

**BRIEFING FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 139<sup>TH</sup> SESSION (9 OCTOBER 2023 - 3 NOVEMBER 2023), WITH RESPECT TO VIOLENCE AGAINST WOMEN IN: KUWAIT** *Submitted by Strategic Advocacy for Human Rights (SAHR), August 2023*



Strategic Advocacy  
Human Rights

**This thematic report<sup>1</sup> considers the legality of violence against women in Kuwait, in particular in relation to sexual violence. In light of the obligation under international human rights treaties to prohibit all violence against women, the global commitment to ending violence against women and girls in the public and private spheres in the context of the 2030 Agenda for Sustainable Development, previous recommendations of the Committee to Kuwait, the recommendations of the UN Secretary General’s Study on Ending Violence Against Women, and those made to Kuwait during the Universal Periodic Review in 2020, it is our hope that the Committee will:**

- **raise the issue of violence against women in its List of Issues Prior to Reporting for Kuwait, in particular asking what progress is being made on drafting and enacting legislation to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law;**
- **in its concluding observations on Kuwait’s State Party Report, recommend that legislation is drafted and enacted as a matter of priority to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law, and including legislation criminalizing domestic violence and marital rape;**
- **in its concluding observations on Kuwait’s State Party Report, recommend that all legislation exonerating or normalizing violence against women in all forms to be repealed or amended.**

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<sup>1</sup> This report was compiled based on information that was publicly available in the English language only. It may not be complete and does not constitute legal advice.

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## 1. INTRODUCTION

Strategic Advocacy for Human Rights (SAHR)<sup>2</sup>, is a peer-led non-governmental organization by and for human right defenders, working to equip a movement of human rights defenders with knowledge and tools to end gender-based violence through litigation, policy, and law reform.

We submit this written contribution for State parties under review for consideration by the Committee, reporting before the 139<sup>th</sup> Session (9 October 2023 - 3 November 2023).

This report highlights key legal inequalities that women face in Kuwait (the “**State Party**”) in relation to violence against women, along with suggested questions to be posed to the State party, namely regarding the lack of appropriate legislation criminalizing all forms of violence against women including rape and domestic violence. In addition, our analysis benchmarks the legislation and practices in Kuwait against the UN Model Law on Rape<sup>3</sup>, published by the former UN Special Rapporteur on Violence against Women, Ms. Dubravka Šimonović, to harmonise national criminal justice responses with accepted international standards.

The aim of this report is to aid and encourage the UN Human Rights Committee (the “**Committee**”), the State and stakeholders, to review national criminal laws and systems and practice with international standards on rape and sexual violence, particularly the UN Model Law on Rape that updates best practices based on the lived realities and recommendations of civil society and survivors.

We hope that the Committee will utilize this report as a key resource in the course of developing its list of issues for Kuwait.

## 2. KEY ISSUES OF CONCERN

### 2.1 Gaps in the definition of sexual violence in the Criminal Code

#### (a) *Background*

- (i) In paragraphs 18 and 19 of its concluding observations report dated 11 August 2026 (the “**2016 Concluding Observations**”), the Committee expressed concerns about the absence of legislation specifically criminalizing sexual violence.
- (ii) The Committee accordingly recommended that the State party criminalize acts of domestic and sexual violence including marital rape, ensure that victims have access to legal, medical, and psychological assistance, reparation and rehabilitation and assist them in reporting incidents, and ensure that cases of domestic violence are thoroughly investigated and that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.

#### (b) *State party’s response*

- (i) In response, the State party stated in paragraph 58 of its Fourth periodic report dated 18 November 2020 (the “**Fourth Periodic Report**”) that violence is criminalized in a number of provisions contained in the Criminal Code (Act

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<sup>2</sup> Website: <https://www.sa-hr.org/>. Email: [connect@sa-hr.org](mailto:connect@sa-hr.org)

<sup>3</sup> United Nations General Assembly, A framework for legislation on rape (model rape law), 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en>

No. 16 of 1960) (“**Criminal Code**”), which are applicable irrespective of the identity of the victim.

(ii) The provisions provided by the State party addressing sexual violence include the following, and are officially classified as “crimes against honour and reputation” in the Criminal Code:

(A) Article 186: Anyone who has sexual intercourse with a female without her consent, using coercion, threat, or deceit, shall be liable to the death sentence or to life imprisonment;

(B) Article 187: Anyone who has sexual intercourse with a female without using coercion, threat or deceit but knowing her to have a mental impairment, to be under the age of 15 or to lack volition for any other reason, or knowing that she does not comprehend the nature of the act or that she believes it to be legitimate, shall be liable to life imprisonment; and

(C) Article 188: Anyone who has sexual intercourse with a female who is over the age of 15 but under the age of 21, without using coercion, threat, or deceit, shall be liable to a term of imprisonment of up to 15 years.

(iii) However, such provisions insufficiently address rape in general and victim rights, in violation of Articles 3, 7 and 9 of the Covenant, guaranteeing, respectively, the equal right of men and women to the enjoyment of civil and political rights in the Covenant; the right to not be subjected to torture or cruel, inhuman, or degrading treatment or punishment; and the right to liberty and security of the person.

(c) *Analysis of State party’s legislation and practical application*

(i) Rape as a crime against honor and reputation

According to the Criminal Code, rape is defined as a crime against “a female,” and more problematically and as confirmed by the State party, classified as a crime against honour, therefore defining rape as a moral crime against the honour and reputation of the victims rather than their right to life, physical integrity, and sexual autonomy (Fourth Periodic Report, 58). Such a categorization disenfranchises the victims of their human rights and facilitates the displacement of perceived harm and redress to family and community members rather than the victims themselves.

Reports of salient cases of violence against women in the State party highlight that the victimization of women is indeed often and predominantly considered a violation of the victim’s male relative’s honour, justifying such males’ relatives’ right to decide and obtain redress on behalf of the victim, and even inflict further violence on the victim to protect family honour<sup>4</sup>. The above categorization of rape as a crime against honour and reputation legally justifies and further entrenches this belief, contributing to the double victimization of the victims of rape in addition to stripping them of their right to redress.

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<sup>4</sup> Y Al Mulla, Kuwait: Pregnant Woman Shot Dead by Brother inside Hospital ICU, Gulf News, Sept. 10, 2020, available at <https://gulfnews.com/world/gulf/kuwait/kuwait-pregnant-woman-shot-dead-by-brother-inside-hospital-icu-1.73760070> [accessed 14 July 2023]; N. Al Bahrani, The Ongoing Fight to end Violence Against Women in Kuwait, Jan. 23, 2023, available at <https://blogs.lse.ac.uk/mec/2023/01/20/the-ongoing-fight-to-end-violence-against-women-in-kuwait/> [accessed 14 July 2023].

Tragically, this double victimization can have fatal results, becoming an additional violation of the right to life protected under Article 6 of the Covenant, despite the Committee's General Comment No. 36 dated 3 September 2019 specifying that State parties must take special measures to protect persons in vulnerable situation such as victims of domestic and gender-based violence .

(ii) Failure to criminalize all sex without consent.

Moreover, the current definition of rape regarding adult female victims, unlike the definition regarding girls and women under 21 or known "to have a mental impairment" specifies that coercion must be exercised through the use of force, deceit, or threat<sup>5</sup>. Such a definition not only materially deviates from the UN Model Rape on Law, as will be further examined in sections 0 and **¡Error! No se encuentra el origen de la referencia.**, but also significantly narrows the scope of rape by refusing to adopt a definition dependent on freely given consent alone. Furthermore, the already problematic requirement that coercion be used introduces additional requirements that coercion must be "exercised through the use of force, deceit or threat," thereby failing to recognize all forms of coercion and introducing yet another hurdle against victims seeking redress.

In addition to being contrary to the rape being understood as any non-consensual sex, such a definition fails to recognize various factors and circumstances that can lead to coercion and intimidation such as economic influence, authority of the perpetrator, and cultural and societal pressure that are prevalent in sexual violence cases including rape<sup>6</sup>.

Such a definition is particularly problematic considering the prevailing cultural and religious norms of the State Party. As an example, a recent study found that women perceive that violence is culturally accepted, especially in the domestic setting, and themselves adopt such beliefs<sup>7</sup>. Under such circumstances, introducing a requirement related to use of force, deceit or threat contributes to further harming victims of rape and discouraging them from seeking redress.

(iii) Absence of statistics regarding sexual violence

The absence of statistics regarding reporting or under reporting of cases of sexual violence and their outcome creates further hurdles in addressing any existing difficulties that victims may face and contribute to their silencing. In particular, it is impossible to assess the magnitude of the problem and its underlying causes without credible and granular official statistics. However, statistics provided by the State Party fail to provide a breakdown of numbers reported, prosecuted, and the penalties imposed, or any other measures undertaken to support victims, or any additional data allowing an understanding of the reporting rates and other underlying structural problems.

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<sup>5</sup> Criminal Code (Act. No. 16 of 1960), Art. 186.

<sup>6</sup> See, e.g., A. Spence, A Contract Reading of Rape Law: Redefining Force to Include Coercion, *Columbia Journal of Law and Social Problems*, 37(1), 57-90; M. Lutz-Priefert, A Call for More Permanent International Definition of Rape, *Creighton International and Comparative Law Journal*, 6(1), 85-101; A. Cole, *Prosecutor v. Gacumbitsi: The New Definition for Prosecuting Rape under International Law*, *International Criminal Law Review*, 8(1,2), 55-86.

<sup>7</sup> A. Alsaleh, *Violence Against Kuwaiti Women*, *Journal of Interpersonal Violence* 00(0), 1-23.

### **Suggested List of Questions for the State party**

- Please report on the measures taken to amend the definition of rape.
- Please provide disaggregated data on sexual violence, including the number of investigations, prosecutions, and convictions of perpetrators, including the penalties imposed, and any remedies and support provided to victims.
- Please indicate what measures have been taken in order to investigate the underreporting of incidence of violence.
- Please provide information on any measures to amend or repeal Article 153 of the Criminal Code.
- Please explain any measures taken to facilitate access to legal recourse by victims of gender-based violence.
- Please provide statistics regarding sexual violence including number of cases reported, prosecuted, penalties imposed, and support provided to victims.
- Please describe any studies or investigations conducted regarding the reporting rate of sexual violence and failure to prosecute sexual violence cases.

## **2.2 Absence of and insufficiency of provisions specifically criminalizing domestic violence**

### **(a) *Background***

- (i) In its 2016 Concluding Observations, the Committee also expressed concerns about reports regarding widespread domestic violence and under-reporting of such violence, including marital rape (2016 Concluding Observations, paragraphs 18 and 19), in violation of Articles 3, 7 and 9 of the Covenant.
- (ii) Highlighting the gravity of this problem, the lack of legislation adequately criminalizing domestic violence despite the prevalence of domestic violence in State party was also raised during the State Party's Universal Periodic Review in 2019, during which over a dozen recommendations were made regarding domestic violence, including the implementation of legislation and policies (Report of the Working Group on the Universal Periodic Review, Kuwait, 2020,157.55 *et seq.*).

### **(b) *State party's response***

- (i) The State party has replied in its Fourth Periodic Report that it is making various efforts to combat domestic violence, for example by way of setting up dedicated centres and shelters and receiving domestic violence reports separately (Fourth Periodic Report, 57 – 70).
- (ii) In paragraph 58 of its Fourth Periodic Report, the State party referred to legal provisions contained in its Criminal Code which address assault and acts of aggression generally, which are applicable irrespective of whether the victim is a man, woman, or child, such as the following:
  - (A) Article 160: Anyone who strikes, wounds, causes bodily harm to, or prejudices the physical integrity of another person in an appreciable

manner is liable to a term of imprisonment of up to 2 years and/or payment of a fine of up to KD 150.

- (B) Article 163: Anyone who commits an act of aggression of lesser gravity than the acts referred to in the preceding articles is liable to a term of imprisonment of up to 3 months and/or payment of a fine of up to KD 22.5.

(c) *Analysis of State party's legislation and practical application*

(i) Developments in the State party's legislation

The articles of the Criminal Code provided by the State party do not in fact criminalize domestic violence specifically but apply to any acts of violence more generally. Given the specificities of domestic violence, such provisions do not adequately address domestic violence nor ensure reparation and redress of the victims. Furthermore, adequate investigation and prosecution of perpetrators cannot be guaranteed without the existence of specific legislation adapted to domestic violence.

A welcome development in the State party's legislative measures against violence against women has been the adoption of the Family Protection Law in August 2020, which creates a committee for the adoption of policies to protect women from domestic violence with the power to recommend the amendment or repeal of laws that contradict the new law<sup>8</sup>. The law also creates helpful mechanisms such as hotlines and dedicated shelters and protection orders preventing abusers from contacting the victims<sup>9</sup>.

(ii) Inadequacies of the Family Protection Law

The Family Protection Law, although a welcome step in the right direction, fails to independently criminalize and establish penalties for domestic violence, or to address violence committed by partners out of wedlock or former partners. This persistent silence hints at a lack of political will from the State party, despite the prevalence and seriousness of domestic violence.

The above-mentioned study on domestic violence in Kuwait found alarming statistics regarding the prevalence of interpersonal violence by intimate partners in Kuwait. According to the study, “[t]he IPV [(interpersonal violence)] against women in Kuwait City is reported by 71% for women who are physically abused, 81% for women who are sexually abused, 89% for women who are psychologically abused [...]”<sup>10</sup>. Such a prevalence was accompanied, and no doubt encouraged, by the widespread cultural acceptance of domestic violence, as shown by the large percentage of women who held beliefs justifying it. For example, 79% of the surveyed women believed that

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<sup>8</sup> R. Begum, Domestic Violence Law Signals Hope for Kuwait's Women, Sept. 29, 2020, available at <https://www.hrw.org/news/2020/09/29/domestic-violence-law-signals-hope-kuwaits-women> [accessed 14 July 2023].

<sup>9</sup> *Ibid.*

<sup>10</sup> A. Asaleh, *supra* note 7.

*“the husband has the right to punish his wife” and 33% believe that “the husband had the right to use violence during family dispute”<sup>11</sup>.*

Such cultural and religious beliefs not only justify domestic violence against women, but also makes it more difficult to seek redress. The prevailing cultural and religious norms, compounded with economic dependence of the victims, contributes to a low reporting rate. Reports regarding the rise of domestic violence rate have highlighted that victims do not file cases, and therefore cannot obtain support or legal redress<sup>12</sup>, and furthermore, reports are often faced with hostility from the police<sup>13</sup>. Although the Family Protection Law introduces helpful measures, lack of any set penalty against abusers continue to contribute to the culture of impunity and therefore discourages victims from filing cases and obtaining available support, also constituting a violation of Article 26 of the Covenant guaranteeing the right to equality before the law and equal protection of the law.

Furthermore, there are significant uncertainties regarding the status of implementation of measures in accordance with the Family Protection Law. For example, reports regarding the establishment of shelters of domestic victims, a crucial measure in ensuring that victims are not exposed to further harm, especially given the absence of any provisions allowing the removal of the abuser from the home, have stated that that no such shelters have been built or are very lacking<sup>14</sup>.

(iii) Generalized culture of impunity sanctioned by existing legislation.

In fact, not only the newly adopted Family Protection Law fails to criminalize all forms of domestic violence, but provisions cited by the State party in its Fourth Periodic Report as evidence of legal protection in fact contribute to the culture of impunity. The State party has stated that if persons in a legal conjugal relationship suffer harm as the result of the use of violence by their spouse, they can demand a divorce on the grounds of that harm under article 126 of the Personal Status Act No. 51 of 1984 as amended by Act No. 61 of 1996 (“**Personal Status Act**”) (Fourth Periodic Report, 60). Further, the spouses may request the annulment of their marriage contract in the manner envisaged in the Personal Status Act (Fourth Periodic Report, 61). Such provisions, although they do not preclude the application of other provisions regarding interpersonal violence or of the newly adopted Family Protection Law, send a clear signal that domestic violence is a matter sufficiently addressed through separation rather than a violent crime.

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<sup>11</sup> *Ibid.*

<sup>12</sup> F. Omar, Rise in the Number of Women Reporting Abuses in Kuwait, Kuwait Times, Dec. 25, 2022, available at <https://www.kuwaittimes.com/rise-in-the-number-of-women-reporting-abuses-in-kuwait/> [accessed 14 July 2023]

<sup>13</sup> U.S. State Department, 2021 Country Reports on Human Rights Practices: Kuwait, 29-30, available at: [https://www.state.gov/wp-content/uploads/2022/03/313615\\_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2022/03/313615_KUWAIT-2021-HUMAN-RIGHTS-REPORT.pdf) [accessed 14 July 2023].

<sup>14</sup> N. al-Mukhled, Kuwait’s Ongoing Struggle Against Gender Violence, Jun. 8, 2021, available at <https://agsiw.org/kuwaits-ongoing-struggle-against-gender-violence/> [accessed 14 July 2023]; Arab Times, Abuse Rampant as 860 Violence Cases Against Women in Kuwait Recorded This Year, Nov. 30, 2022, available at <https://www.arabtimesonline.com/news/abuse-rampant-as-860-violence-cases-against-women-in-kuwait-recorded-this-year/> [accessed 14 July 2023].



Furthering such an understanding is an explicit provision that exonerates family members who kills family members, painting a drastic picture of a culture of impunity: Article 153 of the Criminal Code stipulates that a man who finds his mother, wife, sister, or daughter in a reprehensible sexual act (*zina*) and kills her will only be punished by either a small fine or no more than three years in prison<sup>15</sup>. It goes without saying that no equivalent provision exists for women who commit the same crime. The existence of such a provision is a clear violation of the right to life protected by Article 6 of the Covenant.

**Suggested List of Questions for the State Party**

- Please provide statistics and information on the number of dedicated shelters and hotlines to protect survivors of domestic abuse.
- Please indicate if any measures are being taken to criminalize domestic violence as an independent crime.
- Please explain any protective measures being implemented to encourage reporting of incidents of domestic violence.
- Please describe the measures being implemented in order to offer legal, medical and rehabilitation services for survivors of domestic violence
- Please indicate whether any special teams have been formed by the Ministry of Social Affairs to investigate domestic violence cases in accordance with the law.
- Please indicate whether any measures have been adopted to allow the removal of the abuser from the domestic home.
- Please describe any measures taken to repeal Article 153 of the Criminal Code.

**2.3 Absence of provisions criminalizing marital rape**

*(a) Background*

- (i) In paragraphs 18 and 19 of its concluding observations report dated 11 August 2026 (the “**2016 Concluding Observations**”), the Committee expressed concerns about the absence of legislation specifically criminalizing marital rape.
- (ii) The Committee accordingly recommended that the State party criminalize acts of domestic and sexual violence including marital rape, ensure that victims have access to legal, medical, and psychological assistance, reparation and rehabilitation and assist them in reporting incidents, and ensure that cases of domestic violence are thoroughly investigated and that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.

*(b) State party’s response*

In response and as noted in section 2.1(c) above, the State party stated in paragraph 58 of its Fourth periodic report that violence is criminalized in a number of provisions

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<sup>15</sup> Criminal code, Art. 153.

contained in the Criminal Code which are applicable irrespective of the identity of the victim.

(c) *Analysis of the State party's legislation*

(i) Absence of provisions criminalizing marital rape

No provisions currently exist in the Criminal Code regarding marital rape. Although the Family Protection Law has introduced provisions related to both physical and sexual violence committed by family members, the lack of an express criminal provision, the larger legal landscape and the prevailing cultural and religious norms are such that marital rape remains crime benefiting from absolute impunity in State party, in violation of Article 3, 7, 9 of the Covenant, as well as Article 8 guaranteeing the right to not be subjected to slavery or forced labour.

(ii) Existence of provisions exonerating the perpetrator

Kuwait maintains specific provisions exonerating the rapist if he marries his victim. Article 182 of the Criminal Code stipulates that a kidnapper who uses force, threat, or deception with the intention to kill, harm, rape, prostitute, or extort a victim shall not be punished if he marries the victim with her guardian's permission<sup>16</sup>. In addition to signalling that rape is not a serious act, and completely disregarding the autonomy of the victim by prioritising the legal guardian's permission, Article 182 creates a vicious cycle of violence and abuse by forcing victims of rape and kidnappings into marriage with the perpetrators.

(iii) Existence of discriminatory provisions

Moreover, discriminatory rules exist under the Personal Status Act No. 51 of 1984 as amended by Act No. 6 of 1996 (the "**Personal Status Law**"). Such rules allow, for example, marriage without the woman's presence or discrediting women's testimonies. In combination with Article 182 of the Criminal Code, such provisions create a legal environment where women who are either forced to marry their rapists or are raped by their spouses face a complete lack of redress and recourse, in clear violation of Article 23 of the Covenant enshrining the right to marry with free and full consent and equality in marriage, in addition to the provisions of the Covenant cited above.

(iv) Generalized culture of impunity

Given such circumstances, it is perhaps unsurprising that women themselves internalize this culture of impunity and normalize marital rape. 73% of the women surveyed in a study of interpersonal violence in domestic settings stated that the husband has the right to use Islamic religion as means to force his wife to meet his needs<sup>17</sup>, implying that marital rape is likely common and considered a right of the male spouse.

**Suggested List of Questions for the State Party**

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<sup>16</sup> Criminal Code, Art. 182.

<sup>17</sup> A. Asaleh, *supra* note 7.

- Please describe any measures taken to criminalize marital rape.
- Please report of any measures taken to raise awareness regarding marital rape.
- Please describe any measures taken to repeal Article 182 of the Kuwaiti Penal Code and remove any provisions which enable impunity for the perpetrator of sexual violence.
- Please describe any measures taken to amend the Personal Status Act, in particular provisions discriminating against women.

### 3. LEGISLATIVE PROTECTION AGAINST SEXUAL VIOLENCE

#### 3.1 Background context

##### (a) *Rape and Sexual and Gender Based Violence in Kuwait*

- (i) As discussed briefly in Section 2.1(c)(iii) above, there is a general lack of available recent statistics on the various forms of gender-based violence, including rape, in Kuwait. According to the United Nations Office on Drugs and Crime<sup>18</sup>, Kuwait reported 509 cases of sexual violence in 2009, which corresponds to a rate of 18 cases per 100,000 population. The Kuwait Society for Human Rights (“KSHR”) reported that during 2022, they received 860 complaints of violence against women and girls. The complaints committee of KSHR received 345 domestic violence complaints that year.
- (ii) While such lack of readily available statistics that can be corroborated through multiple sources renders it difficult to gauge the level of gender-based violence in Kuwait, gender-based violence is recognized as an important social issue in the country as demonstrated by protests following widely publicized cases of gender-based violence<sup>19</sup> and movements such as Abolish 153<sup>20</sup>.

##### (b) *Legislation relating to rape and sexual and gender-based violence in Kuwait.*

###### (i) Provisions of the Criminal Code

Primarily, rape and gender-based violence are criminalized under the Criminal Code of Kuwait, under the headings of crimes against honour and reputation. The Criminal Code criminalises rape and indecent assault, and aggravated forms of rape as well as statutory rape against a minor or a woman who is unable to consent due to mental incapacitation result in increased penalties including the death penalty<sup>21</sup>. As discussed in more detail throughout this

<sup>18</sup> United Nations Office on Drugs and Crime, Sexual Violence, available at <https://dataunodc.un.org/data/crime/sexual-violence> [accessed 14 July 2023].

<sup>19</sup> Y. Al Mulla, ‘Am I Next?’: Protest Held in Kuwait After Horrific Murder of Kuwaiti Woman, Gulf News, Apr. 22, 2021, available at <https://gulfnews.com/world/gulf/kuwait/am-i-next-protest-held-in-kuwait-after-horrific-murder-of-kuwaiti-woman-1.1619113488555> [accessed 14 July 2023]; N. al-Mukhled, Kuwait’s Ongoing Struggle Against Gender Violence, Jun. 8, 2021, available at <https://agsiw.org/kuwaits-ongoing-struggle-against-gender-violence/> [accessed 14 July 2023].

<sup>20</sup> See <https://abolish153.org/>; organization advocating to abolish Article 153 of the Kuwait Criminal Code that provides for reduced penalties for honour killings [accessed 14 July 2023].

<sup>21</sup> Criminal Code, Arts. 186 and 187.

report, these provisions are not compliant with the requirements of the UN Model Rape Law. Notably, Article 153 which provides for reduced penalties for ‘honour killings’ remains intact. Kuwait is also one of a few countries that allow perpetrators of gender-based violence to escape punishment by marrying the woman or girl they abducted or raped.

(ii) The Family Protection Law

On August 19, 2020, Kuwait passed the Family Protection Law aimed at providing protective measures against domestic violence for women and families. The law creates a national committee to draw up policies to combat and protect women from domestic violence and submit recommendations to amend or repeal laws that contradict the new domestic violence law.

However, the law does not specifically criminalize domestic violence itself and only applies to marital relationships and fails to include former partners or people engaged in relationships outside of wedlock, including those engaged to be married or in unofficial marriages. There are differing views as to the status implementation of protective measures in accordance with this law. For example, whereas the State party contends that the “Supreme Council for Family Affairs has set up special centres and shelters where victims can access legal, social and psychological advice as well as rehabilitation services and protection” (Fourth Periodic Report), other sources report that no such shelters have been built or are very lacking<sup>22</sup>.

### 3.2 Material deviations in Kuwait’s current laws against UN Model Rape Law

(a) *Gaps between Kuwait’s legislation and UN Model Rape Law*

Based on the comparison table set out below analysing Kuwait’s current laws against the UN Model Rape Law, a number of gaps in Kuwait’s legislation and material deviations from the UN Model Rape Law have been found, as briefly described below:

(i) Definition of rape requires proving use of force, threats or deception.

Article 186 of Criminal Code criminalizing rape is based on proving the use of force, threats, or deception, whereas under Article 1 of the UN Model Rape Law, rape must be defined as all non-consensual sex. Article 2 of the UN Model Rape Law further stipulates that consent must be given voluntarily and must be genuine and result from the person’s free will, assess in the context of the surrounding circumstances. Defining rape based on use of force, threats or deception is contrary to such provisions and fails to adopt a definition of voluntary and genuine consent aligned with the UN Model Rape Law.

(ii) No definition of age of consent

Although Article 188 of the Criminal Code criminalized sex without coercion, threat, or deception with “female [...] nine years old and not exceeding eighteen years old,” no general minimum age of consent is defined as stipulated in Article 3 of the UN Model Rape Law. Furthermore, no close-in-age

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<sup>22</sup> N. al-Mukhled, Kuwait’s Ongoing Struggle Against Gender Violence, Jun. 8, 2021, available at <https://agsiw.org/kuwaits-ongoing-struggle-against-gender-violence/> [accessed 14 July 2023]; Arab Times, Abuse Rampant as 860 Violence Cases Against Women in Kuwait Recorded This Year, Nov. 30, 2022, available at <https://www.arabtimesonline.com/news/abuse-rampant-as-860-violence-cases-against-women-in-kuwait-recorded-this-year/> [accessed 14 July 2023].

exemption is stipulated in the Criminal Code preventing the criminalization of consensual, non-coercive and non-exploitative sexual activity between adolescents of similar age.

(iii) No provisions on incapability of giving genuine consent.

Article 4 of the UN Model Rape Law stipulates conditions under which a person is incapable of giving genuine consent such as where the victim is unconscious, intoxicated or under the coercive control in the context of a domestic relationship. No similar provisions regarding incapability of giving genuine consent exist in the Criminal Code.

(iv) No provisions on presumed lack of consent

Article 6 of the UN Model Rape provides for circumstances under which lack of consent is presumed, such as intoxication, other vulnerabilities of the victims or the perpetrator being in a position of power, trust, etc. The Criminal Code has no analogous provisions protecting victims in circumstances in which consent is invalid, such as where there has been an abuse of an individual's position of authority such as in a correctional facility or school setting or abuse of power by an individual in certain professional relationships to the survivor such as a doctor-patient relationship.

(v) Death penalty imposed for rape

Under Article 7 of the UN Model Rape Law, the death penalty should never be imposed for rape. Article 186 of Kuwait's Criminal Code, however, states that "anyone who has sexual intercourse with a female without her consent, using coercion, threat or deceit, shall be liable to the death sentence or to life imprisonment."

(vi) Other aggravating factors have not been considered:

There is a lack of comprehensiveness regarding aggravating circumstances that increase the gravity and severity of rape as a crime in Kuwait. While Article 186 of Kuwait's Criminal Code does point out family, guardianship and authority relationships between the victim and the perpetrator to be aggravating factors, there is no mention of imprisonment, conditions of vulnerability, crimes committed against children or older people, other discriminatory motives, whether the offence was committed by two or more people, whether pregnancy resulted from the rape, and so on, all of which are recommended under Article 8 of the UN Model Rape Law.<sup>23</sup>

(vii) Improper mitigating circumstances:

Article 182 of Kuwait's Criminal Code, which permits a rapist who has abducted his victim to escape being sentenced to punishment if he marries his victim in a legally-recognised marriage with the permission of her guardian (who agrees that the abductor not undergo punishment), thereby permits the use of extenuating and mitigating circumstances in rape cases that are based on culture, religion, customs, traditions or so-called honour that are contrary to international human rights law in cases of rape.

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<sup>23</sup> United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en> [accessed 14 July 2023].

(viii) No dedicated provisions regarding investigation, prosecution, and trial:

No dedicated provision regarding the implementation of a victim-centred approach and protection measures, the protection of child victims and witnesses of rape, investigation, prosecution, timeliness, evidentiary requirements, rape shield provisions (Articles 12 *et seq.*, UN Model Rape Law) exist in the State party.

(b) *Current situation and legislative update(s) with reference to UN Model Rape Law*

- (i) In spite of a lack of up-to-date statistics, it is generally believed that gender-based violence is widespread in Kuwait, affecting 53.1% of women according to a 2018 study.<sup>24</sup>
- (ii) In May 2022, the Kuwait Democratic Forum launched a campaign called Aman (safe), which aims to raise awareness about sexual violence and lobby to pass a bill on protection from sexual violence in Kuwait.<sup>25</sup> The draft bill recommends scrapping the death penalty for the rapist, aims to secure reporting channels and protect the victims, provide official statistics and train state officials in charge of dealing with such cases to act according to international standards under international human rights laws.<sup>26</sup> If this draft bill is passed, it would be a long-overdue step in the right direction towards aligning Kuwait's current laws with the international best practices, including the UN Model Rape Law.

**Suggested List of Questions for the State Party**

- Please describe what progress is being made on drafting and enacting legislation to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law.
- Please provide an update on the status of the “Aman” bill proposed in May 2022.
- Please describe any measures taken to amend the Criminal Code and other related legislation and adopt provisions aligned with the UN Model Rape Law.

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<sup>24</sup> The Arab Gulf States Institute in Washington, *Kuwait's Ongoing Struggle Against Gender Violence*, 8 June 2021, available at <https://agsiw.org/kuwaits-ongoing-struggle-against-gender-violence/> [accessed 14 July 2023].

<sup>25</sup> Kuwait Times, *Initiative seeks better protection from sexual violence in Kuwait*, 11 May 2022, available at <https://www.kuwaittimes.com/initiative-seeks-better-protection-from-sexual-violence-in-kuwait/> [accessed 14 July 2023].

<sup>26</sup> *Ibid.*

**ANNEX - COMPARISON TABLE OF UN MODEL RAPE LAW AND STATE LEGISLATION**

**In addition to the above observations, we annex a table comparing the State's law on rape and sexual violence with the UN Model Law on Rape.**

<b>UN Model Rape Law</b>	<b>Corresponding Legislative Provisions of State</b>	<b>Included in below report issues list?</b>
<b>A. Criminalization of rape</b>		
<p><b>Article 1. Definition of rape</b></p> <p>16. A person (the perpetrator) commits rape when they:</p> <p>(a) engage in non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by any bodily part or object; or</p> <p>(b) cause non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by a third person; or</p> <p>(c) cause the victim to engage in the non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of the perpetrator or another person.</p>	<p><b>Article 186 of the Criminal Code (Act No. 16 of 1960)</b></p> <p>Anyone who has sexual intercourse with a female without her consent, using coercion, threat, or deceit, shall be liable to the death sentence or to life imprisonment.</p>	<p>Yes</p>
<p><b>Article 2. On consent</b></p> <p>17. Consent must be given voluntarily and must be genuine and result from the person's free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from:</p> <p>(a) silence by the victim;</p> <p>(b) non-resistance, verbal or physical, by the victim;</p> <p>(c) the victim's past sexual behavior; or</p>	<p>None found</p>	<p>Yes</p>

(d) the victim's status, occupation, or relationship to the accused.		
<p><b>Article 3. Age of consent</b></p> <p>(a) A person is considered incapable of giving genuine consent when they are a person below the age of 16.</p> <p>(b) Consensual sexual relations between children younger than 16, or between a child younger than 18 years old and a child older than 14 and younger than 16 should not be criminalized.</p>	<p><b>Article 188 of the Criminal Code (Act No. 16 of 1960)</b></p> <p>Anyone having sexual intercourse with a female without coercion, or threat or deception, and she was nine years old and not exceeding eighteen years old, shall be punished for a period not exceeding seven years, and a fine might be added not exceeding seven thousand rupees.</p> <p>If the offender is an ascendant of the victim or one of the persons entrusted with her upbringing or welfare or vested with authority over her, or a servant or a servant of any of the abovementioned persons, the punishment shall be imprisoned for a period not exceeding 10 years, and a fine might be added not exceeding ten thousand Rupees.</p>	Yes
<p><b>Article 4. On the incapability of giving genuine consent</b></p> <p>A person is considered incapable of giving genuine consent:</p> <p>(a) when they are unconscious, asleep, or seriously intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily, or unknowingly;</p> <p>(b) when the perpetrator is an adult, 18 years old or older and the victim is a child related to the perpetrator by blood, marriage, adoption, fostering or other analogous familial affiliation.</p>	None found	Yes
<p><b>Article 5. Use of force, threat, or coercion</b></p> <p>Lack of consent is presumed where penetration was committed by force, or by threat of force or coercion. There is a broad range of coercive circumstances, including, but not limited to, circumstances in which:</p>	<p><b>Article 186 of the Criminal Code (Act No. 16 of 1960)</b></p> <p>Anyone who has sexual intercourse with a female without her consent, using coercion, threat, or deceit, shall be liable to the death sentence or to life imprisonment.</p>	No



<p>(a) the victim was subject to abuse, violence, duress, deceit, detention or psychological oppression or intimidation that contributed to the victim’s subjugation or acquiescence; or</p> <p>(b) the victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.</p>		
<p><b>Article 6. On presumed lack of consent</b></p> <p>Lack of consent is presumed when:</p> <p>(a) The victim was intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily, or unknowingly;</p> <p>(b) When an illness, bodily injury, or other particular vulnerability has an impact of the victim’s ability to consent; or</p> <p>(c) When the perpetrator is in a position of power, trust, influence, or dependency over the victim and may have taken advantage of that position to force participation.</p> <p>Lack of consent is also presumed when the perpetrator abuses a relationship or position of power or authority over the victim. The positions and relationships listed below include, but are not limited to, situations in which the perpetrator is in a position of power or authority, influence, or dominance over the victim:</p> <p>(a) in a school, hospital, religious, correctional or care facility setting;</p> <p>(b) in a professional or occupational setting;</p> <p>(c) in a residential care facility, community home, voluntary home, children’s home, or orphanage;</p> <p>(d) in the context of providing the victim medical, psychological, or psycho-social support or treatment;</p> <p>(e) in a guardian-ward relationship;</p>	<p>None found</p>	<p>Yes</p>

<p>(f) by acting as a member of law enforcement, worker, probation officer, sports coach, instructor, minister of religion, babysitter, child-minder or in any other position of welfare in relation to the victim; or</p> <p>(g) by otherwise being generally involved and responsible for the care, training, or supervision of the victim.</p>		
<b>B. Sentencing, aggravating and mitigating circumstances</b>		
<p><b>Article 7. Sentencing</b></p> <p>(a) States should ensure that sanctions for offences of rape are effective, proportionate, dissuasive, and commensurate with the gravity of the crimes.</p> <p>(b) States should develop sentencing guidelines to ensure consistency in sentencing outcomes.</p> <p>(c) States should not allow conditional sentences and/or community service or fines alone as sanctions.</p> <p>(d) The death penalty should never be imposed for rape.</p>	<p><b>Article 186 of the Criminal Code (Act No. 16 of 1960)</b></p> <p>Anyone who has sexual intercourse with a female without her consent, using coercion, threat, or deceit, shall be liable to the death sentence or to life imprisonment.</p> <p><b>Article 187 of the Criminal Code (Act No. 16 of 1960)</b></p> <p>“Anyone who has sexual intercourse with a female without using coercion, threat or deceit but knowing her to have a mental impairment, to be under the age of 15 or to lack volition for any other reason, or knowing that she does not comprehend the nature of the act or that she believes it to be legitimate, shall be liable to life imprisonment”;</p> <p><b>Article 191 of the Criminal Code (Act No. 16 of 1960)</b></p> <p>“Anyone who defiles another person using coercion, threat, or deceit, shall be liable to a term of imprisonment of up to 15 years.</p>	<p>Yes.</p>
<p><b>Article 8. Aggravating circumstances</b></p> <p>The presence of aggravating factors increase the gravity and severity of rape and States should ensure that aggravating circumstances are taken into account and factored into penalties.</p> <p>The following non-exhaustive list of circumstances should be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offence of rape:</p>	<p><b>Article 186 of the Criminal Code (Act No. 16 of 1960)</b></p> <p>Anyone who has sexual intercourse with a female without her consent, using coercion, threat, or deceit, shall be liable to the death sentence or to life imprisonment.</p> <p>If the offender is an ascendant of the victim or one of the persons entrusted with her upbringing or welfare or vested with authority over her, or a servant</p>	<p>Yes.</p>

<p>(a) the relationship between victim and perpetrator, when there is a power imbalance that makes the victim particularly vulnerable:</p> <ul style="list-style-type: none"> <li>(i.) the offence was committed against a former or current spouse or partner;</li> <li>(ii.) the offence was committed by a member of the family or a person cohabiting with the victim;</li> <li>(iii.) the perpetrator took advantage of any kind of relationship of trust, kinship, authority, or other unequal power relationship with the victim;</li> <li>(iv.) the perpetrator is an agent or contractor of the State, or has authorization, support, or acquiescence from one or more agents or contractors of the State;</li> </ul> <p>(b) conditions of the victim or context that make them particularly vulnerable to sexual violence:</p> <ul style="list-style-type: none"> <li>(i.) the offence was committed against a victim who for any reason is imprisoned or detained;</li> <li>(ii.) the offence was committed against a child or against an older person;</li> <li>(iii.) the offence was committed against or in the presence of relatives of the victim or any child;</li> <li>(iv.) the perpetrator took advantage of a person in a position of particular vulnerability, including but not limited to in times of armed conflict, political violence, or other social</li> </ul>	<p>or a servant of any of the above-mentioned persons, the punishment shall be life imprisonment.<sup>27</sup></p>	
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<sup>27</sup> See Equality Now, *Honor Over Justice: How Kuwait's Penal Code is Failing to Protect the Human Rights of Women & Girls*, available online at: [https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/3476/attachments/original/1605725022/EN-Kuwait\\_Factsheet\\_Nov\\_2020\\_EN.pdf?1605725022](https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/3476/attachments/original/1605725022/EN-Kuwait_Factsheet_Nov_2020_EN.pdf?1605725022) [accessed 28 June 2023],

<p>disturbance, during human trafficking or migration, labour exploitation, sexual exploitation, or natural disasters;</p> <p>(v.) the offence was committed with an additional discriminatory motive against a victim because of their race, caste, ethnicity, sexual orientation, gender identity, disability, age, migrant or refugee or other status;</p> <p>(vi.) the offence was committed against a pregnant person;</p> <p>(c) the ways in which the offence is carried out:</p> <p>(i.) the offence was committed by two or more people acting together;</p> <p>(ii.) the offence, or related offences, were committed repeatedly;</p> <p>(iii.) the offence was preceded or accompanied by extreme levels of violence or threats of or attempts to cause extreme levels of violence;</p> <p>(iv.) the offence was committed with the use or threat of use of a weapon;</p> <p>(v.) the offence was committed including by causing the victim to take, use or be affected by drugs, alcohol, or other intoxicating substances to maintain control over the victim;</p> <p>(vi.) the perpetrator had previously been convicted of offences of a similar nature;</p> <p>(vii.) the offense was filmed or photographed by the perpetrator;</p> <p>(d) the consequences of rape to the victim:</p>		
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<p>(i.) the offence resulted in severe physical or psychological harm or disability for the victim;</p> <p>(ii.) the offence resulted in death, pregnancy or the communication of a sexually transmitted infection or disease.</p>		
<p><b>Article 9. Mitigating circumstances</b></p> <p>States should not permit in rape cases the use of extenuating and mitigating circumstances that are based on culture, religion, customs, traditions, or so-called honour that are contrary to international human rights law in cases of rape.</p> <p>(a) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment by reaching any form of settlement (financial or otherwise) with the victim or the victim's family;</p> <p>(b) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment for subsequently marrying the victim and the law should not provide that the perpetrator is required to marry the victim.</p> <p>Mitigating circumstances that should be prohibited include, but are not limited to:</p> <p>(a) if the perpetrator marries or desires to or attempts to reconcile with the victim.</p> <p>(b) the wish of the perpetrator, or the perpetrator's family or community, to compensate for the harm.</p> <p>© character or reputation of the perpetrator;</p> <p>(d) prior history of behaviour to insinuate blame on the part of the victim.</p>	<p><b>Article 182 of the Criminal Code (Act No. 16 of 1960)</b></p> <p>‘If the abductor marries the one, he abducted, in a legally recognized marriage with the permission of her guardian, and the guardian agrees that the abductor does not undergo punishment, then he is not sentenced to punishment.’</p>	<p>Yes.</p>

<p><b>Article 10. Withdrawal of parental rights</b></p> <p>States should take legislative measures to allow for the withdrawal of parental rights of perpetrators in relation to the children conceived as a result of rape, taking into consideration their best interests:</p> <p>(a) Where a person is subject to a criminal proceeding for the crime of rape, parental rights to the child conceived as a result of the alleged rape will be suspended until a final decision is determined in the criminal process.</p> <p>(b) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to a child conceived as a result of rape, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. Incidents of violence against women should be taken into account when deciding on parental rights.</p> <p>(c) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to any child conceived by that person, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. These provisions are without prejudice to the child’s right to enjoy any benefit accruing from their paternity.</p>	<p>Based on research conducted for this report, legislation specifically addressing withdrawal of parental rights was not found.</p>	<p>No.</p>
<p><b>C. Investigation, prosecution, and trial</b></p>		
<p><b>Article 11. Victim-centred approach</b></p> <p>(a) A victim-centred approach places the victim at the centre of all responses, including by ensuring that they are kept informed about their rights, the legal process and progress of the case and are supported throughout the process, and free legal aid is available where appropriate;</p> <p>(b) The number of interviews of the victim should be kept to a minimum and interviews carried out only where strictly necessary for the purposes of the criminal investigation;</p>	<p>Based on research conducted for this report, legislation specifically addressing approach towards victims of rape was not found.</p>	<p>No.</p>

<p>(c) Examinations to collect medico-legal evidence are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings;</p> <p>(d) Victims should be able to be accompanied by their legal representative(s) and support persons of their choice, unless a reasoned decision has been made to the contrary.</p>		
<p><b>Article 12 – Child victims and witnesses of rape</b></p> <p>(a) Every child victim or witness of rape has the right to have his or her best interests given primary consideration.</p> <p>(b) Every child victim or witness of rape shall be treated according to the following general principles:</p> <p>(i.) A child victim or witness of crime shall be treated in a caring and sensitive manner that is respectful of his or her dignity throughout the legal proceedings, taking into account his or her personal situation and immediate and special needs, age, gender, disabilities if any and level of maturity.</p> <p>(ii.) Interference in the child’s private life shall be limited to the minimum necessary as defined by law in order to ensure high standards of evidence and a fair and equitable outcome of the proceedings.</p> <p>(iii.) The privacy of a child victim or witness shall be protected.</p> <p>(iv.) Information that would tend to identify a child as a witness or victim shall not be published without the express permission of the court.</p> <p>(v.) A child victim or witness shall have the right to express his or her views, opinions, and beliefs freely, in his or her own words, and shall have the right to contribute to decisions</p>	<p>Based on research conducted for this report, legislation specifically addressing child victims and witnesses of rape was not found.</p>	<p>No.</p>

<p>affecting his or her life, including those taken in the course of the justice process.</p> <p>(c) A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances:</p> <ul style="list-style-type: none"><li>(i.) At his or her request;</li><li>(ii.) At the request of his or her parents or guardian;</li><li>(iii.) At the request of the support person, if one has been designated;</li><li>(iv.) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child.</li></ul> <p>(d) If at any stage in the justice process the safety of a child victim or witness is deemed to be at risk, the competent authority shall arrange to have protective measures put in place for the child. Those measures may include the following:</p> <ul style="list-style-type: none"><li>(i.) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process;</li><li>(ii.) Requesting restraining orders from a competent court;</li><li>(iii.) Requesting a pretrial detention order for the accused from a competent court, with “no contact” bail conditions;</li><li>(iv.) Requesting an order from a competent court to place the accused under house arrest;</li><li>(v.) Requesting protection for a child victim or witness by the police or other relevant agencies:</li></ul>		
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<p>(vi.) Making or requesting from competent authorities' other protective measures that may be deemed appropriate</p>		
<p><b>Article 13. Investigation</b></p> <p>(a) Investigators/police officers should not delay investigation nor refuse to record the crime or initiate an investigation solely based on delayed reporting of the crime;</p> <p>(b) Investigators/police officers should promptly give the victim written acknowledgement of receipt of their complaint;</p> <p>(c) Investigators/police officers should promptly and effectively record and investigate all allegations/reports made by the victim or other witnesses/organizations and ensure that the official report of the complaint is filed in all cases;</p> <p>(d) Investigators/police officers should promptly respond to requests for assistance and protection, advise the victim of their rights, and support the victim in filing a complaint and in accessing relevant services;</p> <p>(e) Investigators/police officers should conduct initial interviews in a gender-sensitive and trauma-informed manner and with due respect for the right to privacy.</p> <p>(f) Investigators/police officers should conduct interviews of victims without unjustified delay after the rape complaint has been made to the competent investigative authority, in a language understood by the victim and with the support of an interpreter, if necessary;</p> <p>(g) Investigators should conduct risk assessments, considering the seriousness of the situation and the risk of repeated rape or lethal violence, including possession of firearms by the perpetrator and issue effective protection orders including ex parte protection orders or other measures to protect the victim and their family as necessary;</p>	<p>Based on research conducted for this report, legislation specifically addressing investigation and prosecution of rape was not found.</p> <p><i>[Note: We only find general provisions in the Code of Criminal Procedure and Trials of Kuwait, prescribing that “the investigator shall investigate all felonies and may investigate misdemeanours if it finds that their circumstances or importance necessitates that” in Article 36. Please note that there is no ready English version available of the Code of Criminal Procedure and Trials, and the language is a rough translation from the Arabic version.]</i></p>	<p>No</p>

<p>(h) There should be a complaint mechanism accessible to victims who were mistreated by the police or if their case was mishandled.</p>		
<p><b>Article 14. Ex officio prosecution</b></p> <p>(a) The investigation and prosecution of rape should be conducted ex officio. The State has the obligation to carry out an effective investigation and prosecute the crime, which should not be wholly dependent on a report or accusation made by the victim and may continue even if the victim has withdrawn their statement;</p> <p>(b) Any prosecutor who discontinues a rape case should provide a formal and timely written explanation to the victim of the reasons why the case was dropped.</p>	<p>Based on research conducted for this report, legislation specifically addressing investigation and prosecution of rape was not found.</p> <p><i>[Note: We only find general provisions in the Code of Criminal Procedure and Trials of Kuwait, prescribing that “the investigator shall investigate all felonies and may investigate misdemeanours if it finds that their circumstances or importance necessitates that” in Article 36. Please note that there is no ready English version available of the Code of Criminal Procedure and Trials, and the language is a rough translation from the Arabic version.]</i></p>	<p>No</p>
<p><b>Article 15. Timely and without undue delay</b></p> <p>(a) Investigations and judicial proceedings should be carried out in a timely manner without undue delay, while taking into consideration the rights of the victim during all stages of the criminal proceedings;</p> <p>(b) All reports of rape should be taken seriously and investigated promptly, thoroughly, and impartially;</p> <p>(c) All evidence properly collected and decision on cases that should be prosecuted without any prejudicial stereotypical views of the victim or any other reason which would deny effective access to justice to victims.</p>	<p>Based on research conducted for this report, legislation specifically addressing investigation and prosecution of rape was not found.</p> <p><i>[Note: We only find general provisions in the Code of Criminal Procedure and Trials of Kuwait, prescribing i) general duty of the police to “conduct the necessary greetings to detect crimes, identify their perpetrators and collect all necessary information related thereto” in Article 39; ii) general duty of the police to “use search and investigation methods that do not harm individuals or restrict their freedoms” in Article 45; and iii) the requirement that “the investigation minutes prepared by the police officers shall be presented to the Public Prosecution or the police investigators as the case may be for their disposition and exercise” in Article 46. Please note that there is no ready English version available of the Code of Criminal Procedure and Trials, and the language is a rough translation from the Arabic version.]</i></p>	<p>No</p>
<p><b>Article 16. Evidentiary requirements, rape shield provisions</b></p> <p>States should ensure an objective, gender-sensitive assessment of the evidence in rape cases:</p> <p>(a) Introduction of evidence regarding the victim’s past sexual history or behaviour should be generally prohibited at all stages of the legal</p>	<p>Based on research conducted for this report, legislation specifically addressing evidentiary requirements and rape shield provisions were not found.</p>	<p>Yes</p>

<p>process, including cross-examination; and should be permitted only when relevant and necessary;</p> <p>(b) There should never be an absolute requirement that any specific piece of evidence be available for a prosecution to go ahead, such as medical evidence, which may not be available, particularly after a delay in reporting, or if there is a delay in starting the investigation;</p> <p>(c) There should be no requirement for the testimony of the victim to be otherwise corroborated in order for that testimony to be considered credible, reliable, and sufficient as a basis for conviction, considered in the context of the particular case;</p> <p>(d) Lack of evidence of resistance such as physical injuries to the body must never, in and of itself, be taken as proof of consent to the sexual act.</p> <p>(e) No adverse inference shall be drawn from a delay of any length between the alleged commission of rape and the reporting thereof.</p>		
<p><b>Article 17. Statutory Limitations</b></p> <p>(a) The prosecution of rape should not be subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict;</p> <p>(b) If statutes of limitation are in place, in the case of child victims, statutes should allow sufficient time for the initiation of proceedings after the victim has reached the age of majority.</p>	<p>Based on research conducted for this report, we have not found legislation specifically touches statutory limitation on rape cases.</p> <p><i>[Note: We noticed that the Criminal Code prescribes in general that “criminal proceedings in felonies fall 10 years from the day of the felony” in Article 4. However, it is worth noting that certain type of rape can be sentenced under 10 years, i.e., it is prescribed that “each female has completed her twenty-first year of age and has accepted that she is forbidden from her, and she knows her relationship with him, punishable by imprisonment for a term not exceeding ten years” in Article 190. Below are the relevant articles.</i></p> <p><b>Article 3 of the Criminal Code (Act No. 16 of 1960)</b></p> <p><i>Felonies are offences punishable by death, life imprisonment, imprisonment for more than three years and a fine of up to 3,000 dinars, or one of these penalties.</i></p>	No

	<p><b>Article 4 of the Criminal Code (Act No. 16 of 1960)</b></p> <p><i>Criminal proceedings in felonies fall 10 years from the day of the felony. The sentence, if it is one of the penalties mentioned in the preceding article, shall lapse 20 years from the time of the final decision, except the death penalty, which shall lapse 30 years.</i></p> <p><b>Article 190 of the Criminal Code (Act No. 16 of 1960)</b></p> <p><i>Each female has completed her twenty-first year of age and has accepted that she is forbidden from her, and she knows her relationship with him, punishable by imprisonment for a term not exceeding ten years.]</i></p>	
<p><b>Article 18. Jurisdiction and Cooperation between States</b></p> <p>States should:</p> <ul style="list-style-type: none"> <li>i. Establish jurisdiction over offences of rape, when the offence is committed:</li> <li>ii. in their territory; or</li> <li>iii. on board a ship flying their flag; or</li> <li>iv. on board an aircraft registered under their laws; or</li> <li>v. by one of their nationals.</li> </ul> <p>(a) Ensure that their jurisdiction is not subordinated to the condition that the acts of rape are criminalised in the territory where they were committed.</p> <p>(b) Establish jurisdiction over offences of rape when the offence is committed in the context of conflict, war crimes, crimes against humanity, genocide, widespread or systematic attack, national disturbances, or humanitarian crises.</p>	<p>Based on research conducted for this report, legislation specifically addressing jurisdiction on rape or cooperation between states on rape were not found.</p> <p><i>[Note: We only found general provisions in the Criminal Code of Kuwait that touches its jurisdiction on i) crimes conducted by person in the territory of Kuwait in Article 11; and ii) crimes committed by Kuwaiti nationality outside Kuwait, under the condition that it is in accordance with the law applicable in the place where the act was committed in Article 12. Please see below the detailed articles.</i></p> <p><b>Article 11 of the Criminal Code (Act No. 16 of 1960)</b></p> <p><i>The provisions of this Law shall apply to any person who commits a crime in the territory of Kuwait and its dependencies. It applies to any person who commits an act outside the territory of Kuwait that makes him an original or accomplice of an offence all or part of which occurred in the territory of Kuwait.</i></p> <p><b>Article 12 of the Criminal Code (Act No. 16 of 1960)</b></p> <p><i>The provisions of this Law shall also apply to any person of Kuwaiti nationality who commits outside Kuwait a punishable act in accordance with the provisions of this law and in accordance with the law applicable in</i></p>	<p>No</p>

<p>(c) States should endeavour to co-operate with each other, to the widest extent possible, for the purpose of preventing, investigating, and prosecuting all rape cases, protecting, and providing assistance to victims and providing mutual legal and other necessary assistance in criminal matters, extradition and enforcement of relevant civil and criminal judgments by judicial authorities of other States, including protection orders.</p>	<p><i>the place where the act was committed, if returned to Kuwait without the foreign courts having acquitted him.]</i></p>	
<p><b>Article 19. Prohibition of mandatory reconciliation or mediation</b></p> <p>The law should expressly prohibit any form of mandatory conciliation or mediation in cases of rape, both before and during legal proceedings.</p> <p>(a) Cases of violence against women, and particularly of rape and sexual violence, should not be referred to mandatory alternative dispute resolution procedures.</p> <p>(b) Plea bargains should be strongly discouraged in cases of rape and especially when the offence was committed against a victim who was a child at the time of the crime.</p>	<p>Based on research conducted for this report, we have not found any legislation specifically mention mandatory reconciliation or mediation mechanism in general or specifically for rape cases.</p>	<p>No</p>
<p><b>Article 20. Victim-centred protection measures</b></p> <p>States should take all necessary legislative measures to ensure that the rights and interests of victims are protected at all stages of the investigation and judicial proceedings, in particular by:</p> <p>(a) Providing for the protection of victims, their family members, and witnesses from intimidation, retaliation, and secondary victimization, including through physical protection of victims and their family members where necessary;</p> <p>(b) Ensuring avoidance of contact between a victim and the alleged perpetrator(s) within premises where criminal investigations or trials are conducted, including by providing separate waiting areas, entrances and exits and staggered arrival and departure times; by permitting victims to give evidence remotely or through the use of communication technology in a place the victim deems safe; or by</p>	<p>Based on research conducted for this report, legislation specifically addressing victim-centred protection measures were not found.</p>	<p>Yes</p>

<p>utilizing witness protection boxes or screens in courtrooms to avoid visual contact between the victim and the alleged perpetrator(s);</p> <p>(c) Protecting the privacy of victims and preventing public dissemination of any information that could lead to the identification of the victim including by prohibiting the media from identifying victims of rape before conclusion of the trial and without the victims' consent afterwards, privacy when reporting to the police, closure of the courtroom during proceedings and the like;</p> <p>(d) Providing victims with adequate and timely information, in a language they understand throughout the criminal justice process, on their rights and available support services, the progress of the investigation and legal proceedings, their role therein and the outcome of the case;</p> <p>(e) Enabling victims to exercise their right to legal aid, interpretation, and court support, including the right to be accompanied and represented in court by a specialized service or by any other independent support persons chosen by the victim.</p> <p>(f) Assessing the victim's specific needs to enable their effective participation in the criminal proceedings; and ensuring that child victims and victims with specific needs are afforded special support and protection measures to ensure they are able to participate as fully as possible in the proceedings at the same time as protecting their best interests. Such special measures may include but are not limited to:</p> <ul style="list-style-type: none"><li>(i.) ensuring that interviews with the victim are conducted in their home or residence or in premises specially designed or adapted for that purpose by an interviewer of the same sex without undue delay;</li><li>(ii.) ensuring the presence of parents or a person trusted by the child while recording a child's testimony, which could include representatives from specialist civil society organizations working to address or support victims of rape; and</li></ul>		
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<p>(iii.) in the case of victims with physical, psychological, mental, or intellectual impairment or disabilities, obtaining the assistance of a special educator, psychologist, or other person familiar with appropriate communication techniques for example braille, sign language or other electronic and information technology accessible to people with specific needs, before interviewing or recording the statement of the victim;</p> <p>(iv.) ensuring that interviews with the victim are carried out by or through professionals trained for that purpose;</p> <p>(v) ensuring interpretation and or translation services;</p> <p>(vi) ensuring psycho-social and legal support and covering travel expenses incurred.</p> <p>(g) Ensuring that protection orders are efficient, available, and easily accessible, could be issued ex parte and that victims are not subjected to undue delays in their applications for protection orders and other protective measures and that all allegations of rape are heard in a timely and impartial manner.</p>		
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