The Status of Women in Iraq: Update to the Assessment of Iraq’s De Jure and De Facto Compliance with International Legal Standards

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This second assessment on the status of women in Iraq examines Iraq’s compliance with universally accepted standards of women’s rights and gender equality as outlined in core international human rights law instruments to which Iraq is a State Party.

The international human rights framework is an interconnected network of laws and principles that serve as legally binding commitments for ensuring human dignity and a universally equal society, regardless of, inter alia, race, gender, ethnicity, religion, or social status. Human rights were defined gradually over several decades through the drafting, signing and ratification of international legal instruments to which governments made commitments and undertook obligations.

International human rights law is embodied in the Universal Declaration of Human Rights (UDHR), as well as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the latter two of which Iraq ratified in 1971. These two covenants codified the principles articulated in the UDHR and together with the UDHR form what is commonly known as the International Bill of Human Rights.

Other key human rights instruments have been developed, signed and ratified by Member States based on the foundation of the UDHR, ICCPR and the ICESCR. These instruments typically focus on particular human rights topics and include the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), which Iraq ratified in 1970 with a reservation as to Article 22, and the Convention on the Rights of the Child (CRC), to which Iraq acceded in 1994 with a reservation as to Article 14(1). The assessment also looks at other conventions and declarations as they apply to individual subject areas, such as The Convention against Discrimination in Education, signed by Iraq in 1977, and the UN Declaration on the Elimination of Violence Against Women, passed by the UN General Assembly in 1994.

The most prominent human rights instrument on women’s equality is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Iraq acceded in 1986 with reservations as to Articles 2(f), 2(g), 9, 16 and 29(1). CEDAW was opened for signature in 1979, and since then has been ratified by 180 countries. CEDAW espouses values and establishes legal obligations for women’s human rights that have become universal because of the treaty’s widespread adoption around the world. These rights are not based on the customs, traditions or values of any one particular set of countries, but instead are basic tenets of equality that have been adopted by the world community.
International human rights treaty law broadly covers and ensures women’s participation in a variety of arenas including political office, education, health care, economic relations, rural concerns, employment, and marriage and family relations (or “personal status” as referred to elsewhere in the Muslim world). By acceding to and ratifying a substantial number of international conventions, Iraq voluntarily obligated itself to comply with the requirements and initiatives that are imposed on States Parties. These include not only measures to eliminate and prevent discrimination, but also proactive measures designed to promote equality between men and women and to change the culture of gender in signatory states. Iraq has entered reservations as to certain obligations under those treaties, in which case it is not legally bound by those specific provisions. In many cases, however, the same rights are protected by similar or broader obligations in other human rights treaties which Iraq has ratified. Furthermore, there are efforts underway in Iraq to remove reservations to certain treaties. Consequently, this assessment will incorporate provisions that have been reserved to in its analysis in selected cases in which the reservation is to a provision considered central to the meaning and purpose of the convention.

Divided into seven chapters, this assessment explores Iraq’s international legal obligations (see the sections on International Legal Framework and International Treaty Framework in each chapter), and looks at the state’s de jure (as a matter of law) and de facto (as a matter of practice) compliance with those obligations. As noted in the report, many of the subjects addressed are areas of concern for both men and women in Iraq, although the nature and degree of those concerns may differ. Most of the areas of concern elaborated on in this assessment would, if addressed, improve the quality of life of all people in Iraq, either directly or indirectly. Improvement in healthcare facilities, for example, would improve access to healthcare for all Iraqis, while greater access to education among Iraq’s women and girls would provide them with, inter alia, greater opportunities in the labor market with consequent social and economic benefits for them, their families and their country.

This assessment is intended as a reference and advocacy tool to be used by Iraqi legislators, policy makers and civil society activists. It may be used in analyzing and reviewing Iraqi constitutional and legislative provisions in universal principles of equality, non-discrimination and the advancement of women. It is also intended, and it is the hope of the authors that it will be used, to assist in the development of policies and programs aimed at strengthening the status of women in Iraq.

The first edition of this assessment, released in August 2005, has been recognized as a unique and important legal reference tool and has been used to assist reform efforts among women’s advocates in governmental and non-governmental institutions in Iraq.
The assessment illustrates the degree to which Iraqi women, as a matter of law (*de jure*) and as a matter of practice (*de facto*), enjoy the rights and protections guaranteed under international law, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In addition to identifying legislative (or *de jure*) deficiencies, it is crucial to determine the degree to which women, in practice, are accorded the rights and status guaranteed by domestic laws. A major focus of the report is, therefore, on *de facto* or “real life” impediments to women’s equality, only some of which may be products of poorly drafted or non-existent legislation. In order to properly identify the source of compliance or non-compliance with international law, *de jure* and *de facto* compliance is discussed separately in each chapter.

This is the second publication on the Status of Women in Iraq completed by the Iraq Legal Development Project (ILDP). The first was completed in July 2005, during the transitional phase of government and the constitutional drafting process. This report has thus been updated to include analysis of the 2005 Constitution of Iraq, as well as newly enacted legislation. It also reflects further changes in women’s *de facto* status, however, to the extent that research conducted in 2005 is still relevant today, it is retained in this second edition of the report.

The *de jure* analysis in this report was completed by attorneys at the American Bar Association with research support and advice from a team of Iraqi attorneys. The researchers and authors reviewed the spectrum of Iraqi laws currently in effect, including the Constitution of Iraq, Civil and Criminal Codes, and Revolutionary Command Council (RCC) Orders, to assess the degree to which the legislative regime supports Iraq’s international legal obligations.

The *de facto* analysis was initially conducted in the first-half of 2005 in cooperation with a network of Iraqi non-governmental organizations (NGOs) working on women’s issues in Iraq. Thirty-five women’s NGOs representing the cultural, religious and geographic diversity of Iraq were recruited to provide feedback on women’s situations in their respective regions. NGO representatives were selected to participate in the survey based on their substantive expertise in the areas covered by the surveys, and on their leadership and activism in Iraqi civil society. These NGOs underwent intensive training on international human rights frameworks applicable to women’s rights and gender equality. During this training, participants, in cooperation with the ILDP, created a survey protocol specifically tailored for the Iraqi context. NGO representatives used this universal survey protocol to interview

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**METHODOLOGY**

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

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members of Iraqi NGOs, religious experts, government representatives and regular women. Some respondents provided substantive expertise in areas such as health, education and personal status law. Other respondents provided anecdotal evidence for the de facto analysis of real-life impediments to the full realization of women’s rights. Those survey findings are contained in this second edition to the extent that they continue to accurately represent the situation in Iraq.

In addition, a team of ILDP researchers surveyed the range of available secondary sources and reports from NGOs, government sources, academics and international organizations in order to provide a thorough background analysis of the issues raised. This secondary source survey was updated for the present edition.

In November 2006, the draft second edition was reviewed by an Iraqi focus group consisting of advisors to government ministries, NGO representatives, religious clerics, lawyers, judges, prosecutors and Iraqi women from various regions. The input from these respondents is reflected throughout this update.

The assessment is broken down into seven thematic chapters: Political Participation, Civil Society and Women in Decision Making; Health; Violence Against Women and the Right to Personal Security; Family and Marriage; Nationality; Education; and Labor and Economic Rights. These categories are based on fundamental provisions in international human rights law regarding women’s rights and represent key areas of concern for the promotion, implementation, and safeguarding of women’s rights in Iraq. Information regarding the status of rural women and regional variations in de jure and de facto status of women is incorporated into each chapter to the extent possible.
INTRODUCTION

Women in Iraq today seem driven not by the expectation of improving their status but by the determination to hold on to what rights they have in the face of growing insecurity, violence, religious fundamentalism and economic hardship.

Women have seen significant gains in some areas since the 2003 invasion of Iraq, carving out an unprecedented space for women’s political and public participation, for example. However, they have largely been unable to capitalize on this position to improve women’s daily lives due to a lack of political will to place women in positions of leadership or to include them in fundamental decision making processes.

An examination of both the de jure and de facto status of women in Iraq exposes the considerable obstacles women face in the quest to secure and safeguard their human rights. Although past Iraqi constitutions guaranteed women formal equality, decades of social, economic and political upheaval have rendered many of these guarantees hollow. For example, women’s access to healthcare remains restricted not due to discriminatory laws but due to a lack of implementation of legislation coupled with an increasing lack of resources. Likewise, the low participation rate of girls in primary education reflects the failure of the government to protect existing rights and the escalating security risks. In other areas, such as family and criminal matters, laws expressly discriminating against women set the framework for depriving women of their legal rights. This systemic discrimination shifts the balance of power in matters of divorce, puts women at risk of violence, stifles women’s earning potential, and limits women’s autonomy as human beings. Like the constitutions before it, the Iraqi Constitution of 2005 establishes the framework for equality in protection and enforcement of human rights. It remains to be seen whether those guarantees will be put into effect.

WOMEN’S RIGHTS IN IRAQ

The development of women’s rights in Iraq has a long and complex history. After the 1958 revolution women were successful in acquiring greater rights in several areas, most notably through the introduction of the Personal Status Code in 1959 by the revolutionary government of General Abdul Karim Qasim. Drawn for the most part from both Sunni and Jafari (Shiite) interpretations of the Shari’a, the Personal Status Code established a uniform set of laws governing family and married life. In this respect, it deviated from other codes of the region by granting greater rights to women in areas such as inheritance and by limiting polygamy.
However, following the rise of the Ba’ath party in 1963, and in an effort to appease conservative factions of society, the Personal Status Code was amended to incorporate more traditional Islamic interpretations of women’s rights. Polygamy became legal under certain circumstances, and women’s allotment of inheritance was reduced in comparison with their male counterparts.

Similarly, the Nationality Law of 1963 provided for conferral of nationality to children only from an Iraqi father with limited exceptions. This overturned the law in force since Iraq’s inception which allowed nationality to pass where either parent was Iraqi.²

In 1970, the Saddam Hussein government passed an interim constitution that provided for formal equality for women with a non-discrimination clause. The Iraqi Interim Constitution of 1970³ and the Interim Constitution of 1990⁴ both contained equal protection clauses. Moreover, the 1970 Constitution included Article 5,⁵ which acknowledged and provided protection for Iraq’s minority communities. Article 26⁶ of the 1970 Constitution further guaranteed the right to peaceful gatherings and participation in associations and political parties.

Despite these assurances, Iraqi laws, including the Personal Status Code, the Penal Code and the Nationality Law, were still subject to interpretation and nullification by various Revolutionary Command Council (RCC) orders which effectively violated core provisions of the 1970 Constitution, including the non-discrimination clause. Examples of such discrimination, which largely came into effect in the last two decades of the Ba’ath regime, include provisions facilitating polygamy, providing mitigated sentences for the murder of women by men in the name of family honor, limiting women’s freedom of movement and depriving women of their property rights in certain cases of marriage to a foreigner. Most of these laws remain in effect to the present day.

In some respects, and at some stages of its rule, the Ba’ath party did promote the advancement of women. Women in Iraq in the 1970s and early 1980s were among the most educated women in the region and actively took part in the labor force. Despite these opportunities, women’s participation in political and public life was limited under the Ba’ath party and few women held influential positions. In 1972, the Ba’ath party established the General Federation of Iraqi Women (GFIW) as one of the only outlets for women’s participation in political and public life. Although largely a tool of the ruling party, the GFIW was able to achieve some advancement of women’s rights through various community programs focused on education, literacy and job training.⁷ Despite these efforts, women’s rights remained a largely political tool to be reduced or expanded to suit political, social and economic interests of the ruling party — a phenomenon which appears to have continued under the government today. Under Ba’athist rule, activists who advocated against the policies of the ruling regime were often singled out for harassment and punishment, which included rape, torture and public beheadings.

In the 1980s, Iraq’s war with Iran led to greater participation by women in the labor force as men went off to war. It also marked the beginning of Iraq’s economic decline, a change in the health sector — with the transfer of certain healthcare institutions from the public to the private sector — and a shift in the social dynamic, as thousands of Iraqi women became widows.
Iraq’s 1991 invasion of Kuwait led to more than a decade of economic sanctions and political isolation. Throughout this decade, Iraqis were deprived of basic nutritional and healthcare needs with a particularly detrimental impact on women’s pre-natal and post-natal condition and the condition of their newborn children, many of whom suffered the after-effects of war and weaponry. Following the 1991 Shiite uprising, the Ba’ath regime also sought to gain favor with Iraq’s tribes by adopting conservative laws and policies reflective of tribal traditions, many of which had detrimental effects upon women. Examples included the introduction of a policy disallowing the appointment of women to the judiciary as well as the passing of an RCC order broadening the scope of “crimes of honor” and allowing for mitigated sentences of as little as one year.⁸

When Saddam Hussein and the Ba’ath party fell from power in March 2003, following the invasion of the US-led multi-national forces, the US established the Coalitional Provisional Authority (CPA). Under the CPA, the Iraqi Governing Council (IGC) was appointed, as were governorate councils throughout the country. By May 2004, the CPA, with UN assistance, selected an Interim Iraqi Government (IIG) to oversee the administration of the country and the upcoming elections for a Transitional National Assembly. In all of these appointed bodies, women were under-represented. Women were excluded from the formal drafting process of the Transitional Administrative Law and only three women were nominated to serve on the 25-member IGC. Similarly, very few women were appointed to the local governorate councils and none were appointed governor or deputy governor. Women were similarly under-represented in the IIG.

The CPA also made significant changes to the Iraqi legal regime under its authority as the occupying administration. While many of those changes covered issues pertaining to human rights, such as freedom of assembly, prisoner and defendant’s rights, and legal representation for indigent litigants, laws discriminating against women were left untouched.

The Law of Administration for the State of Iraq for the Transitional Period (TAL), was formally introduced on February 3, 2004 by the CPA to serve as a fundamental law until a permanent constitution was established. The TAL delineated the legal and administrative framework for the governance of Iraq during the transitional period with a view to democratic self-governance. As stipulated in the TAL, the Transitional National Assembly took on the task of drafting and presenting for referendum a permanent Iraqi constitution.

The TAL’s equal-protection clause, Article 12,⁹ which was more specific in its language than the earlier constitutional documents, expressly provided for equality across gender, sect, opinion, belief, nationality, religion, and origin. Article 1(b) mandated that the TAL’s protections and construction of its application apply equally to both men and women.¹⁰ The TAL also provided legal recourse for victims of discrimination in Article 22.¹¹ Article 6 was functionally an affirmative action mechanism designed to correct the discriminatory and oppressive practices of the former regime against certain marginalized groups and communities although it made no reference to women.¹²

Despite the new opportunities articulated in the TAL and offered by a new post-Ba’athist political structure in Iraq, women remained largely absent from the frontlines of political life in Iraq. The TAL set guidelines for women’s representation in the Iraqi Transitional National Assembly by firmly stipulating that the electoral law “shall aim to achieve the goal
of having women constitute no less than one-quarter of the members of the National Assembly.” Propelled by the quota, women succeeded in securing almost 33% of the seats in the 2005 elections but were severely under represented in other branches of government. Only six of the 36 Cabinet positions in the transitional government were given to women and women made up only nine of the 55-member Constitutional Drafting Committee. Moreover, while the newly independent Iraqi judiciary abandoned the Ba’athist policy of exclusion of women, active measures were not taken to increase women’s representation, leaving the rate of women’s representation in the judiciary at less than 2%.

The 2005 Constitution, passed by referendum in October of that year, is in some areas progressive and in others problematic in terms of its treatment of women’s rights and gender equality.

Article 14 clearly establishes the standard for equal protection in application of all laws and constitutional provisions by stating that “Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.”

Article 16 goes on to state that “[e]qual opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken.” This provision could be interpreted as supporting the implementation of affirmative action, although clearer language, such as an express reference to temporary special measures with a view to rectifying inequalities or past discrimination would put this interpretation beyond doubt.

The equal protection and equal opportunity provisions of Articles 14 and 16 are solidified by Article 13 of the new Constitution which establishes the Constitution as the “preeminent and supreme law in Iraq” and renders void any laws which contradict its provisions. In contrast with the haphazard application of the equal protection clauses of former Iraqi constitutions, this provision mandates that all laws, without exception, must treat men and women equally.

However, Article 2 of the 2005 Constitution is considered problematic as it introduces undefined terms into the document. It establishes Islam as a foundational source of legislation and states that:

A. No law may be enacted that contradicts the established provisions of Islam

B. No law may be enacted that contradicts the principles of democracy.

C. No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.

Paragraphs A and B introduce uncertain parameters into the legislative drafting process, as the “established provisions of Islam” and the “principles of democracy” are open to interpretation. Paragraph C is less problematic, in that it refers to the express provisions of the Constitution as contained in Section 2. However, a full reading of the Constitution, and Article 13 in particular, leads to the conclusion that no law may be enacted that contradicts any provision of the Constitution, and not simply the rights and basic freedoms.

In a similar vein, personal status is again at the centre of fierce debate, having been targeted by the drafters of the Constitution. By providing that “Iraqis are free in their commitment to
their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law,” Article 41 of the Constitution essentially calls for the withdrawal of the 1959 Code and the establishment of a new regime in its place. Although the existing code and its amendments contain provisions which discriminate against women, a new regime opens the door to a wider range of uncertainties for women in terms of the rules that will apply and the individuals or institutions that will apply them. Although Article 2 of the new Constitution dictates that such rules must comply with the Constitution, including Article 14’s equal protection requirements, application of similar provisions in other Arab states, along with the current dominance of religious conservatism in Iraq, casts serious doubt on whether any new system of confession-specific personal status regulations would be consistent with a constitutional framework that clearly supports both supremacy of the Constitution over other forms of law and equal protection under the law for all people regardless of gender, religion or sect.

Decades of discrimination in terms of women’s citizenship rights have been reversed by Article 18 of the 2005 Constitution which provides that Iraqi nationality may pass from an Iraqi father or mother. Effective application of Article 18 remains a question, however, as the recently enacted Nationality Law places conditions on acquisition of nationality which are inconsistent with this constitutional provision.

In language mirroring that of the TAL, Article 49 (fourth) of the Constitution provides that “[t]he elections 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.” No provisions for minimum representation exist for the other branches of government, with consequent effects on women’s representation in the executive and judiciary.

It is also worth noting that the language of the Constitution is not gender neutral. In a negative departure from the TAL, the Constitution contains no provision to the effect that non-gender specific language shall apply equal to males and females. This does not undermine the equal protection clause of the Constitution, however it is problematic in terms of clarity of language of the Constitution and ignores the importance of language in promoting equality of women.

While the 2005 Constitution articulates women’s equality before the law, concerns over women’s overall legal standing persist. The vast majority of the discriminatory laws and RCC orders enacted under Saddam Hussein were not repealed under the CPA or the interim and transitional governments and remain in effect to the present day, contradicting the very essence of Article 14 of the Constitution. Even recently enacted legislation, such as the Nationality Law of 2006, falls short of the standards and guarantees provided under the 2005 Constitution.

There are also indications that efforts to improve women’s de facto status in Iraq will face continued challenges. Although sustained by a quota, women hold fewer positions in the Council of Representatives following the December 2005 elections and their representation in the executive branch has fallen to three of the 36 cabinet positions and two of the eight ministries of state.

Moreover, the strength and breadth of women’s political participation, even when assisted by a quota, has been called into question. Independent and reform minded women have
been largely excluded from the party list system implemented in the January and December 2005 elections. The largest single group of women in the Council of Representatives is religiously conservative and is viewed by the under-represented liberal-secular camp as adopting political positions detrimental or neglectful of women’s interests.

Women’s position under the Iraqi Constitution is still subject to change as the Council of Representatives takes on the task of presenting a further set of revisions for public referendum. The proposed revisions are to be developed by a Constitutional Review Committee (CRC) “representing the principal components of the Iraqi society.” Despite the mandated structure, women hold only two of 27 seats in the CRC, giving rise to serious concerns as to the political will to involve women in the development of the Iraqi state or to deliver a constitutional framework that will support the realization of women’s rights in accordance with international law.

Arguably the greatest threat to the realization of women’s rights and gender equality lies in the government’s lack of capacity and lack of political will to implement its obligations. The Ministry of State for Women’s Affairs (MSWA) established under the CPA and still in existence today is undermined by a woefully small budget, the absence of authority and an unclear mandate. Much needed law reforms are set aside as the list of laws to be reviewed and passed by the COR continues to mount and discriminatory laws pass through the COR unnoticed. In the health sector, a decade of sanctions and the exodus of qualified medical practitioners are such that Iraq’s medical institutions are unable to adequately address the health care needs of the population and women are increasingly put at risk in the course of childbirth. Women and girls are increasingly denied access to education due to concerns for their security and due to the economic constraints faced by the vast majority of Iraqi families.

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

Importantly, it is Iraqis, women and men, who remain at the forefront of the movement for gender equality and full realization of Iraq’s international human rights obligations. This is a force which has seen many victories — among them the Personal Status Code of 1959 and the parliamentary quota of 2005 — and which secured the status of Iraqi women as leaders in the area of women’s rights more than a half-century ago. It is this experienced and committed political force which will ensure that despite current challenges, the status of women in Iraq will remain on the political agenda and move forward in the years to come.
Gender Equality and Non-Discrimination – Iraq’s Obligations under International Law

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

The Universal Declaration of Human Rights (UDHR), the founding document of international human rights law, entitles everyone to all of the rights and freedoms set out in the declaration without discrimination, including on the grounds of sex (Article 2). Although originally non-binding in nature, the UDHR has come to be considered over time as an authoritative interpretation or definition of fundamental human rights. It must be noted that Article 2 does not exist in isolation. It is an overarching right that must be read in conjunction with all of the rights set forth in the UDHR.\(^{19}\)

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are legally binding upon all ratifying states, including Iraq.\(^{20}\) The ICCPR obligates States Parties to respect and ensure “the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant” (Article 3) and “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2). As with the UDHR, Article 2 of the ICCPR is an overarching provision, applicable together with other provisions, thus placing the obligation on states “to respect and to ensure” without discrimination all of the rights delineated in the ICCPR.

The ICESCR, Article 2(2) similarly obligates States Parties to guarantee that “the rights enunciated in the present Covenant will be exercised without discrimination of any kind” including on the basis of sex.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Iraq acceded on August 13, 1986, seeks the achievement of equality between women and men and specifies the particular areas in which women are most likely to experience discrimination and inequality in their lives. CEDAW is distinguished from other international treaties by its expansive and comprehensive definition of discrimination against women (Article 1), which includes distinctions that have a discriminatory effect:

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

Over the years, the CEDAW Committee has expanded the definition above to include various specific discriminatory acts against women such as domestic violence or other forms of violence against women.\(^{21}\)
While legislation in Iraq does not incorporate the particular definition of “discrimination” stipulated in Article 1 of CEDAW, Iraq signed and ratified CEDAW in 1986 without reservation to the difference in definition.

Iraq has, however, entered reservations to other provisions of CEDAW, including Article 2(f)-(g) (relating to the taking of all appropriate measures to abolish laws which constitute discrimination against women); Article 9(1)-(2) (relating to nationality); and Article 16 (relating to marriage and family relations). In light of the provisions in the 2005 Constitution allowing for conferral of nationality from either parent, the reservation to Article 9 appears to be inconsistent with Iraq’s express constitutional commitments and should be withdrawn. The CEDAW Committee has expressed concern at the former government of Iraq’s “justification of . . . reservations [to Articles 2(f)-(g), 9(1)-(2) and 16] as being based on its desire to apply those provisions of the Convention in a manner consistent with Islamic Sharia” and has noted that, in particular, “Articles 2 and 16 are central to the object and purpose of the Convention.” The Vienna Convention on the Law of Treaties dictates that a State Party cannot reserve to articles that are central to the object and purpose of an instrument. The CEDAW Committee has thus called on the government of Iraq to “assess the justifications for [all] reservations [to CEDAW] and modify or withdraw them as soon as possible to ensure full implementation of the Convention.” The reservations are discussed in further detail in the report, as relevant.

It must also be noted that Iraq, along with the vast majority of Arab states, has failed to ratify the Optional Protocol to CEDAW which entered into force on December 22, 2000 as a means for enforcing and strengthening the rights delineated in CEDAW. The Optional Protocol provides for two new mechanisms to hold States Parties accountable for their CEDAW obligations: a communications procedure, which provides individuals and groups with the right to lodge complaints with the CEDAW Committee; and an inquiry procedure, which enables the CEDAW Committee to conduct investigations into serious and systematic abuses of women’s rights. Thus a woman whose rights have been violated or who has been the victim of violence, for example, can file a petition with the CEDAW Committee after she has exhausted all of her domestic remedies. Although Iraq’s ratification of the Optional Protocol would strengthen the means of enforcement of the treaty, its obligations as a State Party must be adhered to independent of Iraq’s recognition of this enforcement mechanism.
ENDNOTES

1. On July 14th 1958, the Hashemite monarchy in Iraq was overthrown and a new republic was proclaimed, as one commentary explains: “the July 14 revolution was the culmination of a series of uprisings and coup attempts ... The revolution radically altered Iraq’s social structure, destroying the power of the landed shaykhs and the absentee landlords while enhancing the position of the urban workers, the peasants, and the middle class. In altering the old power structure, however, the revolution revived long-suppressed sectarian, tribal and ethnic conflicts. The strongest of these conflicts were those between Kurds and Arabs and between Sunnis and Shiites.” www.globalsecurity.org/military/world/war/iraq-coup.htm

2. Article 8 of the Iraqi Law of Nationality Number 42 of 1924:
An Iraqi is a person who is born to an Iraqi Parent.

3. Article 19 of the 1970 Constitution:
(a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin, or religion.
(b) Equal opportunities are guaranteed to all citizens, according to the law.

4. Article 19 of the 1990 Constitution (amendment of 1970 Constitution, but this clause was unchanged):
(a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin, or religion.
(b) Equal opportunities are guaranteed to all citizens, according to the law.

5. Article 5 of the 1970 Constitution:
(a) Iraq is part of the Arab Nation.
(b) The Iraqi People are composed of two principal nationalisms: the Arab Nationalism and the Kurdish Nationalism.
(c) This Constitution acknowledges the rights of the Kurdish people and the legitimate rights of all minorities within the Iraqi unity.

6. Article 26 of the 1970 Constitution:
The Constitution guarantees freedom of opinion, publication, meeting, demonstrations and formation of political parties, syndicates, and societies in accordance with the objectives of the Constitution and within the limits of the law. The State ensures the considerations necessary to exercise these liberties, which comply with the revolutionary, national, and progressive trend.


9. Article 12 of the TAL:
All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion, or origin, and they are equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited. Everyone has the right to life, liberty, and the security of his person. No one may be deprived of his life or liberty, except in accordance with legal procedures. All are equal before the courts.

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

11. Article 22 of the TAL:
If, in the course of his work, an official of any government office, whether in the federal government, the regional governments, the governorate and municipal administrations, or the local administrations, deprives an individual or a group of the rights guaranteed by this Law or any other Iraqi laws in force, this individual or group shall have the right to maintain a cause of action against that employee to seek compensation for the damages caused by such deprivation, to vindicate his rights, and to seek any other legal measure. If the court decides that the official acted with a sufficient degree of good faith and in the belief that his actions were consistent with the law, then he is not required to pay compensation.
12 Article 6 of the TAL:  
The Iraqi Transitional Government shall take effective steps to end the vestiges of oppressive acts of the previous regime arising from forced displacement, deprivation of citizenship, expropriation of financial assets and property, and dismissal from government employment for political, racial, or sectarian reasons.

13 Article 30(c) of the TAL: The National Assembly shall be elected in accordance with an electoral law and a political parties law. The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly and having fair representation for all communities in Iraq, including the Turcomans, ChaldoAssyrians, and others.

14 Article 13 of the 2005 Constitution:  
First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.
Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.

15 Article 18 of the 2005 Constitution:  
First: Iraqi citizenship is a right for every Iraqi and is the basis of his nationality.
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:
   A. An Iraqi citizen by birth may not have his citizenship withdrawn for any reason. Any person who had his citizenship withdrawn shall have the right to demand its reinstatement. This shall be regulated by a law.
   B. Iraqi citizenship shall be withdrawn from naturalized citizens in cases regulated by law.
Fourth: An Iraqi may have multiple citizenships. Everyone who assumes a senior, security or sovereign position must abandon any other acquired citizenship. This shall be regulated by law.
Fifth: Iraqi citizenship shall not be granted for the purposes of the policy of population settlement that disrupts the demographic composition of Iraq.
Sixth: Citizenship provisions shall be regulated by law. The competent courts shall consider the suits arising from those provisions.

16 Article 1(b) of the TAL stated: “Gender-specific language shall apply equally to male and female.”

17 Article 26 of the TAL:  
(a) Except as otherwise provided in this Law, the laws in force in Iraq on 30 June 2004 shall remain in effect unless and until rescinded or amended by the Iraqi Transitional Government in accordance with this law.

(c) The laws, regulations, orders, and directives issued by the Coalitional Provisional Authority pursuant to its authority under international law shall remain in force until rescinded or amended by legislation duly enacted and having the force of law.

18 Article 130 of the 2005 Constitution:  
Existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution.

19 Article 142 of the 2005 Constitution:  
First: The Council of Representatives shall form at the beginning of its work a committee from its members representing the principal components of the Iraqi society with the mission of presenting to the Council of Representatives, within a period not to exceed four months, a report that contains recommendations of the necessary amendments that could be made to the Constitution, and the committee shall be dissolved after a decision is made regarding its proposals.
Second: The proposed amendments shall be presented to the Council of Representatives all at once for a vote upon them, and shall be deemed approved with the agreement of the absolute majority of the members of the Council.
Third: The articles amended by the Council of Representatives pursuant to item “Second” of this Article shall be presented to the people for voting on them in a referendum within a period not exceeding two months from the date of their approval by the Council of Representatives.

Fourth: The referendum on the amended Articles shall be successful if approved by the majority of the voters, and if not rejected by two-thirds of the voters in three or more governorates.

Fifth: Article 126 of the Constitution (concerning amending the Constitution) shall be suspended, and shall return into force after the amendments stipulated in this Article have been decided upon.

19 The UDHR’s provisions have been almost universally applied through state practice through the embodiment of its provisions in national laws, constitutions and international and regional conventions. It is thus broadly, although not universally, accepted that the UDHR has assumed the status of customary international law. A customary norm is considered binding on all states except those who have expressly disavowed it during the course of its development.

20 Iraq signed the ICCPR and the ICESCR on 18 February 1969 both conventions were ratified on 25 January 1971. There are two additional protocols to the ICCPR, neither of which Iraq has signed. The First Optional Protocol to the ICCPR contemplates enabling the Human Rights Committee to receive complaints from individuals. The Second Optional Protocol to the International Covenant on Civil and Political Rights aims at the abolition of the death penalty.


POLITICAL PARTICIPATION, CIVIL SOCIETY AND WOMEN IN DECISION MAKING

“The law … gave women a representative quota of 25%. However … it is not enough for the law alone to guarantee women’s rights. Men have to be convinced and the society as a whole has to be convinced of women’s qualifications and their abilities. This is most important.”

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

Women turned out in record numbers for the January 2005 elections. Eighty-seven women were elected to the 275-member Transitional National Assembly (TNA) under a quota system implemented under the Electoral Law of 2004, issued during the last days of administration of the Coalition Provisional Authority (CPA). This quota system was adopted into the 2005 Constitution, and in the December 2005 elections 27% (73) of those elected to the Council of Representatives (COR) were women.

While Iraq is in de jure compliance with core international conventions providing for women’s right to vote and to run for public office, it has been widely observed that women are not a powerful group either within the Council of Representatives or their own political parties, and that they remain absent from leadership positions within the highest echelons of government. Exposure to assassinations and kidnappings is also cited as a significant factor limiting women’s effective participation, both in political life and civil society activism.

INTERNATIONAL LEGAL FRAMEWORK

Core international human rights instruments provide for the right to political participation, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).
The UDHR’s statement that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives…. and to equal access to public service in his [or her] country” was further solidified through the ICCPR’s legally binding provisions. Article 25 of the ICCPR indicates that every citizen, without distinction, has the right to take part in the conduct of public affairs, to vote, to be elected, and “to have access on general terms of equality to public service in his [or her] country.” In conjunction with the ICCPR’s equality provisions set forth in Article 2 (see the discussion of this Article and its application in the Introduction) the Human Rights Committee (HRC) has interpreted Article 25 as protecting the rights of “every citizen” such that “[n]o distinctions are permitted between citizens in the enjoyment of these rights on the ground of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Moreover, “the Covenant requires States Parties to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.”

The HRC further explains that the right to participate in public affairs entails individuals’ participation in legislative bodies or holding political office.

Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process. . . . Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government.

Indirect ways of participating in public affairs within the meaning of Article 25 include exercising the right to vote in order to choose government officials who will represent one’s views and who “are accountable through the electoral process for [the] exercise of [their] power.” Another indirect means of participation entails exerting influence through public debate and the ability to organize as a group. This necessarily invokes Articles 19, 21, and 22 of the ICCPR that focus on freedom of expression, peaceful assembly, and association.

Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) includes women’s right to political participation on equal terms with men. It seeks to ensure that women vote in all elections and public referenda, are eligible for election to all publicly elected bodies, participate in the development of government policy and its implementation, hold public office and perform all functions at all levels of government, and participate in civil society organizations concerned with public and political life.

The CEDAW Committee explains that the obligations delineated in Article 7 are not limited to the areas specified within the provisions of the article:

The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women’s
organizations, community-based organizations and other organizations concerned with public and political life.\textsuperscript{5}

Some of the factors that prevent women from fully participating in the political sphere have generally been a particular nation’s “cultural framework of values and religious beliefs, the lack of services and men’s failure to share the tasks associated with the organization of the household and with the care and raising of children.”\textsuperscript{7} The CEDAW Committee emphasizes that in all nations, cultural traditions and religious beliefs have played a role in restricting women to the private sphere and excluding them from actively participating in public life. Even in countries where women do participate in politics, they have been confined to issues such as the environment, children, and health and are deflected from issues such as conflict resolution. Furthermore, women politicians and government officials are not generally granted responsibilities related to the finances and budget of the country.\textsuperscript{8}

Additionally, CEDAW Article 8 provides that States Parties must ensure that women have equal opportunities to represent their government at the international level and participate in the work of international organizations. The CEDAW Committee indicates that “[t]his requires that they be included in economic and military matters, in both multilateral and bilateral diplomacy, and in official delegations to international and regional conferences.”\textsuperscript{9} Often times, women lag behind in numbers at the international level because countries do not have “objective criteria and processes for appointment and promotion to relevant positions and official delegations.”\textsuperscript{10}

The CEDAW Committee offers one course of action for ensuring women’s equal participation in public life both at the national and international level: temporary special measures. The Committee explains that it is not sufficient for a country to pass legislation that ensures equal representation of women in government and politics either nationally or abroad. “Failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men.”\textsuperscript{11} Consequently, States Parties to CEDAW are encouraged, in accordance with Article 4, to use temporary special measures to give full effect to Article 7 and 8 discussed above.\textsuperscript{12} That is, in order to bring women on equal footing with men in the public sphere, countries should implement measures such as “recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed to equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies.\textsuperscript{13}

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

Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, \textit{inter alia}…[m]easures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.
In resolution 1483, the Security Council made express reference to UN Security Council resolution 1325 in the context of Iraq, “[e]ncouraging efforts by the people of Iraq to form a representative government based on the rule of law that affords equal rights and justice to all Iraqi citizens without regard to ethnicity, religion, or gender, and, in this connection, recalls resolution 1325 (2000).”\textsuperscript{14}

DE JURE COMPLIANCE

While the Iraqi Interim Constitution of 1970 guaranteed equal opportunities to all citizens and made express reference to gender in its non-discrimination clause (Article 19), it provided no specific mechanisms to ensure women’s political participation. Chapter IV of that Constitution on “Institutions of the Iraqi Republic,” outlined the roles and composition of the major organs of government. It contained no quota provisions with respect to any branch of government and made no express reference to gender. Significant advances have been made under the 2005 Constitution of Iraq, although it still contains no special measures for minimum representation of women beyond the Council of Representatives.

Political Participation

The 2005 Constitution of Iraq expressly provides for the equality of men and women in guaranteeing the basic political rights of Iraqi citizens.

\textbf{Article 20 of the 2005 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.

\textbf{The Quota and the COR}

In delineating the requirements of membership in the Council of Representatives (COR) (Iraq’s Parliament) in Article 49, the Constitution “aims to achieve”, but does not mandate, a minimum quota of 25% for women’s participation in the COR. This language should be strengthened in order to fully entrench the quota for women’s participation in the COR.

\textbf{Article 49(Fourth) of the 2005 Constitution:}

The elections 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.

Article 49’s predecessor provision, Article 30(c) of the TAL, was similarly weak in failing to mandate the quota, instead leaving the achievement of the quota to the enacting legislation. A system for enforcing the quota was provided for under the Coalitional Provisional Authority’s (CPA) Order Number 96 of 15 June 2004, “The Electoral Law,” and was in effect during the January 2005 elections. Article 4 of CPA Order Number 96 provided that party
lists submitted to the Commission must list candidates in a ranked order so that seats won by the party would be allocated to candidates in accordance with that ranking. Notably, paragraph 2 of Article 4 provided that “[n]o fewer than one out of the first three candidates on the list must be a woman; no fewer than two out of the first six candidates must be a woman; and so forth until the end of the list.”

A new Elections Law was passed on September 12, 2005 replacing CPA Order 96. This law governed the December 2005 parliamentary elections. Implementing regulations were promulgated by the Independent Electoral Commission of Iraq (IECI), and these laws and regulations governed the December 2005 elections for the national legislature.

**Article 1 of the Elections Law of 2005:**
This law applies to the following:

1. Election of a Council of Representatives
2. Election of the National Assembly in the case where item E of Article 61 of TAL is implemented [This provision is no longer applicable as the TAL is no longer in effect]
3. Elections of the parliaments of the regions, governorate councils, and local councils, unless otherwise provided by law.

In giving effect to the quota, Articles 11 and 12 of the Elections Law provided that one out of each three candidates on a list must be a woman, and that seats be awarded to candidates in accordance with the order of the names on the list. Under Article 14 of the Elections Law, if a member of the Council of Representatives lost his seat, he would be replaced by the next candidate on the list, but if the vacant seat belonged to a woman, she must be replaced with a woman if not doing so would affect the percentage of women’s representation. This provision is ambiguous; taken literally, any loss of a seat by a woman would affect the percentage of women’s representation.

**Article 11 of the Elections Law of 2005:**
At least one woman must be among the first three nominees on the list and at least two women must be among the first six nominees on the list and so on until the end of the list.

**Article 12 of the Elections Law of 2005:**
Seats allotted to an entity or a coalition shall be allotted to candidates in accordance with the order of the names on the list.

**Article 14 of the Elections Law of 2005:**
First: If a member of the Council of Representatives loses his seat for any reason he shall be replaced by the next candidate on the list according to the order on the list.
Second: If the vacant seat belonged to a woman, it is not necessary that the woman be replaced by a woman unless not doing so would affect the percentage of women’s representation.

IECI Regulations 9-2005 and 13-2005 added detail to the implementation of the quota and provided for the replacement of a candidate who died or became permanently incapacitated or disqualified during the election with a woman if the candidate to be so replaced was a woman. At first glance, Section 5.3 appeared to be in conflict with Article 14 of the Elections Law, however a careful reading revealed that Article 14 referred to replacement of COR members after elections have been certified, while Section 5.3 referred to replacement of candidates during the process of allocation of seats immediately following the elections.

Section 4.1.2 of IECI Regulation 9-2005 “Certification of Candidate lists”:
On any list of candidates, except one presented by an individual person certified as a political entity, no fewer than one out of the first three candidates on the list must be a woman, no fewer than two of the first six candidates must be a woman, and so on until the end of the list.

Section 5 of IECI Regulation 13-2005 “Allocation of Seats”:
5.1. Seats allocated to an entity under Section 4 shall be awarded to candidates from the entity’s certified list for that governorate, in the order in which they appear on that list.
5.2 A candidate awarded a seat under Section 5.1. may not refuse it nor resign it before becoming a member of the Council.
5.3 If a candidate on an entity’s list certified by IECI who is to be awarded a seat has died or become permanently incapacitated or disqualified, the candidate’s place shall be taken by the next candidate on the entity’s list, but if the candidate to be replaced was a woman, the place shall be taken by the next woman on the list unless no woman remains on the list. This also applies to awarding the compensatory and national seats.

In January 2007, the Council of Representatives created a new electoral management body, the Iraqi High Elections Commission (IHEC). The final version of the law creating and governing this body has not yet been released. Future elections will be administered by the IHEC.

Other Government Bodies
The Constitution of 2005 does not contain specific provisions for minimum representation of women in local and governorate councils. The new IHEC will be charged with drafting new elections laws, which would presumably address the issue of quotas for women’s rep-
representation. Based on the Constitution, laws relating to elections do not appear to be within the exclusive powers of the federal government, so it is possible that laws governing the representation of women in governorate and local elections could be made at the regional level as well as by the IHEC.

There are no provisions in the Constitution or any enacting legislation mandating minimum representation of women in any other branches of government, executive or judicial, or in specific positions (such as the Presidency Council).

Civil Society

Freedom of Association

Article 39 of the 2005 Constitution broadly preserves the equal right to form political parties and civil society organizations. It also contains a commitment, in Article 45, to strengthen the role of civil society institutions and support their independence.

Although the new Iraqi Constitution does not make an express guarantee of “non-interference” with the development and partnerships of civil society institutions, as was contained in Article 21 of the former Transitional Administrative Law, Article 46 does include an all-encompassing limitation on the state’s ability to restrict the rights and freedoms contained in the Constitution.

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<tr>
<th>Article 39 of the 2005 Constitution:</th>
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<tr>
<td>First: The freedom to form and join associations and political parties shall be guaranteed, and this shall be regulated by law.</td>
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<tr>
<td>Second: It is not permissible to force any person to join any party, society or political entity or force him to continue his membership in it.</td>
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<th>Article 45 of the 2005 Constitution:</th>
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<tr>
<td>First: The state shall seek to strengthen the role of civil society institutions and to support, develop and preserve their independence in a way that is consistent with peaceful means to achieve their legitimate goals and this shall be regulated by law.</td>
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<th>Article 46 of the 2005 Constitution:</th>
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<tr>
<td>Restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by law or on the basis of a law, and in so far as that limitation or restriction does not violate the essence of the right or freedom.</td>
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CPA Order Number 45, which remains in effect, establishes a set of procedures by which Iraqi non-governmental organizations (NGOs) can be registered with the Ministry of Planning and Development Cooperation. The law is quite stringent in terms of financial reporting and other disclosure requirements (such as those pertaining to ownership, planned
activities, and sources of funding). The Ministry’s authority to deny registration is arguably over-broad and applies in the following circumstances:

(a) The registration documents do not comply with the requirements of this Order.

(b) The NGO’s constitution, conduct, or proposed activities would violate the laws of Iraq or would otherwise constitute a threat to the public order, safety, stability or security of Iraq. Section 3(2).

Review of such NGO documents is, reportedly, strictly adhered to. The onus is, however, on the Ministry to register NGOs in an expedient manner. A 2004 amendment to the law allows for automatic provisional approval of an NGO after 60 days if no decision of the Ministry has been issued (CPA Order Number 100, Section 3(18)). It is not clear, however, that this default approval provision is being enforced.\(^\text{16}\)

CPA Order Number 45 also expressly contemplates the “promotion of gender equality” within the delineation of activities that might be undertaken by an NGO.\(^\text{17}\)

The Ministry for Civil Society is in the process of preparing a draft non-governmental organizations law for submission to the COR. Concerns have been expressed that a revised law would allow for more, rather than less, governmental control over NGOs. At a minimum it seems that the authority to register NGOs will be transferred from the Ministry of Planning to the Ministry for Civil Society, with accompanying changes to the procedures and requirements.

**Freedom of Assembly, Freedom of the Press and Freedom of Expression**

Alongside the freedom of association, the Constitution provides for the freedom of expression, freedom of the press, and freedom of assembly. Although the laws discussed here do not directly mention gender, these are basic rights belonging to all persons and underpinning the right to political participation of everyone.

<table>
<thead>
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<th>Article 38 of the 2005 Constitution:</th>
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<td>The state shall guarantee in a way that does not violate public order and morality:</td>
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<tr>
<td>A. Freedom of expression using all means.</td>
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<tr>
<td>B. Freedom of press, printing, advertisement, media and publication.</td>
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<tr>
<td>C. Freedom of assembly and peaceful demonstration, and this shall be regulated by law.</td>
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</table>

An early CPA Order — CPA Order No. 19 (Freedom of Assembly), as amended by CPA Order 100 — remains in effect and serves to regulate the conduct of public demonstrations throughout Iraq. Although this law sought to overcome pre-existing restrictions on the right to freedom of expression and peaceful assembly contained in the Iraqi Penal Code of 1969 (CPA Order 19, Section 2), it contains its own restrictions which may be interpreted as over-broad. For example, Section 3 contains an absolute prohibition on any gathering within 500
meters of any foreign embassy, multinational forces’ facility or public building actively used by the Iraqi government. It also limits public demonstrations of any type to a period of four hours. One could argue that such limitations effectively foreclose any form of peaceful assembly at or near a government office, and thus violate the essence of the freedom, in contravention of Article 46 of the Constitution.

Moreover, Iraqi Penal Code provisions limiting statements against the government on the basis that they are deemed insults, appear to be in effect and applied by Iraqi courts.

Paragraph 226 of the 1969 Penal Code:

Any person who publicly insults the National Assembly or the government or the courts or the armed forces or any other constitutional body or the public authorities or official or semiofficial agencies or departments is punishable by a term of imprisonment not exceeding 7 years or detention or a fine.

Several journalists have been prosecuted under these provisions for criticisms of government officials, police and the judiciary.

Again, although these provisions do not raise issues specific to women, they are of concern in view of the potential limitations they place on civil society as a whole.

DE FACTO COMPLIANCE

Challenges to women’s participation in public life have existed from the time of the Ba’ath Party, through the various transitional phases of government and continue in effect now, driven by governmental policy, security concerns, and social and religious customs. Although the reversal of certain blatantly discriminatory policies and the introduction of the quota for women’s parliamentary representation have resulted in modest gains for women, significant obstacles remain.

Under the Ba’ath regime, as summarized by one survey respondent:

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

Other respondents gave long lists of names of women murdered by the Ba’ath regime due to their political beliefs. It was also noted that although women “could reach high ranks in the ruling party, … there were no ministers or under secretaries among them.”

In July 2003, the CPA Administrator Paul Bremer appointed three women to the 25-member Iraqi Governing Council (IGC). Governorate councils were also formed throughout the
country by provincial offices of the CPA. Women were represented, although in very low numbers, and no woman was appointed as a governor.

In May 2004, under the advice of the Special Adviser on Iraq to the UN Secretary General Lakhdar Brahimi, who had undertaken a process of consultation with political, religious, tribal and civil society actors, the CPA selected an Interim Iraqi Government (IIG). The IIG comprised of a three-member Presidency Council, Prime Minister, Deputy Prime Minister, and 31 member Council of Ministers. Four women were awarded ministerial posts. They were: Agriculture, Municipal Affairs and Public Works, and Labor and Social Affairs. The fourth was appointed Minister of State for Women’s Affairs, a new office established as part of the Interim Iraqi Government and maintained under the constitutionally-elected government. Issues relating to the Ministry are discussed further below.

Although this account may appear to be historic, several respondents have cited past experience and practice as a significant influence on the position of women in political life today. Indeed, as one respondent argued:

The problem we have now is somewhat due to the fact that no effort was put into this issue in the early stages of the new regime. There was no thrust for women’s participation under the CPA or the TAL. Many people have argued that because Allawi’s government did not have a quota, neither should we. … If the IIG had established a quota approach to women in the executive branch of government, then it would have paved the way.

Women’s Participation in Voting

Women have participated actively in both sets of elections held since the fall of the Ba’ath regime. As documented in the press, women turned out in record numbers for the January 2005 elections, despite serious security threats to all voters. Some survey respondents pointed to the fatwa issued by Ayatollah Ali Al Sistani as of great significance “in creating awareness among the people regarding the necessity of women’s participation, regardless of whether the father or spouse objects.” Non-governmental organizations were also given a large amount of credit for increased participation by women through campaigns promoting the importance of the vote for women, and through provision of practical services to assist women’s participation.

Several respondents noted that basic services aimed at facilitating women’s access to voting, such as offering child care or transportation to polling locations, were not provided by the electoral commission in the January 2005 elections. A smaller number noted that transportation services were available in some areas and that the high number of polling stations facilitated access to voting.

Women’s Representation in the Transitional Government of Iraq and the Constitutional Process

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

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

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

Only 6 of the 36 Cabinet positions in the Transitional Government were held by women. and the three-member Presidency Council, made up of the President (the official head of state) and 2 vice-presidents, contained no women.

Of particular concern to the longer term position of women in Iraq, only nine women were selected for the 55 member Constitutional Committee, a non-representative figure, both in terms of women’s position within the general population and within the Transitional National Assembly, out of which the committee was formed. It could be argued that due to lack of adequate representation on that Committee, there is an overall lack of provision for women’s realization of equal rights under the Constitution. Particular areas of concern include the absence of an overarching provision specifying gender neutrality in the language of the constitution, the lack of provision for women’s minimum representation beyond the legislative branch of government, and the existence of several provisions by which Shari’a law may be applied to the potential determinant of women’s equal rights in various aspects of their private and public life. This is discussed further throughout this report, as relevant. See, in particular, the Chapter on Family and Marriage.

### Women’s Participation in the Constitutionally Elected Government of Iraq

#### Council of Representatives

Despite provision for women’s representation set forth in the Constitution and put into effect under the Elections Law, women won only 19% of the parliamentary seats in the December 2005 elections. They ultimately reached the quota by allocation of compensatory seats to women such that women now make up 73 of the 275-member Council of Representatives (or 27%). This represents a 14 seat loss since the first elections less than a year earlier. Respondents explained that this decrease in numbers related to the placement of women in the third
position on each party list. With a greater spread of seats across different parties than in the January 2005 election, women received an even lower proportion of seats.\(^{34}\)

The concerns expressed after the January 2005 elections remain. Indeed, many women’s activists take the view that, although women now hold more than 25% of the seats in the COR, a large proportion of those women, members of the ruling Shi’a coalition, reflect conservative views of the role of women which run contrary to gender equality and full realization of women’s rights.

Moreover, women remain absent from leadership positions in the COR and political parties. No woman heads a political party or coalition list. The COR is also made up of 23 committees, only two of which are headed by women: the Committee for Women’s, Children’s and Family Affairs, and the Civil Society Committee.

Of greatest concern, however, is the composition of the Constitutional Review Committee (CRC). Of the 24 members selected to participate in the CRC by their respective parties, only two are women. This raises serious concerns as to whether issues of women’s rights and gender equality will be adequately addressed in the constitutional review and amendment process and whether even the guarantees contained in the 2005 Constitution will be maintained. Above all, it is a matter of concern that women are not participating in anything approaching equal numbers in the formulation of all aspects of Iraq’s fundamental law, including federal powers, regional powers, human rights and freedoms, and so on.

**Executive Branch**

Women are severely under-represented in the executive branch of the Iraqi government. Of 36 cabinet ministries in Iraq, women occupy only three posts: Environment, Housing & Construction and Human Rights. Additionally, women head two of the eight ministries of state: Women’s Affairs and Tourism and Antiquities. They are not members of the cabinet but run what many view as policy offices with small staff. As with the interim and transitional governments of Iraq, there are no women in the three-member Presidency Council and the Prime Minister and two Deputy Prime Minister posts are all held by men. Respondents point to a “lack of political will” as a basis for the downturn in women’s representation in the executive.\(^{35}\)

Although the establishment of a Ministry of State for Women’s Affairs (MSWA) must be recognized as a positive step towards greater attention to issues pertaining to women in the creation and implementation of governmental policy, the MSWA has been under-resourced and marginalized by successive Iraqi governments. It currently functions as part of the Prime Minister’s Secretariat. As a Ministry of State, it does not have an independent budget, but is allocated three million ID (2000 USD) per month to cover expenses. The MSWA currently functions on a staff of 10 and the Minister of State cannot hire new staff without the permission of the Prime Minister. The MSWA has no branches, directorates or staff in the governorates, and no budget for activities or outreach.\(^{36}\)

In a recent ESCWA survey of regional women’s institutions, the Ministry of Women’s Affairs sited the main challenges to its work as “security,” “lack of sufficient powers,” “lack of sufficient financial allocation and a special budget,” and “lack of qualified staff to conduct ministry duties.” On November 1, 2005, the MSWA announced that the Council of Ministers
approved upgrading the Ministry to full ministerial status and a bill has been submitted to the COR although it has not been passed in the year since it was submitted.

Several survey respondents expressed concern at the Ministry’s lack of clearly defined powers, such as with respect to legislative reform efforts, and its severe under-funding.\textsuperscript{37} Others have expressed concern that the existence of the MSWA has isolated gender issues rather than “mainstreamed” them, with other ministries abandoning women’s concerns on the pretence that the MSWA will address them. The MSWA has sought to address this issue through the establishment of a Higher Commission for Women’s Affairs (discussed below). Some women’s rights activists, including a former Minister of State for Women’s Affairs, are now calling for an independent commission in lieu of a governmental office or ministry.\textsuperscript{38}

The Ministry has, however, seen significant technical and financial support from the international community and made modest but significant advances since its inception in 2003. According to the ESCWA survey, the Ministry adopted a national strategy for action in 2004, pursuant to which it is working towards incorporation of gender issues in the plans and programs of other institutions of government, including through training of government personnel to raise awareness and sensitivity to issues of gender equality and women’s rights. In an effort towards gender mainstreaming, the MSWA has established gender “focal points’ in each ministry which together form a “Higher Commission for Women’s Affairs.” Although the MSWA has advocated for legislative reforms by submitting a list of discriminatory laws, decisions and orders that should be cancelled or amended, they report that no new legislation has been passed or amended. The Ministry also states that it engaged with international and national women’s organizations in raising awareness of women’s rights, especially in the context of elections and the constitutional process.

\textit{Governorate and Local Councils}

Governorate council elections last took place in January 2005 and were subject to the same quota requirements as the TNA which was also elected at that time. Despite the quota, 4 of the 18 governorate councils emerged with the number of female members below quota: Salah Al-Deen (10 out of 41 or 24%); Misan (same); Dhi Qar (9 out of 41 or 22%); Karbala (8 out of 41 or 19.5%).\textsuperscript{39} Again, of the 18 governors and deputy governors, not one is a woman, and with the exception of Kurdistan, no deputy governor or committee president is a woman.\textsuperscript{40}

According to the Ministry of Municipal Affairs and Public Works, women are represented on local councils (although detailed information about their representation was not made available), and two to three local councils are headed by women.

\textit{Women’s Participation in the Judiciary}

Women were admitted to the Judicial Institute in Baghdad after its establishment in 1976, and several of them were appointed as judges and prosecutors. In 1984, however, and for the remaining years of rule of the Ba’ath party, Saddam Hussein forbade women from entering the Judicial Institute. Only those women who had already begun their career as judges could maintain their posts.\textsuperscript{41} Of the few women working in this sector, most hold prosecutorial, not judicial, posts.
Since May 2003, some former graduates of the Judicial Training Institute have been appointed to the bench, first by the Judicial Review Committee (created under CPA Order Number 15 of June 23, 2003) and subsequently by the Iraqi Higher Judicial Council. Women were also represented among a recent round of new appointments to the bench, although again in small numbers. Of 79 new judicial appointments made in 2006, only 4 were given to women. Of the 235 students currently enrolled in the Judicial Institute, only 25 are women. In summary, women still comprise a fraction of the judiciary; although the numbers are changing, only 13 of the 738 judge outside Kurdistan are female (less than 2%). In Kurdistan, there are only three female judges, all of whom are juvenile court judges based in Sulaimaniya.

The concern, however, goes beyond numeric representation. Those women who do serve on the bench are not permitted to serve in the Personal Status Courts and are generally found only in the Juvenile Courts and the Civil Courts of First Instance. There are no female judges on the Court of Cassation or on any of the 18 provincial appellate courts. Of the new nine-member Federal Supreme Court, which was appointed by the Interim President upon the nomination of the Higher Judicial Council, there is not a single female judge.

Women are somewhat better represented among prosecutorial ranks. They comprise 16 of the 205 prosecutors in the central and southern regions of Iraq and there are approximately 150 women presently employed by the office of the Prosecutor General in Kurdistan. Notably, prosecutors do not have any decision making authority over cases, even at the early stage of an investigation.

One interviewee, a female prosecutor, commented that female judges and prosecutors experience discrimination in their daily work, with male judges favoring their male counterparts among judicial and prosecutorial ranks. She noted that the judiciary is socially considered a man’s realm, as is the broader legal profession and that the challenge of balancing work with family obligations also makes many women reluctant to join the judiciary. Other women have also cited security concerns as a basis for rejecting judicial posts.

There are also significant geographical variations on women’s representation. As noted above, women are substantially better and more broadly represented among the procuracy in Kurdistan. In certain other areas of Iraq, resistance to women in the judiciary is strong. In Najaf, for example, no women were referred by the Appeals Court of Najaf to the Higher Judicial Council for consideration in the recent round of judicial appointments, although several qualified female candidates applied.

In all, the representation and treatment of women in the judiciary remains a serious issue which is generally not being pursued by the women’s rights movement in Iraq.

**Current Factors Impacting Women’s Political Participation**

As summarized by a survey respondent:

Several factors play a role in impeding a woman from playing her role in politics, such as illiteracy, an absence of political education programs and male views on the participation of women in politics, thus standing in the way of her advancement. In fact, many women possess the capabilities, but the opposition of the husband or family prevents them from involvement in political life, in addition to fear
Respondents almost unanimously stated that at present, women are subject to serious threats on their life as a result of their political participation.49 As a leading women’s activist observed, continuous “insecurity and instability in the country are badly affecting women’s endeavors to consolidate their status in the political fields.”50 Survey respondents gave several examples of women’s rights activists having been threatened, kidnapped and killed, by groups expressly opposed to such activism.51 As recently as October 2006, Halima Ahmed Hussein Al Juburi, the head of the Maternity and Childhood human rights organization in Kirkuk was shot and killed by 10 unidentified assailants in her home, in front of her children.52

Women in high profile government positions have been targeted, including Interim Governing Council Member Dr. Aqila Al Hashimi (murdered on September 20, 2003) and Transitional National Assembly member Sheikha Lamea Khaddouri (murdered on April 27, 2005). Both women were gunned down while leaving their homes.

Respondents also pointed to cultural traditions, illiteracy, and lack of programs that support women’s involvement as obstacles to women’s political participation.53 While several respondents stated that the government, NGOs and political parties had encouraged women’s involvement in the lead up to the January 2005 elections through public awareness campaigns, many respondents stated that more campaigns are necessary, especially those that address the cultural and religious traditions that limit women’s participation. Particular concern was expressed for rural women in this regard.54 Respondents also indicated that the practices of the former regime were responsible for continued reluctance among some women to get involved in political activities.55 One respondent stated that “Iraqi women distrust parties and other assemblies.”56

Reactions in some areas to the promotion of women’s political participation demonstrate that these concerns continue. As one report observed, “in 2005, campaign posters in conservative areas showing a woman’s face — as a symbol of the face of a new Iraq — were ripped from walls or painted over, denounced as shameful.”57 Some female candidates who campaigned publicly during the December 2005 elections received death threats, while others refused to display their faces on campaign posters or even appear in public.58 Clerics in some areas have reportedly made statements rejecting women’s political participation, which have been particularly influential in rural and provincial areas.59

**Women’s Participation in Non-Governmental Organizations and Civil Society**

Since the fall of Saddam Hussein in 2003, there has been a surge in the establishment of women’s rights NGOs and networks both within Iraq and in the diaspora. One respondent noted that women’s active involvement in NGOs is a reflection of their desire to be involved in community decision making.60 Leading activists have observed that the expansion of the women’s movement has seen a consequent increase in women’s representation in the media, with coverage focusing on the positive implications of women’s participation in political and social movements.61
Women are also active in trade, labor and professional unions, although in relatively small numbers and they are not well represented in leadership positions.\textsuperscript{62} Numerous initiatives focusing on women have taken place inside and outside Iraq since the fall of the Ba'ath regime, most of them supported by the international community, with a particular focus on women’s political participation and the constitutional process. Demands emerging from such programs have included the equal participation of women in drafting election laws and the permanent constitution; provision for mandatory minimum representation of women in all three branches of government as well as in municipal and governorate councils; quotas for women’s participation in parliament set at 40%; greater participation for women in regional and international political activities; an emphasis on merit as the determining criteria for political candidates, rather than factional or sectarian interests; capacity building programs for women’s organizations; and encouragement and allowance of temporary special measures to enable the enforcement of legislative and constitutional equality provisions and to promote the rights of women and other groups that have suffered from past discrimination.\textsuperscript{63} As can be seen from the analysis, some of these aims have been realized, others have not. In anticipation of the constitutional review process, secular women’s organizations are focusing advocacy efforts on removal of Article 41, which provides for resolution of personal status issues by sect. (For more information on Article 41, please see the Chapter on Family and Marriage.) They are also calling for, inter alia, a gender-balanced approach to all development and reconstruction efforts pursuant to UN Security Council resolution 1325, express recognition of Iraq’s international treaty obligations under the Constitution, greater representation of women in the CRC, and amendment of Article 92(2) of the Constitution to allow for inclusion of Islamic scholars as advisors to rather than members of the Federal Supreme Court.\textsuperscript{64}

Despite this proliferation of organizations and programs (according to Ministry of Planning records, there now exist 80 women’s organizations and an additional 400 NGOs which cite women’s issues among their goals)\textsuperscript{65} their effectiveness has been called into question. One Iraqi commentator, although recognizing the importance of the growth in women’s civil society participation, criticizes the women’s movement as disconnected from the concerns of the majority of Iraqi women and expresses concern at the adversity between the secular and Islamist women’s blocs, even on subjects they should agree about. She observes that the ultimate challenges to success, however, lie in the deteriorating security conditions which limit the work of women’s groups on the ground, the supremacy of sectarian interests over social and women’s interests in Iraqi politics, and “the dominance of radical Islamic groups and the fear they instill in any modern women’s project.”\textsuperscript{66}

**KEY AREAS OF CONCERN**

- Although more active in government than ever before, women continue to be largely excluded from decision-making and leadership positions, both inside government and within political parties. Notably, women’s participation in the Judiciary remains extremely low and only three of the 36 member Council of Ministers are women. (CEDAW – Articles 4, 7(b))
Customary and religious influences as well as threats and attacks on female activists and political figures continue to undermine women’s participation in political life. (UDHR – Article 21; ICCPR – Article 25; CEDAW – Article 7)

The lack of institutional support for the Ministry of State for Women’s Affairs has rendered it largely ineffective. (CEDAW – Article 7(b))

The recently appointed 24-member Constitutional Review Committee contains only two women highlighting a lack of support for women’s participation and serious concern about the representation of women’s interests in the constitutional review process. (CEDAW – Articles 4, 7(b))

### POLITICAL PARTICIPATION – INTERNATIONAL TREATY FRAMEWORK

**UDHR**

Article 21

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

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

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

**ICCPR**

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;

   (b) For the protection of national security or of public order (ordre public), or of public health or morals.
Article 21
The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22
1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 25
Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

CEDAW
Article 4
1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 7

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

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

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

United Nations Security Council Resolution 1325

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

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

8. Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:…

(c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.

…
ENDNOTES

1 Respondent H1. Question 25.
2 UDHR Art. 21.
6 CEDAW Committee Gen. Rec. 23, para. 5.
7 CEDAW Committee Gen. Rec. 23, para. 10.
8 CEDAW Committee Gen. Rec. 23, paras. 10, 12.
9 CEDAW Committee Gen. Rec. 23, para. 35.
10 CEDAW Committee Gen. Rec. 23, para. 38.
11 CEDAW Committee Gen. Rec. 23, para. 15.
12 CEDAW Art. 4, CEDAW Committee Gen. Rec. 23, para. 15.
13 CEDAW Committee Gen. Rec. 23, para. 15.
14 UN Security Council Resolution 1483. Preamble. May 22, 2003. The UN Security Council has “the authority to adopt not only recommendations but also binding decisions” that are expressed through resolutions. Consequently, Iraq is legally bound by both Resolution 1325 and Resolution 1483. Buergenthal, Thomas. Public International Law. 1990.
15 Article 21 of the Law of Administration of the State of Iraq for the Transitional Period (TAL) provided: “Neither the Iraqi Transitional Government nor the governments and administrations of the regions, governorates, and municipalities, nor local administrations may interfere with the right of the Iraqi people to develop the institutions of civil society, whether in cooperation with international civil society organizations or otherwise.” Comments from Focus Group. November 2006.
16 CPA Order Number 45, Section 1.
17 CPA Order 19 Sect. 3(3), as amended by CPA Order 100, Section 3(9)(b).
18 Committee to Protect Journalists. “Three Iraqi journalists face trial on defamation charges.” September 1, 2006. Similar provisions are also being applied in Kurdistan, where one journalist was prosecuted and sentenced by a security court to 30 years imprisonment for accusing the Kurdish leadership of corruption and abuse of power. Committee to Protect Journalists. “Kurdish journalist detained, faces prosecution.” March 22, 2006.
20 Respondent A7. Question 32.
21 Respondent D5. Question 32.
24 Respondent A5 (See also A7). Question 24.
26 Respondents A1, A3. Question 26. The authors were unable to find similar information for the December 2005 elections for comparative purposes.
27 Respondent C1, C3, C4, D2. Question 27.
28 For example, respondents A5, A6, B2, B3, C1, C2, D1, D2. Questions 28 and 29.
29 Respondents C1, C3, C4, D2. Question 27.
31 For example, respondents A7, B1, B2, B3, B4, C1. Question 17.
34 Comments from Focus Group. November 2006.
40 Authors’ interview with senior official of Ministry of Municipal Affairs and Public Works.
41 ABA Judicial Reform Index, Iraq, Factor 4.
42 ABA Judicial Reform Index, Iraq, Factor 4.
43 ABA Judicial Reform Index, Iraq, Factor 4.
44 ABA Judicial Reform Index, Iraq: Kurdistan Supplement, Factor 4.
45 ABA Judicial Reform Index, Iraq: Kurdistan Supplement, Factor 4.
49 For example, respondents A1, A2, A3, A5, A6. Question 32.
56 Respondent C5. Question 23.
64 Report of Women’s Movement Meeting, hosted by HE Narmin Othman, Minister for the Environment and former Minister of State for Women’s Affairs. October 16, 2006.
HEALTH

“Before 2003, Iraqis never had to leave the country to seek specialized medical services. Now, if they can’t afford to leave the country, they will not have access to those services and they might die from lack of care.”

Alongside Iraq’s constitutional provisions that aim to promote the health of all Iraqi citizens through provision of public health services, Iraqi law provides broad measures aimed at supporting maternal health, family planning, and children’s health. The law does not, however, appear to provide detailed regulations for the provision of women’s health care facilities and makes no provision for the prevention and treatment of illnesses specific to women, apart from those associated with pre-natal and post-natal health care.

The greatest risk to women’s health stems from the overall deterioration in healthcare facilities and services brought on by economic sanctions, governmental neglect and war. The last fifteen years of the Saddam Hussein regime were particularly damaging to the healthcare sector, and recent reconstruction efforts have been disappointingly slow. Infrastructure is tremendously weak and public education is practically non-existent. Access to and provision of health care for all citizens is severely undermined by the absence of security in Iraq. The number of health professionals, which was already inadequate, has only become more so as thousands of Iraq’s medical practitioners, among them the most experienced and specialized doctors, flee increasing threats and violence. The overall lack of capacity to deliver health services in Iraq means that even the most basic needs of women are not being met and women’s health status remains dangerously low.

INTERNATIONAL LEGAL FRAMEWORK

Article 25 of the Universal Declaration of Human Rights (UDHR) assures everyone the right to an adequate standard of living necessary for adequate health. It further states that special care and assistance should be given for motherhood and childhood. The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12, recognizes the right of everyone to “the highest attainable standard of physical and mental health.” The Committee on Economic, Social and Cultural Rights (ESCR Committee) indicates that the highest standard of health takes into account the individual’s biological preconditions, his or her socio-economic situation, and a State Party’s available resources to adhere to that individual’s rights as delineated in the ICESCR. This is not to say that the State Party does not have an immediate obligation to fulfill the requirements of Article 12 en toto and to do so in a non-discriminatory manner.
The right to health is broadly defined in the ICESCR. It “embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.” The right to health is inextricably linked to other rights and freedoms under international law, notably, the right to adequate food and the right to adequate water.

Furthermore, the Committee explains that the “right to health is not to be understood as a right to be healthy.” That is,

“[t]he right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”

The Committee emphasizes the equal access of both men and women to adequate health care and stresses that many measures designed to eliminate health-related discrimination can be supported by minimum resources and can involve the adoption, modification, or abrogation of laws and information distribution. Notably, the committee has explicitly recognized that states should integrate a gender perspective into their health-related policies, programs, and research.

The ICESCR further requires States Parties to take such steps as are necessary to attain this standard of health, including “the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Article 12 requires States Parties to take all appropriate measures to eliminate discrimination against women in healthcare and ensure equal access to all services including family planning. It also imposes an obligation upon states to ensure appropriate services, and offer them gratis when necessary, in connection with pregnancy, confinement, and the post-natal period. The CEDAW Committee explains that biological differences between men and women can lead to differences in health status. States Parties to CEDAW therefore must ensure that discrimination based on gender does not occur in the field of health care. If a nation’s health care system lacks services to prevent, detect and treat illnesses specific to women, discrimination is taking place. “It is [also] discriminatory for a State Party to refuse to provide legally for the performance of certain reproductive health services for women.” States Parties to CEDAW must ensure that barriers do not obstruct women’s access to health care. Barriers can include “high fees for health-care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and the absence of convenient and affordable public transport.”
Furthermore, the CEDAW Committee indicates that “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, . . . indigenous women and women with physical or mental disabilities.”

Article 12 in CEDAW further requires that States Parties ensure adequate nutrition during pregnancy and lactation. Services related to pregnancy should be offered for free because “[m]any women are at risk of death or disability from pregnancy-related causes because they lack the funds to obtain or access the necessary services, which include antenatal, maternity and post-natal services.” The Committee indicates that States Parties are required to provide such services to the maximum extent of available resources.

Several international legal sources address the health rights of girls and adolescents. The CEDAW Committee defines the term “women” in the context of health care to include girls and adolescents. Article 24 of the Convention on the Rights of the Child states that ratifiers of the CRC recognize the right of the child to the highest attainable standard of health and to proper health facilities and obligates them to “strive to ensure that no child is deprived of his or her right of access to such health care services.”

Countries are required to pursue full implementation of Article 24 of the CRC by taking the following measures: a) diminishing infant and child mortality; b) ensuring that all children receive the necessary medical assistance and health care (with an emphasis on primary care); c) combating disease and malnutrition by using technology, providing adequate food and clean drinking water, and taking into consideration the dangers and risks of environmental pollution; d) ensuring appropriate pre-natal and post-natal health care for mothers; e) ensuring that health-related information is distributed to all segments of society, that all individuals have access to education, and that they are all supported in the use of basic knowledge of child health and nutrition; f) developing preventive health care, guidance for parents, and family planning services and education.

The CRC also requires States Parties to abolish traditional practices that prejudice children’s health and cooperate with one another in order to progressively achieve the full realization of Article 24.

Giving specific attention to issues facing adolescent girls, the Committee on the Rights of the Child has expressed concern that “early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health.” Among the health problems identified are maternal morbidity and mortality, depression, anxiety and a compromised ability to care for their children. The Committee states:

Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs.

The Committee further urges States Parties to “develop and implement programs that provide access to sexual and reproductive health services, including family planning [and] contraception” and “to develop policies that will allow adolescent mothers to continue their education.”
In conclusion, the Committee calls on States Parties “to take all appropriate legislative, administrative and other measures for the realization and monitoring of the rights of adolescents to health and development as recognized in the Convention,” noting among their obligations:

“(d) To ensure that adolescent girls and boys have the opportunity to participate actively in planning and programming for their own health and development;

…. 

(g) To protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation.”

DE JURE COMPLIANCE

Article 30 of the 2005 Constitution represents a significant improvement in Iraq’s de jure compliance with international health standards. Whereas Iraq’s 1970 Constitution guaranteed equal access to health care by way of the overarching equality clause in Article 19, the 2005 Constitution specifically guarantees equal rights to health care, identifying women and children explicitly.

**Article 30 of the 2005 Constitution:**

First: The state shall guarantee to the individual and the family — especially children and women — social and health security, the basic requirements for leading a free and decent life, and shall secure for them suitable income and appropriate housing.

Second: The State shall guarantee the social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphan hood or unemployment, shall work to protect them from ignorance, fear and poverty, and shall provide them housing and special programs of care and rehabilitation, and this shall be regulated by law.

Article 31 of the 2005 Iraqi Constitution broadly provides that “every citizen” has the right to healthcare. Buttressed by the overarching equality clause in article 14, this provision applies equally to men and women.

**Article 31 of the 2005 Constitution:**

First: Every citizen has the right to health care. The state shall maintain public health and provide the means of prevention and treatment by building different types of hospitals and health institutions.

Second: Individuals and entities have the right to build hospitals, clinics, or private health care centers under the supervision of the State, and this shall be regulated by law.
Article 31 also contains a commitment to “maintain public health”, including through the construction of hospitals and other health facilities, but it does not make an express commitment to *free* medical services, such as was included in Article 33 of the 1970 Constitution. It also allows for private healthcare and aims to regulate the standard of such services through government regulation.

Private hospitals already exist in Iraq. Notably, in the late 1990s, during the UN sanctions imposed after the Gulf War, a Revolutionary Command Council decision allowed for some public hospitals to move to a fee-based structure for health services. However, because this involved a conversion of public hospitals to a private system, this change in policy was seen by many as limiting free services.

### Revolutionary Command Council Order Number 124 of 1997:

First —

1. The Ministry of Health has the authority to transfer a number of government hospitals belonging to the Ministry of Health in Baghdad and some of the other governorates to hospitals that are self-funded to cover their financial costs, in order to offer medical services of a high level of efficiency and performance.

2. A hospital included in the provisions of paragraph one of this Article is a legal entity with financial and administrative independence, and is represented by its director or an individual authorized by the director.

...  

Sixth —

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

Seventh —

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

Article 32 also guarantees the state’s commitment to care for persons with disabilities and others with special needs.

### Article 32 of the 2005 Constitution:

The State shall care for the handicapped and those with special needs, and shall ensure their rehabilitation in order to reintegrate them into society, and this shall be regulated by law.
The new Constitution serves as a positive foundation for equal rights for men and women in access to health care in Iraq. Although free medical services are not guaranteed by the new Constitution, the Iraqi Public Health Law obliges the state to enforce the right of each citizen of Iraq to physical and mental health. Within the realm of “preventative health,” the same law regulates maternity, children’s health and family health care, including nutrition. This law obliges the Ministry of Health to conduct pre-marital medical tests (presumably for both spouses although it is not clear from the text), to educate women in maternal health and childcare, and to provide periodic health tests for pregnant women. Significantly, the law also supports family planning by advising “the family to keep a reasonable period of time between one pregnancy and another in accordance with the health needs of the mother, child and family” and provides for ongoing medical and nutritional care for children.

### Article 1 of the Iraqi Public Health Law No. 89 of 1981:

Complete physical, mental and social health fitness is a right that the society shall guarantee for each citizen. The state shall provide the requirements needed to enjoy this right so as to enable the citizen to participate in building and developing the society.

### Article 3 of the Iraqi Public Health Law No. 89 of 1981:

[The state undertakes to] work with other concerned parties to enable the development and maintenance of physically, mentally and socially healthy citizen(s), free of diseases and defects, taking into account the health preventive services as a basis for its plans by using the following methods:

... Third: Family health protection, maternity, childhood and elderly care.

... Fifth: Raising the nutrition level for all citizens.

...  

### Article 7 of the Iraqi Public Health Law No. 89 of 1981:

The Ministry attempts to achieve its objectives in the fields of maternity, childhood and family health care by using the following methods:

First: Work on providing maternity, childhood and family health centers across the country

Second: Run the necessary medical tests for those who want to get married to identify their fitness and healthiness, and provide them with health certificates.

Third: Undertake health and psychological orientation for the wife to facilitate her future role and responsibility as a mother.
Fourth: Provide for continuous services for pregnant women through periodical tests and education about nutrition.

Fifth: Advise the family to keep a reasonable period of time between one pregnancy and another in accordance with the health needs of the mother, child and family.

Sixth: Run periodic tests on the child to check on his growth, maintain his health, and advise the mother on the food that she should provide him with.

Seventh: Obligate the citizen to take periodic vaccinations in accordance with the instructions issued by the concerned medical authority.

The state further undertakes to educate its citizens about the importance of nutrition to overall health, to monitor the health of its citizens in this area, and to provide “nutritional care” to children, pregnant women and breast feeding mothers in order to prevent and treat malnutrition.

Article 22 of the Iraqi Public Health Law No. 89 of 1981:

Healthy food contributes to building healthy citizens and aids in physical and mental growth. The Ministry works in cooperation with the relevant entities to attain this objective through the following means:

First: Collect information on the nutrition status of the citizens, and diagnose the deficiencies in their nutrition.

…

Sixth: Educate citizens about healthy nutrition.

Seventh: Provide nutrition care to children, pregnant women, breast feeding mothers, and the elderly in order to prevent and treat malnutrition.

In summary, reflective of Article 25 of the UDHR and Article 12 of the ICESCR, Iraq’s Constitution and Public Health Law together provide the basic undertakings by the state to ensure adequate healthcare for all of Iraq’s citizens. The Public Health Law further recognizes the special needs of women in the areas of pre- and post-natal healthcare and aspects of childcare. However, Iraq’s existing legal framework otherwise falls short of international legal standards. Iraqi law does not address adequately the full range of women’s health issues, including reproductive health, family planning, and the prevention and treatment of diseases specific to women. While Article 31 of the Constitution guarantees the right of each citizen to health care, Iraq could better meet its non-discrimination obligations under Article 12 of CEDAW if either the Constitution or related legislation specifically provided that women and men should have equal access to health care services. Such a provision could help to spur improved implementation of laws and policies to address women’s health. Moreover, the legal framework fails to regulate the provision of health services in a way that makes quality health services and medication accessible and affordable for women. Further, the state should enact legislation governing treatment of women victims of violence.
and outlawing specific harmful practices, such as female genital cutting, that have a critical impact on women’s health

DE FACTO COMPLIANCE

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

The situation of Iraqi women and children continued to deteriorate in the 1990s as health infrastructure and food availability became severely compromised by the ongoing economic sanctions. By August 1990, it was estimated that food and medicine imports had fallen by between 85% and 90%. Malnutrition became commonplace and affected 30% of children under the age of five by 1996. The UN supported Oil For Food Program started the same year and supplied two thirds of the nation’s food. Although the rations provided up to 2,215 calories per day per person, food quality was poor and provided little protein. Even after the program’s inception, widespread protein deficiencies and malnutrition continued.

By 1996, over 30% of all hospital beds had been closed and public hospitals were struggling to provide essentials such as electricity, water and food to patients. Basic medicines were often unavailable and those imported under the Oil for Food Program were low quality and often ineffective. Several hospitals were bombed by Saddam Hussein’s army and looted during the uprising after the first Gulf War. Some geographical regions fared far worse than others, as the former regime tended to favor certain political and ethnic groups. As a result, distribution of health services and supplies in Iraq fell dramatically and infant mortality doubled. From August 1990 to March 1998, it is estimated that more than 60 children died every day of health and nutritional deficiencies caused by the embargo.

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

Current Situation

Access to health care, food and water has seen even further deterioration during the current conflict. Water treatment plants have been severely damaged by the war and only half of the country’s sewage treatment plants are operational. In Baghdad, 500,000 residents out of approximately six million can get water for only a few hours a day due to leaking pipes and the inability of the city’s water purifying plant to meet demand. In some governorates, particularly those in the south, over 80% of those living in rural areas still lack clean drinking
water, and only 3% of rural households are connected to a sewage system as compared to 47% in urban areas. Food insecurity remains a reality for many families and chronic malnutrition persists for almost a quarter of children between the ages of six months and five years. Although there are approximately 1,700 Primary Health Care centers operating in Iraq, only half of these are staffed by at least one medical doctor. Post war assessments by the World Health Organization indicate that approximately 12% of hospitals were damaged in the 2003 war.

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

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

Moreover, the distribution of health services is often disproportionate. A 2004 report by the Iraqi Ministry of Health indicated that at least 4 governorates (Misan, Wasit, Nasiriya and Basrah) have minimal or non-existent health services, while Baghdad is comparatively better staffed. This discrepancy was echoed in the Assessment findings. Women noted that even when healthcare is free, particular geographic areas are often isolated from facilities and have no access whatsoever. These problems have been exacerbated by curfews and poor security. In addition, for safety reasons many health facilities have significantly reduced their hours, opening only in the mornings and early afternoons.

Amid increasing violence, Iraq is also losing one of its most important health resources — doctors. Although estimates of the rate and causes of the loss vary, the negative trend is clear in all cases. A recent study by the Brookings Institution concludes that 12,000 physicians have left Iraq since the 2003 invasion, more than 1/3 of the physicians registered before the invasion. An additional 2000 have been killed. Many of them are Iraq’s most experienced and specialized doctors. Respondents reported that the lack of medical specialists together with the economic situation has caused many Iraqi women to die from lack of treatment.

Often perceived as members of the elite, Iraqi doctors are fleeing because they are increasingly being threatened, attacked and kidnapped for ransom. An estimated 250 Iraqi physicians have been kidnapped since 2003, while the Iraqi Ministry of Health reports that during the same period 102 doctors, 164 nurses and 142 non-medical staff have been killed. In addition, because of the proliferation of weapons, doctors and nurses face insecurity inside the hospitals, including pressure by militias to sign certificates or prioritize treatment.
respondents echoed these findings, with one respondent reporting that his own son, who is a neurologist, has fled Iraq and is now practicing medicine in Sweden. The exodus of qualified medical personnel is such that hospitals are chronically understaffed and medical residents undertake operations they are not qualified to perform. Decreasing access to medical services has driven many women to learn basic medical care themselves. The departure of senior physicians leaves a void of trainers for the country’s upcoming health professionals, which threatens to prolong the nation’s already troubling health care problems. The displacement of doctors and other health care professionals, coupled with lack of adequate facilities, equipment and shortages in medicine, have resulted in an overall decline in the quality of medical services available for women.

**Barriers to Women’s Health**

**Security**

Security factors are a substantial barrier to women’s health. As of 2003, assessments estimate that security concerns impede healthcare access for up to 50% of the Iraqi population. Although more recent statistics are not yet available, respondents reported that since 2005, security concerns have further restricted women’s access to health care. According to respondents, Iraq’s deteriorating security situation is discouraging many women from leaving their homes, restricting them from accessing the few health services that are available. Moreover, security concerns have reduced the number of women working in the health-care sector, further restricting the capacity of the health system. Respondents also reported that the ongoing violence frequently spills over into hospitals, when militia members or their targets need emergency care. Respondents reported that the same violence that makes emergency health care necessary can make a trip to the hospital fatal for survivors of those attacks when militia members arrive at the hospital to “finish the job.” Respondents reported a culture of fear in Iraq’s hospital waiting rooms because each new patient could bring a new wave of violence into the hospital. The ongoing violence also creates a steady stream of health emergencies that diverts already strained resources away from health problems that are not viewed as critical, such as ordinary maternal care and pediatrics.

**Mismanagement of Health Resources**

Although years of conflict and sanctions are largely responsible for crippling the healthcare infrastructure, a number of respondents pointed to rampant corruption within the healthcare system as another of the principal causes of this breakdown. Supplies and equipment are often stolen or diverted and sold on the black market, depriving public clinics and hospitals of resources. Access to drugs and medication is particularly at risk because of widespread shortages, drawing a premium price from those who can pay.

Despite significant international aid earmarked for health projects, corruption and mismanagement has substantially reduced the benefit of these efforts. Of the 180 health clinics the US hoped to build by the end of December 2005, only four have been completed and none has opened. Even those that have opened have been plagued with problems. Critics have
argued that the United States has “emphasized reconstruction of clinics and hospitals... rather than what these structures were able to do...It was like their responsibility ended at the door of the structure they rebuilt.” Respondents echoed these concerns, drawing distinctions between the erection of new medical facilities and increased access to medical services. As a result, many completed projects in the health sector have failed to meet the growing health needs of Iraqi women.

**Economics**

Economic barriers to health were first introduced in 1997 with the establishment of a fee-for-service based system of healthcare. Currently, there is a user charge at the public health facilities in both hospitals and public health clinics. Users must pay 500 Iraqi Dinars (about .40 U.S. dollars) per visit, half of which is for the examination and half of which is for drugs (although, as noted already, these are often not available and must be purchased at additional expense outside the clinic). X-rays and laboratory tests are included in this charge. In the evening, public clinics operate from the same facilities and they charge 1,000 Iraqi Dinars per visit. All public health services such as immunization, prenatal care and health education are provided free of charge at the public health centers. Although many services remain subsidized, they are often below acceptable standards if they are available at all.

Economic barriers are further exacerbated in the current environment where basic medicines and healthcare are scarce and few people are able to pay for private care. Anecdotal evidence suggests the private sector charges between $2 and $7 per consultation, with specialists charging up to $15. This represents a significant cost in a country where the average annual income was $800 in 2004. An estimated 50% of the population utilizes the private sector as a first choice despite the considerably higher cost by Iraqi economic standards. Transportation costs to reach services for those in rural areas further add to the cost of healthcare. Other basics such as contraception are not considered essential and thus are not fully covered by the state. As one participant pointed out “Women cannot afford to purchase birth control, even if it is subsidized by the state.” In a recent 2003 survey, 13% of women reported that “they wanted some form of birth control but did not have access to it.”

Longer waiting times for free medical services also force many Iraqi women to forego medical care for themselves and their families. Respondents described a disorganized system in which appointments are not available. Shortages of supplies, equipment and doctors, together with large numbers of injured patients, often force patients to wait all day to receive state-funded care. Substantial waiting times are particularly problematic for Iraq’s ever increasing number of widows, who lack anyone with whom to share their childcare responsibilities. In addition, long waiting times can be prohibitive for those Iraqi women who must work to support their families.

Even those who are able to wait for care find themselves rushed through a health system unresponsive to their needs. The World Health Organization reports that doctors are seeing between 30 and 100 patients during each three-hour shift, making consultation times between two and six minutes per patient. The brevity of the average consultation time creates an increased risk of misdiagnosis and mistreatment of patients.
Cultural and Social Factors

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

Traditional notions of women’s roles and preferential treatment of male members of the family may also act as a barrier to women’s and girls’ health. Although not widely mentioned in our 2005 survey, a 2003 American Medical Association survey of Iraqi women found that only 18% of Iraqi women surveyed reported that they were able to obtain healthcare without first seeking approval from a male relative. Respondents in 2006 did not dispute these findings and admitted that women’s freedom to seek health care without permission from a male relative depends on the preferences of those relatives. Several respondents also pointed to blatant favoritism towards boys in terms of care and treatment.

Reproductive and Maternal Health

Maternal Health

In a population where each woman bears an average of five children, the economic sanctions of the 1990’s had devastating effects on maternal health. Now, conflict and a lack of essential services compound the already precarious circumstances of the 2000 women who give birth on a daily basis in Iraq. The maternal mortality rate has doubled since 1989 and stood at 292 deaths per 100,000 in 2004. Although recent statistics indicate that the maternal mortality rate fell to 250 deaths per 100,000 in 2005, this number remains exceedingly high, especially as compared to the most developed countries. In addition, between 1990 and 2005 skilled attendance at delivery dropped while infant mortality increased from 61 deaths per 1,000 live births to 88 per 1,000 live births. Almost 25% of babies have low birth weights caused primarily by malnutrition among pregnant women. As of March 2003, almost 25% of newborns had a body-weight of less than 2.5 kilograms.

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

There are health centers that women may visit for examination during pregnancy, and for getting special vaccinations, which was rather inaccessible during the embargo period. The difficulty of reaching health centers, and waiting in queues, these factors limit the women’s access to government health centers. After birth, it is possible to vaccinate infants almost for free, but these measures are inadequate given that most of the time getting the medicine is impossible and forces the woman to purchase it from the market.96

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

Respondents also identified the lack of trained professionals attending childbirths as a central issue to women’s maternal health. Many cited the prevalence of homebirths, and the overall lack of information regarding safe birthing procedures as contributing to the deterioration of women’s health.97 As of 2003, it was estimated that only 70% of deliveries were attended by a trained health worker.98 The use of midwives is on the rise, particularly in poor and rural areas, and they may not be properly equipped to deal with complications, with resulting fatalities. As one respondent pointed out, “[during childbirth] often the woman is subject to death as a result of infections, extreme anemia and hemorrhage.”99 A 2004 Ministry of Health report notes that in rural areas, 40% of women give birth without trained assistance.100

Other maternal health problems identified by women included chronic iron-deficiency, estimated by the United Nations Population Fund (UNFPA) to be as high as 50–70% of all pregnant women in Iraq.101 Other concerns include the lack of pre-natal vitamins, high rates of infections, high blood pressure, and diabetes. Exposure to environmental contaminants was also noted as an exceptional risk to women’s and children’s health. Miscarriages, infertility, and congenital defects have been abnormally high since the onset of the Iran-Iraq war and subsequent conflicts where the use of chemical weapons and depleted uranium were common. One doctor noted that before the war the rate of birth defects was 1 in 2000; during and after the war, it rose to 30 in 2000.102

Family Planning and Public Awareness

According to a recent UNFPA report, Iraq has had an official policy of providing family planning and contraception for the last 12 years.103 However, it is unclear to what extent women are able to access family planning services. There are also reports that almost one-third of family planning institutions were destroyed during 2003.104 Technological advances in family planning are unavailable and both healthcare providers and women alike are unaware of newer family planning options.105 One doctor reported that contraception was not available in the country at all as of early April 2005.106 Other respondents pointed to a general lack of awareness and knowledge regarding reproductive health among both men and women, and distrust in service providers as an obstacle. One respondent even pointed out that the government at one time passed out erroneous and outdated information in order to promote higher birthrates.107
Even when facilities are functional, there are indications of serious gaps in reproductive health and family planning education. The gathering and dissemination of public information seems to have been widely neglected over the last decade and has not yet been revitalized. Many of the respondents indicated that public service initiatives or campaigns to educate women on overall health and available health services were inadequate. Public education is also not available in regards to other serious reproductive health risks such as sexually transmitted infections and HIV/AIDS. The Ministry of Health has produced some materials encouraging women to seek maternal health services, but the scope and impact of this project is unknown.

**Other Threats to Women’s Health**

**Cancer**

One of the most recent and serious health problems for women in Iraq is the threat posed by certain types of cancers. Gynecological care is difficult to access for most of the population and the state no longer has the funding, equipment, or expertise to carry out routine examinations and diagnosis. There is little awareness regarding the importance of self-examination for cancers; breast cancer currently ranks as the most common type of cancer in Iraq. As of 2005, radiotherapy facilities existed only in Baghdad and Mosul, and drugs for cancer treatment were not usually available. Because most cancers are caught in the later stages, few treatment options are possible even if treatment and medication were available.

There have been reports that the Ministry of Health does keep statistics on the prevalence of the disease through a population-based cancer registry established in 1976, and indeed many respondents indicated they knew the state collected such data. The number of cases registered remained almost the same in 1998 (9,052) and 1999 (8,939) but increased to 10,888 in the year 2000. It is difficult to attribute the increase to a rise in incidence of cancer because the registration process is substantially incomplete. The quality of the data and its usages remain unknown. There is currently no comprehensive program in Iraq to provide preventive health services for non-communicable diseases.

**Post-Traumatic Stress and Mental Health**

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

**Rape and Other Forms of Violence**

There is evidence that victims of crime and violence have had difficulties accessing treatment for their injuries. There have been numerous reports of women being turned away from hospitals and clinics for sexual assault treatment because hospitals were either unequipped or unwilling to treat victims. There is a general lack of awareness regarding survivor’s medical needs and there are no current guidelines for post-assault procedures. Furthermore,
the social stigmas attached to these crimes also discourage many women from attempting to access medical treatment. Reporting assaults and rapes can lead to other serious social and cultural consequences such as ostracization and additional threats of violence for having caused shame to the family.

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

**Regional Variations – Kurdistan**

The greater level of security in Kurdistan has led to relative benefits for its residents in terms of the availability of resources and services in the health sector.

According to the Ministry of Health in the Kurdish Regional Government, since January 2006, at least 53 medical doctors from other regions of Iraq have been employed in Kurdistan. This figure does not include other doctors who have migrated to the region and are working as private practitioners or in other jobs.

Respondents reported that many of the health sector problems they witnessed following the 2003 invasion have improved significantly since 2005. Respondents cited the arrival of new equipment, the increase in number of Internal Care Units from one to three, and the availability of internal heart surgery as evidence of general improvements in the quality of medical services.

In terms of women’s health, respondents also reported that health centers specializing in maternal and post-natal care are available “all over Kurdistan” and that care received at these centers is free for Iraqi citizens. The greater level of mobility and security enjoyed by Kurdish women also means that health care is more accessible to them than it is to women in other regions of Iraq. However, despite these relative advantages, respondents acknowledged that the standard of care still fails to meet their expectations. Women who can afford it will always pay for private care, one respondent reported. Another respondent described the chaos of a recent visit to a state medical center:

> There is no order. Ten days ago I had to take my mother for an examination and I couldn’t go to work because we were waiting all day. You don’t have an appointment at a particular time. The equipment is also a problem. You can wait for hours for use of a single machine.\(^{120}\)

**Female Genital Cutting**

There are reports that female genital cutting has resurfaced in the northern part of Iraq. Although this practice has serious consequences for women’s long-term health, there appears to be no specific law against the practice. In fact, in Northern Iraq, Amnesty International has reported that midwives regularly see women who have been cut, and that doctors have carried out the practice on married women at their husband’s request.\(^{121}\)

For additional discussion on violence against women, please see the chapter entitled *Violence Against Women and the Right to Personal Security*. 
KEY AREAS OF CONCERN

- While Iraqi law provides for a right to health care and specifies that children and women should be afforded health security, the legal framework is inadequate to ensure women’s equal access to health care. It also fails to address the full range of women’s health issues, instead focusing primarily on prenatal and maternal health. (ICESCR – Article 12; CEDAW – Article 2(a),(c); Article 12)

- Despite the legal guarantees, maternal and child health services are inadequate resulting in a high maternal mortality rate and poor access to prenatal care and family planning services. The government should provide services and information on reproductive health, family planning, modern contraceptives, and HIV/AIDS. The existing family planning policy should be publicized and trained professionals should provide reproductive health services that are easily accessible for women both in urban and rural areas. (UDHR – Article 25(2); CEDAW – Article 12(2)).

- Health services in Iraq lack basic essentials and are inadequate to accommodate the population. Lack of access to doctors and medical specialists, along with violence both in the streets and in hospitals has exacerbated the difficulties of access to quality medical care for women. (UDHR – Article 25; ICESCR – Article 12)

- Lack of basic standards of living (such as water, food and sanitation) has a particularly negative impact on women’s health. (UDHR – Article 25; ICESCR – Article 11)

- The law does not regulate the provision of health services in such a way as to ensure that quality health care is accessible and affordable to women. The privatization of some health care facilities and the resulting fee structure has further limited women’s access to health care. The problem is particularly acute in rural areas, where health care facilities are often non-existent. (UDHR – Article 25; ICESCR – Article 12(1); (2)(d))

- An increase in early marriage and pregnancy, preferential treatment of men in access to food and nutrition, and the commonplace requirement that women obtain permission from a male relative before seeking medical care are barriers to good health for women and girls. The state should address these harmful social practices through focused efforts to enhance awareness of the risks to women’s health and the importance of equal treatment of all members of the family. (CEDAW – Article 5; 12)

- There are no mechanisms in place to measure the prevalence of harmful practices such as female genital cutting, which is currently known to exist in the region of Kurdistan. (CEDAW – Article 5; 12; ICESCR – Article 12; CRC – Article 24(3))

- There is limited capacity to prevent and treat the rising incidents of terminal illnesses such as cancer. Lack of awareness and of preventive health services frustrate efforts at early detection and need to be remedied. (UDHR – Article 25; ICESCR – Article 12)
<table>
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| UDHR Article 25 | **1.** Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.  
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. |
| ICESCR Article 11 | **1.** The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.  
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:  
   (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;  
   (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need. |
| ICESCR Article 12 | **1.** The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.  
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:  
   (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; |
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

CEDAW
Article 2
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

... Article 5
States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 12
1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

CRC

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.
ENDNOTES

2 UDHR Art. 25(1).
3 UDHR Art. 25(2).
4 ICESCR Art. 12(1).
8 ICESCR Article 11.
9 CEDAW art. 14, para. 2(h); Convention on the Rights of the Child, art. 24, para. 2(c); see also ESCR Committee Gen. Comm. No. 15, para. 3 (interpreting ICESCR art. 11, para. 1 to include the right to water.) The Committee on Economic, Social and Cultural Rights has elaborated on the right to adequate food and water in its General Comments. See General Comment 12 – The right to adequate food (Art. 11) (E/C.12/1999/5) available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument; General Comment 15 (E/C.12/2002/11) available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/a5458d1d1bbd713fc1256ce400389e947?Opendocument.
13 ICESCR Art. 12(2)(a–d).
14 CEDAW Art. 12(1).
15 CEDAW Art. 12(2).
16 CEDAW Committee Gen. Rec. 24, para. 11.
17 CEDAW Committee Gen. Rec. 24, para. 21.
19 CEDAW Art. 12(2).
20 CEDAW Committee Gen. Rec. 24, para. 27.
21 CEDAW Committee Gen. Rec. 24, para. 8.
22 CRC Art. 24(1).
23 CRC Art. 24(2) (a–f).
24 CRC Art. 24(3).
25 CRC Art. 24(4).
26 General Comment No. 4 (CRC/GC/2003/4) para.20; available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/504f2a64b22940d4c1256e1c0042d4a?Opendocument.
27 General Comment No. 4 (CRC/GC/2003/4) para. 31.
28 General Comment No. 4 (CRC/GC/2003/4) para. 31.
29 General Comment No. 4 (CRC/GC/2003/4) para. 31.
30 General Comment No. 4 (CRC/GC/2003/4) para. 39.
This includes approximately 1 billion U.S. dollars in supplemental assistance from international NGOs.


Comment from focus group. November 23, 2006.


Interview with Gynecological Specialist. Focus Group. April 28, 2005


For example, respondents A5, A7. Question 60.


For example, respondents E5. Question 62. Respondents E2 and E1. Question 64.


According to figures available at http://www.unicef.org/specialsession/about/sgreport-pdf/09_Maternal-Mortality_D7341Insert_English.pdf, the maternal mortality rate in the developed world generally was less than 100 per 100,000 live births in 2001. The MENA rate in 2001 was over 300 per 100,000 live births, but this was likely skewed by very high numbers in Yemen.


For example, respondents A1, A6, B2, E1, E2, E3, E4, H1. Question 63.

Respondent E2. Question 63.

For example, respondents B2, D1, E2, F1, I3. Question 62.


UNFPA. “Iraq Reproductive Health Assessment.” 2003


Respondents A1, A3, A6, B1, B2, C4, C5,D1, D2, D3, E1, E3, E4, E5, G1, H1–H4, I1, I3. Question 67.


Comments from focus group. April 28, 2005.


All of the information in this section was provided to the authors by the Kurdish Focus Group convened in Amman in October 2006.

Comment from Kurdish Focus Group. October 2006.


VIOLENCE AGAINST WOMEN AND THE RIGHT TO PERSONAL SECURITY

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

This comment on violence by a survey respondent offers real-life testimony to the meaning of “violence against women” in Iraq. This Iraqi woman frames the problem of violence against women in terms of women’s autonomy and freedom — in short, as a violation of basic human rights. Her words are echoed by the CEDAW Committee: “[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”

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

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

INTERNATIONAL LEGAL FRAMEWORK

International Definitions of Violence Against Women

Violence against women, and legal provisions that fail to provide equal protection to women against violence, are broadly recognized as forms of discrimination against women. State Parties violate their legal obligations if they persistently fail to adequately respond to acts of violence against women.

The UN Declaration on the Elimination of Violence against Women, a non-binding document, defines “violence against women” as “any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public
or private life”³ (emphasis added). It encompasses, but is not limited to, violence within the family (such as battering, marital rape and sexual abuse of female children); violence occurring in the community (such as sexual assault and sexual harassment at work); and violence perpetrated or condoned by the State.

Violence against women is not specifically defined in the main articles of CEDAW. However, the CEDAW Committee’s General Recommendation Number 19 interprets the definition of discrimination set forth in Article 1 to include violence against women and elaborates on the its numerous forms. The Committee indicates that “[g]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.”⁴ General Recommendation Number 19 further states that “[t]raditional attitudes by which women are regarded as subordinate to men … perpetuate widespread practices involving violence or coercion.”⁵ The recommendation makes explicit reference to the crimes listed below, including domestic violence, honor crimes, and female circumcision.⁶

The CEDAW Committee has also issued specific recommendations on the eradication of female circumcision, including through education programs and revisions to health care policy.⁷ The Committee recommends that such measures involve the cooperation of universities, medical associations, women’s associations, politicians, professionals and religious and community leaders alike in collecting and disseminating accurate information about female circumcision and its harmful consequences for women, and thus influencing attitudes towards the eradication of this practice.⁸

State Responsibility

Under international human rights law, the state maintains a specific duty to protect women from violence. The International Covenant on Civil and Political Rights (ICCPR), which Iraq has ratified without reservation, obligates States Parties to provide equal protection before the law (Article 26), to respect and ensure the rights recognized in the ICCPR without discrimination based on sex (Article 2) and to ensure the equal rights of men and women (Article 3). Thus, when the state fails to enforce laws prohibiting crimes of violence against women, or fails to provide the same protections to men and women under such laws, it violates its obligations under the ICCPR.

Pursuant to CEDAW, States Parties are required to protect women from violence, whether by the state or by private individuals. Article 2(e) of CEDAW requires States Parties to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.” Moreover, international courts have interpreted provisions similar to those contained in the ICCPR and CEDAW that require states to respect and ensure the rights set forth in the treaty to mean that the state must “take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose appropriate punishment and to ensure the victim adequate compensation.”⁹

The CEDAW Committee has also spoken to this issue. Paragraph 9 of CEDAW General Recommendation Number 19 specifically indicates that states may be responsible for providing reparations for private acts where they have failed to act with “due diligence” to prevent
rights violations or to investigate and punish such acts.\textsuperscript{10} Notably, paragraph 24 specifically calls for legislation to remove the defense of “honor” in relation to murder and assault of a female family member and for criminal and civil remedies in domestic violence cases.\textsuperscript{11}

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

It is important to note that the former government of Iraq entered reservations to those CEDAW Article 2 provisions that set forth the state’s obligations to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (paragraph (f)), and to “repeal all national penal provisions which constitute discrimination against women.” (paragraph (g)). The CEDAW Committee has called on Iraq to reconsider such reservations.\textsuperscript{12}

Regardless of these reservations, however, Iraq remains a State Party to the ICCPR and thus subject to the equal protection provisions contained in the ICCPR and set forth above as well as the broader CEDAW Art 2(e) provision calling for the state to take “all appropriate measures” to eliminate discrimination against women.

**DE JURE COMPLIANCE**

The Iraqi Constitution provides the basic guarantees of equality before the law (Article 14), the right to life and personal security (Article 15) and a blanket prohibition on violence (Article 29), which together and independently serve to guarantee that the state will protect women from violence. The right to liberty and dignity (Article 37) provides further support for this principle, while the prohibition against punishment except as provided by law (Article 19) reinforces the illegality of honor killings under the Constitution.

**Article 14 of the 2005 Constitution:**

Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.

**Article 15 of the 2005 Constitution:**

Every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority.
Article 19 of the 2005 Constitution:

... 
Second: There is no crime or punishment except by law. The punishment shall only be for an act that the law considers a crime when perpetrated. 
...

Article 29 of the 2005 Constitution: 
Fourth: All forms of violence and abuse in the family, school and society shall be prohibited.

Article 37 of the 2005 Constitution: 
First:  
(a) The liberty and dignity of man shall be protected.  
...
(c) All forms of psychological and physical torture and inhumane treatment are prohibited.

Despite the guarantees contained in the 2005 Iraqi Constitution, the Iraqi Penal Code of 1969 and subsequent orders of the Revolutionary Command Council contain provisions that condone violence against women by providing for mitigated sentences and in some cases absolute relief from criminal responsibility by the perpetrator.

Rape and Sexual Assault

Under the Iraqi Penal Code No. 111 of 1969 (with amendments), rape is a private offense, meaning that no action can be brought by the state without the consent of the complainant or a legal guardian.

The provisions pertaining to rape and sexual assault specify various maximum penalties, but impose a uniform minimum penalty of five years. For example, carnal knowledge of a minor carries a maximum penalty of 10 years (Article 385); rape carries a maximum penalty of 15 years (Article 393); sexual intercourse with a minor between 15 and 18 years carries a maximum penalty of 10 years (Article 394); sexual assault of an adult carries a maximum penalty of 7 years (Article 396(2)); and sexual assault of a minor carries a maximum penalty of 10 years (Article 396(1)).

Aggravating circumstances, as provided under Article 393(2), include the use of force, incest, a relationship of guardianship or trust over the victim, transmission of disease, and the victim’s loss of virginity, for which she must be compensated. Revolutionary Command Council Decision No. 488 of 1978 introduced the death penalty for certain cases of incest. Such offences would now result in a penalty of life imprisonment under the revisions to the laws pertaining to the death penalty (discussed below under Prostitution).
One of the most controversial provisions in the penal code, but one that features in several such laws throughout the region, is Paragraph 398 by which the defendant is excused in cases of rape and sexual assault if he marries his victim, even after the sentence has been imposed. The law provides that the sentence will be reinstated or the proceedings will resume if the defendant divorces the victim without legal justification during a period of three years following cessation of the proceedings. This law effectively sentences the victim to a minimum of three years with her rapist.

**Iraqi Penal Code No. 111 of 1969, Article 398:**

If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed. Legal proceedings will resume or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings. The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence.

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

Advocates of this provision argue that it was passed in the interests of the victim, so that her honor may be restored by virtue of the marriage, thus avoiding a potential honor killing. In reality, it has served to institutionalize the shame and dishonor associated with rape and thus further jeopardize the life and health of the victim. A recent case in southern Iraq is illustrative. A 14-year old girl was raped and then threatened with death by her family when she gave birth to the rapist’s baby. The victim was then placed in custody by a judge (in a criminal remand facility) for her own protection, along with her new born baby, while efforts were made by international and Iraqi organizations to secure shelter for her in northern Iraq. When this process was almost complete, the accused, who was being held on remand, petitioned the court to marry the victim, with the agreement of the victim’s family, and, ostensibly, the victim. The accused was released and the two were married. According to NGO workers, cases such as this one are not uncommon. It is also worth noting in relation to this particular case that under the Iraqi Personal Status Code, the legal age for marriage is 18 years (Article 7(1)), and 15 years with the consent of a judge (Article 8(2)). There is no legal provision for marriage of a minor under 15 years of age.
Kidnapping

Under Article 423 of the Iraqi Penal Code, abduction of a woman is a felony carrying a maximum penalty of 15 years. Rape or attempted rape is considered an aggravating factor that carries a penalty of death or life imprisonment. Article 423 was among the articles for which the death penalty was reinstated by Order No. 3 of 2004.

**Iraqi Penal Code No. 111 of 1969, Article 423:**

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

Again, the penalty is voided by marriage of the abductor to the victim, a procedure which may be invoked by “any person who has an interest in the proceedings.”

**Iraqi Penal Code No. 111 of 1969, Article 427:**

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

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

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

Murder and Mitigating Circumstances — Honor Killings

The Iraqi Penal Code treats so-called honor killings differently from other murders by providing for mitigated sentences when issues of honor are involved. This is not only inconsistent with the illegality of the act, but also serves to enforce the practice of “honor killing” as a form of extra-judicial punishment. As noted above, such extra-judicial punishment is prohibited under Article 19 of the Constitution, which states that “there shall be no crime or punishment except by law.” Such mitigated sentences are also discriminatory, as they punish acts of violence against women much more leniently than acts of violence against men.
While the usual penalty for murder is either death or life imprisonment, the Penal Code makes an exception in the case of a man who murders his wife or a female relative when he catches her in the act of adultery. The provision also further deprives the victim or victims of any legal right to self-defense.

**Iraqi Penal Code No. 111 of 1969, Article 409:**

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

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

Revolutionary Command Council Order No. 6 of January 2001 gave effect to a broader category of so-called honor crimes by providing for a mitigated sentence for the killing of a wife or close female relative (*maharem*) where the motive is related to honor. Under Article 130 of the Penal Code, such mitigated sentence may be as low as one year, where the full penalty would have been death, or six months where the full penalty would have been life imprisonment. RCC Order No. 6 then goes even further by providing a mitigated sentence for a male relative of the deceased and dishonored female who murders an individual for making reference to the dishonorable act of the deceased. It also provides for punishment by execution in relation to any attempts to avenge the victim of the honor killing. This provision has not been repealed since the fall of the Ba'ath regime.

**Revolutionary Command Council Order No. 6 of 2001:**

Considering the killing of one’s wife or a close female relative (*maharem*) for honor reasons a mitigating factor under law.

Subject to the conditions of clause (1) of Article 42 of the Constitution, the Revolutionary Command Council decided the following:

First: For the purpose of implementing Article 130 of the Penal Code Number 111 of 1969, it shall be a mitigating factor if a man kills his wife or *maharem* for honor reasons, or if one of the relatives of the deceased woman killed the one who imputed dishonor to any of them by making reference to her disgraceful deed, which she was killed for.

Second: Anyone who intentionally and for the purposes of revenge of the deceased kills the killer specified in the first clause shall be punished by execution. No legal excuse or mitigating factors shall apply to him, and he will not be entitled to any partial or general pardon.
Third: Anyone who, in accordance with tribal procedures, issues a ruling or attempts to issue a ruling in relation to the crimes referred to in the first and second clauses of this decision shall be imprisoned for not more than 7 years and not less than 3 years.

Saddam Hussein, President of the Revolutionary Command Council

**Trafficking and Prostitution**

Alongside the protection of liberty and dignity, the Iraqi Constitution prohibits trafficking of women and children.

**Article 37 of the 2005 Constitution:**

First:

(a) The liberty and dignity of man shall be protected.

...

Third: Forced labor, slavery, slave trade, trafficking in women or children, and sex trade shall be prohibited.

Prostitution is a criminal offense in Iraq. The Anti-Prostitution Law introduced in 1988 included a minimum penalty of three months and a maximum of two years for women guilty of prostitution. RCC Order Number 234 of 2001 amended the Anti-Prostitution Law of 1988 to mandate capital punishment for individuals guilty of pimping and prostitution. This order, however, is no longer in effect. CPA Order Number 7 of 2003, Section 3, repealed all provisions providing for the death penalty and substituted them with life imprisonment. Following the transfer of authority, the death penalty was reinstated for certain offenses by the Interim Iraqi Government, although prostitution and pimping were not among them.\(^{15}\)

Notably, there are no penal provisions outlawing solicitation of prostitution.

**Domestic Violence**

“The punishment of a wife by her husband” is considered a “legal right” under Article 41 of the Iraqi Penal Code and is categorized with such acts as disciplining of children and violence as a means of apprehension of a criminal in the course of a felony. As such, it is not considered a crime. While the law specifies that such punishment is permissible “within certain limits prescribed by law or by custom,” there are no specified legal limits, and the customary limits are, by their nature, undefined.
Iraqi Penal Code No. 111 of 1969, Article 41:

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

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

Marital violence is, however, grounds for divorce, as noted in the chapter on Family and Marriage.

It is worth noting that the Iraqi Constitution contains an absolute prohibition on entrance into the home except by judicial order. Such a provision, while seeking to uphold the right to privacy, may also make police response to domestic violence situations more difficult. While the right to privacy is a critical component of personal freedom, so is freedom from violence. States have an obligation to prevent and punish acts of violence against women that occur in the home. Effective procedures for filing domestic violence complaints and issuing of judicial orders must be implemented to ensure that the police can and do respond to domestic violence cases while at the same time adhering to the right to privacy and ensuring that privacy does not become a shield that protects crimes of violence.

Article 17 of the 2005 Constitution:

First: Every individual shall have the right to personal privacy so long as it does not contradict the rights of others and public morals.

Second: The sanctity of the home shall be protected. Homes may not be entered, searched or violated, except by a judicial decision in accordance with the law.

Female Genital Cutting

Although female genital cutting constitutes “assault” within the meaning of Article 412 of the Penal Code, this provision does not appear to be invoked with respect to such acts. Moreover, there are no specific laws criminalizing female genital cutting and, although the Ministry of Health has stressed that doctors are not to perform such procedures, there is no legal mechanism to enforce this prohibition.16

Iraqi Penal Code No. 111 of 1969, Article 412 (emphasis added):

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

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

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

In conclusion, Iraq’s Constitution prohibits discrimination and guarantees the right to life, personal security, liberty, and dignity. Additionally, the new Constitution specifically prohibits “all forms of violence and abuse within the family.” Trafficking in women and children is also prohibited by the Constitution.

Despite these constitutional provisions, the relevant provisions of the Penal Code and RCC Orders have not been amended accordingly and do not correspond either with the Constitution or with international standards. This legislation ignores and in some cases sanctions violence against women, sets mitigating sentences for abusers and even relieves perpetrators of crimes of violence against women from criminal liability by encouraging the forced marriage of a victim and perpetrator. Iraq’s Penal Code considers “punishment of a wife by her husband” to be a disciplinary action, conferring a legal right on husbands to abuse their wives. Domestic violence is not regarded as a crime or a violation of human rights by Iraq’s national legislation. Both the Penal Code and RCC Orders provide for mitigated sentences for honor killings.

These provisions of law fail to comply with the Universal Declaration on Human Rights (Article 3), the ICCPR (Articles 2, 3, and 26) and CEDAW (Articles 2, 5, 15 and 16), as well as the UN Declaration on the Elimination of Violence against Women (Article 4), which stipulates that states may not invoke any custom, tradition or religious consideration to avoid their obligations to eliminate violence against women.

Iraq’s government should therefore amend national legislation to bring it into compliance with the supreme law of the country and with international treaties to which Iraq is a party. The Government of Iraq should develop policies to protect women’s rights, prosecute cases of gender-based violence, punish perpetrators, and provide effective remedies to women victims of violence.

DE FACTO COMPLIANCE

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

Rape and Sexual Assault

There has been a substantial increase in reported cases of sexual abuse in Iraq over the past three years, including a significant increase in the first half of 2006. A recent study conducted
by the Women’s Rights Association, a local NGO in Iraq, revealed that while fewer than five cases were reported annually during Hussein’s era, nearly 60 women have been raped in Baghdad from February to June 2006, while another 80 were abused in other ways. These statistics do not include unreported cases.

Given the severe consequences to women of reporting acts that violate their chastity, it is reasonable to assume the number of unreported cases is substantial. A senior gynecologist commented in an interview with the authors: “I have seen many female victims of violence through my work. Incidences of rape are high, but rarely recorded as such or reported to the police.” Moreover, even where victims do attempt to report such cases, the police may refuse to file the complaint. Indeed, as noted above, rape is commonly perceived as bringing dishonor upon the family, and frequently leads to honor killings. A 2005 study conducted by the Ministry of State for Women’s Affairs reported that of the 400 cases of rape documented since the fall of the regime until the time of the report, more than half the victims were later murdered in honor killings.

There are also incidences of rape being used to settle scores between warring factions. Women’s rights activists reported one recent incident in which a Shiite girl was kidnapped and raped. In retaliation, several Sunni girls were kidnapped and raped from a nearby neighborhood.

Other victims of sexual violence are forced by their families to marry their attackers. Since Iraqi law provides for the dismissal of charges against men if they agree to marry their victims, many men choose to marry their victims rather than face jail time.

A lack of female law enforcement personnel and a lack of sensitivity and awareness among law enforcement personnel more generally further contributes to the reluctance of women to report incidences of rape.

Kidnapping

In the last year, sectarian violence has increased dramatically. Scores of Iraqis go missing each day as a result of operations staged by militias and other groups. Respondents have indicated that sectarian attacks and kidnappings are more often targeted at men than women, although incidences of targeting and exploitation of women have been reported. One kidnapped woman was reportedly drugged with pills, dressed in a suicide belt and sent to bomb a cleric’s office in Khadamiyah, where she turned herself in to police. A judge gave her a seven year sentence.

There has been a proliferation of kidnappings for ransom over the course of the current conflict due to the inability of security forces, both local and international, to control organized crime, and this form of kidnapping is having a severe impact on women. U.S. officials report that up to 40 people are kidnapped every day, with ransoms ranging from a few thousand dollars to $1,000,000 or more. Several respondents said that they fear leaving their homes, and that their ability to work, study, and participate in political life is severely compromised due to the threat of kidnapping and murder. One respondent stated that 15 female students were kidnapped in the space of a single month from a school in Najaf. This respondent further asserted that “[i]n the event that organized crime continues, women will be unable to do anything.”
The trauma, for many women, does not end upon their escape or release from their captors. The shame associated with the disappearance of a daughter causes many families not to report kidnappings. The resulting stigma of sexual impurity is so great that even if the girl should resurface, she may never be taken back by her family. As one interviewee noted about the recent kidnapping in Al Amarah of a young woman with three children, “her family asked that no one look for her, as it would be shameful to get her back now.” An Iraqi lawyer gave a chilling account of a girl who escaped her captors:

The police transferred her to an investigative court, put her in a women’s prison and issued orders to arrest the people concerned. The suspects confessed. The judge returned the girl to her family, and on the same day, they killed her.

As noted in the de jure section of this report, some families will negotiate with the captor to marry the victim so as to restore her honor, and this so-called remedy is sanctioned by the law.

Honor Crimes

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

Accurate figures on the prevalence of honor crimes are difficult, if not impossible, to obtain. Because the honor of women is often tied to the honor of entire families and at times entire tribes, crimes in the name of honor are seldom reported and even less frequently investigated. However, it is known that honor crimes are occurring increasingly in Iraq and that they affect women predominately, if not exclusively.

Killing

As noted in a recent report by the UN Secretary-General to the Security Council, a substantial number of “honor crimes” were reported in Iraq in 2006, although precise figures are not available. The CEDAW Committee has expressed its deep concern regarding the violence perpetrated against women in Iraq in the form of honor killings. It noted that in addition to the continued practice of this particularly brutal form of violence against women, such crimes are not prosecuted and punished as other homicides.

The Kurdistan National Government has made significant efforts to address the problem of honor killings, including denouncing the practice of honor killings and raising public awareness of these crimes. The Women’s Affairs Committee in the Kurdistan Regional Assembly has worked to change the law in cases of the murder of women. “Honor”, which is considered a defense to murder in other parts of Iraq, is now considered an aggravating circumstance in the region of Kurdistan. Enforcement of these provisions, however, remains a problem. There have been reports that in the first half of 2006, there was a sig-
significant increase in the rate of female mortality under circumstances that are consistent with honor killings. For the period January 1 to July 1, 2006, a total of 275 women were killed in the Governorates of Erbil and Sulaymaniya. “Burning” was listed as the cause of death for over half of the victims in Erbil and for about two thirds of the victims in Sulaymaniya. Many women’s rights activists have reported that such “fire accidents” conceal an honor crime committed in the family. Similarly, incidents reported as suicides or attempted suicides are often attempts to conceal an honor crime. Kurdish prosecutors observe that while the laws no longer provide for mitigated sentences for honor killing, the crimes continue to go largely unaddressed because the cases are not reported and are in fact concealed by the families involved, thus never even reaching the courts.

Outside Kurdistan, perpetrators of so-called honor killings are protected by Iraqi legislation, which permits extraordinarily lenient sentences for such crimes, as noted above. Since a 2001 RCC order expanded the category of “honor” killings and provided for even further mitigated sentences, the number of honor killings has grown. It has also been observed that despite these lenient sentences, honor killings generally go unreported and police and investigative judges have been known to refrain from investigating such suspicious deaths when the family does not cooperate or shows no interest in pursuing the investigation.

It is believed that the incidences of honor killings have further increased in Iraq since the fall of the Ba’ath regime, supposedly because of a rise in conservatism.

**Mutilation**

Honor crimes may also take the form of mutilation. By way of example, a 2005 Amnesty International report contains an account of a 24-year-old pregnant Iraqi woman who was accused of adultery and tortured and mutilated by six members of her husband’s family. They cut off part of her nose and told her they would kill her after the birth of her child. She fled to Syria, where she obtained refugee status. The men who tortured her were released within 24 hours on the grounds that they were safeguarding family honor.

Honor crimes constitute a form of family and community violence against women, violating their right to life, security of the person, freedom from torture, inhuman and degrading treatment, and equal protection of the law. They also implicate additional rights regarding the rights of women to freely enter into marriage. Moreover, honor crimes violate the Constitution’s prohibition on punishment other than as prescribed by law.

**Female Genital Cutting**

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

Although never found to be a common practice in the south of Iraq, the practice of FGM appears to be widespread in the rural areas of northern Iraq. According to one report, FGM...
has increased to shockingly high levels in Iraqi Kurdistan, a region with no significant previous history of this practice.\textsuperscript{52} Between September and November of 2004, an international NGO with strong presence in the region, WADI, conducted interviews with 1,544 women and girls in the German area of northern Iraq; 977 of them stated that they had been subjected to the practice.\textsuperscript{53}

The prevalence of FGM in Kurdistan is grounded in both religious and traditional practices. Although the practice is largely based upon customary practice, many in rural areas consider it to be required by Islamic law.\textsuperscript{54} Social pressures also play a role. Women are still thought to be promiscuous if they are uncircumcised.\textsuperscript{55} Some women are taught to believe that food cooked by an uncircumcised woman is unclean and that a circumcised girl has more affection for her family.\textsuperscript{56} WADI workers report that a newly married woman was so badly treated by her in-laws that she performed the operation on herself.\textsuperscript{57}

**Domestic Violence**

Violence in the family in Iraq goes mostly unreported. According to an Amnesty report, “[t]radition all too often serves as a pretext for acts of brutality against women for daring to choose how to lead their lives.”\textsuperscript{58}

In a survey conducted in 2003 by Physicians for Human Rights, the group found that half of those surveyed, both men and women, “agreed that a man has the right to beat his wife if she disobeyed him.”\textsuperscript{59} A senior gynecologist interviewed by the authors stated: “I have seen cases of beating by husbands which have caused severe physical trauma and miscarriages. In such cases, the men are not punished and the women are sent home.”\textsuperscript{60}

As noted above, public acceptance of marital violence is supported by the law. Accordingly, victims of domestic violence receive no substantive assistance from the government.\textsuperscript{61}

In southern and Shiite areas of Iraq, there are far fewer NGOs monitoring and responding to such issues, despite the fact that the situation of women there is often more dire. The few existing documents show that violence against women is very widespread. Another report issued by Physicians for Human Rights surveyed 2000 families in the south, 50% of whom reported household violence in the form of beatings, torture or murder. Few initiatives such as shelters or education campaigns have been put in place in the region.\textsuperscript{62} Most victims of family violence have no access to medical treatment.\textsuperscript{63}

Significantly, there is a sharp connection between family violence and female suicides in Iraq, including self-immolation. Women’s NGOs in Iraq such as KWAHK and the Asuda Centre shelter have documented numerous cases. Reasons given by survivors included forced marriages, mistreatment within marriage, family disputes, fear of honor killings and poverty.\textsuperscript{64}

**Trafficking & Prostitution**

An increasing number of young Iraqi women and girls are fleeing Iraq and turning to prostitution in neighboring countries, although there are no reliable statistics on how many girls are involved.\textsuperscript{65} One interviewee from Maysan province also reported that due to extreme
poverty, families are selling their daughters to traffickers who are arranging marriages for them in the Gulf. The trafficker marries the girl by proxy, then takes her abroad and gives her to a husband in Dubai. In doing so, “he assures the family that he will marry the girl to a Sheikh, a nice person, and that she will be well taken care of.”

Other young Iraqi women are being kidnapped and sold into sexual slavery in neighboring countries such as Jordan, Yemen, Syria and Persian Gulf countries, where their prices reach ten thousand dollars. The Organization for Women’s Freedom in Iraq estimates that nearly 3,500 Iraqi women have gone missing since 2003 and it suspects that a large number of those women have become victims of sex trafficking. While the majority of these reports involve young girls kidnapped and sold to brothels, there are some reports of married Iraqi women being sold by their husbands.

Women and girls sold into prostitution have little, if any, recourse. If they are able to escape and seek assistance from law enforcement authorities, they are often charged with crimes because they are carrying fake passports or because they have been forced by their captors to engage in unlawful behavior. Others are kept in prisons for their own safety.

Efforts to detect and prevent sex trafficking have been inadequate. The Ministry of the Interior is responsible for trafficking-related issues, but the security situation has prevented the Ministry from actively responding to the problem. Trafficking crimes are not specifically enumerated in Ministry of the Interior statistics on criminal activity and they have not included trafficking in police training curricula. As of March 2006, the Ministry of the Interior had not conducted any trafficking-related investigations.

**Tribal Practices**

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

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

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

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

Exchanges of women as compensation in tribal disputes are reportedly on the increase in some rural areas of Iraq. As noted by an interviewee, “Women married off in this way will live as slaves, humiliated. Marrying an ‘enemy’ family, they will not be treated well.”
Other forms of forced marriage are also commonly invoked within the family. Several interviewees reported ongoing practice of Al Nehwa marriages, whereby a girl is forced to marry her paternal cousin. The consequences of not following this custom, although contrary to law, are potentially grave in certain communities. By one interviewee’s account:

I saw a case where a girl married a cousin from her mother’s side, instead of her father’s side. They accepted this and sent a message to the mother’s family saying there will be no problem, we are ready to reconcile. When she came, they brought all the family, placed her in front of them, and said, ‘look at this girl, because she disobeyed us, she will be killed.’ This was used as a means of intimidation of the other girls.\(^{76}\)

Another survey respondent gave an account of a woman who “refused to marry her cousin, and so her cousin banned her from marriage.”\(^{77}\)

Forced marriage is a recognized form of violence against women and a violation of their fundamental freedoms.\(^{78}\) It is also illegal in Iraq and has been criminalized under Article 9(2) of the Iraqi Personal Status Code, but these prohibitions are not being enforced. This issue is discussed further in the chapter on Family and Marriage.

Religiouly Motivated Violence

Amidst the growing sectarian tensions in Iraq, extremist Sunni and Shiite groups have sought to intimidate women through both verbal threats and flyers warning women to wear the hijab or face violent consequences.\(^{79}\) Women have been attacked for what these groups consider “immoral” or “un-Islamic” behavior, like dancing and socializing with men.\(^{80}\) In some areas, such groups have announced “rules” that women may not drive, go out after midday or walk with men. If someone is caught breaking the rules, they are shot.\(^{81}\) There are also reports of families being sent bullets or death threats because young women played sports or did not wear a headscarf.\(^{82}\) One 23-year-old woman was abducted on her way home from her university. Her attackers threw acid on her face and legs and cut off all her hair while telling her it was the price for not obeying God’s wish in using the veil.\(^{83}\) She lost her vision in one eye and was permanently disfigured by the attack. In a similar attack in May 2006, two teenage girls were dragged off the al-Amel Al-Sha’bi street in the Amariya district and had their heads shaved because they were not wearing the hijab.\(^{84}\) Militants later issued a warning that in the future women walking down the street without a hijab faced death.\(^{85}\)

Although none of the restrictions imposed by militias have the force of law, many women feel they have no legal recourse in the face of these restrictions and related attacks as it is widely believed that the police are unable or unwilling to take action.

In response to the increasing violence against women in the name of Islam, in June 2006 30 of the Iraqi Parliament’s 275 members signed a declaration calling for legislators to clarify the rights of women.\(^{86}\) Acknowledging that female Iraqi citizens endure “humiliating practices,” the declaration calls for the Ministry of Justice to investigate complaints of inequality, for police to respect the rights of women as stated in the Iraqi Constitution.\(^{87}\)
Violence Against Women in Custody

According to an article published by the Global Policy Forum, human rights organizations have reported that women in custody are subjected to beatings, torture, and isolation. Speaking on the condition of anonymity, female detainees released from Abu Ghraib reported being interrogated naked, subjected to humiliation by soldiers and threatened with rape. One female prisoner claimed that American guards were raping female detainees and that some of them were now pregnant. She smuggled a note out of Abu Ghraib urging the Iraqi resistance to bomb the prison to spare the women further shame.

Abuses of women, such as threats, intimidation, beatings, and the application of electric shocks also occurred at the hands of the Iraqi police. For example, a woman detained in the Diwaniyah police station claimed that police had administered electric shocks to the soles of her feet and threatened to sexually abuse her teenage daughters if she did not provide the information they demanded.

Availability of Protection and the State’s Response

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

Law Enforcement

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

As one survey respondent put it: “… if (mis)fortune befalls her and she lands in police stations or detention centers, then she would suffer physical and psychological violence.”

Shelters

There are no government sponsored shelters for women in Iraq. The Ministry of Labor and Social Affairs is reportedly “looking at” developing institutions to help abused women, while the Ministry of State for Women’s Affairs, although supportive of such initiatives, does not have the budget to establish state-run shelters.

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

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

There are reports of bureaucratic roadblocks hindering women’s advocates from providing safe shelters for kidnap survivors. Even groups not funded by the government must receive authorization from four government ministries and the Baghdad city council in order to open a shelter. In addition to making it harder for women’s organizations to open and operate new shelters, these bureaucratic requirements risk exposing the locations of halfway houses, which must remain secret for the safety of the women whom they help.

Such shelters also face social obstacles. Although established to protect women from abusive and life-threatening family environments, shelters are seen by sectors of the community as “encouraging people to leave their homes when they could seek assistance within the family.”

**KEY AREAS OF CONCERN**

- Laws providing for mitigated sentences for so-called honor killings continue in force in most of Iraq and reports indicate that the incidence of honor killings has risen during the period following the fall of the Ba’ath regime. (CEDAW – Article 2 (f); ICCPR – Article 9)

- Victims of rape and kidnapping are commonly perceived as disgraced and thus subjected to the threat of honor killings or to marriage to the perpetrator under the pretense of reinstating the honor of the family. Both practices are legitimized under the Iraqi Penal Code, which relieves perpetrators of crimes of violence against women of criminal responsibility by encouraging the forced marriage of a victim and perpetrator. (ICCPR – Article 2; Article 26; CEDAW – Article 2 (a); (g); Article 5)

- A man is legally entitled to beat his wife under the Iraqi Penal Code, and the practice is broadly accepted by both men and women. (CEDAW – Article 2 (a); (g); UNDEVW – Article 4(d);(j))

- There is little to no state-supported protection for women victims of violence; there are no state-run shelters or rehabilitation facilities and law enforcement personnel are not responsive to complaints of violence against women. (ICCPR – Article 2(3)(a); UNDEVW – Article 4 (c);(d);(e);(f);(g);(h);(i)

- Female genital cutting appears to be increasingly practiced in the Kurdish region and there are no legal provisions outlawing or criminalizing the practice. (CEDAW – Article 2(f); UNDEVW – Article 4 (c); (d)
Over the past 12 months, there has been a dramatic increase in trafficking of women, both inside and outside Iraq. Trafficked victims have little recourse in Iraq and when they do seek assistance from law enforcement authorities, they themselves are often charged with crimes that involved conduct while a victim of the trafficking situation. (CEDAW – Article 6)

VIOLENCE AGAINST WOMEN – INTERNATIONAL TREATY FRAMEWORK

**UDHR**

Article 3

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

**ICCPR**

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
   
   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

   (c) To ensure that the competent authorities shall enforce such remedies when granted.
Article 3
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 9
1. Everyone has the right to liberty and security of person…

Article 26
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CEDAW
Article 2
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.
Article 5
States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6
States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Article 15
1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16 (relevant provisions)
1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;
(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
(c) The same rights and responsibilities during marriage and at its dissolution;
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

CEDAW General Recommendation No. 19, Paragraphs 7, 9 and 11

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

   (a) The right to life;
   (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
   (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
   (d) The right to liberty and security of person;
   (e) The right to equal protection under the law;
   (f) The right to equality in the family;
   (g) The right to the highest standard attainable of physical and mental health;
   (h) The right to just and favorable conditions of work

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2 (e), 2 (f) and 5). For example, under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

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

Article 1

For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 4

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

(a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;

(b) Refrain from engaging in violence against women;

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance,
treatment, counseling, and health and social services, facilities and programs, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women’s movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;

(p) Facilitate and enhance the work of the women’s movement and non-governmental organizations and cooperate with them at local, national and regional levels;

(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programs, as appropriate.
ENDNOTES

1 Respondent interview E2, 2005.
7 Committee on the Elimination of Discrimination Against Women, General Recommendation 14 (Ninth Session 1990), UN Doc A/45/38 (1990) at Paragraphs (a) and (b). Available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bad3a652ca102401c12563ee0062e685?opendocument
9 Velazquez Rodriguez v. Honduras (July 29, 1988), Inter-American Court of Human Rights (Series C), No.4.
13 As reported to author.
14 Maharem is a term used to describe a close female relative who one cannot legally marry.
15 Order No. 3 of 2004 (8/8/2004) provides capital punishment for certain crimes affecting internal state security, public safety, attacks on means of transportation, premeditated murder, drug trafficking, and abduction.
16 Interview with Gynecological Specialist, Focus Group, April 28, 2005.
17 Respondent A7.
27 Respondent A7, B1, B3, B4, C5, E2, E5, G1 (Question 81)
28 Respondent A7, (Question 81).
violence Against women And the right to personal security

37 CEDAW/C/IRQ/2–3 468 and 469, 14 June 2000, ¶ 193 (“The Committee is also deeply concerned by the violence against women perpetrated through honour killings.”).
38 CEDAW/C/IRQ/2–3 468 and 469, 14 June 2000, ¶ 194 (“The Committee urges the Government in particular to condemn and eradicate honour killings and ensure that these crimes are prosecuted and punished in the same way as other homicides.”).
49 Killing for Honor, Ziad Khalaf Al Ajely, Institute for War and Peace Reporting at 1, published at www.peacewomen.org/news/Iraq/May 05/honour.html.


Rashid, Asma Jamil Rashid. “Iraqi Women after Three Years of Change.”


Respondent M1.


Respondent M1.


The Iraqi Personal Status Code of 1959 (the Code) is the primary legal instrument that addresses women’s and men’s rights within the context of family, marriage, inheritance and other related areas. As promulgated in 1959, the Code granted women expansive rights that were, at the time, considered unparalleled in the Arab world. However, under the rule of the Ba’ath party, several of the rights granted to women under the Code were severely limited both in law and in practice by Revolutionary Command Council (RCC) orders. While the Code remains relatively progressive in relation to similar Personal Status Codes found in the region, the Committee on the Elimination of Discrimination Against Women has indicated its concern “at the prevailing view that emphasizes women’s stereotypical role in the family and in private life to the detriment of establishing equality of women in all spheres of life.”

The Code has gained particular relevance since the fall of the Ba’ath regime in light of political and religious efforts to replace the Code with Shari’a law, efforts which found their place in Article 41 of the 2005 Constitution. The ensuing struggle over Article 41 and the validity of the Code reflects the larger and more encompassing dialogue over the exact role that Shari’a should play under the Constitution and in the broader law-making process. In exploring such dialogue, it is also important to note that women do not present a monolithic group in terms of their views on the future direction of the Code and the role of Shari’a. Women remain divided among numerous political and social groupings in Iraq and their attitudes concerning women’s role in family life lie at the heart of this division.

INTERNATIONAL LEGAL FRAMEWORK

The Universal Declaration of Human Rights (UDHR) Article 16 articulates the importance of recognizing the family as “the natural and fundamental group unit of society” and the equal rights of men and women with regard to marriage and its dissolution. Article 16(2) states that both parties to a marriage must give “free and full consent” before entering into marriage.

Article 10(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) indicates that States Parties should grant “[t]he widest possible protection and assistance” to the family especially when one is being formed and when parents are caring and educating...
their dependent children. The ICESCR reiterates the UDHR’s commitment to ensuring that individuals give their free consent to being married.³

Article 23 of the International Covenant on Civil and Political Rights (ICCPR) furthers the protections for the family unit and marriage.⁴ The Human Rights Committee (HRC) has adopted a broad understanding of the term “family” and has acknowledged that this concept varies from country to country. However, regardless of how a State Party defines the family unit, the HRC insists that it must grant that unit the protections delineated in Article 23.⁵ In addition, the HRC notes that ICCPR Article 17 sets forth an all encompassing prohibition on any “arbitrary or unlawful interference with the family.”⁶

Article 23(3) of the ICCPR stresses that the free and full consent of both spouses is needed before entering a marriage. The HRC explains that

The Covenant does not establish a specific marriageable age either for men or for women, but that age should be such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law. In this connection, the Committee wishes to note that such legal provisions must be compatible with the full exercise of the other rights guaranteed by the Covenant; thus, for instance, the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages.⁷

Article 23 further requires States Parties “to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”⁸ The HRC emphasizes that sex-based discrimination is prohibited in situations where spouses lose or gain nationality by reason of marriage.⁹ The equal rights of spouses during marriage also pertain to their “choice of residence, running of the household, education of the children and administration of assets”¹⁰ and spouses maintain their equality in arrangements regarding the dissolution of the marriage or legal separation, noting in particular that States Parties should prohibit discrimination with respect to the grounds and procedures for separation or divorce, child custody and visitation, and maintenance or alimony.¹¹

According to ICCPR Article 23(4), in cases where spouses decide to dissolve their marriage, states need to establish protection measures for any children. The HRC has further noted that Article 24 protect the rights of the child both as a child and as a member of a family.¹²

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) takes the most comprehensive approach to women’s equality provisions within family and marriage. CEDAW Article 16(1) stipulates that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations....” This Article lists eight sub-articles covering women’s rights, on an equal basis with men, in all aspects of marriage. These include the right to freely choose a spouse, rights during marriage and at its dissolution, rights and responsibilities for children and guardianship, personal rights including choice of family name and profession, and rights with respect to property. Article 16(2) of CEDAW further states that underage marriage is null and void.
Although a ratifier of CEDAW, Iraq has made a reservation to Article 16 on the basis of Shari’a law. Iraq’s reservation to Article 16 states:

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

Thus, under international law, Iraq is not bound by the provisions of Article 16. It is important to note, however, that the CEDAW Committee has called on the Government of Iraq to modify or withdraw its reservation to Article 16 as soon as possible. This request is based on a central principle of treaty law, which does not permit reservations that are incompatible with the object and purpose of a treaty. Taking into account this principle, the CEDAW Committee has affirmed that Article 16 is a core provision of the Convention and has concluded that “reservations to Article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.” The CEDAW Committee explained why states would benefit from removing their reservations to Article 16:

Removal or modification … would indicate a State party’s determination to remove all barriers to women’s full equality and its commitment to ensuring that women are able to participate fully in all aspects of public and private life without fear of discrimination and recrimination. States which remove reservations would be making a major contribution to achieving the objectives of both formal and de facto or substantive compliance with the Convention…

DE JURE COMPLIANCE

The Evolution of Personal Status Laws in Iraq

The Personal Status Code of 1959

Following the overthrow of the monarchy by the July 14, 1958 Revolution, General Abdul Karim Kassem’s government passed the Personal Status Code in 1959. The Code governs marriage, divorce, custody, inheritance, and other facets of family life in Iraq. Based on both Sunni and Jafari (Shiite) interpretations of the Shari’a, the Code subjected all Muslims in Iraq to a standard, uniform set of laws concerning family and marriage. In doing so, the Code included provisions that deviated from the tenets of Shari’a and established Fiqh (Islamic jurisprudence). For instance, the Code limited and regulated polygamy and decreed equal inheritance for male and female heirs. This provision reflected a movement away from certain Shari’a laws that, inter alia, provide for a male heir to inherit twice as much as a female heir.

Over time the Code became a political litmus test for those who favored the revolutionary government and those who opposed it, including both Ba’athists and Islamists. Hence, once
the revolutionary government was overthrown in 1963 by the Ba’ath party, the Code was amended to reduce restrictions on polygamy and legislate gender inequities in the area of inheritance.17

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

Iraqi Governing Council Resolution 137

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

If signed into law, Resolution 137 would have granted enormous power to Muslim clerics to interpret matters concerning family and marriage law under various interpretations of Shari’a law according to sect, with potentially detrimental consequences for the rights of women. Women’s groups both inside and outside of Iraq vehemently protested the Resolution. Iraqis petitioned CPA Administrator Ambassador Bremer, urging him not to sign the Resolution into law. These protests, coupled with intense publicity, caused the IGC to withdraw the Resolution.

IGC Resolution Number 137:

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

1. The provisions of Islamic Shari’a shall be applied in areas of marriage, engagement, marriage contract, capacity, veritable marriage, incest, marriage to monotheist women, marital rights such as dowry, marital alimony, divorce, judicial divorce, Kul’, waiting periods, parentage, breastfeeding, custody, child support, kin support, parent support, will, willing, holding of estate, and all Religious Courts (personal status) in accordance with the mandates of their sect.

2. Repeal all laws, decisions, instructions and articles that violate paragraph (a) of this decision.
3. This decision is in effect once issued.
Mr. Abdul Aziz Al-Hakim/ Head of the Governing Council – 29/12/2003

The 2005 Constitution

Defenders of the unified Personal Status Code now face a fresh challenge as personal status has found its place at the center of the struggle over the position of Islam in the legal framework of Iraq. As the 2005 Constitution is currently subject to review, this has become a particularly urgent and heated debate. 18

Several provisions of the 2005 Constitution serve to entrench the role of Islam in Iraqi society.

**Article 2 of the 2005 Constitution:**
First: Islam is the official religion of the State and is a foundation source of legislation:

A. No law may be enacted that contradicts the established provisions of Islam
B. No law may be enacted that contradicts the principles of democracy.
C. No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.

Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandean Sabeans.

**Article 3 of the 2005 Constitution:**
Iraq is a country of multiple nationalities, religions, and sects. It is a founding and active member in the Arab League and is committed to its charter, and it is part of the Islamic world.

**Article 42 of the 2005 Constitution:**
Each individual shall have the freedom of thought, conscience, and belief.

Article 43 of the 2005 Constitution:
First: The followers of all religions and sects are free in the:

A. Practice of religious rites, including the Husseini rituals.
B. Management of religious endowments (waqf), their affairs, and their religious institutions, and this shall be regulated by law.

Second: The State shall guarantee freedom of worship and the protection of places of worship.
Article 2 of the Constitution expressly contemplates Islamic law as a source of all legislation, alongside the principles of democracy and constitutionally enacted rights and freedoms. The Constitution also seeks to enshrine religious freedom — including freedom of conscience, thought and belief, as well as freedom of worship — in Articles 2, 42 and 43. Article 41 then seeks to link this concept of religious freedom to the determination of personal status questions.

**Article 41 of the 2005 Constitution:**

Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.

Article 41, as written, is open to countless interpretations. It could result in the dissolution of the current personal status court system altogether, with personal status issues being decided by religious clerics. It could result in a three-tiered system, as in some Gulf states, comprising of Shiite courts, Sunni Courts and non-Muslim courts, with no specific code. Alternatively, as in Lebanon, it could result in a multi-court system governed by multiple codes — for every single “recognized” religion in Iraq. Seizing on the Article 41 reference to “choices,” it could provide for an optional system, whereby parties can opt in and out of different courts, or choose not to revert to courts at all. As one commentary notes, the question is “whether men will have the right to make that decision even if their wives and daughters disagree.” The possibilities are many and uncertain.

Proponents of Article 41 argue that it preserves religious freedom, rather than forcing upon Muslims of different backgrounds an interpretation of Shari’a which does not fit with their sect. They also argue that it would serve to formalize what is, in practice, a largely sectarian system, whereby personal status disputes are resolved before religious clerics before the parties revert to the courts. One respondent, a moderate Shiite cleric and proponent of Article 41, advised that a draft law not yet made public would create a three-court/three-code system, whereby the litigants would opt into the courts of their choice, regardless of their religion or sect. Islamic scholars — all of whom are men — would formulate the code for a Shiite court and the code for a Sunni court, with the third court being based on the civil code.

The key issue for the women of Iraq, however, is whether the various possible interpretations of Shari’a within each sect would be reconciled with the right of women to equal protection under the law based on Article 14 of the Constitution of 2005, as well as Iraq’s obligations under international law. When questioned on this point, the cleric explained that such interpretations would have to be found in order to comply with Article 2 of the Constitution, which requires compliance not only with “established provisions of Islam,” but with the rights and freedoms set forth in the Constitution as well as the principles of democracy.

Opponents of Article 41 are not so confident that such an interpretation will be found. They argue that Article 41 “enroots sectarianism, and separation between the components of Iraqi society...[and] weakens the role of the governmental institutions in building the power of law and justice.” In its analysis of the 2005 Constitution based upon recommendations of various non-governmental organizations regarding the status of women in Iraq, the regional
office of UNIFEM noted that “applying different laws by various courts to different groups within the same state … will only create a larger gap between individuals, violating the fundamental human rights … granted by international treaties and conventions.” Conversely, they call for the maintenance of the 1959 Code on the basis that it is considered “one of the most developed and advanced codes in the region that is in conformity with the basic principles of Islam, and [which] preserves and insures basic human rights especially those related to women.”

It is not only women’s groups who have voiced their objections to Article 41. A multitude of governmental and non-governmental organizations, civil society activists, members of parliament and the judiciary, and legal professionals have spoken out against this provision. Examples of other states where each religious community follows its own laws regarding marriage, divorce, inheritance, and related rights support these objections.

In Lebanon, for example, the complex web of personal status laws applying to different religions and sects has been strongly criticized as perpetuating the sectarian system that led to 15 years of civil war and remains at the heart of the country’s ongoing instability. Under a constitution that seeks to “guarantee the personal status and religious interests of the population” according to their religious sect, Lebanon recognizes 18 religious communities, each with its own court and law. One commentator describes the slippery slope from sectarian personal status laws to an overarching sectarian system, arguing that it has created a:

[d]uality of legal power between the state on the one hand and the various religious leaders on the other, allowing the latter to have a say in the private affairs of the Lebanese citizens … and also into their public affairs, such as schooling, elections … and the sharing of power within the state among the various sects.

She notes that “this duality has hampered the law from playing an integrative role in the establishment of the concept of citizenship regardless of religious sect.” Virtually mirroring the words of Iraqi advocates for a unified system, she concludes that the Lebanese system of personal status laws stands “in stark contradiction to the tenets of democracy and the establishment of the principle of equality before the law.”

This multiplicity of laws and jurisdictions is of particular consequence for women in Lebanon, with a variety of discriminatory principles and practices finding their way into virtually all personal status codes based on claims of adherence to religious laws or teachings. For example, some Christian sects in Lebanon hold that a man must approve his wife’s decision to work; most Muslim laws provide for the male heir to inherit twice the share of the female heir; virtually every sect provides for different marriage ages for males and females, and the list goes on. Finally, it has been observed that, “the various religious laws maintain the isolation of each faith by establishing a barrier to mixed marriage,” again linking a sectarian approach to personal status to the larger social and political divide. The issues related to inter-marriage also have the greatest impact on women, as some sects explicitly prohibit women from marrying outside their faith, while others require the woman to adopt the faith of her spouse in order for the marriage to be legally recognized.

The possibility of non-codification of personal status laws is a matter of concern for Iraq. In the Gulf, the majority of states have left matters of personal status uncodified and thus subject to independent judicial interpretations of the applicable school of Shari’a. This
has contributed to a lack of consistency in resolution of personal status issues, the rejection of applicable CEDAW provisions, and unequal treatment of women. The uncertainty and discriminatory impact of non-codification is aggravated in states where courts are further divided by sect, an issue of particular relevance to Iraq. This has been met with calls for a unified code from civil society groups as well as from within the government.

It is not possible to provide an exhaustive list of issues which, if determined by different sects, would give rise to different outcomes and impacts on women. However, some pertinent examples demonstrate the potential problems of a multi-code system, or a system where no code exists at all, particularly in cases of inter-marriage:

**Age of Marriage:** Under the Personal Status Code, the legal age of marriage is 18. If determined by sect, it may vary between 18 and as low as 9 years of age.

**The Marriage Contract:** A Sunni woman is required to have a *wali* (male guardian, usually a father, brother or uncle) represent her during the marriage proceeding. A Shiite bride can sign her own marriage contract.

**Daughters Born in Adultery:** There are certain sects that allow men to marry their daughters if born in adultery while other sects prohibit this practice entirely. It is not permitted under the Personal Status Code.

**Mut’a Marriage:** *Mut’a* is a temporary marriage contract drawn up between an adult man and woman which stipulates that the “wife” will be paid a designated sum of money for the “marriage” for a certain timeframe. This type of marriage is permitted by Shiite schools but not by Sunni schools. It is not addressed in the Personal Status Code.

**Custody:** Under Shari’a, while the father has presumptive custody of the children, the mother has the right to retain custody and care for them while they are young. The age of transfer of custody from mother to father varies by sect, and may be as low as seven. Under the Personal Status Code, a woman retains custody of her children until they are 10 years of age, and this may be extended by the court under certain circumstances.

It is also important to note that in some areas, such as divorce, even where the different schools of Islamic thought do not differ, the Iraqi Personal Status Code has departed from Shari’a to provide greater, if not equal, rights to women.

In analyzing all these arguments and comparative examples, the final answer lies in the text of the Iraqi Constitution. While the drafters of the Constitution have sought to link personal status to one’s religion, sect, or belief, they have also enshrined, in Article 14, the principle of equality before the law “without discrimination based on gender, race, ethnicity, origin, color, religion, sect, belief or opinion or economic and social status.” Thus, any interpretations of Shari’a or the laws or teachings of other religions and sects must be reconciled with this express provision of the Constitution.

Article 14’s guarantee of equality before the law rests on the principle of constitutional supremacy, which is embodied in Article 13 of the 2005 Constitution.
**Article 13 of the 2005 Constitution:**

First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.

Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.

Article 13 thus puts the express language of the Constitution — including the non-discrimination clause — above all existing and future laws. So, while opponents and proponents of Article 41 argue over its terms, the truth is that such an article should not exist at all. There is no reason for the drafters of the Constitution to treat personal status according to a distinct set of rules, when no other legislation has been accorded such special treatment. Constitutions across the world, including in the Middle East, demonstrate this point. Even if a particular legal regime were to apply to personal status, it could not conflict with any provision of the Constitution. Religious laws and teachings speak to a range of issues — such as punishment for crimes, commercial dealings, property rights — which are then legislated by government. The Constitution sets forth a framework for the election and selection of government bodies alongside a comprehensive set of rights and freedoms that apply equally to all the laws and all the people of Iraq. If a system of personal status does not comply in full with the supreme law of the land, then it simply cannot exist.

**Analysis of the Personal Status Code of 1959**

Whether Article 41 remains in place, is amended or entirely repealed, it is likely that a new personal status code or significant amendments to the current code will soon be presented before parliament. At the time of writing this assessment, however, the Personal Status Code of 1959 (“the Code”) continues in effect and governs Muslim women’s *de jure* personal status rights.

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

Where the Code fails to address a particular issue, the principles of Shari’a “most in harmony” with the Code shall be applied by the court.
**Iraqi Personal Status Code Number 188, Article 1:**

1. The legislative texts in this law apply to all the issues discussed in these texts in letter and spirit.

2. If there is no applicable legislative provision, the matter shall be adjudicated in accordance with principles of the Islamic Shari‘a that are most in harmony with the provisions of this law.

3. In general the courts shall be guided by the findings of the judiciary and by Islamic Jurisprudence (*Fiqh*) in Iraq and other Islamic countries whose laws are close to or similar to the Iraqi Laws.

One significant and overarching area in which this provision has resulted in discriminatory practice is in relation to the value of a man’s testimony compared with that of a woman. As it is not expressly set forth in the Code, personal status courts have reverted to a practice applied in civil matters requiring the testimony of two women to be equal to that of one man. This practice is based on the following Quranic text: “get two witnesses out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her.” Although this verse begins with a reference to debt agreements, many Islamic states have extended this evidentiary rule to all civil matters, including marriage contracts.

**Consent, Age and Marriage**

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

Article 3 of the Code Number 188 states that marriage is a contract between a man and a woman, both of whom are obliged to fulfill the conditions of marriage. Article 6(4) provides that a wife is entitled to revoke the contract should her husband fail to meet the conditions agreed upon in the contract. As such, these provisions are in *de jure* compliance with Article 16(1)(a) of CEDAW.

**Iraqi Personal Status Code Number 188, Article 3:**

1. Marriage is a contract between a man and a woman who he is lawfully permitted to marry, the purpose of which is to establish a bond for a mutual life and procreate children.

2. If the marriage contract was initiated, the two parties shall abide by the provisions incumbent upon them at the time of its initiation.

3. The promise of marriage, the recital of *Al-Fatiha* (the first Surah of the Holy Quran) and the betrothal are not considered as a contract.

....
Iraqi Personal Status Code Number 188, Article 4:
A marriage contract is initiated by an offer expressed by one of the two parties to the contract — either verbally or customarily — and the acceptance of the other party with the agent (*wakil*) acting in his/her place.

Iraqi Personal Status Code Number 188, Article 5:
A marriage contract is valid if the two parties to the contract or whoever acting in their places meet the legal and lawful conditions.

Iraqi Personal Status Code Number 188, Article 6:
1. A marriage contract will not be initiated if one of the initiation or soundness conditions stated below is missing:
   a. The offer and acceptance must be done in one sitting.
   b. Each party to the contract must listen to the other’s words and understand clearly that what is intended is marriage.
   c. The second party must accept the offer of the first party.
   d. Two witnesses having the qualification of legal competence must bear witness to the marriage contract.
   e. The contract must not be contingent on a condition or unrealized condition.
2. The prospective husband should write to the one he wants to marry. The latter should read what he wrote or read it to two witnesses and they should bear witness that she accepts to marry him.
3. The legitimate conditions stipulated in the marriage contract must be fulfilled.
4. The wife has the right to revoke the contract when the husband fails to fulfill the conditions he agreed upon in the marriage contract.

With few exceptions, as stated below, a person must be 18 years old to enter into a marriage contract. The Code gives a judge discretion to permit a marriage for those younger than 18 years of age and older than 15 years of age. This exception applies to both sexes equally. Specifying the minimum age of marriage and making the registration of marriages in an official registry compulsory complies with Article 16(2) of CEDAW.

Iraqi Personal Status Code Number 188, Article 7(1):
1. In order for the marriage to be valid, the two parties to the contract should be sane and have reached age of 18.
2. The judge can authorize the marriage of a mentally ill person if it was confirmed in a medical report that his marriage entails no harm to society and that it redounds to his personal interest, provided that the other person accepts the marriage expressly.
Iraqi Personal Status Code Number 188, Article 8:

1. If a 15-year-old person asks to get married, the judge can authorize his/her marriage if the eligibility and physical ability of the person in question was proved to him, after obtaining the approval of his/her legal guardian. If the guardian abstains from responding, the judge shall call upon him to state his answer during a defined period. If the guardian does not object or if he submits an objection that is unworthy of consideration, the judge shall proceed to authorizing the marriage.

2. The judge can authorize the marriage of a 15-year-old person if he sees in it an urgent necessity. Giving such authorization is also conditional on the attainment of legal puberty and physical ability.

Forced marriages are illegal and a forced marriage contract is void. Similarly, no person may prevent a lawful marriage. Pursuant to Article 9, violators of this provision are subject to a 3 year imprisonment (in case of a 1st-degree relative), or 10 year imprisonment (in the case of any other person). It is not clear, however, that Article 9 is in compliance with international laws regarding forced marriage (namely CEDAW, Art. 16(1)(b); ICCPR, Art. 23(3); ICESCR, Art. 10(1)), as it appears that nullification of the marriage only occurs in cases where the marriage has not been consummated.

Iraqi Personal Status Code Number 188, Article 9:

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

2. If a first degree relative breaches the provisions of paragraph 1 of this article, they shall be sentenced to no more than a three year term of imprisonment and charged with a fine of a certain amount. If a person other than a first degree relative breaches the provisions of paragraph 1, they shall be sentenced to an imprisonment term varying from a minimum of three years to a maximum of ten years.

3. The Shari’a Court or the Personal Status Court must notify the investigation authorities of the violations of the provisions of paragraph 1 of this article so that they take legal action against the person in question. The court is entitled to hold him in custody to ensure his appearance before the said authorities. Furthermore, the person who was subject to coercion or prevention has the right to refer directly to the investigation authorities concerning this matter.
Polygamy

The CEDAW Committee has noted the discriminatory effect of “harmful traditional and cultural practices” such as polygamy.37

While the original Code provision was less tolerant of polygamy, a 1963 amendment to the Code lessened the prerequisites necessary for entering into a polygamous marriage by reducing restrictions on the financial requirements required for marriage to more than one wife and expanding the basis for a man’s “legitimate interest” in entering a polygamous marriage. Under the Code, anyone who enters a polygamous marriage without complying with these terms can be punished by a one year imprisonment and / or a fine of 100 Dinars. Other Code provisions forbid housing a man’s multiple wives in the same dwelling, although he may house one wife with the child of another.

Iraqi Personal Status Code Number 188, Article 3:

4. Marrying more than one woman is not allowed except with the authorization of a judge. Granting of this authorization is dependant upon the fulfillment of the following two conditions:
   a. The husband should be financially able to provide for more than one wife.
   b. There is a legitimate interest.

5. If justice between wives is feared, polygamy may not be allowed. The issue would then be left to the judge for determination.

6. Each person who concludes a marriage contract with more than one wife, contrary to the stipulations of paragraphs 4 and 5, shall be sentenced to no more than one year of imprisonment or charged with a fine not exceeding 100 Dinars, or both.

7. As an exception from the provisions of paragraphs 4 and 5 of this article: marriage to more than one woman is permissible when the prospective wife is a widow.

Iraqi Personal Status Code Number 188, Article 26:

1. A husband should not house his wives in the same dwelling without their consent.

2. A husband has the right to house with his wife in the marriage dwelling his child from another marriage until the age of puberty.

While the Code tried to limit and regulate polygamous marriages, RCC orders often had the opposite effect. For example, in 1980, in response to the impact of the Iraq-Iran war that left a large number of widows, RCC Order Number 189 added paragraph 7 of Article 3 and allowed a man to marry a second wife, without meeting any other requirements by law, if
the second wife was a widow. A note to paragraph 4(a) of Article 3 also states that, according to RCC Order Number 147 (1982):

remarriage to an ex-wife, (after having pronounced divorce upon her), is not considered as a marriage to more than one woman for the purposes of paragraphs 4 and 5 of article 3, if the husband had married another woman before remarrying his [ex-] wife.

**Marriage to Non-Muslims**

Article 17 of the Code discriminates against Iraqi women with regard to the right to marry a non-Muslim. Under the Code, a Muslim man can marry a non-Muslim woman if she is a monotheist. However, a Muslim woman may not marry a non-Muslim. This provision fails to comply with international legal standards that ensure equality as to marriage.\(^{38}\)

**Iraqi Personal Status Code Number 188, Article 17:**

For a Muslim man, marriage is permissible with an individual who practices one of the religions of the Book, while a Muslim woman may not marry a non-Muslim man.

**Financial Rights during Marriage**

Under Article 23(1) of the Code, a wife is entitled to “marital alimony” (a stipend) as of the date of the marriage contract. Article 24(2) further requires that the marital alimony should cover her clothing, food, housing, basic medication, and the cost of servants. A husband must provide his wife with this stipend if she lives with him or if she leaves the marital home with his consent. The stipend is provided even if she has her own income. Article 25(1)(a) states that a wife is no longer entitled to this stipend if: she leaves her husband’s home without his permission; if she refuses to travel or move with her husband; or if she is convicted and imprisoned for any reason. If a wife does not receive her stipend from her husband, Article 31 provides that she may file a marital alimony case with the court.

**Iraqi Personal Status Code Number 188, Article 23:**

1. The wife is entitled to marital alimony from the husband, as of the date of a valid marriage contract even if she remains at her parent’s house, unless the husband asks her to move to his house and she refuses without a legitimate reason.
2. Her refusal is considered legitimate if the husband did not pay her the immediate dowry or as long as he is not spending on her.

**Iraqi Personal Status Code Number 188, Article 24:**

1. The alimony of the wife who is not disobedient is considered a debt and an obligation on the husband for a period not exceeding one year from the time he refrained from spending money on her.
2. The alimony includes food, clothing, housing and its necessities, medication fees for the amount already known, and service for the wife who needs a helper.

Iraqi Personal Status Code Number 188, Article 31:
During the hearing to determine the amount of payment [of marital alimony], the judge has the right to decide the amount of temporary payment for the wife to be paid by the husband, and such a decision is enforceable.

Pursuant to Article 29 of the Code, if a husband leaves his wife without alimony and then goes missing, the judge will grant alimony to the wife from the date the case is filed conditional upon proof of marriage and non-payment of stipend.

Iraqi Personal Status Code Number 188, Article 29:
Where it is proven that a husband leaves his wife without alimony or disappears or absents himself and after reviewing the evidence and making the wife swear that the husband has not left her alimony and that she is not disobedient and not a divorcee whose period of waiting has lapsed, the judge shall permit her to borrow money in the name of her husband when necessary, and as of the date of the filing of the lawsuit.

Provisions relating to marital alimony create financial rights for women in marriage with no such countervailing rights for men, reflecting customary marital roles as well as a lack of economic opportunity for women in Iraq. Arguably, underlying these alimony provisions is the concept of a duty of obedience of the wife to the husband, as evidenced in Article 33 of the Code, which provides for circumstances where the wife’s “disobedience” is justified, and thus will not justify non-payment of alimony.

Iraqi Personal Status Code Number 188, Article 33:
The wife shall not obey her husband in each matter that contradicts with the rulings of the Shari ’a, and the judge has the right to decide on alimony for her.

These financial rights have been critical to women’s well-being but at the same time may serve to perpetuate gender stereotypes and in turn, social practices that limit women’s ability to work outside the marital home. It would be preferable for such financial assurances to be maintained through a gender-neutral law that provided for spousal support (or “marital alimony”) for the spouse who is not the primary bread-winner. This would avoid stereotyping in the law while preserving important financial rights and obligations in marriage.
Divorce

Under the Code and subsequent RCC orders, men and women do not have the equal right to initiate and obtain a divorce in Iraq. Divorce is defined in Article 34 as the “termination of marriage by the husband or whom he assigns or by the wife if she is assigned to do so or by the Judge. In all cases, a divorce is not valid until registered in court.

Termination of marriage is regulated in Chapter 4 of the Personal Status Code. The Code establishes four methods for ending a marriage; (1) unilateral divorce by the husband (talaq) (Article 37); (2) judicial separation by the court based on a motion filed by either the husband or the wife (Articles 40 and 41); (3) judicial separation by the court based on a motion filed by the wife (Article 43); (4) voluntary separation for the wife (khul’) (Article 46). In all cases, a divorce is not valid until registered in court. Article 39(3) further states that husbands who divorce their wives without reason will be required to provide compensation, and that in all cases this compensation shall not exceed the amount of marital alimony for two years. In certain instances, such as where the wife instigates or is held responsible for the divorce, she may be obliged to return all or part of her dowry, and in some cases to compensate the husband for other expenses incurred in pursuit of the marriage.

**Iraqi Personal Status Code Number 188, Article 37:**
1. The husband performs a divorce by pronouncing three repudiations.
2. These three verbal or gestural repudiations pronounced at once will count as only one divorce.

**Iraqi Personal Status Code Number 188, Article 39:**
1. Whoever wants to have a divorce must file a law-suit in the Shari ‘a Court requesting divorce and a sentence to that effect. If it is difficult for him/her to go to court, he/she must register the divorce in the court within the period of iddat (waiting period).
2. The evidence of marriage remains in effect until the court revokes it.
3. If a husband divorces his wife and the court finds out that he was unjust and tyrannical and that the wife has been harmed because of that, the court will order that her former spouse compensate her in a way appropriate to his financial situation and his injustice. This compensation should be a lump sum on condition that her alimony does not exceed two years in addition to her other fixed rights.

**Iraqi Personal Status Code Number 188, Article 40:**
Either spouse may request dissolution of marriage upon one of the following grounds:
1. If one of the spouses injured the other or the children in a way that makes marital life impossible to continue. Considered as injury is addiction to alcohol or drugs.
Addiction must be proved in a report prepared by a competent, official, medical committee. Another kind of injuries is the practice of gambling in the marital house.

2. If one of the spouses committed infidelity. Considered as infidelity is the practice of the act of homosexuality in any form.

3. If the contract of marriage was concluded before one of the two spouses has completed his 18 years of age, without the consent of the judge.

4. If the marriage was concluded outside the court by coercion and was not consummated.

5. If the husband marries another wife without the permission of the court. ….

**Iraqi Personal Status Code Number 188, Article 41:**

1. Either spouse has the right to ask for separation when a conflict arises between them, whether before or after consummation.

2. The court shall conduct an investigation into the reasons for the conflict. Once the presence of a conflict is verified, the court appoints two arbitrators — if they are available — one from each spouse’s family, to try to reach reconciliation. If arbitrators from the families are not available, the court shall authorize the two spouses to nominate them, and if they failed to agree on them, the court nominates them itself.

3. The two arbitrators must deploy serious efforts to reach reconciliation. If they fail in their mission, they submit the case to the court with a determination as to which party was responsible for the dereliction. If disagreement arises between arbitrators concerning that party, the court shall assign a third arbitrator to join them in their effort.

4. A- If the court is certain that a conflict is still ongoing between the two spouses and it failed to reconcile them, and the husband is refusing to grant his wife divorce, the court is entitled to separate them.

   B- If separation takes place after consummation and the wife is held responsible for the dereliction, the deferred dowry ceases to be effective, were she the plaintiff or the defendant. And if she has collected the entire dowry, she would be bound to restitute no more than half of it. However, if it is held that both parties are responsible for the dereliction, then the deferred dowry would be split between them according to the percentage of dereliction attributed to each one of them.

   C- If separation takes place before consummation and the wife is held to be responsible for dereliction, she would be bound to restitute the immediate dowry she had collected from her husband.
Iraqi Personal Status Code Number 188, Article 43:

First: The wife may request a judicial divorce upon any one of the following grounds:

1. If the husband is facing a period of imprisonment of three years or more even if he is providing for her financially.

2. If the husband has abandoned his wife for two years or more without a legitimate reason and his whereabouts are known, even if he is providing for her financially.

3. If the husband did not ask his wife, with whom marriage is not yet consummated, for consummation for two years after the conclusion of the contract. The husband’s demand to consummate the marriage shall not be accepted if he did not fulfill her marital rights.

4. If the husband is impotent or became impotent and is unable to perform his conjugal duties, whether for physical or psychological reasons, or if he was afflicted with impotence after consummation and it was proven that it is impossible for him to recover based on a medical report prepared by an official competent committee. However, if the court discovers that the reason behind impotence is psychological, it shall postpone separation for one year, provided that the wife would be available for her husband.

5. If the husband was infertile, or became infertile after marriage and she did not have a living child from him.

6. If the discovers after the conclusion of the contract that her husband is afflicted with a disease that makes sexual intercourse inevitably harmful, such as leprosy, tuberculosis, syphilis, insanity; or if he subsequently contracted one of these diseases or the like. If the court finds out, after medical examination, that the disease is likely to be cured, it shall postpone separation until the disease is eliminated, and the wife must abstain from sexual intercourse with her husband throughout the whole period of postponement. However, should the court discover that the disease is unlikely to subside within a reasonable period and the husband refrains from granting his wife divorce and the latter insists on her request, the judge shall rule in favor of separation.

7. If the husband fails to pay marital alimony without a legitimate excuse, after granting him a maximum respite of sixty days.

8. If it not possible to collect marital alimony from the husband due to his disappearance or absence or because he has been sentenced to a term of imprisonment of more than one year.

9. If the husband fails to pay the fixed cumulated alimony, after being granted a maximum respite of sixty days by the execution authority.

Second: The wife has the right to ask for separation before consummation. In this case, the court shall approve the separation upon the return of the entire amount of
the dowry and return of all the proven expenditures incurred by him for the purposes of the marriage.

… [Subsequent paragraphs of this Article provide for the right of a wife to seek separation from a husband who remains abroad or is missing].

**Iraqi Personal Status Code Number 188, Article 46:**

1. *Khul'* is to sever the bond of marriage by pronouncing the formula of *khul'* or an equivalent meaning. It is to be carried out before the judge through an offer and an acceptance taking into consideration the provisions of Article 39 of this law.

2. In order for the *khul'* to be sound, the husband must be qualified to divorce his wife and the latter must be worthy of it. It is considered an irrevocable divorce.

3. The husband can divorce his wife through *khul'* in return for compensation that could be more or less than her dowry.

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

**Custodianship and Guardianship**

Although the language of Article 57 is not entirely clear, it is uniformly interpreted as entitling a divorced wife to the custody of both her male and female children until the children reach 10 years of age provided that she is capable. Under certain circumstances as determined by the Court, women may retain custody until the children are 15 years old, according to the second amendment of Article 57(4) passed in 1978. After the age of 15, the child may choose to live with either parent. If the mother has custody, the father must pay custodial alimony. According to Article 57(2), a divorced wife may keep custody of her children even if she remarries. In such circumstances, the court adjudicates the right of the mother or father to custody in light of the interests of the child.

Discrimination against women still persists regarding the guardianship (as distinct from custodianship) of children. Article 102 of the Iraqi Civil Code lists those entitled to guardianship of children in the following descending order: the father, the father’s father, the guardian of the father and the court. Thus, Article 102 violates Article 16 (1)(f) of CEDAW regarding the guardianship and custody of children.39

**Iraqi Personal Status Code Number 188, Article 57:**

1. The mother has the right to the custody of the child and to his rearing once the marriage takes place and after separation on condition that the one under custody will not be harmed.
2. The custodian must be an adult, sensible, faithful, and able to rear the child and have him in her custody. The custody which a divorced woman has does not terminate because of her marriage. In this case the court adjudicates the right of the mother or father to custody in light of the interest of the child under custody.

3. If the custodian disagrees with the person who should pay the expenses of the child regarding the fees, the court will determine the amount. A sentence will not be given regarding the fees for custody if the marriage holds or if the wife is in the iddat because of a retroactive divorce.

4. The father has the right to care for the child under custody, rear him, and educate him until he is ten years old. The court may extend the custody of the child until he becomes fifteen years old if it finds out, after consulting the medical and public specialized committees, that the interest of the child requires that, on condition that the child stays only at his custodian.

5. When the child under custody is fifteen years of age, he has the right to choose to stay with either parent or with one of his relatives until he is eighteen if the court perceives that he is mature in his choice.

6. The custodian whose custody has been terminated by a sentence has the right to regain the child under custody from the person who has been given the right of custody over the child if it is proven that the child is harmed while staying with the latter.

7. In the case that the mother of the child relinquishes one of the conditions of custody or dies, custody goes to the father unless the interest of the child proves the opposite. In that case, the custody goes to whomever the court chooses taking into consideration the interest of the child.

8. If neither parent is worthy of taking the custody, the court gives the child to a nursemaid or a faithful male nursemaid. The court can also commit the child to a nursery provided by the state when available.
   a. If the father relinquishes one of the conditions of custody, the child remains with his mother as long as she maintains the conditions of custody. The child’s male or female relatives will not have the right to contend with the mother until the child reaches legal age.
   b. If the child’s father dies, the child remains with his mother even if she marries a foreigner on condition that:
      i. the mother maintains the remaining conditions of custody;
      ii. the court is convinced that the child will not be harmed by staying with his mother; and
      iii. the husband of the mother guarantees to care for the child and not harm him when the marriage takes place.
   c. If the husband of the mother violates the commitment mentioned in point (3) of item (b) above, it will constitute a reason for the mother to separate.
Financial Rights after Marriage

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

Iraqi Personal Status Code Number 188, Article 50:

The iddat (waiting period) alimony should be paid to the divorcée by her living husband even if she is disobedient. There is no alimony for iddat following the death of her husband.

Children are entitled to child support from their father when in the custody of their mother. However, these payments include no separate provision for the mother. As set forth in Article 59, for a girl, such support continues until marriage and for a boy until he can earn his own living. These provisions treat boys and girls differently with respect to child support. Although appearing to favor girls, such discrimination also serves to entrench social perceptions as to their respective roles and capabilities.

Inheritance

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

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

The 1959 Code provisions regarding inheritance gave way to less equitable rules in 1963. Article 89 of the 1963 amendments determines both who is entitled to inherit as well as how the inheritance should be divided among family members. Article 90 of the 1963 Amendments uses principles found in the Shari’a that were valid before the 1959 Code to determine the distribution of an estate among family members. The husband’s share is twice the wife’s share and the son’s share is twice the daughter’s share. After children and parents, the following relatives inherit according to the following sequence: grandparents, brothers, sisters, nieces and nephews (on the father’s side); and then uncles and aunts and relatives from the mother’s side.
**Iraqi Personal Status Code Number 188, Article 89:**
The inheritors by kinship and the way to bequeath them:

1. The two parents and the children although the male gets a portion equal to that of two females.

2. The grandfather, the grandmothers, the brothers, the sisters, and the children of brothers and sisters.

3. Paternal and maternal aunts and uncles and the relatives on the maternal side.

4. The full sister is treated the same way as the full brother regarding disinherition.

**Iraqi Personal Status Code Number 188, Article 90:**
Taking into consideration the above mentioned provisions, entitlements and shares shall be distributed between the inheritors by kinship according to the Shari’a rules that were in force before the legislation of the Personal Status Law No. 188 of the year 1959, as they are observed in the rest of the inheritance rules.

**Iraqi Personal Status Code Number 188, Article 91:**

1. The husband is entitled to a quarter of the estate when there is an inheriting descendent to his wife; and to half the estate when the latter does not exist. As for the wife, she is entitled to one-eighth of the estate when there is an inheriting descendent; and to a quarter when the latter does not exist.

2. The girl or the girls, in case there is a son for the deceased, are entitled to the remaining part of the legacy after the two parents and the other husband collect their entitlements from it; and they would be entitled to the entire legacy if none of the said parties exists.

**Analysis of the Civil Code: Personal Status and Non-Muslims**

A parallel system of personal status courts exists throughout Iraq to deal with marriage and family disputes among non-Muslims. These courts are separate from the Islamic personal status courts in terms of their staff, the laws that govern them, and their records.

Like the Islamic courts, these courts resolve matters involving, *inter alia*, separation, divorce, prenuptial divorces, ratification of marriage documents issued outside the Iraqi courts (that is, in churches or other religious places). The courts also consider matters involving child custody, proof of paternity, alimony and child maintenance, dowries, personal property rights, breast feeding rights, custody, child care, wills, and inheritance.

The mechanism for handling such cases may take one of two forms. The first is to consult the laws or rules of the religious institution under which the parties were married. For example, in the case of a Christian woman filing for separation from her Christian husband, the court has to consult the church of their denomination to determine whether church doctrine allows for separation. If it does, then the court rules in favor of separation; if it does not, then
it rules against separation. In the case of marriage contracts that are issued inside a church, the role of the court is to ratify the contracts, but the court may object if either spouse did not reach the legal age of marriage.

The second mechanism for handling such cases is to follow and apply the Iraqi Civil Code. This method is employed in disputes over distribution of personal property, custody of children, proof of paternity, alimony and maintenance, dowry cases for certain sects, breast feeding, will and inheritance, and determination of a missing person as officially deceased.

**DE FACTO COMPLIANCE**

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

Straddling *de jure* and *de facto* considerations and the resolution of personal status issues among all sects and religions is the fact that personal status courts are presided over by male judges. This has obvious repercussions for women’s access to justice in this area, including their ability to respond when questioned on sensitive matters pertaining to marriage.

**Freedom to Choose a Spouse**

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

**Termination of Forced Marriage**

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

Minimum Age of Marriage

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

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

Customary Practices in Marriage

Respondents pointed out several discriminatory marriage practices steeped in custom that directly contravene Code provisions on marriage. These practices include “tribal banning” or al-nahi, in which a male cousin can arbitrarily prohibit the marriage of his female cousin. Other practices include alkassah marriage, where the bride’s brother must marry the groom’s sister and al-fasel marriage, in which a woman is offered as a bride from one tribe to another as a means of solving a problem between the two tribes. Girls can also be reserved for marriage to one of their relatives at birth. As one respondent pointed out, “[i]n some social groups, the girl is a slave that is bought and sold.”

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

Pleasure Marriage (Mut’a)

The Code does not address mut’a or “pleasure marriage,” which is recognized largely by Shiite Muslims. Mut’a is a temporary marriage contract drawn up between an adult man and woman which stipulates that the “wife” will be paid a designated sum of money for the “marriage” for a certain timeframe. While banned under Saddam Hussein’s regime, such temporary marriages have allegedly become more frequent in recent years. One respondent stated that reported cases of Mut’a were rare before the fall of Saddam Hussein, but that the practice has become much more common in the last few years. Recently, increasingly difficult economic circumstances have made mut’a more prevalent. Two women in Missan were reportedly murdered in September 2006 when their families discovered they were party to a mut’a marriage.
Divorce and Annulment

Iraqi women’s ability to obtain a divorce or annulment remains severely limited. Pervasive social and cultural barriers and widespread ignorance of divorce laws prevent many women from exercising the rights they have under the law. One respondent pointed out that many women are simply not aware of their right to terminate a marriage, even if they were forced into it. Others point to the difficulties of executing court judgments and obtaining related rights as a barrier to obtaining a divorce.

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

Polygamy

Although the Code allows polygamy only under certain conditions, in reality polygamy is widely practiced in Iraq and Code provisions are rarely enforced. For instance, one respondent made reference to a case where a man who wished to marry a second wife first obtained approval from a religious leader. He then presented the religious leader’s approval to the judge who, in turn, approved the marriage despite the fact that certain legal conditions provided by the Code had not been met. In general, respondents believed that polygamy, as practiced in Iraq, discriminates against and harms women due to factors ranging from the unequal treatment of multiple wives to the lack of legal recourse to obtain a divorce when a man fails to abide by the law with regard to his marital obligations. One Iraqi attorney who has practiced extensively in personal status courts notes that in most cases, judges only look at the financial capacity of the husband in determining whether to allow a polygamous marriage and that judges rarely require the attendance or approval of the first wife in determining whether to approve the marriage. She also observed that where the judge does call for approval of the first wife, it is generally meaningless and potentially detrimental to the first wife, who may be forced (sometimes through physical abuse) by her husband to give her consent before the judge.

Inheritance

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

Respondents asserted that most Iraqi women do not know what share of inheritance they are entitled to under the Code. Accordingly, their lack of awareness causes them unwittingly to forfeit their inheritance to their fathers or brothers. Furthermore, social pressure or “shaming” plays a role in forcing women to give up their share of an inheritance to their brothers or sons even when they do know the provisions of the Code.
Custody
Respondents asserted that many women are not aware of their custodial rights or the mechanisms for enforcing them. Respondents indicated that many women believe that the maximum age whereby a woman can retain custody of her child is 12. Respondents also indicated that, in many instances, women believe that the father has the right to take a child away from her at any time if he so chooses. Thus, many women do not try to obtain a divorce for fear of losing their children.

Marital Alimony
Even when a woman is awarded alimony, she is often unable to collect the alimony due to factors such as court costs, lack of enforcement of judgments, corruption in courts and social pressures. By law, husbands can pay alimony in installments as low as 10 Iraqi Dinars per month and can also pay directly to the court. One respondent recalled a case where a husband, knowing that transportation costs would prohibit his wife from picking up the alimony, paid 1000 Dinars to take a taxi to a court located far from his wife’s residence and made the 10 Dinar alimony payment there.\textsuperscript{60}

Corruption in family courts also causes legal and logistical hassles for women attempting to collect alimony. One respondent stated that male lawyers and judges collaborate to extend the legal procedures involved with alimony cases, thereby making it easier for a husband to escape paying alimony for an extended period of time. Furthermore, women are discouraged from going to court to demand alimony by their relatives and communities, especially in cases where the former husband is a relative.\textsuperscript{61}

KEY AREAS OF CONCERN

\begin{itemize}
\item Amendments to the Personal Status Code have fostered \textit{de jure} and \textit{de facto} discrimination against women, particularly in the areas of divorce, inheritance and polygamy. (UDHR – Article 16.1; ICCPR – Article 23.4; CEDAW – Article 16(c);(h))
\item While the law generally prohibits forced marriage and establishes a minimum age for marriage, in practice these laws are not fully enforced. Laws and procedures should be strengthened to ensure women have full freedom to choose a spouse and to protect against early marriage. The government should take steps to educate women about their rights and facilitate their access to their legal system to protect those rights. (UDHR – Article 16.1; ICCPR – Article 23.2; ICESCR – Article 10.1; CEDAW – Article 16(1)(b); (2)).
\item Certain practices that discriminate against women, such as polygamy and temporary marriages, are becoming increasingly common. (UDHR – Article 16.1; 16.2; ICCPR Article 23)
\item Iraq’s reservation to Article 16 of CEDAW leaves the door open for continued violation of the core elements of women’s rights with respect to family and marriage. Iraq should comply with the CEDAW Committee’s recommendation and review and withdraw its
\end{itemize}
reservation to Article 16. Doing so will facilitate full implementation of international human rights standards in Iraq and demonstrate the Iraqi Government’s commitment to removing all barriers to women’s full equality.

Article 41 of the Constitution gives rise to concerns that women’s rights will be further eroded by a complete change in the legal regime. The Constitutional Review Committee should consider revoking this provision, and in all cases, the treatment of personal status should be considered in light of the constitutional requirement, set forth in Article 14, of equality before the law, as well as Iraq’s international legal obligations regarding equality. (UDHR – Article 16; ICESCR – Article 10.1; ICCPR – Article 23; CEDAW – Article 16)

**FAMILY AND MARRIAGE – INTERNATIONAL TREATY FRAMEWORK**

**UDHR**

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**ICESCR**

Article 10

The States Parties to the present Covenant recognize that:

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

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

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.
ICCPR

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

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

CEDAW

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

   (a) The same right to enter into marriage;

   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

   (c) The same rights and responsibilities during marriage and at its dissolution;

   (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

   (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

CRC

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.
ENDNOTES

1 Respondent B5. Question 17.
3 ICESCR Art. 10(1).
4 ICCPR Art. 23(1)-(3).
6 HRC Gen. Comm. No. 19, para. 1
8 ICCPR Art. 23(4).
18 Article 142 of the 2005 Constitution provides for review of the Constitution based upon the recommendations of a Constitutional Review Committee and approval based upon an absolute majority vote of the Council of Representatives and a public referendum.
the status of women in Iraq: Update to the Assessment of Iraq’s De Jure and De Facto Compliance with International Legal Standards

36 The Quran, Verse 282 “The Cow”. The text begins “O you who believe! When you deal with each other in contracting a debt for a fixed time, then write it down.” It was originally meant for civil contracts. Many Islamic states extended the ‘two women witness’ to all areas including marriage contracts. Although the personal status law mentions two capable witnesses and doesn’t specify the gender of the witnesses, in practice most judges require two male witnesses for the marriage contracts based on the Quranic text.
38 CEDAW, Art. 16(1); ICCPR, Art. 23 (4).
39 CEDAW Article 16 (1)(F) states: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:…
   The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount.
40 ICESCR Article 10(3); CRC Art. 2; ICCPR Art. 24(1).
41 While the law does not expressly state that these relatives be on the father’s side, it is implied, as the next provision provides for inheritance on the mother’s side.
42 The discussion of de facto compliance focuses largely on the practical application of the Personal Status Code as the vast majority of survey respondents were Muslim women.
44 Respondent E2. Question 72.
45 Respondent B1. Question 73.
47 Comments from focus group. April 28, 2005.
49 Respondent B2. Question 74
51 Respondent B3. Question 74.
53 For example, respondents B1, B4, C3, D1, E2, E3, E4, G1, H1, H2, I1, I3. Question 74.
54 Respondents B4, E2, H1, I1. Question 73.
55 Respondent B4. Question 73.
58 As reported to authors. July 2005.
59 As reported to authors. July 2005.
60 As reported to authors. July 2005.
61 As reported to authors. July 2005.
NATIONALITY

“The Nationality Law [of 2006] is creating clear distinctions between men and women. This is, in itself, problematic.”

In most of the Arab region, women, their husbands and their children have suffered from the effects of discriminatory nationality laws. Although Iraqi nationality laws have been used as a political tool for the past several decades and have been invoked to the detriment of both Iraqi men and women, this chapter focuses on those nationality laws pertaining to a woman’s right to acquire, change or retain her nationality and to pass her nationality to her children and her spouse.

Under Law No. 43 of 1963 and subsequent Revolutionary Command Council (RCC) Orders, women in Iraq were, for the past four decades, denied the right to pass on their nationality to their children or their spouse. Moreover, when a woman acquired the citizenship of her non-Iraqi husband, her own citizenship was revoked. No such limitations were applied to men. These discriminatory laws in turn resulted in restrictions on a woman’s right to own, inherit and pass on property, thus aggravating the detrimental impact on Iraqi women and their children.

To the credit of the drafters of the Constitution and Iraqi women’s rights advocates, significant strides have been made under the 2005 Constitution which recognizes an Iraqi as anyone born to an Iraqi father or mother, allows for dual nationality, restricts the revocation of nationality to cases of naturalized Iraqis, and provides for reinstatement of nationality for those Iraqis whose nationality was revoked under the prior legal regime. However, a recent law passed by the Council of Representatives, which further delineates nationality rights and the procedures for reinstatement of nationality, places conditions on acquisition of nationality which detract from these basic rights. Moreover, certain RCC Orders, which were promulgated under the prior regime and which discriminate against women by denying them the right to pass on and retain property while married to a foreigner, continue to be in effect.

INTERNATIONAL LEGAL FRAMEWORK

The universal right to nationality is enshrined in Article 15 of the Universal Declaration of Human Rights (UDHR). The article further articulates that no one should be arbitrarily deprived of a nationality nor denied the right to change nationalities.
Article 24(3) of the International Covenant on Civil and Political Rights (ICCPR) provides that “every child has the right to acquire a nationality.” The Human Rights Committee (HRC) has explained that this provision

[D]oes not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he [or she] is born.

The HRC goes on to state that:

[N]o discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.2

In the context of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as noted by the CEDAW Committee:

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

Most importantly for women, Article 9 of CEDAW stipulates women’s right to acquire, change or retain their nationality and also requires States Parties to grant women equal rights with men in relation to the nationality of their children. The previous regime in Iraq entered reservations to all of the provisions of Article 9, thus, Iraq is not legally bound by the obligations set forth in this article.4 The CEDAW Committee has noted its concerns with respect to the former regime’s justification of this reservation and recommended that Iraq modify or withdraw the reservation to ensure full implementation of the Convention.5 Recent changes in the legal and constitutional framework are responsive to the CEDAW committee’s recommendations and support the application of Article 9. As discussed below, Article 18 of the 2005 Constitution puts men and women on equal footing in terms of their nationality rights in full compliance with CEDAW Article 9. Obligations arising under Article 9 of CEDAW will, therefore, be taken into consideration throughout this analysis with a view towards their implementation in Iraq.

An individual’s freedom of movement is tied to his or her right to nationality. UDHR Article 13 indicates that everyone has the right to reside within a particular country and to move within its borders. Furthermore, everyone has “the right to leave any country, including his [or her] own, and to return to his [or her] country.”6 ICCPR Article 12 reinforces these rights and states that they “shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order . . . , public health or morals or the rights and freedoms of others” and are consistent with other ICCPR rights.7 The HRC qualifies this provision with the comment that restrictions upon the freedom of movement of individuals “must not impair the essence of the right” and “must conform to the principle of proportionality; they must be appropriate to achieve the protective function; they must be
the least intrusive element amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected." The principle of proportionality must not only govern the laws that restrict the movement of individuals but also the practice of administrative and judicial authorities who apply the law.⁸

**DE JURE COMPLIANCE**

**Right to Nationality and Conferral of Nationality to Children**

Pursuant to Article 18 of the 2005 Constitution, Iraqi nationality is a right of all Iraqis and is passed from either an Iraqi mother or an Iraqi father.

<table>
<thead>
<tr>
<th>Article 18 of the 2005 Iraqi Constitution:</th>
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<tbody>
<tr>
<td>First: Iraqi citizenship is a right for every Iraqi and is the basis of his nationality.</td>
</tr>
<tr>
<td>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.</td>
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</tbody>
</table>

The Nationality Law of 2006 purports to give effect to these basic rights and even widens the scope of Iraqi nationality to those born in Iraq to unknown parents.

<table>
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<tr>
<th>Article 3 of Nationality Law No. 26 of 2006:</th>
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<tr>
<td>A person shall be considered Iraqi if:</td>
</tr>
<tr>
<td>(a) He/She is born to an Iraqi father or an Iraqi mother.</td>
</tr>
<tr>
<td>(b) He/She is born in Iraq from unknown parents. An abandoned child who is found in Iraq shall be considered born in Iraq unless proven otherwise.</td>
</tr>
</tbody>
</table>

Subsequent provisions, however, directly contradict the definition of Iraqi nationality contained in Article 3 of the Nationality Law by placing limits on conferral of nationality from mother to child. Specifically, Article 4 places the nationality of children born outside Iraq to an Iraqi mother within the discretion of the Minister of the Interior and conditions the child’s nationality on his or her residency in Iraq. No such conditions are placed on children born outside Iraq to an Iraqi father, nor are such conditions contained in the 2005 Constitution.

<table>
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<tr>
<th>Article 4 of Nationality Law No. 26 of 2006:</th>
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<tbody>
<tr>
<td>The Minister can consider anyone who is born outside Iraq from an Iraqi mother and an unknown father or a father with no nationality as an Iraqi national if that person chooses to become an Iraqi within one year of reaching the age of majority unless difficult circumstances prevent him/her from that, under the condition that he/she shall be residing in Iraq at the time of the application for Iraqi nationality.</td>
</tr>
</tbody>
</table>
Moreover, the Nationality Law discriminates in conferral of nationality to children born inside Iraq to non-Iraqi mothers, by linking the child’s nationality to the father’s status only, and not the mother’s.

**Article 5 of Nationality Law No. 26 of 2006:**

The Minister can consider as an Iraqi anyone who is born in Iraq and who reaches the age of majority there from a non-Iraqi father who was also born there and who was a resident of Iraq in the normal course of events when his child was born, on the condition that the child shall submit an application for Iraqi nationality.

While Article 18 of the Iraqi Constitution and Article 3 of the Nationality Law place Iraq in compliance with CEDAW Article 9(2) which provides that women be granted “equal rights with men with respect to the nationality of their children,” the exceptional conditions contained in Article 4 and Article 5 of the Nationality Law fall short of those standards.

**Nationality and Marriage**

*Conferral of Nationality by Marriage*

In a positive departure from former legislation, Iraqi law currently provides for the naturalization of the husband of an Iraqi woman as well as the wife of an Iraqi man. The terms of naturalization, however, are different, with additional conditions being placed on foreign husbands seeking naturalization. Moreover, the language of the two provisions differs notably. Naturalization of foreign husbands appears to be at the discretion of the Minister of Interior, whereas naturalization of a foreign wife is a “right” which accrues when the legal conditions are met.

**Article 7 of Nationality Law No. 26 of 2006:**

The Minister can agree to naturalize a non-Iraqi who is married to an Iraqi woman if he meets the conditions set forth in Article (6) of this law. The duration of residence stipulated in Article 6(first)(c) shall not be less than five years and the marital relationship shall be maintained.

**Article 6 of Nationality Law No. 26 of 2006:**

One: The Minister may accept to naturalize a non-Iraqi if the following conditions are met:

(a) That the person has already reached the age of majority.

(b) That the person has legitimately entered Iraq and is residing there when the naturalization application is submitted. Those who are born in Iraq, are residing there, and have obtained the civil status book, but have not obtained a citizenship certificate shall be exempt from this provision.
(c) That, prior to submitting the application, the person has legitimately resided in Iraq for a period of time that is not less than ten consecutive years.

(d) That the person shall have a good conduct record and a good reputation and shall not have been sentenced for a felony or a misdemeanor for breach of honor.

(e) That the person shall have a legitimate way of earning his/her living.

(f) That the person shall be free of contagious diseases.

Second: The Iraqi nationality shall not be granted to Palestinians, so as to guarantee their right of return to their homeland.

By contrast, the naturalization of a foreign spouse of an Iraqi man is subject to only three clear conditions and extends beyond the termination of the marriage where the couple has a child.

**Article 11 of Nationality Law No. 26 of 2006:**

The non-Iraqi woman who is married to an Iraqi has the right to acquire Iraqi nationality under the following conditions:

Submission of an application to the minister;

Lapse of five years since her marriage and residency in Iraq;

Continuity of the marital relationship until the date of the applicant’s submission, except where the woman is divorced or widowed and has a child from her former husband.

**Loss of Nationality by Marriage**

Article 12 of Law No. 43 of 1963 automatically revoked the Iraqi citizenship of a woman who married a foreigner and acquired his nationality. Notably, the current Nationality Law expressly provides that an Iraqi woman shall not lose her nationality under such circumstances unless she elects to do so.

**Article 12 of Nationality Law No. 26 of 2006:**

If an Iraqi woman marries a non-Iraqi and acquires the nationality of her husband, then she shall not lose her Iraqi nationality unless she surrenders her Iraqi nationality in writing.
As to those women who voluntarily relinquish their nationality under Article 12 of the 2006 Law, they may have such nationality reinstated under certain specified conditions. Although the language of the reinstatement provision (Article 13) is not entirely clear, and the reference to Article 10 (third) seems ambiguous, it may be argued that in such cases the woman is not required to comply with the one-year residency period set forth in Article 10 (third). It is not clear whether such provision would apply to reinstatement of nationality for those women whose Iraqi citizenship was taken away under the former regime when they adopted the nationality of their foreign spouse. Even if it did, Article 13 places conditions on reinstatement of nationality which should not be applied in such instances of involuntary forfeiture. The application of conditions to reinstatement of nationality for such women may serve as an obstacle to reinstatement of their nationality and have follow-on effects in terms of the passing of Iraqi nationality to their children.

### Article 13 of Nationality Law No. 26 of 2006:

If an Iraqi woman surrenders her Iraqi Nationality pursuant to the provisions of Item Three of Article 10 of this law, she has the right to have her Iraqi nationality reinstated under the following conditions:

First: If her non-Iraqi husband was granted Iraqi nationality, or if she marries a person who has Iraqi nationality. She shall have her nationality reinstated as of the date of submitting an application.

Second: If her husband dies, divorces her, or the marriage contract is revoked, she has her nationality reinstated as of the date of submitting an application. She shall be in Iraq when she submits the application.

Article 18 of the 2005 Iraqi Constitution expressly permits multiplenationalities, prohibits revocation of nationality from an Iraqi who claims nationality by birth, and allows a claim of reinstatement of nationality by anyone whose nationality was previously revoked.

### Article 18 of the Constitution of 2005:

Third:

A. An Iraqi citizen by birth may not have his citizenship withdrawn for any reason. Any person who had his citizenship withdrawn shall have the right to demand its reinstatement. This shall be regulated by a law.

B. Iraqi citizenship shall be withdrawn from naturalized citizens in cases regulated by law.

Fourth: An Iraqi may have multiple citizenships. …

In delineating conditions for reinstatement of these basic rights, however, the law undermines the constitutional mandate. This has implications for Iraqi women and men whose nationality was revoked by the former regime.
Article 10 of Nationality Law No. 26 of 2006:

Three: An Iraqi who surrenders his/her nationality can have his/her Iraqi nationality reinstated if he/she legitimately returns to Iraq and resides there for at least one year. The Minister can consider — after the lapse of that year — that he/she acquired the Iraqi nationality as of the date of his/her return. He/She shall submit an application to have his/her Iraqi nationality restored before the end of the mentioned duration. He/She benefits from this right only once.

Property Rights and Nationality

RCC Order 1610 of 1982 is currently still in force in Iraq and mandates that an Iraqi woman who married a foreigner cannot transfer any private property to her husband.

RCC Order Number 1610 of 23 December 1982:

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

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

A separate RCC Order deprives such women of managing their property while outside Iraq and vests authority over the property with the state.

RCC Order 1194 for the year 1983:

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

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

As these RCC Orders have not been revoked, they may continue to be applied in a way that discriminates against Iraqi women and deprives them and their families of their property rights. While the nationality law reforms outlined above generally comply with international standards and provide opportunities for non-Iraqi husbands to be naturalized, the conditions on naturalization are such that these RCC Orders are still in effect for at least the

Nationality
first five years of marriage. In any event, the principle that a husband’s nationality should impact the property rights of an Iraqi woman is inconsistent with the basic right to equal treatment embodied in Article 14 of the 2005 Constitution as well as the constitutional right to protection of personal property set forth in Article 23.

**Article 23 of the Constitution of 2005:**

First: Private property is protected. The owner shall have the right to benefit, exploit and dispose of private property within the limits of the law.

Second: Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law.

**Freedom of Movement**

The related right of freedom of movement is expressly protected under the 2005 Iraqi Constitution alongside the right of residency both inside and outside Iraq.

**Article 44 of the Constitution of 2005:**

First: Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq.

Second: No Iraqi may be exiled, displaced, or deprived from returning to the homeland.

As to the law, RCC Orders formerly required that a woman could not obtain a passport without the permission of her *wali* (custodian) and could not travel without a *muharem* (husband or close male relative who she could not legally marry). Although those direct restrictions have now been removed, limitations on other rights as a result of movement outside Iraq, such as those imposed by RCC Orders 1610 and 1194, outlined above, are inconsistent with the full realization of the rights guaranteed under Article 44 and thus violate international standards.

**Enforcement of Nationality Rights**

Authority over decisions to grant or withdraw citizenship as provided under the 2006 Nationality Law is vested with the Minister of Interior pursuant to Article 1. Article 22 further provides that the Minister is also empowered to issue instructions to facilitate implementation of the law.

The law also provides jurisdiction to the administrative courts to “view cases deriving from implementation” of the Nationality Law. Although the language is rather vague, it does appear to provide a forum for the hearing of objections to decisions of the Minister and, potentially, for challenges to the law itself. Traditionally, the administrative courts have jurisdiction to hear cases arising from administrative decisions taken by ministers, govern-
ment officials and administrative departments, as well as other parts of the public sector. They have the power to annul such decisions if they find them to be inconsistent with the law. Although the administrative courts operate under the auspices of the State Consultative Council, which is part of the Ministry of Justice (and thus not part of the independent Higher Judicial Council (HJC)), their decisions may be appealed to the Federal Supreme Court (Iraq’s highest court, which operates under the HJC).

**Article 19 of Nationality Law No. 26 of 2006:**

The Administrative Courts are authorized to view cases deriving from the implementation of this law.

Despite the vague language, this is an improvement in comparison with the 1975 RCC Order which deprived courts of their jurisdiction over nationality issues and instead granted the President of Iraq final authority over objections to decisions by the Minister of Interior.\(^9\)

In summary, the Iraqi Constitution and 2006 Nationality Law are substantially in compliance with CEDAW requirements and other international standards as they delineate the equal basis for a man and woman to obtain their nationality and citizenship. According to the Constitution, men and women maintain equal rights with respect to determining the nationality of their children. However, one important area of concern is the provision of the 2006 Nationality Law that sets forth certain conditions for those children who are born outside Iraq of an Iraqi mother and grants a discretionary right to the Minister of Interior to decide upon their nationality, when there are no such conditions imposed on those children who are born outside of Iraq to an Iraqi father. A positive improvement from the former Nationality Law of 1963 is that marriage to an alien and acquisition of the spouse’s nationality no longer results in an automatic withdrawal of citizenship of an Iraqi woman. This right to retain her Iraqi nationality is guaranteed by the new Nationality Law of 2006 unless the woman decides to revoke her Iraqi nationality in writing. The new Constitution and Nationality Law allow both men and women to restore their Iraqi nationality previously revoked under the old laws. The new Constitution allows every Iraqi to attain more than one citizenship and entitles them “to have multiple nationalities.” The Constitution guarantees the right to ownership of property for everyone throughout the country, but former RCC Orders, which are discriminatory against women, are still in force. For example, an Iraqi woman who marries a foreigner cannot transfer any private property to her husband or manage that property while outside of Iraq. The right to freedom of movement, travel and residence are protected by the 2005 Iraqi Constitution. It should be noted that the new Constitution also prohibits the deprivation of right to return to the homeland.

**DE FACTO COMPLIANCE**

Strictly enforced by the former regime in Iraq, nationality laws were adhered to by Iraqis and foreigners alike. Thus, little discrepancy existed between what the law mandated and what transpired in practice. As a result of the discriminatory nationality laws in force for more than four decades preceding the enactment of the 2005 Iraqi Constitution, the non-
Iraqi families of Iraqi women have been deprived of property, inheritance and any of the benefits of citizenship. For instance, one respondent from Baghdad recounted the discrimination she and her children suffered under the former regime. The woman married a non-Iraqi Arab man, resided in Iraq and bore several children. Upon the death of her husband, her children were denied Iraqi citizenship because they were underage at the time of his death and she, as an Iraqi woman, was unable to pass citizenship to her children. Moreover, when she visited her husband’s relatives in his home country in the Middle East, she had no legal claim over her underage children because they were not Iraqi citizens. Instead, her husband’s relatives legally held custody over her children.\textsuperscript{10}

In addition to the nationality laws, RCC orders also had a devastating effect on women and children. For example, RCC Order 1610, which mandates that an Iraqi woman married to a foreigner cannot transfer property to him or her children, has had a direct and dire effect on thousands of families. This was especially true during the Iraq-Iran war, where women married to Iranians had to forfeit their houses, property and, in many cases, had to leave their families because of this discriminatory law. In some cases, whole families were deported based on alleged Iranian decent, many left to reside in refugee camps inside Iran.\textsuperscript{11}

It is too soon to analyze the impact of the Nationality Law of 2006. As noted above, however, if conditions upon transfer and reinstatement of nationality remain in place, they will have the effect of prolonging the impact of the former discriminatory laws, with serious negative consequences for Iraqi women and their non-Iraqi families.

In contrast with the system of enforcement under the former regime, however, there is a gap between the law and its enforcement. According to respondents, passport authorities are not aware of the new laws and continue to implement the former legal regime. Thus, even the positive changes in the new legal regime are undermined.\textsuperscript{12}

Moreover, the broader public and the Iraqi women among it, are not aware of the legislative changes and their new rights.\textsuperscript{13}

Of particular concern are the observations pertaining to the position of parliamentarians on this issue. Further undermining the legitimacy of the 2006 legislation, it has been observed that a significant number of parliamentarians, themselves tasked with passing of new laws, were not aware that the new Nationality Law had been passed.\textsuperscript{14}

On tenuous ground already, the significant constitutional developments risk being further undermined in the process of constitutional review. Respondents noted that there is significant opposition to the right to dual nationality, and disagreement regarding the passing of citizenship from either the mother or the father. The opposition to these articles is grounded in political and sectarian issues, not gender, with concern among Sunni groups that liberal nationality provisions will allow for nationality to pass to a new generation of children born to Iranian mothers or fathers.\textsuperscript{15} There is thus a drive for nationality to pass only where both parents are Iraqi. Regardless of their source, such changes would have a severe detrimental impact on women, as seen under the former legal regime.
Freedom of Movement

As noted above, former Iraqi laws prevented a woman from obtaining a passport without the permission of her *wali* (custodian) and did not allow her to travel without a *muharem* (close male relative). Although such laws are no longer in effect, women’s present knowledge and perception of their legal rights varies greatly. While some survey respondents observed that there were no longer restrictions on obtaining passports or traveling alone, others stated that a woman could not legally obtain a passport without the consent of her husband or a male guardian. Others also continue to believe that they cannot travel without male permission or accompaniment. Some survey respondents also observed a lack of knowledge or implementation of new laws among employees at the passport department. The range of survey responses on this issue gives credence to the observation of one particular respondent who stated that a “law has been issued canceling the need for a woman to travel without a *muharem* but it did not become public and it was not implemented.” Respondents continued to disagree over the status of the law more than 18 months after this initial survey.

Legal restrictions, actual or perceived, are not the only impediment to women’s freedom to travel. Respondents observed that social and economic factors continue to restrict women’s freedom of movement and prevent most women from traveling without a male guardian or, in the case of married women, without their husband’s consent. A small number of respondents observed that some women cannot even leave the house without a man’s consent, expressing particular concern regarding such practices in rural areas.

Finally, in terms of women’s ability to move around on a daily basis, with the exception of the Kurdish region, the violence and security issues that pervade everyday Iraqi life and affect all Iraqis regardless of gender have a direct and devastating effect on women’s ability to provide for their families, attend school or work, and even accomplish simple tasks such as shopping in public marketplaces.

Freedom of Residence

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

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

- The Nationality Law of 2006 contains certain conditions on acquisition and reinstatement of Iraqi nationality which conflict with the rights to nationality as set forth in the Constitution, and thus, negatively affect women. (UDHR – Article 15; CEDAW – Article 9(1))

- Article 4 of the new Nationality Law of 2006 places the nationality of a child born outside of Iraq of an Iraqi mother within the discretion of the Minister of Interior and conditions that child’s nationality upon his/her residency in Iraq. No similar conditions are placed on a child born outside of Iraq of an Iraqi father. This differentiation in the law directly impedes upon the right of Iraqi women to freely pass on their nationality to their children regardless of where they are born. (CEDAW – Article 9(2))

- Article 5 of the new Nationality Law of 2006 discriminates in conferral of nationality to a child born inside Iraq to a non-Iraqi mother by solely linking such a child’s nationality to the father’s status. (UDHR – Article 15; ICCPR – Article 24(3); CEDAW – Article 9(2))

- Discriminatory RCC orders limiting the property rights of Iraqi women who married a foreigner, and were consequently stripped of their nationality, continue to be in effect. (UDHR – Article 15; CEDAW – Article 9(1))

- Recent gains in the area of women’s rights to acquire and pass their nationality onto their children, as reflected in the 2005 Constitution, are at risk due to the dominance of sectarian concerns in the constitutional review process. (UDHR – Article 15; CEDAW – Article 9)

- Regulatory reforms which would enable greater freedom of movement among Iraqi women are limited by social and economic factors, as well as poor awareness and enforcement of the regulatory regime. (UDHR – Article 13(1); ICCPR – Articles 12(1) and 12(3))

NATIONALITY – INTERNATIONAL TREATY FRAMEWORK

UDHR

Article 15
1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality

Article 13
1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.
ICCPR

Article 24

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

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

CEDAW

Article 9

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

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.
ENDNOTES

4 Iraq ratified CEDAW by Law Number 66 of the year 1986, published in issue number 3107 on 21st July 1986, with the following reservations: “Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g), of article 9, paragraphs 1 and 2, nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic Shariah according women rights equivalent to the rights of their spouses so as to ensure a just balance between them. Iraq also enters a reservation to article 29, paragraph 1, of this Convention with regard to the principle of international arbitration in connection with the interpretation or application of this Convention.”
5 On June 14, 2000, the CEDAW Committee specifically commented on Iraq’s reservation to Article 9 of CEDAW indicating that it was “concerned that Iraq’s nationality law, which is based on the principle that the members of a family should all have the same nationality and that none should have dual nationality or lose their nationality, does not grant women an independent right to acquire, change or retain their nationality or to pass it on to their children. The Committee recommends that the Government of Iraq review its reservations to article . . . 9 . . . , assess the justifications for those reservations and modify or withdraw them as soon as possible to ensure full implementation of the Convention.” CEDAW, “Consideration of Reports of States Parties under Article 18 of CEDAW: Iraq.” (Twenty-third Session) 2000. paras. 22–23.
6 UDHR, Art. 13(2).
7 ICCPR, Art. 12(3).
9 RCC Order Number 413. 1975.
10 As reported to author. July 2005.
16 Respondent L1, Question 44.
17 For example, respondent L2 states: “In the new Iraq, a woman can get a passport and she can travel without the permission of her husband”; respondent M1 states: “Women cannot obtain passports without the presence of their husbands, but they are allowed to travel.” Question 44.
18 For example, respondent L4 states: “A woman cannot obtain a passport or travel without the permission of her husband.” Question 44.
19 Respondent B1, B2. Question 44.
21 For example, respondents B1, D1, D4 (Question 76); respondents L3, M4 (Question 44).
22 Respondents I3 and M4, Question 76.
23 Respondents A1,J3, Question 76.
24 Respondent B4, Question 76.
25 Respondent B4. Question 76.
26 Respondent E1.
EDUCATION

“I have two daughters, and I have had to use my parental authority to prevent them from going to school this year. The security risks are simply too high and the cost of providing secure transportation is prohibitively expensive.”

Although domestic legislation mandates the right to education for all Iraqi citizens, poor implementation of this legislation has dramatically limited women’s and girls’ ability to participate in even the most basic levels of education. Thus, although Iraqi legal and constitutional provisions mirror the standards set forth in various international conventions, the exceptionally low literacy and primary education levels of Iraqi women and girls in recent years illustrate that their de facto situation is quite different.

The most serious impediments to women’s education are economic conditions that restrict educational opportunities, the deterioration of the security situation in Iraq that limits access to education and the rise in violence within educational institutions which has caused many such institutions to close. Coupled with the dramatic decline in educational infrastructure and culturally-based ideas that tend to favor the education of boys and men over that of girls and women, especially in remote and rural areas, these factors have perpetuated discrimination against women and girls at all levels of education.

INTERNATIONAL LEGAL FRAMEWORK

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

The International Covenant on Economic, Social and Cultural Rights (ICESCR), reiterates the right to education in Article 13, which the Committee on Economic, Social and Cultural Rights (CESCR) has coined as an “empowerment right.” The committee explains that “[e]ducation has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth.” Article 3 of the ICESCR is
to be read in conjunction with Article 13 as it obligates States Parties to provide equal access
to education by explicitly stating that men and women are to enjoy the rights set out in the
Covenant equally.6

It is important to emphasize that ICESCR Article 13 stipulates, *inter alia*, that States Parties
are to ensure the full realization of primary education for everyone.7 The CESCR under-
stands primary education to be universal, compulsory, and free of charge to all.8 In cases
where persons do not receive or complete the whole period of their primary education,
Article 13 indicates that “fundamental education shall be encouraged or intensified as far as
possible.”9 The CESCR explains:

> enjoyment of the right to fundamental education is not limited by age or *gender*;
> it extends to children, youth and adults, including older persons. Fundamental
> education, therefore, is an integral component of adult education and life-long
> learning. Because fundamental education is a right of all age groups, curricula
> and delivery systems must be devised which are suitable for students of all ages.
> (*emphasis added*)10

Article 14 of the ICESCR reinforces these principles by requiring States Parties to devise and
adopt “a detailed plan of action for the progressive implementation” of compulsory primary
education. States Parties are to undertake this plan and implement it over the course of “a
reasonable number of years” if, at the time of ratifying the ICESCR, no means for primary
education existed within their metropolitan or other areas.11 The CESC recognizes that
several factors, including debt and financial crises of the 1980s and 1990s, have impeded
upon the ability of states to develop such plans but emphasizes that these difficulties cannot
relieve States Parties to the ICESCR of their unequivocal obligation under Article 14. Lack
of necessary resources is not an acceptable justification for failing to implement compulsory
primary education measures.12 However, “[w]here a State party is clearly lacking in the
financial resources and/or expertise required to ‘work out and adopt’ a detailed plan, the
international community has a clear obligation to assist.”13

Article 13 of the ICESCR also provides for the right to secondary education and to higher
education, and requires that they be made equally accessible to all, by all appropriate means
and through the progressive introduction of free education.14

While recognizing the right to education in different forms, Article 13 places emphasis on
“technical and vocational secondary education.”15 The CESCR has recognized the particular
importance of technical and vocational education towards supporting the right to work, as
“[i]t enables students to acquire knowledge and skills which contribute to their personal
development, self-reliance and employability and enhances the productivity of their fami-
lies and communities.” It has also interpreted the right, in the context of the ICESCR’s non-
discrimination clause, as promoting the technical and vocational education of women and
girls, among other traditionally disadvantaged groups.16

Article 28 of the Convention on the Rights of the Child parallels the obligations of the above
ICESCR articles ensuring the right of children to education “on the basis of equal oppor-
tunity.”17 Article 29 of the CRC provides a qualitative dimension to the right of education
delineated in Article 28 by setting forth five aims: “the holistic development of the full poten-
tial of the child (29(1)(a)), including development of respect for human rights (29(1)(b)), an enhanced sense of identity and affiliation (29(1)(c)), and his or her socialization and interaction with others (29(1)(d)) and with the environment (29(1)(e))." The Committee on the Rights of the Child (CRC) explains that while Article 28 sets forth the right to equal access to education for boys and girls, Article 29 focuses on the content and quality of the child’s education aimed at his or her full development as an individual and within a cultural and social framework.

Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also requires States Parties to “take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education,” and then delineates specific measures to be taken in order to eliminate discrimination against women and girls. This includes inter alia, equal access to the same curricula and examinations, the elimination of stereotyped images of women in curricula, equal access to scholarships and other study grants, equal opportunities to participate in sports and physical education, as well as positive measures such as the organization of programs for women and girls who have left school prematurely.

The Convention against Discrimination in Education (CDE), stipulates a full range of obligations in the area of educational equality. For the purpose of this instrument, discrimination is defined as:

[A]ny distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education…

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

DE JURE COMPLIANCE

Equal Right to Education

Coupled with the equality provisions in Article 14 of the 2005 Iraqi Constitution and the guarantees of equal opportunities contained in Article 16, the right to education is guaranteed equally to women and girls in Article 34. Interviewees have noted that the right to equal education for women in Iraq is grounded in Islamic Shari’a, in addition to parallel provisions in international human rights instruments, and this provides an added layer of protection for equal access to education.
Article 34 of the 2005 Constitution:

First: Education is a fundamental factor in the progress of society and is a right guaranteed by the state. Primary education is mandatory and the state guarantees that it shall combat illiteracy.

Second: Free education in all its stages is a right for all Iraqis.

Notably, Article 34(1) of the 2005 Constitution also emphasizes the State’s intent to make primary education compulsory. This is supported by the Compulsory Education Law of 1978, which makes six years of primary education compulsory for all children.

The right to free education for all Iraqis at all levels set forth in the second paragraph of Article 34 of the Constitution parallels the Free Education Law of 1974, which provides that the state will cover the costs of education at all stages.

In 1978, a national campaign to eradicate illiteracy was launched under the Illiteracy Eradication Law of 1971 and, as a result, female illiteracy was reduced from 62.4% in 1977 to 25.2% in 1978. Although illiteracy among women has subsequently grown (see further discussion in the de facto section of this chapter), the successful use of the Illiteracy Eradication Law of 1971 to implement an aggressive program to combat illiteracy among women illustrates the value of such laws.

Departures from the 1970 Constitution

Despite equivalent guarantees of universal and free education for all its citizens, Iraq’s 2005 Constitution represents a significant departure from the 1970 Constitution. Article 34 of the 2005 Constitution omits many of the more specific aims contained in the 1970 Constitution. For example, Article 27 of the 1970 Constitution sought to ensure education in rural areas and contemplated adult learning. It stated:

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

Article 28 of the 1970 Constitution also expressly set forth educational objectives aimed at the development of the person within the context of the then socialist society:

Education has the objective of raising and developing the general educational level, promoting scientific thinking, animating the research spirit, responding to exigencies of economic and social evolution and development programs, creating a national, liberal and progressive generation, strong physically and morally, proud of its people, its homeland and heritage, aware of all its national rights . . . .
Sports
The 2005 Iraqi Constitution guarantees the right to participate in sports to all Iraqis, including women.

**Article 36 of the 2005 Iraqi Constitution:**
Practicing in sports is a right of every Iraqi and the state shall encourage and care for such activities and shall provide for their requirements.

The 1970 Law on the Establishment of Sports Clubs (Number 3/1970), which is still in effect pursuant to Article 129 of the 2005 Iraqi Constitution, does not restrict women from participating in sports. It does, however, restrict the travel of those playing in sports clubs, subject to ministerial approval.

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

- Article 28(a): The clubs may not participate in matches outside the Country, nor bring teams from outside, except after the approval of the Sport Associations.
- Article 28(b): The clubs shall not be entitled to have athletes (men, women) participate in any meeting or camp outside Iraq, except after the approval of the Ministry.

**DE FACTO COMPLIANCE**

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

The education system declined steadily after the start of the Iran-Iraq war in 1980. Shifting priorities from social welfare and public services to military expenditure caused a gradual decline in government spending on education. By 1988, primary enrollment had already dropped roughly 15% from the former nearly universal level. With the onset of the economic sanctions in 1991, the education sector ceased to be a priority for government spending. Per student spending, which had averaged approximately $680 a year in the late 1980s, fell to approximately $47 between 1993 and 2002. Ministry of Education data suggests that the figure may have been as low as $25 per student in 1998.

As financial resources became scarce in the aftermath of economic sanctions following the Gulf War, the United Nations Oil for Food Program (OFFP) funded the majority of the country’s education programming through in-kind, non-monetary donations. With dwindling
cash resources, salaries for teachers fell from their previous levels of $500–$1000 per month to as low as $5 per month in 2002–2003.36 One education expert reported that she knew of salaries as low as $1 in some parts of the country.37 Faced with meager wages, teachers left the profession for higher paying jobs, or simply stayed home with their families. Political manipulation of the education system further aggravated professional attrition rates by heavily influencing the selection of teachers and the overall curriculum. Professional education for teachers was discontinued leaving many teachers in need of additional training to meet acceptable standards.38 The Ministry of Education also reported that training periods for teachers were shortened to six months, and as little as three months in some cases.39

The past years of conflict have further exacerbated the already poor condition of the education system. Iraq’s current educational capacity and infrastructure remains tremendously weak. Schools lack basic supplies, desks, and teaching materials. In the mass looting and destruction that followed the 2003 conflict, almost 200 colleges were burned, bombed or looted.40 The Iraqi Ministry of Education estimates that as of 2004, almost 6,000 school buildings need repair, over 4,000 will need reconstruction, and over 1,300 must be rebuilt.41 The Ministry of Health has also stated that thousands of school facilities do not meet minimal health standards.42

The decline of the education system has affected the lives of women and girls most dramatically, depriving them of the rights afforded to them under both international and domestic law. Literacy rates of Iraqi women are currently some of the lowest in the Arab region, and reflect both the changing policies on literacy promotion and fluctuating female primary school attendance rates. Only 14% of women in Iraq age 65 and over are literate, while the general literacy rates for women ages 25 to 34 are actually higher than those ages 15 to 24, perhaps because of aggressive literacy programs enacted in the late 1970s.43 Reported overall literacy rates for women vary. A 2004 United Nations Development Programme (UNDP) and Ministry of Planning and Development Cooperation report claims that 56% of women are literate44 while the United Nations Children’s Fund (UNICEF) calculates the literacy rate to be as low as 23% in the year 2000.45

**Barriers to Education**

Increasing numbers of Iraqi children, particularly girls, are not attending school for reasons ranging from security to displacement. A 2003–2004 report produced by the Iraq Ministry of Education reveals that out of a total 4.9 million primary school age children in Iraq, about 4.3 million students were enrolled in primary education in 2004 of which 56% were boys and 44% were girls.46 As of 2004, only 74% of girls were enrolled in primary school and the enrollment of girls is lower than boys in every grade and in every governorate.47 In rural areas, this rate is estimated to be as low as 50%.48 Another report revealed that as of 2000, of the 348,000 primary school-age Iraqi children not in school, administrative sources indicate that 86.9% were girls.49 Only 35% of high school age girls are enrolled in school, compared to 50% of high school age boys.50 Despite these findings, there have been sporadic reports that female enrollment in Iraqi schools is on the rise. According to the Ministry of Education, the number of children enrolled in schools nationwide rose by 7.4% from 2002 to 2005, and in middle schools and high schools by 27% during that time, with high school enrollment increasing more for girls than for boys.51 However, according to these reports, boys contin-
ued to make bigger gains in primary schools, where enrollment increased more for boys than for girls.\textsuperscript{52} This pattern of enrollment trends would be consistent with an earlier peer group in which enrollment for girls was higher simply moving through the system, while more recent enrollment rates for girls are relatively low.

Low literacy rates are indicative of the multitude of barriers that Iraqi girls and women face in accessing education. In response to questions regarding the level of access to education, respondents commented that although official education policy encourages equal access to educational opportunities, girls are often denied their right to education due to a wide range of political, social, cultural and economic factors, with Iraq’s deteriorating security situation chief among them.

\textbf{Security}

Iraq’s security situation is the primary cause for the substantial decrease in women’s access to education. As schools and students increasingly become targets for sectarian violence, parents are becoming more worried about the safety of their children, girls in particular.\textsuperscript{53} Iraq’s Ministry of Education reported that in the first half of the 2005 academic year alone, 64 children were killed and 57 injured in attacks on schools. Another 47 were kidnapped. These numbers do not account for the number of children attacked on their way to or from school. The present security situation is causing many families to pull their daughters out of both schools and universities, thus denying them access to education at all levels of the educational spectrum. Several respondents noted the rise in kidnapping incidents. One respondent noted that “[t]he security situation plays a major role in depriving women of education, especially in the wake of the spread of the phenomenon of kidnapping girls.”\textsuperscript{54} In fact, several focus group participants, including one former university professor, indicated that the security situation has caused them to require their daughters to forego school during the 2006 year.\textsuperscript{55} A respondent to the 2005 survey also noted:

\begin{quote}
In a single school in Najaf, fifteen female students were kidnapped during the previous month, and the motives behind the kidnappings were not apparent. In fact, many parents and guardians are reluctant to send their daughters to schools — this is over and above the bombings and explosive cars that target innocent civilians, which causes women to think a thousand times before embarking on a particular step. In the event that organized crime continues, women will be unable to do anything.\textsuperscript{56}
\end{quote}

Even families that opt to send their daughters to school are finding that schools are closed because of the constant violence plaguing Iraq’s education system. The 2006 school year for primary and secondary education officially began on September 20, but many schools failed to open on that day.\textsuperscript{57} Schools in remote areas of Baghdad, especially girls’ schools, remained closed as of October 31, 2006, more than one month after the official start of the school year.\textsuperscript{58} According to the Ministry of Education, over 300 teachers and employees in the Ministry of Education were killed and an additional 1,158 wounded in 2006 alone, with several schools closing as a result of ongoing threats of violence.\textsuperscript{59} The situation in Ramadi is particularly bad. As of October 31, 2006, almost all Ramadi schools remained closed due to threats from Al-Qaida disseminated via public warnings to the local population at the beginning of the school year.\textsuperscript{60} Schools for girls have been singled out for threats and they, too, remain closed.\textsuperscript{61}
Many parents who send their daughters to school despite the threat of violence insist on escorting them or arrange for drivers or paid rides on private minivans that cater to students. Their dependency on private transportation has become a financial burden for many families, forcing girls to leave school when their parents are unable to provide for secure transportation. One focus group participant described how the financial cost of secure transportation for his daughter finally became prohibitive when the four other young women who shared the cost were each pulled out of school by their families. The $250 dollars per month the driver required was more than he could afford without sharing the expense with other families.

The environment of insecurity has also had a particularly dramatic impact on girls inside the classroom. Since the fall of Saddam Hussein’s government, in schools and universities across the country, girls have been under increased pressure to wear a veil and dress in a more modest manner. Although pressure for women to conform to stricter dress codes started in the early 1990s with Saddam Hussein’s “faith campaign,” the pressure has grown stronger since 2003 and, more recently, has extended to primary and secondary schools. This pressure is also more acute in certain communities, and particularly in the southern part of Iraq. However, the present situation differs due to an increase in intimidation and incidents of violence. In 2006 there were reports of militiamen in Zafaraniyah, waiting outside of schools and slapping girls not wearing the hijab (headscarf).

Numerous Iraqi women reported to the authors that sectarian violence was emerging on some university campuses, and that women were subject to attacks and threats. For example, on March 29, 2005, students were attacked at a university in Basrah while attending a college picnic. Armed militiamen later identified as Jaysh Al Mahdi, beat students with pistols, sticks and cables and hauled several students away. The militiamen later distributed videos of the event and boasted of stamping out debauchery. More recently, in October 2006, a car bomb was rigged to explode in front of a school that trains young women ages 16 to 20 to become teachers, killing two women and wounding 25 more. Many believe these attacks are aimed at scaring women back into their homes and freezing them out of public life.

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

Professors have also been targets of the ongoing violence, prompting many of Iraq’s teaching professionals to flee to neighboring countries. Between February and August 2006, 180 teaching professionals were killed, including a growing number being killed by their students over unsatisfactory grades. According to the Ministry of Higher Education, 3,250 teaching professionals fled Iraq between February and August 2006, almost double the amount of teachers who left in 2005. The drain of teaching professionals is creating a serious shortage in the education system. The Ministry has responded to the loss of teaching
professionals by offering 20–50% higher wages, but continuing instability keeps many from returning.

**Displacement**

Internal displacement of families resulting from the ongoing international conflict is a contributing factor to student nonattendance. Parents are withdrawing their children from schools as families relocate to areas they feel are safer, often because such areas are dominated by their religious sect.\(^{76}\) To accommodate the hundreds of thousands of Iraqis displaced from their old neighborhoods by sectarian violence, the Iraqi government has eased procedures for children to transfer schools.\(^{77}\) Iraqi children displaced in neighboring countries are also increasingly being denied access to education. Deterred by strained resources and increasing numbers of Iraqi students, at least one country that has received large numbers of displaced Iraqis is adopting policies that prevent displaced Iraqi children from attending school on their territory.\(^{78}\) Such policies violate the CRC and deprive Iraqi children of an education and opportunities for their future.

**Economics**

A large number of respondents pointed to economic factors such as the deteriorating education system and the rising costs of supplies and books as the most relevant obstacle to school attendance, after the security situation. A 2003 United Nations and World Bank needs assessment identified poverty as the primary barrier to girls’ education.\(^{79}\) Respondents further noted that education in Iraq is no longer truly free, since necessary supplies and materials are no longer provided by schools.\(^{80}\) These additional costs, together with the costs of providing secure transportation to and from school, can be prohibitively expensive for many Iraqi families, according to respondents.\(^{81}\) Moreover, the kidnapping of family members for ransom and the death of wage earners is also limiting families’ ability to send their children to school.\(^{82}\) Because of the additional costs involved, some respondents observed that boys sometimes receive preference for the little amount of family resources available for education. In addition, there have been reports that some girls are called upon to sustain some of the financial burden for educating male relatives. As one respondent noted, “Due to a low economic standard, preference is given to sending the boy to school, and in some cases, a girl is forced to work to provide for the school needs of her brother. Likewise, the absence of men in the family has led to diminished educational opportunities for girls.”\(^{83}\) Other respondents indicated that preferences for the education of male children, if they occur, are very rare and one respondent noted that many Iraqi’s are paying for private security and transportation just so their daughters can attend school.\(^{84}\)

The economic situation in Iraq may also be diverting funding from education programs to other areas of government. Respondents reported that higher education, which was once free, is now no longer available free of charge.\(^{85}\) Respondents also indicated that door-to-door programs aimed at ensuring that all school-aged children were in school are no longer available.\(^{86}\) Other respondents pointed to the closing of university dormitories and the lack of buses to transport students to school as symptomatic of the toll the declining economic circumstances are taking on women’s access to education.\(^{87}\)
Geography

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

Social and Cultural Factors

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

Even respondents who felt strongly that the education of daughters was equally important to Iraqi families as the education of sons indicated that the current climate of violence was causing some families to keep their daughters, but not their sons, home from school. One respondent commented,

At the present time, I prefer to keep my daughter home from school and send my son because he is more courageous and he can get to school easier than a girl. But that is only because of the current security situation. In the future, I would send them both.

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

There certainly are cultural and social obstacles to educating women. Some parents, especially in villages and rural areas believe that women do not need to be educated, and that they were created for the home and for raising children. Some parents go as far as to say that if women are educated they will disobey them, and they will become aware of things they should not be aware of. So, even if they register their daughters they take them out of school, either for the aforementioned reasons, or because they are preparing them for marriage.

One education expert also confirmed the drop-out rate of girls due to marriage and pregnancy is generally on the rise.
Access to higher education also eludes many women. Many respondents stated that families prefer to educate their sons believing that they will be the breadwinners in their families. As one Iraqi woman pointed out, some families think that women "need a husband more than they need a degree." Still, other respondents insisted that the education of women is equally important to Iraqis and that many families dream of having daughters that are doctors and lawyers.

Discrimination against women in some higher education fields is also reported. Survey respondents noted that colleges prefer to admit males over females, even when applying with lower grades. Women in universities are often encouraged to pursue more traditional (and lower paying) female-dominated fields such as health and education. Survey respondents noted that fields, such as the pharmaceutical and medical field, discriminate against women by setting higher admission standards for them than those applied to men.

**Other Issues**

**Continuing Education**

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

**Participation in Sports**

With respect to women’s and girls’ participation in sports and physical education, many respondents gave contradictory responses. While some insisted that women and girls were able to participate equally, others pointed out that physical activity is often deemed socially and culturally inappropriate for women. “There are no laws that prohibit women from playing sports, but the cultural criteria of Iraqi families and societal practices prevent women from participating. In schools, officials in education are not focused on this matter.” The security situation is further limiting women’s access to sports and physical education. Some schools are canceling after school sports due to security concerns. One women’s high school, once known citywide for its basketball team, no longer has after school sports, as parents consider it too risky.
KEY AREAS OF CONCERN

Girls’ access to primary education is heavily restricted, particularly in rural areas. (UDHR – Article 26; ICESCR – Articles 3, 13; CRC – Article 28; CEDAW – Article 10; CDE – Articles 3, 4)

The educational infrastructure fails to meet the basic needs of most enrolled students and the deterioration of services, such as busing and compulsory education programs, is further limiting girls’ access to education. (CEDAW – Article 10(b); CDE – Article 4(b))

Ongoing threats of violence and intimidation limit women’s opportunities at all levels of education. (UDHR – Article 26; ICESCR – Articles 3, 13; CRC Article – 28; CEDAW – Article 10; CDE – Article 1)

Economic and social factors impede girls’ full participation in educational opportunities. (UDHR – Article 26; ICESCR – Articles 3, 13; CRC Article – 28; CEDAW – Article 10; CDE – Article 1)

EDUCATION – INTERNATIONAL TREATY FRAMEWORK

UDHR

Article 26

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

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

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

ICESCR

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.
Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) primary education shall be compulsory and available free to all;

(b) secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

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

CRC

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

   (a) Make primary education compulsory and available free to all;

   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

   (d) Make educational and vocational information and guidance available and accessible to all children;

   (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

   (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;

   (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

   (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

CEDAW

Article 10

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

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programs for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

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

Article 1

1. For the purpose of this Convention, the term “discrimination” includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) Of depriving any person or group of persons of access to education of any type or at any level;

(b) Of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

2. For the purposes of this Convention, the term “education” refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

Article 2

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

(a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;

(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil’s parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;

(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.
Article 3
In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;

(d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;

(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

Article 4
The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

(b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent;

(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;

(d) To provide training for the teaching profession without discrimination.

Article 5
1. The States Parties to this Convention agree that:

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

(b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction;

(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional.

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

Article 6

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

Article 7

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

1 Comment from a University Professor during Focus Group. November 24, 2006.
2 UDHR, Art. 26(1).
3 UDHR, Arts. 26(1)–(2).
4 UDHR, Art. 26(3).
6 ICESCR, Art. 3.
7 ICESCR Art. 13(2)(a).
9 ICESCR, Art. 13(2)(d).
14 ICESCR Arts. 13(2)(b) and (c).
15 ICESCR Art. 13(2)(b).
16 CESCR, Gen. Comm. 13, para. 16.
17 CRC, Art. 28(1).
20 CEDAW Art. 10.
21 CEDAW, Art. 10(a)–(h).
22 Ratified by Iraq in 1977.
23 CDE Art. 1(1).
24 CDE Arts. 3, 4.
26 This statement is based upon information obtained at the Focus Group Meeting of November, 2006. The authors were unable to obtain a copy of the Compulsory Education Law of 1978 or to confirm that the law is still in effect.
27 This statement is based upon information obtained at the Focus Group Meeting of November, 2006. The authors were unable to obtain a copy of Free Education Law of 1974 or to confirm that the law is still in effect.
28 The authors were unable to obtain a copy of the Illiteracy Eradication Law of 1971 or to determine whether the law is still in effect.
Educational initiatives in post-war Iraq:


Comments from focus group. April 28, 2005 and November 24, 2006.


UN Office for the Coordination of Humanitarian Affairs. “Iraq: Threatened Teachers Fleeing the Country.” August 2006. Also in a statement by Professor Salah Aliwi, Director General of Studies Planning in the Ministry of Higher Education.


Respondent E2. Question 45.

Respondent H1. Questions 45.


For example, respondent G1. Question 46.


Interview with education expert. Focus group. April 28, 2005.

For example, respondents A1, A5, E5. Question 45.

As reported to Author. July 2005.


For example, respondents B2, G1. Question 45.

Comments from focus group. April 28, 2005.

For example, respondents A1, A2, A6, B3, C3, C5, D3, E1-E5, H1. Question 49.

Respondent A5. Question 51.


Respondent E4. Question 52.

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

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

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

INTERNATIONAL LEGAL FRAMEWORK

The right to work, to equal remuneration for equal work and to protection by the state against unemployment remain among the basic tenets of international human rights law, as articulated in Article 23 of the Universal Declaration of Human Rights (UDHR). These rights have since been elaborated on in a series of related human right treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These conventions provide several detailed provisions pertaining to equality in the workforce, including:

- the right to work as an inalienable right for all individuals (CEDAW Art. 11(1)(a); ICESCR Art. 6);
The status of women in Iraq: update to the assessment of Iraq’s de jure and de facto compliance with international legal standards

- equal opportunities for promotion subject to the same criteria for selection (CEDAW, Art. 11(1)(b); ICESCR, Art. 7(c));
- the right of women to be guaranteed conditions of work not inferior to those of men (ICESCR, Art. 7(a)(i));
- the right to equal remuneration for work of equal value, including benefits such as social security, (CEDAW Art. 11(1)(d)-(e); ICESCR Arts. 7(a)(i), 9);
- the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction and protection for working pregnant women (CEDAW, Arts. 11(1)(f), 11(2)(d)); ICESCR Art. 7(b)).

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

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

Iraq has been a member of the International Labour Organization (ILO) since 1932 and has ratified 59 labor conventions currently in force. As early as 1959, Iraq ratified the ILO Discrimination (Employment and Occupation) Convention No. 111 (ILO Convention No. 111), based on the principle that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.” This convention sets forth active measures to be taken by the States towards non-discrimination in employment, including cooperation with employers and labor organizations, enactment and amendment of legislation consistent with these objectives, and vocational guidance and training.

Iraq is also a Party to ILO Equal Remuneration Convention No. 100 of 1951 (ILO Convention No. 100) under which it is obligated to “promote” and “ensure” the application of the principle of equal remuneration for men and women workers for work of equal value, not only through the enactment of laws and regulations, but through legally established mechanisms for wage determination (such as objective appraisal) and collective agreements between employers and employees.

Moving beyond labor rights, equality of treatment with respect to economic rights in general is also protected under international law, starting with the basic right to social security as enunciated in UDHR Article 22, and extending to the equal right to bank loans, mortgages and other forms of financial credit, as expressly set forth in Article 13(b) of CEDAW. The CEDAW Committee explains:

[When a woman cannot enter into a contract at all, or have access to financial credit, or do so only with her husband’s or a male relative’s concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding...}
property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman’s ability to provide for herself and her dependants.7

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

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

Article 14(2) of CEDAW then provides for specific measures to ensure that women in rural areas participate in and benefit from rural development, including through education and training programs, access to agricultural credit and loans, and participation in development planning. In this vein, the CEDAW Committee also recommends that States Parties pay attention to the legal and social situation of rural women, collect measurable and quantifiable statistics related to their unremunerated work within an enterprise owned by a family member, and ensure that they receive social security and social benefits.8

**DE JURE COMPLIANCE**

**Equal Right to Employment**

Article 22 of the 2005 Iraqi Constitution broadly guarantees the right to work for all Iraqis, without reference to gender.

<table>
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<th>Article 22 of the 2005 Constitution:</th>
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<td>First: Work is a right for all Iraqis in a way that guarantees a dignified life for them.</td>
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<tr>
<td>Second: The law shall regulate the relationship between employees and employers on economic bases and while observing the rules of social justice.</td>
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<tr>
<td>Third: The State shall guarantee the right to form and join unions and professional associations, and this shall be regulated by law.</td>
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In addition to the non-discrimination provisions contained in Article 14, the 2005 Iraqi Constitution guarantees “equal opportunities,” which would include equal work opportunities, and permits the adoption of such measures as are necessary to fulfill this commitment.

<table>
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<th>Article 16 of the 2005 Constitution:</th>
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<tr>
<td>Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken.</td>
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</table>
Despite these guarantees, Iraq’s 2005 Constitution represents a departure from the 1970 Constitution, which expressly guaranteed the right to work under equal terms and opportunities without discrimination based on sex, origin, language or religion. Iraq’s 1970 Constitution arguably provided more specific guarantees of the right to be free from employment discrimination on the basis of gender.

Iraq’s Unified Labor Code of 1987 reiterates the guarantees contained in the Constitution and provides for additional protections which extend to the private, semi-private and public sectors. The Unified Labor Code expressly guarantees equal pay for equal work. It also expressly forbids discrimination on the basis of gender, whether in employment or unemployment, and provides for employment on equal terms and opportunities. The legislation makes no express reference to equal opportunities in promotion, or to mechanisms for guaranteeing such equal opportunities.

**Article 2 of the Unified Labor Code of 1987:**
This law guarantees the right to work for each capable citizen with equal opportunities and equal conditions among all, without discrimination on the basis of sex, race, language or religion. Each citizen shall have equal opportunities in vocational training within the limits drawn by the government on the basis of work type and volume in each sector.

**Article 4 of the Unified Labor Code of 1987:**

…

Second: This law guarantees equal pay for equal work of the same type and volume, when done under similar conditions.

**Article 15 of the Unified Labor Code of 1987:**
The Department of Labor and Social Security, through their labor offices, shall organize the recruitment of workers according to opportunities and aims to emphasize equality and justice between workers.

### Conditions of Work
The Unified Labor Code of Iraq guarantees women conditions of work that are not inferior to those of men. The Labor Code is in many respects sensitive to the special conditions of women in the workplace and makes express provision for the protection of pregnant women and for the demands of family life. For example, Article 82 provides that pregnant women may not be employed in “extra” work which may be harmful to them or their pregnancy. Article 87 provides that women who are nursing are permitted one hour per day for breastfeeding. Female workers are to be provided with comfortable environments, desks and chairs. A working mother with a child under six years of age is permitted three days unpaid leave per child per illness to attend to her sick child.
Other provisions more broadly regulate the conditions in which women can and cannot work. For example, Article 81 of the Labor Code provides that women are not to be assigned to dangerous tasks or heavy physical work. Article 83 further provides that women are not to work night shifts except under exceptional circumstances as specified in the Labor Law. These provisions, although drafted with a view to protecting women, could result in discriminatory employment practices.

Article 80 of the Unified Labor Code of 1987:
Employers who hire one or more women workers should post, inside the workplace, a copy of the conditions on working women’s protection.

Article 81 of the Unified Labor Code of 1987:
Women may not be employed in hard or harmful works, referred to in the regulations provided for in Article 57 in this law.

Article 82 of the Unified Labor Code of 1987:
Pregnant women may not be employed in extra works which may be harmful to them or their pregnancy.

Article 83 of the Unified Labor Code of 1987:
First: Women may not be employed in night shifts, unless the work is related to raw or perishable materials and night work is necessary to maintain them
Second: Working women must be given daily rest that is not less than eleven consecutive hours, seven of which must be at night between 9 pm and 6 am.
Third: The first clause above does not apply to the following categories:
(a) Administrative jobs
(b) Health or entertainment jobs
(c) Transportation or telecommunication jobs.

Article 87 of the Unified Labor Code of 1987:
First: Breastfeeding workers are entitled to one hour per day for purposes of breastfeeding during working hours, which shall be deducted from working hours.
Second: Working women who have one or more children less than six years old are exempted from work if her sick child needs her care, for not more than three days for each case, and she will not be paid for this exemption.

Article 88 of the Unified Labor Code of 1987:
Employers hiring women should provide special comfortable working environments for women.
Iraq’s 2005 Constitution expressly prohibits certain forms of economic exploitation, namely “forced labor, slavery, the slave trade, trafficking of women and children, and [the] sex trade.”

Article 29 further prohibits the economic exploitation of children and requires that the state take measures to protect them. For further information on forced labor and the trafficking of women and children, see the chapter on Violence and the Right to Personal Security.

Maternity Entitlements

Iraq’s Maternal Law of 1971 provides women working in the public sector with progressive entitlements. Under this law, women in the public sector receive six months paid maternity leave and may elect to take a further six months leave with half-pay. A subsequent decision of the Revolutionary Command Council grants even more favorable entitlements to the mother of twins. It should be noted that the Revolutionary Command Council no longer exists as an institution in Iraq but its interpretation of the Maternal Law, and many other laws not otherwise amended, still stands as binding law.

**Revolutionary Command Council Decision Number 727:**

Based on the provisions of Paragraph 1 of Article 42 of the constitution The Revolutionary Command Council has decided in its session on September 19 1987 the following:

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

Women in the private sector are entitled to maternity leave in accordance with Article 84 of the Unified Labor Code. They may also receive social security benefits under Article 32 of the Worker’s Social Security and Retirement Law Number 112 of 1969 in the event that they take unpaid leave.

**Article 84 of the Unified Labor Code of 1987:**

First: Working women are entitled to 72 days paid pregnancy and delivery leave.

Second: Pregnant workers are entitled to begin their leave thirty days before the expected delivery date according to a medical certificate issued by a competent entity, and shall continue their leave after delivery for the rest of their leave days.

Third: The competent medical entity may decide that the leave provided for in the first clause above should be extended to not more than nine months in cases of hard delivery, or delivery of more than one infant, or the occurrence of complications before or after delivery; term exceeding that provided in the first clause shall be unpaid, unless the worker is insured, in which case the Worker’s Social Security and Retirement Law applies.
**Article 85 of the Unified Labor Code of 1987:**
 Whoever is on maternity leave may not perform paid work that would damage her health.

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

1. Insured women enjoy birth support in cases of pregnancy or birth that are signed by a licensed physician appointed or approved by the institution, on condition that:
   
   (a) She stops working;
   
   (b) That the benefits paid for her or recorded in her account in the twelve months prior to her due date according to the physician’s report should not be less than six monthly wages.

2. Birth support is paid to insured women for the days they do not work for pay for twelve weeks, with no more than six weeks before the due date, and on condition that the birth support continues until the end of the sixth week that follows birth if the birth occurs after the due date.

Iraqi law does not expressly prohibit dismissal on the grounds of pregnancy, maternity leave or marital status, although the equal opportunity and non-discrimination provisions contained in the 2005 Iraqi Constitution and Unified Labor Code would render such dismissals unlawful.

**Social Security**

**General Social Security Provisions**

The Iraqi Constitution of 2005 takes particular account of women and children in guaranteeing their right to social security and expressly undertakes to provide for a suitable income and appropriate housing.

**Article 30 of the 2005 Constitution:**

First: 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.

Second: The State shall guarantee social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphan hood, or unemployment, shall work to protect them from ignorance, fear and poverty, and shall provide them housing and special programs of care and rehabilitation, and this shall be regulated by law.
The language of the second paragraph of Article 30 contemplates that a new law will be passed to give effect to state guarantees of social and health security, housing and special programs of care and rehabilitation for the contemplated groups. This law had not yet been drafted as of this writing.

Under the existing Workers’ Social Security and Retirement Law of 1969, however, certain categories of workers are expressly excluded from the full range of retirement benefits. While some groups are excluded on the basis that their benefits are provided via other mechanisms, several provisions effectively exclude those workers who participate in the “informal” labor sector, including domestic work, family businesses, and agricultural work. Women, especially rural women, are particularly disadvantaged by these provisions.

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

1. The provisions of this law apply to all workers and trainees, with the exception of the following groups:

   (a) Government workers in official and semi-official departments, municipalities and local administrations and their like in the institutions included in the retirement laws and the retirement law for semi-official institutions, as well as foreign employees and experts used by the government in its official and semi-official departments in accordance with contracts.

   (b) Workers who work for their husbands, fathers, mothers, sons or daughters.

   (c) Workers hired to work in incidental or emergency jobs or for temporary or seasonal work, except as listed in special provisions.

   (d) Foreign workers residing in Iraq due to their work in diplomatic or international missions.

   (e) Foreign workers working for foreign institutions whose headquarters are outside Iraq and who are listed in retirement and social security programs in their own countries.

   (f) House workers and their like.

   (g) Workers in agriculture, livestock and forests except those hired by the government in its official and semi-official institutions and trade and industrial institutions.

   (h) Individuals working in their homes for an employer.

   (i) Workers included in special retirement laws or regulations in which the government contributes through funding.
Under Article 37 of the Worker’s Social Security and Retirement Law Number 112 of 1969, retirement benefits accrue to women earlier than they do to men. Although retirement is not compulsory, this law could serve to force women out the labor market at an earlier age than men.

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

1. Insured individuals deserve old age retirement when the following conditions are met:

   (a) When men reach the age of sixty and women reach the age of fifty five. The first day of July is considered the date of birth for individuals who have no officially documented day or month of birth.

   ...

2. When the paid subscriptions for the insured individual reach (300) or more subscriptions, men deserve to retire at fifty five and women at fifty, as an exception of the provisions of paragraph A of this article.

In the related area of income tax, men are legally considered to be the provider and thus entitled to greater deductions, including additional deductions for multiple wives. A wife is not entitled to the same deductions unless she is a widow or divorcee. A wife loses the deduction entitlement if she re-marries. Consequently, working women who are married are not treated equally by the income tax system because they are not entitled to an equal spousal deduction.

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

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

**Social Security and Widows**

The growing number of widows in Iraq without a reliable source of income and with few work opportunities is creating an increased need for social security programs that address the needs of families that have lost a primary wage-earner. The Iraqi Ministry of Finance has recently issued a procedural amendment on Regulation Number 3/2005 regarding financial compensation for the spouses of those killed or injured in terrorist attacks. The amended regulation now covers such incidents as car bombs, roadside bombs and killing by armed groups.\(^11\)

**Other Economic Rights**

The right to property is guaranteed under the 2005 Constitution to all Iraqis without discrimination on the basis of gender.
Article 23 of the 2005 Constitution:

First: Private property is protected. The owner shall have the right to benefit, exploit and dispose of private property within the limits of the law.

Second: Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law.

Third:

(A) Every Iraqi shall have the right to own property anywhere in Iraq. No others may possess immovable assets, except as exempted by law.

(B) Ownership of property for the purposes of demographic change is prohibited.

Prior Revolutionary Command Council decisions vesting the control of property owned by women to the state under certain circumstances are still in force and they are in conflict with this provision. This is further discussed in the chapter on Nationality of this assessment.

On a related issue, Iraqi law does not discriminate against women entering into and signing contracts on their own. This allows women to take advantage of financial opportunities such as bank loans and mortgages without the involvement of their husbands or male relatives. Article 93 of the Iraqi Civil Code provides that every Iraqi is capable of entering into a contractual agreement. Exceptions to this rule include minors and the mentally incompetent. 12

Excluded Sectors and Excluded Provisions

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

Article 89 of the Unified Labor Code of 1987:

Provisions in this chapter shall not apply on women working in a family environment, where all workers are from the same family under the supervision of a husband, father, mother or sibling.

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

As to the enforcement of labor rights, a network of independent labor courts was established in Iraq to preside over labor disputes in a timely manner.

Article 137 of the Unified Labor Code of 1987:

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

While these courts can be accessed by men and women equally to contest decisions related to employment and termination of employment (“hiring and firing”), these institutions do not appear to have jurisdiction over general allegations of gender discrimination with respect to pay, promotion, or general treatment in the workplace (e.g., lack of facilities for women, lack of compliance with maternity provisions).

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

In summary, the 2005 Constitution, Article 14, guarantees the right to work for all Iraqis who “are equal before the law without discrimination based on gender. . . .” The Constitution is the foundation for equal opportunities for men and women and the state is obligated to take all necessary measures to achieve this equality. Iraq’s labor legislation strengthens these rights and expressly guarantees equal pay for equal work, in accordance with the relevant international conventions.

Iraqi law does contain special provisions for women workers taking into account their physical wellbeing and familial responsibilities. Although ostensibly intended to benefit women, such protective legislation may impede and limit women’s equal employment opportunities if discrimination on such a basis is not expressly addressed by the state. Iraqi legislation must expressly prohibit dismissal as well as discriminatory practices in hiring and promotion based on the worker’s marital status or pregnancy.

Iraqi law does not discriminate against women in the area of entry into contracts, nor as regards the ownership of property, except in the cases discussed in the chapter on Nationality. However, Iraq’s labor legislation does not address the particular problems faced by rural women, as required by Article 14(1) of CEDAW, and exclusions of particular classes of workers from coverage under the Social Security and Retirement Law may disproportionately affect this group.
**DE FACTO COMPLIANCE**

February 2006 estimates put women’s participation in the workforce at 13%¹³ which is low even by regional standards. This number represents a decrease in women’s participation in the workforce since 2004, when estimates ranged from 16.6%¹⁴ to 23%¹⁵ and which represented the lowest level of participation in over 15 years. Anecdotal accounts suggest that participation has dropped due to deteriorating security conditions since early 2006. Of the small number of women employed, the majority work in the public sector and very few women assume senior decision-making posts.¹⁶ Women make up an absolute majority of workers in education, filling 60% of all positions.¹⁷ In the private sector, women represent between 32% and 38% of those employed in agriculture, health and social and financial intermediation.¹⁸ Current official employment estimates do not account for the growing number of women working in unreported industries or the “informal” sector.

The rise in unemployment coupled with limited opportunities has led increasing numbers of women, including professional women, to look for work as domestic servants.¹⁹ The privatization of businesses and the reduction in tariffs on imported goods has exacerbated employment difficulties for women, causing hundreds of skilled female industrial workers to look for other work.²⁰ Overall, women face significant disadvantages “often working in jobs with low wages and little potential for growth.”²¹

A basic human right, women’s participation in the workforce in post-war Iraq must also be seen as an economic necessity. Regional studies have shown that women’s workforce participation “could boost average household earnings by as much as 25%.”²²

**Unemployment**

National unemployment figures have risen since the US-led invasion of Iraq in 2003. Precise unemployment figures are not available and estimates vary widely. Current estimates range from 13.4% to as much as 60%.²³ Citing the Iraqi Ministry of Labor and Social Affairs, a recent report by the UN Office for Coordination of Humanitarian Affairs concludes that unemployment figures have been rising ever since the U.S.-led invasion of Iraq.²⁴ The report goes on to state that the unemployment rate for women is almost 70%, leading many women, including professional women, to accept low-income, low-status work.

**Discrimination**

In its concluding observations concerning Iraq’s last periodic report, the CEDAW Committee expressed concern about women’s low participation in the labor market and the absence of minimum wage laws, which create obstacles in evaluating whether women are being paid on an equal basis with men.²⁵

Respondents to this assessment pointed out that some of the former laws granting equality between men and women covered both the public and private sectors, although the public sector was the only place those laws were implemented. Moreover, benefits such as vacation leave, social security, and critical maternity benefits²⁶ are guaranteed only in the public sector. This is especially problematic for women working in the informal sector, helping with
agricultural projects, or selling products from home. As such, they remain without many of the benefits and protections provided in the public sector.

Several respondents observed inequalities of pay in the private sector, although in the public sector respondents were in agreement that women were considered to be treated equally in terms of pay. However, even in relation to the regulated public sector, many respondents observed that discrimination still exists in the areas of promotion, managerial responsibility and decision making. Several respondents also stated that men generally had more opportunities to access employment than women, and that men were often preferred for certain types of jobs.

Many respondents observed that women in the private sector are most at risk of losing their jobs when the current economic situation forces companies to downsize. Reasons cited included that men were less likely to take time off to care for children and dependents and did not have to take maternity leave. Respondents also noted that some factory owners are reluctant to hire women because of the burden of providing maternity benefits including time to breastfeed and on-site child care.

Respondents observed that although men are preferred for some jobs, women sometimes also receive preference in certain industries, particularly for jobs in sewing and clothing factories. Beliefs about traditionally “male” and “female” jobs and the “nature of women” may be influencing job and hiring choices even in the absence of formal discrimination.

Despite the legal protections for women in the workplace, some respondents voiced concerns that women are still not able to participate fully, noting that women are seldom in higher levels of employment in the public sector and almost never in higher levels of employment in the private sector. One respondent noted that “equality in the workplace is not just about protections for women, it is about their ability to participate fully in the workforce.” It was also noted that the prevalence of men in leadership positions may result in favoritism towards men.

In certain sectors, women were actively blocked from participation by the former regime. Such policies, combined with social and cultural perceptions of what is and is not women’s work, will have long term repercussions for women’s participation in those sectors.

In the judiciary, for example, women were not permitted to serve as judges as of 1991. From that point, no women were admitted to the judicial training institute and women on the bench were removed or reassigned to prosecutorial positions. As mentioned in the chapter on Political Participation, Civil Society and Women in Decision Making, since May 2003 several former graduates of the Judicial Training Institute have been appointed to the bench. The overall numbers, however, are extremely low. Only 13 out of 738 sitting judges (less than 2%) are women and only 25 of the 235 students at the Judicial Training Institute are women. Female judges remain absent from appellate courts throughout the country as well as from the Court of Cassation and the Federal Supreme Court. Moreover, with the exception of Kurdistan, female judges are not appointed to personal status courts or felony courts, thus solely presiding over juvenile courts and civil courts.

The other two areas of law enforcement — the police and prisons services — are also essentially devoid of women. While there is no law preventing their participation, one Iraqi civil
service official stated that women vanished from those services in the late 1980s due to regime policies and social perceptions. The few women who do work in law enforcement must keep their professions a secret. Female Iraqi police have become targets for extremists. This has had serious repercussions for women’s access to justice, as discussed further in the chapter on Violence Against Women and the Right to Personal Security.

Iraqi law provides three mechanisms for responding to discrimination once it has taken place: administrative courts, labor courts and the Disciplinary Council. Participants noted that these remedies have the potential to be particularly effective because the decisions of each of these bodies is binding on the Minister of Labor. However, it was also noted that the adjudicatory process can be expensive and difficult to navigate, making it an unattractive option for victims of discrimination.

Security

Women’s work opportunities have also been severely hampered by the current security situation. Violent attacks, kidnappings and sexual assaults heighten women’s vulnerability and act as obstacles to them leaving their homes in order to participate in the workforce or to seek employment. As such, many women have stopped working and new employment opportunities have been severely restricted. Public violence has driven low-income women engaged in street commerce out of their jobs and into their homes. Working for multinational forces and foreign embassies in Iraq is often the only employment available, but it can be a dangerous option. Women working as cleaners and laundry personnel at a U.S. base near Baghdad were gunned down in 2004, and translators for U.S. news organizations have received death threats. Even members of the Iraqi police are not safe. Dalia Hassan, one of the first women to join the Iraqi police was murdered by a hit squad in a Baghdad street in April 2006, presumably targeted for “collaborating” with the U.S. Many of the respondents made reference to the precarious security situation and the prevailing lack of mobility for women. As one respondent noted, “in the current security environment, I won’t allow my wife to leave the house to go to work.” Another respondent observed, “[the security situation] causes women to think a thousand times before embarking on a particular step.”

The security situation is also forcing many factories, which had been large employers of women, to close. Respondents noted that a significant number of factories that used to provide thousands of jobs for women have been closed since 2003. Even the few that remain open face difficulties because of the infrastructure problems plaguing Iraq. Women in those factories must endure dangerous and unsanitary working environments due to intermittent electricity and water service.

Societal Norms

Tradition and culture also impinge upon women’s opportunities in the labor force, although current efforts to encourage women’s participation in the workforce are having some effect. Women may be denied the opportunity to work because their work is often believed to be less important in supporting the family than men’s work. “Fathers, brothers and husbands — and even in some cases sons — prevent them from working even if the work is good and suitable for them” stated one respondent. Others see women working outside the home as
a sign of men’s inability to provide for their families. Women who do work are sometimes ostracized from their social networks because they are viewed as having declined in social status. When close male relatives have in fact been killed or incapacitated, the resulting female headed households are particularly vulnerable to the inequalities of the labor market. Self-reliance is minimal and most must rely on more distant male relatives for income. There are also reports that female headed families have been forced to pull children out of school to work in order to earn extra income, thus, continuing the cycle of poverty.

Stereotypical depictions of women’s work are also pervasive, leading girls to enroll in traditionally female sectors and limiting growth potential in non-traditional domains. As one respondent stated, “[m]ales are allowed to work in any job they want while females are only allowed to work in certain specific fields.”

Disparity in Education Levels

Opportunity to compete with men for employment is also severely restricted by the large disparities in education levels. As discussed in the chapter on Education, the plunge in literacy levels for women in Iraq over the last decade has been drastic and women and girls’ participation in secondary and higher education has also declined due to the lack of security and competing financial burdens. The link between a decline in education levels and employment opportunities is well recognized and has potential long-term effects for women in Iraq.

Sexual Harassment in the Workplace

Respondents overwhelmingly reported that sexual harassment exists in the workplace, but were divided over how prevalent it has become. Respondents went on to observe that a woman will generally remain silent on this issue, primarily due to fear for her reputation but also for fear of dismissal as men generally hold more senior positions in the workplace. It was also observed that although Iraqi law prohibits rape and assault against women, it contains no express prohibitions on sexual harassment.

Social Security

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

Currently, anyone working for the public sector has the right to social security benefits. The private sector, however, is governed by a separate system, and any company with less than three employees is not required to pay into the system. Thus, women who participate on the margins of the labor force working from home or for small enterprises are excluded from benefits. An overwhelming amount of female labor also goes unpaid in the Iraqi economy. Eighty-four percent of women in a 2005 survey reported that they receive no financial compensation for their labor. This would also preclude any additional benefits such as social security.
Current social welfare laws provide for some family benefits for those in poverty, however, the distribution system does not take family size and need into account. Furthermore, financial benefits for the disabled are extremely limited and do not provide for additional training in connection with self-reliance.

Rural Women

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

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

Efforts to Increase Women’s Participation in the Workforce

Participants generally observed that the Iraqi government is doing a great deal to encourage and support women’s participation in the workforce. Participants cited efforts to increase job opportunities, substantial maternity benefits and programs to provide small business loans to women as important advances in encouraging women’s participation in the workforce. Participants also noted that government inspectors educate employees about their rights and ensure that public and private sector employers are in compliance with labor laws, including on-site maternity benefits.

Efforts are being made by international actors in Iraq to advance women’s economic empowerment. The U.S. Army’s Project and Contracting Office has promoted the use of Iraqi woman-owned businesses in the reconstruction effort through direct contracting and subcontracting outlets. From June 2005 to February 2006, over 250 contracts valued at more than $250 million went to Iraqi woman-owned businesses. The United States Agency for International Development (USAID) has awarded approximately 60% of its small business grants to women. However, these programs represent a fairly small piece of the overall reconstruction budget. One women’s rights group points out that of the 260,000 reconstruction contracts in Iraq, less than 1,000 have gone to women.

Several foreign-funded training programs have also aimed at strengthening women’s participation, largely in the public sector. These programs, however, need to be supported by Iraqi government-led strategic measures at the national level.
KEY AREAS OF CONCERN

- The regulatory divide between the public and private sector leaves women in the private sector exposed to higher instances of discrimination and without access to equal benefits. (UDHR – Article 23; ICESCR – Article 7; CEDAW – Article 11; ILO Convention No. 100 – Articles 1, 2; ILO Convention No. 111 – Articles 1, 2)

- Limited access of women and girls to educational opportunities has a corresponding effect on their access to the labor market. (UDHR – Articles 23, 26; ICESCR – Articles 6, 13, CEDAW – Articles 10, 11)

- Traditional and cultural beliefs regarding women’s status impinge upon women’s opportunities in the labor force and shape stereotypical depictions of what women’s work ought to be. (CEDAW – Article 5(a))

- Limited employment opportunities and an overall unsafe environment force women, including professional women, out of the workforce or into low-status work, thus curtailing their right to freely choose their employment. (UDHR – Article 23; CEDAW – Article 11(1)(c))

- Sexual harassment is a problem in the workplace yet there are no express legal prohibitions or enforcement procedures in place to address the issue, and the social stigma associated with making a complaint is such that most cases go unaddressed. (ICESCR – Article 7(b); CEDAW – Art. 11(1)(f))

- A lack of social safety nets for the informal sector has a significant impact on women, who are disproportionately over-represented in that sector and generally subordinate to men. Rural women and women working in the family environment are particularly vulnerable to deprivation of their economic rights and it was broadly observed that the state has taken no measures to address the special needs of these groups of women. (UDHR – Article 22; CEDAW – Article 11, 14)

LABOR AND ECONOMIC RIGHTS – INTERNATIONAL TREATY FRAMEWORK

UDHR

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.
Article 23

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

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

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

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

ICESCR

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

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

(a) Remuneration which provides all workers, as a minimum, with:

   (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

   (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 9 The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.
Article 10 The States Parties to the present Covenant recognize that:

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

CEDAW

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 13

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

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

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

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counseling and services in family planning;

(c) To benefit directly from social security programs;
(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

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

Article 1

For the purpose of this Convention—

(a) the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment;

(b) the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of—

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.
2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

### Article 4

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

**Discrimination (Employment and Occupation) Convention, 1958:**

The General Conference of the International Labour Organisation,

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

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

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

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

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

### Article 1

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

   (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

   (b) other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with represen-
tative employers’ and workers’ organisations, where such exist, and with other appropriate bodies.

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

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

Article 2

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

Article 3

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

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

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) to pursue the policy in respect of employment under the direct control of a national authority;

(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers’ and workers’ organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disability, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.
ENDNOTES

1 Respondent E4. Question 53.


4 ILO Convention No. 111, preamble.

5 ILO Convention No. 111, Art. 3.

6 ILO Convention No. 100, Art. 2.

7 CEDAW Gen. Rec. No. 21, para. 7.


9 Constitution of Iraq. Article 37(3).

10 Constitution of Iraq. Article 29(2).


12 Civil Code, Art. 94.


28 Respondents K1, L1, M2, M3, D5, E2, E3, H1, H3.
29 See also UN Office for the Coordination of Humanitarian Affairs citing the Iraq Ministry of Labour and Social Affairs. “Unemployment Forces Female Professionals Into Domestic Work.” 5 September 2006.


34 Respondent E3. Question 55.

35 ABA Judicial Reform Index, Iraq, Factor 4.

36 Comment from Focus Group. April 28, 2005.


44 Respondent A7. Question 81.


51 Respondents A5, A6, B1, E3. Question 57.


57 Respondent K1. Question 71.

58 Respondent L1. Question 70.


60 Respondents A6, B1, B2 B3, B5, C1–C4, D1, D3, D5,G1, J3, K2, L2, M1, M4. Question 69.


Although sexual harassment is not separately addressed in CEDAW, it constitutes a violation of the right to protection of health and safety in the working environment as provided under CEDAW Article 11(1)(f).
Although more active in government than ever before, women continue to be largely excluded from decision-making and leadership positions, both inside government and within political parties. Notably, women’s participation in the Judiciary remains extremely low and only three of the 36 member Council of Ministers are women. (CEDAW – Articles 4, 7(b))

Customary and religious influences as well as threats and attacks on female activists and political figures continue to undermine women’s participation in political life. (UDHR – Article 21; ICCPR – Article 25; CEDAW – Article 7)

The lack of institutional support for the Ministry of State for Women’s Affairs has rendered it largely ineffective. (CEDAW – Article 7(b))

The recently appointed 24-member Constitutional Review Committee contains only two women highlighting a lack of support for women’s participation and serious concern about the representation of women’s interests in the constitutional review process. (CEDAW – Articles 4, 7(b))

While Iraqi law provides for a right to health care and specifies that children and women should be afforded health security, the legal framework is inadequate to ensure women’s equal access to health care. It also fails to address the full range of women’s health issues, instead focusing primarily on prenatal and maternal health. (ICESCR – Article 12; CEDAW – Article 2(a),(c); Article 12)

Despite the legal guarantees, maternal and child health services are inadequate resulting in a high maternal mortality rate and poor access to prenatal care and family planning services. The government should provide services and information on reproductive health, family planning, modern contraceptives, and HIV/AIDS. The existing family planning
policy should be publicized and trained professionals should provide reproductive health services that are easily accessible for women both in urban and rural areas. (UDHR – Article 25(2); CEDAW – Article 12(2)).

- Health services in Iraq lack basic essentials and are inadequate to accommodate the population. Lack of access to doctors and medical specialists, along with violence both in the streets and in hospitals has exacerbated the difficulties of access to quality medical care for women. (UDHR – Article 25; ICESCR – Article 12)

- Lack of basic standards of living (such as water, food and sanitation) has a particularly negative impact on women’s health. (UDHR – Article 25; ICESCR – Article 11)

- The law does not regulate the provision of health services in such a way as to ensure that quality health care is accessible and affordable to women. The privatization of some health care facilities and the resulting fee structure has further limited women’s access to health care. The problem is particularly acute in rural areas, where health care facilities are often non-existent. (UDHR – Article 25; ICESCR – Article 12(1); (2)(d))

- An increase in early marriage and pregnancy, preferential treatment of men in access to food and nutrition, and the commonplace requirement that women obtain permission from a male relative before seeking medical care are barriers to good health for women and girls. The state should address these harmful social practices through focused efforts to enhance awareness of the risks to women’s health and the importance of equal treatment of all members of the family. (CEDAW – Article 5; 12)

- There are no mechanisms in place to measure the prevalence of harmful practices such as female genital cutting, which is currently known to exist in the region of Kurdistan. (CEDAW – Article 5; 12; ICESCR – Article 12; CRC – Article 24(3))

- There is limited capacity to prevent and treat the rising incidents of terminal illnesses such as cancer. Lack of awareness and of preventive health services frustrate efforts at early detection and need to be remedied. (UDHR – Article 25; ICESCR – Article 12)

**VIOLENCE AGAINST WOMEN AND THE RIGHT TO PERSONAL SECURITY**

- Laws providing for mitigated sentences for so-called honor killings continue in force in most of Iraq and reports indicate that the incidence of honor killings has risen during the period following the fall of the Ba’ath regime. (CEDAW – Article 2 (f); ICCPR – Article 9)

- Victims of rape and kidnapping are commonly perceived as disgraced and thus subjected to the threat of honor killings or to marriage to the perpetrator under the pretense of reinstating the honor of the family. Both practices are legitimised under the Iraqi Penal Code, which relieves perpetrators of crimes of violence against women of criminal responsibility by encouraging the forced marriage of a victim and perpetrator. (ICCPR – Article 2; Article 26; CEDAW – Article 2 (a); (g); Article 5)
A man is legally entitled to beat his wife under the Iraqi Penal Code, and the practice is broadly accepted by both men and women. (CEDAW – Article 2(a); (g); UNDEVW – Article 4(d);(j))

There is little to no state-supported protection for women victims of violence; there are no state-run shelters or rehabilitation facilities and law enforcement personnel are not responsive to complaints of violence against women. (ICCPR – Article 2(3)(a); UNDEVW – Article 4 (c);(d);(e);(f);(g);(h);(i))

Female genital cutting appears to be increasingly practiced in the Kurdish region and there are no legal provisions outlawing or criminalizing the practice. (CEDAW – Article 2(f); UNDEVW – Article 4 (c); (d))

Over the past 12 months, there has been a dramatic increase in trafficking of women, both inside and outside Iraq. Trafficked victims have little recourse in Iraq and when they do seek assistance from law enforcement authorities, they themselves are often charged with crimes that involved conduct while a victim of the trafficking situation. (CEDAW – Article 6)

FAMILY AND MARRIAGE

Amendments to the Personal Status Code have fostered de jure and de facto discrimination against women, particularly in the areas of divorce, inheritance and polygamy. (UDHR – Article 16.1; ICCPR – Article 23.4; CEDAW – Article 16(c);(h))

While the law generally prohibits forced marriage and establishes a minimum age for marriage, in practice these laws are not fully enforced. Laws and procedures should be strengthened to ensure women have full freedom to choose a spouse and to protect against early marriage. The government should take steps to educate women about their rights and facilitate their access to their legal system to protect those rights. (UDHR – Article 16.1; ICCPR – Article 23.2; ICESCR – Article 10.1; CEDAW – Article 16(1)(b); (2)).

Certain practices that discriminate against women, such as polygamy and temporary marriages, are becoming increasingly common. (UDHR – Article 16.1; 16.2; ICCPR – Article 23)

Iraq’s reservation to Article 16 of CEDAW leaves the door open for continued violation of the core elements of women’s rights with respect to family and marriage. Iraq should comply with the CEDAW Committee’s recommendation and review and withdraw its reservation to Article 16. Doing so will facilitate full implementation of international human rights standards in Iraq and demonstrate the Iraqi Government’s commitment to removing all barriers to women’s full equality.

Article 41 of the Constitution gives rise to concerns that women’s rights will be further eroded by a complete change in the legal regime. The Constitutional Review Committee should consider revoking this provision, and in all cases, the treatment of personal status should be considered in light of the constitutional requirement, set forth in Article 14, of
equality before the law, as well as Iraq’s international legal obligations regarding equality. (UDHR – Article 16; ICESCR – Article 10.1; ICCPR – Article 23; CEDAW – Article 16)

NATIONALITY

- The Nationality Law of 2006 contains certain conditions on acquisition and reinstatement of Iraqi nationality which conflict with the rights to nationality as set forth in the Constitution, and thus, negatively affect women. (UDHR – Article 15; CEDAW – Article 9(1))

- Article 4 of the new Nationality Law of 2006 places the nationality of a child born outside of Iraq of an Iraqi mother within the discretion of the Minister of Interior and conditions that child’s nationality upon his/her residency in Iraq. No similar conditions are placed on a child born outside of Iraq of an Iraqi father. This differentiation in the law directly impedes upon the right of Iraqi women to freely pass on their nationality to their children regardless of where they are born. (CEDAW – Article 9(2))

- Article 5 of the new Nationality Law of 2006 discriminates in conferral of nationality to a child born inside Iraq to a non-Iraqi mother by solely linking such a child’s nationality to the father’s status. (UDHR – Article 15; ICCPR – Article 24(3); CEDAW – Article 9(2))

- Discriminatory RCC orders limiting the property rights of Iraqi women who married a foreigner, and were consequently stripped of their nationality, continue to be in effect. (UDHR – Article 15; CEDAW – Article 9(1))

- Recent gains in the area of women’s rights to acquire and pass their nationality onto their children, as reflected in the 2005 Constitution, are at risk due to the dominance of sectarian concerns in the constitutional review process. (UDHR – Article 15; CEDAW – Article 9)

- Regulatory reforms which would enable greater freedom of movement among Iraqi women are limited by social and economic factors, as well as poor awareness and enforcement of the regulatory regime. (UDHR – Article 13(1); ICCPR – Articles 12(1) and 12(3))

EDUCATION

- Girls’ access to primary education is heavily restricted, particularly in rural areas. (UDHR – Article 26; ICESCR – Articles 3, 13; CRC – Article 28; CEDAW – Article 10; CDE – Articles 3, 4)

- The educational infrastructure fails to meet the basic needs of most enrolled students and the deterioration of services, such as busing and compulsory education programs, is further limiting girls’ access to education. (CEDAW – Article 10(b); CDE – Article 4(b))

- Ongoing threats of violence and intimidation limit women’s opportunities at all levels of education. (UDHR – Article 26; ICESCR – Articles 3, 13; CRC Article – 28; CEDAW – Article 10; CDE – Article 1)
Economic and social factors impede girls’ full participation in educational opportunities. (UDHR – Article 26; ICESCR – Articles 3, 13; CRC Article – 28; CEDAW – Article 10; CDE – Article 1)

LABOR AND ECONOMIC RIGHTS

The regulatory divide between the public and private sector leaves women in the private sector exposed to higher instances of discrimination and without access to equal benefits. (UDHR – Article 23; ICESCR – Article 7; CEDAW – Article 11; ILO Convention No. 100 – Articles 1, 2; ILO Convention No. 111- Articles 1, 2)

Limited access of women and girls to educational opportunities has a corresponding effect on their access to the labor market. (UDHR – Articles 23, 26; ICESCR – Articles 6, 13, CEDAW – Articles 10, 11)

Traditional and cultural beliefs regarding women’s status impinge upon women’s opportunities in the labor force and shape stereotypical depictions of what women’s work ought to be. (CEDAW – Article 5(a))

Limited employment opportunities and an overall unsafe environment force women, including professional women, out of the workforce or into low-status work, thus curtailing their right to freely choose their employment. (UDHR – Article 23; CEDAW – Article 11(1)(c))

Sexual harassment is a problem in the workplace yet there are no express legal prohibitions or enforcement procedures in place to address the issue, and the social stigma associated with making a complaint is such that most cases go unaddressed. (ICESCR – Article 7(b); CEDAW – Art. 11(1)(f) ¹

A lack of social safety nets for the informal sector has a significant impact on women, who are disproportionately over-represented in that sector and generally subordinate to men. Rural women and women working in the family environment are particularly vulnerable to deprivation of their economic rights and it was broadly observed that the state has taken no measures to address the special needs of these groups of women. (UDHR – Article 22; CEDAW – Article 11, 14)

¹ Although sexual harassment is not separately addressed in CEDAW, it constitutes a violation of the right to protection of health and safety in the working environment as provided under CEDAW Article 11(1)(f).
ACRONYMS

CDC  Constitutional Drafting Committee
CDE  Convention Against Discrimination in Education
CEDAW  Convention on the Elimination of All Forms of Discrimination against Women
CERD  Convention on the Elimination of All Forms of Discrimination
CESCR  Committee on Economic, Social and Cultural Rights
COR  Council of Representatives
CPA  Coalition Provisional Authority
CRC  Constitutional Review Committee
CRC  Convention on the Rights of the Child
ESCWA  UN Economic and Social Commission for Western Asia
GA/ UNGA  United Nations General Assembly
GDP / GNP  Gross Domestic Product / Gross National Product
GFIW  General Federation of Iraqi Women
HIV/AIDS  Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome
HJC  Iraqi Higher Judicial Council
HRC  United Nations Human Rights Committee
ICCPR  International Covenant on Civil and Political Rights
ICESCR  International Covenant on Economic Social and Cultural Rights
IECI  Independent Electoral Commission of Iraq
IGC  Iraqi Governing Council
IHEC  Iraqi High Elections Commission
IIG  Interim Iraqi Government
ILDP  Iraq Legal Development Project
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KWAHK   Kurdish Women Against Honor Killing
MSWA    Ministry of State for Women’s Affairs
NGO     Non-Governmental Organization
OFFP    United Nations Oil for Food Program
RCC     Revolutionary Command Council
SCIRI    Supreme Council of Islamic Revolution in Iraq
TAL     Transitional Administrative Law
TNA     Transitional National Assembly
UDHR    Universal Declaration of Human Rights
UN      United Nations
UNDP    United Nations Development Programme
UNDEVW  United Nations Declaration on the Elimination of Violence Against Women
UNESCO  United Nations Educational, Scientific and Cultural Organization
UNFPA   United Nations Population Fund
UNICEF  United Nations Children’s Fund
UNIFEM  United Nations Development Fund for Women
UNSCR   United Nations Security Council Resolution
WHO     World Health Organization