

## IRAQ

Women and women's rights in Iraq have been – and continue to be – affected by the country's recent wars and the current internal conflict. Between 1960 and 1980, Iraqi women had gained access to education, health care and employment, and their political and economic participation was significantly advanced.<sup>1</sup> But women suffered considerably during the 1980-1988 Iran-Iraq war, with many becoming widows and having to support their families, although at the same time, the shortage of men enabled women to enter fields of education and employment that had previously been closed to them.<sup>2</sup> UN sanctions imposed after the first Gulf War (1991) caused further hardship for the Iraqi people, and since the 2003 war-, women's position and security in society has markedly deteriorated.<sup>3</sup> As of 2009, though, this appears to be improving and, according to Freedom House, there has been an increase in the number of women visible in public life as a result.<sup>4</sup>

Iraq's new Constitution (adopted in 2005) states that all Iraqis are equal before the law and prohibits discrimination based on sex (at Article 14).<sup>5</sup> However, the Constitution also cites Islam as the basic source of legislation and forbids the passing of laws contradictory to its "established rulings", and Article 41 allows each religious group in Iraq to govern its own personal status matters.<sup>6</sup> As a result, the situation of women in Iraq very much depends on the implementation of Islamic law and on the priorities of male religious authorities.<sup>7</sup> Iraq ratified the Convention on the Elimination of All forms of Discrimination Against Women in 1986, but has yet to ratify the Optional Protocol on violence against women.<sup>8</sup> Iraq maintains reservations to Article 2 (f) and (g), which call on states to modify or abolish existing laws and penal codes that discriminate against women; Article 9, which requires equal rights regarding changes and transfers of nationality; Article 16, which concerns the elimination of discrimination in marriage and family relations; and Article 29, paragraph 1, with regard to the principle of international arbitration on the interpretation or application of the convention.<sup>9</sup>

### 1. Discriminatory family code

Under Article 41 of the 2005 Constitution, each religious group in Iraq has the right to govern its own personal status matters. However, this provision has not yet been implemented, as revisions to the Constitution are on-going (as of 2011), and because women's rights activists in

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<sup>1</sup> Ahmed (2010) pp.157-158

<sup>2</sup> Ahmed (2010) pp.159, 173

<sup>3</sup> Ahmed (2010) p.159

<sup>4</sup> Freedom House (2010)

<sup>5</sup> Ahmed, Huda (2010) p.161

<sup>6</sup> Ahmed, Huda (2010) pp.160, 161

<sup>7</sup> Ahmed, Huda (2010) p.160

<sup>8</sup> United Nations Treaty Collection (n.d.)

<sup>9</sup> Ahmed (2010) pp.164-165

Iraq have mounted a sustained campaign against Article 41.<sup>10, 11</sup> Iraqi law considers women over 18 to be full adults, in contrast to many other neighbouring countries where women are considered legal minors, under the protection of a male guardian.<sup>12</sup>

Given on-going discussions regarding personal status matters under Article 41 of the Constitution, matters relating to the family in Iraq continue to be governed by the Personal Status Law of 1959.<sup>13</sup> The consent of both spouses is needed for a marriage to be legal, and the **legal age of marriage** is 18 years for both men and women (but with parents' consent and judicial permission the age can be lowered to 15 years).<sup>14, 15</sup>

At present, as outlined above marriage continues to be governed by the 1959 Personal Status Law, under which the minimum age for marriage is 18.<sup>16</sup> This is a civil law, but draws on Sharia law.

As outlined above, eventual implementation of Article 41 of the Constitution would allow each religious group in Iraq to govern its own personal status matters. This could result in different minimum ages for marriage being adopted by different groups.

**Early marriage** does occur, often arranged by parents and performed under a religious ceremony, but is not legally recognised.<sup>17</sup> Since 2003, there has apparently been a rise in the number of unregistered, temporary '*mut'ah*' marriages among Shiites, under which women have no legal rights.<sup>18</sup>

Under the Personal Status Law, the father is the guardian of the children, meaning that women and men do not have equal **parental authority** over children. Mothers are considered the physical – but not legal – custodians.<sup>19, 20</sup>

In cases of **divorce**, under the 1959 Personal Status Law, women are granted physical custody of children up to the age of 10, during which the father must pay child support to the mother. This custody can be extended up to the age of 15 if it is in the child's best interests, after which time the child can decide which parent s/he wants to live with. A woman does not automatically lose physical custody of her children if she remarries.<sup>21</sup>

At present, parental authority continues to be governed by the 1959 Personal Status Law, under which the minimum age for marriage is 18.<sup>22</sup> This is a civil law, but draws on Sharia law.

The 1959 Personal Status law granted women and men equal **inheritance** rights. However, subsequent amendments effectively reintroduced Sharia law as the framework for deciding on inheritance matters, and this discriminates against women.<sup>23</sup>

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<sup>10</sup> MacLeod, Jennifer (2010), pp.97-98

<sup>11</sup> UNICEF (2011), p.1

<sup>12</sup> Ahmed, Huda (2010), p.164

<sup>13</sup> MacLeod, Jennifer (2010), pp.12-13, 97-98

<sup>14</sup> Ahmed, Huda (2010), pp.168, 169

<sup>15</sup> MacLeod, Jennifer (2010), p.99

<sup>16</sup> MacLeod, Jennifer (2010), pp.97-99

<sup>17</sup> Ahmed, Huda (2010), p.168

<sup>18</sup> Ahmed, Huda (2010), p.169

<sup>19</sup> UNICEF (2011), p.2

<sup>20</sup> Ahmed, Huda (2010), p.169

<sup>21</sup> Ahmed, Huda (2010), p.169

<sup>22</sup> MacLeod, Jennifer (2010), pp.97-99

Sharia law provides for detailed and complex calculations of inheritance shares. Women may inherit from their father, mother, husband or children and, under certain conditions, from other family members. However, their share is generally smaller than that to which men are entitled. Daughters, for example, typically inherit half as much as sons.<sup>24</sup>

According to Ahmed, women frequently face pressure from their families to renounce their inheritance rights. In such cases, even when women are aware of their inheritance rights under Sharia, they are often reluctant to bring cases to the courts, preferring to resolve such disputes privately.<sup>25</sup>

### **More**

Men and women have different rights regarding **divorce** in Iraq: men have the right to divorce their wives unilaterally (repudiation), while women can file for divorce based on a number of specific causes (including 'conflict'), or pay, effectively, for a '*khula*' divorce (whereby a woman can obtain a divorce unilaterally, but then forfeits her dowry and any future financial support).<sup>26</sup>

The 1959 Personal Status Law states that a husband has a legal obligation to support this wife financially, and that a wife should only *not* obey her husband if his order is in conflict with Sharia.<sup>27</sup> This would imply that a woman cannot legally be recognised as the head of the household.

## **2. Restricted physical integrity**

In Iraq, there is no specific law criminalizing **domestic violence**. Article 29 of the Constitution prohibits all forms of violence and abuse within the family.<sup>28</sup> However, under Article 41 of the Penal Code (1969), a husband has the legal right to punish his wife.<sup>29, 30</sup> Attempts at repealing this and other discriminatory legislation have been unsuccessful, due to their rejection by the Supreme Judicial Council on the grounds that they would conflict with tribal and religious norms.<sup>31</sup>

According to UNICEF, as of 2011, the Iraqi government was drafting a domestic violence law.<sup>32,</sup>  
<sup>33</sup> No information was found to indicate that such a law has since been adopted.

In 2011, the Kurdistan Regional Government passed the Family Violence Bill, which includes provisions criminalizing domestic violence, as well as forced and child marriages and FGM.<sup>34</sup>

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<sup>23</sup> Ahmed, Huda (2010), p.176

<sup>24</sup> MacLeod, Jennifer (2010), p.62

<sup>25</sup> Ahmed, Huda (2010), p.176

<sup>26</sup> Ahmed, Huda (2010), p.169

<sup>27</sup> MacLeod, Jennifer (2010), pp.103, 105

<sup>28</sup> Ahmed, Huda (2010), p.168

<sup>29</sup> Ahmed, Huda (2010), p.168

<sup>30</sup> MacLeod, Jennifer (2010), p.9

<sup>31</sup> Bushra, Juhi (2011)

<sup>32</sup> UNICEF (2011), p.3

<sup>33</sup> Bushra, Juhi (2011)

<sup>34</sup> Human Rights Watch (2013), p.548

As of 2011, the Ministry of Women's Affairs was drafting a national action plan to combat violence against women, including domestic violence.<sup>35</sup> It is not clear if this action plan was finalised and whether it is being implemented.

At present, NGOs provide support to victims of domestic violence. However, Ahmed notes that women's rights NGOs seeking to provide support services to victims of domestic violence face significant bureaucratic hurdles, and must obtain permission from four separate ministries and the police.<sup>36</sup>

According to Human Rights Watch, the Kurdistan Regional Government has set up institutions to investigate and combat domestic violence.<sup>37</sup> These include special family protection units within the police, through which women can file complaints and seek protection.<sup>38</sup> However, these units are reported to be ineffective, and women seeking help from them have on occasion been returned to their families.<sup>39</sup> No data were available on conviction rates.

There appears to be a high level of acceptance of violence within marriages, and although domestic violence is largely under-reported (as it is considered to be a private matter, to be resolved within the family), it is believed to be common.<sup>40</sup> Women victims of domestic violence have options but to stay with their abusers, as there are few support services available, and natal families are often reluctant to take women back, on the grounds that leaving a husband brings shame on the whole family.<sup>41</sup> Relatives and tribal sheikhs who are called upon to intervene in domestic violence cases usually demand that the couple reconcile (even if they find in the woman's favour), leaving the woman at risk of further abuse.<sup>42</sup>

Amnesty International reports that levels of domestic violence are also high in Iraqi Kurdistan, although no accurate figures are available as to prevalence.<sup>43</sup>

**Rape** is a criminal offence under the Penal Code,<sup>44</sup> however, it is classed as a private offence under the Penal Code, meaning that the state cannot take action without permission from the victim or her legal guardian (if she is underage).<sup>45</sup>

Under Sharia law as interpreted in Iraq, the concept of spousal rape is not recognised. Indeed, the husband has the right to have sex with his wife unless she is ill or has a 'compelling reason' to refuse.<sup>46</sup>

Under Article 398 of the Penal Code, a rapist can escape prosecution by marrying the victim.<sup>47</sup>

No information was found regarding whether any mechanisms or measures exist to ensure the laws on rape are implemented, or on conviction rates.

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<sup>35</sup> Bushra, Juhi (2011)

<sup>36</sup> Ahmed, Huda (2010), p.172.

<sup>37</sup> Human Rights Watch (2010), p.4

<sup>38</sup> Ahmed, Huda (2010), p.170

<sup>39</sup> Ahmed, Huda (2010), p.170

<sup>40</sup> Ahmed, Huda (2010), p.170

<sup>41</sup> Bushra, Juhi (2011)

<sup>42</sup> Ahmed, Huda (2010), p.170

<sup>43</sup> Amnesty International (2010), p.179

<sup>44</sup> Penal Code, Article 393

<sup>45</sup> Ahmed, Huda (2010), p.171

<sup>46</sup> Ahmed, Huda (2010), p.168

<sup>47</sup> MacLeod, Jennifer (2010), p.10

According to the US Department of State, sexual crimes are rarely reported in Iraq, due to fear of stigma and retribution. Research by UNDP found that in cases of rape, the victim's family sometimes demands that she agrees to marry the rapist in order to protect the family's 'honour'; in the event that she refuses, the family may resort to the courts ask a judge to force the marriage to take place.<sup>48</sup>

According to Ahmed (writing in a report for Freedom House), **sexual harassment** is covered under the 1969 Penal Code and the 1987 Labour Code.<sup>49</sup> However, the US Department of State notes that the articles in the Penal Code covering sexual harassment actually relate to the prohibition of sexual relations outside of marriage; as such, a woman making a complaint of sexual harassment could herself face prosecution. In addition, a perpetrator is able to escape prosecution if he agrees to marry the victim.<sup>50</sup>

Ahmed notes that the law on sexual harassment is poorly enforced, and that few women are aware of their rights to protection.<sup>51</sup>

Fear of prosecution, bringing shame on the family and the resultant threat of 'honour' violence, as well as distrust in the criminal justice system mean few women report cases of sexual harassment. In addition, the absence of the rule of law means that women who do make complaints of sexual harassment are in danger of further violence from their aggressors.<sup>52, 53</sup>

As discussed below, street sexual harassment of women has been a significant feature of the on-going conflict in Iraq. According to Ahmed, police have been indifferent or hostile towards victims, and there are also reports of female members of the security forces facing sexual harassment from their male colleagues.<sup>54</sup>

There is no evidence that **female genital mutilation** (FGM) is practised in Iraq.

### **More**

The physical integrity of women in Iraq has been systematically compromised as a result of the on-going **conflict**, and women in many parts of Iraq are at risk of physical and sexual violence on a day-to-day basis. Women have faced physical attack on the streets from ordinary men, as well as from members of armed Islamist militias, who accuse them of not adhering to strict Islamic moral codes, while those taken into detention by both Iraqi and foreign forces report physical and sexual violence at the hands of their captors.<sup>55, 56, 57</sup> The World Bank also notes that the on-going conflict in Iraq has led to a large increase in male

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<sup>48</sup> UNDP (2012), p.12

<sup>49</sup> Ahmed, Huda (2010), p.175

<sup>50</sup> US Department of State (2013) Country Reports on Human Rights Practices for 2012: Iraq, US Department of State, Washington, D.C., <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204362> (accessed 22 August 2013)

<sup>51</sup> Ahmed, Huda (2010), p.175

<sup>52</sup> US Department of State (2013)

<sup>53</sup> Ahmed, Huda (2010), p.175

<sup>54</sup> Ahmed, Huda (2010), pp.163, 171

<sup>55</sup> Amnesty International (2010), p.178

<sup>56</sup> Ahmed, Huda (2010), pp.160-161, 164, 166

<sup>57</sup> Amnesty International (2013), p.130

adult mortality, relative to female adult mortality.<sup>58</sup> As Human Watch Rights observes, this has meant that many women are now bringing up children on their own, often in situations of considerable financial hardship and vulnerability.<sup>59</sup>

**'Honour' crimes**, whereby women are assaulted or killed by members of their family for having besmirched the family's 'honour' through some aspect of their behaviour, occur in Iraq, and under the Penal Code, those found guilty of committing 'honour' crimes are afforded lenient sentences.<sup>60</sup> According to Ahmed, writing in a 2010 report published by Freedom House, the number of 'honour' crimes has increased dramatically since the US-led invasion in 2003.<sup>61</sup> In most cases, crimes go unreported, and even when the police do learn of a case, they are often sympathetic towards the family and agree that they have done the right thing.<sup>62</sup> 'Honour' crimes also occur in Iraqi Kurdistan, although here, the government has passed a law prohibiting lenient sentences in 'honour' crime cases.<sup>63</sup> In 2007, a young woman from the minority Yezidi community was publicly stoned to death in Kurdistan by a group that included members of her family, after she formed an attachment to a young Sunni Muslim man. The murder was witnessed by members of the security forces, who failed to intervene.<sup>64</sup> According to Amnesty International, there have also been cases of gay men (or men assumed to be gay) killed by members of their family or tribe in the name of 'honour'.<sup>65</sup>

**Abortion** is only available in cases where the pregnant woman's life is in danger.<sup>66</sup>

### 3. Son bias

Iraq has a male/female **sex ratio** at birth of 1.05 in 2013.<sup>67</sup> This drops to 1.04 for the age-range 0-14 and keeps stable around 1.03 for the working age-group 15-64. The 2014 projected sex-ratio for the entire population is 1.03.<sup>68</sup> Analysis of sex ratios across age groups suggests initial evidence that **missing women** is an issue of concern in Iraq but the situation is improving.

#### *More*

Infant mortality rate is higher for boys than for girls, with 41.57 deaths over 1,000 live births and 33.28 deaths over 1,000 live births, respectively.<sup>69</sup>

UNICEF data on education statistics reveal that the gender gap in education is still not closed. The 2008-2012 net attendance ratio in primary school is 92.7% for males and 87% for females. This gap keeps almost unaltered in secondary education, with net attendance ratios around

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<sup>58</sup> World Bank (2011), p.119

<sup>59</sup> Human Rights Watch (2013), p.546

<sup>60</sup> Ahmed, Huda (2010), p.163

<sup>61</sup> Ahmed, Huda (2010), p.163 (no figures provided)

<sup>62</sup> Ahmed, Huda (2010), p.163

<sup>63</sup> Human Rights Watch (2010), p.4.

<sup>64</sup> Amnesty International (2009), p.11

<sup>65</sup> Amnesty International (2010), p.177

<sup>66</sup> United Nations Department of Economic and Social Affairs, Population Division (2013)

<sup>67</sup> CIA (2013)

<sup>68</sup> CIA (2013)

<sup>69</sup> CIA (2013)

52.5% for males and 44.6% for females.<sup>70</sup> Males' literacy rates for the 15-24 age group are higher than females' ones (84.1% compared to 80.5).<sup>71</sup>

#### 4. Restricted resources and assets

Under the 1970 Agrarian Reform Law, women in Iraq were granted the right to exercise economic independence and own and cultivate **land**.<sup>72</sup> Under the 2005 Constitution (Article 23) and the Civil Code, women and men have the same rights to own, access, and manage **non-land assets**.<sup>73, 74</sup>

On marriage, a woman has the right to retain to ownership and control of her own property, including land.<sup>75</sup> Land and property ownership appear to be governed exclusively by civil law.<sup>76, 77</sup> No data were found on women's land and property ownership.

Ahmed reports that few women are able to exercise their property and land rights in the current social and political situation.<sup>78</sup>

Women also have the right to enter into financial contracts and access **financial services**, including bank loans and other forms of credit, and do not need their husband's permission to do so.<sup>79</sup> Under the regulations of the Agricultural Bank, women are able to access credit on the same basis as men.<sup>80</sup>

No information was found regarding whether or not women experience discrimination in accessing credit. However, UNDP notes that women routinely need permission from husbands or male relatives to engage in activities outside the home, including economic activities, while Ahmed states that social perceptions reinforce the idea that men are better at business.<sup>81, 82</sup> Together, this would indicate that women face de facto restrictions on accessing credit.

According to the World Bank, 13% of men and 8% of women had a bank account in 2011. In the same year, 8% of adults had taken out a loan with a financial institution (defined as a bank, credit union, microfinance institution, or another financial institution such as a cooperative); these data were not disaggregated by gender.<sup>83</sup>

The government does not appear to run any micro-credit programmes for women, although some organisations do offer seed grants to women would-be entrepreneurs. Research by UNDP found that lack of familiarity, preference for borrowing from friends and family, and the

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<sup>70</sup> UNICEF Statistics (2013)

<sup>71</sup> UNICEF Statistics (2013)

<sup>72</sup> Food and Agriculture Organization (FAO), International Fund for Agricultural Development (IFAD), International Land Coalition (ILC) (2004), p.44

<sup>73</sup> Ahmed, Huda (2010), p.175

<sup>74</sup> MacLeod, Jennifer (2010), p.60

<sup>75</sup> Ahmed, Huda (2010) 'Iraq', in Sanja Kelly and Julia Breslin, eds., (2010), p.175

<sup>76</sup> Ahmed, Huda (2010) 'Iraq', in Sanja Kelly and Julia Breslin, eds., (2010), p.175

<sup>77</sup> MacLeod, Jennifer (2010), p.60

<sup>78</sup> Ahmed, Huda (2010), p.175.

<sup>79</sup> Ahmed, Huda (2010), p.175

<sup>80</sup> Food and Agriculture Organization (FAO), International Fund for Agricultural Development (IFAD), International Land Coalition (ILC) (2004), p.44

<sup>81</sup> UNDP (2012), p.21

<sup>82</sup> Ahmed, Huda (2010), p.176

<sup>83</sup> World Bank (n.d.) Financial Inclusion Data – Iraq

need to secure permission from husbands or brothers or fathers meant that many women were reluctant to make use of micro-credit services.<sup>84</sup>

According to the Microfinance Information Exchange, in 2012, women accounted for 15.74% of recipients of micro-credit in Iraq.<sup>85</sup>

## 5. Restricted civil liberties

Iraqi women are unable to obtain a passport and travel outside the country without the approval of a male relative. The Constitution guarantees the right of all citizens to travel within the country, and to choose their place of residence.<sup>86</sup>

Recently, women's freedom of movement and **access to public space** has been limited (unofficially) by the ongoing conflict; many women are not able – or do not dare – to leave their homes without male escort, as a result of the general security situation, for fear of attack at the hands of Islamist militias for having somehow transgressed unwritten rules regarding acceptable feminine dress and behaviour, or because families are worried about protecting their reputation.<sup>87, 88</sup> This has inevitably placed restrictions on their ability to work outside the home, and access education.<sup>89, 90</sup> It should be noted that women in Iraqi Kurdistan generally enjoy a greater degree of freedom of movement.<sup>91</sup>

Women – and men – who do not conform to accepted gender norms regarding appearance and behaviour are at risk of violence and discrimination, restricting their free access to public space. Gay men – or men perceived to be gay – have been targeted by Islamist militia groups in Iraq, particularly in Baghdad, where they have been kidnapped and tortured, prior to being killed.<sup>92</sup> As discussed above, gay men have also been subjected to 'honour' killings where they have been killed by members of their own families. In March 2012, there were violent attacks (including murders) against young people identifying as 'emo', a subculture characterized by distinctive clothes and musical tastes. Authorities have done nothing to bring those accountable to justice.<sup>93, 94</sup>

Ethnic and religious minorities in Iraq face discrimination, harassment, and violence. According to Minority Rights Group International minority women in particular fear wearing religious symbols publicly, and hide their religious affiliation to protect themselves from harassment.<sup>95</sup> This further impacts on the free access to public space of women from these communities.

In terms of **quotas**, under the Election Law, as amended in 2009, at least 25% of candidates on a party's candidate list must be women, and under Regulation no. 21, Seat Allocation (2010),

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<sup>84</sup> UNDP (2012), p.21

<sup>85</sup> Microfinance Information Exchange (2013) Database

<sup>86</sup> Ahmed, Huda (2010), p.167

<sup>87</sup> Amnesty International (2010), p.177

<sup>88</sup> UNDP (2012), p.20

<sup>89</sup> Ahmed, Huda (2010), p.161

<sup>90</sup> UNDP (2012), p.20

<sup>91</sup> Human Rights Watch (2010), New York

<sup>92</sup> Amnesty International (2010), p.177

<sup>93</sup> Human Rights Watch (2013), p.548.

<sup>94</sup> Amnesty International (2013), p.129

<sup>95</sup> Minority Rights Group International (MRG) (2012), pp.200-201

at least 25% of the national level Council of Representatives must be women. At sub-national level, at least 25% of seats in provincial councils will be allocated to women.<sup>96</sup>

In Iraqi Kurdistan there is a 30% quota in place in the KRG parliament.<sup>97</sup>

As of 2013, women held 25.2% of seats in parliament.<sup>98</sup>

### **More**

Women are protected from discrimination in the **workplace** under the 1987 Labour Code.<sup>99</sup>

Pregnant women in Iraq are entitled to 62 days' paid **maternity leave**. While on maternity leave, women receive their full salary. Maternity leave is paid for by the employer.<sup>100</sup>

In 2007, a prominent woman journalist and woman's rights activist, Sahar Hussain al-Haideri, was shot dead by an Islamist armed group, after having criticised such groups for their attacks on women's rights.<sup>101</sup> Women journalists are a rarity in Iraq, and many have faced violence and intimidation, particularly those writing and broadcasting on human rights and other contentious issues.<sup>102</sup> In general, the **media** does not engage with gender issues that could be deemed sensitive, and portrays women in the stereotypical roles of mother and homemaker.<sup>103</sup>

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<sup>96</sup> The Quota Project (2013)

<sup>97</sup> Human Rights Watch (2010), p.4

<sup>98</sup> OECD (2014), *Gender, Institutions and Development Database*, <http://stats.oecd.org>

<sup>99</sup> Ahmed, Huda (2010), pp.162, 174

<sup>100</sup> Labour Code, Article 84

<sup>101</sup> Amnesty International (2009), p.17

<sup>102</sup> Gorchekova, Nadezhda (2013)

<sup>103</sup> Ahmed, Huda (2010), p.186-187

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