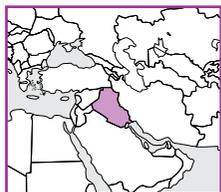


■ IRAQ

Persistent gender-based violence an obstacle to development and peace



The fragile political situation and weak rule of law have transformed Iraqi society into an unsafe environment for development and stability. Iraqi women face difficult conditions, bearing more responsibilities and responding to numerous challenges. Every day women and girls are forced into marriages, murdered for the sake of “honour,” coerced into committing suicide, beaten, raped, trafficked into sex work and restricted in their autonomy and mobility. Arising opportunities must be seized not only to promote the social rehabilitation of the country but also to encourage and support new institutional structures, legislation and its enforcement for the protection of women’s political, economic, social and cultural rights.

Developing Programs for Women and Youth
Iraqi Al-Amal Association
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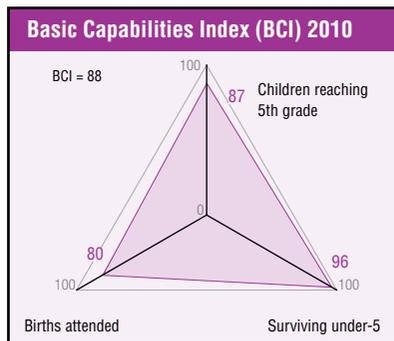
While Iraqi women have generally played an active role in their society, the long years of conflict and international sanctions have had a heavy impact on them. They have suffered from violence and the destruction of the country’s socio-economic fabric. A survey conducted in 2008 by Oxfam and the Al-Amal Association estimated that 35.5% of women were acting as heads of households, primarily as a result of the conflict.¹ Especially in the rural areas, women were undertaking tasks that were traditionally performed by men while also carrying out their traditional roles and struggling daily to meet even the most basic needs.

Women are guaranteed equality before the law under the 2005 Constitution (Art. 14). This also guarantees their right to life and personal security (Art. 15) and prohibits violence (Art. 29). The right to liberty and dignity (Art. 37) reinforces these principles, while the prohibition against punishment except as provided by law (Art. 19) reinforces the illegality of “honour killings.” Despite these protections, however, increased conservative male-dominated values, continuing armed conflict and a flawed law enforcement system expose women and girls to many forms of violence.

Gender-based violence

Local and national surveys indicate that violence against women and girls in Iraq is widespread, with regional variations, and occurs at all levels of society. Much of this relates to long-standing cultural practices and the ongoing challenges in establishing the rule of law. The most common reported forms include beatings, burns, female genital cutting (in the north of the country), forced and early marriage, and emotional, psychological and physical violence including honour crimes.

A survey conducted at the national level showed that 83.1% of women reported at least one form of marital controlling behaviour, 33.4% reported at



least one form of emotional or psychological violence and 21.2% reported experiencing physical violence.² According to a UNICEF survey, 59% of girls and women aged 15-59 believe that a husband is justified in beating his wife.³ The percentage of women married before the age of 18 was 26.8% in 2006; for urban women it was 25.8% and for rural 28.9%.⁴

There are also problems in the law itself. Although Iraq is a party to international human rights treaties including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), there are still provisions within the national law that either excuse the rape, abduction, assault and murder of women and girls or provide mitigated sentences for perpetrators. Under the pretext of restoring honour and maintaining order within the family, such national laws subordinate women to men and perpetuate violence within the family and society.

Sexual violence

It is extremely difficult to get accurate data on the number of cases of rape and sexual violence in Iraq since statistics are not maintained by the medical or judicial authorities. There are only a handful of shelters for women outside of Iraqi Kurdistan and survivors do not report to the medical centres or the

police for fear of reprisal by their families. In light of the security, social and cultural context, as well as of experiences from other conflict situations, it is reasonable to assume that cases are significantly under-reported.

A review of reports from human rights organizations and newspaper articles over the period March 2003-May 2008 gives an indication of the magnitude of the problem. A 2005 study by the Ministry of State for Women’s Affairs, reported some 400 cases of rape documented between the fall of Saddam Hussein’s regime (April 2003) and the time of the study.⁵ A report for the period April 2004-September 2005 (17 months) gives a figure of about 400 rapes of females and 35 rapes of males.⁶ Yet, another report states that between February and June 2006 (5 months), approximately 60 females were raped in Baghdad alone while another 80 were “sexually abused in other ways.”⁷

Notwithstanding the guarantees contained in the Constitution, the Iraqi Penal Code of 1969 and subsequent orders of the Revolutionary Command Council (RCC) contain provisions that condone violence against women by providing for shorter sentences and, in some cases, impunity regarding the perpetrator’s criminal responsibility. Under the Penal Code, rape is a private offence, meaning that the State cannot take any action without the consent of the complainant or a legal guardian. One of Code’s most controversial provisions is Article 398, by which the perpetrator can be excused of rape and sexual assault if he marries the victim. In the absence of any provision to the contrary, this mechanism applies even in cases where the victim is a minor.⁸

5 American Bar Association and Iraq Legal Development Project (ABA/ILDP), *The Status of Women in Iraq: Update to the Assessment of Iraq’s De Jure and De Facto Compliance with International Legal Standards*, December 2006. Available from: <www.abanet.org/rol/publications/iraq_status_of_women_update_2006.pdf>.

6 IRIN, “Iraq: Focus on increasing cases of abused women,” 14 September 2005. Available from: <www.irinnews.org/report.aspx?reportid=25476> (accessed 7 July 2010).

7 IRIN, “Iraq: Local NGO warns of rising cases of sexual abuse,” 14 June 2006. Available from: <www.irinnews.org/report.aspx?reportid=27013> (accessed 7 July 2010).

8 The law provides that the sentence will be reinstated or proceedings will resume if the defendant divorces the victim without legal justification during a period of three years after the end of proceedings.

1 Oxfam International, *In Her Own Words: Iraqi women talk about their greatest concerns and challenges – A survey*, 2009. Available from: <www.oxfam.org.uk/resources/policy/conflict_disasters/iraq-in-her-own-words.html>.

2 Ministry of Health, Ministry of Planning and Development Cooperation and World Health Organization, *Republic of Iraq – Iraq Family Health Survey Report 2006/7*. Available from: <www.iaurraq.org/reports/ifhs_report_en.pdf>.

3 UNICEF, *Progress for Children: A World Fit for Children – Statistical Review*, No. 6, December 2007.

4 *Ibid.*

Advocates of this provision argue that it protects the interests of the victim as her honour may be restored by virtue of the marriage, thus avoiding a potential “honour killing” by the family or community. In reality, however, it serves to institutionalize the shame and dishonour associated with rape and thus further jeopardizes the victim’s life and safety.

Murder with mitigating circumstances

Honour crimes occur for a range of reasons including adultery, refusal to marry a man chosen by the family, attempting to marry someone of whom the family does not approve, having pre-marital sex, being a victim of rape or even the suspicion of committing any of these acts. They most commonly involve killings but also include other forms of violence such as mutilation.

The Iraqi Penal Code treats honour killings differently from other murders. Laws permitting mitigated sentences for honour crimes were suspended in Iraqi Kurdistan in 2000 but remain in effect in the rest of Iraq. RCC Order No. 6 of January 2001 gave effect to a broader category of honour crimes by permitting mitigated sentences for the killing of a wife or close female relative when it relates to honour. Under Article 130 of the Penal Code, such reduced sentences 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). This is inconsistent with the illegality of the practice and serves to enforce it as a form of extra-judicial punishment, which is prohibited by the Constitution.

The CEDAW Committee has expressed its deep concern regarding honour killings in Iraq.⁹ In coordination with a number of national and international stakeholders, Iraqi women activists are campaigning to change the law, advocating for parliament to drop the “honour killings” statute so that perpetrators are prosecuted for murder. However, there is great scepticism, given the weakness of the Government and the conservatism dominating parliament that reform will happen any time soon.

Many other crimes go unpunished

There are others crimes of gender-based violence where the existing law does not protect the victim. On the contrary, in most cases the perpetrators go unpunished or their sentences are mitigated. These include:

- *Kidnappings and abductions.* Under Article 423 of the Iraqi Penal Code the abduction of a woman carries a maximum prison sentence of 15 years; however, as in the case of rape and attempted rape, the penalty is voided by the abductor’s marriage to the victim.

- *Domestic violence.* Under Article 41 of the Code a husband is legally entitled to punish his wife; 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 undefined.
- *Trafficking and prostitution.* While the Constitution prohibits trafficking of women and children and prostitution is a criminal offence, women and girls sold into prostitution have little, if any, recourse. Moreover, trafficking crimes are not specifically enumerated in the Ministry of the Interior statistics on criminal activity and are not covered in police training curricula.
- *Female genital cutting (FGC).* Although not a common practice in the south of Iraq, there are reports that FGC has resurfaced in the north. There are no specific laws against the practice and although the Ministry of Health states that doctors are not permitted to perform such procedures there is no legal mechanism to enforce this prohibition.
- *Religiously motivated violence and tribal practices.* An ABA/ILDP Report in 2006 stated that amidst the mounting sectarian tensions in Iraq extremist Sunni and Shiite groups were demanding that women wear the hijab and avoid “immoral” or “un-Islamic” behaviour or face violent consequences.¹⁰ In Basra, Iraq’s second largest city, 133 women were killed and mutilated in 2007, their bodies dumped in trash bins with notes warning others against “violating Islamic teachings.”¹¹
- *Violence against women in detention.* While media coverage of prisoner abuse at Abu Ghraib focused on the torture, sexual abuse and humiliation of Iraqi men, a variety of sources suggest that female prisoners suffered similar treatment, including rape. According to a Human Rights Watch report the secrecy surrounding female detentions “resulted from a collusion of the families and the occupying forces:” families feared social stigma and the Multi-National Force in Iraq feared condemnation by human rights groups and anger from Iraqis.¹² According to the US State Department, abuses of women such as threats, intimidation, beatings and the application of electric shocks also occurred at the hands of the Iraqi police.¹³

Emerging opportunities

“Gender justice” remains largely an illusion in post-conflict societies such as Iraq, although some

progress is being made. The term means far more than courtroom justice for crimes against women and girls; it encompasses equitable treatment and participation of women in the negotiation of peace agreements, the planning and implementation of peace operations, the creation and administration of the new Government (including agencies and institutions focused on the needs of women and girls), the provision of the full range of educational opportunities, participation in the revival and growth of the economy, and the fostering of a culture that enhances the talents, capabilities and well-being of women and girls.

Crises can break down social barriers and traditional patriarchal patterns, providing windows of opportunity for the construction of a more just and equitable society where women’s rights are protected and gender equality becomes the norm in institutional and social frameworks. Such opportunities must be seized not only to promote social rehabilitation but also to encourage and support new institutional structures, legislation and its enforcement for the protection of political, economic, social and cultural rights.

Recommendations

The following actions suggest how the international community – the UN, donor states and international agents – can provide support to Iraqi women:

- Negotiate terms with the Iraqi Government to fulfil its commitments and obligations concerning human rights issues and empower women to participate in political power, peace-building and national reconciliation processes.
- Prioritize financial support for gender equality training in the Ministries of Interior and Justice, the Judicial Institute, universities and law schools and NGOs.
- Provide legal awareness training for Iraqi civil society organizations, in particular on UN Security Council Resolution 1325 (SCR 1325)¹⁴ and fund advocacy and lobbying training, workshops, conferences and media campaigns.
- Assign a gender advisor to diplomatic missions in Iraq in order to follow up the international and national commitments on gender issues in the country.
- Render relief assistance to Iraqi refugees in Jordan and Syria, where the majority are women and children, and facilitate measures of asylum for those who have applied for refuge in European and North American countries. ■

9 CEDAW Committee, “Summary record of the 468th meeting,” CEDAW/C/SR/468, 14 June 2000. Available from: <www.un.org/womenwatch/daw/cedaw/cedaw23/raq%20as%20adopted.html> (accessed 7 July 2010).

10 ABA/ILDP, *op. cit.*

11 MADRE, “Who is Killing the Women of Basra?” 9 January 2008. Available from: <www.madre.org/index/resources-12/madre-articles-35/news/who-is-killing-the-women-of-basra-71.html>.

12 Human Rights Watch, “Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad,” *Iraq*, 15(7), July 2003. Available from: <www.hrw.org/en/node/12305>.

13 US Department of State, *Iraq Country Report on Human Rights Practices 2005*, 8 March 2006. Available from: <www.state.gov/g/drl/rls/hrrpt/2005/61689.htm>.

14 SCR 1325, adopted by the Security Council on 31 October 2000, was established to address the impact of war on women and increase women’s contributions to conflict resolution and sustainable peace. Available from: <www.un.org/events/res_1325e.pdf> (accessed 7 July 2010).