

Iraq

1. Discrimination in the family

a) Overarching legal framework for marriage

The Constitution of Iraq allows for each religious group to govern its own personal status matters, including marriage (Constitution of the Republic of Iraq, Art. 41). At present the Personal Status Law (PSL) of 1959 is still in effect, putting the legal age of marriage for both men and women at 18, with full consent required from both parties (Personal Status Law, 1959). A draft law dealing with marriage, divorce, inheritance and adoption, called the Jaafari Personal Law, was approved by the Council of Ministers in February 2014. (Puttick, 2015). This draft law was based upon principles of the Jaafari school of Shia religious jurisprudence, founded by Imam Jaafar al-Sadiq, the sixth Shia imam, and would apply to Iraq's Shia population: the majority of Iraq's population (Puttick, 2015). However, in December 2017, the Iraqi's Parliament rejected proposed amendments to the Personal Status Law, which would have legalised marriage at the age of 9 for girls and 15 for boys and restored the authority religious courts in family matters (Human Rights Watch, 2017a).

Although not legally recognised and socially unacceptable, temporary marriage does exist, and is on the rise, in part caused by extreme poverty, increased numbers of widows, and a rising popularity with young people, particularly in universities (CEDAW Shadow Report, 2014). One form of these temporary marriages are *Muta'a* (pleasure) marriages, which re-emerged under a growing Shi'a influence, where women and girls are 'married' for a fixed time, even several hours, under the presence of a religious figure. These can leave women and girls open to gender-based violence (GBV), trafficking or prostitution charges (MADRE, 2014), and offer the women no inheritance, alimony or child support rights (CEDAW Shadow Report, 2014). *Muta'a* marriages are often seen as a loophole for men to have sex outside of traditional marriage (OWFI, MADRE, IQHR, 2015).

Forced marriage is additionally a problem, particularly due to tribal customs, 'bride exchanges', extreme poverty (Puttick, 2015), women being forced to marry their aggressor to cancel a criminal trial (see later section on rape), or in a *diyya* (blood settlement) settlement (MADRE, 2014). Forced marriage is illegal under the personal status code, and subject to up to three years' imprisonment (Personal Status Law, 1959), however, the Iraqi legal system has very few provisions for prevention or prosecution (MADRE, 2014). The woman must prove she was coerced into marriage, and the law does not offer protection following such a complaint, effectively opening the woman to retribution (MADRE, 2014).

No legal provisions prohibiting harmful practices against widows could be identified.

b) Child marriage

The legal age of marriage is 18 years for both women and men (Personal Status Law, 1959). Child marriage is currently only legal at the age of 15, with the consent of their legal guardians and the

permission of a judge (Personal Status Law, 1959). Although illegal, child marriage is prevalent and is on the rise (The Central Statistics Organisation and the Kurdistan Regional Statistics Office, 2012).

c) Household responsibilities

Married women do not have the same rights as married men to be recognised at the head of households (Civil Status Law, 1972, art 17, 19; Women, Business and the Law, 2017). Furthermore, in a culture where it is assumed that households are male-headed, female-headed households cannot receive the same tax breaks as men, unless they are widowed or divorced (Women, Business and the Law, 2017). No restrictions on unmarried women were found in the law.

Married women are legally obliged to obey their husbands under the Personal Status Law so long as it does not conflict with the rulings of Shari'a law (Personal Status Law, 1959).

Fathers are considered the legal guardians of the children, although in the case of divorce a woman may be granted custody of her children until they reach the age of 10, extendable by a court up until the age of 15 if it is in the interest of the child (UNICEF, 2011).

Women are restricted in their movement and choice on where to live under the Personal Status Law. Although there was a brief period in 2003 when it was not required, women are now required to have their guardian's approval to obtain a passport, under a law amendment of 2004. Furthermore, freedom is restricted by the poor security (UNICEF, 2011). Widows or divorced women can face discrimination or violence on the streets, targeted by 'anti-women death squads' who target women they believe to be acting contrary to Islam (The Loomba Foundation, 2015).

Widows and divorced women often face discrimination, are often living in poor economic situations due to low income and are at risk of sexual exploitation, prostitution and offers of temporary marriage (The Loomba Foundation, 2015). Many families rely upon charity or family to survive (CEDAW Shadow Report, 2014) and widows are often unable to receive a pension from government, due to a complicated registration process, being unaware of their rights, or being unable to register as they cannot prove the death of their husband (The Loomba Foundation, 2015).

d) Divorce

Divorce in Iraq must be performed according to Shari'a (Personal Status Law, 1959). Iraqi men can 'unilaterally' divorce their spouses, while women can only initiate divorce proceedings for specific reasons, such as the incarceration of the man for more than three years, impotence or the husband being infertile. In addition, both men and women have the right to ask for separation for reasons including infidelity, gambling inside the marital house or injuring in such a way which makes marital life impossible to continue. Women can additionally ask for a '*khula*' divorce, where they return their dowry and forfeits any future financial support (Ahmed, 2010).

Women are discriminated against if adultery takes place, as Article 378 of the Penal Code allows a husband to accuse his wife of adultery for up to four months' post-divorce, yet women do not have the same right. In cases of divorce due to domestic violence some women are intimidated by their husbands to relinquish legal rights for support payments or child custody in some cases (Puttick, 2015).

Women are less likely to be educated or have professional work experience, meaning that once they are divorced they are unable to support themselves, relying upon male relatives. Furthermore, divorce holds a social stigma in Iraqi society (OWFI, MADRE, IQHR, 2015).

e) Inheritance

Although the original 1959 Personal Status law granted men and women equal inheritance rights it was later amended with Shari's rules now applying (Ahmed, 2010). This means that women are now discriminated against; in general, only receiving half of that a man receives (Personal Status Law 1959: Art 89; UNICEF, 2011). Women are frequently pressured into giving up their inheritance to male family members (Ahmed, 2010). Many women are unaware of their rights, and when they are, are reluctant to prosecute, preferring to resolve such disputes privately (Ahmed, 2010).

2. Restricted Physical integrity

a) Violence against women

In 2014 Iraq became the first country in the MENA region to implement a National Action Plan 1325 (NAP 1325) followed by an Emergency NAP to implement NAP1325, partially in response to the rise of the Islamic State of Iraq and Syria (ISIS). Both NAPs have been criticised for a lack of political will to implement, especially as they were both launched without a budget (Zeynep, 2016). In addition, the Ministry of Women's Affairs of Iraq was instrumental in advocating and passing the bill, but has since been dismantled in Prime Minister Abadi's August 2015 reforms.

b) Domestic violence

The Penal Code allows a man to punish his wife "within certain limits prescribed by law or by custom", although these limits are not specified (Penal Code, art 41). Abuse is traditionally seen as a family affair, as there is the prevalent view that women are the property of the man and his family (CEDAW Shadow Report, 2014). Despite a high rate of domestic violence, it is rarely reported (Puttick, 2015). Even when reported it is hard for police to intervene as the Iraqi Constitution forbids the entering of homes except by judicial decision (Alternatives, 2010).

The Iraqi government established Family Protection Units to receive complaints from women and children regarding domestic abuse, conduct initial investigations and refer to the judiciary when necessary, however, their effectiveness is limited, in large part due to lack of female staff and suitably qualified staff, its location in the regular police station and a focus on reconciliation rather than victim protection (Puttick, 2015).

The Iraqi government does not provide shelters for abused women and children, and bans civil society organisations from providing independent ones. A hotline was established in April 2015 by the Directorate for Protecting Families and Children from Domestic Violence, under the Ministry of the Interior, to provide legal guidance on domestic violence (Puttick, 2015).

The Kurdistan Region of Iraq passed a Domestic Violence Bill in 2011 which criminalised violence against women in the family, forced marriage, female circumcision, and hitting of children amongst

others (MADRE, 2014). The Iraqi Government has drafted an Anti-Domestic Violence in Iraq law, most recently amended in 2016, but it has yet to be passed. The Kurdistan Region of Iraq runs limited shelters (Puttick, 2015).

c) Rape

Although rape is illegal under the Penal Code, all charges are dropped in the instance that the perpetrator marries his victim, a marriage which must last at least three years (Penal Code 1969, art 398). Furthermore, rape is considered a private offense, meaning that the law cannot intervene without the woman or her guardians' permission (Ahmed, 2010). If the victim dies it carries a maximum life sentence (US State Department, 2015).

Spousal rape is not recognised by law, and indeed Shari'a law holds that a man is able to have sex with his wife unless she provides a 'compelling reason to refuse' (Ahmed, 2010).

Human Rights Watch report that systematic rape and sexual violence is being committed by ISIS against women and girls in northern Iraq (Human Rights Watch, 2017b).

Rape victims are unlikely to press charges due to societal and family pressure and norms, and are pressured to marry their aggressor in some cases (MADRE, 2014). A fear of harassment leads to lawyers refusing cases of rape or sexual assault, and police and judicial personnel are lacking adequate training impeding justice brought against the per (MADRE, 2014).

d) Sexual harassment

There is no specific law against sexual harassment. Although sexual harassment is prevalent local traditions and customs prevent many women from seeking justice (Rutgers, 2016), and the Penal Code is framed in such a way that a woman seeking legal redress could herself face prosecution (US State Department, 2015). Additionally, women can face further risk of violence from their aggressors when they do make complaints (Ahmed, 2010).

The 2015 Labour Law promotes equal opportunities and treatment, and prohibits sexual harassment in recruitment and employment, defined as both physical or verbal (article 10).

e) Female genital mutilation

Female genital mutilation (FGM) is not explicitly outlawed. It is implicitly referred to as "assault" under the Penal Code (Art. 412), with a punishable term of 15 years' imprisonment. A 2011 Domestic Violence law criminalised FGM in the region of Kurdistan, with a maximum fine of five million Iraqi dinars and six months' imprisonment for those who incite, help or does the FGM, increasing to ten million Iraqi Dinars and one year imprisonment when it is conducted on a minor. If the perpetrator is a medical professional they also receive a ban from working in their profession, for no more than three years (The Law against Domestic Violence, 2011). FGM is a common practice in Iraqi Kurdistan (UNICEF, 2011).

f) Abortion

Abortion is only legal when the life of the mother is in danger (Penal Code, Art. 417).

More

Honour killings continue to be prevalent, and although punishable by law, there is a lenient sentence for a man who kills his wife or close female relative when they are caught conducting 'unlawful sexual relations' (Ahmed, 2010). Since a 2001 Revolutionary Command Council decree, the definition of an honour crime has been expanded, and sentencing more lenient (Alternatives, 2010). Reports suggest a prevalence of women being burnt alive in family-based violence, often recorded as 'self-burning' (Puttick, 2015).

The Constitution also bans the trafficking of women and children and criminalises prostitution. However, it is common for young girls or wives to be forced into sex trafficking or prostitution due to poverty or to resolve dispute (Alternatives, 2010). Those forced have little recourse, as by law they were committing illegal acts. Reports suggest that women are being trafficked into Syria and the Gulf states (UNIAW, 2010), and face increased vulnerability during the conflict with ISIS. Thousands of girls have been captured by ISIS and sold to ISIS fighters, subjected to forced marriage, sexual slavery, rape, and domestic servitude. ISIS maintained a systematic system for buying and selling women, including sales contracts notarised by ISIS courts (US Department of State, 2016).

The recent outbreak of conflict with the rise of ISIS have subjected women, particularly ethnic and religious minorities, to a number of severe human right violations, including targeting killing, abductions, sexual slavery and systematic rape, sexual assault and forced marriage (UNFPA, 2015).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Women have the same rights as men to own and cultivate land, as well as exercise economic independence under the 1970 Agrarian Reform Law (FAO, IFAD, ILC, 2004). Women are also allowed to borrow from the Agricultural Bank on the same terms as men (FAO, IFAD, ILC, 2004). The Constitution and the Civil Law provide women and men the same right to own, use and make decisions in her own interest, regarding non-land assets (FAO, IFAD, ILC, 2004).

Rural women suffer from social customs which prevent them their legal and legitimate rights (CEDAW Shadow Report, 2014).

b) Secure access to formal financial resources

Men and women are seen as equal under the Civil Code (1951) in terms of legal capacity, and the Commercial Code makes no distinctions between men and women regarding trade or business; for example, they do not require male involvement to bid for and sign contracts (Ahmed, 2010).

Women do face societal barriers in the general perception that men possess better business skills, and the ability to take the risks and critical decisions, although it is largely socially acceptable for women to enter into business partnerships with men (Ahmed, 2010).

Other challenges to participating in business include access to finance (UNDP, 2012). Although no restrictions could be found in the law regarding women being able to open a bank account, obtain

credit and access formal financial institutions, without the legal permission of her husband or guardian (Women, Business and the Law, 2017), cultural restrictions such as needing permission from her family or husband to partake in activities outside the home suggest that women can face significant restrictions around credit and financial services (UNDP, 2012; Ahmed, 2010).

c) Workplace rights

Iraq has ratified the Equal Remuneration Convention (1951) and the Discrimination (Employment and Occupation) Convention (1958). Women have the same rights regarding labour law as men under the 2005 Constitution and workers are protected under the Labour Law 2015, including against workplace discrimination, forced labour and child labour (Labour Law, 2015). Women do not need permission from their husbands or guardians to choose a profession or register a business, however, customary or cultural practices may restrict women participating in business (UNDP, 2012).

Women are guaranteed maternity leave with full pay for 14 weeks, with the guarantee of the same job or similar job upon return. There are provisions for nursing mothers to have full pay nursing break during the day (Labour Law, 2015).

4. Restricted Civil liberties

a) Citizenship rights

Women have the same rights as men to acquire, change or attain their nationality, according to the Iraqi Nationality Law. However, women are discriminated against in respect to conferring their nationality to their spouse or children. For children born outside of Iraq the mother may apply for Iraqi nationality within one year, so long as the child's father is unknown or stateless and the child is residing inside Iraq. Men do not face this restriction (UNHCR, 2014).

This law also allows for the naturalisation of the husband of an Iraqi woman to be the same as for men, as well as allowing her to confer her property to non-Iraqi husband and children once they become Iraqi. However, foreign husbands of Iraqi women must reside in Iraq for 10 years before they can apply for citizenship, in contrast to 5 years required for foreign-born wives of Iraq men (Ahmed, 2014).

Women have the same rights as men to apply for identity cards and passports (Civil Status Law, 1974 Arts. 44(1) and 45; Passport Law, 2015 No. 32 of 2015, Arts. 1(10) and 5). The poor security situation faced in Iraq further impacts women's movement inside the country (Ahmed, 2014).

b) Voting

Women and men have equal voting rights under the 2005 Constitution, although voting patterns vary, largely due to education levels, tribal or social pressures, including men demanding women in their family vote to the wish of man (Ahmed, 2014).

c) Political voice

The law provides women with the same rights as men to hold public and political office in Legislature, Executive and Judiciary branches (Iraq Constitution, 2005). In 2017, there were 83 women in parliament (WPL, 2017) and no female justices on the constitutional court (Women, Business and the Law, 2015).

Legal quotas exist to promote women's political participation at the national level with a goal of achieving not less than one-quarter female representation within the Council of Representation (Constitution of Iraq, Article 49.4). Article 3 of Law 26 (2009) states that countrywide there will not be less than 25% female representation. The law does not provide guidance beyond the achievement of a 25% quota for female representation at the national level. However, at the local level Article 13(2) of the Iraqi Council of Representatives Election Law, it states that there must be a woman among the final group of winners. If the final selection of winners of the elections does not fill the 25% quota, there are procedures set in place to ensure the correct number of women are placed within positions of governance. Each governorate determines the number of women to be included in the final winners list, for example, including those who gained the most votes among other female candidates but not enough votes to win seats (Quota Project, 2017).

Female judges and lawyers face discrimination from colleagues and are forced to sit in separate waiting chambers in court, are urged to stay at home by male family members and have even been killed by client's opponents or received death threats demanding they stay at home (Ahmed, 2014).

d) Access to justice

An unmarried women's testimony does not carry the same evidentiary weight in court as an unmarried man's, as they draw upon Shari'a law, which requires two female witnesses to corroborate a woman's testimony, and therefore be considered (Ahmed, 2014).

No laws could be located regarding a woman's capacity to be sued or sue in the same manner as a man, however as the Constitution recognises women as fully legal entities it can be assumed that this is true.

Sources

Ahmed, Huda (2010) 'Iraq', in Sanja Kelly and Julia Breslin, eds., (2010) Women's Rights in the Middle East and North Africa, Freedom House, New York, NY; Rowman & Littlefield, Lanham, MD

Alternatives, Iraqi Democratic Future Network (2010). Iraqi Women: Lost Liberties. http://iraq.alterinter.org/IMG/pdf/Final_Policya116.pdf

Food and Agriculture Organization of the United Nations (FAO), International Fund for Agricultural Development (IFAD), International Land Coalition (ILC), (2004). Rural Women's Access to Land and Property in Selected Countries. Progress Towards Achieving the Aims of the Convention on the Elimination of All Forms of Discrimination against Women. <http://www.landcoalition.org/sites/default/files/documents/resources/cedawrpt.pdf>

Human Rights Watch (2017a), Iraq: Parliament Rejects Marriage for 8-Year-Old Girls. <https://www.hrw.org/news/2017/12/17/iraq-parliament-rejects-marriage-8-year-old-girls>

Human Rights Watch (2017b), Commentary on the Draft Law on Anti-Domestic Violence in Iraq. <https://www.hrw.org/news/2017/03/19/commentary-draft-law-anti-domestic-violence-iraq>

International Institute for Vital Registration and Statistics (2017), Iraq. http://www.quotaproject.org/country/iraq#cvview_subnational

Iraq: Constitution of the Republic of Iraq, 15 October 2005. <http://www.refworld.org/docid/454f50804.html>

Iraq: Labour Law of Iraq, 2015. http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=96652

Iraq: Law No. 188 of 1959, Personal Status Law and amendments, 30 December 1959, <http://www.refworld.org/docid/469cdf3011.html>

Iraq: Ministry of Health, Birth Certificate. <http://www.mofa.gov.iq/en/submenu.php?id=43>

Iraq, Ministry of the Interior, General Directorate for Nationality, Passports Affairs Directorate. http://www.iraqnationality.gov.iq/passport_en.htm

Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. <http://www.refworld.org/docid/4b1e364c2.html>

Iraq: Penal Code, No. 111 of 1969, July 1969. <http://www.refworld.org/docid/452524304.html>

IWHR, CUNY, MADRE, OQFI (2015), Women's Human Rights Violations In Iraq in Response to the Fourth Periodic Report Of The Republic Of Iraq. http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/IRQ/INT_CESCR_CSS_IRQ_21592_E.pdf

Landinfo (2015) Report Iraq: Travel documents and other identity documents available at: http://www.landinfo.no/asset/3369/1/3369_1.pdf

MADRE, OWFI, WOLA (Republic of Iraq, Submission to the United Nations Universal Periodic Review, 20th Session of the Working Group on the UPR Human Rights Council [October 27 – November 7, 2014] Violence and Discrimination against Women in Iraq.

<https://www.madre.org/sites/default/files/PDFs/Violence%20and%20Discrimination%20Against%20Women%20in%20Iraq.pdf>

Personal Status Law and amendments [Iraq] Law No. 188 of 1959.
<http://www.refworld.org/docid/469cdf3011.html>

Puttick, Miriam (2015), The Lost Women of Iraq: Family-based violence during armed conflict. Ceasefire Centre for Civilian Rights and Minority Rights Group International.
https://www.ecoi.net/file_upload/1788_1447079735_mrg-report-a4-october-2015-web.pdf

Rutgers (2016), Fact Sheet: Sexual and Reproductive Health and Rights in Iraq.
<https://www.rutgers.nl/sites/rutgersnl/files/PDF/Factsheet%20Iraq%20Eng.pdf>.

Shadow Report, Iraqi Women in Armed Conflict and Post Conflict Situation. Shadow Report submitted to the CEDAW committee at the 57th Session. February 2014.
http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_16_192_E.pdf

The Central Statistics Organisation and the Kurdistan Regional Statistics Office (2012), Iraq Multiple Indicator Cluster Survey 2011, Final Report. https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Iraq/2011/Final/Iraq%202011%20MICS_English.pdf

The Loomba Foundation (2015), The Global Widows Report 2015. A Global Overview of the Deprivation Faced by Widows and Their Children. <http://theloombafoundation.org/wp-content/uploads/2015/07/Loomba-Foundation-Global-Widows-FULL-Report-2015-V2.2.pdf>

The Parliament of Kurdistan, Iraq. Act No.8 from 2011. The Act of Combatting Domestic Violence in Kurdistan Region – Iraq. The Law against Domestic Violence, 2011.
http://www.ekrg.org/files/pdf/combat_domestic_violence_english.pdf

UNDP, 2012. Women's Economic Empowerment Integrating Women into the Iraqi Economy. <http://www.undp.org/content/dam/rbas/doc/Women%27s%20Empowerment/Report%20on%20Women%20Economic%20Empowerment%20in%20Iraq,%20Integrating%20Women%20in%20the%20Iraqi%20Economy-.pdf> (accessed 26 May 2017).

UNHCR, 2014, Gender Equality, Nationality Laws and Statelessness.
<http://www.unhcr.org/4f5886306.pdf>

UNICEF (2011), Iraq. MENA Gender Equality Profile. Status of Girls and Women in the Middle East and North Africa. <https://www.unicef.org/gender/files/Iraq-Gender-Eqaulity-Profile-2011.pdf>

United Nations Inter-Agency Information and Analysis Unit, (2010), Violence Against Women in Iraq Factsheet. <http://www.refworld.org/pdfid/4cf4a67d2.pdf>

United Nations Population Fund (UNFPA) (2015), UNFPA Role in Sexual Violence in Conflict Survivors: Dohuk Case Study, Iraq. <http://iraq.unfpa.org/publications/unfpa-role-sexual-violence-conflict-survivors-dohuk-case-study-iraq?page=3>

US Department of State (2015), Country Reports on Human Rights Practices for 2015. Iraq. <https://www.state.gov/j/drl/rls/hrrpt/2015humanrightsreport/index.htm?year=2015&dliid=252925#wrapper>

US Department of State (2016), Office to Monitor and Combat Trafficking In Persons, 2016 Trafficking in Persons Report. <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258787.htm>

Women, Business and the Law. The World Bank. (2017) http://wbl.worldbank.org/data/exploreconomies/iraq/2015#wbl_ai

World Bank (2017) Women, Business and the Law, Iraq: available at: <http://wbl.worldbank.org/data/exploreconomies/iraq/2015>

WPL (2017) Iraq: Council of Representatives: <https://www.womenpoliticalleaders.org/parliament/iraq-council-of-representatives/>

Zeynep, Kaya (2016), Women Peace and Security in Iraq: Iraq's National Action Plan to Implement Resolution 1325. LSE Middle East Centre Report, Middle East Centre, LSE, London, UK. <http://eprints.lse.ac.uk/67347/1/WPSIraq.pdf>