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## NANSEN PROFIEL 20-5

**Nood aan bescherming voor  
iraakse vrouw met  
buitenechtelijke relatie en  
kind**

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## Samenvatting/Summary

NANSEN concludes in this Profile that women who have violated socio-cultural norms in Iraqi society, such as women who commit adultery or enter into an extramarital relationship - which may or may not result in extramarital children – risk being persecuted in the sense of the UN Refugee Convention.

Women in these situations will face persecution from both non-state actors, mainly their husbands and their families, and from the Iraqi state itself. On the one hand a woman cannot experience her sexuality freely in the Iraqi society and any socio-cultural transgression is seen as an attack on the value of her husband or her family. Honour crimes to restore this transgression are common and threaten the life of the woman who entered into the extramarital relationship. Moreover, there is insufficient state protection against these forms of honour killings, as all the reports evidence that state protection against such persecution is severely lacking. In this Profile will be demonstrated that these crimes of honour are insufficiently reported and insufficiently prosecuted. It is also important to note that Iraqi legislation recognises mitigating circumstances for a man who commits honour killings and as such offers a legal condonance. Finally, in this respect, NANSEN will also point out in this Profile the secondary consequences of the transgression of socio-cultural norms: in Iraqi society, which is patriarchal and where survival is based on good community ties, a woman who is rejected for exceeding socio-cultural norms also suffers serious economic and social consequences, even if she succeeds in bringing herself physically to safety.

Secondly, NANSEN will also highlight the risk of direct persecution by the state, because adultery is punishable under Iraqi criminal law. Reports show that extreme prison sentences are common, and that women are at risk of torture and inhumane treatment when serving these sentences.

NANSEN therefore considers that women who have entered into an extramarital relationship cannot return to Iraq because they have an objective fear of persecution within the meaning of the UN Refugee Convention.

Dit NANSEN Profiel onderzoekt de nood aan internationale bescherming van een Iraakse vrouw die na haar huwelijk een buitenechtelijke relatie aanging, waarbij deze buitenechtelijke relatie resulteerde in een zwangerschap. NANSEN is van mening dat deze vrouwen een specifieke sociale groep vormen en dat zij omwille van specifieke, persoonlijke redenen risico lopen op vervolging indien ze gedwongen moeten terugkeren naar Irak

## **Deel 1. Algemene situatie**

### **1.1 Algemene situatie voor vrouwen in Irak**

Vooreerst is het belangrijk de context van dit profiel te schetsen. Irak verkeert nog steeds in een precare veiligheidssituatie na lange decennia van oorlogen en civiele onrust. Dit heeft een bijzonder ernstige impact gehad op de situatie van vrouwen en de mate waarin zij hun rechten kunnen doen gelden in het land.

*Iraq in 2018 is a fragile state. It is country emerging from conflict and facing the challenge of reconstructing core physical infrastructure and delivering public services to 39 million people. According to the UN Inter-Agency Information and Analysis Unit, government expenditure for 2013 totaled \$118.3 billion, an increase of 18 percent over 2012 and exceeding 70 percent of GDP. The budget has three main areas: energy, security/defense and social services, accounting for 21 percent, 14 percent and 13 percent of the total budget respectively.<sup>10</sup> Thus, Iraqi government spending is more highly focused on energy and defense than contributing to development needs. In fact, about 60 percent of Iraqi households are suffering from the lack of at least one of the following: access to adequate water supply and sanitation, a minimum of 12 hours of electricity from the public network a day, and food security.<sup>11</sup> As of 2015–2016, Iraq invested only 5.7 percent of its government expenditure on education, which puts the country on the bottom ranking of Middle East countries in any given year.<sup>12</sup> Iraq in 2018 is a fragile state. It is country emerging from conflict and facing the challenge of reconstructing core physical infrastructure and delivering public services to 39 million people. According to the UN Inter-Agency Information and Analysis Unit, government expenditure for 2013 totaled \$118.3 billion, an increase of 18 percent over 2012 and exceeding 70 percent of GDP. The budget has three main areas: energy, security/defense and social services, accounting for 21 percent, 14 percent and 13 percent of the total budget respectively.<sup>10</sup> Thus, Iraqi government spending is more highly focused on energy and defense than contributing to development needs. In fact, about 60 percent of Iraqi households are suffering from the lack of at least one of the following: access to adequate water supply and sanitation, a minimum of 12 hours of electricity from the public network a day, and food security.<sup>11</sup> As of 2015–2016, Iraq invested only 5.7 percent of its government expenditure on education, which puts the country on the bottom ranking of Middle East countries in any given year.<sup>1</sup>*

Het is belangrijk te benadrukken dat de situatie van vrouwen in Irak ernstig is achteruitgegaan ten gevolge van de opeenvolgende oorlogen.

*[...] since the 1991 Gulf War, the position of women within Iraqi society has deteriorated rapidly. Women and girls were disproportionately affected by the*

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<sup>1</sup> V. VILARDO en S. BITTAR, *Gender profile Iraq – A situation analysis on gender equality and women's empowerment in Iraq*, UN WOMEN en OXFAM, december 2018, p. 5.

*economic consequences of the U.N. sanctions, and lacked access to food, health care, and education. These effects were compounded by changes in the law that restricted women's mobility and access to the formal sector in an effort to ensure jobs to men and appease conservative religious and tribal groups.*

*According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), as a result of the national literacy campaign, as of 1987 approximately 75 percent of Iraqi women were literate; however, by year-end 2000, Iraq had the lowest regional adult literacy levels, with the percentage of literate women at less than percent.<sup>25</sup> Women and girls have also suffered from increasing restrictions on their freedom of mobility and protections under the law. In collusion with conservative religious groups and tribal leaders, the government issued numerous decrees and introduced legislation negatively impacting women's legal status in the labor code, criminal justice system, and personal status laws.<sup>2</sup>*

Ook UN Iraq bevestigd:

*Years of repression, economic actions, and armed conflicts have led to the deterioration in the lives of women in Iraq and an associated loss to the country since women are marginalized and unable to contribute economically, socially and politically. Iraqi women suffer from a lack of education opportunities, a lack of health care, and limited access to the labour market as well as high levels of violence and inequality. These conditions are often exacerbated by misconceptions of traditions, cultural and social values, perceptions, a lack of awareness of women's rights and potential as well as institutional and legal barriers.<sup>3</sup>*

In 2018 dat wat betreft de gelijkheid tussen vrouwen en mannen, Irak zich op de laatste plaats bevindt in de MENA-regio.

*Iraq ranked 121st out of 188 countries the UN Human Development Index in 2017 and 123rd on the UN Gender Inequality Index (GII).<sup>13</sup> Iraq holds one of the lowest GII rankings (123) in the MENA region<sup>4</sup>*

Ook recente ontwikkelingen zoals de Corona-crisis hebben bijgedragen aan het verslechteren van een reeds precaire situatie, waarbij bijvoorbeeld meer melding gemaakt wordt van huiselijk geweld.

*The lockdown and the curfew have severely impacted the ability of women facing abuse at their homes to communicate with us and to seek help.<sup>5</sup>*

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<sup>2</sup> HUMAN RIGHTS WATCH, *Backgrounder on women in Iraq*, 2003, beschikbaar op:

<https://www.hrw.org/legacy/backgrounder/wrd/iraq-women.pdf>

<sup>3</sup> UN IRAQ, *Women in Iraq Factsheet*, 2013, beschikbaar op:

[http://webcache.googleusercontent.com/search?q=cache:k-waZYkiJe8J:www.uniraq.com/index.php%3Foption%3Dcom\\_k2%26view%3Ditem%26task%3Ddownload%26id%3D3\\_a0648978643576b1765216c6562b256b%26lang%3Den+&cd=15&hl=nl&ct=clink&gl=be](http://webcache.googleusercontent.com/search?q=cache:k-waZYkiJe8J:www.uniraq.com/index.php%3Foption%3Dcom_k2%26view%3Ditem%26task%3Ddownload%26id%3D3_a0648978643576b1765216c6562b256b%26lang%3Den+&cd=15&hl=nl&ct=clink&gl=be)

<sup>4</sup> V. VILARDO en S. BITTAR, *Gender profile Iraq – A situation analysis on gender equality and women's empowerment in Iraq*, UN WOMEN en OXFAM, december 2018, p. 5.

<sup>5</sup> UN WOMEN, *Despite compounding challenges, women in Iraq play vital roles in the country's COVID-19 response*, juli 2020, p. 6, beschikbaar op:

Dit is in lijn met de algemene bevindingen waaruit blijkt dat vrouwen in Irak vaak het slachtoffer worden van verschillende vormen van geweld.

*Women are subjected to high levels of violence as a result of the accumulation of policies by the former regime and the wars and embargo these policies brought on the country. In addition to the effects brought by the post- 2003 terrorist attacks , the killings and displacement , which has led to high rates of unemployment , and increasing levels of poverty among members of the community , as indicated by the Comprehensive Survey of Social Conditions and Health of Iraqi Women (I-WISH 2011). 2. One of the challenges faced by the official institutions and CSOs, in addressing this issue, is a lack of a database and statistics and the lack of studies and researches in this area.<sup>6</sup>*

Het moet benadrukt worden dat hoewel de algemene veiligheidssituatie in Irak verbeterd is, de situatie van vrouwen en hun toegang tot rechten nog steeds de nasleep ondervindt van de instabiliteit en het geweld.

*These factors have led to the increase of violence and the growth of militancy and extremism, which made women a target for extremists. The U.S. invasion of Iraq in 2003 reinforced sectarian and ethnic divisions, and the dominance of Islamic political parties. Neither the Iraqi or the U.S. leaderships opted to install the basic principles of equality, which in its turn allowed tribal traditions and customs and religious conservative and extreme elements to exploit the law to strengthen their conservative positions towards women's rights, and to focus only on the reproductive role of women in service of family and subordination to men.*

Ook Human Rights Watch bevestigt dit en wijst expliciet op de rol die eerwraak speelt in de Iraakse samenleving:

*Women's rights have suffered dramatically in Iraq since the Gulf War of 1991: as security and stability have eroded, militias promoting misogynist ideologies have targeted women and girls for assassination and intimidated them to stay out of public life. Women risk harassment and abuse from Iraq's virtually all-male police and other security forces, compounding their frequent victimization at home. Fathers, brothers, and husbands sometimes kill women for a wide variety of perceived "honor" transgressions. Iraqi law protects perpetrators of violence against women: Iraq's penal code considers "honorable motives" to be a mitigating factor in crimes, including murder. The code also gives husbands a legal right to discipline their wives.<sup>7</sup>*

Dit wil zeggen dat zeker alleenstaande vrouwen, of vrouwen die niet kunnen rekenen op de steun van hun familie, zoals vrouwen die verstoten worden wegens een buitenechtelijke relatie, erg kwetsbaar zijn. Ook vrouwen die deel uitmaken van een etnische minderheid of

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<https://www.unwomen.org/en/news/stories/2020/7/feature-women-in-iraq-play-vital-roles-in-the-countrys-covid-19-response>

<sup>6</sup> IRAQI WOMEN NETWORK, RAFIDAIN WOMEN COALITION, NO TO VIOLENCE AGAINST WOMEN IN KIRKUK, *Iraqi women in armed conflict and post conflict situation – shadow report submitted to the CEDAW committee at the 57<sup>th</sup> session, 2014*, beschikbaar op:

[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGO\\_IRQ\\_16192\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_16192_E.pdf)

<sup>7</sup> HUMAN RIGHTS WATCH, *No one is safe: Abuses of Women in Iraq's Criminal Justice System*, 2014, p. 15



die intern ontheemd zijn, zoals bijvoorbeeld vrouwen die gedwongen terugkeren, lopen een groter risico.

*Women's freedom of movement in public places is severely restricted. The main reason is due to the deterioration of the security situation and the criminal operations of the militias on one hand, and the poor qualification of the security services, despite their large numbers, on the other hand. When women are subjected to violence and assault, the majority of them avoid reporting the incident, fearing a scandal and blame and accusation from their families and society in general. In many cases, the victims were killed by their families under the pretext of "honor." Such practices occur in many parts of Iraq.*

*Many women face threats on sectarian basis, and threats on basis of gender. Also, women suffer from stress on both a domestic and a national level. Often, displaced women from ethnic and religious minorities are the most vulnerable<sup>8</sup>*

### 1.2 Vrouwen als sociale groep

Vrouwen kunnen beschouwd worden als een specifieke sociale groep die vervolgd wordt volgens de VN-Vluchtelingenconventie.<sup>9</sup>

*It follows that sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently than men. Their characteristics also identify them as a group in society, subjecting them to different treatment and standards in some countries.<sup>10</sup>*

### 1.3 Mensenrechtenschendingen als vervolging

NANSEN stelt vast dat het vaak erg moeilijk is voor Iraakse vrouwen om een specifieke vervolging te bewijzen. Enerzijds is de vervolging vaak niet persoonlijk te staven, omdat de vervolgingsfeiten zitten ingebed in de manier waarop de Iraakse samenleving hen behandelt in het algemeen, en aldus geen specifiek persoonlijk bewijs voorhanden is. Anderzijds is het vaak ook zo dat het voor vrouwen die zijn teruggekeerd uit het Westen gaat om toekomstige vermoedelijke vervolging wegens hun verwestering, of een vervolging omwille van feiten die zich hebben voorgedaan na hun vlucht, zoals bijvoorbeeld het aangaan van nieuwe relaties, zodat er opnieuw geen bewijs uit het verleden voorhanden is.

NANSEN wijst er echter op dat vervolging in de zin van de VN-Vluchtelingenconventie verwijst naar potentiële vervolging die in de toekomst redelijk waarschijnlijk is. Vervolging in het verleden kan bijdragen aan een omkering van de bewijslast. Bovendien zal de vervolging niet beperkt zijn tot specifieke daden, maar in het algemeen vaak een samenloop zijn van

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<sup>8</sup> IRAQI WOMEN NETWORK, RAFIDAIN WOMEN COALITION, NO TO VIOLENCE AGAINST WOMEN IN KIRKUK, *Iraqi women in armed conflict and post conflict situation – shadow report submitted to the CEDAW committee at the 57<sup>th</sup> session*, 2014, p. 8, beschikbaar op: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGO\\_IRQ\\_16192\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_16192_E.pdf)

<sup>9</sup> Zie ook overweging 30 en artikel 10 d van de EU Kwalificatierichtlijn

<sup>10</sup> UNHCR, *GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, beschikbaar op: <https://www.unhcr.org/publications/legal/3d58ddef4/guidelines-international-protection-1-gender-related-persecution-context.html>

verschillende elementen die bijdragen tot vervolging. Dit is voldoende om de drempel van vervolging te bereiken:

*In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on “cumulative grounds”<sup>11</sup>*

*Severe discrimination or the cumulative effect of various measures not in themselves alone amounting to persecution, as well as their combination with other adverse factors, can give rise to a wellfounded fear of persecution or, otherwise said: make life in the country of origin so insecure from many perspectives for the individual concerned, that the only way out of this predicament is to leave the country of origin.<sup>12</sup>*

## **Deel 2. Risico op vervolging**

In dit onderdeel zal NANSEN uiteenzetten dat vrouwen in Irak die een buitenechtelijke relatie hebben en aldus verdacht of beschuldigd kunnen worden van overspel, vervolging van zowel niet-statelijke actoren vrezen als vervolging vanwege statelijke actoren. Enerzijds zal duidelijk worden dat vrouwen die een buitenechtelijke relatie hebben, geacht worden belangrijke socio-culturele normen te overschrijden, en aldus zo de eer van de familie en de man krenken. Hierbij lopen zij een groot risico om het slachtoffer te worden van eerwraak. Daarnaast is duidelijk dat ook wanneer vrouwen officieel scheiden, dit het risico op vervolging niet noodzakelijk wegneemt. Bovendien is duidelijk dat er geen statelijke bescherming voorhanden is om vrouwen te beschermen tegen deze eerwraak.

Ten tweede zal NANSEN uiteenzetten dat vrouwen ook objectief kunnen geacht worden vervolging te vrezen vanwege de staat, omwille van het feit dat overspel ook strafrechtelijk bestraft wordt in Irak. Uit de cijfers blijkt dat vrouwen erg zwaar gestraft dreigen te worden voor overspel.

### **2.1 Vervolging omwille van buitenechtelijke relatie door niet-statelijke actoren**

Vrouwen die een buitenechtelijke relatie aangaan in Irak zullen eerst en vooral vervolging moeten vrezen van hun familie en hun gemeenschap. Het is zo dat eerwraak voor vrouwen die socio-culturele normen overtreden, zoals het aangaan van een buitenechtelijke relatie, een veelvoorkomend fenomeen is.

*So-called “honour crimes” - that is, violence committed by family members to protect the family’s honour - reportedly remain of particular concern. Most frequently, women and girls and, to a lesser extent, men and boys, are killed or subjected to other types of violence such as mutilations, because they are judged to have transgressed cultural, social or religious norms bringing shame to their family. **“Honour crimes” are said to occur for a variety of reasons, including adultery, loss of virginity (even by rape),***

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<sup>11</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1, Reedited, Geneva, januari 1992, UNHCR 1979, § 53

<sup>12</sup> UNHCR, *Statement by Ms. Erika Feller, Director, Department of International Protection, UNHCR, SCIFA*, 6 november 2002, beschikbaar op: <https://www.unhcr.org/admin/dipstatements/42bab1b52/statement-ms-erika-feller-director-department-international-protection.html>



*refusal of an arranged marriage, attempt to marry someone against the wishes of the family or making a demand for a divorce. **Even the suspicion or rumour that any of these acts have been committed can reportedly result in “honour crimes”.** With the emergence of mobile phones and internet, allowing young couples to communicate in secret, cases have been reported in which girls, or boys, were killed on the basis of suspicious or incriminating messages or phone calls.*<sup>13</sup>

Deze misdaden moeten uiteraard bekeken worden in de context van de Iraakse samenleving en het is belangrijk om te benadrukken dat dit gebeurt in alle maatschappelijke groepen en in alle religies:

*Grounded in the cultural belief that women’s bodies are the site of honour and that their sexuality and movement must be strictly controlled in order to avoid bringing dishonour upon the entire family, honour crimes are acts of violence perpetrated by family members against a relative who is perceived to have brought shame upon the family or tribe. MRG reports in 2015 that women are the main victims of such crimes, which are overwhelmingly perpetrated by male family members, although occasionally males are also the victims of such violence. Honour crimes are most often perpetrated after a woman has committed or is suspected of committing any of the following transgressions: ‘engaging in friendships or pre-marital relationships with a member of the opposite sex; refusing to marry a man chosen by the family; marrying against the family’s wishes; committing adultery; or being a victim of rape or kidnapping’. In Iraq, honour crimes often take the form of murder, although they also can encompass other forms of violence. Sometimes families will compel a female member accused of wrongdoing to kill herself as an alternative to carrying out the killing themselves (hence, the large numbers of female suicides, especially by self-immolation in Iraq). **Honour crimes take place in all areas of Iraq and cut across ethnic and religious lines.***<sup>14</sup>

Het blijkt duidelijk dat er geen voldoende statelijke bescherming is tegen deze misdaden van eerwraak en dat bovendien, zoals in een volgend deel zal uiteengezet worden, de staat zelf bijdraagt aan het tolereren van deze misdaden. Enerzijds omdat onvoldoende rapportering en vervolging plaatsvindt, en anderzijds omdat eerwraak wordt gezien als een verzachtende omstandigheid en dus een vorm van legale rechtvaardiging biedt voor families die hun vrouwen mishandelen of vermoorden omwille van hun socio-culturele transgressie.

*In addition to the actual ordeal of suffering sexual violence, women often fear or actually face social ostracism and further reprisals, including “honour killings” at the hands of their families. If women file a complaint or are arrested, they may, according to reports, face accusations, harassment and abuse from Iraq’s male-dominated police, who are said to be generally reluctant to deal with cases of sexual violence. In rural areas, impartial investigations are said to be compromised by police members’ own tribal affiliations. Furthermore, women and girls may be subjected to detention*

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<sup>13</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, p. 37 available at: <https://www.refworld.org/docid/4fc77d522.htm>

<sup>14</sup> EASO, *Country of Origin Information Report – Iraq – Targeting of individuals*, maart 2019, p. 160-161, beschikbaar op: <https://www.easo.europa.eu/sites/default/files/publications/EASO-COI-Report-Iraq-Targeting-Individuals.pdf>

and criminal procedures on prostitution or adultery charges, even in the case of forced prostitution and rape.<sup>15</sup>

*Because many honour crimes are unreported or disguised by the family as accidents or suicides, it is difficult to assess the true scale of their incidence. Minority Rights Group adds that ‘as a general rule, crimes go unreported and unprosecuted and are seen by the police and the judicial authorities as falling within the responsibility and discretion of male family members.’ If prosecution does take place, the Iraqi Penal Code allows mitigated sentences for perpetrators of crimes against women in which ‘honour’ was a motive.<sup>16</sup>*

Het Iraakse strafwetboek voorziet zoals gezegd een verzachtende omstandigheid voor misdaden van eerwraak en dergelijke misdaden worden ook vaak in zijn geheel ongestraft gelaten.

*The Iraqi Penal Code contains provisions that allow lenient punishments for “honour killings” on the grounds of provocation or if the accused had “honourable motives”. The punishment is between six to 12 months imprisonment. Article 409 further provides that if a person catches his wife or a female relative in the act of committing adultery and kills/injures one or both persons involved immediately, the punishment will not exceed three years. The law does not provide any guidance as to what “honourable motives” are and therefore, observers note, leaves scope for wide interpretation and abuse. **“Honour crimes” are reported to be frequently committed with impunity, given the high level of social acceptance of this type of crime, including among law enforcement officials.** “Honour crimes” are reported to be committed in all areas of Iraq, though there is generally more information available in the Kurdistan Region, where the KRG has taken steps to combat the practice. Importantly, the KRG has introduced legal amendments to the Iraq Penal Code, effectively treating “honour killings” on the same level as other homicides.<sup>17</sup>*

Slachtoffers die vervolgd of bedreigd worden door hun familie, worden niet voldoende beschermd door een gebrek aan opvangmogelijkheden en door het gebrekkige juridische systeem.

*In cases of (alleged) adultery, the family’s decision to kill the woman in order to “cleanse” the family’s honour can generally not be reversed through mediation, and the woman has no other option but to remain in the shelter. Most shelters are reportedly under-resourced and unable to provide all necessary services. Women’s shelters can also not guarantee full physical protection to women at risk, especially if a woman has to temporarily leave the shelter to appear in court. Shelter employees*

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<sup>15</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, p. 36 available at: <https://www.refworld.org/docid/4fc77d522.htm>

<sup>16</sup> EASO, *Country of Origin Information Report – Iraq – Targeting of individuals*, maart 2019, p. 160-161, beschikbaar op: <https://www.easo.europa.eu/sites/default/files/publications/EASO-COI-Report-Iraq-Targeting-Individuals.pdf>

<sup>17</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, p. 37 available at: <https://www.refworld.org/docid/4fc77d522.htm>

*have reportedly been subjected to various forms of threats and intimidation because of their work and involvement in matters that are widely regarded as “family affairs”.*<sup>18</sup>

Minory Rights Group stelt vast dat er onvoldoende rapportering is, en onvoldoende vervolging.

*Because many honour crimes are unreported or disguised by the family as accidents or suicides, it is difficult to assess the true scale of their incidence. Minority Rights Group adds that ‘as a general rule, crimes go unreported and unprosecuted and are seen by the police and the judicial authorities as falling within the responsibility and discretion of male family members.’ If prosecution does take place, the Iraqi Penal Code allows mitigated sentences for perpetrators of crimes against women in which ‘honour’ was a motive.*<sup>19</sup>

Door de precare veiligheidssituatie in Irak blijkt dat ook steeds meer misdaden van eerwraak plaatsvinden en deze sociaal geaccepteerd worden.

***The deterioration of the security situation**, and the emergence of armed groups and religious extremism and entrenchment of customs and tribal traditions in the community, **as well as the weakness of the security institutions and justice**, and the offender escaping punishment covered by law (Article 128 - a) of the Penal Law 111 (1969), **all contributed to the high rates of so-called honor crimes, which are socially justified**, and are increasing more in rural areas than in the city. 2. The cases files show that most cases of killing women are registered against an unknown person, or as accidents. These crimes are registered either as accidentally being burned to death or suicide.*<sup>20</sup>

Ook EASO stelt vast dat er onvoldoende statelijke bescherming is voor vrouwen die het slachtoffer werden of dreigen te worden van eerwraak.

*In her June 2018 report of an official visit to Iraq (14-23 November 2017) the Special Rapporteur on extrajudicial, summary or arbitrary executions defines honour killing as the ‘arbitrary deprivation of life of women and girls (but possibly also men and boys) by (male) family members or tribal members, because they are deemed to have brought shame or “dishonor” on the family or tribe’. Although the scale of honour killings in Iraq is unknown due to severe underreporting, the estimates that several hundreds of girls and women become victims of honour killings in Iraq each year. The Special Rapporteur was informed that ‘this issue affects all parts of the country, cutting through religious and ethnic divides, with a strong tribal element and linked with the strong patriarchal society.’ UNAMI also reported in 2018 that “the killing of women and*

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<sup>18</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, p. 37 available at: <https://www.refworld.org/docid/4fc77d522.htm>

<sup>19</sup> EASO, *Country of Origin Information Report – Iraq – Targeting of individuals*, maart 2019, p. 160-161, beschikbaar op: <https://www.easo.europa.eu/sites/default/files/publications/EASO-COI-Report-Iraq-Targeting-Individuals.pdf>

<sup>20</sup> IRAQI WOMEN NETWORK, RAFIDAIN WOMEN COALITION, *NO TO VIOLENCE AGAINST WOMEN IN KIRKUK, Iraqi women in armed conflict and post conflict situation – shadow report submitted to the CEDAW committee at the 57<sup>th</sup> session*, 2014, p. 8, beschikbaar op: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGO\\_IRQ\\_1\\_6192\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_1_6192_E.pdf)

*girls to protect the “honour” of the family continued, as does the fact the police appear to be reluctant to meaningfully investigate such incidents.’<sup>21</sup>*

Daarnaast is het erg belangrijk te benadrukken dat vrouwen die het slachtoffer worden van eerwraak of van vervolging vanwege hun familie, niet enkel geweld vrezen maar ook in het algemeen vervolging kunnen vrezen omdat hun overlevingskansen in een samenleving die voornamelijk berust op gemeenschapsbanden erg dalen wegens verstoting ten gevolge van hun socio-culturele transgressies.

*Women at risk of “honour crimes” at the hands of their family are extremely vulnerable, as they have lost “the primary source of protection and support”. Their options are very limited and include shelters, prisons or the home of another relative or influential community leader.<sup>22</sup>*

*In a May 2018 report the Finnish Immigration Service made the observation that ‘The community-based culture in Iraq has a major influence on the situation of women. As men have the main responsibility for their families and family honour, most women are dependent on men for cultural reasons. Despite some change in attitudes, women’s lives are restricted by these cultural norms. Women who violate them can become victims of so-called honour violence. Living alone as a woman is not generally accepted in Iraq because it is considered inappropriate behaviour. Women can also face other legal infringements. Women also face discrimination in the labour market and education. In practice, a single woman has very poor chances of making a living independently.’<sup>23</sup>*

Alleenstaande vrouwen worden geconfronteerd met bijzonder veel obstakels die een zelfstandig leven mogelijk maken, zo rapporteert EASO verwijzend naar een rapport van UNDOS en vaststellingen van het Nederlandse ministerie van Buitenlandse zaken:

*The USDOS annual human rights report (covering 2017) states that single women and widows often had problems registering their children’s births, leading to problems accessing public services like food, healthcare and education. In a November 2016 report the Netherlands Ministry of Foreign Affairs makes note of the difficult position of single, divorced or widowed women. The report states that it is customary for divorced women to return to the care their families, widowed women may be taken in by their own family or by their in-laws. In those circumstances, male relatives will act as their custodian. Women who have been repudiated by their family and lack a social support network are considerably worse off. The Netherlands Ministry of Foreign Affairs further notes that the position of single women who are self-sufficient because they have a job differs from the position of unemployed and/or uneducated women.*

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<sup>21</sup> EASO, *Country of Origin Information Report – Iraq – Targeting of individuals*, maart 2019, p. 160-161, beschikbaar op: <https://www.easo.europa.eu/sites/default/files/publications/EASO-COI-Report-Iraq-Targeting-Individuals.pdf>

<sup>22</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, p. 37 available at: <https://www.refworld.org/docid/4fc77d522.htm>

<sup>23</sup> EASO, *Country of Origin Information Report – Iraq – Targeting of individuals*, maart 2019, p. 164-165, beschikbaar op: <https://www.easo.europa.eu/sites/default/files/publications/EASO-COI-Report-Iraq-Targeting-Individuals.pdf>



Het is dan ook erg belangrijk te benadrukken dat zelfs wanneer een vrouw erin slaagt om aan eerwraak te ontsnappen, het geweld niet noodzakelijk ophoudt na bijvoorbeeld een scheiding:

*MRG notes in a report on violence against women in Iraq that divorce does not bring an end to the women's problems with their former husband: 'In a large number of cases, women were intimidated by their husbands into giving up their legal rights, such as support payments or child custody, in order to finalize the divorce.' Furthermore, divorced women who return to live with their families may be subject to abuse and stigma due to their status as divorced women. As married women often rely on their husbands as the sole breadwinner, divorce places women in an economically vulnerable situation. Given the lack of employment opportunities for women, it is difficult for them to find a job. Besides that, negative social perceptions of divorced women can leave them vulnerable to sexual harassment, Minority Right Group International adds. A factsheet published in March 2013 by the United Nations Assistance Mission for Iraq (UNAMI), in a section headed Female-Headed Households (FHHs), states: 'In Iraq, due to years of war and political instability, 10 % of households are headed by females who are widowed, divorced, separated, or caring for sick spouses. They represent one of the most vulnerable segments of the population and are more exposed to poverty and food insecurity as a result of lower overall income levels. More than half of Female Heads of Households (FHoH) are between the ages of 35 and 54. This segment of the population is particularly disadvantaged in terms of education and access to employment and adequate shelter.'*<sup>24</sup>

De lagere en kwetsbare positie van de vrouw in de Iraakse samenleving wordt benadrukt als men kijkt naar het Iraakse strafwetboek dat mannen de verzachtende omstandigheid toekent wanneer zij eerwraak plegen: deze verzachtende omstandigheid wordt immers niet toegekend aan de vrouw zelf.

• *Article ( 409 ) [van het Iraakse strafwetboek, noot NANSEN) : Gives men a mitigating excuse : " If a husband caught his wife or a female kin in the act of adultery, or if she is in bed with her partner, if he kills them both or one of them , the husband is punished by imprisonment, ." This article in its current state constitutes discrimination against women, as it is a legal excuse for a reduced sentence, for men who kill defending their honor. This does not apply to a woman who surprises her husband and partner in the marital bed and kills them.*<sup>25</sup>

Het is ook van belang te benadrukken dat wanneer kinderen geboren worden uit een buitenechtelijke relatie, het risico op eerwraak vanzelfsprekend ook erg reëel is:

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<sup>24</sup> EASO, *Country of Origin Information Report – Iraq – Targeting of individuals*, maart 2019, p. 164-165, beschikbaar op: <https://www.easo.europa.eu/sites/default/files/publications/EASO-COI-Report-Iraq-Targeting-Individuals.pdf>

<sup>25</sup> IRAQI WOMEN NETWORK, RAFIDAIN WOMEN COALITION, *NO TO VIOLENCE AGAINST WOMEN IN KIRKUK, Iraqi women in armed conflict and post conflict situation – shadow report submitted to the CEDAW committee at the 57<sup>th</sup> session*, 2014, p. 40, beschikbaar op: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGO\\_IRQ\\_1\\_6192\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_1_6192_E.pdf)

*In less common but more extreme circumstances, women who bear children outside of marriage may fear so-called 'honor' crimes, in which family members retaliate against women for perceived transgressions against the family 'honor.'*<sup>26</sup>

## 2.2 Vervolging omwille van een buitenechtelijke relatie door statelijke actoren

Uit voorgaande mag al blijken dat, hoewel in dit profiel de opdeling wordt gemaakt tussen vervolging vanwege niet-statelijke actoren, voornamelijk familie, benadrukt moet worden dat vrouwen die een buitenrechtelijke relatie aangaan ook vervolging vrezen vanwege de Iraakse staat. Dit is enerzijds door nalatigheid van de staat, zoals hierboven reeds beschreven, omdat misdaden die gepleegd worden uit eerwraak onvoldoende worden gerapporteerd, er onvoldoende mogelijkheden zijn voor vrouwen om zichzelf in veiligheid te brengen en de misdaden van eerwraak onvoldoende worden vervolgd.

Het is echter ook van belang te benadrukken dat effectieve strafrechtelijke vervolging vanwege de staat een erg groot risico is voor vrouwen die een buitenechtelijke relatie aangaan, aangezien het Iraakse strafwetboek overspel strafbaar stelt. De gevolgen van een veroordeling voor overspel zijn erg zwaar, gezien de bijkomende factor dat vrouwen in Iraakse gevangenissen dreigen gefolterd of onmenselijk te worden behandeld.

*The Penal Code criminalizes adultery as a misdemeanour. An adulteress and the man with whom she commits adultery are both punishable with a sentence from three months to five years. The same penalty applies if the husband commits adultery, but only if he commits adultery in the conjugal home. No action for adultery may be brought if the complainant (husband or wife) is content to resume married life despite having become aware of the offence.<sup>37</sup> In 2001, KRG amended the adultery offence to hold men liable to the same extent as women, such that a married man may be charged and convicted of committing adultery whether the act is committed inside or outside the home. The Penal Code states that "every husband who incites his wife to commit adultery, and the wife commits adultery through incitement, is punished with imprisonment." This means that the husband's incitement alone is not considered a crime unless the wife actually commits adultery. This Article has been criticized because it does not punish the act of incitement unless the act of adultery is committed, which fails to protect the wife. The existence of the adultery offence may deter a woman from reporting a rape or sexual assault because she fears that she may be prosecuted for adultery. Consensual sex between an unmarried adult man and an unmarried adult woman is not specifically criminalized. However, the conduct may be prosecuted under laws relating to immoral conduct<sup>27</sup>*

Ook hier kan de juridische discriminatie tussen man en vrouw benadrukt worden, hoewel overspel strafbaar is voor beide, is overspel voor de man enkel strafbaar wanneer hij dit pleegt in het gemeenschappelijke huis. Uit een rapport van een lokale Iraakse vrouwenrechten coalitie blijkt dat:

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<sup>26</sup> B. Fisher, *Why non-marital children in the MENA region face a risk of statelessness*, 2015, beschikbaar op: <https://harvardhrj.com/2015/01/why-non-marital-children-in-the-mena-region-face-a-risk-of-statelessness/>

<sup>27</sup> UNDP, *Iraq – Gender justice & the law*, 2018, p. 15, beschikbaar op: [https://arabstates.unfpa.org/sites/default/files/pub-pdf/Iraq%20Country%20Assessment%20-%20English\\_0.pdf](https://arabstates.unfpa.org/sites/default/files/pub-pdf/Iraq%20Country%20Assessment%20-%20English_0.pdf)



*Adultery is criminalized under the 1969 Penal Code of Iraq whose article 377(1) of the 1969 Penal Code of Iraq states that an adulteress and the man with whom she commits adultery are both liable to punishment by imprisonment. Article 377(2) of the Penal Code states that "the same penalty applies if a husband commits adultery in the conjugal home". In sum, while the criminalisation of adultery applies to both sexes, the husband will only commit the crime if he commits adultery in the conjugal home, whereas for a woman, this limitation does not apply. Under Shari'a law, married men or women who commit adultery may also face the punishment of stoning. It is our firm belief that laws criminalizing adultery, such as the 1969 Penal Code of Iraq, are based on and result in discrimination against women. Our Group has noted that the enforcement of such laws leads to discrimination and violence against women in law and in practice and has stressed that while criminal law definitions of adultery may be ostensibly gender neutral and prohibit adultery by both men and women, closer analysis reveals that the criminalization of adultery is both in concept and practice overwhelmingly directed against women and girls. Criminalisation of adultery hence contravenes article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (acceded to by Iraq on 13 August 1986), in which State parties condemn discrimination against women in all its forms, and agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women. Our expert group considers that the offence of adultery, though it may constitute a matrimonial offence, should not be regarded as a punishable criminal offence and, ex forte, should not be punishable by death, stoning or imprisonment.<sup>28</sup>*

Bovendien moet ook benadrukt worden dat, zoals hierboven reeds aangehaald, de Iraakse wet verzachtende omstandigheden toekent aan een man die eerwraak pleegt op zijn vrouw wegens overspel, en aldus zo aldus mee de sociale acceptatie van eerwraak justifyeert.

*Furthermore, honour killings (namely homicide of a member of a family or social group by other members, due to the belief that a woman has brought dishonour upon the family or community (for example by engaging in adultery or zina) are still taking place. Further, the Penal Code provides for more lenient sentences for male perpetrators of honour killings. Article 409 of the Penal Code provides more lenient sentences for a man who "surprises his wife in the act of adultery or finds his girlfriend in bed with her lover and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled". Such sentences are set out in article 130 of the Penal Code, which provides for penalties to be as low as six months for such crimes and up to a maximum of three years. This is particularly lenient given that the usual sentence for murder is life imprisonment under article 405 of the Penal Code or even death under article 406 of the Penal Code. However, the same right is not afforded to a woman who discovers her husband or boyfriend engaging in equivalent activities.<sup>29</sup>*

OHCHR benadrukt dat deze discriminerende wetgeving geweld tegen vrouwen kan verergeren.

*In addition we would like to express our concerns that such discriminatory legislation may exacerbate gender-based violence, as women who are accused and/or convicted*

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<sup>28</sup> OHCHR, *Mandate of the working group on the issue of discrimination against women in law and practice*, OL IRQ 3/2017, 16 november 2017, beschikbaar op:

<https://www.ohchr.org/Documents/Issues/Women/WG/Communications/32/OL-IRQ-16-11-17.pdf>

<sup>29</sup> OHCHR, *Mandate of the working group on the issue of discrimination against women in law and practice*, OL IRQ 3/2017, 16 november 2017, beschikbaar op:

<https://www.ohchr.org/Documents/Issues/Women/WG/Communications/32/OL-IRQ-16-11-17.pdf>

*of adultery tend to be targets of violence and abuse, by members of family, community or law enforcement officers, due to a belief that they deserve to be punished for their moral crimes.*<sup>30</sup>

Daarnaast moet ook benadrukt worden dat, indien effectief tot juridische vervolging wordt overgegaan wegens overspel, vrouwen niet alleen op dat vlak geschonden worden in hun fundamentele rechten, maar bij een veroordeling zij ook dreigen gefolterd of onmenselijk behandeld te worden wanneer zij hun straf uitzitten.

*Female detainees have reportedly been subjected to torture and ill-treatment in Iraqi detention facilities, including also rape or the threat of rape. (Threat of) rape of a female family member is also used as a way to humiliate a male detainee and/or to obtain confessions or information. Women subjected to sexual violence in detention or prison may also subsequently face “honour killings” at the hands of their families.*<sup>31</sup>

Bovendien moet ook benadrukt worden dat extreme gevangenisstraffen veel voorkomend zijn:

*“UNAMI is also concerned at the excessive harshness of some sentences: 15 percent of the convicts had received prison terms ranging from 15 years to life for adultery or prostitution” and two thirds of all women convicted for murder had been sentenced to death. In Baghdad, for example, UNAMI found a number of women in the Rusafa women’s detention centre, who had been sentenced to 15 years imprisonment for adultery or prostitution. 3. “In one case documented by UNAMI in Basra, a female Iraqi refugee who had returned to Iraq to search for her relatives was arrested twice in two different provinces, apparently only because she was an unaccompanied woman who had a relatively large sum of money in her possession. Only repeated interventions by lawyers and UN representatives secured her release two months after her initial arrest. 19”<sup>32</sup>*

### **Deel 3. Conclusie**

NANSEN concludeert uit het voorgaande dat vrouwen die socio-culturele normen hebben overschreden, zoals vrouwen die overspel plegen of een buitenechtelijke relatie aangaan – waar al dan niet buitenechtelijke kinderen uit voortkomen – objectief op verschillende niveaus vervolging vrezten.

Eenzijds is het zo dat, omwille van de culturele context, een vrouw haar seksualiteit niet vrij kan beleven en iedere socio-culturele transgressie wordt gezien als een aanval op de waarde van haar echtgenoot of haar familie. Eerwraak om deze inbreuk te herstellen, is veelvoorkomend en bedreigt het leven van de vrouw die de buitenechtelijke relatie aanging. Bovendien is er onvoldoende statelijke bescherming tegen deze vormen van eerwraak,

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<sup>30</sup> OHCHR, *Mandate of the working group on the issue of discrimination against women in law and practice*, OL IRQ 3/2017, 16 november 2017, beschikbaar op:

<https://www.ohchr.org/Documents/Issues/Women/WG/Communications/32/OL-IRQ-16-11-17.pdf>

<sup>31</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, p. 36 available at: <https://www.refworld.org/docid/4fc77d522.htm>

<sup>32</sup> IRAQI WOMEN NETWORK, RAFIDAIN WOMEN COALITION, *NO TO VIOLENCE AGAINST WOMEN IN KIRKUK, Iraqi women in armed conflict and post conflict situation – shadow report submitted to the CEDAW committee at the 57<sup>th</sup> session*, 2014, p. 45, beschikbaar op: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGO\\_IRQ\\_1\\_6192\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_1_6192_E.pdf)

aangezien uit alle rapporten blijkt dat bescherming tegen deze vervolging onvoldoende voorhanden is, deze misdaden onvoldoende gerapporteerd worden en onvoldoende vervolgd. Daarnaast is ook belangrijk vast te stellen dat de Iraakse wetgeving verzachtende omstandigheden erkend voor een man die eerwraak pleegt. Tenslotte moet wat dit betreft ook gewezen worden op de secundaire gevolgen van de mogelijke eerwraak en de transgressie van de socio-culturele normen: het is immers zo dat in de Iraakse samenleving, die patriarchaal is ingericht en waar overleven berust op goede gemeenschapsbanden, een vrouw die verstoten wordt omwille van het overschrijden van de socio-culturele normen hier ook ernstige economische en sociale gevolgen van ondervindt, zelfs als ze erin zou slagen zichzelf fysiek in veiligheid te brengen.

Daarnaast werd ook vastgesteld dat vrouwen die een buitenechtelijke relatie aangaan rechtstreekse statelijke vervolging vrezen omdat overspel strafbaar wordt gesteld door de Iraakse strafwet. Uit rapporten blijkt dat extreme gevangenisstraffen veel voorkomend zijn, en dat vrouwen het risico lopen op foltering en onmenselijke behandeling wanneer zij deze gevangenisstraf moeten uitzitten.

NANSEN is dus van oordeel dat vrouwen die een buitenechtelijke relatie aangingen, niet kunnen terugkeren naar Irak omdat zij een objectieve vrees hebben voor vervolging in de zin van de VN Vluchtelingenconventie.