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## Iraq: Stakeholder Report to the UN Universal Periodic Review Process by Karama – February 2010

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### 1. Executive Summary

#### 1.1 Improvements since 2005

Iraq has demonstrated certain efforts to improve the human rights of women in these past four years. The quota in effect for elections of 2005 and 2009 increased women's representation in national and provincial legislative bodies to 25%, one of the highest levels in the region. Also, the Kurdistan Regional Government (KRG) in Iraq amended its Personal Status Law in 2008 to place restrictions on polygamy, created emergency shelters to provide a measure of protection to women from violence, established a Cabinet-level Committee on Violence against Women, and set up a Directorate to Follow up Violence against Women in each KRG governorate.

#### 1.2 Violence against women remains a major human rights concern

However, among the areas of human rights concerns in Iraq, the environment for women's safety from violence and the threats to women's security are worse in many ways than they were four years ago: honor killings in Iraq occur at one of the highest frequency levels in the Arab Region, domestic violence still occurs with grave impunity, the Personal Status Law of 1959 is weakened by Article 39 in the new constitution, and in the Northern Region of Kurdistan the harmful tradition of female genital mutilation is tolerated and practiced with impunity.

#### 1.3 Recommendations for actions by the State

Several key measures for action by the State to improve the human rights of women and girls and their safety from violence include:

- 1.3.1 Amend the penal code to remove mitigating factors from the punishment of honor-related crimes against women
- 1.3.2 Draft, approve, and enforce laws against domestic violence
- 1.3.3 Repeal Article 39 from the new Iraqi constitution
- 1.3.4 Withdraw the State's reservations to CEDAW, particularly Article 2 and Article 9

### 2. Main Issues of Concern and Recommendations

#### 2.1 Honor Killings and Domestic Violence

The 2009 Arab Human Development Report states there were 34 honor killings in Iraq in Erbil and Sulaimaniya over one year, plus 47 more cited in Basra in 2007 by the Basra security committee.<sup>1</sup> In comparison, 52 were reported in Egypt in the same year, which was the next highest total on record in the region. Iraq's penal code contains specific provisions that reduce penalties for honor killings, cutting the

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<sup>1</sup> "Hitmen charge \$100 a victim as Basra honour killings rise," The Guardian, United Kingdom, November 30, 2008



sentences down to six months or one year in some cases. Consequently, the police are less likely to arrest men accused of violence against female relatives, as judges tend to show leniency to the perpetrators. The unlikelihood of facing justice for committing these crimes emboldens families to perpetuate acts of honor killing, and makes women and girls unsafe and unprotected from honor crimes and family violence in Iraq. According to the Kurdistan Regional Government, between July 2007 and June 2008, 102 women were killed and another 262 died or were gravely injured due to intentional burning and suicides.<sup>2</sup>

2.1.1 Recommendation: **Remove mitigating clauses from the penal code for honor-related violence**

The removal of language about mitigating circumstances or motivations for the crimes against women will help the police and courts view and prosecute the severity of the crimes rather than making allowances for them. The KRG took this step to amend its Penal Code in 2002, and the State of Iraq should do so as well in compliance with Article 29-Fourth Paragraph in Iraq's new constitution approved on October 15, 2005: "*All forms of violence and abuse in the family, school and society shall be prohibited.*" This requires amending or repealing the related sections that mitigate punishment of honor crimes against women in the sections of the 1969 Iraqi Penal Code and the Revolutionary Command Council orders.

2.1.2 Recommendation: **Set and enforce laws against Domestic Violence**

Certain surveys have found that up to 1 out of every 5 Iraqi women have experienced some form of violence in the past 5 years.<sup>3</sup> This rate will not abate but will persist if the Iraqi Penal Code continues to allow a legal right for a husband to "discipline a wife...within certain limits prescribed by Islamic law (Shari'a), by law or by custom."<sup>4</sup> Fortunately, the new constitution declares Article 29-Fourth paragraph: "*All forms of violence and abuse in the family, school and society shall be prohibited.*" For the enforcement of this constitutional law and mitigation of the prevalence of violence, greater accountability, prosecution, education, protection, and enforcement will be needed. The Kurdistan Regional Government (KRG) in Iraq has demonstrated some of these measures by creating emergency shelters to provide a measure of protection to women from violence, establishing a Cabinet-level Committee on Violence against Women, and setting up a Directorate to Follow up Violence against Women in each KRG governorate, which resolves these cases instead of religious courts or bodies. According to the 2009 Arab Human Development Report, the prevalence of assaults on women in Kurdistan was just 10.9% compared to 22.7% of all married women in the South and Center of Iraq.<sup>5</sup>

2.2 Recommendation: **Repeal Article 39 in the Iraqi Constitution**

Article 39 of the new Iraqi Constitution states the following: "*The Iraqis are free to abide by their personal statutes according to their religions or denominations or beliefs or choices; and this shall be regulated by a law*". This

<sup>2</sup> "Trapped by Violence: Women in Iraq," Amnesty International, March 2009

<sup>3</sup> Women for Women International, "Stronger Women, Stronger Nations," 2008

<sup>4</sup> Iraqi Penal Code, quoted in "Trapped by Violence: Women in Iraq," Amnesty International, March 2009

<sup>5</sup> Arab Human Development Report, UNDP, 2009



Article will allow individuals to claim on legal grounds that sectarian religious laws can supercede obedience to the laws of the State. The equality and safety of women on several levels that was otherwise guaranteed by Iraq's far-reaching Personal Status law of 1959 are now compromised and inconsistent. This may reverse or diminish women's status and rights on matters of judicial separation, divorce by proxy, child custody, alimony, equal inheritance, and specifically on matters of gender-based violence, as described in Paragraph 2.1.2 of this report. Article 39 may be used to justify impunity for or obedience to early or forced marriage, honor killings, domestic violence, female genital mutilation, and polygamy, found in practice in the Northern Region of Kurdistan. Article 39 places women's rights at the mercy of the interpretations by the religious leaders and not the law or elected leaders.

## 2.3 CEDAW Reservations

In 1986, Iraq acceded to and ratified CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women, but the State still holds reservations on Article 2 (Paragraphs F and G) and Article 9. These reservations conflict with the viable enactment of CEDAW by the State. For reference, Article 2 (F/G) resolves to eliminate, amend, or repeal all laws and penal codes that are discriminatory to women, and Articles 9.1 and 9.2 grant equality for women and men in matters of citizenship and nationality, and over their children's nationality.

### 2.3.1 Recommendation: **Withdraw Reservation on Article 2 of CEDAW**

Maintaining a reservation on Article 2 (f) *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;* and Article 2 (g) *To repeal all national penal provisions which constitute discrimination against women,* contradicts the very name and purpose of CEDAW as the Convention on the Elimination of All Forms of Discrimination Against Women. Because CEDAW is a ratified treaty in Iraq, and Article 14 in the new Iraqi constitution declares, *"Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, color, religion, creed, belief or opinion, or economic and social status,"*<sup>6</sup> the reservation on Article 2 of CEDAW should be withdrawn for non-compliance with the adopted legal frameworks in Iraq. By enforcing Article 2, all other recommendations in this report should proceed as a matter of course.

### 2.3.2 Recommendation: **Withdraw Reservation on Article 9 of CEDAW**

The Iraqi constitution was adopted on October 15, 2005, and contains Article 18 which defines equal rights to citizenship and nationality, including, *"Second: Anyone who is born to an Iraqi father or to an Iraqi mother shall be considered an Iraqi. This shall be regulated by law;... Third: An Iraqi citizen by birth may not have his citizenship withdrawn for any reason...; Fourth: An Iraqi may have multiple citizenships...."* Thus, the State's ongoing reservation to CEDAW Article 9 regarding equality in nationality and citizenship, is in conflict with Article 18 of the new Iraqi constitution and should be withdrawn. If Article 18 in the constitution is nullified by the reservation on Article 9 in CEDAW, then an Iraqi woman who is

<sup>6</sup> [www.uniraq.org/documents/iraqi\\_constitution.pdf](http://www.uniraq.org/documents/iraqi_constitution.pdf), accessed August 25, 2009



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married, divorced or separated from a non-Iraqi man may find it necessary to live or remain in a foreign country in order to raise her children. She may be compelled to stay in an abusive marriage with a foreign spouse rather than leave without her children. The economic and immigration difficulties that arise from family members being unable to live as citizens in Iraq also bears a risky burden on a mother, putting her more at risk of the factors that trigger or exacerbate domestic violence and increase her vulnerability to harm.