**UNAMI Human Rights Office**

**Submissions to the UN SRVAW Thematic Report On Rape As A Grave And Systematic Human Rights Violation And Gender-Based Violence Against Women**

**Questionnaire on criminalization and prosecution of rape**

**Definition and scope of criminal law provisions**

1. **Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.**

***Substantive Law***

Under the Iraqi Penal Code, rape is criminalized in Part Two, Chapter 9, Section 1 (Moral indecency – public etiquette) of the Iraqi Penal Code (IPC) Law No. 111 of 1969. Rape is defined as an “offence against the public welfare” and as “moral indecency – public etiquette” rather than a violent act against the person. The Kurdistan Region of Iraq does not have a separate law on rape.

***Definition of Rape***

Article 393 of the Iraqi Penal Code criminalises and defines rape as follows:

1. *Any person who has sexual intercourse with a female without her consent or commits buggery with any person without their consent is punishable by a term of imprisonment not exceeding 15 years.*

Paragraph 2 and 3 of Article 393 lists aggravating measures that increase the sentence and paragraph 4 envisions compensation if the female victim was a virgin.

1. *The following are considered to be aggravating circumstances for this offense:*
	1. *If the victim at the time of the act was under 18 years old.*
	2. *If the offender was a relative of the victim to the third generation, or if the offender is the guardian, protector, or custodian of the victim or has authority over the victim or the victim is the offender’s servant.*
	3. *If the offender was a public official, religious leader, or doctor and used the power of his position or the trust in him.*
	4. *If the offense is committed by two or more people in order to prevail over the resistance of the victim or if they commit the offense multiple times.*
	5. *If the victim contracts venereal disease as a result of the offense.*
	6. *If the victim loses her virginity or loses her virginity as a result of the offense.*
2. *If the offense leads to the death of the victim, the penalty will be life imprisonment.*
3. *If the victim was a virgin, the court must order that she receive appropriate compensation.*

***Observations on Article 393***

* Article 393(2)(f) and Article 393(4) increase penalties for offenders of rape, if the victim was a virgin at the time the rape occurred. Such provisions can allow for an extensive inquiry into the victim’s sexual history. Furthermore, the primacy placed on virginity in Iraqi culture has led to unethical medical and forensic practices such as virginity and hymen testing. The primacy placed on virginity also reinforces traditional gender roles and associated ‘value’ of women in the society.
* Consent is central to the definition of rape. Rape only occurs where there is a lack of consent, yet the term consent is not defined in the Penal Code. An additional problem with having consent being the central consideration for a charge of rape is that in conflict-related sexual violence cases, questions of consent are generally irrelevant due to the coercive circumstances of conflict. Prosecutions of this nature intrinsically focus on the survivor’s words or actions and do not appropriately consider the survivor’s age or other relevant circumstances.
* This definition does not consider contexts of power and culture that affect a woman’s ability to express or otherwise assert her will, as well as the inherent inequality in male-female dynamics that can render the issue of consent almost meaningless.
* The definition does not cover marital rape.

***Recommendations***

* Adopt a broader definition of rape that is in line with international standards and the one used in International Criminal Law which includes the various forms and types of penetration, extending beyond the narrow use of the words “sexual intercourse” and “consent” accounting for the full array of acts that amount to rape.
* Rape is defined as invading the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. *(*Article 7(1)(g)-1 Rome Statute Elements of crimes).
* Substituting consent with invasion committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. (Article 7(1)(g)-1 Rome Statute Elements of crimes)

Article 398 of the Iraqi Penal Code allows a perpetrator to quash an investigation or conviction for rape or other offences under this section of the Code, if the offender lawfully marries the victim, in contradiction with international human rights norms and standards. The same article goes on to say that “legal proceedings will resume or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings.”

Article 398 of the Penal Code provides as follows:

*If the offender mentioned in this Section (Rape, buggery, indecent assault) then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed. Legal proceedings will resume or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behaviour within 3 years following the cessation of the proceedings. The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence.*

***Observations on Article 398***

* This provision encourages impunity for perpetrators of rape who decide to marry the women they would have raped.
* It also encourages men to rape and indecently assault women who refuse to get married to them with the end result that they are forced to marry them anyway.
* The provision, combined with the traditional ‘honor of the family’ culture also encourages families of the victim to resort to mediation to achieve marriage, placing additional pressure on victims to marry the rapist by their families.

***Recommendations***

* Abolish Article 398 so perpetrators should face the full array of the legal consequences of their actions regardless of marrying their victims.

**Other Relevant Laws**

Article 236 of the Iraqi Penal Code criminalises the act of publishing the name or the photograph of rape or sexual assault victim, which can be punished with fine, detention or the combination of both. Article 236 provides as follows:

*Any person who publishes the following information is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties:*

*(1) ...*

*(2) ...*

 *(3) ...*

*(4) ...*

 *(5) The names or photographs of the victims of rape or sexual assault or the names or photographs of juvenile defendants.*

Article 385of the Iraqi Penal Code criminalizes the act of having consensual carnal knowledge of a girl below 18 years to whom he is not married. Prosecution of this crime, however, may only be brought on the basis of a complaint by the victim or her ancestor, descendant, brother or sister.

The Article provides as follows:

*Any person who has carnal knowledge of a girl to whom he is not married with her consent when she has not yet reached the age of 18 year is punishable by a term of imprisonment not exceeding 10 years or by detention. It is considered an aggravating circumstance if the victim is forced or if she loses her virginity or contracts venereal disease as a result of the offence or if the offender is responsible for the victim's upbringing or supervision or has some measure of authority over her. Any action or measure in respect of such action may only be brought on the basis of a complaint by the victim or her ancestor, descendant, brother or sister.*

Article 394 criminalizes sexual intercourse and buggery outside marriage if the victim is under 18 or 15 and entitles female victims only to compensation on the condition of being virgins. The article provides as follows:

1. *Any person who, outside of marriage, has sexual intercourse with a woman with her consent, or commits buggery with a person with their consent, is punishable by a period of imprisonment not exceeding 7 years if the victim is between the ages of 15 and 18. If the victim was under the age of 15, the offender is punishable by a period of imprisonment not exceeding 10 years.*
2. *It will be considered an aggravating circumstance if the act occurred under circumstances described in Paragraph 393.*
3. *If the victim was a virgin, the court must order that she receive appropriate compensation.*

Article 395 criminalises the seduction of women above 18 to sexual intercourse with the promise of marriage if the man refuses to marry her after. The article provides as follows:

*Any person who seduces a woman over the age of 18 with a promise of marriage, has sexual intercourse with her and subsequently refuses to marry her is punishable by detention.*

Article 396 of the Iraqi Penal Code outlines the punishment for sexual assault which can be forcible, or in cases committed against juveniles which constitute a crime even if it is non-forceful or consensual. The article provides as follows:

1. *Any person who sexually assaults a man or woman or attempts to do so without his or her consent and with the use of force, menaces, deception or other means is punishable by a term of imprisonment not exceeding 7 years or by detention.*
2. *The penalty will be a term of imprisonment not exceeding 10 years if the person against whom the offence is committed is under 18 years of age or the offender is a person described in Sub-Article 2 of Article 393.*

Article 397 introduces aggravated sentences if the victim is under 18:

*Any person who sexually assaults a boy or girl under the age of 18 without the use of force, menaces or deception is punishable by detention. The penalty will be a term of imprisonment not exceeding 7 years or detention if the offender is a person described in Sub-Article 2 of Article 393.*

**Procedural Law**

Outside of substantive provisions, there are other barriers for victims of rape in the Iraqi criminal justice system. Under Article 3 A (iii) of the Iraqi Criminal Procedure Code, a complaint of rape can only be set in motion if it is filed by “the aggrieved party” (i.e. the victim or their representative) in case the perpetrator is a spouse or ascendant of the victim, as with cases of property crimes or crimes of slander (Book One, Section 1, Article 3, ii and iii of the Iraqi Criminal Procedure Code of 1971). The article reads as follows:

*A. The complaint can only be set in motion on the basis of a complaint from the aggrieved party or someone taking his place in law in relation to the following offences:*

 *(i)…*

*(ii)…*

*(iii) Theft, rape, breach of trust, fraud, or acquisition of items by these means, if the aggrieved party is a spouse or descendent of the perpetrator and these items were not seized legally or administratively or legally transferred to another person.*

Paragraph B of Article 3 of the Iraqi Criminal Procedure Code provides that no criminal complaint can be set in motion in relation to offences that took place outside Iraq except with the permission of the Minister of Justice.

Sexual assault has been mentioned also in Article 331 of Iraqi Criminal Procedure Code as a limitation to conditional discharge:

*Article 331: paragraph D: The following convicted persons are excluded from procedures for conditional discharge:*

*(3) A person convicted of non-consensual sexual intercourse, buggery, or indecent assault; or of indecency without violence, threat or deception against a person under the age of 18 years; or of sexual intercourse or buggery with relatives; or incitement to prostitution and fornication.*

1. **Based on the wording of those provisions, is the provided definition of rape:**
	1. Gender specific, covering women only **NO.**

* 1. Gender neutral, covering all persons. **YES**.

In cases of women ‘sexual intercourse’ without consent constitutes as rape, meanwhile in the case of men only ‘buggery’ without consent. This wording of the text leaves room for wider interpretation of sexual intercourse committed against female victims, meanwhile in relation to male victims it limits it to anal rape. Article 393 of the Iraqi Penal Code refers to rape of a female and buggery of anyone without their consent.

* 1. Based on the lack of consent of victim. **YES**
	2. Based on the use of force or threat. **NO**
	3. Some combination of the above. **YES.** Please specify **a, b, and d.**

Article 393 of the Penal Code provides for aggravating circumstances. Subparagraph (d) provides that If the offense is committed by two or more people in order to prevail over the resistance of the victim or if they commit the offense multiple times.

* 1. Does it cover only vaginal rape? **NO**

While Article 393 covers vaginal and anal rape, other articles referred to above covering sexual assault would criminalize additional sexual acts with lower sentences.

* 1. Does it cover all forms of penetration? **NO.** Please specify:

Article 393 of the Iraqi Penal Code refers only two forms vaginal and anal. Rape itself only constitutes as anal penetration in case of male and female victims, meanwhile for female victims it is additionally described as ‘sexual intercourse’, leaving wider room for interpretation. Sexual assault would cover other forms of sexual penetration, carrying less grave sentence.

* 1. Is marital rape in this provision explicitly included? **NO.**

Iraqi legislation does not recognise marital rape as a criminal act.

* 1. Is the law silent on marital rape? **YES.**

Iraqi legislation does not recognise marital rape as a standalone criminal act, however the wording of the law ‘sexual intercourse without consent’ allows such wide interpretation, where marital rape could, in theory, be prosecuted. UNAMI HRO is not aware of any rape within marriage that has been reported for criminal prosecution.

* 1. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **NO.**

Iraqi legislation does not recognise marital rape as a criminal act. However Article 3 (A) (iii) of the Iraqi Criminal Procedure Code indirectly recognises marital rape when it sets a statute of limitation to filing a complaint only -by the spouse or someone taking their place reporting rape if the aggrieved party is a spouse or descendent of the perpetrator.

According to the limited publicly available information legal precedent does not show marital rape reported or prosecuted at all, although theoretically, it is possible to legally raise an issue of marital rape. *.*

* 1. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? **YES.**

Iraqi legislation does not recognise marital rape as a criminal act.

1. **To what extent legislation in your country excludes criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit relevant articles with corresponding translations.**

Sexual relationships outside legal marriage are criminalized in Iraq regardless of consent. Marital rape is not recognized by law. Article 398 of the Iraqi Penal Code excludes criminalization of rape in instances where the perpetrator marries the victim and remains married to her for at least three years.

1. **What is the legal age for sexual consent?**

The law does not specify the minimum age of sexual consent, however any sexual act with children under 18 constitutes a crime, regardless of whether forced or consensual. Article 394 of the Iraqi Penal Code specifically mentions that sexual intercourse with a girl under 18 outside of a legal marriage is a criminal act, which makes it legal to have sexual intercourse with a girl under 18 if it is with their spouse. The legal age to marry for girls and boys in Iraq is 16 years.

In addition, **Article 7 of the Personal Status Law**, provides that in order for the marriage to be valid, the two parties to the contract should be sane and have reached 18 years of age and under **Article 385 of the Penal Code,** carnal knowledge of a girl below the age of 18 years to whom a perpetrator is not married to, with her consent, is punishable by a term of imprisonment not exceeding 10 years or by detention. By inference, the legal age of sexual consent seems to be 18 years.

1. **Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**

Both female and male should be above 18 years to engage in a sexual relationship. In case they are not married, and the acts are not committed in public, this is not a criminal act, unless the man seduces the woman with the promise of marriage which he fails on fulfilling later.

Articles 377-380 of the Iraqi Penal Code regulates adultery of married persons: If a married woman above 18 engages in a sexual relationship out of marriage, she commits a criminal act punishable by law, whereas a male spouse is only guilty if he has committed adultery in the conjugal home.

Article 385 of the Iraqi Penal Code criminalizes the act of having consensual carnal knowledge of a girl below 18 years to whom he is not married.

1. **Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**

Article 385 of the Iraqi Penal Code any person who has carnal knowledge of a girl to whom he is not married with her consent when she has not yet reached the age of 18 year is punishable by a term of imprisonment not exceeding 10 years or by detention.

Article 393 of the Iraqi Penal Code states that any person who has sexual intercourse with a female without her consent or commits buggery with any person without their consent is punishable by a term of imprisonment not exceeding 15 years.

Sexual assault can lead to a punishment of maximum 7 years in prison in line with the provisions of Article 396 of the Iraqi Penal Code, or 10 years if the victim is below 18, or other aggravating factors are present described in Article 393.

1. **What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

If the female victim of rape was a virgin and lost her virginity as a result of rape, the court must order she receives appropriate compensation (Article 393(4) of the Iraqi Penal Code).

In case a girl 18 years of age engaged in consensual sexual act and loses her virginity outside of marriage, she is eligible for appropriate compensation under Article 394 (3)of the Iraqi Penal Code.

In case the above criterion doesn’t apply, then civilian reparation can be claimed in a civil court under the provision of Article 23 of the Iraqi Criminal Procedure Code.

Article 23 of the Iraqi Criminal Procedure Code - If the civil plaintiff abandons a case lodged before the criminal court, he may lodge it before the civil court unless by his own declaration he renounces his rights so to do.

1. **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

Aggravating circumstances are listed in Article 393 (2), (3) and (4) of the Iraqi Penal Code:

*2) The following are considered to be aggravating circumstances for rape and buggery:*

* 1. *If the victim at the time of the act was under 18 years old*
	2. *If the offender was a relative of the victim to the third generation, or if the offender is the guardian, protector, or custodian of the victim or has authority over the victim or the victim is the offender’s servant.*
	3. *If the offender was a public official, religious leader, or doctor and used the power of his position or the trust in him.*
	4. *If the offense is committed by two or more people in order to prevail over the*

*resistance of the victim or if they commit the offense multiple times.*

* 1. *If the victim contracts venereal disease as a result of the offense.*
	2. *If the victim loses her virginity or loses her virginity as a result of the offense.*

*(3) If the offense leads to the death of the victim, the penalty will be life imprisonment.*

*(4) If the victim was a virgin, the court must order that she receive appropriate compensation.*

1. **Is rape by more than one perpetrator an aggravating circumstance? YES.**

Yes, according to sub-paragraph (d) of paragraph (2) of Art. 393.

1. **Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES.**

Some aggravating circumstances are listed in Article 393(2)(a) and (c) of the Iraqi Penal Code (see above). In addition to that the judge has the authority in terms of Article 135 of the Iraqi Penal Code to take aggravating circumstances into consideration when delivering a verdict. Article 135 provides as follows:

*Without prejudice to the special conditions prescribed by law for an increase in the penalty, the following are 'considered to be aggravating circumstances:*

* + 1. *The commission of an offence with a base motive.*
		2. *The commission of an offence while taking advantage of a defect in the victim's reason or his inability to resist or in circumstances in which others are unable to come to his aid.*
		3. *The use of brutal methods in the commission of an offence or the harsh treatment of the victim.*
		4. *The use by the offender in the commission of an offence of his position of employment or the abuse of any authority or influence deriving from such position.*
		5. *The abuse of public or trusted officer for private gain or the offering, granting or acceptance of some advantage in violation of the person’s trusted or public official duties and the official abuse of the rights of others, or attempting to induce such abuse or violation.*
		6. *The commission of an offense in connection with, in furtherance of, or to impede detection of any of the offenses described in sections 2 (4) (a) through (d) of the organic law establishing the Commission of Integrity.*
		7. *Violation of financial disclosure regulations promulgated by the Commission of Integrity.*
1. **Is rape by spouse or intimate partner an aggravating circumstance? NO.**
2. **Does the law foresee mitigating circumstances for the purposes of punishment? YES. If yes, please specify.**

Under four conditions the law mitigates circumstances for punishment; three are general provisions, one is specific for rape.

* Article 60 of the Iraqi Penal Code: Effect on personal culpability of loss of reason or volition This will be applicable when the perpetrator is:
1. Is suffering from a loss of reason or volition due to insanity or infirmity of mind
2. Is in a state of intoxication or under the influence of drugs resulting from the consumption of intoxicating or narcotic substances given to him against his will or without his knowledge or due to any other reason which leads one to believe that he has lost his reason or volition is not criminally liable.
3. if he is not suffering from any infirmity of mind nor is under the influence of intoxicating, narcotic or other substances but only from a defect of reason or volition at the time of the commission of the offence, then it is considered a mitigating circumstance.
* Article 62 of the Iraqi Penal Code: Any person who is compelled to commit an offence by force or under threat so that he is unable to resist is not criminally liable.
* Articles 66 to 79 of the Iraqi Penal Code on the criminal liability of juveniles and children.
* According to Article 398 of the Iraqi Penal Code if the offender legally marries the victim, the crime is abolished. Any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed.
1. **Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES If so, at what stage and what are the consequences?**

Article 398 of the Iraqi Penal Code - If the perpetrator of rape, buggery or indecent assault lawfully marries the victim, any criminal actions against the perpetrator become null and void. That is, any investigations or other procedures are discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed.

1. **Regardless of the law, is reconciliation permitted in practice? YES and what is the practice in this regard?**

Reconciliation is possible when the victim has not filed a criminal case against the perpetrator yet.

Paragraph III., Section A. Art. 3 of the Iraqi Criminal Procedure Code sets a limitation that the criminal proceeding can only be initiated based on the complaint of the aggrieved party or someone taking his place is some specific cases, and that includes rape by spouse or ascendant. This excludes the option that the complaint can be filed by a witness or someone who learned about the crime. Especially cases like this can be settled through reconciliation, such as tribal mechanisms.

Article 398 of the Iraqi Penal Code allows perpetrators to escape punishment if they legally marry the victim of rape or sexual assault, increasing the likelihood of families of victims and perpetrators engaging in reconciliation for rape cases.

Cases are sometimes settled according to tribal laws and in consideration of family honour.

1. **Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES If yes, please specify.**

Article 398 of the Iraqi Penal Code automatically prohibits the prosecution of the perpetrator if he marries the victim legally.

According to Art. 1. of Section One of the Iraqi Criminal Procedure Code criminal proceedings in general are initiated by a complaint of the victim or anyone who knows of the crime committed or a witness. At the same time paragraph III., Section A. Art. 3 of the ICPC sets a limitation that the criminal proceeding can only be initiated based on the complaint of the aggrieved party or someone taking his place is some specific cases, and that includes rape by spouse or ascendant. This excludes the option that the complaint can be filed by a witness or someone who learned about the crime, which allows non-prosecution of rape if the victim doesn’t file a complaint.

1. **if the perpetrator marries the victim of rape? YES.**

Article 398 of the Iraqi Penal Code - If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed. Legal proceedings will resume or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings. The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence.

**b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? NO.**

**Prosecution**

12**. Is rape reported to the police prosecuted ex officio (public prosecution)? YES.**

Yes, according to Art. 1. of Section One of the ICPC criminal proceedings in general are initiated by a complaint of the victim or anyone who knows of the crime committed or a witness to the investigative judge or a judicial authorized police officer, who then notify the Public Prosecutor.

In addition to the regular police in the Kurdistan Region of Iraq there are offices of Combating Violence against Women and Family to receive cases of rape and sexual assault and after taking the statements, the files are referred to the Domestic Violence Investigative Judge for further referral.

13**. Is rape reported to the police prosecuted ex-parte (private prosecution)? NO.**

14**. Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES.**

If the victim marries the perpetrator*.*

15**. Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children? NO.**

The law does not provide for such settlements. However, in tribal/family settlements these settlements do occur.

16**. Please provide information on the statute of limitations for prosecuting rape.**

Article 6 of the Iraqi Criminal Procedure Code **-** Limits the period of instituting criminal proceedings against a perpetrator to 3 months.

Article 3 (A) (iii) of the Iraqi Criminal Procedure Code - A complaint of rape can ONLY be set in motion on the basis of a complaint from the victim or someone taking his place in law if the aggrieved party is a spouse or descendent of the perpetrator. In case the victim and the perpetrator are not in those two specific types of relations the limitation does not apply and any witness or informed party can file the complaint according to Article 1 (A) of the Iraqi Criminal Procedure Code.

17**. What are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any?**

No specific provisions.

18**. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? YES. If yes, please specify.**

No specific articles describe the mandatory requirements to prove rape different than any other crime.

19**. To what extent are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman’s sexual history during trial?**

No such provisions in the law.

20**. What procedural criminal law provisions exist aimed to avoid re-victimizations during the prosecution and court hearings? Please specify.**

In accordance with the provisions of Article 152 of the Iraqi Criminal Procedure Code the court can decide to hold private sessions or exclude certain groups of people from attendance, which is regular practice cases involving sexual acts in Iraq.

No specific provisions, however, after filing the complaint in person some procedures need the victim’s presence, however when the case reaches trial phase their lawyer can represent them.

**War and/or conflict**

21**. Is rape criminalized as a war crime or crime against humanity? NO.**

22**. Is there a statute of limitations for prosecuting rape in war or in conflict contexts?**

The law is silent on the issue of prosecuting rape in war or in conflict settings.

23**. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? NO.**

24**. Has the Rome Statute of the International Criminal Court (ICC) been ratified? NO.**

**Data**

25**. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.**

There is no publicly available data on cases of rape, due to the sensitivity and the social stigma around the subject. HRO will continue to attempt obtaining statistics after the movement restrictions are lifted.

**Other**

26**. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.**

The most difficult barriers to reporting the cases of rape are traditions, norms and customs. Women and girls are considered the symbols of family’s honor in the Iraqi community just as they are in other middle eastern communities. Cases of rape remain hidden and families of the victims would try to reconcile and arrange a marriage between the perpetrator and the victim. In case this marriage would not take place the families would try to marry the victim to any suitor available or as a last resort put pressure on the victim to commit suicide or even kill her to preserve the honor of the family and prevent a scandal.

The Iraqi Criminal Code No. 111 of 1969 continues to permit “honour” as a lawful defense in crimes alleging violence against women and family members, even when it is reported that many hundreds of women die from so-called “honour” killings each year. This is contained in Article 128 (1) which has been used by perpetrators of gender-based crimes to avoid punishment for the crimes. The article reads as follows:

1. *Legal excuse either discharges a person from a penalty or reduces that penalty. Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honourable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse.*

Under Article 152 of the Iraqi Criminal Procedure Code, trial sessions can be closed in order to maintain secrecy or public decency. However, there is little in the Code about: (a) preliminary and ongoing orders of protection for victims or witnesses of sexual violence; (b) expunging the name of victims and witnesses from public records; (c) the use of pseudonyms; (d) the use of alternative means of testifying such as video-conferencing or closed-circuit television and altering the picture or voice of a witness; or (e) the vigilant managing of questions posed to victims of sexual violence. There is no explicit protection against a defense attorney cross-examining a witness based on previous sexual history. Developing victim and witness protection measures is an absolute necessity for cases of sexual violence.