



BRIEF
Experts Roundtable

**DISCRIMINATION OF WOMEN
IN LEGISLATION AND PROTECTION
OF WOMEN AND GIRLS FROM VIOLENCE**

November 17th, 2021
Erbil

Under the patronage of the Judicial Council of Kurdistan Region of Iraq (KR-I), Women Empowerment Organization (WEO) in partnership with EuroMed Feminist Initiative (EFI) organized an Experts' Roundtable on November 17th, 2021 in Erbil "Gender Discrimination in Laws and Protecting Women and Girls from Violence", marking the global campaign on 16 Days against Violence against Women and Girls (VAWG). The roundtable gathered representatives from Kurdistan's Region Judicial Council, members of the Kurdistan Parliament, governmental stakeholders, legal experts, women rights organizations and gender experts.

The roundtable provided platform to share lessons learned and best practices from combating VAWG in the Middle East and North Africa (MENA) and discussed legal discrimination of women in Personal Status Law and Penal Code in KR-I. It elaborated recommendations for alternatives based on international women's rights norms and governmental commitments. Furthermore, it enabled the coordination of strategies to raise awareness on VAWG and to advocate for the adoption, enforcement and implementation of comprehensive laws that criminalize VAWG and address all its forms.

Ms. Suzan Aref, president of Women Empowerment Organization welcomed the participants and expressed sincere gratitude to the Judicial Council of Kurdistan Region for their kind support and cooperation in supervising the convening of the experts roundtable.

Judge Negar Ahmed Muhammad, the representative of the Kurdistan's Region Judicial Council, expressed on behalf of the President of Judicial Council appreciation for WEO and EFI for organizing the experts roundtable. She underlined that "The Judicial Council is concerned with gender equality and the protection of women as respecting women's rights is the primary means in the development of the entire society." She added, "It is necessary to work to establish a safe environment for women in all fields and their participation in political life, administrative and decision-making positions." She also stressed the role of the Kurdistan Region in the past years in working to change the discriminatory frameworks that were impeding the process of women's access to justice and equality. Furthermore, she highlighted the necessity of holding these consultative sessions in order to develop a roadmap that guarantees the right path to gender equality and to identify gaps and mechanisms of action in order to combat and eliminate violence against women, where this goal can be reached only through the participatory work among all concerned parties.

Dr. Basheer Hadad, former deputy speaker of the Iraqi Parliament, expressed his appreciation for WEO and Judicial Council of Kurdistan Region for organizing this roundtable. He emphasized that the importance of protecting women and girls lies in implementing the laws and the amendment of legislations. He underlined: "Although there are international, regional, and local efforts to address this phenomenon and combat it through raising awareness and legislation, yet it keeps growing in different rates all over the world." He added: "The Kurdistan Region has passed several steps towards addressing violence against women. However, the violence rates are still high." He highlighted that the handbook ABC for a Gender-Sensitive Constitution offered by EFI is very important to be reflected with the KRG draft constitution, as it will decrease the violence against women and that women's rights will be preserved within the constitution.



Ms. Borianna Jonsson, executive director of EuroMed Feminist Initiative expressed her appreciation to the Judicial Council and WEO for organizing the experts roundtable, and underlined the importance of expressed commitment in the previous interventions. EFI has launched a regional campaign on *Zero Tolerance for VAWG* in the in the Southmediterranean, and works globally for VAWG elimination. EFI has supported the development in Iraq of the National Action Plan (NAP) for UNSCR 1325, and Iraq became the first country in the MENA to have a NAP for UNSCR 1325, to have implemented and reported on its implementation, and now, building on lessons learned, to address VAWG in a more comprehensive manner. She underlined that: “Violence against women and girls may be better defined in legislations in Europe but violence still exists”. She finally added that through open discussions in the meeting, experts together would highlight a set of recommendations to address discrimination of women in legislation and protection of women and girls from violence.

During the **first session**, A Regional Policy Assessment Study on VAWG was presented by **Dr. Gulnar Wakim**, researcher and international consultant in sociology and Gender Studies. The study, Combating VAWG in the Southern Mediterranean Region, addressed the common patterns, challenges, best practices, and lessons learned, while **Judge Badraddin Barzanji** – Public Prosecution Judge, highlighted arguments for amending or annulling discriminatory laws and for advocacy strategies for legislative change in Kurdistan. A lively and interactive discussion followed the session in which the experts discussed in details the discriminatory articles in the Personal Status Law, Penal Code and the Law on violence against women and girls in KR-I.

During the **second session**, **Judge Chrakhan Ibrahim Fatah**, a judge of Slemani Criminal Court, discussed and addressed the discrimination of women in laws and the necessity of having a comprehensive law on VAWG in KR-I, followed by a presentation of the handbook developed by EFI, ABC for Gender Sensitive Legislation by Dr. Ibrahim Draji, professor of international law.

Ms. Narmin Qaradaghi, a lawyer and legal advisor at Women Empowerment Organization, moderated the **last session** where the experts discussed the priority areas for amending discriminative legislation, and brainstormed recommendations and ideas to move forward, underlying the importance of changing discriminative legislation and making an institutional reform, in order to address VAWG in a more comprehensive manner.

During the lively and rich discussions, experts underlined pertinent gaps in the law and made key recommendations.



About UNSCR 1325

The United Nations Security Council adopted resolution (S/RES/1325) on women and peace and security on 31 October 2000. The resolution reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security.



Most important gaps discussed

Personal Status Law

- Early marriage still exists, and the age for secondary school is not compulsory.
- The law regards marriage outside the court as a criminal offense, but not divorce if it takes place outside the court, and thus opening for loopholes, as selling property before divorce to avoid paying the wife's dues, etc.
- There are not yet established legal measures for children born out of wedlock, especially after the ISIS attack.

Anti- Domestic Violence Law no. (8) of 2011 of Kurdistan Region

Most gaps and loopholes discussed were linked to the law combating domestic violence.

- Despite the existence of a draft law amendment under study in the Parliament of the Kurdistan Region since 2017, the coordination between Kurdistan Regional Parliament, legal experts in the Judicial Council, and gender experts from the civil society organizations active in the field of women's rights is still weak and the suggestions for amendments by gender experts are not considered yet.
- There is a lack of a comprehensive definition of VAWG in the existing domestic violence law, in line with the recommendations of the CEDAW Committee and as per UN standards, allowing to target and address all forms of violence against women.
- Within the definition of the family set in Articles 1 and 2, an ambiguity in the degree of kinship (to the fourth degree) exists, and that sometimes explains whether the definition includes (the fourth degree) or not.
- In reporting the crime, there is an inconsistency and a difference in concept between the Kurdish and Arabic contexts.
- The law does not clearly define the working mechanisms of the reconciliation committee in accordance with Article (5) and the terms of reference of the persons working in the committee.
- Protection orders are not implemented and the duration is very short – it does not exceed 48 hours.
- The law does not define the working mechanisms of shelters. The law mentions examples of acts committed against women ("for example"), and this contradicts the principle of the law (there is no crime and no punishment without a context).

“ The existing domestic violence law
needs a comprehensive definition of VAWG ”

Iraqi Penal Code No. (111) of 1969

- Article 398 allowing the perpetrator to escape penalty if marrying the victim of rape, still exists.
- Article (380) on “adultery” still exist while incest is not criminalised.
- Not all forms of harassment are highlighted in the Iraqi Penal Code, especially the acts that are most prevalent in workplace, academic and public places, although the law referred to it in articles nos. (400, 401, 402 and 403).



Key Recommendations

VAWG is a complex problem and therefore it needs a joint and coordinated action. In this regard, the expert roundtable is a unique joint step forward. Key recommendations are provided to mitigate the loopholes present in the current laws. Addressing the aforementioned loopholes would better improve the prevention and the protection of women victims and perhaps decrease the prevalence of uncriminalised acts of violence against women and girls.

- Work towards the adoption of a comprehensive law to combat VAWG that provides a comprehensive definition of VAWG as per UN definition and includes all its forms; that criminalises all forms of VAWG and ensures the penalisation of perpetrators, and that provides for prevention measures and protection orders as well as for services for victims of VAWG (health, economic, social, psychological, legal).
- Amend legislative frameworks to ensure the abolition of discriminatory articles related to women, particularly discriminatory articles in Penal Code and Personal Status Law) in particular Art 398, 380 of Iraqi Penal Code.
- In Personal Status Law, divorce should be considered a criminal offence if it takes place outside the court. Article (38) should not be applied if divorce is not effective in the courts in relation of the issue of (spouses' desire for reform) in the event of a revocable divorce. The second paragraph of Article (39) must be activated in relation to the husband's obligation to place an amount of money in a special fund for family care within the court, for a period of three months, when filing a divorce case. Financial actions that the husband makes prior to divorce, including selling of his property to avoid paying the wife's dues as compensation and the rights to housing, should not be considered by the courts.
- Male and female judges should strive to interpret legal contexts in favour of women. For example, the Personal Status Court judges in Erbil, after interpreting the legal contexts, have issued the guardianship order based on the request for temporary alimony for the children and the restoration of custody.
- Work on and find legal measures for children born out of wedlock, especially after the ISIS attack.
- Parliament is required to approve a draft amendment to the Anti-Domestic Violence after consulting with main actors implementing the law (the Supreme Judicial Council, Ministry of Interior) and the civil society organizations concerned in this field.
- Expand education and awareness-raising campaigns on violence against women and girls in the media. This task falls primarily on the shoulders of the Ministry of Culture and other ministries.
- Raise the compulsory school age to secondary school (high school), thus contributing to reducing the early marriage phenomenon.
- Ensure inclusion of domestic violence topics in the subjects and curricula of the Ministries of Education and Higher Education, and in the various academic levels up to universities.
- The collaboration between relevant ministries, police, courts, social and health services as well as civil society organisations and health-care providers should be strengthened to work more efficiently towards elimination of all forms of VAWG.

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