sanctions jeopardized the rights to food, health, education and, in many cases, life of hundreds of thousands of individuals, many of them children. Women were often disproportionately affected, since they bore the main burden of maintaining the household. In female-headed households, it became even more difficult for women to find paid work.

A major impact of the sanctions was a further deterioration of the health services, already severely damaged by two consecutive wars.¹³ There was a dramatic increase in risks for pregnant women, mothers and babies in particular. According to a survey of the UN Population Fund (UNFPA) published in November 2003, the number of women who died in pregnancy and childbirth almost tripled between 1989 and 2002.¹⁴

One of the most important indicators used to measure the health situation in any country is the mortality rate of vulnerable groups. In the years before the Gulf war, the mortality rate for children under five years of age was on the decline. From 1990 and under the sanctions regime, child mortality rates went up dramatically. In March 2003 the UN Children's Fund (UNICEF) estimated that "one in eight children died before the age of five – one of the world's worst mortality rates".¹⁵ A UNICEF study of 1999 on child and maternal mortality found that between 1990 and 1998, 500,000 more children would have survived beyond their fifth birthday if the Iraqi government had continued to invest in its social sector.¹⁶

¹² Recently there have been claims about corruption within the UN administration of the oil-for-food programme, which are currently under inquiry.

¹³ Campaign against Sanctions on Iraq, *Sanctions on Iraq: background information*, January 1999, <http://www.casi.org.uk/halliday/backg.html>.

¹⁴ *Agence France Presse*, "Death rate of Iraq mothers triples, UN survey finds", 4 November 2003. According to the study the number rose from 117 cases of maternal death per 100,000 live births in 1989 to 310 in 2002.

¹⁵ http://www.unicef.org/media/media_9779.html

¹⁶ http://www.unicef.org/media/media_9779.html

Sanctions contributed to a sharp and unprecedented economic decline. The state was unable to continue funding social and welfare services and programmes, and most of the population were subjected to severe hardship. Women saw their employment opportunities and income shrink, their access to education decline and their household responsibilities increase. This led to a generation gap "between older women who were literate, educated and worked outside the home, and their daughters who were not in the work force, often more socially conservative, and had not received the same level of education as their mother."¹⁷

Before 1991, women constituted 23 per cent of the labour force.¹⁸ Most of these women workers were professionals in the public sector where, since the Iraq-Iran war, increasingly women had been employed. According to a report of the International Labour Organization (ILO), by 2000 the share of women workers in the public sector had increased further as wages fell and men moved to better paid work in the private or informal sector.¹⁹ In addition to earning low wages, many working women suffered from the collapse of state-funded support systems, including kindergartens and free transportation to schools and women's work places.²⁰

The rise in households headed by women, and growing economic hardship, increased household responsibilities for women. In the absence of state-sponsored social services, they had more care responsibilities for families and children. Faced with rising costs and shrinking income, they had to take on

¹⁷ Women for Women International, *Windows of Opportunity, The Pursuit of Gender Equality in Post-War Iraq*, January 2005.

¹⁸ ILO Regional Office for the Arab States: *ILO Multidisciplinary Mission to Iraq, 28 April-5 May 2000*, <http://www.ilo.org/public/english/region/arpro/beirut/infoservices/report/report10.htm>

¹⁹ ILO Regional Office for the Arab States: *ILO Multidisciplinary Mission to Iraq, 28 April-5 May 2000*, <http://www.ilo.org/public/english/region/arpro/beirut/infoservices/report/report10.htm>

²⁰ Nadje Al Ali, *Society and Culture: Sanctions and Women in Iraq*, pages 73-84. In: Campaign against Sanctions in Iraq, *Sanctions on Iraq: Background, Consequences and Strategies, Proceedings of the Conference hosted by Campaign against Sanctions on Iraq; Conference hosted by the Campaign against Sanctions on Iraq, 13-14 November 1999, 2000*, Cambridge, <http://www.casi.org.uk/conf99/proceedings.pdf>.

extra work to provide the essentials. Their increased responsibilities notwithstanding, women's role in the public domain was shrinking as they were "pushed back into their homes and into the traditional roles of being mothers and housewives".²¹

3. Violence in the present armed conflict

Continuing insecurity constitutes a serious threat to the whole population, and is a major obstacle for the country's rebuilding and reconstruction process. Since the announcement by US President George Bush of the end of "major combat operations in Iraq" in May 2003, the violence has not ended. Since then, thousands of civilians – women, men and children – have been killed in military operations by the US-led forces and in attacks by armed groups.

Violence and threats have directly affected women and have been specifically aimed at women. Armed opposition groups have targeted and killed several women political leaders and women's right activists. Women detained by US forces have in some cases been subjected to sexual abuse, possibly including rape.

Because of the increased level of violence and threats, many women try to avoid leaving their homes as much as possible. The widespread fear of violence affecting all Iraqis has restricted the participation of women in civil society since the 2003 war, particularly in education, employment and political decision-making.

Lawlessness and intimidation

In a climate of lawlessness during the first months after the overthrow of Saddam Hussain's government, there was an increase in reports of kidnappings, rapes and killings of women and girls by criminal gangs. Iraqi officers at a police station in Baghdad reported in June 2003 "that the number of [rape] cases reported was substantially higher than before the war".²²

²¹ Nadje Al Ali, *ibid.*

²² Human Rights Watch, *Climate of fear: Sexual Violence and Abduction of Women and Girls in Baghdad*, July 2003, p. 3.

In one reported case, "Asma", a young engineer, was abducted in Baghdad in May 2003. She was shopping with her mother, sister and a male relative when six armed men forced her into a car and drove to a farmhouse outside the city. There she was repeatedly raped. A day later, she was driven to her neighbourhood and pushed out of the car.

Since late 2003 reports of kidnappings resulting in rape or other sexual violence against women appear to have decreased. However, many cases of kidnapping and rape are not reported, because relatives fear for the woman's safety and their own, even after release, and because of the stigma associated with rape.

Women continue to be forced to wear headscarves by threats and harassment from members of Islamist groups. These groups have targeted women and girls who have not covered their heads, including non-Muslims, in the streets, in schools and in universities. As a consequence, the number of women and girls wearing a headscarf or veil has further increased. Choice of clothes can be an important element of the right to freedom of expression. Intimidating women and girls to make them observe a strict dress code amounts to a restriction of that right. Such forms of social control often have a disproportionate impact on women, because their dress and appearance are subject to particular regulation. Underlying such controls is the threat of injury or worse. They not only restrict women's freedom of movement, their rights to education and work, and sometimes their freedom of religion, but also expose women to the risk of violence as a penalty for transgression.

Targeted by armed groups

Hundreds of women, men and children have died in attacks by armed groups. In some cases, civilian deaths have resulted from indiscriminate attacks on specific targets, such as police stations. In others, civilians have themselves been the objects of attack. In one instance, more than 100 civilians were killed on 2 March 2004 in nine coordinated attacks in Karbala and Baghdad as millions of Muslims were marking 'Ashoura, the holiest day in the Shi'a Muslim calendar'.²³

²³ Amnesty International, *Amnesty International strongly condemns latest bombings* (AI Index: MDE 14/003/2004), 2 March 2004.

Women campaigning to protect women's rights have been threatened, kidnapped and killed by members of armed groups in Iraq. In several cases, the perpetrators have identified themselves as members of Islamist groups, linking their attack to the women's activism for women's rights. In other cases, their activism appears to have contributed to the attack on them. A recent report on Iraq by Women for Women International²⁴ is dedicated to "Iraqi women who have been targeted merely because of their leadership activities, the positions they held, or for being otherwise visible in public" and lists the names of several who have been kidnapped or killed over the past year.²⁵

Members of the Organisation of Women's Freedom in Iraq (OWFI) have reported threats received because of their advocacy of women's rights. Chairperson **Yanar Mohammed** reported that in January and February 2004 she received several death threats by e-mail from an Islamist group known as the Army of Sahaba. She asked US officials for protection, but was reportedly told they had more urgent matters to address. Yanar Mohammed and her colleagues at the Baghdad office of OWFI were forced to avoid public appearances and wear bullet-proof vests.²⁶



Yanar Mohammed © OWFI

²⁴ Women for Women International is an international NGO operating since 2003 in Iraq. For more information see <http://www.womenforwomen.org>.

²⁵ Women for Women International, *Windows of Opportunity, The Pursuit of Gender Equality in Post-War Iraq*, January 2005.

²⁶ *IRINnews*, "Women's groups under threat in new Iraq", 24 March 2004.

Several women's centres established by the US authorities to provide support for women, including literacy programs, IT training and political awareness raising, have had to reduce or review their activities following threats and attacks.

Amira Salih, the manager of a US-funded women's centre in Karbala reportedly stepped down after she received repeated death threats.²⁷ Another women's rights activist from Karbala told Amnesty International that in April 2004 she was stopped by Iraqi police in front of a women's centre where she wanted to attend a meeting. A police officer advised her that this was an unsafe location and that she should not enter.²⁸

The killing of US lawyer **Fern Holland** and Iraqi assistant **Salwa Oumashi** in an armed attack on 9 March 2004 added to the climate of threat and insecurity experienced by many women working for women's rights. Fern Holland was a civilian employee of the Coalition Provisional Authority (CPA), the US-headed body that governed Iraq until the handover of power to an interim Iraqi administration in June 2004. She played a key role in supporting US-funded women's rights projects in the governorates of Babil, Karbala and Najaf, including by setting up women's centres in Hilla and Karbala. Although those responsible for killing the two women have not been identified, it is widely believed that both were targeted because of their promotion of women's rights.

The US authorities have frequently announced their support for women in Iraq, which has included the allocation of US\$10 million for the Women's Democracy Initiative for Iraq.²⁹ However, some women's rights activists have expressed uneasiness about women's organizations receiving financial or other support from US government bodies. One Iraqi woman working for a women's NGO that receives US-funding explained: "Our society doesn't understand our relation with Americans, and that's why I and all of us are afraid. Anyone dealing with

²⁷ Annia Ciezadlo, "After an Advocate's Killing, Iraqi Women Try to Stay Course", *Christian Science Monitor*, 1 April 2004.

²⁸ Amnesty International interview, 30 August 2004, Amman.

²⁹ *Agence France Presse*, 8 March 2004.

Americans – friendship, work – they’re considered a spy”.³⁰

Although only states ratify international treaties, many of the international legal principles contained in such treaties apply also to armed groups and their members. Article 3 common to all four **Geneva Conventions** applies to all parties involved in an internal armed conflict, and reflects customary international law. Among the actions it prohibits, by armed groups, no less than governments, are the targeting of civilians and others taking no active part in hostilities, who must be treated humanely; the taking of hostages; violence to life and person, in particular murder, mutilation, cruel treatment and torture; and outrages upon personal dignity, in particular humiliating and degrading treatment.³¹

Some armed groups have made explicit statements that they will respect rules of international law. Nevertheless, irrespective of whether or not an armed group has made a specific commitment, individual members of such groups who commit such acts prohibited under international customary law can and must be held criminally responsible and should be brought to justice.

Several women political leaders have been targets of politically motivated armed attacks. **‘Aquila al-Hashimi**, one of only three female members in the Iraqi Governing Council (IGC), was killed in September 2003, reportedly by armed men opposed

³⁰ Elizabeth Rubin, “Fern Holland’s War”, *New York Times*, 19 September 2004.

³¹ Article 3 common to all four Geneva Conventions: “In the case of armed conflict not of an international character... each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) Taking of hostages; (c) Outrages upon personal dignity, in particular humiliating and degrading treatment.”

to the US-led occupation.³² **Raja Khuzai**, another IGC member, reported that she received death threats for opposing proposed amendments to the Personal Status Law: “There was a proposal, Resolution 137, which was against women’s rights... I succeeded in having this resolution cancelled in February [2004]. After that I received so many death threats, telephone calls, letters to me and my family”.³³ On 29 March 2004, **Nisreen Mustafa al-Burawari**, the then Minister of Public Works and the only woman in the cabinet, survived an attack on her convoy in Mosul in which two of her body guards were killed.

On 20 November 2004, **Amal al-Ma’amalachi**, a women’s rights activist and adviser at the Ministry of Municipalities and Public Affairs, was killed with her secretary, bodyguard and driver in Baghdad. She was on her way to work when her car was riddled with gunshots and she received at least 10 bullet wounds. She was a co-founder of the Advisory Committee for Women’s Affairs in Iraq and the Independent Iraqi Women’s Assembly, which were established after the overthrow of Saddam Hussain’s government.



Amal al-Ma'amalachi © Private

A number of women have been taken hostage by armed groups, some of them in connection with political demands. Three relatives of Prime Minister Iyad Allawi, two of whom were women, were

³² Appointed by the Coalition Provisional Authority, the Iraqi Governing Council was established in July 2003 and operated until June 2004.

³³ Anthony Paul, “Grandmother lends voice to Iraq’s women” *Straits Times*, 25 August 2004. See also: Al-Mashriq, 15 March 2004, Baghdad.

abducted from their home in Baghdad on 10 November 2004 in one hostage-taking. An armed opposition group, Ansar al-Jihad, claimed responsibility and demanded that US and Iraqi military operations in Falluja be halted and political prisoners be released.³⁴ The group threatened to kill the hostages unless their demands were met within 48 hours.³⁵ On 15 November 2004 the release of the two female relatives, one aged 75 years and the other pregnant, was reported.³⁶

Women of non-Iraqi origin have also been held as hostages, often in an attempt to have foreign troops withdrawn from Iraq. Hostages have been beaten and threatened with execution, and at least one has reportedly been killed. They have included Japanese, Polish and Italian nationals. Following their release in September 2004, **Simona Toretta** from Italy reported that she and her colleague, **Simona Pari**, were treated with respect by their captors, but that “there were times when we feared we’d be killed”.³⁷

On 19 October 2004, **Margaret Hassan**, the Iraq country director of the international NGO, Care International, was taken hostage in Baghdad while on her way to work. Margaret Hassan, who was married to an Iraqi national and herself a national of Ireland, the UK and Iraq, had lived in Iraq for 30 years. Several video messages that showed her in captivity and clearly in distress were broadcast. On 27 October 2004, *al-Jazeera TV* transmitted a video of her appealing for the withdrawal of UK troops and the release of all Iraqi women detainees. On 16 November 2004, her family said they believed she was dead, after a video tape appeared to show her

³⁴ In November 2004, US and Iraqi troops launched a major offensive aimed at gaining control of the city of Falluja.

³⁵ BBC, “Relatives of Iraqi PM kidnapped”, 10 November 2004, http://news.bbc.co.uk/1/hi/world/middle_east/3998681.stm

³⁶ CBC News, “Iraq PM’s relatives released by kidnapers”, 15 November 2004, <http://www.cbc.ca/story/world/national/2004/11/15/allawi-releases-iraq-041115.html>

³⁷ BBC, “Italy celebrates hostages’ return”, 29 September 2004, <http://news.bbc.co.uk/1/hi/world/europe/3699350.stm>.

being killed.³⁸ To date, no group has claimed responsibility for her abduction and killing.

Abuses by US-led forces

The numbers of civilian casualties in Iraq remain heavily disputed. Different sources suggest that among the civilian population women are less likely than men to be killed by the US-led forces. However, the absence of sufficient data makes it difficult to draw conclusions from such findings. Between March 2003 and mid-January 2005, the Iraq Body Count had recorded between 15,300 and 17,500 “media-reported civilian deaths” resulting from US-led military intervention.³⁹ A much higher figure was given in a sample-based study published in October 2004 in the UK medical journal, the *Lancet*, which estimated that “about 100,000 excess deaths, or more have happened since the 2003 invasion of Iraq”.⁴⁰ In response to the estimate in the *Lancet*, the Iraq Body Count pointed out that it counted only civilian deaths and considered its own figures to be an “underestimate of the true position”.⁴¹

Women have also been at risk of torture or ill-treatment as detainees in the custody of US-led forces. Reports about the torture and cruel, inhuman and degrading treatment of detainees in Abu Ghraib prison and other US detention centres in Iraq have included allegations that women have been subjected to sexual abuse, possibly including rape.

³⁸ BBC, “Leaders condemn ‘Hassan murder’”, 17 November 2004,

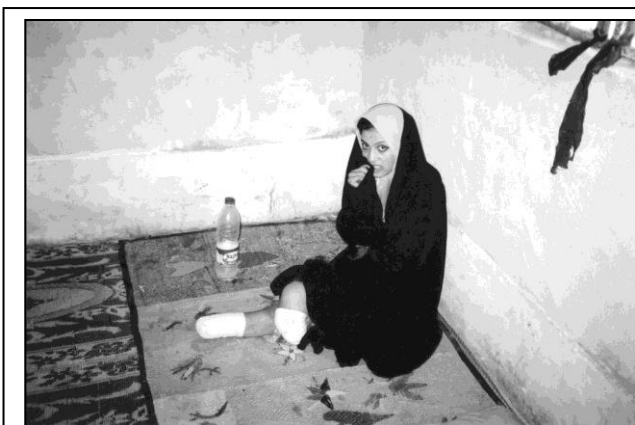
<http://news.bbc.co.uk/1/hi/uk/4018335.stm> and <http://news.bbc.co.uk/1/hi/uk/3946455.stm>.

³⁹ Iraq Body Count (www.iraqbodycount.net) is a not-for-profit organization aiming to provide independent data on civilian deaths in Iraq since the 2003 war. In September 2004, it named and identified about 3,000 individual victims. Of about 2,800 cases, where the gender was known, under a quarter were female.

⁴⁰ Les Roberts et al, “Mortality before and after the 2003 invasion of Iraq: cluster sample survey”, *Lancet*, 29 October 2004. According to the study, of those whose deaths were attributed to the US-led forces, 46 per cent were children under 15 years and seven per cent were women. The study’s total of “excess” death was arrived at by comparing mortality in sample households during the months before and after the US-led invasion in 2003.

⁴¹ Iraq Body Count, “IBC response to the Lancet study estimating ‘100,000’ Iraqi deaths”, 7 November 2004, see <http://www.iraqbodycount.net/press/>.

Several women detainees have spoken to Amnesty International after their release from detention, on condition of anonymity. They reported beatings, threats of rape, humiliating treatment and long periods of solitary confinement. Some of the male detainees who alleged torture or ill-treatment in US custody said that the sexual humiliation was the worst part of their treatment. For women in Iraq, the stigma frequently attached to the victims instead of the perpetrators of sexual crimes makes reporting such abuses especially daunting.



Ahlam Abd al-Zahra Idris, aged 18. Her feet were amputated after injuries sustained when her house was shelled during the war by British forces. The house was flattened and all the members of her family including her baby were injured. The attack happened on 21 April 2003 while her family were cooking lunch, around 12 noon. Her brother was also severely injured and in hospital at the time AI delegates visited the house. In total about 23 homes were hit that day and about 31 civilians killed; 15 in one house. © AI

Huda Hafez Ahmad, a 39-year-old businesswoman, is one of the few former women detainees who have spoken out about their experiences. She was taken into US custody when she went to look for her sister, Nahla, who had been detained. The two women were reportedly not seen by a lawyer for more than six months. In December 2003 Huda Hafez Ahmad and several other members of her family, including her sister Nahla and her brother Ayad, were detained at the US base in the al-A'dhamiya neighbourhood of Baghdad, because they were suspected of supporting an armed opposition group. In a communication to Amnesty International she made allegations that she had been tortured and ill-treated.

Huda Hafez Ahmad said that she was handcuffed and blindfolded after her arrest and left overnight in a cold room containing only a wooden chair. She

alleged that she was hit in the face, made to stand for 12 hours with her face against a wall, and for the next three days subjected to excessively loud music and sleep deprivation.⁴² She reported that her brother Ayad Hafez Ahmad died in US custody following torture and ill-treatment at this time.

In early January 2004, Huda Hafez Ahmad and her sister were transferred to Abu Ghraib prison, where she was reportedly held in a cell on her own for several months. The sisters were the last two women to be released from Abu Ghraib prison in July 2004, where – according to US official sources – 42 women had been detained since mid-2003.⁴³ After her release, she said she was not sexually assaulted by US personnel while held at Abu Ghraib Prison. She was not aware of sexual abuse of other women in detention who were held with her at Abu Ghraib Prison.⁴⁴ However, US investigations into allegations of torture and ill-treatment at US-controlled detention centres in Iraq found that women had been sexually abused and possibly raped.

Among the “intentional abuse of detainees by military police [MP] personnel” found in an investigation by Major General Antonio Taguba were “a male MP guard having sex with a female detainee” and “videotaping and photographing naked male and female detainees”.⁴⁵ Military investigators found that “the female detainees were made to pose for soldiers taking pictures and on one occasion one female was instructed to expose her breasts for a soldier to take her picture”.⁴⁶

⁴² Luke Harding, “After Abu Ghraib”, *Guardian*, 20 September 2004. Huda Hafez Ahmad is referred to under a different name in the article.

⁴³ Statement of the US Department of Defense referred to in: Tara McKelvey, *Unusual Suspects, What happened at Abu Ghraib? The government is not talking. But some of the women are*, American Prospect, 4 February 2005.

⁴⁴ Luke Harding, “After Abu Ghraib”, *Guardian*, 20 September 2004.

⁴⁵ Article 15-6 Investigation of the 800th Military Police Brigade.
<http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html>.

⁴⁶ Criminal Investigation Division report, 28 January 2004.
<http://www.publicintegrity.org/docs/AbuGhraib/Abu11.pdf>. See also Amnesty International: *United States of America: Human dignity denied – Torture and accountability in*

According to a report on Abu Ghraib prison by Major General George Fay, three US military personnel received non-judicial punishment for their role in the assault of a female detainee on 7 October 2003. According to the report:

“First the group took her out of her cell and escorted her down the cellblock to an empty cell. One unidentified soldier stayed outside the cell; while another held her hands behind her back, and the other forcibly kissed her. She was escorted downstairs to another cell where she was shown a naked male detainee and told the same would happen to her if she did not cooperate. She was then taken back to her cell, forced to kneel and raise her arms while one of the soldiers removed her shirt. She began to cry, and her shirt was given back as the soldier cursed at her and said they would be back each night.”⁴⁷

Amnesty International takes the view that the rape of a prisoner by a prison, security or military official always constitutes torture. Other sexual abuse of prisoners by such officials always constitutes torture or ill-treatment.⁴⁸ Rulings by international tribunals and statements by UN human rights mechanisms support this view.⁴⁹ The state is accountable under international human rights law for rape and sexual abuse carried out by, at the instigation of, or with the consent or acquiescence of any person acting in an

official capacity.⁵⁰ Torture, ill-treatment, rape and other sexual abuse, irrespective of whether the perpetrator is a state official or agent, are also proscribed under international humanitarian law. Depending on the circumstances they may constitute war crimes or crimes against humanity for which the perpetrators can be held individually responsible under international criminal law. These acts are proscribed as war crimes and crimes against humanity under the **Rome Statute of the International Criminal Court**.⁵¹ They are also proscribed under the statutes of the ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda, which have convicted a number of perpetrators.⁵²

Women have also reported being subjected to sexual threats or insults in other encounters with US-led forces. **Huda Shaker Neimi**, a women’s rights activist⁵³ and a political scientist, reported how she was treated by US troops at a check point in Baghdad at the beginning of 2004. When she objected to a search of her handbag, one of the soldiers pointed a

⁵⁰ The state’s obligations under international human rights law include ensuring that all acts of torture (including complicity or participation in such acts) are offences under criminal law punishable by penalties appropriate to their grave nature, and bringing to justice those involved in committing acts of torture and other ill-treatment.

⁵¹ Rome Statute of the International Criminal Court, Article 7 (crimes against humanity) and Article 8 (war crimes).

⁵² In the cases of Akayesu (Ruwanda Tribunal Case No. ICTR-96-4-T, Judgment of 2 September 1998) and Delalic and others (“Celebici case”) ICTY Case No. IT-96-21, Judgment of 16 November 1998) rape was identified specifically as an act of torture when perpetrated by or at the instigation of a public official and in the case of Furundzija (ICTY Case No. IT-95-17/1-T, Judgment of 10 December 1998) when it takes place during interrogation. In the case of Kunarac, Kovac and Vukovic (ICTY Case No. IT-96-23 and IT-96-23/1, Judgment of 22 February 2001) the defendants were convicted of rape as a crime against humanity and rape as a crime against the laws and customs of war. The Tribunals have convicted men who committed acts such as sexual enslavement, forced nudity and sexual humiliation – in addition to rape and sexual assault – thus recognizing such acts as serious international crimes.

⁵³ Huda Shaker Neimi established the Baghdad-based women’s rights organization al-Iraqiya al-Hurra (The Free Iraqi Woman) in October 2004.

the ‘war on terror’ (AI Index: AMR 51/145/2004), 27 October 2004.

⁴⁷ AR 15-6 Investigations of Intelligence Activities at Abu Ghraib. Conducted by Major General R. Fay and Lieutenant General Anthony R. Jones. <http://www.defenselink.mil/news/Aug2004/d20040825fay.pdf>, page 72.

⁴⁸ For more detail on definitions of torture and ill-treatment see Amnesty International, *Combating torture: a manual for action* (AI Index: ACT 40/001/2003), 2003, section 3.3. and on rape specifically see 3.3.2.

⁴⁹ See, for example, European Court of Human Rights, case of *Aydin v. Turkey* (57/1996/676/866), Judgment of 25 September 1997, para 86; *Mejía v Peru*, 1 March 1996, Annual Report of the Inter-American Commission on Human Rights 1995, page 187; Report of the Special Rapporteur on Torture to the Commission on Human Rights, U.N. Doc. E/CN.4/1992/SR.21, para. 35.

gun at her. “Then he pointed to his penis. He told me: Come here, bitch, I’m going to fuck you”, she was reported as saying.⁵⁴

House raids frequently conducted by the US-led forces at night have been terrifying experiences for many Iraqis. There have been particular concerns that during such operations women were exposed to male soldiers when they were not properly dressed.⁵⁵ A former woman detainee told Amnesty International that she was arrested in August 2003 at her home in Baghdad at about 2am by US soldiers and taken in her nightclothes to al-Karrade Security Center. She was released in the evening of the same day, at around 9pm, and had to walk back home still only in her nightwear.⁵⁶

4. Violence in the family

For decades, violence in the family in Iraq has been under-reported. Most acts of violence in the home are carried out on women and girls by husbands, brothers, fathers or sons. The men are sometimes acting on the orders of family councils, gatherings of family or clan elders who decide the punishment for women deemed to have infringed traditional codes of honour. Tradition all too often serves as a pretext for acts of brutality against women for daring to choose how to lead their lives. An underlying cause of the violence, and closely bound up with it, is the discrimination that denies women equality with men in every area of life, including within the family.

In recent years, organizations in Iraq have started working to provide support to women who have experienced violence in the home. Women’s rights activists have helped women to escape violent men and to hold their attackers to account. They confront the prejudices that hold women’s protests and complaints about ill-treatment to be shameful to the family. They are often themselves faced with threats and assaults from the families of the women they support.

The first shelter for women victims of violence in Iraq was established in 1998 in the city of Sulaimaniya, in the Kurdish-controlled areas in northern Iraq.

⁵⁴ Luke Harding, “Focus shifts to jail abuse of women”, *Guardian*, 12 May 2004.

⁵⁵ *Associated Press*, “Hamza Hendani: US Raids Offend Iraqi Sensibilities”, 7 July 2003.

⁵⁶ Amnesty International interview, 1 July 2004, Amman.

More shelters were opened in these areas in the following years. Since the early 1990s the activities of Kurdish women’s rights organizations have raised awareness within their own society about the suffering caused by violence in the family – in particular by “honour crimes”. Since early 2004, shelters for women have also been established in Baghdad and Kirkuk by the Organization for Women’s Freedom in Iraq. However, for the vast majority of women, support facilities such as shelters or rehabilitation centres are not accessible.

The state’s duty to protect women from violence is explicitly stated in the **UN Declaration on the Elimination of Violence against Women**: “States should pursue by all appropriate means and without delay a policy of eliminating violence against women” (Article 4). In so far as it may be claimed that matters of honour are deeply rooted in tradition and culture, the **UN Convention on the Elimination of All Forms of Discrimination against Women (UN Women’s Convention)**, to which Iraq is a party, places an obligation on states “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (Article 5).

Women’s rights activists in Iraq have repeatedly emphasized that awareness-raising is one of the most important tools to combat discrimination and violence against women.⁵⁷ At a women’s conference entitled “Voice of the Iraqi Women”, in June 2004 in Baghdad, a number of recommendations for awareness-raising were discussed, including “intensive and comprehensive awareness [raising] on...gender equality throughout all social organizations, starting with the family, schools, religious, political and social institutions.”⁵⁸

Women should not face these challenges unsupported. Under international human rights law, the state has an obligation not only to ensure that its agents and officials do not commit violence against women, but also to protect women from violence committed by private individuals and bodies

⁵⁷ Amnesty International interviews: 28 August 2004, Amman; 30 August 2004, Amman; 2 September 2004, Beirut.

⁵⁸ Iraqi al-Amal Association, *The National Conference for Empowering Women in Democracy – Baghdad 16-17 June*, August 2004, page 12.

(sometimes referred to as “non-state actors”), including members of their own families and communities.

In order to comply with their obligations to protect women against abuses of their rights by private individuals, states should exercise “due diligence” in securing women’s rights to equality, life, liberty and security, and to freedom from discrimination, torture and cruel, inhuman and degrading treatment. They must have policies and plans to enable the fulfilment of these rights, to protect people from abuses of these rights, and to provide redress and reparation to those whose rights have been violated.

‘Honour crimes’

Most victims of “honour crimes” are women and girls who are considered to have shamed the women’s families by immoral behaviour. Often the grounds for such an accusation are flimsy and no more than rumour. “Honour crimes” are most often perpetrated by male members of the women’s families in the belief that such crimes restore their and the family’s honour.

In international human rights law, “honour crimes” are recognized as a form of violence against women in the family or community. The rights that they violate include the right to life and security of the person; freedom from torture and cruel, inhuman and degrading treatment; and the right to equality before the law and to equal protection of the law. They also deprive women of rights assured by the **UN Women’s Convention**, for example the rights to choose a marriage partner, to enter into marriage freely, to freedom from discrimination, and to be treated as a human being with dignity and equal rights to men.⁵⁹

In recent years, reports by Kurdish women’s organizations on violence against women in northern Iraq have gained international attention and been echoed in reports by international organizations. The Committee on the Elimination of Discrimination against Women, the UN expert body charged with monitoring implementation of the Convention on the Elimination of All Forms of Discrimination against Women, noted in 2000 that: “The Committee is...deeply concerned by the violence against women perpetrated through honour killings.” The Committee

⁵⁹ For further information on international human rights standards on “honour crimes”, see Appendix.

urged the Iraqi government in particular “to condemn and eradicate honour killings and ensure that these crimes are prosecuted and punished in the same way as other homicides”.⁶⁰ Furthermore, the UN Special Rapporteur on violence against women referred to the practice of “honour killings” in Iraq in her report of January 2002 to the Commission on Human Rights.⁶¹

The **UN Commission on Human Rights** has addressed “honour killings” in the context of the right to life and called on States to “investigate promptly and thoroughly all killings committed in the name of passion or in the name of honour...and to bring those responsible to justice before a competent, independent and impartial judiciary, and to ensure that such killings, including those committed by...private forces, are neither condoned nor sanctioned by government officials or personnel”.⁶²

The organization, Kurdish Women Against Honour Killings (KWAHK), reported that between 1991 and 1998 hundreds of women had died in so-called “honour killings” in northern Iraq. The report listed more than 100 individual cases of women killed during the 1990s by their husbands, brothers, cousins and other family members in northern Iraq.⁶³ Among reasons given for the killings were that the women had committed adultery, refused to marry against her will, or left home in order to marry a man of her own choice.

Until legal reforms specifically to address “honour killings” were introduced by the Kurdish authorities in northern Iraq between 2000 and 2002, the perpetrators of such killings were either never tried or received generally lenient sentences.⁶⁴ In one well-documented case, a court in Dohuk, northern Iraq, accepted the “honourable motivation” of men who had killed a young woman as grounds for leniency in

⁶⁰ UN Doc. A/55/38, 14 June 2000, paras 193-194.

⁶¹ UN Doc. E/CN.4/2002/83, 31 January 2002, para. 23.

⁶² Commission on Human Rights, *Report to the Social and Economic Council on the Sixteenth Session of the Commission, Resolution 2004/37 Extrajudicial, summary or arbitrary executions*, UN doc. E/CN.4/2004/L.11/Add.4, 20 April 2004.

⁶³ KWAHK, *Honour Killing – a Catalogue of Horror*, May 2000.

⁶⁴ For details on Iraqi legislation on “honour crimes” and amendments in the Kurdish controlled governorates, see chapter 5, Leniency for ‘honour killings’ and Women win legal reforms.

sentencing.⁶⁵ **Pela**, unmarried and living with her family in Sweden, was killed on 24 June 1999 on a visit to the family home in Dohuk. Breen, Pela's younger sister, heard a shot upstairs. Her uncle, Rezkar Atroshi, came out of the room holding a gun, and claimed that Pela had shot herself. Breen, initially made to leave the house, later managed to get back in. Running upstairs, she found her sister covered in blood but still alive. Pela said that her uncle had shot her. Her mother helped bring her downstairs to the living room. There she was shot in the head and killed by one of her uncles. On 9 October 1999 the Dohuk Criminal Court convicted Pela's father, Agid Atroshi⁶⁶, and her uncle Rezkar of the killing, but gave them each a suspended one-year prison sentence.⁶⁷



Pela - Photo taken at the conference on "Honour killings", organised by "Glöm Aldrig Pela och Fadime" (Never forget Pela and Fadime). © AI

The court referred to a report from the autopsy that "the hymen was broken" and to the defendants' "honourable motivation" in support of its decision. The Court of Cassation reviewed the verdict and on 22 February 2000 ruled that the one-year sentence be served. In January 2000, Pela's uncles Rezkar and Dahasz Atroshi were arrested in Sweden. On 12 January 2001 the Stockholm City Court convicted both men of the murder and sentenced them to life

⁶⁵ Lena Katarina Swanberg, *Hedersmordet på Pela. Lillasystem berättar*, 2002.

⁶⁶ The Dohuk Criminal Court refers to a different family name.

⁶⁷ Under Articles 128 and 130 of the Penal Code. For further information about legislation allowing lenient sentences, see chapter 5, Discrimination in national law.

imprisonment. The sentences were confirmed on appeal.

Mutilation is another form of "honour crime" used in northern Iraq as a punishment for people accused of a relationship considered to be illegitimate. In July 1996, **Kajal Khidr**, 24 years old and pregnant, was accused of adultery, tortured and mutilated by six members of her husband's family near the town of Rania, Sulaimaniya governorate. They cut off part of her nose, and told her that she would be killed after the birth of her child. She received treatment at a hospital in Rania, and a further three months of hospital treatment in Sulaimaniya, where she was kept under police protection. She then spent a year in hiding before finding refuge with a women's organization in Sulaimaniya. With the help of local human rights activists, she fled to Syria in February 1999 and was recognized as a refugee by the UN High Commissioner for Refugees. In July 2000 she was resettled in a third country where she lives with her daughter. Two of the men who had tortured her were arrested by the Patriotic Union of Kurdistan (PUK) authorities, which controlled the area, but were released within 24 hours on the grounds that they had acted to safeguard the "honour" of the family. No charges were ever brought against them.



Kajal Khidr, who was pregnant at the time, was mutilated by her husband's relatives in 1996. With the help of human rights activists she escaped abroad and was granted asylum. © AI

Dunya (not her real name) from the Rania region was forced to marry against her will in 1999. Before her marriage she had been in love with Ahmed (not his real name), her husband's nephew. In March 2002 her husband accused her of adultery with Ahmed, and the families decided to cut off Dunya's nose and one of Ahmed's ears. In September 2002 one of Ahmed's relatives was sentenced to four years'

imprisonment for carrying out the mutilations, two years for each offence.

Between 2000 and 2002 the Kurdish authorities amended the law so that courts could no longer find “honourable motivation” a mitigating circumstance in “honour crimes” against women.⁶⁸

However, despite these reforms, Kurdish women’s organizations fear that more efforts are made to conceal “honour killings”, in order to avoid the judicial consequences. The Women’s Information and Cultural Centre (WICC) suspects that the bodies of victims of “honour killings” have been hidden, or mutilated to conceal their identities. The Centre has reported recent cases where women have died in suspicious circumstances, and relatives have claimed that the deaths were accidental. One man who had killed his daughter-in-law, **Gulestan**, in June 2001 in the Balisan area, told the Centre in August 2002:

“We killed this woman to end the problem. If we did not kill this woman, two families would have got into a fight and maybe 15 people would have died over this. We have tribal customs and we do not take such cases to court... If I did not kill her I may have been told many times that I did not keep my honour... If I did not kill her, whenever I will have a family problem, the issue will be mentioned again.”

He said that they had to act swiftly to prevent the authorities from protecting Gulestan. Although he was aware of the legal amendments regarding “honour killings”, he did not expect the case to be brought to trial. An agreement, including the payment of compensation, had been reached with Gulestan’s family, and the local authorities appeared to be aware of the arrangement.⁶⁹

Women and girls living in hiding to escape “honour killings” have given videotaped interviews about their experiences. One of them, **Nivan** (not her real name), ran away in 2002 at the age of 16 to marry the man she loved, against the will of her family. Attempts to reconcile her family and her

⁶⁸ Amendments to legislation on “honour killings” were first introduced by the Sulaimaniya-based Kurdish authorities in April 2000. The Arbil-based Kurdish authorities followed in 2002.

⁶⁹ Women Information Cultural Centre (WICC) *Statistical Study on Violence used against Women*, 2003, pages 23-28. See the biweekly newspaper, Rewan, <http://www.rewan.org>.

husband’s family, involving religious leaders and local authorities, were unsuccessful. Her family was allegedly behind an attempt to kill her and her husband, and the killing of her husband three months later in mid-2003. Initially detained on suspicion of involvement in the killing, she was released after two months, and now lives with her child in hiding. “I have no future. My family will look for me to kill me. I can never return to my family,” she said.

In recent years several organizations have been established in northern Iraq that offer support for women at risk of violence, including survivors of attempted “honour killings”. One of these organizations is the Sulaimaniya-based Asuda Centre for Combating Violence against Women (Asuda Centre), which in August 2002 opened a shelter for women survivors of violence at a secret location.⁷⁰ Asuda Centre’s work to protect women who have experienced violence or those at risk includes negotiating with their families. Most organizations operating in northern Iraq and offering support for women who have escaped violence in the home consider a controlled return to the family to be the most likely means of arriving at a long term solution. To ensure a woman’s safe return, the male head of the family is often required to sign an official undertaking to guarantee the woman’s protection. However, an activist of the Sulaimaniya-based women’s centre, Khanzad, told Amnesty International that there had been cases in which families had killed a woman after her arranged return.⁷¹

Kurdish women’s rights activists have reported that several women who have remained in a shelter for more than a year, because no settlement with their families could be reached, might only be able to find safety in the long term outside northern Iraq or even outside Iraq altogether.⁷²

Violence associated with “honour crimes” has never been confined to northern Iraq. The Iraqi author, Fuad Tekerly, who worked as a judge in Baghdad, took a stand against such crimes when he

⁷⁰ See <http://www.asuda.org>.

⁷¹ Ruth Jüttner, interview with Khandan Mohammed Jeza, *ai-Journal*, October 2003, <http://www2.amnesty.de/internet/deall.nsf/windexde/JL2003172/>

⁷² Amnesty International interview, 2 September 2004, Beirut.

published a short story in 1972 about a man claiming that he killed his sister-in-law in order to protect his family honour. The story reveals that the woman was murdered because she had discovered her brother-in-law's adulterous relationship with a relative.⁷³

More recently, lawyers have spoken of their involvement in cases of "honour killings" in the 1980s and 1990s in central and southern Iraq. A lawyer from Baghdad reported a case in which she was involved in the mid-1990s.⁷⁴ She was representing **Azima** (not her real name), a teenage girl from the Abu Ghraib neighbourhood in Baghdad, who had been arrested after running away from her family with her lover. After several months of negotiations, she was returned to her family, who promised to ensure her safety. However, a month later she was shot dead by her teenage brother. The brother was sentenced to six months' imprisonment for the killing.⁷⁵

Another lawyer reported details of more than a dozen cases of "honour killings" that have been tried at Basra Criminal Court over the past three decades. She told Amnesty International about the killing of a young single mother in Basra:

"In the beginning of the 1980s I witnessed a case of 'honour killing'. I was on my way to the Basra Criminal Court. About 10 metres away from me, I saw a young man talking to a woman holding a baby child. Suddenly he pulled out a pistol and fired at her. The woman fell to the ground. The man lifted her up and pulled the child from beneath her. Then he covered her body, took the child and walked into the court building".

The murdered woman had become pregnant as a result of a secret relationship. She had turned to the police for protection and had been kept at a police station until her child was about a year old, when she was told to leave. She was apparently on her way to

⁷³ Fuad al-Tekerly: "al-Firin", 1972; German translation published in: Wiebke Walther (ed.): *Erkundungen. 28 irakische Erzähler*, 1985, Verlag Volk und Welt, Berlin, pages 25-31.

⁷⁴ Some of the people interviewed by Amnesty International about "honour killings" provided only general information, either to ensure that the individuals involved could not be identified or because they were unable to recall the details of incidents that occurred more than a decade ago.

⁷⁵ Amnesty International interview, 29 June 2004, Amman.

court to seek further protection when her brother killed her. At his trial, he was given a suspended two-year prison sentence.⁷⁶

The same Basra-based lawyer also reported cases in which the perpetrators of "honour killings" received significantly higher sentences. She recalled a case in the early 1980s in Basra. A young woman was returned to her family shortly after her wedding by her husband, who claimed that she was not a virgin when they married. She was stabbed to death by a member of her family. However, the autopsy report revealed that her hymen was intact, and the perpetrator was sentenced to at least 10 years' imprisonment.

The lawyer had experience of negotiations with the families of women seeking protection from threats of "honour crimes", and of the killing of a young woman by a relative one year after a settlement ensuring her safety had been agreed with the family.

"Honour killings" have continued during and after the Iraq-Iran war, the Gulf war in 1990-91 and the 2003 US-led war on Iraq.

There is insufficient information available to establish whether the incidence of "honour killings" has increased over the past decades of armed conflict in Iraq. However, during the months of lawlessness following the 2003 US-led invasion, the perpetrators of "honour killings" – like other criminals – were unlikely to be tried. The lack of a functioning judicial system during the months after the 2003 war contributed to an increase in the part played by tribal bodies in resolving conflicts, including in relation to "honour crimes". In one case at the beginning of 2004 in al-'Amara, there was a settlement between two tribes over an "honour killing". A husband of two wives had killed his second and younger wife when he discovered she had been involved in a love affair while he was absent for several months. The tribal settlement did not provide any punishment for the killing of the woman, but required her family to compensate the husband.⁷⁷

⁷⁶ Amnesty International interview, 29 August 2004, Amman.

⁷⁷ Amnesty International interview, 28 August 2004, Amman.

Female genital mutilation

There is no official data and only limited information available from other sources on female genital mutilation (FGM) in Iraq.⁷⁸ However, NGOs based in northern Iraq have reported its continued use in some areas. In a 2003 survey on women's health in southern Iraq, FGM was not identified as a common practice.⁷⁹

The practice of FGM involves removing all or part of a girl's external genital organs. It can have dire and lasting consequences for the physical and mental health of girls and women. If carried out without anaesthetic, FGM is traumatic and terrifying. It can result in excessive bleeding, infection, transmission of diseases – including HIV – from use of non-sterile instruments and trauma, and often leads to excessive pain and difficulties in intercourse and childbirth.

In some rural areas in northern Iraq, FGM appears to be widespread. A midwife working in the district of Rania, the Sulaimaniya governorate, reported that the vast majority of women she had examined had undergone FGM, and only in recent years had she seen women who had not.⁸⁰

Areas where FGM seems to be common are within the region where the Sorani Kurdish dialect is spoken, including around Halabja, Germian and Kirkuk. Between September and November 2004 the NGO, WADI, conducted research on FGM in 40 villages in the Germian area.⁸¹ Members of WADI interviewed 1,544 women and girls, of whom 907 said they had been subjected to FGM.⁸²

⁷⁸ See <http://www.unicef.org/sowc04/files/Table9.pdf>

⁷⁹ Lynn L. Amowitz et al: *Human Rights Abuses and Concerns About Women's Health and Human Rights in Southern Iraq*, in: Journal of American Medical Association, March 24/31, 2004 (Vol. 291, No. 12) pages 1471- 1479.

⁸⁰Nicholas Birch, *Genital Mutilation Is Traditional in Iraq's Kurdistan*, Women's E-News, 1 August 2004, <http://womensenews.com>

⁸¹ WADI, an NGO with its headquarters in Germany, has branches in several countries of the Middle East, including in northern Iraq (see <http://www.wadinet.de>).

⁸² WADI, *Research about circumcisions in Germian area*, 2 December 2004. The author of the report pointed out that a number girls who reported that they had not undergone FGM may have been too young.

There are indications that the practice has been decreasing. A Norwegian journalist and a Kurdish writer from northern Iraq interviewed numerous people about FGM – including, doctors, women's rights activists and Muslim clerics – in the course of research in late 2003.⁸³ Two chief physicians at the Sulaimaniya University Hospital and at the Soresh Maternity Hospital reported that in recent years the number of girls brought into hospital with haemorrhages caused by FGM has decreased. The doctors saw this development as an indication that the practice of FGM had declined. Although FGM is usually carried out on girls, the doctor at the Soresh Maternity Hospital reported that, in the course of her 25-year career as a gynaecologist, she recalled about 10 cases in which she or a colleague had carried out FGM on a married adult woman at the request of the husband.

There have been a number of campaigning activities in northern Iraq against FGM, involving NGOs, local authorities and clerics, which appear to have contributed to a fall in the incidence of the practice. Kurdish women's rights activists have gained the support of Muslim clerics in their awareness-raising activities against FGM. On 8 May 2000, Muslim clerics in Sulaimaniya issued a fatwa stating that the practice of FGM was harmful to women. Following the fatwa, FGM was featured several times on the "Religion and Life" television programme at Gali Kurdistan TV, and on Khak TV and KurdSat.

FGM is a grave violation of a woman's physical and mental integrity. Some aspects of it are analogous to torture in that it is intentional and calculated, and causes severe pain and suffering. FGM is opposed by women's groups around the world as a violation of women's human rights. The **UN Fourth World Conference on Women** in 1995 condemned FGM as a form of violence against women that must be prevented and punished.

Amnesty International calls on states to prohibit FGM and to exercise due diligence in protecting girls and women from this abuse. In its General Comment No. 14 (Right to the Highest Attainable Standard of Health), the UN Committee on Economic Social and Cultural Rights affirmed the responsibility of states to

⁸³ Hawdam Salih Jaf and Inger Østenstad, *Zor kama esta Om omskjaring av kvinner i Sor-Kurdistan*, 2003 (En foreløpig rapport).

protect women and girls from FGM: “States are...obliged...to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation.”⁸⁴

Violence in marriage

Findings of a study in southern Iraq, conducted in July 2003 by the NGO, Physicians for Human Rights, concluded that about half of both the women and men surveyed agreed that a man has the right to beat his wife if she disobeys him.⁸⁵

This high level of acceptance of violence within marriage is supported by Iraqi legislation. According to the Penal Code of 1969, which is still in force, a husband who “disciplines” his wife is exempt from criminal liability for doing so (Article 41(1)).⁸⁶

Iraqi women’s rights activists have suggested that armed conflict, political pressure, and economic hardships under the Saddam Hussain’s government may have contributed to an increase of violence in the family in Iraq.⁸⁷ Research in other countries confirms this view. In the Occupied Territories of Gaza and the West Bank, for example, Palestinian women have suffered increased levels of violence in the family since the *Intifada* (uprising) began in 2000.⁸⁸ In post-conflict Kosovo, a report by the UN Development Fund for Women (UNIFEM) concluded that violence in the family “appears to have increased since the conflict. Possible explanations...[include] increased acceptability of violence as a way to solve problems, the breakdown

of tight family and social structures, [and] a general rise in instability and uncertainty”.⁸⁹

Despite indications of increasing levels of violence in the family in Iraq, however, there are no proper monitoring mechanisms. The Ministry of Health has recently started to document cases, and encourages other authorities to provide it with information and reports on violence in the family. Most victims of violence in the family have no access to medical treatment.⁹⁰

During the lawlessness after the overthrow of Saddam Hussain’s government, many cases of violence, including spousal violence, were not prosecuted. Nineteen-year-old “**Fatima**” was shot in the legs by her husband in front of her family and their neighbours on 21 May 2003. Married at the age of 12, she was treated as a servant and regularly beaten in her husband’s family home. She told Amnesty International that she tried to run away to her own family, but her husband came and said she should go back. When she refused he became very angry and took a piece of wood to beat her. It broke, so he grew even angrier and took his gun and shot her. Despite the number of eyewitnesses and the seriousness of the crime, neither the family nor the hospital reported the case to the police and the husband was not arrested. The family said it was a matter to be solved within the tribe. Fatima returned to her father’s house after she left hospital. Her husband expressed regret and offered her compensation, seeking reconciliation with her through the mediation of elders of her tribe. However, she refused to return to him, despite the pressures.

Violence in the family, including forced marriage and sexual abuse, has been a contributory factor in suicides and attempted suicides. Kurdish women’s organizations have investigated and documented suicides among Kurdish women in Iraq. Kurdish Women Against Honour Killings (KWAHK) has documented dozens of cases of women who

⁸⁴ Committee on Economic Social and Cultural Rights, *General Comment No. 14 (The Right to the Highest Attainable Standard of Health)*, UN Doc. E/C.12/2000/4, 11 August 2000, para. 35.

⁸⁵ Lynn L. Amowitz et al: *Human Rights Abuses and Concerns About Women’s Health and Human Rights in Southern Iraq*, in: *Journal of American Medical Association*, March 24/31, 2004 (Vol. 291, No. 12) pages 1471- 1479

⁸⁶ See also chapter 5, Discrimination in law, Impunity for violence in marriage.

⁸⁷ Amnesty International interview, 30 August 2004, Amman.

⁸⁸ For more details see: Amnesty International: *Lives blown apart. Crimes against women in times of conflict* (AI Index: ACT 77/075/2004), 8 December 2004.

⁸⁹ UNIFEM and United Kingdom’s Department for International Development, *No Safe Place: Results of an Assessment on Violence against Women in Kosovo*, April 2000.

⁹⁰ Amnesty International interview, 3 October 2004, Amman.

reportedly committed suicide in the 1990s in connection with violence in the family.⁹¹



Fatima in her hospital bed © AI

Based on research conducted by the Asuda Centre in October 2002, the Kurdish newspaper Hawlati reported an alarming number of women who died or were injured by setting fire to themselves.⁹² According to the Asuda Centre's findings, of 105 women from and around Sulaimaniya who were admitted to the Sulaimaniya Training Hospital in 2001 after apparently burning themselves intentionally, 63 died and 42 survived. The reasons given by those who survived included being forced into a marriage and family disputes. The Women's Information and Cultural Centre (WICC) recorded similar figures for the Sulaimaniya area in 2002, and noted that poverty appeared to be a contributory factor.

Forced marriages

The equal right of both men and women to enter into marriage only with their free and full consent is enshrined in the **Universal Declaration of Human Rights** and the **International Covenant on Civil and Political Rights**.⁹³ The **UN Convention on the Elimination of All Forms of Discrimination Against Women (UN Women's Convention)** provides explicitly that states should ensure that women have the same right as men "freely to choose a

⁹¹ KWAHK, *Honour Killing – a Catalogue of Horror*, May 2000.

⁹² Hawlati, *An alarming statistic on cases of burned women*, 7 October 2002.

⁹³ Universal Declaration of Human Rights (Article 16(2)); International Covenant on Civil and Political Rights (Article 23(3)).

spouse and to enter into marriage only with their free and full consent" (Article 16).⁹⁴

Many women and young girls in Iraq are denied the right to choose their marriage partner freely, and those who oppose forced marriage are at risk of violence or even of being killed. The Asuda Centre reported that in 1999 a 13-year-old girl from the Rania region of northern Iraq was seeking their protection because she had repeatedly refused to be forcibly married.⁹⁵

A forced marriage is a marriage conducted without the valid consent of both parties, where duress is a factor. It is a violation of internationally recognized human rights standards and cannot be justified on religious or cultural grounds. While both men and women experience forced marriages, it is primarily seen as an issue of violence against women.⁹⁶ Forced marriage "may involve coercion, mental abuse, emotional blackmail, and intense family or social pressure. In the most extreme cases, it may also involve physical violence, abuse, abduction, detention, and murder of the individual concerned".⁹⁷

Women and girls who have been forcibly married may be forced to submit to violence from their partner. If they seek refuge with their families, may be made to return.

In northern Iraq, the practice of "*Jin be Jin*" contributes to the high incidence of forced

⁹⁴ For further information on international human rights standards on forced marriage, see Appendix.

⁹⁵ Amnesty International communication with the Asuda Centre, 24 October 2004.

⁹⁶ UK Home Office, *A choice by right — Report of the Working Group on forced marriage*, 2000, cited in report of the UN Special Rapporteur on Violence against Women, UN Doc. E/CN.4/2002/83 (31 January 2002) para 57. The Working Group identifies a key factor distinguishing forced marriage from arranged marriage as the right to choose: in the tradition of arranged marriages, the families of both spouses take a leading role in arranging the marriage, but the spouses have the right to choose – to say no – at any time. In forced marriage, there is no choice.

⁹⁷ Ain O Salish Kendra and Shirkat Gah, *Information Gathering Exercise on Forced Marriages, submission by Interights to the Home Office Working Group*, UK, March 2000.

<http://www.soas.ac.uk/honourcrimes/FMsubmission.htm>.

marriage.⁹⁸ It involves the exchange of girls – the girl from one family marrying the son of another (or from the same extended) family, while his sister is given in marriage in return – to avoid having to pay “bride prices” for the daughters. Similar marriage arrangements take place in other regions of Iraq.

The reasons for forced marriages vary, and include giving women or girls in marriage to another family in compensation for a killing. The forced marriage of girls reinforces women’s unequal status in society, reduces their life choices and leaves them vulnerable to violence.

Under Iraq’s Personal Status Law, forced marriage is prohibited and punishable by up to three years’ imprisonment (Article 9). The legal age for marriage is 18 (Article 7). Anyone who wishes to marry under the age of 18 must meet certain conditions prescribed by law: being at least 15 years old, having the approval of parent or guardian, and having judicial permission (Article 8).⁹⁹

However, in practice forced marriages, including of underage girls, continue to take place. Girls under the age of 15 are particularly vulnerable to forced marriage, which are arranged by the family in the vast majority of cases. Early pregnancy, frequently a result of child marriage, is associated with adverse health effects for both mother and child.

The UN Committee on the Elimination of Discrimination against Women considers that the minimum age for marriage should be 18 years for both men and women. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. The Committee recommends that states parties should require the registration of all marriages whether contracted civilly or according to custom or religious

⁹⁸ This Kurdish expression means: Changing one woman for another.

⁹⁹ A 1979 amendment to the Personal Status Law lowered the minimum age for marriage from 16 to 15 years, because of “the social situation in the country and in particular outside the urban areas where the practice of marrying at a young age is widely practiced.” The lowering of the minimum age was therefore justified as a measure for “reducing cases of marriages conducted outside the courts”.

law, in order to ensure compliance with the UN Women’s Convention.¹⁰⁰

Since the civil marriage of a girl under 15 is illegal, underage girls are often married in religious ceremonies that are not legally recognized. A women’s rights activist from Karbala told Amnesty International in August 2004 about a recent case in which a 13-year-old girl in her neighbourhood was forced into a marriage. The wedding was conducted in a religious ceremony by a Shi’a Muslim cleric.¹⁰¹

5. Discrimination in national law

Discrimination against women is banned in Iraq’s Constitution, but laws still contain provisions that deny women rights and control of their lives, or fail to protect them from violence.

The 1970 Constitution of Iraq says that “citizens are equal before the law without discrimination on the grounds of sex, race, language, social origin or religion” (Article 19). The Transitional Administrative Law (TAL) of March 2004 – effectively an interim constitution – states: “All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion or origin, and they are all equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited” (Article 12). However, the TAL contains no reference to the extensive legal reforms needed to remove discriminatory provisions from penal, personal status and nationality laws.

Despite Iraq’s obligations under international human rights treaties and its own Constitution, women in Iraq continue to face various forms of discrimination in legislation and legal practice. Most discrimination relates to family matters – including marriage, inheritance, and passing on citizenship to children – and to the punishment of men who have

¹⁰⁰ Committee on the Elimination of Discrimination against Women, *General Recommendations No.21 : Equality in Marriage and Family Relations* (13th session, 1994), UN Doc. A/47/38, paras 36 and 38. The 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages obliges States to specify a minimum age for marriage which should not be less than 15 years. Iraq has not yet ratified this Convention.

¹⁰¹ Religious marriages are usually conducted in addition to the civil ceremony and referred to among the Shiite community as “Zawaj al-Sayid”.

committed violent crimes, including murder, against women.

In 2003 and 2004 the Coalition Provisional Authority (CPA), the governing body appointed by the US-led coalition, introduced amendments to the Iraqi Penal Code, Law 111 of 1969. In response to the increased abduction and rape of women in the months after the US-led invasion, the amendments increased the penalties for kidnapping, rape and sexual assault, and suspended provisions allowing perpetrators to escape punishment if they married the woman concerned.¹⁰² They were not, however, part of any comprehensive approach towards abolishing discrimination or strengthening the protection of women from violence in law.

The prohibition of discrimination against women is a cornerstone of human rights law and states cannot derogate from it: it applies even in times of emergency and war. The Charter of the United Nations, which is binding on all UN member states, explicitly refers to “human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”.¹⁰³ In addition, women’s rights to equality and freedom from discrimination is provided for in the **Universal Declaration on Human Rights** (Article 2) as well as in binding international human rights treaties to which Iraq is a state party: the **International Covenant on Civil and Political Rights** (Articles 2, 26), the **International Covenant on Social, Economic and Cultural Rights** (Articles 2(2), 3) and the **UN Convention on the Rights of the Child** (Article 2).

At a training meeting on gender issues for Iraqi civil servants, organized by UNIFEM in October 2004 in Amman, Jordan, participants raised a number of concerns about legislation that permits polygamy, abuse within marriage, and lenient sentences for perpetrators of “honour killings”.¹⁰⁴

The Personal Status Law

Discrimination against women in the Personal Status Law, Law 188 of 1959 as amended, relates to

¹⁰² CPA order No. 31 of 10 September 2003.

¹⁰³ Articles 1(3), 13 (1)(b) and 55(c).

¹⁰⁴ During the training, 35 representatives from all government ministries were trained to become gender focal points at their respective ministries.

marriage, divorce and inheritance.¹⁰⁵ Men are allowed to practise polygamy under certain conditions (Article 3(4)). They must have judicial authorization and the judge should take into consideration whether or not the applicant has the financial means to support more than one wife.

The UN Committee on the Elimination of Discrimination against Women stated in its General Recommendation No. 21 on equality in marriage and family relations:

“Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriage ought to be discouraged.

“There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband’s or father’s property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased’s property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.”¹⁰⁶

Provisions on inheritance in the Personal Status Law also discriminate against women, who are generally only awarded half of the entitlement of their male counterparts (Articles 86-94). The law provides that both husband and wife can seek to end the marriage under certain conditions to be assessed by a family court (Articles 40-45). However, it also allows another form of divorce petition (*Talaq*) that may only be filed by the husband and does not require him to give any reason (Article 34-39).

Apart from these discriminatory provisions, the Personal Status Law is still generally seen as having been an achievement for women’s rights in a region in which women often do not have equal legal status to men. In December 2003 the IGC attempted to amend the Personal Status Law to place certain family matters under the control of religious authorities.

¹⁰⁵ Provisions of the Personal Status Law do not necessarily apply to members of non-Muslim communities in Iraq.

¹⁰⁶ Committee on the Elimination of Discrimination against Women, *General Recommendations No.21 : Equality in Marriage and Family Relations* (13th session, 1994), UN Doc. A/47/38, paras 14 and 35.

However, after protests and lobbying by women's organizations, the IGC reconsidered and later withdrew the resolution containing the proposal (Resolution 137).

Impunity for violence in marriage

The Penal Code effectively encourages the persistence of violence in the family by allowing husbands to use violence against their wives with impunity. The "exercise of a legal right" to exemption from criminal liability is permitted in cases of: "Disciplining a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by Islamic law (*Shari'a*), by law or by custom" (Article 41 (1)).

This broadly phrased provision prevents women from obtaining justice for violence against them by marriage partners. Complaints of violence in marriage are generally brought before a court only when women submit evidence of abuse by a husband in support of a divorce application.

The application of Article 41 in relation to the "disciplining" of wives was reportedly suspended in 2001 in the areas controlled by the Kurdish Democratic Party (KDP).

Leniency for 'honour killings'

The Penal Code contains provisions that allow lenient punishment for "honour killings" on the grounds of provocation or if the accused had "honourable motives" (Article 128). For decades the Iraqi judiciary has relied on Article 128 to allow such attempts to justify the killings as mitigating circumstances when determining sentences for the perpetrators of "honour killings".

Penal Code

"Excuses either exempt an individual from being punished or have their punishment reduced. There are no excuses except for those cases specified by the law; other than in these cases, an extenuating excuse is the perpetration of a crime for honourable motives or because of a serious, unjustified provocation by the victim of the crime." (Article 128)

According to Article 130, where there are mitigating circumstances, a death penalty may be reduced to one year's imprisonment and a life sentence may be commuted to six months' imprisonment.

"Whoever surprises his wife or one of his unmarriageable relations under Islamic law (*mahrims*) in the act of adultery/fornication or finds her in one bed with her companion and kills them both immediately or kills one of them or attacks them both or one of them leading to their death or to permanent disablement shall be punished by imprisonment for a period not exceeding three years." (Article 409)

A brother who had killed his sister for becoming pregnant when she was not married, even though she later married her lover, received a seven-year prison sentence for premeditated murder, a capital offence. This reduced sentence was confirmed by the Court of Cassation on 13 October 1979, which found that the perpetrator could claim mitigating circumstances under Article 128.

In another case, a man who killed his sister for running away from home was given a one-year prison sentence by the Babel Criminal Court on the basis of Articles 128 and 130. However, on 27 January 1980 the Court of Cassation ruled that the crime warranted a stronger punishment and ordered the sentence to be reviewed by the Criminal Court.

Articles 128 and 130 were also the legal basis for Dohuk Criminal Court to issue a lenient sentence in its verdict of 9 October 1999 in the case of the killing of Pela.¹⁰⁷

Under Presidential Decree 111 of February 1990, men who killed, intentionally or with premeditation, their "mother, daughter, sister, cousin or niece in order to cleanse the shame" were exempted from criminal liability. The Decree was reportedly not implemented. However, Presidential Decree 6, issued in January 2001, allowed anyone who killed a female relative to claim "honourable motives" in mitigation. It was not known how this Decree was applied in practice.

Penal Code provisions that effectively pressured women to marry men who had abducted, raped or sexually assaulted them were suspended by the CPA in 2003. The provisions included Article 427, which allowed a kidnapper to escape prosecution by marrying the abducted woman.¹⁰⁸ Also suspended was Article 398, which stipulated that, in cases of

¹⁰⁷ Pela was killed on 24 June 1999 by one of her uncles at her family house in Dohuk. For more details of the case see above chapter 4, 'Honour Crimes'.

¹⁰⁸ CPA order No. 31 of 10 September 2003.

rape or sexual assault, the perpetrator's marriage of the victim might be considered a mitigating factor.

Women win legal reforms in the north

Campaigning and lobbying by Kurdish women's organizations against "honour killings" have led to legislative reforms in northern Iraq. On 12 April 2000 the Sulaimaniya-based Kurdish authority controlled by the Patriotic Union of Kurdistan (PUK) decreed that:

"The killing or abuse of women with the pretext of cleansing the shame is not considered to be a mitigating excuse. The court may not apply articles 130 and 132 of the Iraqi Penal Code number 111 of the year 1969 as amended to reduce the penalty of the perpetrator." (Decree No. 59)¹⁰⁹

The Arbil-based Kurdish authority controlled by the Kurdish Democratic Party (KDP) amended legislation on "honour crimes" in Law No. 14 of 2002.

"The perpetration of a crime with respect to women under the pretext of honourable motives shall not be considered an extenuating legal excuse for the purposes of applying the rules of articles 128, 130 and 131 of the Penal Code, number 111, 1969, amended."¹¹⁰

6. Women claim their rights

Violence against women is a manifestation of inequality and discrimination. It helps to maintain women in subordinate roles, and contributes to their low level of political participation and to their lower level of education, skills and work opportunities.¹¹¹ To eradicate violence against women, it is therefore necessary to address the context of inequality and discrimination against women, not only in the family but more broadly in public life, political decision-

¹⁰⁹ Article 132 of the Penal Code provides for the reduction of a penalty on the grounds of mercy.

¹¹⁰ Article 131 of the Penal Code provides for the reduction of a penalty under mitigating circumstances in misdemeanour cases.

¹¹¹ Committee on the Elimination of Discrimination against Women, *General Recommendations 19: Violence against women* (11th session), 1992, UN GAOR, 1992, Doc. No. A/47/38

making, work, health and education. Human rights, with equality and freedom from discrimination as guiding principles, should be integrated into the fundamental changes in these areas that have taken place since the war on Iraq in 2003.

UN Security Council resolution 1325, passed in 2000, which deals with the role of women in conflict and post-conflict situations, specifically calls for the integration of gender perspectives into post-conflict processes.¹¹² It stresses the importance of women's participation in peace building and conflict resolution and, in that context, calls for measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, police and judiciary. Similarly, the UN Secretary General, in his 2002 report on women, peace and security, calls for the incorporation of gender perspectives in rehabilitation and reconstruction programs.¹¹³

In Iraq from 2003 to date, the record has been mixed. While some important steps have been taken at the legislative level to increase women's participation in political decision-making, an improvement in the security situation is an urgent and essential prerequisite for the improvement of the overall human rights situation and for strengthening women's participation at all levels of Iraqi society.

Women for Women International commissioned a survey on women's views, including on political, legal, social and economic matters, and on their living conditions. The survey was conducted in the governorates of Baghdad, Basra and Mosul in August 2004. Of the women surveyed:

- 93.7 per cent wanted to secure legal rights for women;
- 83.6 per cent wanted the right to vote in the referendum on the final constitution;
- 95.1 per cent felt there should be no restrictions on education.

On their living conditions, 57.1 per cent said that their families lacked adequate medical care, and 84

¹¹² UN Security Council Resolution 1325, 31 October 2000, UN Doc. S/RES/1325(2000).

¹¹³ UN Security Council, Report of the Secretary-General on women, peace and security, 16 October 2002, UN Doc. S/2002/1154.

per cent of the women had no income from formal or informal work.¹¹⁴

The International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), to both of which Iraq is a state party, require states to undertake to ensure the equal right of men and women to the enjoyment of all the rights contained in them. However, there are several respects in which women's equal rights to political participation, education, work, and health are threatened or curtailed in the current situation in Iraq.

Participation in political decision-making

During the occupation that followed the 2003 US-led war on Iraq, the country was governed by the CPA, headed by a US Administrator for Iraq (Paul Bremer), and a 25-member IGC appointed by the CPA in July 2003 from among the various religious and ethnic groups in Iraq. In March 2004 the IGC signed an interim constitution, the TAL. This came into effect in June 2004, when the CPA and IGC transferred power to an Interim Government of Iraq (IGI) whose members had been appointed by the IGC. The TAL provided for the appointment of a Provisional National Assembly pending the election of a National Assembly no later than 31 January 2005. The legislative tasks of the elected National Assembly include drafting a permanent Constitution for approval in a referendum in October 2005.

The International Covenant on Civil and Political Rights (ICCPR) and the UN Women's Convention provide that women and men shall have an equal right to take part in the conduct of public affairs, including the right to vote and be elected at elections, to hold public office and perform public functions at all levels of government.¹¹⁵ The Women's Convention provides for states, where necessary, to adopt temporary special measures aimed at accelerating the implementation of *de facto* equality between men and women, to be discontinued when the objectives of equality of opportunity and treatment have been achieved (Article 4.1). Similarly the UN **Human Rights Committee**, which monitors states' compliance with the ICCPR, has urged states to take effective and positive measures to promote

¹¹⁴ Women for Women International, *Windows of Opportunity, The Pursuit of Gender Equality in Post-War Iraq*, January 2005.

¹¹⁵ ICCPR Articles 3 and 25, UN Women's Convention Article 7.

and ensure women's participation in the conduct of public affairs and in public office, including appropriate affirmative action.¹¹⁶

The UN Committee on the Elimination of Discrimination against Women has drawn attention to specific measures that can be taken by states to ensure equal participation of women in political decision-making, including the adoption of a rule that neither men nor women should constitute less than 40 per cent of the members of a public body.¹¹⁷

Before and after the TAL was adopted, several Iraqi women's organizations lobbied for the introduction of a quota ensuring that women had 40 per cent representation on political decision-making bodies. However, to date, the quota of women on such bodies has been set at 25 per cent.

In relation to the National Assembly, the TAL states: "The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly and of having fair representation of all communities in Iraq" (Article 30). The Electoral Law issued by the CPA in June 2004 stipulates that "all seats in the National Assembly will be allocated among Political Entities through a system of proportional representation."¹¹⁸

Political parties must present lists of candidates in ranked order. To ensure the representation of women, the Electoral Law states: "No fewer than one out of the first three candidates on the list must be women; no fewer than two out of the first six candidates must be women; and so forth until the end of the list".¹¹⁹ These provisions require that about one third of the candidates nominated by political parties are women, although parties may choose to nominate a higher proportion of women candidates.

A 25 per cent representation of women was also reflected in the process of identifying the 100 members of the Provisional National Assembly. Three women and 16 men had been appointed to this

¹¹⁶ Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)*, UN Doc. CCPR/C/21/Rev.1/Add.10, 29 March 2000, para. 29.

¹¹⁷ Committee on the Elimination of Discrimination against Women, *General Recommendations No. 23, Political and Public Life*, (16th session, 1997), UN. Doc. A/52/38, para. 29.

¹¹⁸ CPA order No. 96 of 15 June 2004.

¹¹⁹ CPA order No 96 of 15 June 2004.

body as members of the IGC, with a National Conference of more than 1,000 delegates held in mid-August 2004 in Baghdad to nominate the remaining 81 members. The President of the Conference rejected the initial list proposed because it did not contain a sufficient number of women candidates.¹²⁰

However, the representation of women in the IGI was lower, at about 18 per cent. It was composed of a president, two vice-presidents – all men – and 33 ministerial posts, of which six were held by women.

Several Iraqi women's rights organizations were active in mobilizing women in the months leading up to the elections in January 2005. However, in the controversy over participation in the elections, while many women and women's rights activists believed it to be in the interest of Iraqi women to play a role in political decision-making, others chose not to become involved in the current political process.

The right to work

“Many professional women have stopped working. They are being forced to stay at home”, said Manal Omar, the Iraq director of Women for Women International, describing the impact of the continuing violence on women's access to employment in November 2004.¹²¹ The failure to restore peace and security has increased the risks for women of employment outside the home and hampered the creation of new employment opportunities for women.

Women have for many years had a strong presence in certain sectors of the Iraqi labour force, and particularly in the public sector. According to ministerial figures released at the beginning of 2004, out of 909,344 civil servants employed at Iraqi ministries (not including the Interior Ministry), 423,801 (about 46 per cent) were women.¹²² The representation of women in middle-ranking positions was particularly high in the Ministry of Labour and Social Affairs. However, women were

¹²⁰Michael Howard, “Chaos and farce as Iraq chooses first assembly”, *Guardian*, 19 August 2004.

¹²¹Sharon Behn, “Iraqi women threatened, killed for defying tradition”, *Washington Times*, 12 November 2004.

¹²² Iraqi al-Amal Association, *The National Conference for Empowering Women in Democracy – Baghdad 16-17 June, August 2004*, page 2.

underrepresented in leading positions in most ministries.

There have never been many women working as judges in Iraq, despite generally high levels of education among women and many qualified women lawyers. At the end of 2004 there were about 700 judges, and fewer than three per cent of them were women. The appointment of women judges continued to face resentments.¹²³ In July 2003 the swearing in of **Nidal Nasser Hussain** as a judge in Najaf was indefinitely postponed after religious leaders protested at the position being occupied by a woman.¹²⁴

However, since the overthrow of Saddam Hussain's government, new job opportunities for women have opened up in the security sector, including in the police force and army, which had been the domain of men.¹²⁵ The recruitment of women police officers should be an important step towards improving safeguards for women, in particular those held in police detention

The high level of unemployment has created severe hardship for many Iraqis. In October 2004 the Minister of Labour and Social Affairs estimated “50 per cent of the population to be out of work”, and said that it provided social benefits for more than 100,000 poor families, including widows and divorcees with children.¹²⁶

However, many female-headed households have continued to live in poverty. According to findings of the UN and the World Bank published in October 2003, almost 1 million women were heads of their households. Around 70 per cent of them were expected to earn not more than US\$2.5 per month.¹²⁷

¹²³ According to some interpretation of Islamic Law (*Shari'a*), women do not have the capacity to be judge.

¹²⁴ Neil MacFarquhar: *In Najaf, Justice Can be Blind but Not Female*, *New York Times*, 31 July 2003.

¹²⁵ *Reuters*, “First Iraq women graduates as armed security guards”, 30 September 2003, and see *Agence France Presse*, “New Paramilitary force seeks women to take on security role”, 24 May 2004.

¹²⁶ *IRINnews*, “Iraq: Interview with Minister for Labour and Social Affairs”, 4 October 2004.

¹²⁷ UN/World Bank Joint Iraq Needs Assessment, October 2003, Working Paper, Livelihoods, Employment & Re-integration, page 7.
<http://lnweb18.worldbank.org/mna/mena.nsf/Attach>

The right to education

Iraq's education system before 1990 was considered one of the best in the region: education was free, and enrolment and literacy rates were high. However, the 1990-91 Gulf war and the subsequent economic sanctions led to the rapid deterioration of the education sector. Iraq's literacy rate in 2003 was among the lowest in the region, according to a survey of education in the Arab states by the UN Educational, Scientific and Cultural Organization (UNESCO).¹²⁸ A sample survey conducted in 2000 showed that only 76.3 per cent of children aged six to 11 were reported to be attending primary school; 31.2 per cent of girls in this age group were not in school, compared with 17.5 per cent of boys. The gender gap was more pronounced in rural than in urban areas.¹²⁹

According to the 2003 Physicians for Human Rights study in three southern governorates of Iraq, 90 per cent of the people interviewed were in favour of equal opportunities for women in education. However, more than half of them indicated that there were reasons to restrict education opportunities at the current time.¹³⁰ This view seemed to reflect in particular concerns about the lack of security. Many children have reportedly been withdrawn from school out of concern for their safety.

The International Covenant on Economic, Social and Cultural Rights, to which Iraq is a state party, requires states to ensure that girls and women have the same rights to education as boys and men. In particular, states should provide universal, free and compulsory primary education.¹³¹

Worrying reports have suggested increasing drop-out rates among school children, with significantly

ments/IQ-
LIVELIHOODS/\$File/LIVELIHODS+final+sector+report+16+October.pdf

¹²⁸ UNESCO, *New Courier* No. 3, October 2003

¹²⁹ UNESCO Situation analysis of education in Iraq, April 2003, section 3.2.2

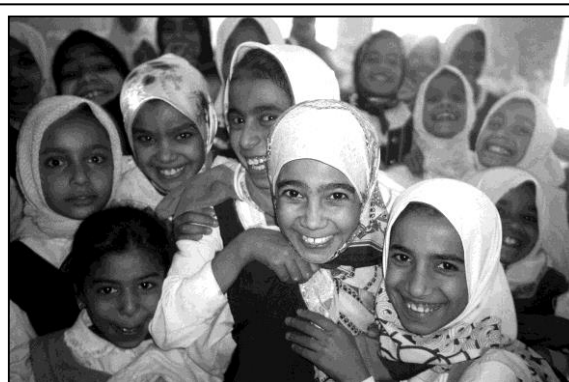
<http://unesdoc.unesco.org/images/0013/001308/130838e.pdf>

¹³⁰ Lynn L. Amowitz et al: *Human Rights Abuses and Concerns About Women's Health and Human Rights in Southern Iraq*, in: *Journal of American Medical Association*, March 24/31, 2004 (Vol. 291, No. 12), page 1477.

¹³¹ International Covenant on Economic, Social and Cultural Rights, Article 13 and Article 3.

higher rates among girls. In 2000, UNICEF reported that about 23 per cent of children of primary school age were not in school, and that only 49 per cent of girls in rural areas attended primary schools.¹³²

In September 2004, UNICEF noted that, out of 4.3 million primary school children in Iraq, only 1.9 million were girls, and gave the following explanation: "The lower figure for girls in school is no doubt a reflection of the ongoing insecurity, inadequate access to school, over-crowding, and poor water supply and sanitation facilities".¹³³



Gharnata School in al-Hartha, Basra. © AI

Among girls who do go to school, they have been subjected to increased pressure to wear a headscarf or veil since the overthrow of Saddam Hussain's government. Women and girls at universities and schools have been harassed and threatened. In Basra for example, female students reported intimidation by members of Islamist groups at the University of Basra for not wearing the veil.¹³⁴ Women teachers and girl pupils at Basra schools have also been harassed if they did not cover their heads.¹³⁵ Similar

¹³² UN/World Bank Joint Iraq Needs Assessment, October 2003, Working Paper, Education Sector, pages 1-2.

[http://Inweb18.worldbank.org/mna/mena.nsf/Attachments/IQ-EDUC/\\$File/Iraq+Education+Needs+Assessment.pdf](http://Inweb18.worldbank.org/mna/mena.nsf/Attachments/IQ-EDUC/$File/Iraq+Education+Needs+Assessment.pdf)

¹³³ UNICEF, News note: Helping Iraq's children get back to school, 7 September 2004.

¹³⁴ *IRINnews*, "Iraq: Female harassment from religious conservatives", 14 April 2004.

¹³⁵ Amnesty International interviews, 28 August 2004, Amman.

intimidation has been reported from campuses in other parts of the country. At Mosul University, leaflets were circulated in October 2004 warning women of “a terrible fate” if they did not wear the veil.¹³⁶

In response, many women students, including non-Muslims, have felt obliged to wear a headscarf or veil, and some girls and women have reportedly abandoned their studies. At Mustansariya University in Baghdad, pamphlets demanding women abandon Western clothing and cover their heads, and calling for the separation of male and female students, were said to have been circulated. **Vian Kiryakus**, a Christian student waiting in front of the university to be collected by her father, was reported as saying: “I have no choice but to wear the veil; the terrorists keep watching and targeting the unveiled girl students”. By October 2004 the Ministry of Higher Education and Scientific Research was reported to know of about 3,000 women students in Baghdad requesting a postponement of their studies because of the security situation.¹³⁷

The right to health

Health care and food supply systems already damaged by wars and sanctions were almost paralysed after the 2003 war on Iraq. There was damage to about 12 per cent of the hospitals and seven per cent were looted; 30 per cent of the institutions that provided family planning services were destroyed. Poor sanitation and shortages of safe water increased the risk of infections.¹³⁸

Many primary care centres were not equipped to provide antenatal services, according to government sources in 2004. In addition, half of the district-level medical institutions, where high risk pregnancies were referred, were lacking basic resources and qualified staff.¹³⁹

The 2003 Physicians for Human Rights survey in southern Iraq found that most women questioned

¹³⁶ <http://healingiraq.blogspot.com>, 28 October 2004.

¹³⁷ *Washington Times*, “Women fleeing college under Islamist threats”, 17 October 2004.

¹³⁸ UN/World Bank Joint Iraq Needs Assessment, *Working Paper, Health*, October 2003 page 7-9.

¹³⁹ These findings by the Iraqi Ministry of Health have been referred to in: Medact, *Enduring effects of war*, November 2004, page 3-4.

had restricted access to health care: 82 per cent said they first had to obtain the permission of their husband or a male relative. The study also found that only 54 per cent of women received prenatal care for all their pregnancies.¹⁴⁰ In addition, the lack of security prevented many women from leaving their homes to seek medical treatment.

Iraq lacks appropriate health services for the survivors of abduction, rape, “honour crimes” and other forms of violence against women. The sensitivity and social stigma attached to these crimes increase the difficulties for women in reporting them or seeking help from the health authorities.

7. Recommendations

Amnesty International’s Stop Violence Against Women campaign calls on world leaders, states, organizations, including the UN, the European Union, the Arab League and other international and regional organizations and individuals to:

- * Publicly pledge to make the Universal Declaration of Human Rights – which promised equal rights and equal protection for all – a reality for all women;
- * Develop action plans to end violence against women, and set up mechanisms to monitor their implementation;
- * Fully and speedily implement all international and regional treaties, declarations, resolutions and recommendations aimed at condemning, prohibiting and preventing all acts of violence against women, investigating all cases of violence and bringing perpetrators to justice in accordance with international standards of fair trial, as well as providing reparations for victims;
- * Support and encourage initiatives to provide training and exchange of information for judicial personnel and lawyers who act on behalf of women who have experienced violence;
- * Support and encourage initiatives for the prevention of violence and the protection of women at both the governmental and the NGO level.

¹⁴⁰ Lynn L. Amowitz et al: *Human Rights Abuses and Concerns About Women’s Health and Human Rights in Southern Iraq*, in: *Journal of American Medical Association*, March 24/31, 2004 (Vol. 291, No. 12), page 1475.

To the Iraqi authorities

Amnesty International urges the Iraqi authorities to publicly and at every opportunity declare their commitment to eradicating violence against women in Iraq and to exercise due diligence in preventing, investigating and punishing acts of all forms of violence against women, and, in particular, to:

- Review all legislation discriminating against women, including penal, personal status and nationality law, and abolish or amend any provision which discriminates against women;
- Ensure that “honour crimes” and violence in the family are treated as serious criminal offences. This requires immediate action to be taken in order to abolish or amend the following articles of the Penal Code: Article 41 (permitting a husband to punish his wife), Article 128 (providing lenient punishment if a crime is committed with “honourable motivation”), Article 398 (providing lenient punishment for a rapist if he marries the victim) and Article 409 (limiting the punishment for a husband who has killed his wife or her suspected lover). It also requires the abolition of provisions in any other legislation, including presidential decrees issued under previous governments, prohibiting lenient punishment or impunity for perpetrators of “honour killings”;
- Involve women’s rights organizations in the reform of the judicial system, in particular to strengthen women’s rights and equality in law;
- Bring to justice those responsible for torture and other serious human rights violations, including violence against women under the government of Saddam Hussain. in proceedings which meet international standards of fair trial and with no possibility of the death penalty being imposed;
- Take all steps necessary to ensure that complaints by women of violence in any form, whether by private individuals or by officials acting in a private or public capacity, or by officials serving in the multinational forces, be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. When there is sufficient admissible evidence, suspects should be prosecuted. Complainants, witnesses and others at risk during such investigations and prosecutions should always be protected from intimidation and reprisals;
- Provide training in gender issues to police officers, prosecutors, judges and other officials in the criminal justice system to ensure that women are encouraged to report violence in the family, and receive appropriate care, medical attention and support;
- Investigate promptly, impartially and thoroughly all murders, attempted murders and apparent suicides of women, with a view to bringing to justice all those responsible for acts of violence against women, including members of family councils that ordered the crimes where relevant;
- Ensure that all who, after a fair trial, are found to have committed violence against women are given sentences commensurate with the gravity of the crime;
- Ensure that all women who have been subjected to violence are provided with access to redress and reparation, including compensation;
- Ensure that all primary health care practitioners and lawyers are given training in responding to family violence, in all its forms, and that appropriate emergency mechanisms exist;
- Encourage and support the establishment of shelters and other facilities for women survivors of violence, in consultation with women’s rights organisations;
- Fund and support measures that will enable all women to live free from violence, such as programmes of civic education, training and systems to support and protect victims of violence and women’s human rights defenders;
- Eradicate the practice of female genital mutilation (FGM) in all parts of the country, including by legal measures, health education and awareness-raising;
- Collect comprehensive data across all regions of Iraq that systematically measure the nature and extent of violence against women;
- Improve safeguards for women detainees and prisoners, including by ensuring that supervision is carried out by appropriately trained female staff in all detention facilities. All detainees must be treated humanely and in accordance with the obligations set out in international human rights and humanitarian law;
- Ensure that no women are refused work on the basis of their gender; and support the equal

representation of women in public and political life, including in all branches of the judiciary;

- Take measures to promote the equality of women and counter women's impoverishment by ensuring equal access to economic and social rights, including education, employment and health services, as well as their freedom of movement and political participation
- Withdraw all Iraq's reservations to the UN Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention);
- Ratify the Optional Protocol to the UN Women's Convention, enabling individuals and groups to complain directly to the UN Committee on the Elimination of Discrimination against Women;
- Ratify the Rome Statute of the International Criminal Court and adopt implementing national legislation to end impunity for violence against women in all circumstances.

To governments with troops in Iraq

Amnesty International calls on the governments of all states that have troops serving in Iraq under the US-led multinational forces to:

- Fully respect and implement in all their military operations the provisions of international humanitarian law;
- Investigate promptly all allegations of violations of international human rights law or international humanitarian law, in particular violence against women, including sexual attacks and other torture or ill-treatment, by their forces or other agents. Such investigations should not just cover the direct perpetrators, but must include the higher chain of command responsibility;
- Ensure that those responsible for such abuses are brought to justice in civilian-led mechanisms able to apply international human rights law and standards relevant to the investigations of allegations of serious human rights violations by the military;
- Suspend from duties any officials involved pending the outcome of the investigation and any subsequent legal or disciplinary proceedings;

- Ensure, through appropriate policies, training and oversight, that violence against women will not be tolerated;
- Improve safeguards for women detainees and prisoners, including by ensuring that supervision is carried out by appropriately trained female staff in all detention facilities. All detainees must be treated humanely and in accordance with the obligations set out in international human rights and humanitarian law;
- Train the troops on gender issues in order to ensure that women are treated appropriately and not subjected to violence, threats of violence or insults;
- Ensure that survivors of violence against women receive full reparations, including compensation, as required under international law.

To armed groups

Amnesty International calls on armed groups to:

- Stop immediately the hostage-taking, torture and ill-treatment, and targeting and killing of civilians, including hostages;
- Halt immediately all indiscriminate attacks;
- End immediately the harassment, death threats and violent attacks on women who exercise their rights to freedom of expression and to freedom of religion, including by deciding not to wear a headscarf or veil;
- Respect minimum standards of international humanitarian law, justice and humanity in all their actions.

Appendix: International standards on violence against women¹⁴¹

Recent decades have seen significant advances in the commitment of the international community to scrutinize and combat violations of women's rights in general, and the right to freedom from violence in particular.

The **UN Charter**, the founding document of the UN, affirms the realization of fundamental human rights as core UN principles and objectives, and the equal rights of men and women. Articles 55(c) and 56 commit UN member states to work towards the achievement of purposes including the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”

The **Universal Declaration of Human Rights**, proclaimed in 1948 by the General Assembly of the UN, and the founding document of international human rights law, states that “*Everyone has the right to life, liberty and security of person*” (Article 3), that “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*” (Article 5), and that everyone is entitled to all the rights and freedoms set out in the declaration without discrimination, including on the ground of sex (Article 2).¹⁴²

This fundamental founding commitment to equality between men and women is reflected in various human rights treaties adopted following the Universal Declaration of Human Rights, and which place legally binding obligations on states parties. Each of the main human rights treaties establishes a treaty body, a committee of independent experts who monitor implementation of the treaty. The treaty bodies examine periodic reports by states parties and

¹⁴¹ Most of the treaties and declarations mentioned in this appendix, as well as the general comments and recommendations of the treaty bodies and the reports of the UN Special Rapporteur on violence against women, can be found on the website of the UN High Commissioner for Human Rights at www.ohchr.org. For a more detailed account of international standards relevant to this issue, see Amnesty International, *The duty of states to address violence against women* (AI Index: ACT 77/049/2004) June 2004.

¹⁴² Universal Declaration of Human Rights, UNGA res. 217 A(III), adopted 10 December 1948.

elaborate international human rights law by issuing general comments and recommendations on the implementation of the treaty provisions. They also consider communications from individuals who complain that their state has not respected or enforced their human rights, if such a procedure exists for that particular treaty. While Iraq is a party to the ICCPR and the UN Women's Convention, it is not a party to the Optional Protocols to each of these treaties which provide for individual complaints to be made under those treaties.

The content of rights is elaborated in declarations and resolutions of international bodies. They draw on and clarify the definitions of rights in treaties and the jurisprudence of treaty bodies. Although they are not legally binding in themselves, they are legally authoritative comments which illustrate and provide detail on the content of rights which are binding through treaty obligations.

The work of the UN Special Rapporteur on violence against women, an independent expert appointed in 1994 by the UN Commission on Human Rights, has deepened the international community's understanding of the causes and manifestations of violence against women. In addition, the mandates of other UN Special Rapporteurs have increasingly included an explicit commitment to addressing the gender dimensions of the specific aspects of human rights which each of them deals with.

International criminal law has become particularly pertinent to violence against women in recent years. The development of definitions of crimes, the jurisprudence of the two *ad hoc* international criminal tribunals for Rwanda and former Yugoslavia, and the drafting and adoption of the Rome Statute of the International Criminal Court have defined violence against women more thoroughly, and in a more gender-sensitive manner, than ever before. The methods of investigation and court procedures of these international tribunals are also sensitive to the needs and safety of witnesses and victims, particularly of survivors of sexual violence.

International Human Rights Treaties

The 1966 **International Covenant on Civil and Political Rights (ICCPR)**, which came into force in 1976, provides that “*The States Parties to the present Covenant undertake to ensure the equal right of men and*

women to the enjoyment of all civil and political rights set forth in the present Covenant”(Article 3). These rights include the right to life (Article 6) and an absolute prohibition on torture and other ill-treatment (Article 7). The state’s obligations in the ICCPR have been explicitly interpreted by the Human Rights Committee as including an obligation to exercise due diligence (see below) to prevent and punish human rights abuses carried out by non-state actors (private individuals), including those who commit violence against women in the home and the community.¹⁴³

In relation to “honour crimes” against women, the Human Rights Committee considers impunity for “honour crimes” a serious violation of the Covenant.¹⁴⁴

Freedom from torture and ill-treatment is guaranteed further in the 1984 **Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment**, which came into force in 1987. Elements of torture as defined for the purpose of the Convention, as any act by which “severe pain or suffering, whether physical or mental, is intentionally inflicted” for a purpose such as “punishment” or “for any reason based on discrimination of any kind”, can be found also in violence in the family. The Convention covers acts of torture or ill-treatment by state officials, and private acts of torture or ill-treatment when carried out with the “consent or acquiescence of a public official (Article 1(1))”. Accordingly, the international human rights framework could be applied to address discriminatory laws or customs, like exceptions for marital rape or the defence of honour, which exempt perpetrators of domestic violence from sanctions and reflect the consent of the state.¹⁴⁵

¹⁴³ Human Rights Committee, General Comment No.31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 21 April 2004, para. 8, read with General Comment No. 28: Equality of rights between men and women (article 3), 29 March 2000.

¹⁴⁴ In particular of articles 6, 14 and 26. See Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)*, UN Doc. CCPR/C/21/Rev.1/Add.10, 29 March 2000, para 31.

¹⁴⁵ Report of the Special Rapporteur on Violence against Women, February 1996, UN Doc. E/CN.4/1996/53, para. 45.

The 1979 **Convention on the Elimination of All Forms of Discrimination against Women** (UN Women’s Convention), which came into force in 1981, sets out in detail the obligations of states parties to secure equality between women and men and to prohibit discrimination against women. It expressly requires states parties to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” (Article 2) – that is, the state is explicitly required under the Convention to protect individuals against abuses by non-state actors (see below). As a part of the obligation to transform social relationships between men and women to combat discrimination, Article 5 of the UN Women’s Convention requires states to use means: “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” If the state fails to offer protection against discriminatory practices and abuses, or to bring to justice those who commit such abuses and to ensure reparation for the survivors, it is in breach of its legal obligations.

However, Iraq has made reservations to substantial articles of UN Women’s Convention, namely Article 2 (f) and (g), which requires states to take measures to modify or abolish laws, regulations, customs and practices and repeal penal provisions which constitute discrimination against women, and Articles 9 and 16 which respectively require states to grant women equal rights in relation to nationality (including passing their nationality to their children) and to eliminate discrimination in matters of marriage and family relations.¹⁴⁶

In June 2000 the Committee on the Elimination of Discrimination against Women considered Iraq’s second and third periodic reports. In its recommendations the Committee urged the Iraqi authorities to “implement awareness-raising campaigns to change stereotypical and discriminatory attitudes concerning roles of women and girls, in addition to providing a non-discriminatory legal basis”. It further called on the authorities to “work

¹⁴⁶ See Amnesty International, *Reservations to the Convention on the Elimination of All Forms of Discrimination against Women: Weakening the protection of women from violence in the Middle East and North Africa region* (AI Index: IOR 51/009/2004), November 2004.

towards the elimination of the practice of polygamy.” The Committee urged the Iraqi authorities to withdraw its reservations to UN Women’s Convention¹⁴⁷ The majority of these recommendations still apply, as is reflected in a June 2004 report by the UN High Commissioner for Human Rights who noted that the Transitional Administrative Law does not offer adequate protection against discrimination in marriage (no equal rights to marry, within the marriage or to divorce), inheritance and ability to pass citizenship on to their children.”¹⁴⁸

On forced marriages, the Committee on the Elimination of Discrimination Against Women has found that, in practice, “custom, tradition and failure to enforce...laws in reality contravene the Convention” in many countries. Women’s right to choose a spouse and enter freely into marriage impacts strongly upon their lives, dignity and equality as human beings. The Committee draws attention to human rights violations engendered by forced marriages or remarriages. It notes that some “countries allow a woman’s marriage to be arranged for payment or preferment and in others women’s poverty forces them to marry foreign nationals for financial security”.¹⁴⁹

The Committee has addressed “honour crimes” as a form of family violence and has included among the measures to overcome such violence “legislation to remove the defence of honour in regard to the assault or murder of a female family member”.¹⁵⁰

The 1989 **Convention on the Rights of the Child**, which came into force in 1990, defines all

those under the age of 18 as children. It requires states to take all effective and appropriate measures with a view to “*protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person who has the care of the child*” (Article 19(1)), and to abolish traditional practices prejudicial to the health of children (Article 24). It further places an obligation on states parties to protect children from all acts of sexual exploitation and abuse (Article 34) and from torture and other ill-treatment (Article 37(1)). Article 2 requires states to ensure the rights set out in the Convention without discrimination of any kind and irrespective of the child’s sex. The Committee on the Rights of the Child has determined that child and forced marriage is both a harmful traditional practice and a form of gender discrimination contrary to the obligations set out in the Convention.¹⁵¹ Like the UN Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child has recommended the use of marriage registers to combat child marriage.¹⁵²

The Committee has stated that “States parties should take all effective measures to eliminate all acts and activities which threaten the right to life of adolescents, including honour killings. The Committee strongly urges States parties to develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices.”¹⁵³

¹⁴⁷ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Iraq, UN Doc. CEDAW/C/2000/II/Add.4, 14 June 2000, paras 192, 26.

¹⁴⁸ Report of the United Nations High Commissioner for Human Rights Follow-up to the World Conference on Human Rights: The present situation of human rights in Iraq, UN doc E/EC.4/2005/4, para. 86.

¹⁴⁹ Committee on the Elimination of Discrimination against Women, *General Recommendations No.21 : Equality in Marriage and Family Relations* (13th session, 1994), UN Doc. A/47/38, paras 15-16

¹⁵⁰ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 Violence against women* (11th session, 1992), UN doc. A/47/38, para 24 (ii).

¹⁵¹ See for instance the Committee’s concluding observations regarding Burkina Faso, UN Doc. CRC/C/15/Add.19 (1994), para. 8; Central African Republic, UN Doc. CRC/C/15/Add.138 (2000), para. 46; and Bangladesh, UN Doc. CRC/C/15/Add.221(2003), para. 61.

¹⁵² See, for instance, Concluding Observations on India, UN Doc. CRC/C/15/Add.115, paras. 32-3, 23 February 2000.

¹⁵³ Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child (33rd session, 2003), UN Doc. CRC/GC/2003/4 (2003), para 24.

Declarations

In 1993, participants at the UN-sponsored World Conference on Human Rights in Vienna declared violence against women to be a human rights violation requiring urgent and immediate attention.¹⁵⁴ Later that year, the UN **Declaration on the Elimination of Violence against Women**¹⁵⁵ was adopted by the UN General Assembly.

The **Beijing Declaration and Platform for Action**,¹⁵⁶ agreed at the Fourth World Conference on Women in 1995, and reiterated in its five-year review in 2000, underlined these concerns, which have been further augmented by declarations of other UN world conferences.

International Criminal Law

The 1998 **Rome Statute of the International Criminal Court**, which entered into force on 1 July 2002, defines several forms of violence against women, including rape and other forms of grave sexual violence as war crimes and crimes against humanity. It also includes gender-based persecution as a crime against humanity.¹⁵⁷

Due diligence and abuses by private individuals and groups

In recent years there has been an increasing emphasis on states' obligation to intervene when private individuals and groups (also referred to as "non-state" actors) abuse human rights. Such people and organizations acting outside the state, its organs and its agents are often known as "non-state actors".

¹⁵⁴ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna, 25 June 1993, para. 18..

¹⁵⁵ UN General Assembly Resolution 48/104, 20 December 1993.

¹⁵⁶ Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, A/CONF.177/20/Rev.1, annexes I and II, endorsed by G.A. res. 50/42, 50 U.N. GAOR Supp. (No. 49) at 33, U.N. Doc. A/RES/50/49 (1995). For text see <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N96/273/01/PDF/N9627301.pdf?OpenElement>.

¹⁵⁷ See Article 7 (Crimes against humanity) and Article 8 (War crimes).

Abuses by non-state actors that infringe an individual's human rights include the actions of a violent husband; or cruel, inhuman and degrading punishments inflicted by a group that exerts informal authority within the community such as a parallel legal authority; or killings by a group acting unlawfully, such as a criminal gang or an extremist religious group.

States are obliged under human rights law not only to respect rights by refraining from violating human rights themselves through their state agents and apparatus, but also to protect rights from being abused by others and to promote enjoyment of human rights in a wider sense. The standard of **due diligence** is applied in order to assess whether they have carried out these obligations, in particular the obligation to protect against the acts of private individuals and groups.

According to the UN Declaration on the Elimination of Violence against Women, states should "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons."

The UN Human Rights Committee has stated that states' obligations to ensure human rights require that the state protects individuals not just against violations rights by its agents, but also against acts committed by private persons or entities. "There may be circumstances in which a failure to ensure Covenant rights ... would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."¹⁵⁸

This requirement of due diligence has been underlined by independent human rights experts including the Special Rapporteur on violence against women in her 2003 report to the UN Commission on Human Rights: "States must promote and protect the human rights of women and exercise due diligence: (a) To prevent, investigate and punish acts of all forms of violence against women whether in

¹⁵⁸ Human Rights Committee, General Comment No.31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 21 April 2004, para. 8.

the home, the workplace, the community or society, in custody or in situations of armed conflict; ... (c) To condemn violence against women and not invoke custom, tradition or practices in the name of religion or culture to avoid their obligations to eliminate such violence; ... [and] (e) To enact and, where necessary, reinforce or amend domestic legislation in accordance with international standards ...”¹⁵⁹.

¹⁵⁹ Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, para. 85.