

## 1. DEFINITION OF RAPE IN IHT AND INTERNATIONAL LAW ARTICLES 12(First)(G), 13(Second)(V) and 13(Fourth)(F)

*Rape is defined in the IHT Elements of Crimes as:*

The perpetrator invaded 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.

The invasion was 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.

## 2. OVERVIEW OF RAPE AS TORTURE IN INTERNATIONAL LAW

*In certain circumstances, rape has been found to be torture under international law by the ICTY and ICTR.*

Rape is often used for such purposes as intimidation, degradation, humiliation, discrimination, punishment control or destruction of a person and can and should be tried as rape as a means of torture.

## 3. OVERVIEW OF SEXUAL VIOLENCE IN INTERNATIONAL LAW ARTICLES 12(First)(G), 13(Second)(V) and 13(Fourth)(F)

Sexual violence covers crimes that the definition of “rape” fails to encompass yet are of a sexual nature and can be equally painful and degrading to the victim.

## 4. OVERVIEW OF SEXUAL ENSLAVEMENT IN INTERNATIONAL LAW ARTICLES 12(First)(G), (C), 13(Second)(V) and 13(Fourth)(F)

Sexual enslavement involves exercise “of ownership” over the victim by the perpetrator and the subsequent coercion to engage in one or more acts of a sexual nature.

## 5. HONOUR CRIMES

*International bodies have declared that the failure to punish perpetrators of honour crimes violates international law and nullifies the victim’s freedom and enjoyment of human rights. Honour crimes are condoned by the Iraqi Penal Code No. 111 of 1969, and deter women from coming forward to testify.*

Honour crimes are acts of violence against female relatives who are perceived to have brought dishonour upon the family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce, or allegedly committing adultery.

## Honour Crimes

### **Iraqi Laws Condoning Honour Killings Violate Women's Access to Justice as Required by the Iraq Constitution, CEDAW, ICCPR and Security Council Resolution 1325**

#### **Definition of Honour Crimes**

Honour killings are the most prevalent form of honour crimes. These murders are mostly committed by males against female relatives, who are perceived to have brought dishonour upon the family. A woman can be targeted by individuals within her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce (even from an abusive husband) or allegedly committing adultery. The mere perception that a woman has behaved in a specific way to "dishonour" her family, is sufficient to trigger an attack.

#### **Statistics on Honour Crimes in Iraq**

*(see table for worldwide)*

In northern Iraq, more than 4,000 women have been maimed and killed to date in the name of honour; the killers have not been brought to justice. [Kurdish Women's Action Against Honour Killings (KWAHK)] *There are no exact statistics on honour crimes because women are reluctant to come forward due to the unjust laws.*

#### **Articles in Iraqi Penal Code Number 11 of 1969 that Condone Honour Crimes**

*(see attached chart)*

##### **Article 111 of the Iraqi Penal Code was introduced by Saddam Hussein in 1990**

He who discovers his wife, one of his female relatives committing adultery or a male relative engaged in sodomy and kills, wounds or injures one of them, is exempted from any penalty.

**Paragraph 128-** (1) ...the commission of an offense with honourable motive or in response to the unjustified and serious provocation of a victim of an offense is considered a mitigating excuse.

##### **Revolutionary Command Council Order Number 6 of 2001:**

Considering the killing of one's wife or a close female relative (muharam) for honour reasons a mitigating factor under law.

Subject to the conditions of clause (1) of Article 42 of the Constitution, the Revolutionary Command Council decided the following:

First: For the purpose of implementing Article 130 of the Penal Code Number 111 of 1969, it shall be a mitigating factor if a man kills his wife or muharam for honour reasons, or if one of the relatives of the deceased woman killed the one who imputed dishonour to any of them by making reference to her disgraceful deed, which she was killed for.

## IRAQI KURDISTAN: Amended Penal Code Provisions

The government in Kurdistan amended the IPC in 2000 and 2001 to remove mitigated sentences for crimes motivated by honour. This means that women in Kurdish Iraq have more rights than women in the rest of Iraq.

- The Patriotic Union of Kurdistan (PUK) passed Decree No.59 on April 12, 2000: Lenient punishment for killing women or torturing them with the pretext of purifying shame shall not be implemented. The court should not apply articles 130 and 132 of the Iraqi Penal Code no.111 of the year 1969 to reduce the penalty of the perpetrator.
- The Kurdistan Democratic Party (KDP) passed **Law No.14 of 2002:**

Crimes against women with the pretext of 'honourable motivation' will not be legally liable for lenient punishment and Articles 128, 130 and 131 of the Iraqi Penal Code no.111 of the year 1969 will not be implemented.

### International Bodies on Honour Crimes

#### **U.N. General Assembly 59<sup>th</sup> session, Third Committee** *October 2004*

Bearing in mind that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of crimes committed against women and girls in the name of honour and to provide protection to the victims, and that not doing so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.

#### **CEDAW Committee General Recommendation No.19** *1992 para.24*

The Committee on the Elimination of Discrimination Against Women recommends that:

- (r) measures that are necessary to overcome family violence should include:
  - (ii) legislation to remove the defense of honour in regard to the assault or murder of a female family member.

#### **Concluding Observations of the CEDAW Committee: Iraq** *06/14/2000 para.193, 194.*

The Committee is also deeply concerned by the violence against women perpetrated through honour killings. The Committee urges the Government in particular to condemn and eradicate honour killings and ensure that these crimes are prosecuted and punished in the same way as other homicides.

## International Law

### **CEDAW, Article 5(a)**

*Modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*

International law addresses situations in which custom and tradition interfere with the treatment of women as citizens and human beings with the same rights as men.

### **ICCPR, Article 9**

*Everyone has the right to liberty and security of person.*

International protections for the right of women to sexual autonomy can also be found in the principal of bodily integrity enumerated in ICCPR provisions on liberty and security of person. Therefore, when a woman is severely punished for pre-marital sex, her right to make free decisions regarding her body is violated.

### **United Nations, Beijing Declaration and Platform for Action October 1995, para.96.**

International human rights law guarantees women the right to have control over and decide freely and responsibly on matters relating to their sexuality free of coercion, discrimination, and violence.

### **Security Council Resolution 1325**

10. *Calls* on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11. *Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes including those relating to sexual violence against women and girls, and in this regard, stresses the need to exclude these crimes, where feasible from amnesty provisions;

## International Trends to Remove Honour as a Defense

### *Law Reform via Legislation*

#### **TURKEY:**

In 2004, the new Turkish Penal Code was accepted by the Turkish Parliament.

- Certain articles in the Penal Code that were used to grant sentence reductions to honour killing perpetrators have been removed.
- There has been an amendment to the “Unjust Provocation” article, previously employed to grant sentence reductions in honour killing cases. The Justification of Article 29, now entitled “Unjust Acts,” states that this reduction is not applicable to killings in the name of honour.
- Article 38, of the Penal Code states that any person who forces a person to commit crimes receives the same sentence as the perpetrator, and if the person forced is a minor, the sentence is increased.

#### **JORDAN:**

- A Draft law amending Article 340 of the Penal Code which provides for a reduced penalty for men who murder their female relatives in cases of honour killings was submitted to Parliament for consideration in 1999.
- In November of 1999, the amendment was defeated by a large majority of the Lower House of Parliament.

### *Law Reform Via Judiciary - Cases*

#### **JORDAN:**

In October 2002, for the first time, the Court of Cassation sent an honour crime case back to the Criminal Court for tougher sentencing on the basis that the murder was premeditated. The original 3-month sentence passed against Fawaz Syouf was increased to 10 years.

- In January 2002, two brothers from Jordan were given a three-month prison sentence for killing their sister Safa Samir on 7 July 2001.
- The brothers turned themselves in to the police, claiming to have killed their sister to cleanse the family’s honour.
- They were tried for premeditated murder, but the Criminal Court reduced the charge to a misdemeanor citing Article 98 of the Penal Code, which stipulates that a person "provoked" into committing a crime benefits from a reduction in penalty. "The two defendants benefit from a reduction in penalty because their sister's acts brought shame to her family," the court ruled.
- The Court of Cassation increased the sentence against Fawaz Syouf for the honour killing of his sister.

## **DENMARK:**

In June 2006, nine people were sentenced to prison for the honour killing of an 18 year old woman, including family members and friends who plotted and carried out the murder.

- Ghazala Khan was a Danish-Pakistani woman, who was shot and killed in Denmark by her brother after she had married against the will of the family.
- The murder of Ghazala had been ordered by her father to save the family “honour.”
- Nine members of the family and friends of the family took part in arranging and performing the murder.
- They were all found guilty by Østre Landsret (the High Court of Eastern Denmark) on 27 June 2006 on counts of manslaughter and attempted manslaughter (of her husband).

The convicted were ordered to pay one million Danish kroner (134,000 euros) to the husband.

## **Other International Bodies’ Comments**

### **Commission on Human Rights: Report to the Social and Economic Council on the Sixteenth Session of the Commission Resolution April 2004**

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

### **General Comment No.28 Human Rights Committee of the ICCPR 03/2000 para.31**

The right to equality before the law and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in all fields. The commission of so-called “honour crimes” which remain unpunished constitutes a serious violation of the Covenant and in particular of articles 6, 14, and 26.

### **Concluding Observations of the CEDAW Committee: Jordan 01/27/2000 para.179.**

The Committee urges the Government to provide all possible support for the speedy repeal of article 340 and to undertake awareness-raising activities that make “honour killings” socially and morally unacceptable.

### **Concluding Observations of the CEDAW Committee: Turkey 12/08/97 para.179,195**

*\*note Turkey has since repealed its old laws and replaced it with stricter laws.*

The Committee was concerned about the provisions of the Penal Code that allowed less rigorous sanctions or penalties for “honour killings”. The concept contravened the principle of respect for human life and the security of all persons, which was protected by all the international human rights laws. The practice of so-called honour killings, based on customs and traditions, was a violation of the right to life and security of persons and therefore must be appropriately addressed under the law.