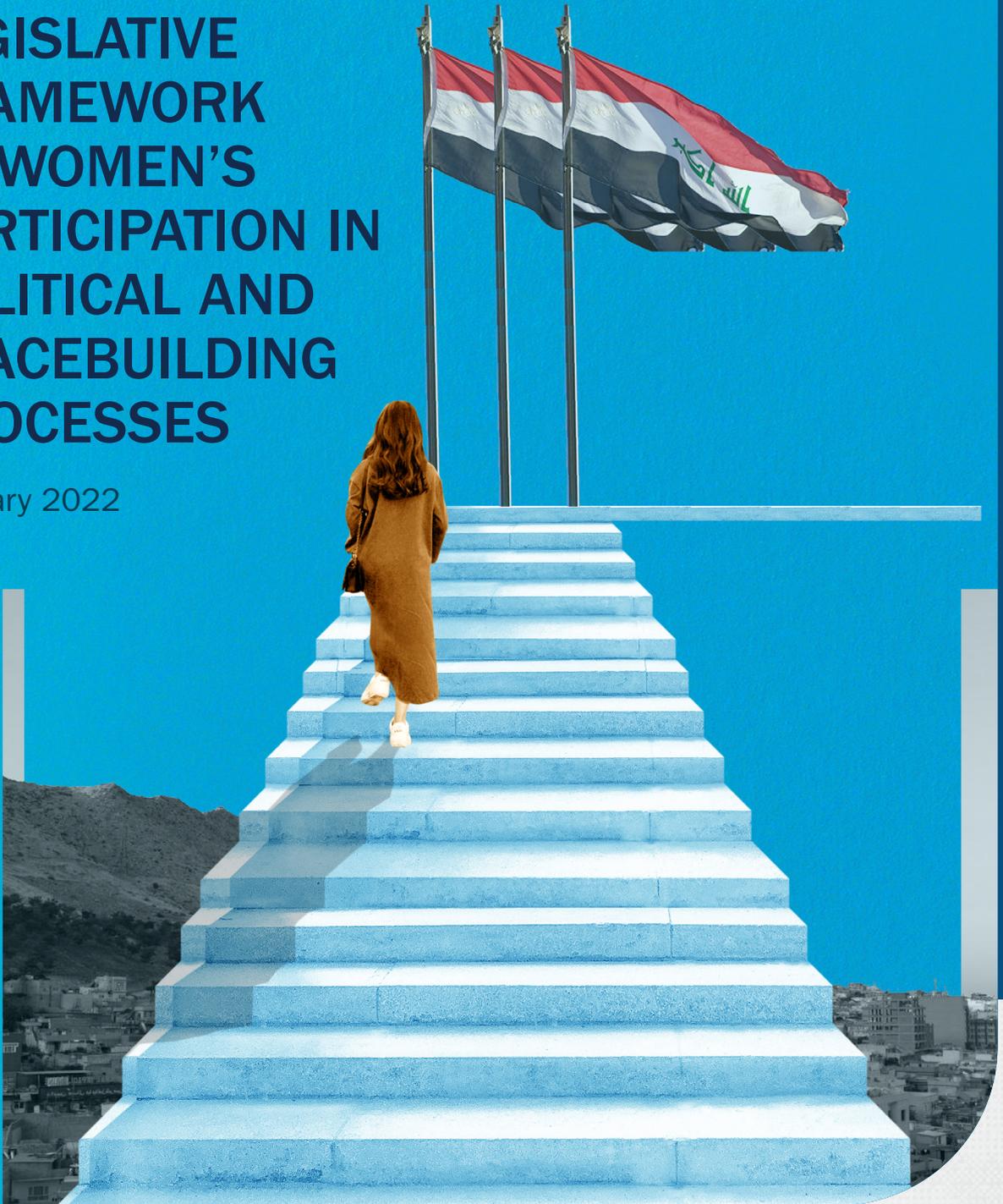


Dr. Rejna Alaaldin

LEGISLATIVE FRAMEWORK TO WOMEN'S PARTICIPATION IN POLITICAL AND PEACEBUILDING PROCESSES

February 2022



german
cooperation

DEUTSCHE ZUSAMMENARBEIT

Implemented by

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

elbarlament
cultures of democracy



Disclaimer: The views expressed in this paper represent those of the authors and not necessarily those of elbarlament. References made to the work of other authors remain solely the responsibility of the author(s).

This research paper was produced within the framework of the implementation of “Women Talking Peace, Women Leading Peace Talks” project, implemented by elbarlament and supported by *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH* on behalf of the German Government.

Table of Contents

List of abbreviations	4
Executive Summary	5
1. Introduction	7
2. Women’s Participation in Political and Peacebuilding Processes	10
2.1 Rights Guaranteed to Women by the Constitution of Iraq	11
2.2 Representation of Women in the Independent High Electoral Commission	14
2.3 Women in Political Parties	15
2.4 Representation of Women in the Council of Representatives	16
2.5 Representation of Women at Provincial Level	20
2.6 Political Participation of Women in the Kurdistan Region	22
2.7 Challenges to Women’s Political Participation	23
3. Violence Against Women	25
3.1 Iraq Penal Code	25
3.2 Domestic Violence and the Family Violence Protection Bill	28
3.3 Sexual Harassment	30
3.4 Human Trafficking	32
3.5 Personal Status Law	33
3.6 Measures taken by the Kurdistan Regional Government	36
3.7 Yazidi Female Survivors Law	36
4. Conclusion	39

List of Abbreviations

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women

CoR: Council of Representatives

FGM: Female Genital Mutilation

IHEC: Independent High Electoral Commission

IDP: Internally Displaced Person

KP: Kurdistan Iraq Parliament

KRI: Kurdistan Region of Iraq

KRG: Kurdistan Regional Government

NAP: National Action Plan

MP: Member of Parliament

SGBV: Sexual and Gender-Based Violence

UNSCR 1325: United Nations Security Council Resolution 1325, on Women, Peace, and Security

Executive Summary

Iraq has suffered immense devastation and degradation after two decades of armed conflict and political instability. While this has far-reaching implications for the social fabric of the country, it has also increased the vulnerability of women. Women in Iraq remain underrepresented, excluded from peacebuilding negotiations and in the margins of politics. This paper examines the existing legislative framework and policies adopted in Iraq regarding women's participation in political and peacebuilding processes. Furthermore, it analyses whether or not existing laws protect and promote women's rights, as well as identifies the areas that need to be improved.

Section 1 of the paper provides an introduction and Section 2 analyses the provisions of the Constitution of Iraq and the laws governing women's rights and women representation in the legislative and executive institutions at the federal, regional, provincial and district levels. It found that while the Constitution does include articles guaranteeing equal rights for Iraqi citizens irrespective of their sex and requiring the provision of social security to Iraqi citizens, particularly women and children, further legislation is still required to be enacted by the Council of Representatives (CoR), also known as Iraq Parliament, to effectively apply such provisions. In addition, the federal government needs to adopt policies ensuring the provision of social security to women, children and those of age.

Section 2 studies women's representation in the Independent High Electoral Commission (IHEC) and identifies the need to establish a minimum threshold for the representation of women in the Board of Commissioners. In addition, Section 2 analyses Law No. 36 of 2015 on Political Parties. It found that the Law on Political Parties lacks a precise threshold for the minimum representation of women in the leadership committees of political parties and the membership of those parties. Further to highlighting the need to strengthen women representation in political parties, Section 2 identifies the necessity to guarantee women a minimum representation in executive positions of the Iraqi Government at the federal, regional, provincial and district levels. In this regard, Law No. 21 of 2008 on Provinces that have not joined a Region, stipulates that a Governor shall have five Deputies, however, this is without guaranteeing women a minimum representation. Therefore, it is recommended to introduce gender quotas to at least 40 per cent at all leadership levels. Political parties should be obliged to have a gender quota of at least 40 per cent for the founding members and leadership councils. However, it is necessary to empower and assign competent women rather than just increase the number of women present in decision-making positions irrespective of whether such representation will actually further strengthen the government's ability to perform its duties. To improve women capacities, long-term education opportunities should be provided to women in all fields.

Section 3 scrutinises the laws relating to violence against women and the need for the effective implementation of such laws. The provisions of the Iraqi Penal Code that are relevant to violence against women are dissected and the chapter emphasises the need for the CoR to adopt the Family Violence Protection Bill (also known as the Domestic

Violence Law). The number of domestic violence victims has increased over the past years. Therefore, the Domestic Violence Law is urgently required to legally safeguard women and ensure that perpetrators are not immune from punishment.

It is recommended in this paper that a focal point is appointed at the General Prosecutor's Office to allow victims of al-fasliya (forced marriage) and al-nahwa (prevention of marriage) to privately and safely submit cases and request the General Prosecutor to file a claim on their behalf. This also protects victims against the stigma associated with taking legal action against a husband or a family member. Section 3 also highlights the necessity to tackle human trafficking and to fight sexual harassment, particularly in the workplace. The gaps in the provisions of the federal Personal Status Law are highlighted. This paper explains how the Kurdistan Regional Government (KRG) has attempted to overcome them to protect women in the Kurdistan Region. Finally, it examines the recently adopted Law on Yazidi Female Survivors and its importance and shortcomings.

The protection of women is a prerequisite to increasing women's political and peacebuilding participation in the country. A lack of adequate legislation to protect women's rights and insufficient implementation of existing laws are major contributing reasons for violence and a lack of female participation in politics and peacebuilding. Women lack sufficient protection in laws and regulations, and are vulnerable to social norms and biases that risk prolonging the shortcomings in existing laws that urgently need to be addressed if gender violence and discrimination is to be tackled. This paper identifies policy recommendations that could enable greater political inclusion for women and foster an environment of accountability. This analysis is also based on a series of interviews with civil-society actors, academics and members of parliament.

Addressing the legal gaps for the advancement of women in the political sphere and promotion of gender equality, pursuant to international standards, requires political will and a long-term effort by both the government, the political elite and civil society. Women face institutional, legal and political challenges. Iraq should review all laws and provisions that are discriminatory against women and adopt laws that protect women from violence, such as the Domestic Violence Law, to prevent harmful practices and further killings of women.

1. Introduction

Iraq's political and social environment has undergone a seismic change since the fall of the Baath regime in 2003. While there has been substantial international focus on post-conflict reconstruction efforts, the fragile political system and the precarious security environment, coverage and attention on the plight of women in the country has been insufficient in comparison amid the tumult and devastation over the past two decades. Gender inequalities in Iraq have been ongoing, and pre-dates the 2003 invasion. In the Kurdistan Region, the struggle underwent significant changes after the region achieved autonomy in 1991. Women's rights and broader gender equality issues were integrated into KRG policies and state-building efforts. The efforts to gain international legitimacy and the state building of the Kurds in the Kurdistan Region has meant that gender equality was promoted and this reflected in some of their laws⁽¹⁾, compared to the rest of Iraq.

In the rest of Iraq, although Iraqi women have been an integral part of women rights organisations, they have come under increased pressure after the dismantling and reconfiguration of governing and social structures in the country in the aftermath of a plethora of armed conflicts in recent years. While their rights are enshrined in the Constitution, these have come under pressure from the security environment and militant armed organisations. Scholars Nadjie Sadig al-Ali and Nicola Pratt argue Iraqi women's lives and rights have been exploited since 2003 for competing political agendas that have put them on the centre stage, producing the regression of women's empowerment and keeping patriarchal structures alive.⁽²⁾ Women were marginalised in political institutions due to sectarian and ethnic divisions between political parties and the deteriorating violent fragmentation of political authority.⁽³⁾

Since 2003, women have been mobilising to secure a better future. A lack of political will from the major political parties is evident in the number of women in leadership. Women are also under-resourced due to insufficient financial funds and have a lack of economic capacity to fund their political careers and electoral campaigns. Women experience notable differences, for example, 24 per cent of Iraqi women are illiterate compared to 11 per cent of men.⁽⁴⁾

1 For example: Article 1, Kurdistan Parliament – Iraq (KIP) Law No. 2 of 2009 and Law No. 8 of 2011, Combating Domestic Violence in Kurdistan Region-Iraq.

2 al-Ali, Nadjie and Pratt, Nicolla, "Between Nationalism and Women's Rights: The Kurdish Women's Movement in Iraq," *Middle East Journal of Culture and Communication* 4 (2011): 337–53.

3 Ibid.

4 *Breaking Out of Fragility, A Country Economic Memorandum for Diversification and Growth in Iraq*, World Bank Group, 2020, <https://openknowledge.worldbank.org/bitstream/handle/10986/34416/9781464816376.pdf?sequence=4&isAllowed=y>

The 2019 protest movement amplified the urgency of addressing gender inequalities but it still remains the case that Iraqi legislation does not comply with international norms and laws. In addition to facing continued violence and abuse, women in Iraq also struggle to gain access to justice and accountability, which results from the persistence of patriarchal norms, flaws in the legal system and legislation and a weak judiciary. Due to the weak enforcement of existing laws, women are still subject to archaic customs such as al-nahwa practice (prevention to marry)⁽⁵⁾ and the fasliya marriage (forced marriage), which are criminalised under Article 9 of the Personal Status Law No. 15 of 2008 and Articles 430 and 431 of the Penal Code.

Furthermore, as a result of weak and inadequate protection at the structural level, Iraqi women are vulnerable to gender biases that underscore much of the problems and gaps in existing legislation and decision-making processes.

Although Iraq's Constitution emphasises equality in Article 14 and contains other articles that lay the foundation for women's political participation, legislation fails to promote women's participation in politics and peacebuilding processes and does not fully address their involvement and protection against various forms of violence. Nevertheless, Law No. 9 of 2020 on the Election of the Council of Representatives and Law No. 12 of 2018 on the Election of Provincial and District Councils require at least 25% representation for women in the CoR and the Provincial and District Councils.

Despite being a signatory to the Convention on Eliminating Discrimination Against Women (CEDAW)⁽⁶⁾ and the United Nations Security Council Resolution 1325 (UNSCR 1325) on Women, Peace and Security, Iraq has failed to frame their advocacy on women's rights and gender equality around these two main international instruments and include women in political and peacebuilding processes. Iraq has launched a number of national strategies and the National Action Plan (NAP) 2014 – 2018 for the Implementation of UNSCR 1325 on Women, Peace and Security.⁽⁷⁾ The NAP was published in 2014 and set a strategy for four years. The first NAP consists of 6 pillars, namely participation, protection and prevention, promotion, social and economic empowerment, legislation

5 Al-Nahwa allows for a block of a women's marriage plans by a male family member; the fasliya marriage forces a woman or several women to marry a man or men from an enemy tribe in order to "reconcile" a harm convicted by the women's tribe; Haley Bobseine, Tribal Justice in a Fragile Iraq, p. 16, <https://tcf.org/content/report/tribal-justice-fragile-iraq/?agreed=1>

6 Iraq is signatory with 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), nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic Sharia 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." Reservations and declarations made by the Republic of Iraq to CEDAW, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en#75.

7 National Action Plan for the Implementation of UNSCR 1325, https://www.peacewomen.org/sites/default/files/final_draft_Iraq_nap_1325_eng.pdf.

and law enforcement as well as resource mobilization, monitoring and evaluation and included a number of objectives, such as gender mainstreaming. However, there was a lack of implementation across Iraq, as reported by the Iraqi Women's Network.⁽⁸⁾ The Second NAP for 2021-2024 officially entered into force on 14 April, 2021. The recent NAP focuses on increasing women's participation in the leadership and decision-making roles, humanitarian relief efforts and the post-war rebuilding processes at the local and national level. In addition, it addresses the protection of women and young girls from gender-based violence, and sets mechanisms that ensure perpetrators do not remain unpunished. The NAP 2021-2024 is structured around 3 pillars, namely participation, protection and prevention.⁽⁹⁾

Iraq also launched a National Plan to implement the Joint Communique on Prevention and Response to Conflict-Related Sexual Violence, that was signed by the Special Representative of the Secretary-General on Sexual Violence in Conflict in 2016.⁽¹⁰⁾ The KRG and federal government in Baghdad formed a working group to combat sexual violence as part of the Joint Communique. However, we have yet to see the results of this agreement due to a number of factors, including lack of funding and the volatile and polarised political environment.

This research adopted a mixed-method approach combining secondary data review with primary data collection. A comprehensive desk review of the laws, regulations and policies related to women, peace and security and women's political participation was carried out. Interviews were conducted with civil society actors, activists and academics and members of parliament to assess the political, economic and social environment in Iraq and how it impacts women's political inclusion and participation. Due to the COVID-19 pandemic, some interviews were conducted over the phone or online. A focus group discussion was attended by representatives from women's groups, the media, government, parliament and civil society organisations. The analysis of the legislative framework builds mainly on the desk review of the laws and legal literature and the political, economic and social factors are considered due to the extreme impact they have had on women's lives and their involvement in the political arena. Therefore, focus group discussions and interviews underpinned the legal analysis to further understand the gender inequalities in Iraq.

Each section of this paper starts with a legal analysis and is further complemented by the social and political factors that play a role in Iraq. An analysis of the Iraqi Constitution was carried out followed by an analysis of the legal framework for the political participation

8 Women, Peace and Security Recommendations for the UPR of Iraq, 2019, https://www.upr-info.org/sites/default/files/document/iraq/session_34_-_november_2019/iraqi_women_network_submission.pdf.

9 Department of Women Empowerment Iraq, second National Action Plan for the Implementation of UNSCR 1325, 2021

10 Joint Communique of the Republic of Iraq and the United Nations on the Prevention and Response to Conflict-Related Sexual Violence, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/joint-communique/join-communique-of-the-republic-of-iraq-and-the-united-nations-on-prevention-and-response-to-crsv/Joint_Communique_of_the_Govt_of_Iraq_and_UN_9_2016_ENG.pdf.

of women in Iraq. The law regulating political parties and the political participation at the local, regional and federal level were also considered. It is not possible to assess the political participation of women in Iraq without considering the violence and threats women face. Therefore, this paper also focuses on the legal framework in place to protect women from violence, including domestic violence and trafficking.

2. Women's Participation in Political and Peacebuilding Processes

Women are able to participate in political processes as candidates, elected officials and voters in Iraq.⁽¹¹⁾ However, their participation has been detrimentally impacted by years of conflict and structural and cultural barriers. There is still a lack of women in leadership positions and their participation in politics has been limited. The political scene in Iraq is dominated by the major political parties, which are primarily formed and based on religious and tribal values. Women are faced with tremendous challenges when participating in politics and peacebuilding processes and it can be difficult to secure key decision-making positions.

Women candidates are frequently targeted, facing threats and online abuse.⁽¹²⁾ The protests that emerged in late 2019, saw women protestors take to the streets demanding their rights and fundamental freedoms to be respected. However, there were a series of targeted killings of prominent women protestors, bloggers and activists.⁽¹³⁾ Women are often deterred from participating in elections and political processes and the entrenched violence, patriarchal attitudes and cultural norms discriminate against women's involvement in politics and securing positions of leadership. There is no support for women to become political and peacebuilding leaders in Iraq. Elham Maki, a writer, researcher and women's rights activist, explains that "women's participation in peacebuilding is almost non-existent, and the Iraqi government's efforts are weak and the formal procedures are ineffective."⁽¹⁴⁾

This section analyses the provisions of the Iraqi Constitution and laws related to women's rights and women's representation in legislative and executive institutions at federal, regional, provincial and district levels.

11 Chapter Two and Three, Law No. 9 of 2020, Law No. 9 of 2020, Election of the Council of Representatives.

12 For example, Intidhar Ahmed Jassim withdrew from the 2018 elections after a fake video of her having sexual relations with a Saudi man was circulated. "Candidate Steps aside after Sex Tape Allegation in Iraq," Mohammed Tawfeeq and Joe Sterling, CNN, April 20, 2018, <https://www.cnn.com/2018/04/20/middleeast/iraq-parliament-candidate-withdraws/index.html>

13 Female Iraqi activist killed in Basra as gunmen target protestors, 20 August 2020, BBC News, <https://www.bbc.com/news/world-middle-east-53847648>.

14 Interview with Elham Maki, writer, researcher and women's rights activist (26 November, 2020).

2.1 Rights Guaranteed to Women by the Constitution of Iraq

Formed in 2005, Iraq's Constitution contains a number of articles that relate to women's rights and guarantee basic human rights to all Iraqis. Although there are articles in the Constitution that mention or give women certain rights, there are also articles that overlap and contradict this. The Preamble states:

“We the people of Iraq...are determined...to...pay attention to women and their rights.”

It is important to firstly note that the preamble is not legally binding, however, it does play an important part in the interpretation of the provisions of the Constitution. The words used in the preamble of the Constitution does not guarantee women's rights and do not oblige the government to protect women's rights. The words “pay attention to” merely promises that women's rights will be considered rather than impose action points on the state. The reference here provides the government with a loophole that, rather than making changes for women and enhancing gender equality, it can simply “pay attention” to it.⁽¹⁵⁾

The stipulation that the state is compelled to simply “pay attention” to women and their rights creates a superficial safeguarding of women. These shortcomings and ambiguities are inherent in other provisions and laws that have been formulated and implemented since the Constitution was first enacted in 2005, which also reflects the composition of the constituency that devised the Constitution and the near-total absence of women in the process. “The principle of equality exists in the Constitution, but it has not been reflected in laws,” says Elham Maki.⁽¹⁶⁾ Article 16 of the Constitution of Iraq guarantees “equal opportunities” for all Iraqis, however, does not focus on the empowerment of women.

Article 14 of the Constitution stipulates, “Iraqis are equal before the law without discrimination because of sex, ethnicity, nationality, origin, religion, sect, belief, opinion or social or economic status.” According to this provision, all Iraqis are equal before the law regardless of their sex and the state is obliged to apply laws equally to all people. Women should, therefore, be treated equally. Iraqis must not discriminate on the basis of race, religion or gender. The principles of equality and non-discrimination are merged together in a catch-all pursuant to Article 14 of the Constitution. However, one can argue that the principle of equality does entail prohibition of discrimination. As Article 14 of the Constitution guarantees the equal treatment of all Iraqis before the law, the same article means that discrimination is prohibited.

Furthermore, the Constitution states in Article 2 that “Islam is the official religion of the state and is a basic source of legislation and no law can be passed that contradicts the undisputed rules of Islam.”⁽¹⁷⁾ In addition, and perhaps in contradiction, the Constitution

15 See Constitution of the Republic of Iraq, United States Institute of Peace (USIP), available at https://www.usip.org/ruleoflaw/projects/unami_iraq_constitution.pdf.

16 Interview with Elham Maki, writer, researcher and women's rights activist (26 November, 2020).

17 Article 2, Constitution of Iraq, 2005.

goes on to state that “Iraqis are free in their adherence to their personal status according to their own religion, sect, belief and choice, and that will be organised according to the law.”⁽¹⁸⁾ Certain interpretations of Islam as a source of legislation may have an impact on the provision and fulfilment of women’s rights, as stated in the Constitution and according to Iraq’s international legal obligations to promote and protect women’s rights.

According to Article 20 of the Constitution, “Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office.” Although this allows for women’s political participation, a separate provision and a gender quota was needed to ensure the representation of women. Article 49 of the Constitution states that “[t]he elections law shall aim to achieve a percentage of representation of not less than one-quarter of the members of the Council of Representatives.”⁽¹⁹⁾

The quota mentioned in the Constitution only applies to the representation of women in Iraq’s parliament and not in government or across other offices. In government, leadership posts are based on alliances between the political parties and power-sharing. Women have faced many obstacles due to this specific system, as Dr. Safia Al-Suhail explains, “The most important challenge I had to face was the quota system that the Iraqi political factions adopted to determine who could assume responsibility in various ministerial and political post. When a government is formed according to political compromise, its composition depends on the choices made by the different political parties and priority is given to men.”⁽²⁰⁾ Some argue that although women may have a presence, they can still fail to protect the interests of women. Female members of parliament attempted to adopt strict Sharia Law and demolish the Iraqi Family Law.

One female Iraqi member of parliament proposed a law that encourages men to marry multiple women.⁽²¹⁾ Dr. Bushra explains, “Empowerment cannot take place without political parties, which is the political base for women to start...the women they choose are weak...this weakened the political participation of women and the poor political performance of women left a bad imprint that women are not qualified for political and governing work.”⁽²²⁾

According to Article 29(First)(b), the Constitution protects motherhood and mentions women specifically as mothers, “The State shall guarantee the protection of motherhood, childhood and old age, shall care for children and youth, and shall provide them with

18 Article 41, Constitution of Iraq, 2005.

19 Article 49 (Fourth), Iraq Constitution, 2005.

20 Interview with Safia Al-Suhail, 26 May, 2014, <https://www.ipu.org/news/2014-05/safia-al-suhail-iraq>.

21 Female Iraqi MP proposes law that encourages men to marry multiple women for financial benefits, *The Independent*, 13 March 2017, <https://www.independent.co.uk/news/world/middle-east/iraq-marriage-women-ploygamy-mp-legislation-jamila-al-ebeidi-a7627071.html>.

22 Interview with Dr. Bushra Al-Obaidi, member of the Baghdad Women’s Association, former member of the High Commission for Human Rights, former director of the independent Electoral Commission and human rights activist (23 November, 2020).

the appropriate conditions to develop their talents and abilities.” This provision fails to outline what exact protection will be afforded to women, for example, whether it should be legislative or social, highlighting the vagueness of the Constitution to have any real and meaningful influence on the everyday lives of women and women’s rights. This exposes the provisions of the Constitution in their entirety to conservative and politicised interpretations that have a high probability of reflecting the preferences of conservative members of the ruling class who drafted the terms of the Constitution. However, one could also argue that a Constitution lays down the general principles based on which laws shall be enacted. Hence, as Article 29(First)(b) guarantees the rights of motherhood and childhood, the CoR is required to enact a law to fully achieve such a protection. This is particularly needed if one also considers Article 30 of the Constitution of Iraq, which states that “The State shall guarantee to the individual and the family - especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing.”

When it comes to nationality and citizenship, the Constitution guarantees Iraqi mothers to pass on their Iraqi nationality to children.⁽²³⁾ However, nationality and citizenship are governed by the Iraqi Nationality Law 2006⁽²⁴⁾ and women are faced with restrictions. Article 3 of the Iraqi Nationality Law, sets out that a person is considered Iraqi if he/she is born to an Iraqi father or an Iraqi mother or if he/she is born in Iraq to unknown parents.⁽²⁵⁾ The nationality law limits the ability of a woman to confer nationality to their children born outside of Iraq from an unknown father or a father that does not have a nationality,⁽²⁶⁾ violating the Constitution and can be challenged before the Federal Supreme Court (i.e. the Constitutional Court). The child can only apply for Iraqi nationality within one year of reaching majority, provided that the child is residing in Iraq at the time of the application for Iraqi nationality.⁽²⁷⁾ Hence, while the Constitution stipulates that nationality is acquired from the mother or father, Iraq’s nationality law restricts this right for children born outside Iraq from an Iraqi woman and an unknown father or a father that does not have a nationality. In contrast, men do not have any restrictions imposed on them to pass on nationality to their children. For example, children born out of sexual violence or forced marriages in Iraq during the ISIS conflict exposed the complexities of Iraq’s nationality laws and the restrictions which prevent women from passing on nationality to their children risking their welfare, security and education.⁽²⁸⁾ There are also complexities for Yazidi women who bore children by rape from ISIS members. The women are unable to register their children due to the restrictions of the nationality law and, furthermore, the Yazidi community will not recognise the children born from rape and who are also registered as Muslims.

23 Article 18(Second), Iraq Constitution, 2005.

24 Law No. 26 of 2006, Iraq Nationality Law.

25 Article 3, Nationality Law No. 26 of 2006.

26 Article 4, Nationality Law No. 26 of 2006.

27 Article 4, Nationality Law No. 26 of 2006.

28 Children of the Caliphate, what to do about kids born under ISIS, Nadim Houry, 22 November, 2016.

It can be stated that the Constitution of Iraq does provide certain principles that can be considered a basis for the adoption of further measures guaranteeing women's rights. It guarantees equality and equal opportunities between all Iraqis irrespective of their sex. However, the lack of legislation implementing the provisions guaranteeing women's rights in the Constitution can lead to discrimination against women and a lack of representation for women. Therefore, it is necessary to adopt legislation and amend existing ones to outline more detailed provisions that apply the Constitution, such as Article 29(First) (b) on the protection of the rights of motherhood and childhood and Article 30 on the provision of social and health security. The adoption of new laws and regulations will be an important step to progressing and increasing women in political and peacebuilding processes, and will in turn impact laws relating to nationality, personal status and family.

Much more emphasis should be placed on the Constitution's articles that guarantee women's protection and involvement in politics and they can act as a trigger to enhance gender equality across government agencies. The quota guaranteeing 25 per cent female representation in the CoR should be increased to at least 40 per cent and be applicable to all levels of government. This is not a short-term recommendation and will be a long-term objective. In the short term, the 25 per cent quota should be applied to all government departments. This will increase the number of women in leadership and in politics.

Additionally, Iraq is a party to CEDAW, however, with reservations. To enhance the status of women, international treaties on the protection of women should be adhered to entirely without any reservations. According to Article 61 and 73 of the Constitution international treaties are binding as they have to be approved by the CoR with a two-thirds majority and enacted by the President.

2.2 Representation of Women in the Independent High Electoral Commission

Every Iraqi citizen, who has reached eighteen years of age, has registered as a voter in accordance with the law and holds an electronic voter card, is entitled to vote regardless of sex, race, colour, sect, belief, opinion and economic or social circumstances and who is an Iraqi citizen.⁽²⁹⁾ There are no legal restrictions that prevent women from voting and women can also be nominated to become elected officials. The requirements to become an elected official are to be at least twenty-eight years of age, not be convicted of any felonies or misdemeanours, hold a middle school certificate, be from the governorate or be a resident of the elected district position, be supported by at least five-hundred voters from the electoral district that they are running for and not be a member of the armed forces or a member of the IHEC.⁽³⁰⁾

29 Article 4, Chapter Two: Voting Rights, Law No. 9 of 2020, Election of the Council of Representatives.

30 Chapter Three: The Right to be Nominated, Law No. 9 of 2020, Election of the Council of Representatives.

The IHEC is the electoral authority responsible for conducting all referendums and elections in Iraq.⁽³¹⁾ It is subject to the supervision of the CoR and has a management board with nine board commissioners. There is no gender quota for commissioners and the only reference made in legislation to ensure women are represented is in the Law of the Independent High Electoral Commission is that “[t]he representation of women shall be taken into consideration in choosing the Board of Commissioners for the nine members.”⁽³²⁾ There is currently only one woman on the IHEC board⁽³³⁾ and without an obligatory number of women as commissioners, there is no guarantee women will be represented on the board in the future. The lack of female representation and a gender quota would mean it would also be difficult to push forward gender equality agendas.

Women’s political participation is seriously low, with a notable absence of women in decision-making structures within key government institutions and within the most powerful political factions. The IHEC could play a fundamental role in changing this and ensuring that more women are included in the elections. Furthermore, the IHEC does not allocate a serious budget for gender equality programmes, mainstreaming and gender working groups, which can have a serious positive impact for the future of women’s political participation and gender equality in Iraq. Other amendments could also include additional broadcasting times and coverage for women candidates.

2.3 Women in Political Parties

Although women have the right to participate in political life in Iraq, their access and rights are restricted. The Political Parties Law No. 36 of 2015 guarantees Iraqis the right to participate in founding a political party, to affiliate with one, or to withdraw from it.⁽³⁴⁾ It is the primary legislation regulating political party formation and membership. When a political party is formed, there must be seven founding members and at least two thousand members from different governorates. Women’s representation should be taken into account when forming a political party.⁽³⁵⁾ However, the law does not make any references to how many women should be founders or how many female members must represent the political party. In other words, there is no obligation for a political party’s founding members to be women. Therefore a provision in the law to ensure women’s representation, especially as part of the founding members, could positively contribute to their participation and that their rights will be guaranteed.

The law goes on to state that political parties and their members should be committed to achieving equality and equal opportunities for citizens when they assume responsibility or participate in it. However, without a gender quota for their own political party, there is

31 Law of the Independent High Electoral Commission No. 31 of 2019.

32 Article 3(5) Law of the Independent High Electoral Commission No. 31 of 2019.

33 Dr. Ahlam Adnan Al-Jaberie is the only female and is the Head of Electoral Administration, <https://ihec.iq/>.

34 Article 4, Chapter 2 (Basic Principles), Political Parties Law No. 36 of 2015.

35 Article 11(1)(A), Chapter 4 (Registration Process), Political Parties Law No. 36 of 2015.

no guarantee that political parties will be committed to achieving gender equality or will have a gender equality agenda. There are no other references made to women's political participation in the Political Parties Law meaning the provisions within the law do not oblige political parties to include a certain percentage of women.

Women who participated in this research stated that there are obstacles to reaching leadership positions within political parties.⁽³⁶⁾ Tribal factors and cultural norms restrict women and play a great role when deciding leadership roles, which are usually given to men. Without any connections and personal links, it is difficult for women to be promoted to a leadership level within political parties.⁽³⁷⁾ The traditional gender roles in Iraq stand in the way of women entering politics and reaching leadership level and decision-making roles.⁽³⁸⁾

Research conducted at the beginning of 2020 showed the figures of the number of women members and women in leadership in political parties.⁽³⁹⁾ Only one out of 11 political parties had 50 per cent women members and 46 per cent women in leadership positions. Two political parties had no women in leadership. The average for women members was 27.7 per cent and 18.3 per cent for women in leadership.⁽⁴⁰⁾

The constitutional requirement that women must represent no less than one-quarter of the CoR, means that political parties in Iraq are required to place a woman in every third position on its lists of candidates. This proportional representation system meets the constitutional guarantee. Although political parties are subject to this quota for women, the number of women at the leadership level is poor. There is no political party in Iraq that has gender equality as an objective or a gender equality agenda.⁽⁴¹⁾ Elham Maki explains that “the status of women changed superficially. Women within political parties have instead been used to obtain an extra seat by the quota.”⁽⁴²⁾ The Political Parties Law should therefore be amended to provide for a quota for women of at least 40 per cent in the leadership bodies of political parties.

2.4 Representation of Women in the Council of Representatives

The CoR in Baghdad consists of 329 seats and members are elected for a period of four years.⁽⁴³⁾ The Constitution of Iraq guarantees the right to elect to every Iraqi citizen.⁽⁴⁴⁾

36 Focus Group Meeting with stakeholders in Iraq, 27 September, 2020.

37 Ibid.

38 Ibid.

39 Political Exclusion in Iraqi Political Parties, How Women, Youth and Components Strive to Change Politics, National Democratic Institute, May, 2020, https://www.ndi.org/sites/default/files/Political%20Exclusion%20in%20Iraqi%20Political%20Parties_EN.pdf.

40 Ibid.

41 Ibid.

42 Interview with Elham Maki, writer, researcher and women's rights activist (26 November, 2020).

43 Article 13, First, Law No. 9 of 2020, Election of the Council of Representatives. You can cite the articles in the footnote

44 Article 4(1) Law on Election of the Council of Representatives.

Eligibility criteria to elect and be elected do not discriminate against women nor negatively impact women's political participation. Nevertheless, women voters are at a disadvantage because voters must go to registration centres twice to obtain biometric voter cards, a process that is sometimes difficult for most women to undertake because of childcare responsibilities.

The law requires a minimum of 25 per cent of the seats in the CoR to be held by women, this translates into a minimum of 83 seats.⁽⁴⁵⁾ Therefore, political parties must submit candidate lists that include 25 per cent women candidates. When this list is submitted to the IHEC for candidate approval, there must be at least one female candidate listed after each three male candidates.⁽⁴⁶⁾ The IHEC will reject candidate lists that do not meet this requirement and should the number of women fall below 25 per cent of the seats in the CoR, a special mechanism is applied to re-rank candidates in governorates with the lowest share of elected women.⁽⁴⁷⁾

Iraq uses a proportional representation system, whereby a voter can select both a political entity and a specific candidate or a political party only. Under the old election law, the electoral system uses the governorates as constituencies. Each governorate is one electoral constituency and assigned a number of seats proportional to its estimated population. Seats are then awarded based on each list's share of the valid votes in a constituency. This was done through calculations set out in the IHEC's seat allocation regulations, utilising the modified Sainte-Laguë method.⁽⁴⁸⁾

In October 2020, the CoR approved a new elections law to replace the old elections law⁽⁴⁹⁾ and was officially signed by the President in November 2020.⁽⁵⁰⁾ The main amendment of this new law is the change in the use of proportional representation and establishes each district as a small constituency. The new law moves away from the use of the Sainte-Laguë method. The distribution of electoral constituencies for eighteen of Iraq's governorates was approved and changed Iraq's eighteen governorates into several electoral districts.

45 Constitution of Iraq, Article 49, Fourth: "The election law shall aim to achieve a percentage of representation for women of not less than one-quarter of the members of the Council of Representatives."

46 IHEC Decision, 2018, <https://ihec.iq/ihecftp/2018/en/sys12en.pdf>.

47 IHEC Decision, 2018, <https://ihec.iq/ihecftp/2018/en/sys12en.pdf>.

48 The use of the Sainte-Laguë method means that seats will be distributed among the candidates on the open list. The seats are first allocated to participating political entities based on the number of votes they have received. The candidates within each open list will then be re-ranked based on the number of votes obtained. The candidate who secures the highest number of votes shall be deemed the winner and so on for the rest of the candidates. The counting system has been changed slightly from the previously used largest remainder method due to a ruling by the Supreme Court that stated the previous method discriminated against smaller parties. See: https://www.ifes.org/sites/default/files/2018_ifes_iraq_council_of_representatives_elections_faqs_final.pdf

49 Iraqi parliament votes on final version of electoral law, Omar Sattar, 2 November, 2020, <https://www.al-monitor.com/pulse/originals/2020/11/iraq-elections-law-parliament.html>

50 "President Salih signs Iraq election reforms into law," Dilan S. Hussein, 5 November, 2020, <https://www.rudaw.net/english/middleeast/iraq/051120201>

The governorates are divided into several constituencies, the number for each governorate corresponding to its number of seats reserved for female parliamentarians, a total of 83 constituencies. There will be three to five parliamentary seats for each constituency, and one will be reserved for a female MP, according to population density. Seats are allocated to candidates who receive the highest number of votes. Despite the change in the electoral system, there are no major differences in the allocation of seats to women. The new law prevents parties from running on unified lists and the seats will go to the candidates who get the most votes in the electoral districts. However, women have voiced concern for the new Elections Law as Suhad Al-Khateeb states, “the new law will be an obstacle to the rise of women, because it relies on dividing the governorates into a number of districts. This encourages tribalism and religion to interfere and it will not be in the interests of women. It is better for the governorate to be a single electoral district.”⁽⁵¹⁾

In the opinion of Dr. Bushra Al-Obaidi, “changes in the new law somewhat opened a door for increasing women’s political participation through the electoral district distribution... the gain in this law is that there is a table showing the seats with two columns separating the highest votes from the female quota. The IHEC, however, must clarify this point to encourage women who have gained a higher number of votes to hold seats outside of quota to prevent manipulation and misinterpretation of the law.”⁽⁵²⁾

The women’s minimum quota is determined for each governorate as follows:⁽⁵³⁾

- Baghdad: 17 out of 69 seats
- Basra: 6 out of 25 seats
- Dhi-Qar: 5 out of 19 seats
- Maysan: 3 out of 10 seats
- Babylon: 4 out of 17 seats
- Al-Muthanna: 2 out of 7 seats
- Wasit: 3 out of 11 seats
- Diwaniyah: 3 out of 11 seats
- Karbala: 3 out of 11 seats
- Najaf: 3 out of 12 seats

51 Interview with Suhad Al-Khateeb, President of the Iraqi Women’s Association in Najaf, Member of the Central Committee of the Iraqi Communist Party and former Iraqi politician (29 November, 2020).

52 Interview with Dr. Bushra Al-Obaidi, member of the Baghdad Women’s Association, former member of the High Commission for Human Rights, former director of the independent Electoral Commission and human rights activist (23 November, 2020).

53 Article 16, Third, Chapter Five: The Electoral System, Law No. 9 of 2020, Election of the Council of Representatives; https://www.uniraq.org/index.php?option=com_k2&view=item&id=14768:elections-for-iraq-s-council-of-representatives-fact-sheet-1&Itemid=740&lang=en

- Diyala: 4 out of 14 seats
- Saladin: 3 out of 12 seats
- Duhok: 3 out of 11 seats
- Erbil: 4 out of 15 seats
- Slemani: 5 out of 18 seats
- Anbar: 4 out of 15 seats
- Nineveh: 8 out of 31 seats
- Kirkuk: 3 out of 12 seats

Article 16 of the new law does not change the quota percentage for women and sets out that the percentage of women's representation in the CoR shall be no less than 25 per cent⁽⁵⁴⁾ and representation of women shall also be no less than 25 per cent in each province.⁽⁵⁵⁾ This will depend on the density of the population and how many seats are allocated to each constituency. Should the quota for women not be achieved, one (hypothetical) seat is added to the number of women who win in each electoral district⁽⁵⁶⁾ and this number is divided by the total number of seats allocated to the electoral district to determine the percentage of female winners.⁽⁵⁷⁾ One seat is added to the number of female seats for the electoral district that obtained the lowest percentage.⁽⁵⁸⁾ If this again does not fulfil the quota criteria for the number of females in the CoR, a new process is started with the calculation of the increase⁽⁵⁹⁾ and this is repeated until the total number of women reaches 25 per cent representation.⁽⁶⁰⁾

Furthermore, should a seat belonging to a female member become vacant, it does not necessarily mean that this seat will be replaced by another woman. The seat will only be replaced by a woman should the 25 per cent of women representation in the CoR be affected.⁽⁶¹⁾ This has become a loophole for political parties who fulfil the 25 per cent criteria in their candidates list and then later decide to replace seats filled by women with men, should it not impact female representation.⁽⁶²⁾ It is recommended to amend the Law on the Election of the Council of Representatives to require the replacement of a vacant seat that was assumed by a woman with another woman candidate.

54 Article 16, First, Law No. 9 of 2020, Election of the Council of Representatives

55 Article 16, Second, Law No. 9 of 2020, Election of the Council of Representatives

56 Chapter Five: The Electoral System, Article 16, Fifth, (A), Law No. 9 of 2020, Election of the Council of Representatives

57 Article 16, Fifth, (B), Law No. 9 of 2020, Election of the Council of Representatives

58 Article 16, Fifth, (C), Law No. 9 of 2020, Election of the Council of Representatives

59 Article 16, Fifth, (D), Law No. 9 of 2020, Election of the Council of Representatives

60 Article 16, Sixth, Law No. 9 of 2020, Election of the Council of Representatives

61 Article 16, Ninth, Law No. 9 of 2020, Election of the Council of Representatives

62 Interview with Elham Maki, writer, researcher and women's rights activist (26 November, 2020).

There have been four parliamentary terms since a gender quota was adopted for the CoR in 2005. The change in the number of women has increased, however, not a significant one. The first session saw 78 women out of 275 seats participate as parliamentarians, the second session had 81 women out of 325 seats, the third session with 83 women out of 329 seats and the current session has 84 women out of 329 members of parliament. The number of women elected without a quota was low. The elections in 2018 saw 22 seats given to women without a quota. Women can stand as independent candidates in the elections. However, their chances of being elected are slim compared to the well-organised parties, they could easily be outrun by them, especially the larger electoral lists.

The low participation of women at the executive (one female minister out of 22 ministers) and legislative levels is very weak. Given that women make up half the population, these numbers lack the necessary representation of women. Initially, women's organisations had requested 40 per cent representation in the CoR back in 2010.⁽⁶³⁾

Minority groups are also underrepresented. Nine seats are reserved for minority groups⁽⁶⁴⁾. Five seats are allocated to Christians in Baghdad, Ninewa, Kirkuk, Dohuk, Erbil; one seat to Yazidis in Ninewa; one seat to Sabean-Mandean in Baghdad; one seat for Shabaks in Ninewa; and one seat for Fayli Kurds in Wassit. However, it is unclear whether a percentage of the nine seats should be given to women, meaning that women belonging to minority groups may not be represented at the national level if all nine seats are given to men. Furthermore, there has also never been an Afro-Iraqi woman⁽⁶⁵⁾ in a high-level political position. It is clear that there is an urgent need for anti-discrimination laws and enhancement of women from minority groups. As things stand, there is no guarantee of minimum representation for them.

2.5 Representation of Women at Provincial Level

At the provincial level, there are still a series of shortcomings within existing legislation that has impeded female political participation. The electoral law for the 2009 provincial elections, for example, failed to commit to a 25 per cent gender quota,⁽⁶⁶⁾ the result of an ambiguity within the following provision in Law No. 12 of 2018 on Governorates, Districts and Sub-District Council Elections, Article 12 (while the Constitution contains a quota for the Parliament, no such provision exists in relation to provincial council elections), "The seats shall be distributed to the candidates of the open list and the candidates shall be re-ranked according to the number of the votes obtained by a candidate." The candidate who secures the highest number of votes within the open list shall be deemed the winner

63 Zainab Salbi, "Foreign Policy: Iraq's Forgotten Women," NPR, March 15, 2010, <https://www.npr.org/templates/story/story.php?storyId=124687123>.

64 Article 13, Second, Law No. 9 of 2020, Election of the Council of Representatives.

65 Afro-Iraqis are the descendants of sailors, traders and mostly slaves that were brought to Iraq from the region of Sansibar.

66 Alissa J. Rubin and Sam Dagher, "Changes in Iraq Election Law Weaken Quota for Women," New York Times, January 13, 2009, <https://www.nytimes.com/2009/01/14/world/middleeast/14iraq.html>.

and so on for the rest of candidates. A woman candidate shall have a seat following each of the three winners regardless of the number of male winners.”⁽⁶⁷⁾

It was consequently left to IHEC to interpret the above provision and IHEC passed a decree for the 2013 provincial elections to ensure 25 per cent of the representatives on each provincial council would be women.⁽⁶⁸⁾ The CoR approved amendments to the existing provincial council elections on 29 July, 2019, however, did not include any amendments regarding the implementation of a gender quota. Furthermore, provincial councils were abolished towards the end of 2019,⁽⁶⁹⁾ except for those in the Kurdistan Region. This means that women do not have the guarantee that they will be represented at local levels. Dr. Bushra Al-Obaidi states that the “parliament elections laws and the provincial council elections law encourage political participation of women, while the political parties do not. It only has one provision referring to women’s representation in political parties without further explanation.” Unfortunately, the rights of women seen in articles 14, 16⁽⁷⁰⁾ and 20 in Iraq’s Constitution has not translated into laws and provisions, despite women’s rights activists and organisations repeated requests.⁽⁷¹⁾

Governorates are made up of a number of districts, sub-districts and villages.⁽⁷²⁾ Governorates that are not incorporated in a region have broad administrative and financial authorities.⁽⁷³⁾ There is no gender quota or constitutional guarantee for female representation at these levels. No minimum threshold is set for women to be represented at the provincial level, including district, and sub-district level. The law on provinces that have not joined a region sets out that a Governor shall have five Deputies, however, there is no gender quota set for this and does not set out that women should be included.⁽⁷⁴⁾

67 Article 12(2), Election of the Provincial and Districts Council Law No. 12 of 2018, amended by Law No. 27 of 2019.

68 With Some Electoral Gains in Iraq, Women Candidates Work towards Change,” United Nations Women, May 16, 2013.

69 Iraq parliament votes to dissolve provincial councils, look at amending constitution, Karwan Faidhi Dri, 28 October 2019, <https://www.rudaw.net/english/middleeast/iraq/281020192>.

70 “Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken.” Article 16, Iraq Constitution, 2005.

71 Interview with Dr. Bushra Al-Obaidi, member of the Baghdad Women’s Association, former member of the High Commission for Human Rights, former director of the independent Electoral Commission and human rights activist (23 November, 2020).

72 Article 122, First, Chapter Two, Governorates not incorporated in a region, Constitution of Iraq.

73 Article 122, Second, Chapter Two, Governorates not incorporated in a region, Constitution of Iraq.

74 Article 33(1), Law No. 21 of 2008, Provinces that have not joined a Region.

2.6 Political Participation of Women in the Kurdistan Region

It is the case that Iraq's territorial and power-sharing configurations mean that there are some parts of the country where more progressive laws are implemented and enforced, and others where there has been a severe regression in the protection of women and their rights. As noted above, this is exemplified by the differences between how Baghdad and the KRG have engaged the issue, and the overall different cultures and norms that separate.

However, it is implausible to argue that any one single region or province is free from major shortcomings. The Kurdistan Region has made more positive progress in combating gender inequalities. It is a comparatively more secular culture and relative stability has opened up the space for public debates and policy-making.

The Kurdistan Region established its legislative branch, Kurdistan Parliament in 1992. The Kurdistan National Assembly Elections Law was adopted in 1992⁽⁷⁵⁾ and was later amended by Kurdistan Parliament – Iraq (KIP) Law No. 2 of 2009. There are 111 seats in Kurdistan Parliament⁽⁷⁶⁾, ten are reserved for minorities and 30 per cent of the seats are allocated to women.⁽⁷⁷⁾ Candidate names are arranged in a way that guarantees the representation of the required percentage of women in Kurdistan Parliament and each list must have three candidates as a minimum.⁽⁷⁸⁾ There are currently thirty-four female parliamentarians in the Kurdistan Parliament.⁽⁷⁹⁾ The current Speaker of Kurdistan Parliament is a woman and the Committee on Protection of Women's Rights consists of 7 females and 1 male.

Women's political participation in the Kurdistan Region remains limited. Female politicians rely on male leaders of their political party for nomination. Again, views and attitudes on women's rights also depend on the party's agenda. In a panel event and report, Minister of Labour and Social Affairs, Kwestan Mohammed stated that the KRG's efforts are slow and symbolic and political blocs do not trust women to lead them.⁽⁸⁰⁾ A review of the structural barriers is required at local, regional and national levels in order for women to gain more senior positions.

75 Kurdistan National Assembly Elections Law – Iraq (KNA) No. 1 of 1992, amended by Kurdistan Parliament – Iraq (KIP) Law No. 2 of 2009.

76 Article 1, Kurdistan Parliament – Iraq (KIP) Law No. 2 of 2009.

77 Article 22(1), Section Six: Nomination, Kurdistan Parliament – Iraq (KIP) Law No. 2 of 2009.

78 Article 22(2), Section Six: Nomination, Kurdistan Parliament – Iraq (KIP) Law No. 2 of 2009.

79 Kurdistan Parliament official website, <https://www.parliament.krd/english/members-and-parties/>

80 Panel Five: Women in Positions of Leadership: Opportunities for Empowerment, Ending Wars – Winning Peace in the Middle East, Middle East Research Institute, MERI Forum, Erbil, Kurdistan Region, 4 - 2019.

2.7 Challenges to Women's Political Participation

Women face a number of challenges and obstacles when participating in political and peacebuilding processes in Iraq, including the Kurdistan Region. The Iraqi Women's Network found that in 2017 only 3.9 per cent of judges and 18 per cent of public prosecutors were women.⁽⁸¹⁾ Female members of parliament are often excluded entirely from committees. Suhad Al-Khateeb points out that "there is marginalisation of the role of women and deliberate failure to include them in reconciliation committees and peacebuilding committees, at all levels."⁽⁸²⁾ For example, the Committee on Security and Defence in Iraq's parliament has 21 members with no female members.⁽⁸³⁾

The political sphere in Iraq is dominated by the major political parties, which are largely conservative and based on their religious backgrounds. Therefore, female participation and positions may be difficult to secure. During campaigns and elections, posters of women candidates are often taken down or defaced.⁽⁸⁴⁾ Dr Bushra states, "The biggest challenge is political and moral defaming that aims to force women to withdraw from running in elections."⁽⁸⁵⁾

In 2018, many women were faced with abuse and threats. A female candidate for the Kurdistan Democratic Party (KDP), Dr. Heshu Rebwar Ali, had her mobile phone stolen, and a video was then circulated of her wearing a short dress at a private party. However, she remained in the race.⁽⁸⁶⁾ Although the law does not prevent female political participation, women are faced with abuse and challenges. The UN condemned the defamation and violence against women candidates after one candidate resigned over a fake sex tape. Dr. Intidhar Ahmed Jassim, a university professor, was running in the electoral race when a fabricated short video clip went viral on social media.⁽⁸⁷⁾ She was moved by her own party leadership. Defamation and threats are criminalised by the Iraqi Penal Code, specifically by Articles 433, 438 and 430. However, perpetrators who have used social media to defame or threaten female candidates have not been convicted. This has had negative implications for women's participation in politics and trust in the electoral process and in political parties to ensure the protection of women.

81 Women, Peace and Security Recommendations for the UPR of Iraq, 2019, https://www.upr-info.org/sites/default/files/document/iraq/session_34_-_november_2019/iraqi_women_network_submission.pdf.

82 Interview with Suhad Al-Khateeb, President of the Iraqi Women's Association in Najaf, Member of the Central Committee of the Iraqi Communist Party and former Iraqi politician (29 November, 2020).

83 Women MPs in the Iraqi Parliament, 18 March 2019, Rend Al-Rahim, <https://www.wilsoncenter.org/blog-post/women-mps-the-iraqi-parliament>

84 "Tough road for Iraq's female candidates in May 12 elections." Ali Abdul-Hassan and Sinan Salaheddin, 3 May 2018, AP NEWS, <https://apnews.com/article/a5a8de8d7a9e4c4ea2ff5062b61d38f8>

85 Interview with Dr. Bushra Al-Obaidi, member of the Baghdad Women's Association, former member of the High Commission for Human Rights, former director of the independent Electoral Commission and human rights activist (23 November, 2020).

86 Iraqi women election candidates targeted for abuse gain UN support, BBC News, 25 April 2018, <https://www.bbc.com/news/world-middle-east-43894391>.

87 "Iraqi women election candidates targeted for abuse gain UN support," BBC News, 25 April 2018, <https://www.bbc.com/news/world-middle-east-43894391>.

The challenges do not stop there. Financial challenges also exist for women. They are disadvantaged when it comes to accessing finance for campaigns. The majority of funding from political parties goes towards their male candidates and access to employment impacts their job opportunities.⁽⁸⁸⁾ Dr. Bushra states, the “financial challenge, which forces women to fall under the mantle of parties...they [the political parties] neglect them when campaigning and focus only on male candidates.”⁽⁸⁹⁾

When it comes to voting, men also control who the family votes for during elections, “unfortunately, men accompany women to the election centres, especially in tribal areas, and the commission does not intervene because of fear of tribal retaliation.”⁽⁹⁰⁾

The ISIS conflict exacerbated the situation and obstacles for women. They were left without identity cards because male members of their family were brutally murdered. Abducted by ISIS fighters and married by force, they and their children were left without documents. Women are, therefore, unable to vote if they do not hold valid paperwork and ID cards.

Single women and widows now have many problems registering their children’s birth and obtaining identification documents. This causes difficulties in accessing public services like food distribution, employment, healthcare and education.⁽⁹¹⁾ This discriminatory practice restricts women and gives them no choice but to require the need or the support of a male family member in order to access different services and to exercise certain rights.

88 Women Running for Elected Office in Iraq: Needs and Challenges, 2020, United Nations Assistance Mission for Iraq, https://www.unescwa.org/sites/www.unescwa.org/files/20-00382_women-political-participation-iraq-executive-summary-en-web-full.pdf.

89 Interview with Dr. Bushra Al-Obaidi, member of the Baghdad Women’s Association, former member of the High Commission for Human Rights, former director of the independent Electoral Commission and human rights activist (23 November, 2020).

90 Interview with Dr. Bushra Al-Obaidi, member of the Baghdad Women’s Association, former member of the High Commission for Human Rights, former director of the independent Electoral Commission and human rights activist (23 November, 2020).

91 Women, Peace and Security Recommendations for the UPR of Iraq, 2019, https://www.upr-info.org/sites/default/files/document/iraq/session_34_-_november_2019/iraqi_women_network_submission.pdf.

3. Violence Against Women

This section analyses the provisions of the Iraqi Penal Code relevant to violence against women and discusses the need for the CoR to adopt the Family Violence Protection Bill⁽⁹²⁾. It highlights the issues of human trafficking and sexual harassment, particularly in the workplace. Certain provisions of the federal Personal Status Law are analysed and measures taken by the Kurdistan Region to protect women are discussed. Finally, it examines the recently adopted Law on Yazidi Female Survivors by the CoR, and its success and shortcomings.

3.1 Iraqi Penal Code

Violence against women is a prevalent issue in Iraq. Conflicts, discrimination, tribal customs, culture and gender inequality have all created an environment that enables violence and have prevented women from participating in politics and peacebuilding processes. Women are often victims of abuse, threats, and killings. The atrocities committed against women by ISIS elevated the issues of sexual violence in the country. Iraq has made slow progress addressing violence against women and addressing shortcomings in existing laws that make women vulnerable to abuse and discrimination. Tackling violence against women must be made a priority by Iraq as “there is a direct link between the weak political participation of women and the existing violence against women at all levels, whether in the family, the street or at work.”⁽⁹³⁾ Women may feel intimidated and threatened when considering a political career in Iraq and the vast number of violence against women is a great deterrent for them to pursue a political path and to actively engage in politics.

The Iraqi Penal Code was adopted in 1969⁽⁹⁴⁾. It is an archaic law that fails to adequately account for crimes committed against women and girls today. There have been no real and effective changes to this law in Iraq, excluding the Kurdistan Region. The Penal Code does criminalise certain types of violence, such as rape, murder, abduction and other forms of violence, however, it still includes discriminatory articles that allow for loopholes and immunity for perpetrators.

Rape is criminalised in Article 393 of the Penal Code and defines rape as follows, “sexual intercourse with a female without her consent or commits buggery with any person without their consent.” This definition is flawed, excluding other forms of sexual violence such as marital rape and does not provide the definition of consent. Nevertheless, marital rape seems to be implicitly criminalised by Article 3(A)(3) of the Iraqi Criminal Procedure Code No. 23 of 1971, which provides that “[a] criminal case may not be initiated without the submission of a complaint by the victim or the one who can legally act on behalf of the victim in the following crimes: [...] rape ... if the offender was the spouse of the victim. [...]”

92 Also known as Domestic Violence Bill.

93 Interview with Elham Maki, writer, researcher and women's rights activist (26 November, 2020).

94 Iraq Penal Code No. 111 of 1969.

Based on Article 393 of the Penal Code, the penalty of a perpetrator of rape ranges between 6 and 20 years of imprisonment.⁽⁹⁵⁾ However, pursuant to Article 398 of the Penal Code, if a correct marriage occurs between the perpetrator and the victim of rape, such a marriage shall be considered to be a mitigating legal excuse to reduce the penalty imposed on the perpetrators of rape crimes. The perpetrator of rape would still be prosecuted for the crime committed whether that perpetrator marries the victim or not. In addition, the victim would need to consent to such marriage in order to consider it to be a mitigating legal excuse. Theoretically, therefore, the rapist would be prosecuted for the offence committed even if he marries the victim or not. In reality, this is often not the case. In addition, the victim would have to agree to such a marriage in order for it to be considered a mitigating reason, for example, for a complete waiver of punishment. This consent is often required of the victim by the family. However, it can be argued that the definition of the crime of rape needs to be widened to include other forms of sexual violence. Furthermore, should a woman become pregnant, it would be illegal for her to undergo an abortion and if she does, it will be considered a crime punishable by up to a year detainment.⁽⁹⁶⁾ A much more comprehensive definition of rape is required should Iraq want to safeguard women.

A model for changes could be the Istanbul Convention. It defines rape as follows: Article 36 – Sexual Violence, including rape:

1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:
 - engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
 - engaging in other non-consensual acts of a sexual nature with a person;
 - causing another person to engage in non-consensual acts of a sexual nature with a third person.
2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.
3. Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.⁽⁹⁷⁾

One must also clarify that the Iraqi Penal Code stipulates a more severe penalty against perpetrators of rape if such a crime is committed in conjunction with a kidnapping crime.

95 Read Article 393 of the Penal Code in conjunction with Article 87 of the same code.

96 Article 417(1), Penal Code, Law No. 111 of 1969.

97 The Istanbul Convention of the Council of Europe was negotiated by its 47 member states and adopted on 7 April 2011 by its Committee of Ministers. It is known as the Istanbul Convention after the city in which it opened for signature on 11 May 2011. Three years later, on 1 August 2014, it entered into force.

Article 423 of the Penal Code penalises with capital punishment, rape committed under those circumstances or the plan to rape a kidnaped women. However, Article 427 allows for suspension of the case of rape committed if the offender marries the victim, stating that,

“If a valid marriage is concluded between the perpetrator of one of the crimes mentioned in this chapter [i.e. kidnapping crimes among others] and the victim, the case shall be suspended, the investigation and other procedures, and if a judgment has been issued in the case, the execution of the judgment shall be suspended.

The lawsuit or execution procedures shall be resumed - as the case may be, if the marriage ends with a divorce issued by the husband without a legitimate reason or a divorce occurred based on a ruling of the court due to the husband’s mistake or misbehaviour, before the lapse of three years from the suspension of procedures.”

However, to allow for the suspension of a rape case or the execution of a judgment issued in this regard, the consent of the victim is required.

So-called “honour” killings still occur in Iraq, which are practices stemming from culture and tribal customs. The motives of “honour” remain a legal loophole for perpetrators of “honour killings”. Article 128⁽⁹⁸⁾ lists a number of defences that either result in the reduction or discharge of a penalty, among them offences committed with “honourable motives.”⁽⁹⁹⁾ The limited accountability measures mean that victims are not protected and violence against women is not prevented. There have been no amendments made or provisions abolished in the Penal Code by the federal government. The KRG amended certain provisions that were discriminatory and harmful towards women and girls and “honour” was removed in 2004 as a defence. This needs to be reflected in the rest of Iraq to protect women across the country.

Article 409 provides that a person who catches his wife in the act of adultery can assault or kill her, “[a] penalty of no more than three years detention shall be imposed on any person who catches his wife or any of his maharams [i.e. close relatives] in the act of adultery or in the act of being in the same bed with her partner and kills both or one of them immediately or assaults both or one of them to the extent that the latter dies or is left permanently disabled. It is not permissible to exercise the right of legal defence against any person who uses this excuse nor do the rules of aggravating circumstance apply against him.” According to this article in the Penal Code, any man who finds his wife in an act of adultery and kills her will only face imprisonment of up to three years. The

98 Art. 128: (1) Legal excuse either discharges a person from a penalty or reduces that penalty. Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honourable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse. (2) The court must identify in its decision the excuse that discharges a person from a penalty.

99 Article 128(A), Iraq Penal Code, Law No. 111 of 1969.

article does not mention or cover when a woman finds her husband committing adultery. Therefore, no punishment exists for men committing the same act.

Although the Constitution “prohibits all forms of violence and abuse within the family,”⁽¹⁰⁰⁾ the Penal Code provides that “[t]here is no crime committed while exercising a legal right,” including the “punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority, within the limits prescribed by or custom.”⁽¹⁰¹⁾ This provision legalises the use of violence by husbands and permits them to beat their wives and discipline their children. There is a clear contradiction between the Constitution and the Penal Code. Unlike legislation in the Kurdistan Region,⁽¹⁰²⁾ the CoR has yet to adopt a national domestic violence law to protect women and children.

3.2 Domestic Violence and the Family Violence Protection Bill

As discussed, Iraq has a number of laws and provisions that reinforce and crystallise a status quo that becomes resistant to much-needed reforms needed to protect women. According to interviews conducted by Human Rights Watch, victims of domestic violence in Iraq rarely make criminal complaints to the police, who play a mediatory rather than a law enforcement role, which inevitably favours the perpetrator and allows them to escape culpability.⁽¹⁰³⁾ The Family Violence Protection Bill, also known as the Domestic Violence Law, has the potential to address serious shortcomings in existing laws and enforcement mechanisms. The urgency for this law to be adopted was intensified by the COVID-19 pandemic and the national lockdowns. Iraq’s community police reported that their domestic violence cases log saw an increase of an average of 30 per cent since the lockdown, and with some areas as high as 50 per cent increase of cases. Confinement has heightened the risk of women being abused, beaten and killed.⁽¹⁰⁴⁾

100 Article 29(Fourth), Constitution of Iraq, 2005.

101 Article 41(1), Iraq Penal Code, Law No. 111 of 1969.

102 Law No. 8 of 2011, Combating Domestic Violence in the Kurdistan Region – Iraq, http://www.ekrg.org/files/pdf/combat_domestic_violence_english.pdf.

103 Iraq: Urgent Need for Domestic Violence Law 22 April 2020, Human Rights Watch, available at <https://www.hrw.org/news/2020/04/22/iraq-urgent-need-domestic-violence-law>

104 Spike in domestic abuse cases hits Iraq, Arab Weekly, 28 April 2020, available at <https://thearabweekly.com/spike-domestic-abuse-cases-hits-iraq>; Aljazeera, <https://www.aljazeera.com/features/2021/2/12/iraqi-women-struggle-to-escape-abuse-as-domestic-violence-rises>

While the law was drafted by a committee of experts and presented in October 2012, and despite the Women, Family and Childhood Committee in the CoR advocating for its implementation ever since, the CoR has failed to pass the law due to resistance from powerful political and social factions that believe the law undermines customs and traditions, and goes against the laws of Sharia.⁽¹⁰⁵⁾ These are not marginal actors but informal authorities who have considerable support from local communal structures, powerful political elites and religious institutions. Speaking to one member of the Iraqi parliament, it became clear that this needs a collective response of its own. Member of Iraq Parliament and leading the adoption of the Domestic Violence Law, Dr. Abdulbari Al-Mudarris explained that,

“There needs to be a powerful statement and signatures from powerful figures, including politicians, leading academics and well-known respected figures. Getting the main signatures first for the adoption of the domestic violence law, others will be likely to sign too.”⁽¹⁰⁶⁾

He explained that any attempts to expedite the implementation of the law requires strategic communication, an effort to mobilise public opinion and that statements should not contain anything controversial “if you want people to sign it.” Fundamentally, he explained, it is important to have a unified position so that there is one single voice that represents the campaign as opposed to having disparate actors and voices, which would impede a campaign and create opportunities for its critics to slow its implementation.⁽¹⁰⁷⁾

Other interviewees explained the challenges that emanated from the political environment. Dr. Intisar Aljiboury explained that political elites are occupied with preparing for elections or contesting political rivalries but also highlighted that this can be turned into an opportunity since there are candidates and powerful figures who use women’s rights as an electoral platform, meaning that this may provide an opening to accelerate the push to have the domestic violence law implemented, provided there was an organised effort to ensure the law was actually approved. She states,

“We can turn this challenge into an opportunity, because most candidates focus on women and women’s rights, violence and families. One of the slogans for the elections can be pushing for the domestic violence law. The opposition will be supporting the law and they can make the law part of the electoral campaign, we can take advantage of this. Particular parties can have the domestic violence law part of their programme.

105 Iraq unrest fuels spike in domestic violence cases, Moayed Al-Torfi, 3 December 2020, The Independent, <https://www.independent.co.uk/news/world/middle-east/iraq-domestic-violence-abuse-laws-b1765959.html>.

106 Interview with Dr. Abdulbari Al-Mudarris, Member of Parliament and Member of Legal Committee, 28 November 2020.

107 Interview with Dr. Abdulbari Al-Mudarris, Member of Parliament and Member of Legal Committee, 28 November 2020.

Should the Prime Minister insist on the election date next year, then we only have three months to work on pushing for the approval of law...Parliament conducts sessions for a week and then conducts a campaign. Two weeks are dedicated to the committee. We have to consider this in our campaign and we have to intensify our efforts.”⁽¹⁰⁸⁾

Like Dr. Abdulbari, the need for strategic communication was highlighted, “if people are rejecting the law because they have not understood it, then it is necessary for us to raise awareness around the actual terms of the law, which requires us consulting the media and communication experts.”⁽¹⁰⁹⁾ That said, the level of resistance from the political class may be too strong as it stands. More than twenty-one meetings have been held by the women's rights committee in the Iraqi parliament and the legal committee, according to the interviewee, and yet the law has not been properly studied and assessed. Since these committees are dominated by powerful political forces, in some respects the whole process is a charade since the law is rejected from the outset.⁽¹¹⁰⁾ Also, there are flaws within the draft law, it does not repeal any provisions in the Penal Code, including the provision that a husband has the right to punish his wife and that children can be disciplined.⁽¹¹¹⁾

Women and girls are pressured to bring cases of sexual violence to alternative dispute mechanisms due to a fear of shame, which are often played out through tribal customs and norms that have more of a focus on maintaining the reputation of the family, as opposed to achieving justice for the victim.⁽¹¹²⁾ When Iraq ratified CEDAW in 1986, it submitted reservations and failed to eliminate laws and practices that discriminated against women.

3.3 Sexual Harassment

The Iraqi Labour Law of 2015⁽¹¹³⁾ prohibits sexual harassment in the workplace and any other behaviour that is offensive or results in intimidation in the work environment. Penalties for sexual harassment during employment, the search of work, or vocational training are punishable for up to six months imprisonment and/or a fine of one million Iraqi Dinars.⁽¹¹⁴⁾ It should be emphasised, however, that there is still a need to establish mechanisms allowing for safe and confidential complaints be made against sexual harassment in the workplace, such as a focal point or an ombudsman.

There are no specific statistics available on sexual harassment in Iraq. A survey was conducted in 2015 by the Iraqi Women Journalists' Forum, finding that 8 in 10 women in

108 Focus Group Meeting with stakeholders in Iraq, 23 September, 2020.

109 Ibid.

110 Ibid.

111 Ibid.

112 In Iraq, tribal traditions rob women, girls of rights, 18 April, 2019, France24, <https://www.france24.com/en/20190418-iraq-tribal-traditions-rob-women-girls-rights>.

113 Iraq Labour Law No. 37 of 2015 replaced the Iraq Labour Law No. 71 of 1987.

114 Article 10 and 11, Iraq Labour Law No. 37 of 2015.

Iraq reported having suffered some form of sexual harassment.⁽¹¹⁵⁾ The study concluded that harassment in the workplace should be recognised and should have serious consequences. This has not translated into action in Iraq, as women are still hesitant to report harassment due to fear of losing their jobs and stigma associated.

There is no official data in Iraq presenting the rate of sexual harassment in the workplace, in both the public and private sector. A conference was convened by Iraqi civil society organisations to publish a report stating that 77 per cent of Iraqi women are exposed to harassment.⁽¹¹⁶⁾ Consequently, in 2017, women in the public sector started to speak up about harassment in the workplace. Parliament members and ministers revealed having received complaints of sexual harassment.⁽¹¹⁷⁾ Parliament member, Aaliyah Nasif, revealed she was receiving complaints of sexual harassment of female employees in a number of ministries. One member of parliament, Rezan Sheikh Dler, was interviewed and she stated that “women are perceived as inferior by the male politicians. This is why women MPs have had to deal with harassment during parliamentary sessions.”⁽¹¹⁸⁾

The Iraqi Journalists Forum Sharazad, proposed the following legal changes⁽¹¹⁹⁾:

1. Revise and activate what has been stated in the Iraqi Penal Code no. 111 of 1969 in Articles 400 to 404. It currently has a weak definition of criminal conduct, and a punishment that is not an effective deterrent to harassment in any form, and will not help to prevent sexual harassment.
2. The application of those articles that work to resolve issues surrounding the harassment of female workers in the labour law which was recently passed in the CoR.
3. Amend the law for government employees on the issue of discipline (No. 14 for the year 1991), as it is devoid of any meaningful penalty against an employee who might harass his colleagues on the job.
4. Organise workshops to raise awareness among law officials and the police force, and encourage women who are subjected to harassment to file a complaint and to call upon support from the law.
5. Harmonise national laws, policies and practices to conform to international standards and obligations of human rights, including the repeal of all legislation is discriminatory.

115 A New Study Reveals Facts about the Phenomenon of Sexual Harassment in Iraqi Society, Iraqi Women Journalists Forum – 2015, https://www.iraqicivilsociety.org/wp-content/uploads/2015/10/Shahrazad-Study-FINAL.En_.pdf.

116 A call to increase the penalties against harassers, 77% of Iraqi women experience sexual harassment, <https://elaph.com/Web/News/2015/9/1037165.html>.

117 Sexual harassment common even for Iraqi women professionals, Adnan Abu Zeed, 1 February 2017, <https://www.al-monitor.com/originals/2017/02/iraqi-elite-sexual-harassment.html>.

118 Sexual harassment common even for Iraqi women professionals, Adnan Abu Zeed, 2 February 2017, <https://www.al-monitor.com/pulse/originals/2017/02/iraqi-elite-sexual-harassment.html>.

119 A New Study Reveals Facts about the Phenomenon of Sexual Harassment in Iraqi Society, Iraqi Women Journalists Forum – 2015, https://www.iraqicivilsociety.org/wp-content/uploads/2015/10/Shahrazad-Study-FINAL.En_.pdf.

3.4 Human Trafficking

Human trafficking has contributed to the high levels of violence against women. It has become a widespread issue in Iraq and the problem exacerbated after the ISIS conflict in 2014. Iraq adopted the Law on Combatting Human Trafficking No. 28 in 2012 to tackle and prosecute perpetrators and trafficking networks. Human Trafficking is defined as “recruiting, transporting, housing, or receiving individuals by force, threat to use force, or other means, including by coercion, kidnapping, fraud, deception, misuse of power, exchange of money, or privileges to an influential person in order to sell, exploit the trafficked individuals by means of prostitution, sexual abuse, unpaid labor, enslavement, beggary, trading or human organs, medical experimentation.”⁽¹²⁰⁾ Enslavement in all forms is criminalised and includes sexual slavery.

The Iraqi government has been slow and ineffective to respond to human trafficking. During 2013, the government investigated several trafficking cases and did not manage to prosecute any perpetrators.⁽¹²¹⁾ Rather than prosecuting perpetrators, women have fallen victim to trafficking and prostitution and are treated like criminals and convicted.⁽¹²²⁾ Yanar Mohammed, Director of the Organisation of Women’s Freedom in Iraq, stated that “the women who are in the brothels, they are the ones who are thrown in the prisons, they are the ones who are thought of as perpetrators.”⁽¹²³⁾

Shelters in Iraq are needed to protect the many victims of violence, including victims of trafficking. A government shelter was opened in 2013 in Baghdad, however, it is hardly functioning and is sitting mostly vacant. There is a dire shortage of shelters and the few NGOs who do manage shelters in Iraq, excluding the Kurdistan Region, must do so clandestinely. Without a legal framework to protect NGOs managing shelters and allowing for the operation of those shelters for all victims of violence, women and girls fall under constant threat. It has been reported that first responders and judges do not enforce laws accordingly and are insensitive to trafficking cases.⁽¹²⁴⁾

120 Article 1, First, Law No. 28 of 2012, Combatting Human Trafficking.

121 Minority Rights Group International & Ceasefire Centre for Civilian Rights, No Place to Turn: Violence against women in the Iraq conflict, February 2015.

122 Minority Rights Group International & Ceasefire Centre for Civilian Rights, No Place to Turn: Violence against women in the Iraq conflict, February 2015.

123 Interview with Yanar Mohammed, 17 December 2014, Minority Rights Group International & Ceasefire Centre for Civilian Rights, No Place to Turn: Violence against women in the Iraq conflict, February 2015.

124 Finnish Immigration Service, Overview of the Status of Women Living Without a Safety Net in Iraq, May 22, 2018.

3.5 Personal Status Law

The Personal Status Law was adopted in 1959 and was one of the first pieces of liberal legislation in the Middle East.⁽¹²⁵⁾ Provisions in this law gave equal rights to women in divorce, forbid child and forced marriages and restricted polygamy. However, there are restrictions within the law that discriminate against women.

The Personal Status Law sets the legal age for marriage at 18 years old, and 15 years old with parental and judicial permission.⁽¹²⁶⁾ The law provides exceptions for minors when their parents or legal guardians provide agreement.⁽¹²⁷⁾ The KRG amended certain provisions in the Personal Status Law to give women more rights. For example, the Domestic Violence Law in Kurdistan prohibits any type of forced and early marriages.⁽¹²⁸⁾ However, the increase of IDPs and recent conflicts has meant that there was a growing trend of marrying daughters for financial security and reducing economic hardship.⁽¹²⁹⁾ Studies carried out in 2019, showed that 27.9% of women aged between 20 to 24 years old were married before 18 years of age and 7.2% were married before 15 years of age.⁽¹³⁰⁾

Article 9 (1) of the Personal Status Law criminalises forced marriage, “No relative or non-relative has the right to force marriage on any person, whether male or female, without their consent.” The contract of forced marriage is considered void if the marriage is not yet consummated. An exception is made if the marriage is consummated. This is a harmful legal provision and one that does not consider marital rape. Moreover, no person has the right to prevent the marriage under the provisions of this law. There are no other articles explaining this provision, to define what consent means and to protect women whose marriages have been consummated. The law lacks clarity and does not account for women and girls who underwent forced marriages to ISIS members or who were forced into marriage and raped. This leaves a large gap in the legal framework and women and girls can also be punished by their husbands under Iraqi law, should they speak out.

Children who were born out of sexual violence during the ISIS conflict are unable to obtain identity documents, where proof of paternity is impossible. Article 28(1) of the Personal Status Law states, “the child born out of wedlock and one of the parents is known, shall be registered in the birth register after providing a decision from the personal status court that includes a proof of paternity, the name of the child, birth date and place. The court chose the name of the foundling whose both parents are unknown and to transfer the child’s register from the birth register to the civil register.” The civil register is where

125 Law No. 188 of 1959, Personal Status Law, published in the Iraq Official Gazette Issue No. 280, dated 20 December 1959.

126 Article 7-8, Personal Status Law No. 188 of 1959.

127 Article 8, Personal Status Law No. 188 of 1959.

128 Article 2, Law No. 8 of 2011, Combating Domestic Violence in Kurdistan Region-Iraq.

129 With no money or security, Iraqi IDPs turn to child marriage, 26 January, 2019, <https://www.rudaw.net/english/kurdistan/260120195>.

130 UN Women, Women Count Data, Iraq, <https://data.unwomen.org/country/iraq>

all citizens are listed. There are no provisions for children born of rape and mothers will have difficulties to register their children for education, health and other services. No protection is afforded to them under the current legal framework and, again, they are at risk and made vulnerable.

The Constitution allows for each religious group to govern their own personal status matters, meaning that rules related to marriage, rights over children and divorce can be based on the interpretation of religion.⁽¹³¹⁾ People are free to determine their personal status according to their own religion, sect, belief and choice. This may mean that women from different sects will be subject to different laws imposed on them according to religion, sect, belief and choice of their religion or tribe. The serious risk this represents was shown when the Jaafari Law was proposed by Shia Islamic Parties, headed by the Fadhila party, allowing for girls to be married as young as 9 years old and inheritance and divorce provisions to be changed.⁽¹³²⁾ This was rejected by parliament; however, many attempts have been made and it still poses a threat to Iraq's women and girls. In July 2021, another initiative to amend the Personal Status Law was adopted in the first reading⁽¹³³⁾ in Parliament. The amendment provides for children to be separated from their mothers in the event of divorce from the age of 7.

There is a need to adopt measures guaranteeing women's protection when making a claim to nullify a forced marriage (al-fasliya) or to prevent a marriage (al-nahwa). The Government of Iraq should coordinate with the efforts of women's non-governmental organisations who are on the frontlines of these issues. It should be noted here that both al-fasliya and al-nahwa crimes are criminalised under Article 9 of the Personal Status Law No. 15 of 2008 and Articles 430 and 431 of the Penal Code. Furthermore, based on Article 9(2) of the Personal Status Law, if the perpetrator was a relative of first degree to the victim, that perpetrator shall be penalised with detention that could reach up to three years or with a fine or with both penalties. If that perpetrator is not a first -degree relative, he or she shall be penalised with a penalty that ranges between three years detention and ten years imprisonment. However, the problem lies in the difficulty women face when making a claim in court and the fear of being shamed by society. In other words, women often lack the ability to stand against their family and cultural norms. Therefore, it is necessary to appoint a safe and reliable focal point person at the General Prosecutor's Office who can be contacted by victims of al-nahwa and fasliya crimes. Through the focal point, the General Prosecutor can file a claim on the victim's behalf. This is legally possible as the General Prosecutor's mandate includes protecting public interest. The claim made by the General Prosecutor will relieve women from the burden associated with approaching the courts and can protect them from the stigma associated.

131 Article 41, Iraq Constitution 2005.

132 Iraq: Parliament Rejects Marriage for 8-Year-Old Girls, 17 December 2017, <https://www.hrw.org/news/2017/12/17/iraq-parliament-rejects-marriage-8-year-old-girls>.

133 To enter into force, adoption in a second reading is needed.

3.6 Measures taken by the Kurdistan Regional Government

The debate over violence against women is a major public debate, and it was an issue that catapulted to the top of the national agenda under successive administrations. The KRG has established the Directorate of Combatting Violence Against Women (DEVAW) that follows up on cases of violence against women, domestic violence courts in three governorates and new institutional bodies to support gender mainstreaming in policy-making.⁽¹³⁴⁾ In parallel to this, the High Council of Women's Affairs in the Kurdistan Region advises ministries on gender-mainstreaming and the KRG also ratified the National Strategy to Combat Violence Against Women in 2013.

The position of women in the Kurdistan Region, compared to the rest of the country, has legally improved. The KRG has abolished some of the discriminatory laws and provisions against women and have adopted laws that protect them. "Honour" was removed as a defence and as a mitigating circumstance in Iraq's Penal Code,⁽¹³⁵⁾ as well as article 409 on mitigation.⁽¹³⁶⁾ The Personal Status Law was amended to restrict polygamy⁽¹³⁷⁾ and to consider forced marriages void, even when consummated. Forced marriage is a crime under the Domestic Violence Law in Kurdistan. However, this has not entirely translated into eradication of violence. Women are still being killed in the name of so-called "honour."⁽¹³⁸⁾

Post-2003, violence against women dominated KRG policy making in respect of women's rights, resulting in a law in 2011, Combatting Domestic Violence in the Kurdistan Region,⁽¹³⁹⁾ including several provisions covering assault, female genital mutilation (FGM) and other forms of violence. This law was a milestone in the Kurdistan Region to hold perpetrators accountable, however, enforcement has not yet been the resounding success the government had initially hoped. Although, the above amendments were made and this law was adopted, violence is still prevalent and so-called "honour" killings still occur.⁽¹⁴⁰⁾ FGM is also still widespread. That said, the passing of the law has been followed with a comprehensive capacity building strategy that includes awareness campaigns, the training of judges, police training tied to ensuring officers of the law enforce its provisions and developing a stronger understanding of the law and the norms it sets out to promote. The Kurdistan Region is the better example for the rest of the country to follow in order to heighten safety for women.

134 Law No. 8 of 2011, Combatting Domestic Violence in the Kurdistan Region – Iraq.

135 Resolution No. 59 of 2002.

136 Law No. 3 of 2015, amending the Penal Code No. 111 of 1969.

137 Law No. 15 of 2008, amending the Personal Status Law.

138 Three men in Kalar arrested for hanging their sister to death: police, Dilan Sirwa, 23 November 2020, <https://www.rudaw.net/english/kurdistan/23112020>.

139 Law No. 8 of 2011, Combatting Domestic Violence in the Kurdistan Region – Iraq.

140 Iraqi Kurdistan struggles to end violence against women, Fazel Hawramy, 18 December 2018, <https://www.al-monitor.com/pulse/originals/2018/12/iraq-kurdistan-violence-women.html>.

3.7 Yazidi Female Survivors Law

It was not until April 2019, that a bill, the Yazidi Female Survivors Law, to secure reparation for Yazidi female survivors was proposed to the Iraqi parliament. This was regarded as a major step towards addressing and redressing the suffering endured by the minority group in the wake of ISIS' emergence in 2014 in Iraq. The legal framework and reparation scheme under Law No. 20 of 2009, Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations, is insufficient to cover the ISIS conflict as it only identifies specific categories for reparations.⁽¹⁴¹⁾ The Yazidi Female Survivors Law was passed by the Iraqi parliament on 1 March 2021.⁽¹⁴²⁾

The law offers psychological and medical care,⁽¹⁴³⁾ as well as housing and land,⁽¹⁴⁴⁾ compensation⁽¹⁴⁵⁾ and education.⁽¹⁴⁶⁾ However, there is scepticism that the Yazidi Female Survivors Law will meet expectations, raising concerns and confusion, which will require amendment before its enactment.

Article 1 defines the female survivor as follows: "Every woman or girl who has been subjected to crimes of sexual violence from her kidnapping, sexual slavery, selling her in slavery markets, separating her from her family, forcing her to change her religion, forced marriage, pregnancy and forced abortion or inflicting physical and psychological harm to her by ISIS since the date 3/8/2014 and was freed afterwards." The definition does not cover all aspects of crimes against humanity, such as torture, imprisonment, persecution based on religion, gender, political or racial grounds, the forcible transfer of populations and the enforced disappearance of persons. Conflict-related sexual violence should also be clearly defined to ensure that survivors are not outside of the law's scope. This means that the law does not address the entirety of the atrocities committed and every victim of ISIS.

A large part of the problem is also that the law risks focusing the debate on victims of sexual violence with the definition in Article 1, putting every abductee into the category of a victim of sexual violence regardless of the fact that there are some individuals

141 Article 2, Law No. 20 of 2009, Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations, can be found at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5e4579204>

142 Iraqi parliament passes Yazidi survivor bill after years of delay, Sura Ali, 1 March 2021, <https://www.rudaw.net/english/middleeast/iraq/010320214>.

143 Article 5(Sixth), Yazidi Female Survivors Law 2021.

144 Article 6(Second), Yazidi Female Survivors Law 2021.

145 Article 4(First), Yazidi Female Survivors Law 2021.

146 Article 5(Fourth), Yazidi Female Survivors Law 2021.

who were not necessarily victims of sexual violence. There have, for example, been documented cases of abducted disabled women who were subjected to other gross human rights violations and who are not accounted for in the law. Furthermore, although, the law covers “inflicting physical and psychological harm” by ISIS there is a danger that not all gender-based crimes are recognised.

Indeed, the broader issues that have underpinned attempts to address sexual violence in the country and remedy holes in the legal system remain. In failing to cover other forms of conflict-related violence, the inequality fault lines are intensified, creating a two-tier system that may ignite intra-community tensions and conflicts.

The law requires further clarification in Article 2 (First), stating that the law applies to every Yazidi woman who was kidnapped and freed by ISIS, and in Article 2 (Second), which goes on to state that the “law shall apply to Turkmen, Christian and Shabak women and girls who were subjected to the same crimes mentioned in Article 1.”⁽¹⁴⁷⁾ An interpretation of this Article surely comes to the conclusion that the law is also covering the mentioned minorities. A clarification as to who is eligible for reparations, would avoid misinterpretations. It is recommended to clarify if non-Yazidi women are included in the Yazidi Female Survivors Law and if Article 1 covers all crimes or only sexual violence.

There has clearly been an absence of victim participation in the drafting of the law. It appears that the Iraqi government has taken a “one-size fits all” approach, with general provisions and has fallen short of addressing the unique impacts of different violations and abuses. Women and girls were undoubtedly disproportionately subjected to SGBV; however, men and boys were also victims. A more inclusive law could have been prepared with the consultation of victims and one that responds better to the expectations of survivors.⁽¹⁴⁸⁾

By excluding crimes committed against men and boys, and women and girls of other religions or ethnic groups, the bill more generally fails to account for all victims of human rights violations under ISIS. It should be noted that, first, the State of Iraq is a Party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the 1949 Four Geneva Conventions. Thus, Iraq is bound by the provisions of these Conventions, which are applicable before the Iraqi courts. Second, Iraq has established a court mandated to investigate and prosecute war crimes, genocide and crimes against

147 Article 2, Yazidi Female Survivors Law,

148 Güley Bor, Iraq’s Reparation Bill for Yazidi Female Survivors: More Progress Needed, LSE, 12 June 2019, available at <https://blogs.lse.ac.uk/crp/2019/06/12/iraqs-reparation-bill-for-yazidi-female-survivors-more-progress-needed/>

humanity committed between 17 July 1968 and 1 May 2003, namely the Supreme Criminal Court of Iraq (المحكمة الجنائية العراقية العليا), which functions based on Law No. 10 of 2005. This can be renewed with amendments made. Third, Iraq has many Penal Codes covering many crimes whether committed during war or not, such as the 1971 Penal Code, the 2007 Penal Code of Military Forces (see e.g. Article 61) and the 2008 Penal Code of National Security Forces. In addition, the CoR issued Decision No. 126 on 24 March 2015 that considered crimes committed by ISIS as genocide crimes.⁽¹⁴⁹⁾

149 The decision of the Council of Ministers is available on the Iraqi Legislations Database at <<http://iraql.dhjc.iq/LoadLawBook.aspx?page=1&SC=&BookID=38901>>.

4. Conclusion

This paper analysed the current legal framework applicable to the participation of women in political and peacebuilding processes and studied the laws regulating the protection of women against violence. The research identified many legal gaps that must be addressed to allow women to actively participate in political affairs and to be represented across all leadership levels. Institutionally, reform attempts have often failed because they were resisted by powerful political and social forces. To strengthen women's participation, it is necessary to promote equal representation in the executive positions of the Iraqi Government at federal, regional, provincial and district levels. Unfortunately, the Law on Provinces that have not joined a Region No. 21 of 2008 sets out that a Governor shall have five Deputies without guaranteeing women minimum representation.⁽¹⁵⁰⁾ It is crucial to require a quota for the representation of women in the Deputy-Governor positions. In addition, it is necessary to introduce a quota for women's representation in the IHEC Board. The IHEC could play a fundamental role in ensuring that more women are included in the elections and in creating training programs for women who wish to pursue a political career.

There is no quota for women in the membership of political parties in Law No. 36 of 2015 on Political Parties. This law also lacks a precise threshold for women representation in the leadership committees of political parties. Therefore, the Political Parties Law should be amended to provide for a quota for women of at least 40 per cent in the leadership bodies of political parties. Furthermore, it is crucial to guarantee women belonging to minority groups an adequate representation in the CoR and Provincial Councils, as the 2020 Law on the Election of the Council of Representatives does not clarify whether a representation of those groups shall be guaranteed.

The Iraqi government must increase the level of female political participation and protect women from abuse and harassment. Women are frequently attacked online during election campaigns. During the 2018 elections, the UN condemned the defamation and violence against women candidates after one candidate resigned over a fake sex tape, while others suffered rampant online harassment. It is necessary to create effective means to help victims of sexual violence. The government should legalise and help fund the establishment of shelters that are operated by civil society organisations and to establish transparent supervision mechanisms on the functioning of government shelters.

Amending Article 393 of the Iraqi Penal Code is a must to widen the definition of rape to cover all forms of sexual violence against women, such as martial rape. The definition of the Istanbul Convention could serve as a model here. In addition, sexual harassment should be addressed, particularly at the workplace. To tackle sexual harassment, it is recommended that mechanisms are established for women to make safe and confidential claims, such as appointing focal points or an ombudsman.

150 Article 33(1), Law No. 21 of 2008, Provinces that have not joined a Region.

To guarantee women better protection and access to justice, it is fundamental to adopt the Domestic Violence Law. It is equally important to establish effective mechanisms ensuring proper implementation of the Domestic Violence Law, such as shelters and legal protection of non-governmental organisations operating shelters. Other measures can also be taken such as guaranteeing women protection when filing a claim in court, for example, to nullify a forced marriage (al-fasliya) or to prevent marriage (al-nahwa). A focal point can be appointed at the General Prosecutor's Office allowing a victim of al-fasliya or al-nahwa to submit a complaint and to request the General Prosecutor file a claim in court. This will protect women from the stigma associated and help the course of justice.

The balance of power in Iraq shifts substantially in favour of men, at both the political and societal level. This makes it imperative that women's organisations and groups forge alliances and coalitions, which can be supported by the international community. Long-term strategies must be set that enhance existing campaigns and plans. Efforts should also be focused on raising awareness amongst the most conservative communities and political factions. Working with tribal leaders is an important part of reform and increasing women's political and peacebuilding participation.

At the top-down level, international organisations and civil society should pressure the government to open up access to resources and information for the most vulnerable, including the poor, unemployed, IDPs and the widowed. The social fabric of the country will continue to come under pressure as a result of political instability and conflict, and measures like this will empower the most vulnerable to, at the very least, mitigate the detrimental consequences that they suffer in the absence of appropriate legal protection.

The emphasis on campaign effectiveness is an area that warrants further attention. Given the centrality of social media platforms to the protest movement in the country, it is plausible to argue that women's rights campaigners need to develop a more effective strategic communication strategy. However, this constitutes only one part of the puzzle that needs to be solved. There are broader structural problems that inhibit both the promotion and implementation of the laws that enable gender equality and protect women, and that inhibit the mobilising capacity of civil society actors and international NGOs.

In short, addressing the legal, political and social gaps in the protection of women and the promotion of gender equality in Iraq, pursuant to international norms and the objectives set out in UNSCR 1325, requires a long-term and concerted effort by both the government, civil society and the wider political class including religious and tribal leaders. The incremental progress proposed above, like taking steps to increase the level of female political participation or devising more effective campaigning and strategic communication, can produce momentum and the guiding principles that allows the country to eventually implement a broad-spectrum of policies and laws that protect women. Since Iraq is a conflict-plagued country and at risk of conflict relapse, incorporating International Criminal Law into the penal code, in direct consultation with

the victims of these crimes, will both provide these victims with justice and contribute toward creating an environment of accountability and respect for international norms.

Iraq would do well to review all laws and provisions that discriminate against women and promote inequality, particularly those articles in the Penal Code that do not protect women. The Domestic Violence Law should be developed and passed by parliament as soon as possible to both reduce the domestic violence rates and the killings it leads to.

Local and international organisations working on women's rights and empowerment can offer further training and support parliament to adopt laws and amend provisions that increase women's political participation and promote gender equality. Unfortunately, harmful practices in Iraq remain and women in Iraq, including the Kurdistan Region, face many institutional, social, political and economic challenges. There is an absence of adequate protection in law and all stakeholders must work together and use their efforts to overcome challenges facing women and girls.

For more info, please contact:

elbarlament e.V.
Reuchlinstraße 10
10553 Berlin
Tel.: +49 (0)30 398 204 190
E-Mail: info@elbarlament.org

