

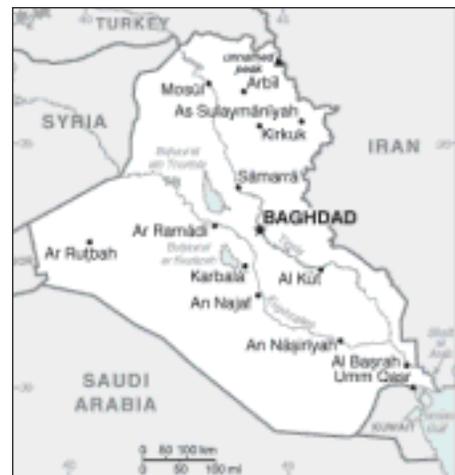


I L D P

Iraq Legal Development Project

مشروع تطوير القانون في العراق

The Status of Women in Iraq:
An Assessment of Iraq's
De Jure and *De Facto*
Compliance with
International Legal Standards



July 2005

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PREFACE

This Assessment measures Iraq's compliance with internationally accepted standards of gender equality as outlined in core international human rights law instruments to which Iraq is a party.

The international human rights framework is an interconnected network of laws and principles that serve as guidelines for ensuring human dignity and a universally equal society. Human rights were defined gradually over several decades through the drafting, signing and ratification of international legal instruments to which governments made commitments and undertook obligations.

International human rights law is largely based upon the principles set out in the Universal Declaration of Human Rights (UDHR), as well as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the latter two of which Iraq ratified in 1971. These two Covenants codified the principles articulated in the UDHR.

Other key human rights instruments have been formulated, signed and ratified by Member States based on the foundation of the UDHR, ICCPR and the ICESCR. These include the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), which Iraq ratified in 1970, and the Convention on the Rights of the Child (CRC) acceded to in 1994. The Assessment also looks at other conventions and declarations as they apply to individual subject areas, such as The Convention against Discrimination in Education, signed by Iraq in 1977, and the UN Declaration on the Elimination of Violence Against Women, passed by the General Assembly in 1994.

The most prominent human rights instrument on women's equality is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Iraq acceded to in 1986. CEDAW was opened for signature in 1979, and since then has been adopted by 180 countries. CEDAW espouses values and legal obligations for women's human rights that, because of the treaty's widespread adoption around the world, have become universal. They are not characteristic of the customs, traditions or values of any one particular set of countries, but instead are basic tenets of equality that have been adopted by the world community.

International human rights treaty law broadly covers and ensures women's participation in a variety of arenas including political representation, education, health care, economic rights, rural concerns, employment, and marriage/family relations. Many of the subjects addressed by the treaties are areas of concern for both men and women in Iraq. It should be noted that focusing attention on compliance with international law in relation to women's human rights does not mean that men do not also suffer from the failure of the Iraqi health care system, for example, or that they are not also entitled to safe workplaces. Most of the areas of concern which are elaborated on in this assessment would, if addressed, improve the quality of life of all people in Iraq.

By acceding to numerous international conventions, Iraq voluntarily obligated itself to comply with the requirements and initiatives that are imposed on States Parties. These include not only measures to eliminate and prevent discrimination, but also proactive measures designed to promote equality between men and women and to change the culture of gender in signatory states.

METHODOLOGY

The Assessment measures the degree to which Iraqi women, as a matter of law (*de jure*) and as a matter of practice (*de facto*), enjoy the rights and protections guaranteed under international law, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women. In addition to identifying legislative (or *de jure*) deficiencies, it is crucial to determine the degree to which women, in practice, are accorded the rights and status guaranteed by domestic laws. A major focus of the diagnostic tool is, therefore, on *de facto* or “real life” impediments to equality, some of which may be products of poorly drafted or non-existent legislation. In order to properly identify the source of compliance or non-compliance with international law, *de jure* and *de facto* compliance are discussed separately under each heading.

The *de jure* survey was conducted by Iraqi attorneys with expertise in Iraqi legislation, international human rights law, and women’s rights using a template of 66 standard questions. The attorneys reviewed all Iraqi law relevant to the survey, including the Transitional Administrative Law (TAL), past Constitutions, civil and criminal codes, and Revolutionary Command Council (RCC) Orders, to assess how the legislative regime complies with international standards.

The *de facto* analysis was conducted in cooperation with a network of Iraqi NGOs and National Assembly members (“Respondents”) working on women’s issues in Iraq. Thirty-five women’s NGOs representing the cultural, religious and geographic diversity of Iraq were recruited to provide feedback on women’s situations in their respective regions. NGO representatives were selected to participate in the survey based on their representation of the various cross-sectors of Iraqi society, on their substantive expertise in the areas covered by the surveys, and on their leadership and activism in Iraqi civil society. These NGOs underwent intensive training on international human rights frameworks applicable to women’s rights and gender equality. During this training, participants, in conjunction with the Iraq Legal Development Project (ILDLP), developed a survey protocol specifically tailored for the Iraqi context. NGO representatives used this universal survey protocol to interview members of Iraqi NGOs, religious experts, government representatives and regular women. Interview respondents were selected for several purposes. Some respondents were chosen for their substantive specific expertise in areas such as health, education or family law. Other respondents provided anecdotal evidence for the *de facto* analysis of real-life impediments to the full realization of women’s rights.

Finally, a team of researchers surveyed the range of available secondary sources and reports from NGOs, government sources, academics and international organizations in order to provide a thorough background analysis of the issues raised by the Assessment.

The Assessment is broken down into a number of thematic categories: Political Participation, Civil Society and Women in Decision Making; Violence Against Women and the Right to Personal Security; Labor and Economic Rights; Family and Marriage; Nationality; Health; and Education. These categories are based on central provisions in international human rights law regarding women’s rights

and represent key areas of concern for the promotion, implementation, and safeguarding of women's rights in Iraq. Given the scarcity of data on rural women in Iraq, information regarding the status of rural women is incorporated into the *de facto* and *de jure* sections of each category to the extent possible.

This Assessment is intended as a reference and advocacy tool to be used by Iraqi legislators, policy makers and civil society activists, in analyzing the draft constitution in terms of the fundamental issues of equality, non-discrimination and the advancement of women. It is also intended to be used as a tool in reviewing and developing the laws and policies of the Iraqi state beyond the conclusion of the constitutional process.

INTRODUCTION

The hope of new political, economic and social opportunities continues to inspire and drive the women's movement in Iraq. Over the past two years, women have remained resilient in the face of insecurity and violence, carving out an unprecedented space for women's political and public participation. As one survey respondent observed, "After the fall of the regime, the participation of women in political life has represented a historic leap. We have seen a shift from non-participation to the allocation of a fixed ratio at twenty-five percent, a demand for raising this ratio, and an increased competence in political life."¹

Notwithstanding the increased participation of women in public life, an examination of both the *de jure* and *de facto* status of women in Iraq exposes the considerable obstacles women face in the quest to secure and safeguard their human rights. These obstacles include: discrimination by law; lack of political will to implement existing rights; social and economic pressures; and an absence of security. Although past Iraqi constitutions guaranteed women formal equality, decades of social, economic and political upheaval have rendered many of these guarantees hollow. For example, women's access to healthcare remains restricted not due to discriminatory laws, but due to a lack of implementation of neutral legislation coupled with a lack of resources. Likewise, the low participation rate of girls in primary education reflects the failure of the government to protect existing rights. In other areas, such as family and criminal matters, laws expressly discriminating against women set the framework for depriving women of their legal rights. This systemic discrimination shifts the balance of power in matters of divorce, puts women at risk of violence, stifles women's earning potential, and limits women's autonomy as human beings.

WOMEN'S RIGHTS IN IRAQ

The development of women's rights in Iraq has a long and complex history. After the 1958 revolution, women were successful in acquiring equal rights with the introduction of the Personal Status Code (the Code) in 1959 by the revolutionary government of General Abdul Karim Kassem. Drawn for the most part from both Sunni and Jafari (Shiite) interpretations of the Shari'a, the Code established a uniform set of laws governing family and married life. In this respect, it deviated from other Codes of the region by granting greater rights to women in areas such as inheritance and by limiting polygamy.

However, the Code suffered serious setbacks following the rise of the Ba'ath party in 1963. In an effort to appease conservative factions of society, the Code was amended to incorporate more traditional Islamic interpretations of women's rights. Polygamy became legal under certain circumstances, and women's allotment of inheritance was reduced compared to their male counterparts.

In 1970, the Saddam Hussein government passed an interim constitution that solidified formal equality for women with a non-discrimination clause. The Iraqi Interim Constitution of 1970,² and the

interim Constitution of 1990,³ both contain equality or equal protection clauses. Moreover, 1970 Constitution included Article 5,⁴ which acknowledges and provides protection for Iraq's minority communities. Article 26⁵ of the 1970 Constitution guarantees the right to peaceful gatherings and participation in associations and political parties.

Despite these assurances, both the Code and the Criminal Codes were still subject to interpretation and nullification by various Revolutionary Command Council (RCC) orders which effectively violated core provisions of the 1970 Constitution, including the non-discrimination clause. Examples of such discrimination, which largely came into effect in the last two decades of the Ba'ath regime, include provisions facilitating polygamy, providing mitigated sentences for the murder of women by men in the name of family honor; and limiting women's freedom of movement. Many of these laws remain in effect to the present day.

In some respects, and at some stages of its rule, the Ba'ath party did promote the advancement of women. Women in Iraq in the 1970s and early 1980s were among the most educated women in the region, and actively took part in the labor force. Despite these opportunities, women's participation in political and public life was limited under the Ba'ath party and few women held influential positions. In 1972, the Ba'ath party established the General Federation of Iraqi Women (GFIW) as one of the only outlets for women's participation in political and public life. Although largely a tool of the ruling party, the GFIW was able to achieve some advancement of women's rights through various community programs focused on education, literacy and job training.⁶ Despite these efforts, women's rights remained a largely political tool to be reduced or expanded to suit political, social and economic interests of the ruling party. Women activists who advocated against the policies of the ruling regime were often singled out for harassment and punishment, which included rape, torture and public beheadings.

When Saddam Hussein and the Ba'ath party fell from power in March 2003, following the invasion of US-led forces, the U.S. established the Coalitional Provisional Authority (CPA) with Ambassador L. Paul Bremer as its head. Under the CPA, the Iraqi Governing Council (IGC) was appointed, as were governorate councils throughout the country. By May 2004, Ambassador Bremer selected an Interim Iraqi Government (IIG) to oversee the administration of the country and the upcoming elections for a Transitional National Assembly.

The Law of Administration for the State of Iraq for the Transitional Period (known as the Transitional Administrative Law, or the TAL), was formally introduced on 3 February 2004 by the CPA to serve as an interim constitution until the drafting of a permanent document. The TAL established the legal and administrative framework for the governance of Iraq during the transitional period with a view to democratic self-governance. As stipulated in the TAL, the Transitional National Assembly will draft the constitution of Iraq by August 15, 2005 with a general referendum to be held no later than October 15, 2005. If the draft constitution is rejected by two-thirds of the voters in three or more governorates, the National Assembly shall be dissolved and new elections held no later than December 15, 2005.

The TAL's *equal-protection clause*, Article 12,⁷ which unlike its earlier constitutional counterparts⁸ is very particular in its language, expressly provides for equality across gender, sect, opinion, belief, nationality, religion, and origin. Article 1(b)⁹ mandates that the TAL's protections and construction of its application apply equally to both men and women. The TAL also provides legal recourse for victims of discrimination in Article 22.¹⁰ Article 6¹¹ is functionally an affirmative action mechanism designed to correct the discriminatory and oppressive practices of the former regime against certain marginalized groups and communities although it makes no reference to women. In addition, the TAL

expands protection of minorities' rights and legal recognition of both Arabic and Kurdish as the country's official languages.¹²

Articles 4¹³ and 5¹⁴ of the TAL squarely address, and legally counteract, the Ba'ath's one-party-state system and its monopoly of the government and military.

Despite the new opportunities articulated in the TAL and offered by a new Iraqi political structure, women have been largely absent from the frontlines of political life in Iraq. Women were excluded from the formal drafting process of the TAL, and only three women were nominated to serve on the 25 member IGC appointed in July of 2003. Similarly, very few women were appointed to the local governorate councils and none were appointed governor or deputy governor. Women were similarly under-represented in the interim Iraqi government. The TAL sets guidelines for women's representation in the Iraqi Transitional National Assembly by firmly stipulating that the electoral law "shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly."¹⁵ Propelled by the quota, women succeeded in securing almost 33% of the seats in the 2005 elections. However, only 4 of the 36 Cabinet positions in the transitional government are women, and there are no women represented in the 3-member Presidency Council.

While the TAL articulates women's equality before the law, concerns over women's overall legal standing persist. Many of the discriminatory orders enacted under Saddam Hussein were not repealed under the CPA and remain in effect to the present day¹⁶ in contradiction to the very essence of Article 12. There are currently no mechanisms to guarantee equality among men and women before the law, and discriminatory provisions can be found in several laws, most notably, the Personal Status Code and the Criminal Code.

There are also indications that the campaign to remedy women's legal standing in Iraq will face ongoing challenges. In December 2003, under Resolution 137, members of the IGC attempted to replace the long-standing civil basis of the Code with Shari'a law. Women's groups inside and outside of Iraq vehemently protested the Resolution, which Ambassador Bremer subsequently declined to sign into law. The IGC eventually withdrew the Resolution without further debate. More recently, the strength of women's political participation, even when assisted by quota, has been called into question. Independent and reform-minded women have been largely seen as excluded from the party-list system implemented in the January 2005 elections. The largest single group of women in the TNA is politically conservative. Moreover, women are under-represented in the Constitutional Drafting Committee (CDC) holding only 9 of 55 seats, giving rise to concerns as to the political will and capacity to deliver a constitutional framework that will support the realization of women's rights in accordance with international law.

Although Iraq is a party to numerous international human rights conventions, as detailed in this Assessment, substantial and long-standing impediments to domestic compliance with Iraq's treaty obligations remain. Iraq's current discriminatory legislative provisions illustrate that constitutional provisions alone do not guarantee women the fulfillment of their rights. Legislative change, coupled with active enforcement mechanisms, remains necessary to bring Iraq into full compliance with anti-discrimination instruments and assure to women their equal rights.

GENDER EQUALITY AND NON-DISCRIMINATION UNDER INTERNATIONAL LAW

Equality and non-discrimination provisions are found in many human rights instruments to which Iraq is a party. This Assessment draws extensively from the following definitions and provisions as it evaluates Iraq's fulfillment of its commitments under international human rights law.

The Universal Declaration of Human Rights (UDHR), the founding document of international human rights law, entitles everyone to all of the rights and freedoms set out in the Declaration without discrimination, including on the grounds of sex (Article 2).

The International Covenant on Civil and Political Rights (ICCPR) ensures "the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant" (Article 3) and "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2). The International Covenant on Economic Social and Cultural Rights (ICESCR) similarly guarantees that "the rights enunciated in the present Covenant will be exercised without discrimination of any kind" including on the basis of sex. (Article 2(2)).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) seeks the achievement of equality between women and men and specifies the particular areas in which women are most likely to experience discrimination and inequality in their lives. CEDAW is distinguished from other international treaties by its expansive and comprehensive definition of discrimination (Article 1), including the following definition of discrimination against women, which includes distinctions that have a discriminatory *effect*:

For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

While legislation in Iraq does not incorporate the particular definition of "discrimination" stipulated in Article 1 of CEDAW, Iraq signed and ratified CEDAW in 1986 without reservation to the difference in definition.

ENDNOTES

¹ Respondent A7. Question 2.

² **Article 19 of the 1970 Constitution:**

- (a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin, or religion.
- (b) Equal opportunities are guaranteed to all citizens, according to the law.

³ **Article 19 of the 1990 Constitution** (*amendment of 1970 Constitution, but this clause was unchanged*):

- (a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin, or religion.
- (b) Equal opportunities are guaranteed to all citizens, according to the law.

⁴ **Article 5 of the 1970 Constitution:**

- a) Iraq is part of the Arab Nation.
- b) The Iraqi People are composed of two principal nationalisms: the Arab Nationalism and the Kurdish Nationalism.
- c) This Constitution acknowledges the rights of the Kurdish people and the legitimate rights of all minorities within the Iraqi unity.

⁵ **Article 26 of the 1970 Constitution:**

The Constitution guarantees freedom of opinion, publication, meeting, demonstrations and formation of political parties, syndicates, and societies in accordance with the objectives of the Constitution and within the limits of the law. The State ensures the considerations necessary to exercise these liberties, which comply with the revolutionary, national, and progressive trend.

⁶ Human Rights Watch Briefing Paper. "Background on Women's Status in Iraq Prior to the Fall of the Saddam Hussein Government." November 2003.

⁷ **Article 12 of the TAL:**

All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion, or origin, and they are equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited. Everyone has the right to life, liberty, and the security of his person. No one may be deprived of his life or liberty, except in accordance with legal procedures. All are equal before the courts.

⁸ Namely, Article 19 of the 1970 Constitution

⁹ **Article 1(b) of the TAL:** Gender-specific language shall apply equally to male and female.

¹⁰ **Article 22 of the TAL:**

If, in the course of his work, an official of any government office, whether in the federal government, the regional governments, the governorate and municipal administrations, or the local administrations, deprives an individual or a group of the rights guaranteed by this Law or any other Iraqi laws in force, this individual or group shall have the right to maintain a cause of action against that employee to seek compensation for the damages caused by such deprivation, to vindicate his rights, and to seek any other legal measure. If the court decides that the official acted with a sufficient degree of good faith and in the belief that his actions were consistent with the law, then he is not required to pay compensation.

¹¹ **Article 6 of the TAL:**

The Iraqi Transitional Government shall take effective steps to end the vestiges of oppressive acts of the previous regime arising from forced displacement, deprivation of citizenship, expropriation of financial assets and property, and dismissal from government employment for political, racial, or sectarian reasons.

¹² **Article 9 of the TAL:**

The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turcoman, Syriac, or Armenian, in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions, shall be guaranteed. The scope of the term "official language" and the means of applying the provisions of this Article shall be defined by law and shall include:

- 1) Publication of the official gazette, in the two languages;
- 2) Speech and expression in official settings, such as the National Assembly, the Council of Ministers, courts, and official conferences, in either of the two languages;
- 3) Recognition and publication of official documents and correspondence in the two languages;

- 4) Opening schools that teach in the two languages, in accordance with educational guidelines;
- 5) Use of both languages in any other settings enjoined by the principle of equality (such as bank notes, passports, and stamps);
- 6) Use of both languages in the federal institutions and agencies in the Kurdistan region.

¹³ **Article 4 of the TAL:**

The system of government in Iraq shall be republican, federal, democratic and pluralistic, and powers shall be shared between the federal government and the regional governments, governorates, municipalities, and local administrations. The federal system shall be based upon geographic and historical realities and the separation of powers, and not upon origin, race, ethnicity, nationality, or confession.

¹⁴ **Article 5 of the TAL:**

The Iraqi Armed Forces shall be subject to the civilian control of the Iraqi Transitional Government, in accordance with the contents of Chapter Three and Five of this law.

¹⁵ **Article 30(C) of the TAL:**

The National Assembly shall be elected in accordance with an electoral law and a political parties law. The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly and having fair representation for all communities in Iraq, including the Turcomans, ChaldoAssyrians, and others.

¹⁶ **Article 26 of the TAL:**

- (a) Except as otherwise provided in this Law, the laws in force in Iraq on 30 June 2004 shall remain in effect unless and until rescinded or amended by the Iraqi Transitional Government in accordance with this law.
- (b) Legislation issued by the federal legislative authority shall supersede any other legislation issued by any other legislative authority in the event that they contradict each other, except as provided in Article 54(b).
- (c) The laws, regulations, orders, and directives issued by the Coalitional Provisional Authority pursuant to its authority under international law shall remain in force until rescinded or amended by legislation duly enacted and having the force of law.

POLITICAL PARTICIPATION, CIVIL SOCIETY AND WOMEN IN DECISION MAKING

*"[T]he Transitional Administrative Law ... gave women a representative quota of 25%. However ... it is not enough for the law alone to guarantee women's rights. Men have to be convinced and the society as a whole has to be convinced of women's qualifications and their abilities. This is most important."*¹

Since 1958 and throughout the rule of the Ba'ath party, there were no legal limitations on women's right to vote or to participate in government in Iraq. Women's practical participation in political life was, however, limited. Women's interests were represented through a so-called non-governmental women's association, the General Federation of Iraqi Women, which was broadly considered to be an extension of the Ba'ath party. As is well documented in historical texts and confirmed by survey respondents, women were persecuted for their political activities or for the activities of family members, if they in any way conflicted with those of the ruling party.

The January 2005 elections in Iraq saw record participation by women in voting. Eighty-seven women were elected to the Transitional National Assembly (TNA) under a quota system implemented under the Electoral Law of 2004, issued during the last days of administration of the Coalition Provisional Authority (CPA). This new system brings Iraq into *de jure* compliance with core international conventions providing for women's right to vote and to run for public office. However, it has been widely observed that women are not a powerful group either within the TNA or their own political parties, and that they remain absent from leadership positions within the highest echelons of government. Exposure to assassinations and kidnappings is also cited as a primary factor limiting women's effective participation, both in political life and civil society activism.

INTERNATIONAL LEGAL FRAMEWORK

Core international human rights instruments provide for the right to political participation, from the Universal Declaration on Human Rights (UDHR) to the International Covenant on Civil and Political Rights (ICCPR). Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) includes women's right to political participation, and seeks to ensure that women are eligible for election as well as maintain the right to participate in civil society. Additionally, CEDAW provides that State parties must ensure that women have equal opportunities to represent their government at the international level.

In the context of Iraq, it is important to note that UN Security Council Resolution 1325 recognizes the importance of women's participation in conflict resolution and the peace-building processes. The Resolution "[u]rges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict." Section 8 (c) of the Resolution also:

Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, *inter alia*...[m]easures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.

In Resolution 1483, the Security Council made express reference to UN Security Council Resolution 1325 in the context of Iraq, "[e]ncouraging efforts by the people of Iraq to form a representative government based on the rule of law that affords equal rights and justice to all Iraqi citizens without regard to ethnicity, religion, or gender, and, in this connection, recalls resolution 1325 (2000)...."²

DE JURE COMPLIANCE

While the Iraqi Interim Constitution of 1970 guarantees equal opportunities to all citizens and makes express reference to gender in its non-discrimination clause (Article 19), it provides no specific mechanisms to ensure women's political participation. Chapter IV of that Constitution on "Institutions of the Iraqi Republic," outlines the roles and composition of the major organs of government. It contains no quota provisions with respect to any branch of government and makes no express reference to gender.

The Quota System

In laying out the formula for election of a Transitional Government in Iraq, the TAL expressly prohibits discrimination in voting rights and calls for (but does not mandate) a minimum quota of 25% for women's participation in the Transitional National Assembly.

Article 20(b) of the TAL:

No Iraqi may be discriminated against for purposes of voting in elections on the basis of gender, religion, sect, race, belief, ethnic origin, language, wealth, or literacy.

Article 30(c) of the TAL:

The National Assembly shall be elected in accordance with an electoral law and a political parties law. The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly and of having fair representation for all communities in Iraq, including the Turcomans, ChaldoAssyrians, and others

This quota was subsequently enforced under the Coalitional Provisional Authority's (CPA) Order Number 96 of 15 June 2004, "The Electoral Law."

CPA Order Number 96, "The Electoral Law," Article 4:

Any political entity may present a list of candidates for election to the National Assembly to the Commission, so long as the candidates on the list meet the applicable legal criteria.

- (1) The lists presented to the Commission must have the candidates in a ranked order. Seats in the National Assembly shall be allocated to candidates according to the ranked order on the list. The candidates on the lists may not be reordered or otherwise changed after a date to be established by the Commission.
- (2) No fewer than one out of the first three candidates on the list must be a woman; no fewer than two out of the first six candidates must be a woman; and so forth until the end of the list.

There are no provisions in the TAL mandating minimum representation of women in specific positions (such as the Presidency Council) or within the executive or judicial branches of government.

Civil Society

The General Federation of Iraqi Women (GFIW) was established by Law 139 of 1972. According to Iraq's Second and Third Periodic Reports on the Implementation of CEDAW:

In accordance with this law, the Federation is a public-interest institution that is a legal entity having full legal capacity and enjoying administrative and financial independence. It is a mass, democratic organization representing all the women of Iraq without discrimination.³

The report went on to describe the GFIW as a "non-governmental" organization. However, as noted below under *De Facto* Compliance, survey respondents did not consider the GFIW to be independent of the ruling party.

The Law of Associations of 2000, Number 13, holds that "every Iraqi man or woman has the right to form an organization, become a member in one, or withdraw from any in accordance to the laws...." Article 3. As attested to by survey respondents, this was not enforced under the former regime. Although professional associations did exist, they were not fully independent of the Ba'ath party.

CPA Order Number 45 of November 2003 established a set of procedures by which Iraqi NGOs would be registered with the Ministry of Planning and Development Cooperation. The law is quite stringent in terms of financial reporting and other disclosure requirements (such as those pertaining to ownership, planned activities, and sources of funding). The Ministry's authority to deny registration is arguably overbroad and applies in the following circumstances:

- (a) The registration documents do not comply with the requirements of this Order.
- (b) The NGO's constitution, conduct, or proposed activities would violate the laws of Iraq or would otherwise constitute a threat to the public order, safety, stability or security of Iraq. Section 3(2).

The onus is, however, on the Ministry to register NGOs expeditiously. A 2004 amendment to the law allows for automatic provisional approval of an NGO after 60 days if no decision of the Ministry has been issued. CPA Order Number 100 of 28 June 2004, Section 3(18).

CPA Order Number 45 also expressly contemplates the “promotion of gender equality” within the delineation of activities that might be undertaken by an NGO. Section 1.

The TAL broadly preserves the equal right to form unions, political parties, and civil society organizations.

Article 13(c) of the TAL:

The right of free peaceable assembly and the right to join associations freely, as well as the right to form and join unions and political parties freely, in accordance with the law, shall be guaranteed.

Article 21 of the TAL:

Neither the Iraqi Transitional Government nor the governments and administrations of the regions, governorates, and municipalities, nor local administrations may interfere with the right of the Iraqi people to develop the institutions of civil society, whether in cooperation with international civil society organizations or otherwise.

DE FACTO COMPLIANCE

Women’s Political Participation Under the Ba’ath Party

As summarized by one survey respondent:

Women under the former regime were subject to physical and psychological violations, for they were imprisoned, tortured, raped and murdered for bearing ideas conflicting with those of the party, and they were banished if relatives engaged in political activity. Political involvement was restricted to one group, which is the Women’s Federation, which used to represent the ruling party. They used to conform to what was dictated to them by the ruling party without discussion.⁴

Other respondents gave long lists of names of women murdered by the Ba’ath regime due to their political beliefs.⁵ It was also noted that “quotas existed for women’s representation and they could reach high ranks in the ruling party, but there were no ministers or under secretaries among them.”⁶

Women’s Political Participation Under the Coalition Provisional Authority

In July 2003, CPA Administrator, Paul Bremer, appointed three women to the 25-member Iraqi Governing Council (IGC). One of those women, Dr. Aqila Al Hashimi, was assassinated in September 2003, less than three months after her appointment.

Governorate councils were also formed throughout the country by provincial offices of the CPA. Women were represented, although in very low numbers, and no woman was appointed governor.

Women’s Representation in the Interim Iraqi Government

In May 2004, under the advice of the Special Adviser on Iraq to the UN Secretary General Lakhdar Brahimi, who had undertaken a process of consultation with political, religious, tribal and civil society actors, Bremer selected an Interim Iraqi Government (IIG). The IIG comprised a 3-member Presi-

gency Council, Prime Minister, Deputy Prime Minister, and 31 member Council of Ministers. Four women were awarded ministerial posts, they were: Agriculture, Municipal Affairs and Public Works, and Labor and Social Affairs.⁷

The fourth was appointed Minister of State for Women's Affairs, a new office established as part of the Interim Iraqi Government, and maintained under the Transitional Government. One survey respondent described the Ministry's authorities as "taking care of women's affairs; publishing studies on women and their status in Iraq; demanding their political, social and ideological rights; and holding activities on awareness of their rights."⁸ However several respondents expressed concern at the Ministry's lack of clearly defined powers, such as with respect to legislative reform efforts, and its severe under-funding.⁹

Women's Participation in the January 2005 Elections

In a strong indication of support for women's participation in the electoral process, 2 out of 7 of the appointees to the Independent Electoral Commission of Iraq were women. As noted above, the Electoral Law also mandated that at least one in three candidates on a party list be a woman.

As was well documented in the press, women turned out in record numbers for the January 2005 elections, despite serious security threats to all voters. Some survey respondents pointed to the Fatwa issued by Ayatollah Ali Al Sistani as of great significance "in creating awareness among the people regarding the necessity of women's participation, regardless of whether the father or spouse objects."¹⁰ Non-governmental organizations were also given a large amount of credit for increased participation by women through campaigns promoting the importance of the vote for women, and through provision of practical services to assist women's participation.

Several respondents noted that basic services aimed at facilitating women's access to voting, such as offering child care or transportation to polling locations, were not provided by the electoral commission.¹¹ A smaller number noted that transportation services were available in some areas and that the high number of polling stations facilitated access to voting.¹²

Women's Representation in the Transitional Government of Iraq

Transitional National Assembly

As a result of the quota system implemented under Article 4 of the Electoral Law, 87 of the 275 member Transitional National Assembly elected in January 2005 are women. Although proud of the fact that women now occupy more seats than ever before in the legislative branch of government, respondents remain concerned about the absence of women in high-level positions and the inferior position female members assume within party and coalition lists. One respondent opined that "[t]here is no real belief among the parties that women's participation in the political process is necessary. This leads to unqualified people being chosen only in order to fill up the electoral lists."¹³

Indeed several respondents observed that although parties and coalitions adhered to the quota system as a condition of acceptance of the list, the women were almost uniformly listed in every third position, and were thus less likely to be elected on any given list.¹⁴ This was the reason that the Electoral Law mandated a 1 in 3 listing as a means of meeting the 25% quota set forth in the TAL. Notably, not a single list exceeded the mandated 1 in 3. Several respondents also felt that the quota should have been set higher, many suggesting that 40–45% would be more appropriate,¹⁵ a position broadly endorsed by women's activists.¹⁶

Respondents were virtually unanimous in observing that few women are in positions of leadership within the political parties.¹⁷ Several respondents observed that some parties deliberately selected weak women so that they would not effectively represent women's interests or conflict with party policies. One respondent stated that the "political party system does not strengthen women because independent women can't participate."¹⁸

Council of Ministers and Presidency Council

Only 4 of the 36 Cabinet positions in the Transitional Government are held by women: Minister of Municipal Affairs and Public Works, Minister of Environment, Minister of Migration and Immigration, and Minister of State for Women's Affairs. Moreover, none of the four top positions – Prime Minister, or Deputy Prime Minister (of which there are 3) – are held by women. The 3-member Presidency Council, made up of the President (the official head of state) and 2 vice-presidents, contains no women. These figures are noticeably out of proportion with the number of women in the Transitional National Assembly (women make up 11% of the Council of Ministers vs. 32% of the parliament) and reflective of women's weak position within the parties.

Judiciary

As noted in the Chapter on Labor, for the last 10 years of rule of the Ba'ath party, women were not permitted to serve as judges. Since May 2003, some former graduates of the Judicial Training Institute have been appointed to the bench, first by the Judicial Review Committee (created under CPA Order Number 15 of June 23, 2003) and subsequently by the Iraqi Judicial Council. However, women still comprise a fraction of the judiciary (although the numbers are changing, it is believed to be less than 2%).¹⁹ Those women who do serve on the bench are not permitted to serve in the Personal Status Court and are generally found only in the Juvenile Court and the Civil Court of First Instance. There are no female judges on the Court of Cassation or on any of the 18 provincial appellate courts. Of the new 9 member Federal Supreme Court, which was appointed by the Interim President upon the nomination of the Higher Juridical Council, there is not a single female judge. There are several female public prosecutors, however, it is important to note that prosecutors do not have any decision making authority over cases, even at the early stage of an investigation.

For additional discussions on women in the judiciary, please see the Chapter entitled *Labor and Economic Rights*.

Governorate Councils

Governorate Councils were subject to the same quota requirements as the Transitional National Assembly (TNA). Despite the quota, 4 of the 18 governorate councils emerged with the number of female members below quota: Salah Al-Deen (10 out of 41 or 24%); Misan (same); Dhi Qar (9 out of 41 or 22%); Karbala (8 out of 41 or 19.5%).²⁰ Again, of the 18 governors and deputy governors, not one is a woman, and with the exception of Kurdistan, no deputy governor or committee president is a woman.²¹

Constitutional Committee

There are 9 women on the 55 member Constitutional Committee, a non-representative figure, both in terms of women's position within the general population and within the Transitional National Assembly, out of which the committee was formed.

Current Factors Impacting Women's Political Participation

As summarized by a survey respondent:

Several factors play a role in impeding a woman from playing her role in politics, such as illiteracy, an absence of political education programs and male views on the participation of women in politics, thus standing in the way of her advancement. In fact, many women possess the capabilities, but the opposition of the husband or family prevents them from involvement in political life, in addition to fear [by the woman and her family], given that those involved in the political arena are usually targeted.²²

Respondents almost unanimously stated that at present, women are subject to serious threats on their life as a result of their political participation.²³ As a leading women's activist observed, continuous "insecurity and instability in the country are badly affecting women's endeavors to consolidate their status in the political fields."²⁴ Survey respondents gave several examples of women's rights activists having been threatened, kidnapped and killed, by groups expressly opposed to such activism.²⁵

Women in high profile government positions have been similarly targeted, including Interim Governing Council Member Dr. Aqila Al Hashimi (murdered on September 20, 2003) and Transitional National Assembly member Sheikha Lamea Khaddouri (murdered on April 27, 2005). Both women were gunned down while leaving their homes. Sheikha Lamea Khaddouri, daughter of a prominent Shiite leader, is the first and only TNA member to be assassinated, and had survived two previous assassination attempts.²⁶

Respondents also indicated that the practices of the former regime were responsible for continued reluctance among some women to get involved in political activities.²⁷ One respondent stated that "Iraqi women distrust parties and other assemblies."²⁸

Respondents also pointed to cultural traditions, illiteracy, and lack of programs that support women's involvement as obstacles to women's political participation.²⁹ While several respondents stated that the government, NGOs and political parties had encouraged women's involvement in the lead up to the January 2005 elections through public awareness campaigns, many respondents stated that more campaigns are necessary, especially those that address the cultural and religious traditions that limit women's participation. Particular concern was expressed for rural women in this regard.³⁰

Women's Participation in Non-Governmental Organizations and Civil Society

Since the fall of Saddam Hussein in 2003, there has been a surge in the establishment of women's rights NGOs and networks both within Iraq and in the diaspora. One respondent noted that women's active involvement in NGOs is a reflection of their desire to be involved in community decision making.³¹ Leading activists have observed that the expansion of the women's movement has seen a consequent increase in women's representation in the media, with coverage focusing on the positive implications of women's participation in political and social movements.³²

Women are also active in trade, labor and professional unions, although in relatively small numbers and they are not well represented in leadership positions.³³

Several conferences focusing on women have taken place inside and outside Iraq since the fall of the Ba'ath party. The first national women's conference "The Voice of Iraqi Women" was held in July 2003 with over 100 participants from all regions of Iraq. A larger conference was held in June 2004 with an attendance of over 350 participants. Entitled "The National Conference for Empowering Women in Democracy," it focused on women's political participation at the national and local level, particularly in the electoral process.³⁴

Demands emerging from such conferences have included, the equal participation of women in drafting election laws and the permanent constitution (the latter of which has not been met in terms of the formation of the official constitutional drafting committee); quotas for women's participation in parliament set at 40%; greater participation for women in regional and international political activities; an emphasis on merit as the determining criteria for political candidates, rather than factional or sectarian interests; capacity building programs for women's organizations; the establishment of a mechanism of communication between the government and women's NGOs at the national and governorate level, supported by a sufficient budget; and ensuring women's 25% participation in local and municipal councils.³⁵

More recent conferences have focused on issues of Women and the Constitution. In March 2005, the Ministry of State for Women's Affairs gathered women's activists, government officials, members of the Transitional National Assembly, lawyers and international experts and concluded with a set of recommendations agreed to by the 30 participants. On the subject of constitutional guarantees relating to women's political participation and public life, they called for:

- Provision for mandatory minimum representation of women in all three branches of government, the judiciary, executive and legislature.
- Maintaining the guarantees as provided for under the TAL pertaining to freedom of association, assembly and media.
- Encouragement and allowance of temporary special measures to enable the enforcement of legislative and constitutional equality provisions and to promote the rights of women and other groups that have suffered from past discrimination.
- Implementation of Article 60 of the TAL to ensure public participation in the constitutional drafting process.

More broadly, the recommendations sought the express reference to gender in constitutional provisions pertaining to equality and non-discrimination; the withdrawal of Iraq's reservations to international conventions (such as CEDAW); the incorporation of Iraq's treaty obligations into Iraqi law; enforcement of constitutional provisions through a Court empowered to hear complaints by individuals pertaining to violations of the Constitution; and the establishment of an independent committee tasked with reviewing legislation for compliance with the provisions of the Constitution.³⁶

KEY AREAS OF CONCERN

- ➔ The recently appointed 55 member Constitutional Drafting Committee contains only 9 women, giving rise to serious doubts about the representation of women's interests in the permanent Constitution.
- ➔ Although more active in civil society and in government than ever before, women continue to be largely excluded from decision-making and leadership positions, both inside government and within political parties. Notably, women's participation in the Judiciary remains extremely low and only 4 members of the 36 member Council of Ministers are women.
- ➔ Threats and attacks on female activists and political figures continue to undermine women's participation in political life.

UDHR

Article 21

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right to equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ICCPR

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

CEDAW

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

United Nations Security Council Resolution 1325

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution...

Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict...

8. Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:
 - c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.

ENDNOTES

- ¹ Respondent H1. Question 25.
- ² UN Security Council Resolution 1483. Preamble. May 22, 2003.
- ³ CEDAW/C/IRQ/2-3 19. October 1998 (English).
- ⁴ Respondent A6. Question 32.
- ⁵ Respondent A7. Question 32.
- ⁶ Respondent D5. Question 32.
- ⁷ Interim Iraqi Government. Announcement Ceremony Press Packet. Available at: www.cpa-iraq.org.
- ⁸ Respondent I3. Question 7.
- ⁹ Respondents E2, I1, F1. Question 7. Respondents A1, A6, B1, B2, C1. Question 8.
- ¹⁰ Respondent A5 (See also A7). Question 24.
- ¹¹ For example, respondents A7, B1-4, C2-5. Question 26.
- ¹² Respondents A1, A3. Question 26.
- ¹³ Respondent G1. Question 23.
- ¹⁴ For example, respondents A5, A6, B2, B3, C1, C2, D1, D2. Questions 28 and 29.
- ¹⁵ Respondents C1, C3, C4, D2. Question 27.
- ¹⁶ Iraqi Al-Amal Association. "The National Conference for Empowering Women in Democracy (White Paper)." Baghdad. June 16-17, 2004.
- ¹⁷ For example, respondents A7, B1, B2, B3, B4, C1. Question 17.
- ¹⁸ Assessment Focus Group. April 28, 2005.
- ¹⁹ Iraqi Al-Amal Association. "The National Conference for Empowering Women in Democracy (White Paper)." Baghdad. June 16-17, 2004.
- ²⁰ Statistics researched by Survey Respondent. April 2005.
- ²¹ Authors' interview with senior official of Ministry of Municipal Affairs and Public Works.
- ²² Respondent A5. Question 23.
- ²³ For example, respondents A1, A2, A3, A5, A6. Question 32.
- ²⁴ Iraqi Al-Amal Association. "The National Conference for Empowering Women in Democracy (White Paper)." Baghdad. June 16-17, 2004.
- ²⁵ Respondents A1, A7, B1, B4, G1. Question 32. A1, H1. Question 81.
- ²⁶ New York Times. "Slain Iraqi Legislator Knew the Risks She Was Taking." April 27, 2005.
- ²⁷ Respondents A6, A7. Question 23.
- ²⁸ Respondent C5. Question 23.
- ²⁹ Respondents A5, B2. Question 23.
- ³⁰ Respondent E2. Question 25.
- ³¹ Respondent A1. Question 25.
- ³² Iraqi Al-Amal Association. "The National Conference for Empowering Women in Democracy (White Paper)." Baghdad. June 16-17, 2004.
- ³³ Respondents A2, B2, B3, B4. Question 36.
- ³⁴ Iraqi Al-Amal Association. "The National Conference for Empowering Women in Democracy (White Paper)." Baghdad. June 16-17, 2004.
- ³⁵ Iraqi Al-Amal Association. "The National Conference for Empowering Women in Democracy (White Paper)." Baghdad. June 16-17, 2004.
- ³⁶ Recommendations of the Conference on Women and the Constitution in Iraq. Dead Sea, Jordan. March 19-20, 2005. Provided to the American Bar Association (ABA) by the Office of the Ministry of State for Women's Rights. This Conference was sponsored by the ABA and the National Democratic Institute (NDI).

HEALTH

“In theory, yes, there is healthcare but the quality is very poor and in rural areas there is no health care at all.”¹

At present, there are no discriminatory provisions in Iraqi domestic law that prohibit women from accessing healthcare or seeking medical treatment. On the contrary, Iraqi legislation contains provisions that attempt to promote the health of men and women alike.

Although women are not discriminated against in the legal provision of healthcare, their *de facto* status remains dangerously low. The past fifteen years of the Saddam Hussein regime were particularly damaging to the healthcare sector. Infrastructure is tremendously weak, the number of health professionals woefully inadequate, and public education is practically non-existent. The overall lack of capacity to deliver health services in Iraq means that even the most basic needs of women are not being met. Thus, although Iraq is in compliance with international standards in regards to its domestic law, in reality, the healthcare sector in Iraq is failing women on almost every level.

INTERNATIONAL LEGAL FRAMEWORK

Article 25 of the Universal Declaration of Human Rights (UDHR) assures everyone the right to an adequate standard of living necessary for adequate health. It further states that special care and assistance should be given for motherhood and childhood.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12, recognizes the right to “the highest attainable standard of physical and mental health.” The Covenant further expresses the steps to be taken by State Parties in order to attain this standard of health, including the “creation of conditions which would assure to all medical service and medical attention in the event of sickness.” Article 12(2)(d).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Article 12 requires States to take all appropriate measures to eliminate discrimination against women in healthcare and ensure equal access. It also calls on States to ensure appropriate services in connection with pregnancy and confinement. Article 12 further requires that State Parties ensure adequate nutrition during pregnancy and lactation and free services where necessary.

DE JURE COMPLIANCE

Iraqi law does not discriminate against women in the provision of health services. Article 19(b) of the 1970 Constitution stipulates equal opportunities for all citizens, which necessarily encompasses provision of health services.

Article 19 of the 1970 Constitution:

- (a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin, or religion.
- (b) Equal opportunities are guaranteed to all citizens, according to the law.

Article 14 of the Transitional Administrative Law (TAL) broadly provides that “the individual” has the right to healthcare. Buttressed by the overarching equality clause in the TAL (Article 12), this provision applies equally to men and women.

Article 14 of the TAL:

The individual has the right to security, education, health care, and social security.

Article 12 of the TAL:

All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion, or origin, and they are equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited. Everyone has the right to life, liberty, and the security of his person. No one may be deprived of his life or liberty, except in accordance with legal procedures. All are equal before the courts.

Article 33 of the 1970 Constitution specifically addresses health, including the provisions for the expansion of free services.

Article 33 of the 1970 Constitution:

The State assumes the responsibility to safeguard public health by continually expanding free medical services, in protection, treatment, and medicine, within the scope of cities and rural areas.

During the sanctions, however, sections 1, 6 and 7 of the Revolutionary Command Council Order Number 124 of 1997 allowed for some hospitals to move to a fee-based structure for health services, thus limiting free services.

Revolutionary Command Council Order Number 124 of 1997:

First -

1. The Ministry of Health has the authority to transfer a number of government hospitals belonging to the Ministry of Health in Baghdad and some of the other governorates to hospitals that are self-funded to cover their financial costs, in order to offer medical services of a high level of efficiency and performance.
2. A hospital included in the provisions of paragraph one of this Article is a legal entity with financial and administrative independence, and is represented by its director or an individual authorized by the director.

Sixth -

The hospital will offer its medical services in return for fees to be determined according to the rules set by the Ministry of Health, after they are presented to the Opinion Board at the Ministry and approved by the Presidency Secretary.

Seventh -

The Minister of Health may task the hospitals included in this order with offering medical services to citizens free of charge in the case of epidemics and emergencies, provided the Ministry of Finance will assume the financial cost necessary.

DE FACTO COMPLIANCE

Prior to the Gulf War and the subsequent decade of sanctions, Iraq enjoyed a high standard of healthcare relative to the rest of the Arab region. The healthcare system was free, centrally administered through the Ministry of Health and well equipped with modern hospitals and an adequate number of health service workers. Serious deterioration of services started in 1980 with the Iran-Iraq war and continued to decline throughout the subsequent conflicts and economic sanctions. However, even as late as 1991, it is estimated that up to 97% of urban and 71% of rural populations were able to access healthcare.²

The situation of Iraqi women and children continued to deteriorate in the 1990s as health infrastructure and food availability became severely compromised by the ongoing economic sanctions. By August 1990, it was estimated that food and medicine imports³ had fallen by between 85% and 90%.⁴ Malnutrition became commonplace and affected 30% of children under the age of five by 1996.⁵ The UN supported Oil For Food Program started the same year and supplied two thirds of the nation's food.⁶ Although the rations provided up to 2,215 calories per day per person, food quality was poor and provided little protein.⁷ Even after the program's inception, widespread protein deficiencies and malnutrition continued.

By 1996, over 30% of all hospital beds had been closed and public hospitals were struggling to provide essentials such as electricity, water and food to patients.⁸ Basic medicines were often unavailable and those imported under the Oil for Food Program were low quality and often ineffective.⁹ Several hospitals were bombed by Saddam Hussein's army and looted during the uprising after the first Gulf War. Some geographical regions fared far worse than others, as the former regime tended to favor certain political and ethnic groups. As a result, distribution of health services and supplies in Iraq fell

dramatically and infant mortality doubled.¹⁰ From August 1990 to March 1998, it is estimated that more than 60 children died every day of health and nutritional deficiencies caused by the embargo.¹¹

During this time of conflict and chaos, trained health workers fled the country for more stable and lucrative positions in neighboring countries, while those who remained were cut off from new technologies and education. Throughout the country, healthcare standards fell to dismal levels. Even before the present conflict, as of 2000, health care spending averaged only 2.2% of the GDP, well below the Middle East and North Africa average of 2.9%.¹²

Current Situation

Even after the fall of the former regime, the basic prerequisites for health continue to lag in most areas of the country. Water treatment plants have been severely damaged by the war and only half of the country's sewage treatment plants are operational.¹³ In some governorates, over 80% of those living in rural areas still lack clean drinking water,¹⁴ and only 3% of rural households are connected to a sewage system as compared to 47% in urban areas.¹⁵ Food insecurity remains a reality for many families and chronic malnutrition persists for almost a quarter of children between the ages of six months and five years.¹⁶ Although there are approximately 1,700 Primary Health Care centers operating in Iraq, only half of these are staffed by at least one medical doctor.¹⁷ Post war assessments by the World Health Organization indicate that approximately 12% of hospitals were damaged in the 2003 war.¹⁸

Serious problems persist with the level and quality of health services available to women. Many of the respondents noted that the majority of clinics and hospitals lack personnel, equipment and medicines.¹⁹ As one respondent pointed out, "[h]ealthcare is very poor and medicines for chronic illnesses are very scarce. Queuing up for them is enough to make the elderly ill over and above any previous ailments."²⁰ One doctor interviewed recounted conducting surgical procedures by candlelight due to the lack of electricity, without access to clean water, anesthesia, stitches or disinfectants:

In 2003, hospitals were looted and burned (for the second time, the first time was during the 1990 war). There has been even further decline in the quality of imported food and medicine as the borders are open, but not controlled or regulated. The water is polluted, causing disease. Anesthetics are not readily available, nor are materials for stitches, clean bedding, disinfectants or food for patients. Lack of electricity means that surgical procedures have to cease mid-way or be performed by candlelight. I have personally lost newborns due to a lack of electricity in hospitals.²¹

Moreover, the distribution of health services is often disproportionate. A recent report by the Iraqi Ministry of Health indicated that at least 4 governorates (Misan, Wasit, Nasiriyah and Basrah) have minimal or non-existent health services, while Baghdad is comparatively overstaffed.²² This discrepancy was echoed in the Assessment findings. Women noted that even when healthcare is free, particular geographic areas are often isolated from facilities and have no access whatsoever.

Barriers to Women's Health

Corruption

Although years of conflict and sanctions are largely responsible for crippling the healthcare infrastructure, a number of respondents pointed to rampant corruption within the healthcare system as one of the principal causes of this breakdown.²³ Supplies and equipment are often stolen or diverted and sold on the black market, depriving public clinics and hospitals of resources. Drugs and medication

are particularly at risk because of widespread shortages, drawing a premium price from those who can pay.

Security

Security factors were also mentioned as a substantial barrier to women's health. Because women are afraid to leave their homes out of fear of violence, they are not accessing what little health services are available. As of 2003, assessments estimate that security concerns impede healthcare access for up to 50% of the Iraqi population.²⁴ Moreover, fewer women are working outside the home in the health-care sector, further restricting the capacity of the health system.²⁵ Respondents also pointed out that the ongoing violence further drains the health system by channeling resources to those who are injured or killed on a daily basis.²⁶

Economics

Economic barriers to health were first introduced in 1997 with the establishment of a fee-for-service based system of healthcare. Although many services remained free, they were often below acceptable standards if they were available at all. Those wishing for a better standard of care were forced to pay for both services and medicines. Economic barriers are further exacerbated in the current environment where basic medicines and healthcare are scarce and few people are able to pay for private care. Transportation costs to reach services for those in rural areas further add to the cost of healthcare. Other basics such as contraception are not considered essential and thus are not fully covered by the state. As one participant pointed out "Women cannot afford to purchase birth control, even if it is subsidized by the state."²⁷ In a recent 2003 survey, 13% of women reported that "they wanted some form of birth control but did not have access to it."²⁸

Cultural and Social Factors

Substantial cultural and social barriers also impede women's health and wellbeing. Cultural practices such as early marriage persist, jeopardizing the overall reproductive and mental health of young girls who may not be sufficiently physically or mentally prepared to give birth. Other social and religious beliefs prohibit the use of family planning and restrict women's ability to choose the spacing and number of children in their families. Moreover, the preference for larger families compound risks for women when comprehensive maternal health services are not available. Several respondents also pointed out that some women may receive lower food quantities than the male members of their households fueling malnutrition rates among women.²⁹ As of 2004, over 40% of adult males in Iraq are overweight, while chronic malnutrition and anemia was reported to be common in children, adolescents and pregnant women.³⁰

Traditional notions of women's roles and preferential treatment of male members of the family may also act as a barrier to women's and girls' health. Although not widely mentioned in our survey, a 2003 American Medical Association survey of Iraqi women found that only 18% of Iraqi women could obtain healthcare without first seeking approval from a male relative.³¹ Several respondents also pointed to blatant favoritism towards boys in terms of care and treatment.

Reproductive and Maternal Health

Maternal Health

In a population where each woman bears an average of five children,³² the economic sanctions of the 1990's had devastating effects on maternal health. Now, conflict and a lack of essential services com-

pounds the already precarious circumstances of the 2000 women who give birth on a daily basis in Iraq.³³

The maternal mortality rate has doubled since 1989,³⁴ and stood at 292 deaths per 100,000 in 2004.³⁵ This number is exceedingly high, especially as compared to the most developed countries. In addition, almost 25% of babies have low birth weights³⁶ caused primarily by malnutrition among pregnant women.³⁷ As of March 2003, almost 25% of newborns had a body-weight of less than 2.5 kilograms.³⁸

The rate at which women access prenatal care is exceptionally low and is estimated to be under 60%.³⁹ Even within operating Primary Health Care centers, under 50% are able to provide basic maternal and child health services due to lack of equipment and qualified staff.⁴⁰ Many respondents indicated that although the State does in fact make efforts to provide some pre-natal and post-natal care, it has ceased to be a priority in the last few years.⁴¹ Although there were discrepancies among the respondents as to the nature of the services available, most of the efforts seemed to revolve around inoculations for pregnant women and infants. They also indicated that these vaccines were often in short supply and of poor quality.

There are health centers that women may visit for examination during pregnancy, and for getting special vaccinations, which was rather inaccessible during the embargo period. The difficulty of reaching health centers, and waiting in queues, these factors limit the women's access to government health centers. After birth, it is possible to vaccinate infants almost for free, but these measures are inadequate given that most of the time getting the medicine is impossible and forces the woman to purchase it from the market.⁴²

Respondents who stated that comprehensive health services are readily available were far fewer than those who pointed out the lack of services, and may be indicative of the geographic disparities within the country.

Respondents also identified the lack of trained professionals attending childbirths as a central issue to women's maternal health. Many cited the prevalence of homebirths, and the overall lack of information regarding safe birthing procedures as contributing to the deterioration of women's health.⁴³ As of 2003, it is estimated that only 70% of deliveries are attended by a trained health worker.⁴⁴ The use of midwives is common, particularly in poor and rural areas, and they may not be properly equipped to deal with complications. As one respondent pointed out, "[during childbirth] often the woman is subject to death as a result of infections, extreme anemia and hemorrhage."⁴⁵ A recent Ministry of Health report notes that in rural areas, 40% of women give birth without trained assistance.⁴⁶

Other maternal health problems identified by women included chronic iron-deficiency anemia, estimated by the United Nations Population Fund (UNFPA) to be as high as 50–70% of all pregnant women.⁴⁷ Other concerns include the lack of pre-natal vitamins, high rates of infections, high blood pressure, and diabetes. Exposure to environmental contaminants was also noted as an exceptional risk to women's and children's health. Miscarriages, infertility and congenital defects have been abnormally high since the onset of the Iran-Iraq war and subsequent conflicts where the use of chemical weapons and depleted uranium were common. One doctor noted that before the war the rate of birth defects was 1 in 2000; during and after the war, it rose to 30 in 2000. She also stated that she had seen birth defects such as children born with one eye, or two heads, as well as others with no brain.⁴⁸

According to a recent UNFPA report, Iraq has had an official policy on family planning and contraception for the last 12 years.⁴⁹ However, it is unclear to what extent women are able to access family planning services. There are also reports that almost one-third of family planning institutions were destroyed in the 2003 conflict.⁵⁰ Technological advances in family planning are unavailable and both healthcare providers and women alike are unaware of newer family planning options.⁵¹ One doctor reported that contraception was not available in the country at all as of early April 2005.⁵² Other respondents pointed to a general lack of awareness and knowledge regarding reproductive health among both men and women, and distrust in service providers as an obstacle. One respondent even pointed out that the government at one time passed out erroneous and outdated information in order to promote higher birthrates.⁵³

Even when facilities are functional, there are indications of serious gaps in reproductive health and family planning education. The gathering and dissemination of public information seems to have been widely neglected over the last decade and has not yet been revitalized. Many of the respondents indicated that public service initiatives or campaigns to educate women on overall health and available health services were inadequate.⁵⁴ Public education is also not available in regards to other serious reproductive health risks such as sexually transmitted infections and HIV/AIDS. The Ministry of Health (in conjunction with the CPA) has produced some materials encouraging women to seek maternal health services, however, the scope and impact of this project is unknown.

Other Threats to Women's Health

Cancer

One of the most recent and serious health problems for women in Iraq is the threat posed by certain types of cancers. Gynecological care is difficult to access for most of the population⁵⁵ and the state no longer has the funding, equipment, or expertise to carry out routine examinations and diagnosis. There is little awareness regarding the importance of self-examination for cancers; breast cancer currently ranks as the most common type of cancer in Iraq.⁵⁶ At the present time, radiotherapy facilities exist only in Baghdad and Mosul, and drugs for cancer treatment are not usually available.⁵⁷ Because most cancers are caught in the later stages, few treatment options are possible even if treatment and medication were available.

There have been reports that the Ministry of Health does keep statistics on the prevalence of the disease through a population-based cancer registry established in 1976, and indeed many respondents indicated they knew the State collected such data. The quality of the data and its usages remain unknown.

Post-traumatic Stress and Mental Health

Respondents indicated that mental health was an area largely ignored under the current health structure.⁵⁸ However, despite this, respondents noted that mental health has become a serious issue due to the ongoing violence, conflict, and political repression over the last several decades. Currently, there are no mental health services available through the public system.⁵⁹

Violence

There is evidence that victims of crime and violence have had difficulties accessing treatment for their injuries. There have been numerous reports of women being turned away from hospitals and clinics

for post sexual assault treatment because hospitals were either unequipped, or unwilling to treat victims.⁶⁰ There is a general lack of awareness in regards to survivor's medical needs and there are no current guidelines for post-assault procedures.⁶¹ Furthermore, the social stigmas attached to these crimes also discourage many women from attempting to access medical treatment. Reporting assaults and rapes can lead to other serious social and cultural consequences such as ostracization and additional threats of violence for having caused shame to the family.

Female Genital Cutting

There are reports that female genital cutting has resurfaced in the northern part of Iraq. In the district of Rania, in the Sulaimaniya governorate, midwives report that many women have been cut.⁶² Although this has serious consequences on women's long-term health, there appears to be no law against the practice. In fact, in Northern Iraq, Amnesty International has reported that midwives regularly see women who have been cut, and that doctors have carried out the practice on married women at their husband's request.⁶³

For additional discussions on violence against women, please see the Chapter entitled *Violence Against Women and the Right to Personal Security*.

KEY AREAS OF CONCERN

- Women's health services in Iraq lack basic essentials and are inadequate to accommodate the population.
- Lack of basic standards of living (such as water, food and sanitation) has a particularly negative impact on women's health.
- Healthcare facilities are non-existent in many rural areas.
- There are no mechanisms in place to measure the prevalence of harmful practices such as female genital cutting.
- There is no capacity to prevent and treat the rising incidents of terminal illnesses such as cancer.

UDHR

Article 25

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

ICESCR

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

CEDAW

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

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VIOLENCE AGAINST WOMEN AND THE RIGHT TO PERSONAL SECURITY

“The culture of violence and blood has led to a degradation of woman and her standing and the denial of her freedom.”¹

This comment on violence by a respondent is a real-life testimony to the principle stated in the opening paragraph of the Convention on the Elimination of All Forms of Discrimination against Women’s (CEDAW) General Recommendation Number 19 on Violence Against Women that “[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”²

Violence against women in Iraq is underscored by a set of laws that excuse or provide mitigated sentences for rape, abduction, assault and murder of women in direct violation of international conventions to which Iraq is a party. Under the pretext of restoring family honor and maintaining order within the family, such laws subordinate women to men and perpetuate violence within the family and the community.

In Iraq, such laws have been coupled with a rise in conservatism, armed conflict, and a flawed law enforcement system, which add to the insecurity experienced by women both inside and outside the home. The forms of violence addressed in this Chapter are endemic to Iraqi society today and will continue unless addressed by the State, both as a matter of law and practice.

INTERNATIONAL LEGAL FRAMEWORK

International Definitions of Violence Against Women

The UN Declaration on the Elimination of Violence against Women (GA Res 48/104 of 20 December 1993) defines “violence against women” as “any act of gender-based violence that results in or is likely to result in, *physical, sexual or psychological harm or suffering to women*, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.” Article 1 (emphasis added). It encompasses, but is not limited to violence within the family (such as battering, marital rape and sexual abuse of female children); violence occurring in the community (such as rape, sexual harassment and intimidation at work); and violence perpetrated or condoned by the State.

CEDAW’s General Recommendation Number 19 puts gender-based violence squarely within the definition of discrimination against women:

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights

conventions, is discrimination within the meaning of article 1 of the Convention. Paragraph 7.

Violence is not specifically addressed in the main articles of CEDAW, with the exception of Article 6 on prostitution and trafficking. However, the CEDAW Committee's General Recommendation Number 19 elaborates on the numerous forms of violence against women and their inherent links with discrimination and notes that "[g]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence." Paragraph 6. Paragraph 11 states that "traditional attitudes that regard women as subordinate to men ... perpetuate widespread practices involving violence or coercion." Recommendation 19 makes explicit reference to domestic violence, honor crimes and female circumcision.³

State Responsibility

Under international human rights law, the State maintains a specific duty to protect women from violence. The UN Declaration on the Elimination of Violence against Women requires that, "States should pursue by all appropriate means and without delay a policy of eliminating violence against women." Article 4.

As articulated in CEDAW's General Recommendation Number 19, paragraphs 8 and 9, and pursuant to Article 2(e) of CEDAW, States are required to protect women from violence, whether by the State or by private individuals. Paragraph 9 specifically provides that States may be responsible for providing reparations for private acts where they have failed to act with "due diligence" to prevent rights violations or to investigate and punish such acts. Notably, paragraph 24 specifically calls for legislation to remove the defense of "honor" in relation to murder and assault of a female family member and for criminal and civil remedies in domestic violence cases.

The UN Declaration on the Elimination of Violence Against Women, Article 4, reiterates the State's obligations to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons." Notably, that Article goes on to state that "States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination."

The former government of Iraq entered reservations to those CEDAW Article 2 provisions that set forth the State's obligations to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women" (paragraph (f)), and to "repeal all national penal provisions which constitute discrimination against women." (paragraph (g)). Those provisions are fundamental to the implementation of the convention and the CEDAW Committee has called on Iraq to reconsider such reservations.⁴

DE JURE COMPLIANCE

The Iraqi Penal Code of 1969, subsequent orders of the Revolutionary Command Council and specialized amending legislation, contain several provisions that condone violence against women by providing for mitigated sentences and in some cases absolute relief from criminal responsibility by the perpetrator. While the earliest Coalition Provisional Authority (CPA) amendments addressed several provisions of the Iraqi Penal Code and Law of Criminal Proceedings that were perceived as falling

short of international human rights standards, they did not address gender discrimination in those laws.

Rape and Sexual Assault

Under the Iraqi Penal Code Number 111 of 1969 (with amendments), rape is a private offense, meaning that no action can be brought by the state without the consent of the complainant or a legal guardian. The provisions pertaining to rape and sexual assault specify maximum penalties, but no minimum penalties. See Article 385 (carnal knowledge of a minor, maximum penalty 10 years); Article 393 (rape, maximum penalty 15 years); Article 394 (sexual intercourse with a minor between 15 and 18 years, maximum penalty 10 years); Article 396(1) (sexual assault of an adult, maximum penalty 7 years); Article 396 (2) (sexual assault of a minor, maximum penalty, 10 years).

Aggravating circumstances include the use of force, incest, a relationship of guardianship or trust over the victim, transmission of disease, and the victim's loss of virginity (for which she must be compensated). Article 393 (2). Revolutionary Command Council Decision Number 488 of 1978 introduced the death penalty for certain cases of incest. Such offences would result in a penalty of life imprisonment under the revisions to the laws pertaining to the death penalty (discussed below under Prostitution).

One of the most controversial provisions in the penal code, but one that features in several such laws throughout the region, is Article 398 by which the defendant is excused in cases of rape and sexual assault if he marries his victim, even after the sentence has been dispensed. The victim is thus subjected to a minimum of three years with her assailant, as the law provides that the sentence or proceedings will resume if he divorces her without legal justification during that period.

Iraqi Penal Code Number 111 of 1969, Article 398:

If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed.

Legal proceedings will resume or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings.

The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence.

This provision may be put in effect by petition of one of several parties, namely, "the public prosecutor, the accused, the victim or any person who has an interest in the proceedings." As there is no provision to the contrary, this mechanism is applied even in cases where the victim is a minor.

Advocates of this provision argue that it was passed in the interests of the victim, so that her honor may be reinstated by virtue of the marriage. In reality, it has served to institutionalize the shame and dishonor associated with rape and further jeopardize the life and health of the victim. This was demonstrated by a recent case in Southern Iraq, where a 14 year old girl was raped and then threatened with death by her family when she gave birth to the rapist's baby. The victim was then placed in custody for her own protection, along with her new born baby, while efforts were made by international and Iraqi organizations to secure shelter for her outside southern Iraq. When this process was

almost complete, the accused, who was being held on remand, petitioned the court to marry the victim, with the agreement of the victim's family, and, ostensibly, the victim. The accused was released and the two were married.⁵ According to NGO workers, cases like this are not uncommon. It is also worth noting that under the Iraqi Personal Status Code the legal age for marriage is 18 years (Article 7(1)), and 15 years with the consent of a judge (Article 8(2)). There is no legal provision for marriage of a minor under 15 years of age.

Kidnapping

Article 423 of the Iraqi Penal Code Number 111 of 1969 (with amendments) provides that abduction of a woman is a felony carrying a maximum penalty of 15 years, with rape or attempted rape considered an aggravating factor carrying a penalty of death or life imprisonment. Article 423 was among the articles for which the death penalty was reinstated by Order Number 3 of 2004.

Iraqi Penal Code Number 111 of 1969, Article 423:

Any person who himself or through another kidnaps a woman over the age of 18 with the use of force or deception is punishable by a term of imprisonment not exceeding 15 years. If the kidnapping is accompanied by any sexual intercourse with the victim or an attempt to have intercourse with her, the penalty will be death or life imprisonment.

Again, using identical language to Article 398, the penalty is voided by marriage of the abductor to the victim.

Iraqi Penal Code Number 111 of 1969, Article 427:

If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, the sentence will be quashed.

Legal proceedings will resume or the sentence will be reinstated according to the circumstances if the marriage ends in a divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings.

The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence.

Murder and Mitigating Circumstances – Honor Crimes

While the usual penalty for murder is either death or life imprisonment, the Penal Code makes special provision in the case of a man who murders his wife or a female relative when he catches her in the act of adultery, and further deprives the victim or victims of any legal right to self defense.

Iraqi Penal Code Number 111 of 1969, Article 409:

Any person who surprises his wife or close female relative in the act of adultery and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding 3 years. It is not permissible to exercise the right of legal defense against any person who uses this excuse nor do the rules of aggravating circumstance apply against him.

Laws providing for mitigated sentences in relation to honor crimes were suspended in the Kurdish region in 2000. They remain in effect in the remainder of the country.

Revolutionary Command Council (RCC) Order Number 6 of January 2001 gave effect to a broader category of so-called honor crimes by providing for a mitigated sentence for the killing of a wife or close female relative (*muhamam*)⁶ where the motive is related to honor. Under Article 130 of the Penal Code, such mitigated sentence may be as low as one year, where the full penalty would have been death, or 6 months where the full penalty would have been life imprisonment. RCC Order Number 6 further provides a mitigated sentence for a male relative of the deceased and dishonored female who murders an individual for making reference to the dishonorable act of the deceased. It also provides for punishment by execution in relation to any attempts to avenge the victim. This provision has not been repealed either by CPA order or by order of the Interim or Transitional Governments.

Revolutionary Command Council Order Number 6 of 2001:

Considering the killing of one's wife or a close female relative (*muhamam*) for honor 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 *muhamam* for honor reasons, or if one of the relatives of the deceased woman killed the one who imputed dishonor to any of them by making reference to her disgraceful deed, which she was killed for.

Second: Anyone who intentionally and for the purposes of revenge of the deceased kills the killer specified in the first clause shall be punished by execution. No legal excuse or mitigating factors shall apply to him, and he will not be entitled to any partial or general pardon.

Third: Anyone who, in accordance with tribal procedures, issues a ruling or attempts to issue a ruling in relation to the crimes referred to in the first and second clauses of this decision shall be imprisoned for not more than seven 7 years and not less than three 3 years.

...

Saddam Hussein
President of the Revolutionary Command Council

Prostitution

Prostitution is a criminal offense. The Anti-prostitution Law introduced in 1988 included a minimum penalty of 3 months and a maximum of 2 years for women guilty of prostitution. Revolutionary Command Council Order Number 234 of 2001, amended the Anti-prostitution Law of 1988 to mandate capital punishment for individuals guilty of pimping and prostitution.

Although this provision has not been specifically revoked or amended, CPA Order Number 7 of 2003, Section 3, repealed all provisions providing for the death penalty and substituted them with life imprisonment. Following the transfer of authority, the death penalty was reinstated for certain offenses by the Interim Iraqi Government, although prostitution was not among them. Order Number 3 of 2004.⁷

Domestic Violence

“The punishment of a wife by her husband” is considered a “legal right” under Article 41 of the Iraqi Penal Code and is categorized with such acts as disciplining of children and violence as a means of apprehension of a criminal in the course of a felony. As such, it is not considered a crime. While the law specifies such punishment to be permissible “within certain limits prescribed by law or by custom,” there are no specified legal limits, and the customary limits are, by their nature, indefinable.

Iraqi Penal Code Number 111 of 1969, Article 41:

There is no crime if the act is committed while exercising a legal right. The following are considered to be in exercise of a legal right:

- (1) The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom.

Marital violence is, however, grounds for divorce. For additional discussions on marital violence, please see the Chapter entitled *Family and Marriage*.

Female Genital Cutting

There are no specific laws criminalizing female genital cutting and, although the Ministry of Health has stressed that doctors are not to perform such procedures, there is no legal mechanism to enforce this prohibition.⁸ Although female genital cutting constitutes “assault” within the meaning of Article 412 of the Penal Code, this provision is rarely if ever invoked with respect to such acts.

Iraqi Penal Code Number 111 of 1969, Article 412 (emphasis added):

- (1) Any person who willfully assaults a person by wounding or beating him or with the use of force or harmful substances or by committing another unlawful act with intent to cause permanent disability is punishable by a term of imprisonment not exceeding 15 years.

There is permanent disability if the act results in the severance or amputation of a limb or part thereof or the loss or diminution of the benefit of such limb or madness or mental disability or permanent loss in whole or part of any of the senses or bodily disfigurement that is not expected to disappear or imminent danger to life.

- (2) The penalty will be a term of imprisonment not exceeding 7 years or detention if the offence results in permanent disability which the offender did not intend.

DE FACTO COMPLIANCE

Conflict, insecurity, violence in the home, and institutionalized non-enforcement of the limited legal protections that do exist make Iraqi women increasingly vulnerable to violence. As one survey respondent stated, “violence has left a deep imprint on the lives of women.”⁹

Rape and Sexual Assault

A senior gynecologist commented: “I have seen many female victims of violence through my work. Incidences of rape are high, but rarely recorded as such or reported to the police.”¹⁰ Indeed, as noted above, rape is commonly perceived as bringing dishonor upon the family, and frequently leads to honor killings. A recent study conducted by the Ministry of Women’s Affairs reported that of the 400 cases of rape documented since the fall of the regime, more than half of the victims were later murdered in honor killings.¹¹

The absence of female law enforcement personnel contributes to the reluctance of women to report incidences of rape. A Human Rights Watch Report compiled in July 2003 documented a general insensitivity on the part of law enforcement personnel as well as a lack of awareness of their role in addressing such matters.¹²

Kidnapping

There has been a proliferation of kidnappings for ransom over the course of the last two years due to the inability of security forces, both local and international, to control organized crime. Several respondents stated that they fear leaving their homes, and that their ability to work, study, and participate in political life is severely compromised due to the threat of kidnapping and murder.¹³ One respondent stated that 15 female students were kidnapped in the space of a single month from a school in Najaf.¹⁴ Another stated that “[i]n the event that organized crime continues, women will be unable to do anything.”¹⁵

Honor Crimes

Within their own communities and homes, women and girls remain at risk of death or injury at the hands of family members who believe they have brought dishonor upon the family. Honor crimes occur for a range of “reasons,” including adultery, refusal to marry a man chosen by the family, attempting to marry someone not approved by the family, having pre-marital sex, being a victim of rape, or even “suspicion” of committing such acts.¹⁶ In addition to murder, honor crimes also include other forms of violence, such as mutilation.¹⁷

The CEDAW Committee has expressed its deep concern regarding the violence perpetrated against women in Iraq in the form of honor killings.¹⁸ It noted that in addition to the continued practice of this particularly brutal form of violence against women, such crimes are not prosecuted and punished as are other homicides.¹⁹

Killing

The organization Kurdish Women Against Honor Killings (KWAHK) reports that between 1991 and 1998 hundreds of women died from honor killings in Northern Iraq. KWAHK also listed more than 100 cases that occurred during the 1990s, before the passage of legislation prohibiting such crimes. In

Kurdistan, the government is criticized as not having done enough with regard to the enforcement of the law.²⁰ Outside Kurdistan, perpetrators of so-called honor killings are protected by Iraqi legislation, which provides for extraordinarily lenient sentences for such crimes, as noted above. Since 2001, when RCC Order Number 6 was issued providing mitigated sentences for so-called honor killings, the number of honor killings has grown and is said to have further increased in Iraq since the fall of the Ba'ath party, supposedly because of a rise in conservatism.²¹

Mutilation

Honor crimes may also take the form of mutilation. By way of example, a recent Amnesty report contains an account of a 24-year-old pregnant Iraqi woman, who was accused of adultery and tortured and mutilated by six members of her husband's family. They cut off part of her nose and told her they would kill her after the birth of her child. She fled to Syria where she obtained refugee status. The men who tortured her were released within 24 hours on the grounds that they were safeguarding family honor.²²

Female Genital Cutting

Female genital cutting (also known as female genital mutilation or female circumcision) involves the removal of all or part of a girl's external sexual organs. It can have dire and long-term consequences on a woman's physical and mental health and it can result in excessive bleeding, infection, as well as the transmission of disease, including HIV. It can also lead to excessive pain during sexual intercourse and increases the risk of hemorrhaging, which can lead to death, during childbirth.

Although never found to be a common practice in the south of Iraq, in the rural areas of northern Iraq, the practice of female genital cutting appears to be widespread.²³ According to one report, female genital cutting has increased to shockingly high levels in Iraqi Kurdistan, a region with no previous history of this practice.²⁴ Between September and November of 2004, an international NGO with strong presence in the region, WADI, conducted interviews with 1,544 women and girls in the Germain area of northern Iraq; 977 of them stated that they had been subjected to female genital cutting.²⁵

Domestic Violence

Violence in the family in Iraq goes mostly unreported. According to an Amnesty International report, "[t]radition all too often serves as a pretext for acts of brutality against women for daring to choose how to lead their lives."²⁶

In a survey conducted in 2003 by Physicians for Human Rights, the group found that half of those surveyed, both men and women, "agreed that a man has the right to beat his wife if she disobeyed him."²⁷ A senior gynecologist interviewed by the authors stated: "I have ... seen cases of beating by husbands which have caused severe physical trauma and miscarriages. In such cases, the men are not punished and the women are sent home."²⁸

As previously noted, public acceptance of marital violence is supported by the law.

Studies concerning women in conflict have shown the interrelation between State violence and a rise in domestic violence, such as in the Occupied Territories of Gaza and the West Bank and in Kosovo. One United Nations Development Fund For Women (UNIFEM) report concluded that family violence "appears to have increased since the conflict. Possible explanations . . . [include] increased acceptability of violence as a way to solve problems, the breakdown of tight family and social structures, [and] a rise in instability and uncertainty."²⁹

There are far fewer NGOs in the southern and Shiite areas of Iraq, despite the fact that the situation of women there is often more dire. The few existing documents show that violence against women is very widespread. Another report issued by Physicians for Human Rights surveyed 2000 families in the south, 50% of whom reported household violence in the form of beatings, torture or murder. Few initiatives such as shelters or education campaigns have been put in place in the region.³⁰ Most victims of family violence have no access to medical treatment.³¹

Significantly, there is a sharp connection between family violence and female suicides in Iraq, including self-immolation. Women's NGOs in Iraq such as KWAHK and the Asuda Centre shelter have documented numerous cases of suicides. Reasons given by survivors included forced marriages, mistreatment within marriage, family disputes, fear of honor killings and poverty.³²

Trafficking and Prostitution

In 2000, under the regime of Saddam Hussein, dozens of women were arrested on suspicion of prostitution, detained, and mistreated in custody before being publicly beheaded, many of them in front of their homes with swords.³³ At least one judge who refused to enforce such penalties was removed from the bench and himself imprisoned.³⁴

During the Anfal campaign against the Kurds, senior Iraqi officials were involved in the trafficking of Kurdish women for sexual exploitation as part of the government's repression of the Kurds.³⁵

Other Forms of Violence Against Women

Survey respondents reported cases of women being used as bargaining tools or as gifts between tribes. One respondent described several such cases:

I found cases where girls are offered to men as gifts, the sister or the daughter of a tribal leader would be offered as a gift, and the man would have to accept the gift in keeping with social customs. I met with one of these gift girls, and I found that she is a woman without free will and she cannot even describe the repression she is going through, especially because she is the second wife, and the husband's son is married to a woman who is three years her senior.

There is another case involving ransom. I met with a woman who is a victim of these bad traditions, she refused to marry her cousin, and so her cousin banned her from marriage.

The third case: I met with a young girl who was a peace offering between two tribes to resolve a conflict, when she was in the sixth grade. In this case, the woman is not allowed to wear a wedding dress or have a party, and she is not treated as a regular wife is treated, nor does she have the right to divorce.

....

Fifth case: I met a woman who only gave birth to girls, and so she pledged to offer one of the girls to tribal leaders, and this girl was later married off.³⁶

Forced marriage is a recognized form of violence against women and a violation of their fundamental freedoms.³⁷ It is also illegal in Iraq and has been criminalized under Article 9(2) of the Iraqi Personal Status Code. For additional discussions on forced marriage, please see the Chapter entitled *Family and Marriage*.

Availability of Protection and the State's Response

Despite the State's responsibility to prevent and punish violence against women, in its concluding comments on Iraq's last periodic report to CEDAW (June 2000), the Committee criticized the Government for its "lack of a comprehensive approach to the issue." In particular, the government was criticized for the lack of data and information on the types of violence perpetrated against women in the home and in society; the absence of social, medical and psychological support available to women subjected to violence; and the absence of measures to prosecute and punish perpetrators and to provide legal redress.³⁸

Law Enforcement

To the extent that the law provides punitive measures for acts of violence against women, enforcement is limited. Obstacles include the absence of female police personnel, limited forensics capabilities and poor investigative practices within the police services and the judiciary.

As one respondent stated, "if [mis]fortune befalls her and she lands in police stations or detention centers, then she would suffer physical and psychological violence."³⁹

Shelters

While the recently established Ministry of Women's Affairs is actively seeking to provide assistance in this area, it does not have the budget to establish state-run shelters.⁴⁰

Known non-governmental women's shelters include the Asuda Center for Combating Violence Against Women in Sulaimaniyah and the shelter run by the Women's Freedom Organization, both of which specialize in assisting women endangered by threatened or attempted honor killings.⁴¹ These shelters generally try to negotiate with the family for the woman's or girl's safe return as the best long-term solution; if that is not possible, the women are sent to distant locations to start a new life.⁴² Shelters are very few and of limited capacity. For example, only 12 women can be accommodated in Asuda at any one time.⁴³

The Nawa Centre, opened by German NGO WADI in 1999 in Sulaimaniyah, Northern Iraq, and now run by the Ministry of Social Affairs with funding and technical support from WADI, provides shelter and counseling to homeless and displaced women, and assists with conflict resolution as a means of reconciling women with their families. The Khazad Centre for Women in Distress in Arbil provides similar services, also with funding from WADI.⁴⁴

KEY AREAS OF CONCERN

- ➡ Laws providing for mitigated sentences for so-called honor killings continue in force. Reports also indicate that incidences of honor killings have risen during the period following the fall of the Ba'ath party.
- ➡ Victims of rape are commonly perceived as disgraced and thus subjected to the threat of honor killings, or to marriage to their rapist, under the pretense of reinstating honor to the family. Both practices are legitimized under the Iraqi Penal Code.
- ➡ A man is legally entitled to beat his wife under the Iraqi Penal Code, and the practice is broadly accepted by both men and women.

- ➔ Female genital cutting appears to be on the rise in the Kurdish region. There are no legal provisions expressly outlawing or criminalizing the practice.
- ➔ The state has limited capacity to provide redress for female victims of violence, either through the criminal justice system or through the provision of shelter for women seeking to escape such violence.

VIOLENCE AGAINST WOMEN – INTERNATIONAL TREATY FRAMEWORK

UDHR

Article 3

Everyone has the right to life, liberty and the security of person.

ICCPR

Article 9

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

CEDAW

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

CEDAW General Recommendation Number 19, Paragraphs 7, 9 and 11

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:
- (a) The right to life;
 - (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
 - (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
 - (d) The right to liberty and security of person;
 - (e) The right to equal protection under the law;
 - (f) The right to equality in the family;
 - (g) The right to the highest standard attainable of physical and mental health;
 - (h) The right to just and favorable conditions of work
9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities.

**UN Declaration on the Elimination of Violence against Women (A/RES/48/104
23 February 1994)**

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- (a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
- (b) Refrain from engaging in violence against women;
- (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- (d) Develop penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- (e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;
- (f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- (g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and programs, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;
- (h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;
- (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

- (j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;
- (k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
- (l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- (m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- (n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- (o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;
- (p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;
- (q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programs, as appropriate.

Committee on Economic Social and Cultural Rights, General Comment Number 14 (The Right to the Highest Attainable Standard of Health), UN Doc. E/C.12/2000/4, 11 August 2000.

Paragraph 35

States are ... obliged ... to prevent third parties from coercing women to undergo traditional practices, e.g., female genital mutilation.

ENDNOTES

- ¹ Respondent E2. Interview. 2005.
- ² CEDAW. "General Recommendation 19, Violence Against Women (Eleventh Session 1992)." 1993.
- ³ CEDAW. "General Recommendation 19, Violence Against Women (Eleventh Session 1992)." 1993.
- ⁴ CEDAW. "General Recommendation 19, Violence Against Women (Eleventh Session 1992)." 1993.
- ⁵ As reported to author.
- ⁶ *Muharam* - a term used to describe a close female relative who one cannot legally marry.
- ⁷ Order No. 3 of 2004 (August 8) provides capital punishment for certain crimes affecting internal state security, public safety, attacks on means of transportation, premeditated murder, drug trafficking, and abduction.
- ⁸ Interview with Gynecological Specialist. Focus Group. April 28, 2005.
- ⁹ Respondent A7. Question 41.
- ¹⁰ Interview with Gynecological Specialist. Focus Group. April 28, 2005.
- ¹¹ Al Ajeley, Ziad Khalaf. "Killing for Honor." Institute for War and Peace Reporting. Available at: www.peacewomen.org/news/Iraq/May 05/honour.html
- ¹² Human Rights Watch. "Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad." Human Rights Watch, Vol. 15, No. 7 (E). July 2003.
- ¹³ Respondents A7, B1, B3, B4, C5, E2, E5, G1. Question 81.
- ¹⁴ Respondent A7. Question 81.
- ¹⁵ Respondent A7. Question 81.
- ¹⁶ Brown, Lucy & Romano, David. "Women in Post-Saddam Iraq: One Step Forward or Two Steps Back?" 2004.
- ¹⁷ Amnesty International. "Iraq: Decades of Suffering, Now Women Deserve Better." 2005.
- ¹⁸ CEDAW/C/IRQ/2-3 468 and 469, ¶199. June 14, 2000. ("The Committee is also deeply concerned by the violence against women perpetrated through honour killings.")
- ¹⁹ CEDAW/C/IRQ/2-3 468 and 469, ¶194. June 14, 2000. ("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.")
- ²⁰ Brown, Lucy & Romano, David. "Women in Post-Saddam Iraq: One Step Forward or Two Steps Back?" 2004.
- ²¹ Al Ajely, Ziad Khalaf. "Killing for Honor." Institute for War and Peace Reporting. Available at: www.peacewomen.org/news/Iraq/May 05/honour.html
- ²² Amnesty International. "Iraq: Decades of Suffering, Now Women Deserve Better." 2005.
- ²³ Amnesty International. "Iraq: Decades of Suffering, Now Women Deserve Better." 2005.
- ²⁴ Brown, Lucy & Romano, David. "Women in Post-Saddam Iraq: One Step Forward or Two Steps Back?" 2004.
- ²⁵ Amnesty International. "Iraq: Decades of Suffering, Now Women Deserve Better." 2005. Citing WADI. "Research About Circumcisions in Germain Area." December 2004.
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- ²⁷ Amnesty International. "Iraq: Decades of Suffering, Now Women Deserve Better." 2005. Citing Amowitz, Lynn L. "Human Rights Abuses and Concerns About Women's Health and Human Rights in Southern Iraq." *Journal of the American Medical Association*, Vol. 291, No. 12. March 2001.
- ²⁸ Interview with Gynecological Specialist. Focus Group. April 28, 2005.
- ²⁹ UNIFEM & UK's Department for International Development. "No Safe Place: Results of an Assessment on Violence against Women in Kosovo." April 2000.
- ³⁰ Brown, Lucy & Romano, David. "Women in Post-Saddam Iraq: One Step Forward or Two Steps Back?" 2004. Citing: IRIN. "Iraq: women Afraid to Seek Healthcare in South." April 2004. Available at: <http://www.occupationwatch.org/article.php?id=3991>
- ³¹ Amnesty International. "Iraq: Decades of Suffering, Now Women Deserve Better." 2005.
- ³² Amnesty International. "Iraq: Decades of Suffering, Now Women Deserve Better." 2005; Al Ajely, Ziad Khalaf. "Killing for Honor." Institute for War and Peace Reporting. Available at: www.peacewomen.org/news/Iraq/May 05/honour.html;

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- ³³ Amnesty International. "Iraq: Decades of Suffering, Now Women Deserve Better." 2005.
- ³⁴ Personal account of former judge as reported to one of the authors.
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- ³⁶ Respondent M1. Question 14.
- ³⁷ For example, Article 8 of CEDAW General Recommendation 19. Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#reco>
- ³⁸ CEDAW/C/IRQ/2-3 468 and 469, ¶189. June 14, 2000.
- ³⁹ Respondent E2. Question 80.
- ⁴⁰ Al Ajely, Ziad Khalaf. "Killing for Honor." Institute for War and Peace Reporting. Available at: www.peacewomen.org/news/Iraq/May_05/honour.html
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- ⁴³ WADI – Association for Crisis Assistance and Development Co-operation. "Assistance for Women in Distress in Iraq and Iraqi-Kurdistan." Available at: <http://www.wadinet.de/projekte/newiraq/women/shelters.htm>
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FAMILY AND MARRIAGE

“There are many extreme religious practices that discriminate against women, and most of them are not based on the real meaning of Islam...”¹

The Iraqi Personal Status Code (the Code) is the primary legal instrument that addresses women’s rights within the context of family, marriage, inheritance and other related areas. As promulgated in 1959, the Code granted women expansive rights that were, at the time, considered unparalleled in the Arab world. However, under the rule of the Ba’ath party, most of the rights granted to women under the Code were severely limited both in law and in practice by Revolutionary Command Council (RCC) orders. Nonetheless, the Code remains relatively progressive in relation to similar Personal Status Codes found in the region.

Currently, the Code has gained particular relevance in light of political and religious efforts to uniformly replace the Code with Shari’a law. The struggle over the validity of the Code reflects the larger and more encompassing dialogue over the exact role the Shari’a will play in both the constitutional and legislative process.

It is also important to point out that women do not present a monolithic group in terms of their views on the future direction of the Code. Women remain divided among numerous political and social groupings in Iraq, some of which are very conservative in outlook. This is particularly true in regards to attitudes concerning women’s role in family life.

INTERNATIONAL LEGAL FRAMEWORK

The Universal Declaration of Human Rights (UDHR) articulates the equal rights of men and women with regard to marriage and its dissolution under Article 16. Article 16 states that both parties to a marriage must give “free and full consent” before entering into marriage. Both Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 23 of the International Covenant on Civil and Political Rights (ICCPR) further reiterate the need for full consent by both spouses.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) takes the most comprehensive approach to women’s equality provisions within family and marriage. CEDAW Article 16 (1) stipulates that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations....” This Article lists eight sub-articles covering women’s rights in all aspects of marriage. These include: the right to freely choose a spouse; equal rights as to marriage dissolution; responsibilities for children and guardianship; the right to choose a family name; and equal rights with respect to property. Article 16 (2) of CEDAW further states that underage marriage is null and void.

Although a signatory to CEDAW, Iraq has made a reservation to Article 16 on the basis of Shari'a law. Iraq's reservation to Article 16 states:

Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g), of article 9, paragraphs 1 and 2, nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic Shari'a according women rights equivalent to the rights of their spouses so as to ensure a just balance between them.

Thus, under international law, Iraq is not bound by the provisions of Article 16, despite repeated calls by the international community for Iraq to withdraw its reservation to this Article.

DE JURE COMPLIANCE

The Evolution of the Personal Status Code in Iraq

The Code governs marriage, divorce, custody, inheritance, and other facets of family life in Iraq. After the overthrow of the monarchy by the July 14, 1958 Revolution, General Abdul Karim Kassem's government passed the Code in 1959.

Based on both Sunni and Jafari (Shiite) interpretations of the Shari'a, the Code subjected all Muslims in Iraq to a standard, uniform set of laws concerning family and marriage. In doing so, the Code included provisions that deviated from the tenets of Shari'a and established Fiqh (Islamic jurisprudence). For instance, the Code limited and regulated polygamy and decreed equal inheritance for male and female heirs. This provision reflected a movement away from certain Shari'a laws that, *inter alia*, provide for a male heir to inherit twice as much as a female heir.

Over time the Code became a political litmus test for those who favored the revolutionary government and those who opposed it, including both Ba'athists and Islamists. Hence, once the revolutionary government was overthrown in 1963 by the Ba'ath party, the Code was immediately amended to reduce restrictions on polygamy and promulgate gender inequities in the area of inheritance.²

Under Saddam Hussein, the regime passed an interim constitution in 1970 (the "1970 Constitution"). Although the constitution solidified formal equality for women through the inclusion of a non-discrimination clause, many of the issues regarding family and marriage covered under the Code were subject to interpretation and nullification by various Revolutionary Command Council (RCC) orders issued in the name of Saddam Hussein. These RCC orders were often arbitrary and subject to the political whims of the regime. Nonetheless, pursuant to Article 42 of the 1970 Constitution, the orders bore legal authority to amend any legislation, including the Code. In many cases, they contradicted the terms of the Constitution itself. Many RCC orders effectively nullified, both in law and in practice, provisions of the Code protecting women's *de jure* rights, while some orders had the effect of broadening women's rights. For example, in 1978, the regime gave women more legal grounds to initiate divorce.

Following the fall of Saddam Hussein, the status of the Code was again called into question by members of the Iraqi Governing Council (IGC). In December 2003, Abdul Aziz al-Hakim, president of the Supreme Council of the Islamic Revolution in Iraq (SCIRI), proposed Resolution 137 and the members of the IGC present at that session passed it without debate.

If signed into law, Resolution 137 would have granted enormous power to Muslim clerics to interpret matters concerning family and marriage law under various interpretations of Shari'a law, according to sect.

Resolution Number 137:

The Governing Council decided in its session held on 29 December 2003 on the following:

1. The provisions of Islamic Shari'a shall be applied in areas of marriage, engagement, marriage contract, capacity, veritable marriage, incest, marriage to monotheist women, marital rights such as dowry, marital alimony, divorce, judicial divorce, Kul', waiting periods, parentage, breastfeeding, custody, child support, kin support, parent support, will, willing, holding of estate, and all Religious Courts (personal status) in accordance with the mandates of their sect.
2. Repeal all laws, decisions, instructions and articles that violate paragraph (a) of this decision.
3. This decision is in effect once issued.

Mr. Abdul Aziz Al-Hakim/ Head of the Governing Council – 29/12/2003

Given the tremendous impact of Resolution 137, women's groups both inside and outside of Iraq vehemently protested the Resolution. Iraqis petitioned Ambassador Bremer, urging him not to sign the Resolution into law. These protests, coupled with intense publicity, caused the IGC to withdraw the Resolution.

The debate surrounding Resolution 137 and the status of the Code is symptomatic of the broader struggle between the forces that want a state ruled by Shari'a law, and those who want a more secular Iraq. Resistance towards Resolution 137, however, should not necessarily be interpreted as a demand for the rule of secular law. One commentator has observed that there are "[v]irtually no political forces calling for a totally secular law."³ Rather, resistance may be more properly interpreted as a demand to work within a more liberal and uniform interpretation of Shari'a.

Family and Marriage Law

The Code and its amendments address family law in several articles including engagement and marriage (Articles 3-11); unlawful weddings and marriage with followers of monotheistic religions (Articles 12-18); marital rights and obligations (Articles 19-33); dissolution of marriage (Articles 34-46); waiting periods between divorce and remarriage (Articles 47-50); birth and its consequences (Articles 51-63); wills and guardianship (Articles 64-85); and inheritance (Articles 86-91).

Consent, Age and Marriage

De jure equality exists in many Code provisions including: eligibility for marriage (Article 7(1)), age for marriage (Article 8(2)), the marriage contract (Article 4), and registration of the marriage contract (Article 10).

Article 3 of the Code Number 188 states that marriage is a contract between two equal parties. With few exceptions, as stated below, a person must be 18 years old to enter into a marriage contract. As such, these provisions are in *de jure* compliance with Article 16(1)(a) and (b) of CEDAW.

Iraqi Personal Status Code Number 188, Article 3:

Marriage is a contract between a man and a woman that aims at creating a mutual life together and creating a family.

Iraqi Personal Status Code Number 188, Article 4:

Marriage is conducted with an offer by one party in the contract and an acceptance of the other party or his/her proxy.

Iraqi Personal Status Code Number 188, Article 7(1):

[In order] to have the capacity to enter into a marriage [the person] must be rational and eighteen years old.

The Code gives a judge discretion to permit a marriage for those younger than 18 years of age and older than 15 years of age. This exception applies to both sexes equally. Specifying the minimum age of marriage and making the registration of marriages in an official registry compulsory complies with Article 16 (2) of CEDAW.

Iraqi Personal Status Code Number 188, Article 8:

If a minor who has attained the age of fifteen years makes a request to be married, the judge may give him permission if he has proven himself physically capable and of capacity and has his legal guardian's approval. If the guardian does not approve, the judge will ask him for his approval again within a given period. If the guardian approves or has given an unreasonable rejection, the judge will permit the marriage.

Forced marriages are illegal and a forced marriage contract is void. Violators of this provision are subject to a 3 year imprisonment (in case of a 1st-degree relative), or 10 year imprisonment (in the case of a more distant relative). Article 9 (1). As such, this provision is in compliance with international law regarding forced marriage.

Iraqi Personal Status Code Number 188, Article 9(1):

No person, whether a relative or not, shall force a man or a woman to enter into marriage without their consent, in such an event this contract shall be considered null and void, if no consummation has occurred. Furthermore, no person, whether a relative or not, shall prevent the marriage of one who has the capacity of marriage as prescribed in this law.

Polygamy

The CEDAW Committee has noted the discriminatory effect of "harmful traditional and cultural practices" such as polygamy.⁴

While the original Code provision was less tolerant of polygamy, a 1963 amendment to the Code lessened the pre-requisites necessary for entering into a polygamous marriage by reducing restrictions on the financial requirements required for marriage to more than one wife and expanding the basis for a man's "legitimate cause" for entering a polygamous marriage. Under the Code, anyone who enters a

polygamous marriage without complying with these terms can be punished by a one year imprisonment and/or a fine of 100 Dinars. Other Code provisions forbid housing a man's multiple wives in the same dwelling.

Iraqi Personal Status Code Number 188, Article 3(4):

Marriage of more than one wife is prohibited in the absence of judicial permission on two conditions:

- (a) The husband has financial sufficiency to marry more than one wife.
- (b) He should have a legal interest.

Iraqi Personal Status Code Number 188, Article 26:

The husband should not house his second wife in the same house with the first one without her approval, and should not house any other relative with her without her approval, except his minor child.

While the Code tried to limit and regulate polygamous marriages, RCC orders often had the opposite effect. For example, in 1980, in response to the impact of the Iraq-Iran war that left a large number of widows, RCC Order Number 189 allowed a man to marry a second wife, without meeting any other requirements by law, if the second wife was a widow.

Marriage to Non-Muslims

Article 17 of the Code discriminates against Iraqi women with regard to the right to marry a non-Muslim. Under the Code, a Muslim man can marry a non-Muslim woman if she is a monotheist. However, a Muslim woman may not marry a non-Muslim.

Iraqi Personal Status Code Number 188, Article 17:

A Muslim male may marry a Christian or Jew (People of the Book). A Muslim female may not marry a non-Muslim.

Financial Rights during Marriage

Under the Code, a wife is entitled to "marital alimony" (a stipend) as of the date of the marriage contract to cover her clothing, food, housing, basic medication, and the cost of servants. Article 24(1). A husband must provide his wife with this stipend if she lives with him or if she leaves the marital home with his consent. The stipend is provided even if she has her own income. Article 25(1)(a) states that a wife is no longer entitled to this stipend if: she leaves her husband's home without his permission; if she refuses to travel or move with her husband; or if she is convicted and imprisoned for any reason. If a wife does not receive her stipend from her husband, she may file a marital alimony case with the court. Article 31.

Iraqi Personal Status Code Number 188, Article 31:

During the hearing to determine the amount of payment [of marital alimony], the judge has the right to decide the amount of temporary payment for the wife to be paid by the husband, and such a decision is enforceable.

With judicial permission, if a husband is missing or the couple is not yet divorced, a wife can borrow money to cover her stipend. This debt incurred by the wife must be repaid by the husband. Article 29.

Divorce

Under the Code and subsequent RCC orders, men and women do not have the equal right to initiate and obtain a divorce in Iraq. Divorce is defined in Article 34 as the “termination of marriage by the husband or whom he assigns or by the wife if she is assigned to do so or by the Judge.” Article 39 lists three types of divorce: (1) unilateral divorce by the husband (*Talaq*); (2) judicial divorce by the court; and (3) voluntary divorce for the wife if allowable under the marriage contract. In all cases, a divorce is not valid until registered in court. Article 40 further states that men who divorce their wives without reason will be required to provide compensation.

Iraqi Personal Status Code Number 188, Article 40:

Either party may request dissolution upon the following grounds:

- Harm that makes continuation of marriage impossible;
- Marital infidelity;
- If marriage was contracted without judicial permission before either party attained 18 years;
- If marriage was concluded outside the court by coercion and was not consummated;
- If the husband enters into a polygamous marriage without judicial permission;
- And if any of the above grounds are not proven, on grounds of personal discord (in which case the courts may initiate reconciliation procedures);
- If reconciliation efforts fail and the husband refuses to pronounce *talaq*, the courts may grant judicial divorce. If the wife is found to be at fault, her financial rights are forfeited.

The wife may request a judicial divorce upon the following grounds:

- If the husband is imprisoned for three or more years;
- If the husband abandons the wife for two or more years without lawful reason;
- If the husband does not consummate marriage within two years of contract;
- Husband’s impotence or affliction (if after consummation, must be confirmed by medical report);
- Husband’s infertility if wife has no living son by him;
- Husband’s serious illness which would cause wife harm;
- Non-maintenance after grace period of up to 60 days;
- Non-maintenance due to husband’s absence, disappearance, concealing his whereabouts, or because of imprisonment for more than one year; and
- If the husband refuses to pay maintenance arrears after the 60-day grace period;
- The wife may also request judicial separation before consummation in return for any dowry and proven expenditure on the husband’s part for purpose of the marriage.

RCC orders have also encouraged a husband’s unilateral termination of marriage if his wife was of Iranian origin. For example, RCC Order 474 of the year 1981, awarded civilians 4000 dinars and military personnel 8000 dinars, if they divorced their wives of Iranian origin.

Custodianship and Guardianship

A divorced wife is entitled to the custody of both her male and female children until the children reach 10 years of age. Under certain circumstances as determined by the Court, women may retain custody until the children are 15 years old, according to the second amendment of Article 57(4) passed in 1978. After the age of 15, the child may choose to live with either parent. If the mother has custody, the father must pay custodial alimony. According to Article 57(2), a divorced wife may keep custody of her children even if she remarries.

Discrimination against women still persists regarding the guardianship of children. Article 102 of the Iraqi Civil Code lists those entitled to guardianship of children in the following descending order: the father, the father's father, the guardian of the father and the court. Thus, Article 102 violates Article 16 (1)(f) of CEDAW regarding the guardianship and custody of children.

Financial Rights after Marriage

The right of a woman to marital alimony continues for only three months following the termination of marriage, also known as the "waiting period" (the period during which she may not remarry). Article 50. Beyond that point, the husband has no obligation to provide for his wife, regardless of her financial circumstances, or his.

Children are entitled to child support from their father when in the custody of their mother, however, these payments include no separate provision for the mother. For a girl, such support continues until marriage and for a boy until he can earn his own living. Article 59.

Inheritance

Prior to 1959, inheritance in Iraq was governed entirely by Shari'a law. Inheritance is widely recognized as the most complex area of Shari'a law and thus cannot be summarized in a single page. Inheritance laws based on Qur'anic verses involve an intricate division of the estate into shares, with the largest share going to patrilineal relatives of the deceased. The Qur'an and Shari'a grant both men and women the right to inherit property. "Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind." Qur'an 4:7. However, there is a difference in the amount or the share of the inheritance that the Qur'an assigns to men and women. By way of example, a son receives twice the shares allotted to his sister.

The original 1959 Code departed from Shari'a by providing, with some exceptions, equal inheritance shares for males and females. For instance, the 1959 Code provided for equal inheritance between sons and daughters, although a husband had greater inheritance rights than his wife.

The 1959 Code provisions regarding inheritance made way for less equitable rules in 1969. Article 89 of the 1963 amendments determines both who is entitled to inherit as well as how the inheritance should be divided among family members. Article 90 of the 1963 Amendments uses principles found in the Shari'a that were valid before the 1959 Code to determine the distribution of an estate among family members. The husband's share is twice the wife's share and the son's share is twice the daughter's share. After children and parents, the following relatives inherit according to the following sequence: grandparents, brothers, sisters, nieces and nephews (on the father's side);⁵ and then uncles and aunts and relatives from the mother's side.

DE FACTO COMPLIANCE

The Code grants Iraqi women certain rights in the context of family and marriage. However, the implementation of these rights is often undermined by political, social, religious, and cultural factors. In particular, respondents found that RCC orders, conservative interpretations of Islamic norms, patriarchal traditions, economic factors and tribal customs placed the most severe constraints on women's rights and autonomy. Respondents repeatedly stressed the different ways that the Code, the Shari'a, and customary traditions and practices affect the realization of women's rights in both the private and public domain. They also maintained that the impact of these factors on particular individuals and groups of women varied according to certain economic, social, geographical, religious and lifestyle factors.

Straddling *de jure* and *de facto* considerations is the fact that personal status courts are presided over by male judges only and female advocates rarely if ever appear in such courts. This has obvious repercussions for women's access to justice in this area, including their ability to respond when questioned on sensitive matters pertaining to marriage.

Freedom to Choose a Spouse

Although forced marriages are prohibited under both Iraqi Islamic law, respondents found that women are denied the right to freely choose their partner due to social customs and pressures. Many of the women stressed that a woman's right to voluntarily enter into marriage is acceptable under the Shari'a but that external customs and practices restrict the woman's free choice of a partner. One respondent stated that under the Shari'a the parties have "the same right – but in reality, it varies from one area to another, from the city to the countryside, due to the culture of the region in which the woman lives."⁶ The respondent also stated that she believed that no legal mechanisms existed to ensure women their rights in this respect. Another respondent argued that "[t]he man is the decision-maker in the choice of a wife, while the girl may be forced to marry . . . There is no mechanism to protect women from this injustice."⁷

Minimum Age of Marriage

Although the minimum age for marriage in Iraq is 18 years old for both sexes, or 15 years old with the permission of a judge and a legal guardian, the actual age varies depending on whether the Code, the Shari'a, or a particular school of religious law is applied in each particular circumstance.

Most respondents knew the legal age for marriage as provided in the Code. However, many noted in reality, Iraqis enter into marriage at a considerably younger age. One respondent argued that under Islamic law "a woman is entitled to marry the man whom she sees suitable as long as she reaches the legal capacity age, which is nine years old for females."⁸ Although uncommon in Iraq, another respondent cited a case where a girl had been married at the age of nine.⁹

Customary Practices in Marriage

Respondents pointed out several discriminatory marriage practices steeped in custom that directly contravene Code provisions on marriage. These practices include "tribal banning" or *al-nahi*, in which a male cousin can arbitrarily prohibit the marriage of his female cousin.¹⁰ Other practices include *al-kassah* marriage, where the bride's brother must marry the groom's sister and *al-fasel* marriage, in

which a woman is offered as a bride from one tribe to another as a means of solving a problem between the two tribes.¹¹ Girls can also be reserved for marriage to one of their relatives at birth. As one respondent pointed out, “[i]n some social groups, the girl is a slave that is bought and sold.”¹²

Although such customs may be declining in recent years, they persist in rural areas as well as among tribal groups found in urban areas. One respondent stated that “[f]reedom does not exist in villages and rural areas, and it also does not exist in the city, unless the parents are open-minded and understanding.”¹³

Pleasure Marriage (*Mut’a*)

The Code does not address *mut’a* or “pleasure marriage,” which is recognized largely by Shiite Muslims. *Mut’a* is a temporary marriage contract drawn up between an adult man and woman which stipulates that the “wife” will be paid a designated sum of money for the “marriage” for a certain timeframe. While banned under Saddam Hussein’s regime, such temporary marriages have allegedly become more frequent in recent years. One respondent stated that reported cases of *Mut’a* were rare before the fall of Saddam Hussein, but that the practice has become much more common in the last few years.

Termination of Forced Marriage

Women and girls who are forced into marriage have little recourse. For example, although many respondents knew that forced marriage involved a penalty under the Code, no respondents knew of an instance where a woman received an annulment for a forced marriage. Several respondents also observed that the chances of a woman obtaining a separation under such circumstances are relatively small due to social morays; the expense of court costs; and cumbersome procedures. As one respondent stated, “if the woman can reach a court and prove that she has been forced into marriage, she is protected by the law and she might be granted separation. But, she will have lost a lot of time, money and energy.”¹⁴

Divorce and Annulment

Iraqi women’s ability to obtain a divorce or annulment remains severely limited in reality.¹⁵ Pervasive social and cultural barriers and widespread ignorance of divorce laws prohibit many women from even accessing the rights they do have under the law.¹⁶ One respondent pointed out that many women are simply not aware of their right to terminate a marriage, even if they were forced into marriage.¹⁷

While legal and social limitations are placed on women seeking divorce and annulment, recent reports indicate that men are increasingly initiating divorces since the fall of Saddam Hussein.¹⁸ A June 2005 report from the Institute for War and Peace Reporting finds that divorce courts in Iraq are also granting men divorces without the presence and/or knowledge of their wives.¹⁹

Polygamy

Although the Code allows polygamy only under certain conditions, in reality, polygamy is widely practiced in Iraq and Code provisions are rarely enforced. For instance, one respondent cited to a case where a man who wished to marry a second wife first obtained approval from a religious leader. He then presented the religious leader’s approval to the judge who, in turn, approved the marriage

despite the fact that certain legal conditions provided by the Code had not been met.²⁰ In general, respondents believed that polygamy, as practiced in Iraq, discriminated against and harmed women due to factors ranging from the unequal treatment of multiple wives to the lack of legal recourse to obtain a divorce when a man fails to abide by the law with regard to his marital obligations.

Inheritance

Respondents stated that various factors keep women from demanding and receiving their rightful share of inheritance in court and from their families. These factors include: lack of faith in the court system; prohibitive court costs; family pressures; and ignorance of their rights.

Respondents also asserted that most Iraqi women do not know what share of inheritance they are entitled to under the Code. Accordingly, their ignorance causes them to unwittingly forfeit their inheritance to their fathers or brothers. Furthermore, social pressure or “shaming” plays a role in forcing women to give up their share of an inheritance to their brothers or sons.²¹

Custody

Respondents asserted that many women are not aware of their custodial rights or the mechanisms for enforcing them. Respondents indicated that many women believe that the maximum age whereby a woman can retain custody of her child is 12. Respondents also indicated that, in many instances, women believe that the father has the right to take a child away from her at any time if he so chooses.

Marital Alimony

Even when a woman is awarded alimony, she is often unable to collect the alimony due to factors such as court costs, corruption in courts and/or social pressures. By law, husbands can pay alimony in installments as low as 10 Iraqi Dinars per month and can also pay directly to the court. One respondent recalled a case where a husband, knowing that transportation costs would prohibit his wife from picking up the alimony, paid 1000 Dinars to take a taxi to a court located far from his wife’s residence and made the 10 Dinar alimony payment there.²²

Corruption in family courts also causes legal and logistical hassles for women attempting to collect alimony. One respondent stated that male lawyers and judges collaborate to extend the legal procedures involved with alimony cases, thereby making it easier for a husband to escape paying alimony for an extended period of time. Furthermore, women are discouraged from going to court to demand alimony by their relatives and communities, especially in cases where her former husband is a relative.²³

Freedom of Movement

Women’s freedom of movement is restricted by major obstacles that are interrelated to their status as wives and mothers, issues of guardianship, societal attitudes and political impediments. These obstacles include, cumbersome procedures for obtaining a passport or other travel documents without a male guardian’s approval; social norms that prohibit women from traveling or living alone; and the absence of personal and public security in Iraq.

A woman’s marital status also influences her ability to obtain a passport. Although a woman can legally obtain a passport without her husband’s or male guardian’s permission, she is often unable to do so in practice. As one respondent noted, “[c]urrently, women can obtain passports without the per-

mission of their husbands, but employees at the Passports Department do not [implement] this law correctly.”²⁴ In fact, many of the respondents believed that a woman could not legally obtain a passport without the consent of her husband.

De jure and *de facto* passport restrictions are not the only factor that prohibits women’s freedom of movement. In addition, respondents overwhelmingly stated that few women in Iraq actually travel without a male guardian. For the most part, respondents believed that a woman is prohibited by law from traveling outside Iraq without being accompanied either by her husband or by a male guardian such as her father or brother.²⁵ Of those respondents who knew that it was legal to travel without a male guardian, many stated that social customs still made it difficult for a woman to travel alone.²⁶

Finally, in terms of women’s ability to move freely within Iraq, the current security situation severely impedes women’s ability to travel to work, school, social events or to visit relatives/friends in neighboring regions. The violence and security issues that pervade everyday Iraqi life have a direct and devastating effect on women’s ability to provide for their families, attend school or work, and to even accomplish simple tasks such as shopping in public marketplaces.

Residence and Domicile

Women, both inside and outside marriage, have little or no freedom as to the selection of their place of residence due to pervasive economic, cultural and social considerations. Respondents observed that married women are often obliged to live within the husband’s extended family, particularly in rural areas, where it is not socially acceptable for the man to live independently or with the family of his wife.²⁷ Such living arrangements further limit the woman’s ability to participate in decision making within the family.

As observed by survey respondents, single women, divorced women and widows are also subject to “[a]ll forms of restrictions, especially social, cultural and religious restrictions.”²⁸ “Women living alone are shunned”²⁹ and “[i]nherited social traditions ... do not confer on woman the ability to manage the affairs of her life and be independent.”³⁰

Respondents also pointed to a lack of financial security, exorbitant living expenses, unemployment, violence, and personal security as further contributing to these limitations on unmarried women.

KEY AREAS OF CONCERN

- ➔ Amendments to the Personal Status Code have fostered *de jure* and *de facto* discrimination against women, particularly in the areas of divorce, inheritance and polygamy.
- ➔ Certain practices that discriminate against women, such as polygamy and temporary marriages are becoming increasingly common.
- ➔ Iraq’s reservations to Article 16 of CEDAW leaves the door open for continued violation of the core elements of women’s rights with respect to family and marriage.
- ➔ Recent attempts to replace the Personal Status Code with Shari’a law give rise to concerns that women’s rights will be further eroded by a complete change in the legal regime.

UDHR

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

ICESCR

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

ICCPR

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

CEDAW

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

ENDNOTES

- ¹ Respondent B5. Question 17.
- ² Tripp, Charles. "A History of Iraq." 2000.
- ³ Brown, Nathan. "Debating Islam in Post-Ba'athist Iraq." 2005.
- ⁴ CEDAW/C/IRQ/2-3 468 and 469, ¶191. June 14, 2000.
- ⁵ While the law does not expressly state that these relatives be on the father's side, it is implied, as the next provision provides for inheritance on the mother's side.
- ⁶ Respondent A3. Question 72.
- ⁷ Respondent E2. Question 72.
- ⁸ Respondent A1. Question 72.
- ⁹ Comments from focus group. April 28, 2005.
- ¹⁰ Respondent B1. Question 74.
- ¹¹ Respondent B2. Question 74.
- ¹² Respondent B1. Question 74.
- ¹³ Respondent B3. Question 74.
- ¹⁴ Respondent B1. Question 73.
- ¹⁵ For example, respondents B1, B4, C3, D1, E2, E3, E4, G1, H1, H2, I1, I3. Question 74.
- ¹⁶ Respondents B4, E2, H1, I1. Question 73.
- ¹⁷ Respondent B4. Question 73.
- ¹⁸ For example: The Institute for War & Peace Reporting. "Family Breakdowns Soar." July 2005.
- ¹⁹ The Institute for War and Peace Reporting. "Secret Divorces Underline Women's Powerlessness." June 2005.
- ²⁰ As reported to authors. July 2005.
- ²¹ As reported to authors. July 2005.
- ²² As reported to authors. July 2005.
- ²³ As reported to authors. July 2005.
- ²⁴ Respondent B2. Question 44.
- ²⁵ For example, respondents C1-C4, D1-D5, H3, H4. Question 44.
- ²⁶ For example, respondents A1-A3, A6, B1-B4.
- ²⁷ Respondents A1, I3. Question 76.
- ²⁸ Respondent B4. Question 76.
- ²⁹ Respondent B4. Question 76.
- ³⁰ Respondent E1. Question 76.

NATIONALITY

“Yes, there is discrimination, given that the nationality of a woman is dependent on that of a man.”¹

In most of the Arab region, women, their husbands and their children have suffered from the effect of discriminatory nationality laws. Although Iraqi nationality laws discriminate against both men and women alike in a variety of contexts, this chapter focuses exclusively on those nationality laws pertaining to a woman’s right to acquire, change or retain her nationality and to pass her nationality to her children.

Discriminatory nationality laws have the greatest impact on women and children. Such laws deny children the right to education, employment, and civil and political rights in their home countries. Women are also affected by the resulting restrictions on their right to pass on property, inherit property and reside with their foreign husbands in Iraq. Conversely, these laws allow men to pass their nationality onto their children, even if their children are born and raised outside the country.

Nationality laws that do not permit a woman to pass her nationality to her children are purportedly based on the 1869 Ottoman Nationality Law that forbade Ottoman women from passing their nationalities to their children. In modern times, the validity of these laws is often justified as being based on Shari’a law. There is no clear argument, however, in the Qur’an or Sunna that “denies a woman the right to transfer her nationality to her children.”²

It must be noted that the status of all Iraqi laws has been in flux since the revolution of 1958. More specifically, since the assumption of power by the Ba’ath regime in 1963, and subsequently in 1968, Iraq has been governed through Revolutionary Command Council (RCC) orders and edicts that often contradicted and effectively amended existing laws. From the perspective of nationality law, the important milestones are the laws promulgated in 1924 and 1963, various RCC orders, and the Transitional Administrative Law (TAL).

INTERNATIONAL LEGAL FRAMEWORK

The universal right to a nationality is enshrined in Article 15 of the Universal Declaration of Human Rights (UDHR). The article further articulates that no one should be deprived of nationality nor denied the right to change nationalities. The right to nationality for children and the right to freedom of movement are also covered in the International Covenant on Civil and Political Rights (ICCPR), Articles 24 and 12 respectively.

In the context of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as noted in the CEDAW Committee’s General Recommendation 21, paragraph 6, on Equality in Family and Marital Relations:

Nationality is critical to full participation in society...Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.³

Most importantly for women, Article 9 of CEDAW stipulates women's right to acquire, change or retain their nationality and also requires states to grant women equal rights with men in relation to the nationality of their children.

Iraq has entered reservations to Article 9, paragraphs (1) and (2), of CEDAW.⁴

DE JURE COMPLIANCE

The CEDAW Committee has expressed its concern regarding the discriminatory effects of Iraq's existing nationality law. Iraqi nationality law is based on the principle that all members of the family should have the same nationality. However, according to the Committee, this law remains in violation of the Convention. As the Committee stated,

The Committee is . . .concerned that Iraq's nationality law, which is based on the principle that the members of a family should all have the same nationality and that none should have dual nationality or lose their nationality, does not grant women an independent right to acquire, change or retain their nationality or to pass it on to their children.⁵

The first Iraqi law pertaining to nationality, passed in 1924, established the inhabitants of Iraq as a component of the Iraqi State created under the Lausanne Treaty of 1924. Article 8 of the Iraqi Law of Nationality Number 42 of 1924 provided that "An Iraqi is a person who is born to an Iraqi Parent." As the word parent was not defined as the 'father' only, courts in Iraq, endorsed by the court of appeal, interpreted the word "parent" to include both mother and father.⁶ Thus, those "original" Iraqis, men and women, were granted nationality on an equal basis and their nationality was conferred on an equal basis.

Iraq's Nationality Law Number 43 of 1963 superseded the 1924 legislation and limited the rights of women to give their nationalities to their children.

The 1970 Constitution subsequently set forth a general framework for the regulation of nationality.

Article 5 of the Interim Constitution of 1970:

- (a) Iraq is a part of the Arab Nation.
- (b) The Iraqi People are composed of two principal nationalisms: the Arab Nationalism and the Kurdish Nationalism.
- (c) This Constitution acknowledges the national rights of the Kurdish People and the legitimate rights of all minorities within Iraqi unity.

Article 6 of the Interim Constitution of 1970:

The Iraqi nationality is regulated by the law.

Notably, a 1975 RCC order deprived courts of their jurisdiction to hear cases related to the implementation of the 1963 Nationality Law, referring such matters instead to the Minister of Interior with ultimate authority to the President.

RCC Order Number 413 of April 7 1975:

According to Article 42(a) of the Interim Constitution, the Revolutionary Command Council has ordered the following in its session of April 7 1975:

1. Courts should refrain from looking into disputes arising from the application of the Law of Nationality, this order extends to cases already brought to court but have not received a final order.
2. Objections to the decisions of the Minister of Interior are submitted to the President whose decisions are final.

The TAL also includes provisions on nationality, as outlined in Article 11. While it reinstates the authority of the courts over issues of nationality, it does not expressly address discrimination in conferral of nationality based on gender (although such discrimination would be covered by the general non-discrimination clause). Consequently, discriminatory provisions still exist in many areas of nationality law despite Article 11 of the TAL.

Article 11 of the TAL:

- (a) Anyone who carries Iraqi nationality shall be deemed an Iraqi citizen. His citizenship shall grant him all the rights and duties stipulated in this Law and shall be the basis of his relation to the homeland and the State.
- (b) No Iraqi may have his Iraqi citizenship withdrawn or be exiled unless he is a naturalized citizen who, in his application for citizenship, as established in a court of law, made material falsifications on the basis of which citizenship was granted.
- (c) Each Iraqi shall have the right to carry more than one citizenship. Any Iraqi whose citizenship was withdrawn because he acquired another citizenship shall be deemed an Iraqi.
- (d) Any Iraqi whose Iraqi citizenship was withdrawn for political, religious, racial, or sectarian reasons has the right to reclaim his Iraqi citizenship.
- (e) Decision Number 666 (1980) of the dissolved Revolutionary Command Council is annulled, and anyone whose citizenship was withdrawn on the basis of this order shall be deemed an Iraqi.
- (f) The National Assembly must issue laws pertaining to citizenship and naturalization consistent with the provisions of this Law.
- (g) The Courts shall examine disputes arising from the application of the provisions relating to citizenship.

Conferral of Nationality to Children

Under Article 3 of the 1963 law, as a general rule, children acquire their nationality through their father.

In rare instances, a mother can pass her nationality to her children. These exceptions include: a child born in Iraq from an Iraqi mother and an unknown father, or from a father with no nationality. Article 4(2).

Article 3 of Nationality Law Number 43 of 1963:

An Iraqi is whoever is born in or outside Iraq to an Iraqi Father.

This provision violates CEDAW Article 9(2) which provides that women be granted “equal rights with men with respect to the nationality of their children,” although, as already stated, Iraq has entered a reservation to that provision.

Nationality by Marriage

Article 12 of the Nationality Law number 43 of 1963 states that a foreign woman of Arab descent who marries an Iraqi is entitled to Iraqi citizenship upon approval by the Minister of Interior. If the foreign woman is non-Arab, then she can only apply for citizenship after residing in Iraq for three years. If an Iraqi woman marries a foreigner who does not have Iraqi citizenship, she forfeits her Iraqi citizenship.

Article 12 of Nationality Law Number 43 of 1963:

- (a) If a foreign woman marries an Iraqi national, she thereafter acquires the Iraqi nationality as of the date of the Minister’s approval. She is entitled to forfeit Iraqi citizenship within three years of her spouse’s death or divorce or separation, and such forfeiture is retroactive as of the date of application.
 - (b) If the foreign woman is non-Arab, she may not apply for the citizenship of her Iraqi spouse until they have been married for three years and residing in Iraq for the same period, provided the marriage is still in effect when the application is lodged. A non-Arab woman is exempted from this requirement if her husband dies and she bore a son.
2. If an Iraqi woman married a foreigner or an Iraqi who acquired a foreign citizenship, the Iraqi citizenship is revoked once she acquires her spouse’s citizenship by choice. She may re-qualify for the Iraqi citizenship upon her spouse’s death or divorce or separation. The Iraqi citizenship is reinstated as of the date of application provided she resides in Iraq upon lodging the application.

Forced Nationality

In 1980, an RCC order was issued which required foreign women to become Iraqi nationals in order to stay married and live with their husbands in Iraq. RCC Order Number 180 of 3 February 1980, Article 5(c). Under the order, a foreign woman had to apply for Iraqi nationality within 6 months of the issuance of the order, or she forfeited her right to stay in Iraq. Six months later, a second order was passed preventing any further applications for nationality by foreign wives and effectively preventing them from remaining in Iraq. RCC Order Number 1468 of 14 September 1980.

In 1984, RCC Order Number 329 mandated that all male Iraqis employed by the government and married to a foreign woman had to ensure their spouses apply for Iraqi citizenship after she resided in Iraq for a year. If the government employee's spouse failed to apply for citizenship, then the male employee's services were terminated and he became obligated to reimburse the government for any expenses incurred by the government for his education.

RCC Order Number 329 of 1984:

Based on Paragraph (a) of Article 42 of the Interim Constitution, the Revolutionary Command Council decided during the session convened on 15/3/1984 the hereunder:

Article One

Every Iraqi employed or working in the State institutions or Socialist sector thus married a foreign woman, must undertake the following:

First: the institute or department where he is employed must communicate to him that his spouse should apply for Iraqi citizenship if she resided in Iraq for one year or more. Should she decline, the institute or department undertakes the necessary steps to terminate his services and thereafter is bound to pay to the State Treasury the sum of 3000 dinars and expenses of his education as estimated by the Education Ministry and Higher Education & Scientific Research Ministry.

...

Article Two

The concerned authorities are not bound by the three year conditions stipulated in the RCC order number 180 for 1980 upon probing the issue to grant the spouse an Iraqi citizenship if her residency in Iraq lasted one year.

Article Three

The aforementioned conditions are applicable to any person who marries foreign woman after this order comes into force or he who marries a foreign woman after 31/12/1968 where steps were not taken to terminate his services.

Article Four

Provisions of this order are applicable to the wife if she is working in a State institute or the Socialist sector if she marries a foreigner.

Article Five

An Arab, bearing the citizenship of an Arab country or an Arab woman bearing the citizenship of an Arab country, is not regarded a foreigner thereafter for purposes of this order.

Article Six

A person whose services were terminated according to RCC orders number 197 and 620 dated 15/9/1968 and 2/6/1974, respectively may be appointed as worker or clerk in the State institutes or the Socialist sector if his wife is granted Iraqi citizenship.

Article Seven

This order comes into force as of the date of publishing it in the official gazette.

Property Rights

In terms of the transfer of property, RCC Order 1610 of 1982 mandated that an Iraqi woman who married a foreigner could not transfer any private property to her husband.

RCC Order Number 1610 of 23 December 1982:

According to provision of Paragraph (a) of Article 342 of the constitution, the Revolutionary Command Council decided in the session convened on 23/12/1982 the hereunder:

1. An Iraqi woman who is married to a foreigner is forbidden from giving property to her foreign husband and any action that causes the change of ownership will be considered illegal and not valid.
2. When she dies all her property will go to her Iraqi successors and her non-Iraqi husband will be deprived from any inheritance.

A separate RCC Order deprives them of dealing with their property while outside Iraq and vests such authority with the state.

RCC Order 1194 for the year 1983:

According to Article 42(a) of the Interim Constitution, the Revolutionary Command Council has ordered the following in its session of April 7 1975:

1. The financial authority shall manage the estate of Iraqi women married to a foreigner who left with their husbands, while keeping their Iraqi nationality.
2. The amounts resulting from investment of these estates should be recorded in special records.

DE FACTO COMPLIANCE

Strictly enforced by the former regime in Iraq, nationality laws are adhered to by Iraqis and foreigners alike. Thus, little discrepancy exists between what the law mandates and what transpires in practice. As a result of Iraq's discriminatory nationality laws, the non-Iraqi families of Iraqi women are deprived of property, inheritance and any of the benefits of citizenship.

For instance, one respondent from Baghdad recounts the discrimination she and her children suffered under these laws. The woman married a non-Iraqi Arab man, resided in Iraq and bore several children. Upon the death of her husband, her children were denied Iraqi citizenship because they were underage at the time of his death and she, as an Iraqi woman, was unable to pass citizenship to her children. Moreover, when she visited her husband's relatives in his home country in the Middle East, she had no legal claim over her underage children because they were not Iraqi citizens. Instead, her husband's relatives legally held custody over her children.⁷

In addition to the nationality laws, RCC orders also have a devastating effect on women and children. For example, RCC Order 1610 that mandates that an Iraqi woman married to a foreigner cannot transfer property to him or her children has had a direct and dire effect on thousands of families. This was especially true during the Iraq-Iran war, where women married to Iranians had to forfeit their houses,

property and, in many cases, had to leave their families because of this discriminatory law. In some cases, whole families were deported based on alleged Iranian decent, many left to reside in refugee camps inside Iran.⁸

KEY AREAS OF CONCERN

- ➔ Current nationality laws deprive Iraqi women of the ability to pass citizenship and property to their non-Iraqi children or to their non-Iraqi husbands.
- ➔ Women without Iraqi citizenship are unable to inherit property from their Iraqi husbands.
- ➔ Iraq has not withdrawn its reservations to Article 9(1) and (2) of CEDAW thus undermining women's equal rights with respect to nationality.
- ➔ Discriminatory RCC orders pertaining to nationality continue in effect.

NATIONALITY – INTERNATIONAL TREATY FRAMEWORK

UDHR

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

ICCPR

Article 24

3. Every child has the right to acquire a nationality.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

International Convention on the Elimination of all forms of Racial Discrimination

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (d) Other civil rights, in particular:
 - (iii) The right to nationality;

CEDAW

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

ENDNOTES

- ¹ Respondent E1. Question 42.
- ² Amman Daily News. "Experts Examine Nationality Laws Restricting Women's and Children's Rights in the Arab World." July 31, 2003. Available at http://www.amanjordan.org/english/daily_news/wmview.php?ArtID=2218
- ³ CEDAW. "CEDAW General Recommendation 21: Equality in Marriage and Family Relations." (Thirteenth Session) 1992.
- ⁴ Iraq ratified CEDAW by Law Number 66 of the year 1986, published in issue number 3107 on 21st July 1986, with the following reservations: "Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g), of article 9, paragraphs 1 and 2, nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic Shariah according women rights equivalent to the rights of their spouses so as to ensure a just balance between them. Iraq also enters a reservation to article 29, paragraph 1, of this Convention with regard to the principle of international arbitration in connection with the interpretation or application of this Convention."
- ⁵ CEDAW. "CEDAW: Concluding Observations: Iraq." 2000. Available at <http://www1.umn.edu/humanrts/cedaw/iraq2000.html>
- ⁶ Case number 1032/civil/1976.
- ⁷ As reported to author. July 2005.
- ⁸ Amnesty International. "Iraq: Decades of Suffering, Now Women Deserve Better." 2005.

EDUCATION

“Closing the gap in girls’ education is regarded as a matter of secondary importance.”¹

Education for women and girls is currently a low priority in Iraq. Although domestic legislation mandates the right to education for all Iraqi citizens, poor or non-existent implementation of this legislation has dramatically limited women’s and girls’ ability to participate in even the most basic levels of education. Thus, although Iraq technically complies with the *de jure* standards set out by the various international conventions, the exceptionally low literacy and primary education levels of Iraqi women and girls illustrate that their *de facto* situation is quite different.

The largest impediments to women’s education are socio-economic conditions that restrict educational opportunities, and the deterioration of the educational infrastructure that limits access to education, especially in remote and rural areas. Cultural traditions that see education for women and girls as a burden further exacerbate these problems and restrict even basic primary education. Coupled with the dramatic decline in security and the rise of violence within educational institutions, these factors have perpetuated discrimination against women and girls at all levels of education.

INTERNATIONAL LEGAL FRAMEWORK

The Universal Declaration of Human Rights (UDHR) articulates the universal right to education in Article 26, which states that “[e]veryone has the right to education.” Article 26 goes on to stipulate that elementary education shall be compulsory and free; higher education should be equally accessible; and education should be “directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.”

The International Covenant on Economic, Social and Cultural Rights (ICESCR), reiterates this right in Article 13 and further stipulates that fundamental education should be encouraged for those without primary education. Article 3 of the ICESCR obligates State parties to provide equal access to education by explicitly stating that men and women should enjoy the rights set out by the Covenant equally.

Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also requires states to take various measures to eliminate discrimination against women in education. For instance, Article 10 articulates that “States parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education,” and goes on to delineate specific measures to be taken in order to eliminate discrimination against women and girls. Article 10 (a)–(h). This includes *inter alia*, the elimination of stereotyped images of women in curricula, equal access to scholarships and other study grants, equal opportunities to participate in sports and physical education, as well as positive measures such as the organization of programs for women and girls who have left school prematurely.

The Convention against Discrimination in Education,² stipulates a full range of obligations in the area of educational equality. For the purpose of the Convention, discrimination is defined as

“any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education....”

The Convention contains a total of 19 Articles outlining the steps States must undertake to eliminate discrimination in education. These steps include, but are not limited to, ensuring by legislation that there is no discrimination in the admission of pupils, and formulating and applying a national policy that will “tend to promote equality of opportunity and of treatment in the matter of education.” Article 4.

DE JURE COMPLIANCE

The Right to Education

Iraqi domestic law complies with the universal education provisions in the UDHR and the ICESCR. With an emphasis on the eradication of illiteracy, Article 27 (a) of the 1970 constitution guarantees the right to universal and free education for all its citizens at all levels.

Article 27 of the 1970 Constitution:

- (a) The State undertakes the struggle against illiteracy and guarantees the right of education, free of charge, in its primary, secondary, and university stages, for all citizens.

Article 14 of the Transitional Administrative Law (TAL) reinforces the 1970 Constitution’s assurance of education for all. Coupled with the equality provisions in Article 12 of the TAL, the right to education is guaranteed equally to women and girls.

Article 14 of the TAL:

The individual has the right to security, education, health care, and social security. The Iraqi State and its governmental units, including the federal government, the regions, governorates, municipalities, and local administrations, within the limits of their resources and with due regard to other vital needs, shall strive to provide prosperity and employment opportunities to the people.

Article 12 of the TAL:

All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion, or origin, and they are equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited. Everyone has the right to life, liberty, and the security of his person. No one may be deprived of his life or liberty, except in accordance with legal procedures. All are equal before the courts.

Compulsory Primary Education

Article 27(b) of the 1970 constitution further emphasizes the State's intent to make primary education compulsory.

Article 27 of the 1970 Constitution:

- (b) The State strives to make primary education compulsory, to expand vocational and technical education in cities and rural areas, and to encourage particularly night education which enables the popular masses to combine learning and work.

Objective of Education

The 1970 constitution sets out certain educational objectives, including the promotion of awareness surrounding national rights.

Article 28 of the 1970 Constitution:

Education has the objective of raising and developing the general educational level, promoting scientific thinking, animating the research spirit, responding to exigencies of economic and social evolution and development programs, creating a national, liberal and progressive generation, strong physically and morally, proud of its people, its homeland and heritage, aware of all its national rights, and one that struggles against the capitalistic ideology, exploitation, reaction, Zionism, and imperialism for the purpose of realizing Arab unity, freedom, and socialism.

Sports

The 1970 Law on the Establishment of Sports Clubs (Number 3/1970) does not restrict women from participating in sports. It does, however, restrict the travel of those playing in sports clubs, subject to ministerial approval.

Law on the Establishment of Sports Clubs, Number 3, of 1970:

Article 28(a): The clubs may not participate in matches outside the Country, nor bring teams from outside, except after the approval of the Sport Associations.

Article 28(b): The clubs shall not be entitled to have athletes (men, women) participate in any meeting or camp outside Iraq, except after the approval of the Ministry.

DE FACTO COMPLIANCE

Iraq has a long history of promoting education for women. At one time, Iraqi women had access to what some regarded as the best educational system in the region.³ In the 1970s, literacy was officially promoted by the State through a series of campaigns that made literacy education compulsory for all Iraqis aged 15 to 45, with a special focus on accommodations for women's participation.⁴ In 1980, Iraq enjoyed almost universal levels of primary school enrolment,⁵ a high standard of literacy, and boasted some of the best higher education facilities in the Arab world.

The education system declined steadily after the start of the Iran-Iraq war in 1980. Shifting priorities from social welfare and public services to military expenditure caused a gradual decline in spending on education. By 1988, primary enrollment had already dropped roughly 15% from the former nearly universal level.⁶ With the onset of the economic sanctions in 1991, the education sector ceased to be a priority for government spending. Per student spending, which had averaged approximately \$680 in the late 1980s, fell to approximately \$47 between 1993 and 2002.⁷ Ministry of Education data suggests that the figure may have in fact been as low as \$25 per student in 1998.⁸

As financial resources became scarce in the aftermath of economic sanctions following the Gulf War, the United Nations Oil for Food Program (OFFP) funded the majority of the country's education programming through in-kind, non-monetary donations. With dwindling cash resources, salaries for teachers fell from their previous levels of \$500–\$1000 per month to as low as \$5 per month in 2002/2003.⁹ One education expert reported that she knew of salaries as low as \$1 in some parts of the country.¹⁰ Faced with meager wages, teachers left the profession for higher paying jobs, or simply stayed home with their families. Political manipulation of the education system further aggravated professional attrition rates by heavily influencing the selection of teachers and the overall curriculum. Professional education for teachers was discontinued leaving many teachers in need of additional training to meet acceptable standards.¹¹ The Ministry of Education also reported that training periods for teachers were shortened to six months, and as little as three months in some cases.¹²

The past years of conflict have further exacerbated the already poor condition of the education system. Iraq's current educational capacity and infrastructure remains tremendously weak. Schools lack basic supplies, desks, and teaching materials. In the mass looting and destruction that followed the 2003 conflict, almost 200 colleges were burned, bombed or looted.¹³ The Iraqi Ministry of Education estimates that as of 2004, almost 6,000 school buildings need repair, over 4,000 will need reconstruction, and over 1,300 must be rebuilt.¹⁴ The Ministry of Health has also stated that thousands of school facilities do not meet minimal health standards.¹⁵

The decline of the education system has affected the lives of women and girls most dramatically, depriving them of the rights afforded to them under both international and domestic law. Literacy rates for women are some of the lowest in the Arab region, and reflect both the changing policies on literacy promotion and fluctuating female primary school attendance rates. Only 14% of women in Iraq aged 65 and over are literate, while the general literacy rates for women aged 25 to 34 are actually higher than those aged 15 to 24.¹⁶ Reported overall literacy rates for women vary; a recent 2004 United Nations Development Program (UNDP) and Ministry of Planning and Development Cooperation report claims that 56% of women are literate¹⁷ while the United Nations Children's Fund (UNICEF) calculates the literacy rate to be as low as 23% in the year 2000.¹⁸

Barriers to Education

Low literacy rates are indicative of the multitude of barriers that Iraqi girls and women face in attaining education. As of 2004, only 74% of girls are enrolled in primary school.¹⁹ In rural areas, this rate is estimated to be as low as 50%.²⁰ In response to questions regarding the level of access to education, respondents commented that although official education policy allows for equal access to educational opportunities, girls are often denied their right to education due to a wide range of social, cultural and economic factors. Similar conclusions were found in a recent Women for Women International survey, where over 50% of respondents stated that access to education was not sufficient.²¹

Economics

A large number of respondents pointed to economic factors such as the deteriorating education system and the rising costs of supplies and books as the most relevant obstacle to school attendance. Because of the additional costs involved, boys often receive preference for the little amount of family resources available for education. In addition, girls are often called upon to carry some of the financial burden for educating male relatives. As one respondent noted, “[d]ue to a low economic standard, preference is given to sending the boy to school, and in some cases, a girl is forced to work to provide for the school needs of her brother. Likewise, the absence of men in the family has led to diminished educational opportunities for girls.”²² A 2003 United Nations/World Bank needs assessment also identified poverty as the primary barrier to girls’ education.²³

Geography

Many respondents noted the geographic disparities that restrict access to education for girls. One respondent stated that “[e]ducational opportunities are available for both boys and girls on an equal basis in larger cities. However, in the villages and in rural areas, educational opportunities for girls are almost non-existent, especially in the advanced stages of education.”²⁴ This geographic disparity is also reflected in a recent UNDP/Ministry of Planning and Development Cooperation report, which found that “[a]mong rural girls not enrolled and living more than 30 minutes away from school, the most important reason for not attending school is family preference – the family does not want the girl to go to school.”²⁵ This preference in rural areas for excluding girls from education may reflect both economic expense, as well as social and cultural factors. The second reason given is that “a school is not available nearby.”²⁶ Some governorates also reflect much lower rates of education for girls. Less than 40% of women aged 15 and over in the Sulaimaniyah, Dahouk, and Al-Muthanna governorates have completed elementary education.²⁷

Social and Cultural Factors

Social customs may also play a major role in limiting opportunities for girls, particularly in the latter stages of education. As one respondent commented: “[w]omen who obtain their degrees stay at home, so what is the use of educating them in schools?”²⁸ Other respondents agreed that social restrictions put ceilings on the amount of education that women receive, and that families are satisfied with low levels of education for their girls.²⁹

Social and cultural norms, such as early marriage and childbearing, also limit girls’ educational opportunities. As one respondent pointed out:

There certainly are cultural and social obstacles to educating women. Some parents, especially in villages and rural areas believe that women do not need to be educated, and that they were created for the home and for raising children. Some parents go as far as to say

that if women are educated they will disobey them, and they will become aware of things they should not be aware of. So, even if they register their daughters they take them out of school, either for the aforementioned reasons, or because they are preparing them for marriage.³⁰

One education expert also confirmed the drop-out rate of girls due to pregnancy is generally on the rise.³¹

Access to higher education also eludes many women. Many respondents stated that families prefer to educate their sons believing that they will be the breadwinners in their families.³² As one Iraqi woman pointed out, families think that women “need a husband more than they need a degree.”³³

Discrimination against women in some higher educational fields is also common. Women are encouraged to pursue more traditionally (and lower paying) female-dominated fields such as health and education. Some survey respondents noted that colleges prefer to admit males over females, even when applying with lower grades.³⁴ Others reported that some educational fields, such as pharmacy and medicine, discriminate against women by setting higher admission standards than those applied to men.³⁵

Security

Security was identified as a major barrier to women’s and girls’ education among respondents. The present security situation affects girls and women at all levels of the educational spectrum, from primary school through to post-secondary. Bombings, kidnappings, and ongoing violence between Iraqi insurgents and international forces are an almost daily occurrence in some parts of the country. Children have been killed or injured on their way to school and while in school facilities. For example, in April 2004, ten children were killed when two school vans carrying kindergarten and middle school students were destroyed in a Basrah police station attack.³⁶

Girls have been especially targeted in the violence and the recent insecurity that grips the country. A 2003 Human Rights Watch report documented the increasing numbers of sexual violence and kidnapping cases in Baghdad directly after the fall of the Saddam Hussein government.³⁷ Several respondents noted the rise in kidnapping incidents. One respondent noted that “[t]he security situation plays a major role in depriving women of education, especially in the wake of the spread of the phenomenon of kidnapping girls.”³⁸ As a result of the security situation, some families have resorted to pulling their girls out of school:

Many obstacles emerged...aiming to impede the effectiveness of woman in society. Kidnappings and rapes of women increased noticeably. In a single school in Najaf, fifteen female students were kidnapped during the previous month, and the motives behind the kidnappings were not apparent. In fact, many parents and guardians are reluctant to send their daughters to schools — this is over and above the bombings and explosive cars that target innocent civilians, which causes women to think a thousand times before embarking on a particular step. In the event that organized crime continues, women will be unable to do anything.³⁹

The environment of insecurity has also had a particularly dramatic impact on post-secondary education. Since the fall of Saddam Hussein’s government, in universities across the country, girls have been under increased pressure to wear a veil and dress in a more modest manner. Although pressure for women to conform to stricter dress codes started in the early 1990s with Saddam Hussein’s “faith campaign”, the pressure has grown stronger since 2003. This pressure is also more acute in certain

communities, and particularly in the south. However, the present situation differs due to an increase in intimidation and incidents of violence. Numerous Iraqi women reported to the authors that religious violence was emerging on some post-secondary campuses, and that women were subject to attacks and threats.⁴⁰

Other incidents of violence at post-secondary institutions have been well-documented. On March 29, 2005, students were attacked at a university in Basrah while attending a college picnic. Armed militiamen later identified as Jaysh Al Mahdi, beat students with pistols, sticks and cables and hauled several students away.⁴¹ The militiamen later distributed videos of the event and boasted of stamping out debauchery.⁴² Mosul University in Northern Iraq has lost both its Dean of Law, and Dean of Political Sciences to the ongoing violence. Both professors were assassinated within 6 months of one another.⁴³ A February 2005 UNESCO report states that 48 academics have been killed since 2003.⁴⁴

Women feel the long-term impacts of violence more keenly. Women are the first to be denied the right to education following incidents of instability and conflict. As one respondent stated, “[a]fter the fall of the regime, and in consequence of the deteriorating security situation, many families resorted to forbidding their girls from completing their university education.”⁴⁵ The current situation for girls is especially discouraging considering that if given the opportunity, girls in the region not only excel in school, but also outperform boys.⁴⁶ A recent 2005 report found that girls who completed final exams in Iraq outperformed boys at all levels despite not attending school regularly due to security concerns.⁴⁷

Other Concerns

Non-formal/Continuing Education

Respondents were mixed in their knowledge of additional educational resources beyond formal education. Although many stated that ongoing educational opportunities for women were available, others indicated that there were no such services.⁴⁸ Of those who knew of opportunities, many pointed out practical barriers to access such as cost and security. “Continuing education for those who did not enroll in educational institutions is in return for fees, which may not be affordable to all. Hence, this is an impediment for those who cannot pay, in addition to the fact that some of the studies are in the evening so families may refuse to allow their daughters to enroll. No measures have been taken to face this problem.”⁴⁹ The Ministry of Education reports that the level of enrollment in non-formal education is negligible.⁵⁰

Participation in Sports

In regards to women’s and girls’ participation in sports and physical education, many respondents gave contradictory responses. While some insisted that women and girls were able to participate equally, others pointed out that physical activity is often deemed socially and culturally inappropriate for women. “There are no laws that prohibit women from playing sports, but the cultural criteria of Iraqi families and societal practices prevent women from participating. In schools, officials in education are not focused on this matter.”⁵¹

KEY AREAS OF CONCERN

- ➔ Girls' access to primary education is heavily restricted, particularly in rural areas.
- ➔ The educational infrastructure fails to meet the basic needs of most enrolled students.
- ➔ Ongoing threats of violence and intimidation limit women's opportunities in higher education.
- ➔ Socio-economic factors impede girls' full participation in educational opportunities.

EDUCATION - INTERNATIONAL TREATY FRAMEWORK

UDHR

Article 26

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

ICESCR

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

CEDAW

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programs of continuing education, including adult and functional literacy programs, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student dropout rates and the organization of programs for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;

- (h) Access to specific educational information to help to ensure the health and well being of families, including information and advice on family planning.

Convention against Discrimination in Education

Article 1

1. For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:
 - (a) Of depriving any person or group of persons of access to education of any type or at any level;
 - (b) Of limiting any person or group of persons to education of an inferior standard;
 - (c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
 - (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.
2. For the purposes of this Convention, the term "education" refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

Article 2

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

- (a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;
- (b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;
- (c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

Article 3

In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

- (a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;
- (b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

- (c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;
- (d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;
- (e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

Article 4

The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

- (a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;
- (b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent;
- (c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;
- (d) To provide training for the teaching profession without discrimination.

Article 5

1. The States Parties to this Convention agree that:

- (a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;
- (b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction;
- (c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:
 - (i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;
 - (ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional.

2. The States Parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this article.

Article 6

In the application of this Convention, the States Parties to it undertake to pay the greatest attention to any recommendations hereafter adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization defining the measures to be taken against the different forms of discrimination in education and for the purpose of ensuring equality of opportunity and treatment in education.

Article 7

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, including that taken for the formulation and the development of the national policy defined in article 4 as well as the results achieved and the obstacles encountered in the application of that policy.

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- ²⁸ Respondent B1. Question 46.
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- ³⁰ Respondent B1. Question 46.
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- ³² For example, respondents A1, A5, E5. Question 45.
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- ³⁴ For example, respondents B2, G1. Question 45.

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LABOR AND ECONOMIC RIGHTS

“Labor laws guarantee equality, but they are not implemented correctly.”¹

Prior to the 1990s, women’s participation in the Iraqi labor force was influenced through a set of laws and policies that were broadly viewed as favorable to women. The Ba’ath party encouraged women’s participation as part of its aggressive campaign towards economic growth, and subsequently, as a means of filling the gap created when working age men left the labor force to contribute to the various wars of the regime, particularly the long and devastating Iraq-Iran war in the 1980s.² Labor and employment laws, in principle, provided women with equal opportunities in the public and private sectors, and progressive maternity laws came into effect in the early 1970s.

After the Iran-Iraq war, women were pushed out of the labor market to make room for men returning from war. Economic sanctions imposed on Iraq during the early 1990s further devastated the overall economy and had a disproportionate effect on women’s status in the labor market. This situation was further exacerbated as Saddam Hussein launched a “faith campaign” in a bid to gain favor with religious and tribal leaders, forcing women into more traditional roles, and actively excluding them from certain professions.

Despite essentially equal status under Iraqi law, the situation for women in Iraq today, both in terms of their participation in the labor market and their economic rights in general, is restricted by conservative perceptions of women’s position in the workplace, lack of mechanisms for enforcement of those rights that exist under law, and a security environment that limits women’s freedom of movement, and with it, their employment options.

INTERNATIONAL LEGAL FRAMEWORK

The right to work, to receive equal remuneration for equal work and protection by the state against unemployment, remain among the basic tenets of international human rights law, as articulated in the Universal Declaration of Human Rights (UDHR). These rights have since been elaborated on in a series of related human right treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These Conventions provide several detailed provisions pertaining to equality, including:

- equal opportunities for promotion subject to the same criteria for selection (CEDAW, Article 11(1)(a); also ICESCR, Article 7(c));
- the right of women to be guaranteed conditions of work not inferior to those of men (ICESCR, Article 7(a)(i));

- the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction (CEDAW, Article 11(1)(f));

The Conventions also go one step further towards gender equality in expressly protecting women from discrimination based on marriage or maternity, including:

- prohibition of dismissal on the grounds of pregnancy, maternity leave or marital status (CEDAW, Article 11(2)(a));
- provision of paid maternity leave or leave with comparable social security benefits without loss of employment, seniority or social allowances (CEDAW, Article 11(2)(b); also ICESCR, Article 10);
- support for provision of child-care services for working parents (CEDAW Article 11(2)(c).

As early as 1959, Iraq ratified the Discrimination (Employment and Occupation) Convention, based on the principle that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.” Preamble. This Convention sets forth active measures to be taken by the States towards non-discrimination in employment, including cooperation with employers and labor organizations, enactment and amendment of legislation consistent with these objectives, and vocational guidance and training. Article 3.

Moving beyond labor rights, equality of treatment with respect to economic rights in general is also protected under international law, starting with the basic right to social security as enunciated in the UDHR, and extending to the equal right to bank loans, mortgages and other forms of financial credit, as expressly set forth in Article 13 of CEDAW.

Cognizant of the particularly vulnerable position of rural women in this context, Article 14(1) of CEDAW provides:

States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

Article 14(2) then provides for specific measures to ensure that women in rural areas participate in and benefit from rural development, including through education and training programs, access to agricultural credit and loans, and participation in development planning.

Right to Employment

Iraq's Interim Constitution of 1970 and the Unified Labor Code, Law Number 81 of 1987, forbid discrimination against women, whether in employment or unemployment. The Unified Labor Code extends to the private, semi-private and public sectors. The public sector is also further governed by the Civil Service Law.

Article 32 of the 1970 Constitution:

- (a) Work is a right, which is ensured to be available for every able citizen.
- (b) Work is an honor and a sacred duty for every able citizen, and is indispensable by the necessity to participate in building the society, protecting it, and realizing its evolution and prosperity.
- (c) The State undertakes to improve the conditions of work, and raise the standard of living, experience, and culture for all working citizens.
- (d) The State undertakes to provide the largest scale of social security and services for all citizens, in cases of sickness, disability, unemployment, or aging.
- (e) The State undertakes to secure the means necessary, to enable working citizens to pass their vacations in an atmosphere which enables them to improve their health standard, and to promote their cultural and artistic talents.

Article 2 of the Unified Labor Code of 1987:

This law guarantees the right to work for all capable Iraqis under equal terms and opportunities for all Iraqis without prejudice to their sex, origin, language or religion.

Article 15 of the Unified Labor Code of 1987:

The Department of Labor and Social Security, through their labor offices, shall organize the recruitment of workers according to opportunities and aims to emphasize equality and justice between workers.

The Unified Labor Code expressly guarantees equal pay for equal work.

Article 4 of the Unified Labor Code of 1987:

The Department of Labor located at the Ministry of Labor and Social Affairs, and through its labor offices, undertakes the regulation of employing workers in accordance with available opportunities in a manner that guarantees justice and equality among them.

The Transitional Administrative Law (TAL) provides a broad guarantee of employment and social security in its all encompassing Article 14, but makes no reference to the special protections to be afforded to women.

Article 14 of the TAL:

The individual has the right to security, education, health care, and social security. The Iraqi State and its governmental units, including the federal government, the regions, governorates, municipalities, and local administrations, within the limits of their resources and with due regard to other vital needs, shall strive to provide prosperity and employment opportunities to the people.

Conditions of Work

The Unified Labor Code is in many respects sensitive to the special conditions of women in the workplace and demonstrates concern, and support for, the demands of family life. Article 87 provides that women who are nursing are permitted one hour per day for breastfeeding; female workers are to be provided with comfortable environments, desks and chairs; and a working mother with a child under six years of age is permitted 3 days unpaid leave to attend to her sick child.

Other provisions arguably result in discriminatory treatment of women by regulating the conditions in which women can and cannot work. For example, articles 80, 81, 82 and 83 of the Labor Code provide that women are not to be assigned to dangerous tasks or heavy physical work; pregnant women are not to work more than the normal working hours; women are not to be assigned night shifts or work at night except under exceptional circumstances as specified in the Labor Law; and women are not allowed to work between 9:00 pm and 6:00 am.

Maternity Entitlements

Maternity entitlements in the public sector are specifically governed by the Maternal Law of 1971, under which women receive six months paid maternity leave and may elect to take a further six months leave with half-pay. A subsequent decision of the Revolutionary Command Council gives even more favorable entitlements to the mother of twins.

Revolutionary Command Council Decision Number 727:

Based on the provisions of Paragraph 1 of Article 42 of the constitution

The Revolutionary Command Council has decided in its session on 19/9/1987 the following:

1. The Iraqi mother employed in state departments or the socialist sector who gives birth to twins may enjoy a special maternity leave for one year with full pay in order to look after her twins who are less than one year old.

Women in the private sector do not benefit from such entitlements from their employer but may receive social security benefits in the event that they take unpaid leave.

Article 80 of the Unified Labor Code of 1987:

A working woman has the right to leave her job a month prior to the expected date of delivery and in such circumstances she is considered to be on unpaid maternity leave. She is subject to the provisions on support assistance and maternity leave as stipulated in the Workers' Social Security and Retirement Law.

Article 32 of the Workers' Social Security and Retirement Law Number 112 of 1969:

1. Insured women enjoy birth support in cases of pregnancy or birth that are signed by a licensed physician appointed or approved by the institution, on condition that:
 - (a) She stops working;
 - (b) That the benefits paid for her or recorded in her account in the twelve months prior to her due date according to the physician's report should not be less than six monthly wages.
2. Birth support is paid to insured women for the days they do not work for pay for twelve weeks, with no more than six weeks before the due date, and on condition that the birth support continues until the end of the sixth week that follows birth if the birth occurs after the due date.

Labor Court

As to the enforcement of labor rights, an independent Labor Court was established to preside over labor disputes in a timely manner. While these courts can be accessed by men and women equally as a form of contesting decisions as to employment and termination of employment ("hiring and firing"), the court does not appear to have jurisdiction to address general allegations of gender discrimination with respect to pay, promotion, or general treatment in the workplace (e.g., lack of facilities for women, lack of compliance with maternity provisions).

Article 137 of the Unified Labor Code of 1987:

One or more labor courts shall be established in each governorate and will convene with one judge to be assigned by the Minister of Justice based on the recommendation of the President of the Court of Appeals.

Article 59 of the Unified Labor Code states that there will be no hearing in courts for cases against the government filed by the official or the employee claiming rights under the Civil Service Law and that such hearings should be carried out by the "Public Disciplinary Council."

Excluded Sectors and Excluded Provisions

It is important to note that Article 89 of the Unified Labor Code states that provisions pertaining to women do not apply to women working in the family environment under the supervision of the father, husband or brother. There is a similar provision in the Worker's Social Security and Retirement Law of 1969 (discussed later in this Chapter).

Neither the Civil Service Law nor the Unified Labor Code speak to diversity of participation in the workplace or temporary special measures as a means of ensuring a certain level of representation of women, or indeed any other traditionally under-represented groups, in the workplace. Moreover, there are no specific provisions in these laws dealing with sexual harassment and other forms of harassment in the workplace, a subject which is discussed further in the *de facto* section of this Chapter.

Social Security

As noted above, the Iraqi Constitution of 1970 guaranteed that the State would “provide the largest scale of social security and services for all citizens, in cases of sickness, disability, unemployment, or aging.” Article 32(d). Under the Workers’ Social Security and Retirement Law, however, certain categories of workers are expressly excluded from such benefits. In short, these workers participate in the “informal” labor sector, including domestic work, family businesses, and agricultural work. Rural women were particularly disadvantaged by these provisions.

Article 3 of the Workers’ Social Security and Retirement Law Number 112 of 1969 (emphasis added):

1. The provisions of this law apply to all workers and trainees, with the exception of the following groups:
 - (a) Government workers in official and semi-official departments, municipalities and local administrations and their like in the institutions included in the retirement laws and the retirement law for semi-official institutions, as well as foreign employees and experts used by the government in its official and semi-official departments in accordance with contracts.
 - (b) Workers who work for their husbands, fathers, mothers, sons or daughters.
 - (c) Workers hired to work in incidental or emergency jobs or for temporary or seasonal work, except as listed in special provisions.
 - (d) Foreign workers residing in Iraq due to their work in diplomatic or international missions.
 - (e) Foreign workers working for foreign institutions whose headquarters are outside Iraq and who are listed in retirement and social security programs in their own countries.
 - (f) House workers and their like.
 - (g) *Workers in agriculture, livestock and forests* except those hired by the government in its official and semi-official institutions and trade and industrial institutions.
 - (h) Individuals working in their homes for an employer.
 - (i) Workers included in special retirement laws or regulations in which the government contributes through funding.

Retirement benefits accrue to women earlier than they do to men.

Article 37 of Workers’ Social Security and Retirement Law Number 112 of 1969:

1. Insured individuals deserve old age retirement when the following conditions are met:
 - (a) When men reach the age of sixty and women reach the age of fifty five. The first day of July is considered the date of birth for individuals who have no officially documented day or month of birth....
2. When the paid subscriptions for the insured individual reach (300) or more subscriptions, men deserve to retire at fifty five and women at fifty, as an exception of the provisions of paragraph A of this article.

Other Economic Rights

Iraqi law does not discriminate against women making and signing contracts. Article 93 of the Iraqi Civil Code provides that every Iraqi is capable of entering into a contractual agreement. Exceptions to this rule include minors and the mentally incompetent (Article 94).

In the area of income tax, however, men are considered the legal provider and thus entitled to greater deductions, including additional deductions for multiple wives. A wife is not entitled to the same reductions unless she is a widow or divorcee. A wife loses the deduction entitlement if she re-marries.

Article 12 of the Income Tax Law Number 95 of 1959 and its amendments:

1. A husband is entitled to a deduction of 450 Dinars, 200 Dinars for each wife and 75 for each child below the age of 18.

DE FACTO COMPLIANCE

Current estimates put women's participation in the workforce at anywhere from 19%³ to 23%⁴ with the majority of that number working in the public sector. As of 2004, women made up approximately 46% of employees in the Iraqi ministries (excluding the Ministry of Interior).⁵ Very few women, however, assume senior, decision-making posts and a large proportion of women are in traditionally female sectors such as health and education.⁶

Discrimination

In its Concluding Observations concerning Iraq's last periodic report to the CEDAW Committee, the Committee expressed concern about women's low participation in the labor market and the absence of minimum wage laws, which create obstacles in evaluating whether women are being paid on par with men.⁷

Respondents pointed out that some of the former laws granting equality between men and women covered both the public and private sectors, although the public sector was the only place those laws were implemented. Moreover, benefits such as vacation leave, social security, and critical maternity benefits,⁸ are guaranteed only in the public sector, as private employers ignore the governing laws. This is especially problematic for women working in the informal sector, helping with agricultural projects, or selling products from home.⁹ As such, they remain without many of the benefits and protections the public sector provides.

Several respondents observed inequalities of pay in the private sector, although in the public sector women were considered to be treated equally in terms of pay.¹⁰ However, even in relation to the regulated public sector, many respondents observed that discrimination still exists in the areas of promotion, managerial responsibility and decision making. Several respondents also stated that men generally had more opportunities to access employment than women, and that men were chosen more frequently over women for the same jobs. Reasons cited included that men were less likely to take time off to care for children and dependents, and did not have to take maternity leave. It was also noted that the prevalence of men in leadership positions resulted in favoritism towards men.¹¹ By way

of example, one respondent noted that “the [Education] Directorate for Karbala Governorate has replaced 17 school headmistresses with headmasters in the school year 2004”¹²

In certain sectors, women have been actively blocked from participation by the former regime. In the judiciary, for example, women were not permitted to serve as judges as of 1991. From that point, no women were admitted to the judicial training institute and women on the bench were removed, or relegated to prosecutorial positions. In some cases, they would sit as “acting judges” to do much-needed work, but were never given the title or associated benefits. As mentioned in the Chapter on *Political Participation*, since May 2003, several former graduates of the Judicial Training Institute have been appointed to the bench, first by the Judicial Review Committee and subsequently by the Iraqi Judicial Council. The overall numbers, however, are extremely low (less than 2%) and female judges remain absent from appellate courts throughout the country, as well as from the Court of Cassation and the Federal Supreme Court. Moreover, female judges are not appointed to the personal status courts or felony courts, sitting only on juvenile courts and civil courts.

The other two areas of law enforcement – the police and prisons services – are also essentially devoid of women. While there is no law preventing their participation, one Iraqi civil service official stated that women vanished from those services in the late 1980s due to regime policies and social perceptions.¹³ This has had serious repercussions for women’s access to justice, as discussed further in the Chapter on *Violence Against Women and the Right to Personal Security*.

Security

Women’s work opportunities have also been severely hampered by the current security situation. Heightened vulnerability to violent attacks, kidnappings and sexual assaults make women wary of leaving their homes for outside jobs or to seek employment. As such, many women have stopped working and new employment opportunities have been severely restricted.¹⁴ Many of the respondents made reference to the precarious security situation and the prevailing lack of mobility for women. As one respondent noted, “[the security situation] causes women to think a thousand times before embarking on a particular step.”¹⁵

Societal Norms

Tradition and culture also bar women’s opportunities in the labor force. Women may be denied the opportunity to work because their work is often believed to be less important in supporting the family than men’s work. “Fathers, brothers and husbands – and even in some cases sons – prevent them from working even if the work is good and suitable for them” stated one respondent.¹⁶ Others see women working outside the home as a sign of men’s inability to provide for their families. Stereotypical depictions of women’s work are also pervasive, leading girls to enroll in traditionally female sectors and limiting growth potential in non-traditional domains. As one respondent stated, “[m]ales are allowed to work in any job they want while females are only allowed to work in certain specific fields.”¹⁷

Disparity in Education Levels

Opportunity to compete with men for employment is also severely restricted due to the large disparities in education levels. The plunge in literacy levels for women over the last decade has been drastic. Currently, Iraq has the lowest regional rate literacy for women, estimated to be as low as 25%.¹⁸ This obviously severely limits women’s employment options.

Female-headed Households

Overall, women face significant disadvantages “often working in jobs with low wages and little potential for growth.”¹⁹ Female headed households are particularly vulnerable to the inequalities of the labor market. Self reliance is minimal and most must rely on male relatives for income. There are also reports that female headed families have been forced to pull children out of school to work in order to earn extra income, thus, continuing the cycle of poverty.²⁰

Although a basic human right, women’s participation in the workforce in post-war Iraq must also be seen as an economic necessity. Regional studies have shown that women’s workforce participation “could boost average household earnings by as much as 25%.”²¹

Sexual Harassment in the Workplace

Respondents overwhelmingly reported that sexual harassment exists in the workplace.²² Respondents went on to observe that a woman will generally remain silent on this issue, primarily due to fear for her reputation, but also for fear of dismissal, as men generally hold more senior positions in the workplace.²³ It was also observed that there are no regulations expressly addressing this issue.²⁴

Social Security

Starting with the Iran-Iraq war and culminating in the recent and ongoing conflict, women have been substantially affected by the breakdown of basic social infrastructure, such as transportation, access to clean water and electricity. Because women’s labor is so heavily tied to the informal sector, the current precarious supply of electricity, water and other basic necessities directly effect whether women are able to earn income.

Currently, anyone working for the state sector has the right to social security benefits. The private sector, however, is governed by a separate system, and any company with less than 3 employees is not required to pay into the system.²⁵ Thus, women who participate on the margins of the labor force working from home or for small enterprises are excluded from benefits. An overwhelming amount of female labor also goes unpaid in the Iraqi economy; 84% of women in a recent survey reported that they receive no financial compensation for their labor.²⁶ This would also preclude any additional benefits such as social security.

Current social welfare laws do provide for some family benefits for those in poverty, however, the distribution system does not take family size and need into account.²⁷ Furthermore, financial benefits for the disabled are extremely limited and do not provide any kind of additional training for self-reliance.²⁸

Although Article 14 of the TAL does guarantee social security to all citizens, the parameters are not well defined. As part of the reconstruction effort, the World Bank has been involved with formulating an alternate system and is expected to assist the new government with this initiative.²⁹

Rural Women

As one respondent observed: “Rural women are governed by social norms and customs which are, in many cases, unreasonable and which exploit them in working in agriculture, in housework, and raising children and which force them to give up many of their rights.”³⁰

Others observed that while Iraqi laws did not distinguish rural women from women in urban areas, in reality, rural women are disadvantaged by a lack of services and lack of education, which ultimately lead to further deprivation of rights. Respondents observed that rural women are largely deprived of their property ownership rights,³¹ training opportunities and loans that might otherwise improve their situation.³² Respondents almost unanimously concluded that the state has taken no special measures in determining and addressing the needs of rural women.

KEY AREAS OF CONCERN

- The split in regulation between the public and private sector leaves many women without access to equal wages and benefits.
- Limited access of women and girls to educational opportunities has a corresponding effect on their access to the labor market.
- A lack of social safety nets for the informal sector has a significant impact on women, who are disproportionately over-represented in that sector and generally subordinate to men.
- Rural women are particularly vulnerable to deprivation of their economic rights and it was broadly observed that the State has taken no measures to address the special needs of this group of women.

LABOR AND ECONOMIC RIGHTS - INTERNATIONAL TREATY FRAMEWORK

UDHR

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Everyone has the right to form and to join trade unions for the protection of his interests.

ICESCR

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

2. Special protection should be accorded to mothers during a reasonable period before and after child-birth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

CEDAW

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
 - (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
 - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
 - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counseling and services in family planning;

- (c) To benefit directly from social security programs;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Equal Remuneration Convention), 1951

Article 1

For the purpose of this Convention—

- (a) the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
- (b) the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.
2. This principle may be applied by means of—
 - (a) national laws or regulations;
 - (b) legally established or recognised machinery for wage determination;
 - (c) collective agreements between employers and workers; or
 - (d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.
2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.
3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Discrimination (Employment and Occupation) Convention, 1958:

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights, adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term discrimination includes—

- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- (b) other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice—

- (a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

- (b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
- (c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- (d) to pursue the policy in respect of employment under the direct control of a national authority;
- (e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
- (f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.
2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

ENDNOTES

- ¹ Respondent E4. Question 53.
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- ³ United Nations. "United Nations Development Program - Programme on Governance in the Arab Region (UNDP-POGAR) Iraq: Women in Public Life." Available at: www.undp-pogar.org/countries/iraq/gender-pw.html
- ⁴ World Bank. "MENA Development Report. Gender and Development in the Middle East and North Africa: Women in the Public Sphere." 2004.
- ⁵ Iraqi Al-Amal Association. "The National Conference for Empowering Women in Democracy (White Paper)." Baghdad. June 16-17, 2004.
- ⁶ Iraqi Al-Amal Association. "The National Conference for Empowering Women in Democracy (White Paper)." Baghdad. June 16-17, 2004.
- ⁷ CEDAW/C/IRQ/2-3 468 and 469. June 14, 2000.
- ⁸ CEDAW/C/IRQ/2-3 468 and 469. June 14, 2000.
- ⁹ Women for Women International. "Windows of Opportunity: The Pursuit of Gender Equality in Post-War Iraq." 2005.
- ¹⁰ Respondents K1, L1, M2, M3, D5, E2, E3, H1, H3.
- ¹¹ Respondent E3. Question 55.
- ¹² Respondent G1. Question 14.
- ¹³ Comment from Focus Group. April 28, 2005.
- ¹⁴ Amnesty International. "Decades of Suffering, Now Women Deserve Better." 2005.
- ¹⁵ Respondent A7. Question 81.
- ¹⁶ Respondent H1. Question 14.
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- ¹⁸ Human Rights Watch. "Background on Women's Status in Iraq Prior to the Fall of the Saddam Hussein Government." 2003.
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- ²⁰ Global IDP Database. "Profile of International Displacement: Iraq." November 24, 2004.
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- ²³ Respondents A5, A6, B1, E3. Question 57.
- ²⁴ Respondent D2. Question 57.
- ²⁵ UNHCHR. "The Present Situation of Human Rights in Iraq." June 9, 2004.
- ²⁶ Women for Women International. "Windows of Opportunity: The Pursuit of Gender Equality in Post-War Iraq." 2005.
- ²⁷ UNHCHR. "The Present Situation of Human Rights in Iraq." June 9, 2004.
- ²⁸ UNHCHR. "The Present Situation of Human Rights in Iraq." June 9, 2004.
- ²⁹ UNHCHR. "The Present Situation of Human Rights in Iraq." June 9, 2004.
- ³⁰ Respondent K1. Question 71.
- ³¹ Respondent L1. Question 70.
- ³² Respondent M1. Question 71.
- ³³ Respondents A6, B1, B2 B3, B5, C1-C4, D1, D3, D5,G1, J3, K2, L2, M1, M4. Question 69.

COMPLETE LIST OF KEY AREAS OF CONCERN

INTRODUCTION

- ➔ The recently appointed 55 member Constitutional Drafting Committee contains only 9 women, giving rise to serious doubts about the representation of women's interests in the permanent Constitution.
- ➔ Although more active in civil society and in government than ever before, women continue to be largely excluded from decision-making and leadership positions, both inside government and within political parties. Notably, women's participation in the Judiciary remains extremely low and only 4 members of the 36 member Council of Ministers are women.
- ➔ Threats and attacks on female activists and political figures continue to undermine women's participation in political life.

POLITICAL PARTICIPATION, CIVIL SOCIETY AND WOMEN IN DECISION MAKING

- ➔ The recently appointed 55 member Constitutional Drafting Committee contains only 9 women, giving rise to serious doubts about the representation of women's interests in the permanent Constitution.
- ➔ Although more active in civil society and in government than ever before, women continue to be largely excluded from decision-making and leadership positions, both inside government and within political parties. Notably, women's participation in the Judiciary remains extremely low and only 4 members of the 36 member Council of Ministers are women.
- ➔ Threats and attacks on female activists and political figures continue to undermine women's participation in political life.

HEALTH

- ➔ Women's health services in Iraq lack basic essentials and are inadequate to accommodate the population.
- ➔ Lack of basic standards of living (such as water, food and sanitation) has a particularly negative impact on women's health.
- ➔ Healthcare facilities are non-existent in many rural areas.
- ➔ There are no mechanisms in place to measure the prevalence of harmful practices such as female genital cutting.
- ➔ There is no capacity to prevent and treat the rising incidents of terminal illnesses such as cancer.

VIOLENCE AGAINST WOMEN AND THE RIGHT TO PERSONAL SECURITY

- ➔ Laws providing for mitigated sentences for so-called honor killings continue in force. Reports also indicate that incidences of honor killings have risen during the period following the fall of the Ba'ath party.
- ➔ Victims of rape are commonly perceived as disgraced and thus subjected to the threat of honor killings, or to marriage to their rapist, under the pretense of reinstating honor to the family. Both practices are legitimized under the Iraqi Penal Code.
- ➔ A man is legally entitled to beat his wife under the Iraqi Penal Code, and the practice is broadly accepted by both men and women.
- ➔ Female genital cutting appears to be on the rise in the Kurdish region. There are no legal provisions expressly outlawing or criminalizing the practice.
- ➔ The state has limited capacity to provide redress for female victims of violence, either through the criminal justice system or through the provision of shelter for women seeking to escape such violence.

FAMILY AND MARRIAGE

- ➔ Amendments to the Personal Status Code have fostered *de jure* and *de facto* discrimination against women, particularly in the areas of divorce, inheritance and polygamy.
- ➔ Certain practices that discriminate against women, such as polygamy and temporary marriages are becoming increasingly common.
- ➔ Iraq's reservations to Article 16 of CEDAW leaves the door open for continued violation of the core elements of women's rights with respect to family and marriage.
- ➔ Recent attempts to replace the Personal Status Code with Shari'a law give rise to concerns that women's rights will be further eroded by a complete change in the legal regime.

NATIONALITY

- Current nationality laws deprive Iraqi women of the ability to pass citizenship and property to their non-Iraqi children or to their non-Iraqi husbands.
- Women without Iraqi citizenship are unable to inherit property from their Iraqi husbands.
- Iraq has not withdrawn its reservations to Article 9(1) and (2) of CEDAW thus undermining women's equal rights with respect to nationality.
- Discriminatory RCC orders pertaining to nationality continue in effect.

EDUCATION

- Girls' access to primary education is heavily restricted, particularly in rural areas.
- The educational infrastructure fails to meet the basic needs of most enrolled students.
- Ongoing threats of violence and intimidation limit women's opportunities in higher education.
- Socio-economic factors impede girls' full participation in educational opportunities.

LABOR AND ECONOMIC RIGHTS

- The split in regulation between the public and private sector leaves many women without access to equal wages and benefits.
- Limited access of women and girls to educational opportunities has a corresponding effect on their access to the labor market.
- A lack of social safety nets for the informal sector has a significant impact on women, who are disproportionately over-represented in that sector and generally subordinate to men.
- Rural women are particularly vulnerable to deprivation of their economic rights and it was broadly observed that the State has taken no measures to address the special needs of this group of women.

ACRONYMS

CDC	Constitutional Drafting Committee
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (United Nations)
CERD	Convention on the Elimination of All Forms of Discrimination
CPA	Coalition Provisional Authority
CRC	Convention on the Rights of the Child
GA/ UNGA	United Nations General Assembly
GDP	Gross National Product
GFIW	General Federation of Iraqi Women
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IGC	Iraqi Government Council
IIG	Interim Iraqi Government
ILDLP	Iraq Legal Development Project
KWAHK	Kurdish Women Against Honor Killing
NGO	Non-Governmental Organizations
OFFP	Oil for Food Program
RCC	Revolutionary Command Council
SCIRI	Supreme Council of Islamic Revolution in Iraq
TAL	Transitional Administrative Law
TNA	Transitional National Assembly
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNIFEM	United Nations Development Fund for Women
UNSCR	United Nations Security Council Resolution
WHO	World Health Organization

