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EuroMed Feminist Initiative  
المبادرة النسوية الأورو متوسطية  
Initiative Féministe EuroMed



## Legal and Institutional Challenges Regarding Women's Access to Justice in Kurdistan Region

In response to the concluding comments issued by the Committee on the  
Elimination of All Forms of Discrimination against Women (CEDAW).

Women Empowerment Organization (WEO) in collaboration with Investigator Organization for  
the Rule of Law.

September, 2020

## **Letter of Appreciation**

Women Empowerment Organization (WEO) and Investigator Organization for the Rule of Law (IOL) seize this opportunity to show appreciation and express gratitude to the experts for taking part in preparing this report, the strenuous efforts exerted in this connection, and for sharing their experiences. Also, we are grateful for the lengthy discussions, comments, dialogues and valuable contributions. Indeed, we would like to show appreciation to the following esteemed figures:

- Legal Consultant and Gender Expert at Women Empowerment Organization Mrs. Nermine Hama Ahmad Qaradaghi.
- Member of Public Prosecution at Ministry of Justice, Kurdistan Region & Chairman of the Advisory Board of Investigator Organization for the Rule of Law Judge Badruddin Barzanji.
- Regional Expert and International Gender Trainer Mrs. Manar Zuaiter.

### **We also show our sincere gratitude and appreciation to members of report's preparation committee including:**

- Member of Women Empowerment Organization's board of trustees (WEO) Judge/ Nekar Ahmed Mohammed.
- Representative of Human Rights Commission, Kurdistan Region Mrs. Taveka Umar Rashid.
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## **Women Empowerment Organization (WEO)**

Women Empowerment Organization (WEO) is an independent, non-profitable and non-governmental organization that aims to promote equal rights and gender equality, equal participation of women as well as ensuring their effective role in Iraqi society.

WEO aspires to a peaceful and safe community where gender equality is maintained thus reflected unambiguously in laws, policies and peace initiatives. Men and women alike share economic, political and cultural resources, as well as contributing to decisions-making and conflicts' resolution.

WEO believes that men and women are entitled to human rights, freedoms and the right to access resources without distinction. WEO has made breakthroughs, at the national level, bringing about changes in lives of the people with whom it has communicated over the past years. Also, it focused on activating role of women and enhancing their political, economic, cultural and social participation.

Since its inauguration in 2004, the organization has worked to render its services as part of four main sectors: economic empowerment, livelihood, political participation, legal and social advocacy, gaining support and lobbying.

The organization played an important role in prioritizing and advocating for Women Peace and Security (WPS) agenda, and leading initiatives to develop the national action plan for UN Security Council Resolution 1325.

## **Investigator Organization for the Rule of Law**

Investigator Organization for the Rule of Law (IOL) is an independent, non-profitable, and non-governmental organization that is concerned with educating members of society on human rights issues, combating corruption, supporting independence of the judiciary, ensuring rule of law, maintaining Judiciary members' rights, enhancing their skills, working on legislative and legal reforms, taking part in preparing drafts for purpose of changing the investigative proceeding and upgrading thereof, reforming the applicable laws, the legislative system, especially penal laws so as to keep up with the development witnessed by the community and to go in line with democracy and human rights as per international standards and instruments to ensure independence of judiciary system, development thereof, as well as strengthening the rule of law and its effectiveness.

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## Preface

Gender equality as a concept goes beyond the traditional context limited to equality by elimination of all forms of discrimination based on gender to include application of accountability and creation of effective accountability mechanisms that ensure putting an end to the discriminatory measures.<sup>1</sup>

This concept is deemed as a qualitative shift with regard to issue of gender equality by providing states' commitment to protect women, guarantee all their human rights, provide a safe space for them to achieve equality-based justice with no distinction based on sex or gender.

Iraqi Kurdistan is exerting painstaking efforts to make progress with the rights of women as well as ensure their access to justice. Notwithstanding, significance of the efforts made by authorities of Iraqi Kurdistan via governmental and nongovernmental institutions, women still encounter many challenges when it comes to justice that can be classified into various levels including challenges at the individual and social levels, and others do exist at the institutional and legal levels.

Practical measures taken demonstrate that there are many obstacles and restrictions that deprive women of their right to initiate legal proceedings based on concept of equality before the law. These obstacles include lack of effective judicial protection as part of a structural context of discrimination and inequality that is exercised due to certain factors constituting ceaseless violations of women's human rights, including gender-based stereotypes, discriminatory laws, intersecting or complex discrimination, procedural requirements and practices relative to inability to act systematically in order to ensure guarantee of judicial mechanisms that promote women's access to justice.

Commenting on what was provided in the concluding observations issued by the Committee concerned with Elimination of All Forms of Discrimination Against Women (CEDAW) <sup>2</sup> as per Iraq's seventh report of 2019 regarding this convention.

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<sup>1</sup>) Muscat Declaration towards achieving Gender justice in the Arab Region in 2016.

<sup>2</sup>) Concluding observations stipulated in the seventh periodic report of Iraq (whereas the committee considered the report of Iraq (CEDAW/ C/IRQ / 7) at hearings nos. 1720 & 1721 held on October 22<sup>nd</sup> 2019 (see session no. EDAW 1720/C/ SR. and session no. 1721 CEDAW/ C/ SR). The list of issues and questions raised by the pre-session working group is provided in the document CEDAW/C /IRQ /Q /7, while Iraqi replies stipulated in the document no. CEDAW/ C/ IRQ /Q/ 7 / Add.1, approved by the Committee at its seventy-fourth session.

Aiming to follow up with the concluding observations of the CEDAW committee, plus linking them to factual and legal background dominating the region. Accordingly, Women Empowerment Organization, on one hand and Investigator Organization for the Rule of Law, on the other, have taken the initiative to intensify the efforts to prepare this report through a collective and supportive team work consisting of a set of effective bodies concerned with issue of access to justice and from concerned institutions such as the High Council of Women's Affairs, Ministry of Justice, NGO's representatives including judges, advocates (m/f), notaries (m/f), academic figures (m/f) as part of orchestrated efforts to cooperate in preparing this report, which highlights and identifies the most prominent gaps, challenges and analyzes shortcomings intercept women's access to justice and the recommendations to ensure application of such rights in Iraqi Kurdistan, the most important of which is compliance with the international standards, creating effective and independent judiciary that facilitates the access of vulnerable groups to their rights as well as enjoying legal protection and allowing them to initiate legal proceedings to ease access to justice with no discrimination based on sex or gender.

The Working team aspires to benefit from the report as a tool for providing protection and advocacy at the regional level due to the fact that it focused on the most prominent Problems, but they are fully cognizant that all the sub-issues stipulated in the report need thorough examination.

## **Research Methodology:**

Preparation of this report relied on the descriptive approach, especially when it comes to the concluding comments and recommendations as per the seventh periodic report of Iraq in 2019 issued by the Committee concerned with Elimination of Violence against Women in United Nations where the legal and procedural background was presented to guarantee women's access to justice in accordance with the international conventions, local laws and judicial procedures applied In this regard at all levels.

The report includes the following:

### **1<sup>st</sup> part: International and constitutional frameworks and strategies**

#### **First: The International Framework**

Republic of Iraq, as a member of the United Nations since 1945, has complied with obligations of the state stipulated in the Charter, as well as signed a set of conventions and treaties on human rights, regardless of having some reservations about a set of conventions. These instruments altogether constitute an umbrella for many human rights issues including the issue of access to justice with no distinction based on sex or gender.

- **Republic of Iraq showed total commitment to the Universal Declaration of Human Rights promulgated in 1948.** Article (7) of the Declaration hereto ascertains all are equal before the law and are entitled without any discrimination to equal protection of the law. Also, article (8) Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
- **In 1976, Republic of Iraq has ratified the International Covenant on Political and Civil Rights promulgated in 1966.** Article (14) (1) of the covenant affirms that All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.<sup>3</sup>
- **In 1971, Republic of Iraq has ratified the International Covenant on Economic, Social and Cultural Rights promulgated in 1971,** in spite of the fact that it does not include special provisions on the right of petition, the committee concerned with the application of this covenant considered that such right is necessary to protect economic, social and cultural rights.
- **In 1986, Republic of Iraq has ratified the International convention on Elimination of All Forms of Discrimination against Women promulgated in 1979,** but voiced reservations over some articles. Article (2) States Parties shall take all appropriate measures to provide remedies for women who experience discrimination and whom rights are violated, and affirms that appropriate legislative measures including penal, civil or administrative penalties shall be taken to eliminate all forms of discrimination against women. Article 2(C) obliges states parties 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.
- **In 1970, Republic of Iraq has ratified the International Convention on Elimination of All Forms of Racial Discrimination promulgated in 1951,** which confirms prohibition and elimination of racial discrimination in all its forms, and guarantees the right of every person, without discrimination based on race, color, or nationality or ethnic origin, to be equal before the law and the right to equality before courts and all other bodies that are concerned with justice.<sup>4</sup>

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<sup>3</sup> - <https://www.nhrc-qa.org/wp-content/uploads/2014/01/%D8%A7%D9%84%D8%B9%D9%87%D8%AF-%D8%A7%D9%84%D8%AF%D9%88%D9%84%D9%8A-%D8%A7%D9%84%D8%AE%D8%A7%D8%B5-%D8%A8%D8%A7%D9%84%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A%D8%A9-%D9%88%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%A9.pdf>

<sup>4</sup> <https://www.ohchr.org/ar/ProfessionalInterest/Pages/CERD.aspx>

- **In 2008, Republic of Iraq has ratified United Nations Convention against Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, promulgated in 2000**, which emphasizes preventing and combating trafficking in persons devoting special attention to women and children and protecting and assisting victims.
- **In addition to rules of international human rights law, Iraq abides by rules of the international humanitarian law** in accordance with which states parties shall allow those who are victims of a violation of human rights or humanitarian law access to justice on an equal and effective basis, without regard to who is ultimately responsible for the violation and the state shall “provide victims with effective remedies.” Iraq has accessed the additional protocol to the Geneva Conventions in 2001 convened in Aug.12<sup>th</sup>, 1949, relative to Protection of Victims of International Armed Conflicts, entered into force in Geneva in 2005.<sup>5</sup>

**Iraq committed itself to the 1995 Beijing Platform for Action Declaration**, which affirms the need to eliminate all forms of discrimination against women and the girls, remove all obstacles to achieving gender equality, the advancement and empowerment of women, and to prevent all forms of violence against women and girls.

**Iraq has approved Development Agenda 2020** that affirms achievement of gender equality and the empowerment of women and girls through application of sound policies, enforceable legislation, strengthening of current policies and legislation of this nature to advance gender equality, reduce all forms of violence, end abuse, put an end to human trafficking, empower all women and girls at all levels. In 2016, government of Iraq has adopted the 2030 Sustainable Development Goals and took significant steps to educate with its objectives and significance. Iraq is considered one of the member states to commit to implementing sustainable development goals. Accordingly, Iraq prepared the first voluntary report in 2019 which was considered a positive step that was mentioned in clause (6) of the concluding observations as per the seventh periodic report of Iraq issued by the Committee on the Elimination of Discrimination Against Women 2019, which states:

6. The Committee praises the international support for sustainable development goals, and calls for legal and concrete implementation (objective) for gender equality, in accordance with provisions of the Convention, in all stages of implementing 2030 Sustainable Development plan. The Committee denotes importance of goal # (5) and stressing on generalization of principles of equality and non-discrimination amongst the seventeen (17) sustainable development goals. Also, it urges the State party to recognize women as vanguard of sustainable development in Iraq, and to adopt relevant policies and strategies to achieve that end.

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<sup>5</sup> Law No. (85)of 2001 accession the First Optional Protocol to the Geneva Conventions

Also, Iraq has committed itself to Security Council Resolution # (1325) on Women, Security and Peace issued in 2000 and the supplementary resolutions that affirm holding women harmless against gender-based violence during armed conflicts, the fight against impunity, conducting accountability, as well as overcoming obstacles to their implementation.

Iraq took the initiative to prepare a national plan to implement Resolution # (1325), to be the first Arab country to adopt a national plan on women, security and peace. The Cabinet approved the plan as part of the National Strategy for the Advancement of Iraqi Women in April 2014.

Iraq has designed the 2015 operational emergency plan for displaced women and those affected by conflicts as part of the national plan to implement resolution # (1325). In 2016, Iraq has started preparing the unified executive plan for implementation of Resolution # (1325) from 2016 to 2018 due to the circumstances that Iraq went through when ISIS swept some areas, meeting the needs of women in areas of conflict, providing protection for displaced women, thus it was necessary to start preparing the second national plan to the same Resolution and the first draft of which was drawn up.

One may say that State of Iraq and Iraqi Kurdistan were able to embody the basic principles of Human rights and women's rights as part of national policies that drawn up at levels of legislation, plans and strategies. However, there are still challenges that prevent application of principles of the same in state's policies including:

1. Republic of Iraq have reservation about a set of articles in the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), despite the fact that Iraq withdrew the reservation on Article (9) of this convention on equality between both gender in their right to acquire, change or retain a nationality, as well as having equal rights in respect of the nationality of her children, but Iraq, in accordance with ratification law of the Convention on Discrimination against Women No. (66) of 1986 promulgated in 28/06/1986<sup>6</sup> expressed reservation over the following paragraphs:
  - Paragraph (f) of article (2) that point out taking all appropriate measures, including legislative ones, to amend or nullify the current laws, regulations, customs and practices that constitute discrimination against women.
  - Paragraph (g) of article (2) that denotes abatement of all national penal provisions that constitute discrimination against women.

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<sup>6</sup> Law No. 66 of 1986 ://wiki.dorar-aliraq.net/iraqilaws/law/6757.html

- Paragraph (1) of article (29) regarding principle of international arbitration on interpretation or application of the agreement.
2. Iraq's failure to accede the first Optional Protocol supplemental to the Convention of Elimination of All Forms of Discrimination Against Women (CEDAW), which allows women to claim compensation through international mechanisms.
  3. Iraq's failure to accede the International Convention on Protection of the Rights of All Migrant Workers and Members of their Families issued in 1990, and the Convention relating to the Status of Refugees issued in 1957.
  4. Iraq's failure to accede Rome Statute of the International Criminal Court, entered into force in 2005.
  5. Poor knowledge of the concluding comments issued by the committees and bodies concerned with international treaties and agreements.

## Recommendations:

- 1- We encourage the relevant authorities in government of Iraq to withdraw its reservations to the international agreements it has ratified earlier, especially his reservations about paragraph (f) of article (2), of the Convention on the Elimination of All Forms of Discrimination against Women, which refers to taking all appropriate measures, including legislative measures, amend or nullify the current laws, regulations, customs, and practices that constitute discrimination against women, and paragraph (g) of article (2) which refers to abatement of all national penal provisions that constitute discrimination against women, and paragraph (1) of article (29) regarding principle of international arbitration relative to interpretation or application of the relevant convention.
- 2- Accession the Optional Protocol supplemental to the Convention on Elimination of All Forms of Discrimination Against Women Which allows claiming compensation through international mechanisms, after exhaustion of national legal remedies, as stated in clause (43) of the concluding observations as per Iraq's seventh periodic report issued by the Committee concerned with the Elimination of Discrimination Against Women of 2019<sup>7</sup>, which states:

43. The Committee encourages the State party to speed up ratification process of the Optional Protocol to the Convention, as well as accepting, as soon as possible, the amendment to article (20) (1) thereof regarding date of meeting convening.

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<sup>7</sup> The same previous source.

3. Iraq's accession to the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families promulgated in 1990 and the Convention Concerning status of refugees issued in 1951 as stated in clause no. (47) of the concluding comments as per Iraq's seventh periodic report issued by the Committee concerned with the Elimination of Discrimination against Women 2019, which states:

The Committee denotes that accession of the State party to the nine (9) core international human rights instruments enhances women's enjoyment of the human rights and fundamental freedoms in all aspects of their lives. Hence, the Committee encourages the State party to ratify the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families, to which it is not yet a party.

4. Iraq's accession to membership of the Rome Statute of the International Criminal Court, entered into force in 1998.

5- Concentrating on annexation of the international agreements and conventions in the constitution and national legislation and converting them into domestic legal rules by means of legislation issued by an authority authorized to issue legislation (e.g., Council of Representatives of Iraq, and Iraqi Kurdistan Parliament) to cancel or amend the discriminatory laws that impede women's access to justice as stated in Paragraphs (13 & 14) in compliant with the concerns and recommendations stipulated in the concluding comments as per Iraq's seventh periodic issued by the Committee concerned with the Elimination of Discrimination against Women 2019.<sup>8</sup>

6- Follow up with Government of Iraq and Kurdistan Regional Government to timely implementation of the observations on the final reports submitted to the UN committees, especially such reports submitted to the committee concerned with the elimination of discrimination against women, which was ascertained by clause (7) of the concluding observations as per Iraq's seventh periodic report issued by the Committee concerned with Elimination of Discrimination against Women 2019, which states:

The Committee stresses on significance of legislative authority's role in ensuring full implementation of the agreement and calls upon Council of Representatives of Iraq, districts councils, Iraqi Kurdistan Parliament, under jurisdiction granted to each, to take the necessary steps to enforce such concluding observations from now until submission of the next report under the agreement.

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<sup>8</sup> The same previous source.

7. Timely application of the second national plan to implement Security Council Resolution (1325), as provided in clause (12) in compliant with the recommendations and concerns as per the seventh periodic report of Iraq issued by the Committee concerned with Elimination of Violence against Women 2019<sup>9</sup> which states:

#### **Woman, peace & Security**

12- The Committee recommends the State party to expedite approving Iraqi Second National Action Plan's final version (2019-2023) regarding application of Security Council Resolution no. 1325 of (2000) in collaboration with the Kurdistan Regional Government and representatives of women's civil society organizations, as well as ensuring that the plan includes the following:

- A) Subject to the full packages of women, peace and security-related issues enlisted in the agenda of the Security Council, as provided in security council resolutions nos. 1325 of (2000), 1820 of (2008), 1888 of (2009), 1889 of (2009), 1960 of (2010), 2106 of (2013), 2122 of (2013), 2242 of (2015), 2467 of (2019) and 2493.
- B) Approving a model that devotes true equality and not only affects violence practiced against women in the State party, but also affects all aspects of women's lives and addresses the complex forms of discrimination that target women, such as widows, displaced women and refugees.
- C) Ensure involvement of women, including those belonging to various minorities, in international peace processes, transitional justice mechanisms and national reconciliation processes, particularly what is relative to implementation of the National Action Plan.
- D) Establishing a gender-based budget that provides indicators for regular monitoring of its implementation and creating mechanisms of accountability.
- E)

8. Building capacities of the concerned bodies, including governmental and nongovernmental institutions, regarding the international agreements and taking measures to enhance culture of women's human rights.

9- Provide training for lawyers (m/f), judges (m/f) in using international conventions in Judicial rulings and pleadings.

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<sup>9</sup> The same previous source

## Second: constitutional framework

In 2005, the Iraqi constitution, following a referendum, recognized Kurdistan Region and the authorities thereof, as an autonomous federal region as per (article 117) and article # (120) of the Iraqi constitution which stipulates powers of the regions, which are as follows: The region shall draw up a constitution in which it defines structure of the authority, powers, and mechanisms of exercising such powers, provided to be in compliant with the constitution.

In accordance with the aforementioned articles of Iraqi constitution, it becomes evident that the region has a constitution that organizes the authorities whereof, provided that the constitution of the region does not contravene the federal constitution. In spite of the fact that, fifteen years had elapsed since issuance of the Iraqi constitution, the authorities in the region have not been able to issue its own constitution despite repeated attempts resulting in absence of the constitutional reference for the region.

Undoubtedly, this constitution shall not in contrast with the federal one, and should we get back to the Iraqi constitution, we can find the texts confirming individual's right to subject to a fair trial, considering human rights, the right to equality without discrimination, and protection from gender-based violence.

### **A. Right of litigations' guarantees:**

- No one may be arrested or interrogated except under judicial resolution in accordance with article (37) first paragraph / B.
- Litigation is a protected right and guaranteed to all, and the right to defense is sacred and guaranteed during proceedings of investigation and trial. Also, everyone has the right to be treated fairly in judicial and administrative procedures, as per article (19)/ third paragraph.
- The court shall delegate an attorney to defend the person accused of a felony or misdemeanor who does not deputize an advocate to defend him at the expense of the country, pursuant to article (19), eleventh paragraph.
- Detention, imprisonment or arrest in places other than those designed for this purpose shall be prohibited in accordance with laws of prisons covered by health and social care and subject to state authorities, as per article (19), twelfth paragraph.

## **B. Right of Equality & non-discrimination based on gender:**

### **Article (14)**

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

### **Article (15)**

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with law and pursuant to a resolution issued from a competent judicial authority.

### **Article (37)**

All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under force, threat, or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law. Also, forced labor, slavery, slave trade, trafficking in women or children, and sex trade shall be prohibited.

**No matter how important these guarantees are, it is imperative to highlight a number of problems or gaps:**

1. The Iraqi constitution brought guarantees which establish right of litigation for all Iraqis without discrimination, as well as protecting Human rights and preventing discrimination based on sex, however Kurdistan Region faces challenges in this regard due to absence of constitution.
2. International conventions are inferior to Iraqi constitution, also the international agreement shall not be deemed as a reference unless converted into law and internal legislation, the same is applied to Kurdistan's constitution.
3. Absence of a text that interprets the idea of "public order" as a loose idea, which hinders the process of amendment and conducting thorough review of the legislations.
4. Article (41) of the constitution is controversial as it opens the door widely before sectarian and religious disputes regarding promulgation of laws that undermine many of the rights and privileges under Personal Status in a way that prompted the Committee concerned with Elimination of Discrimination to recommend Iraq to cancel such article because it is inconsistent with CEDAW agreement and in sharp contrast with ensuring equality before the law guaranteed by the constitution.

## **Recommendations**

1. Bridging the constitutional gap and stressing on timely ratification of the constitution and presentation thereof to the citizens of Kurdistan region, with an emphasis on the texts that maintain gender equality without discrimination, and guarantees for access to justice for everyone,

establishing the right of litigation in accordance with international principles and standards, as well as guaranteeing rights and freedoms stipulated in the Federal Constitution.

2. The constitution shall include all international principles and values that lead to guaranteeing rights and equality for both genders besides establishment of a fair and independent judicial system through which everyone can access to justice without discrimination and ensuring achieving equality.
3. Kurdistan's constitution shall include guarantees of individual rights and protection from discrimination based on sex.
4. Cancellation of article (41) of the constitution, providing "Iraqis are free to abide by their personal status, according to their religions, sects, beliefs, or choices, and this shall be regulated pursuant to a law," for purpose of guaranteeing equality between women and men, by virtue of the convention and article (14) of the Constitution as stipulated in the concluding comments issued by the Committee concerned with the Elimination of Discrimination against Women as per Iraq's seventh periodic report in 2019<sup>10</sup> in clause (14/A) in compliant with the recommendations related to legislative and constitutional framework that states:

14- The committee recommends state party to carry out the following measures:

A- Cancellation of article (41) of the constitution, providing "Iraqis are free to abide by their personal status, according to their religions, sects, beliefs, or choices, and this shall be regulated pursuant to a law," for purpose of guaranteeing equality between women and men in compliant with the agreement and article (14) of the constitution.

5. Constitution of Iraqi Kurdistan shall include special guarantees in respect of protection as per laws that guarantee effectiveness of women's participation in Political, economic and social public affairs.
6. Iraqi Kurdistan shall conduct thorough review of the protective legislation besides issuing legislation that guarantees women's access to justice, as well as the procedures that facilitate access to justice i.e., such procedures issued before issuance of Iraqi constitution, which is in compliant thereof, or refer to the legislation that was issued prior to Iraq's signing some international agreements.
7. Encouraging Iraqi Kurdistan to fulfill the commitments made by Iraq as per the international agreements and the impact therefrom on legislations.

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<sup>10</sup> The same previous source.

### Third: National strategies

High Council of Women's Affairs in Iraqi Kurdistan is the institution concerned with status of women, beside other mechanisms and institutions represented in Kurdistan Parliament's Committee on Protection of Women's, combating domestic violence departments affiliate to Ministry of Interior, gender centers, sectoral teams concerned with implementing the Security Council resolution # (1325). Such institutions are assigned to activate women's participation in all aspects of governance, achieve gender justice, eliminating violence against women. Approving the below mentioned strategies was amongst the steps taken by government of Iraqi Kurdistan to advance women's issues:

#### **A. The National Strategy for Combating Violence against Women in Iraqi Kurdistan 2017-2027**

Government of Iraqi Kurdistan ratified the strategy for combating violence against women in 2012 that was updated for the period from 2017 to 2027, which is a long-term national strategy to combat and address violence against women and to develop an appropriate framework for a serious and appropriate action plan and work program to eradicate the negative phenomena in society in general, particularly such phenomena relative to oppression of women and violence against them. This strategy was developed in collaboration with United Nations Population Fund, representatives of the official institutions in the government, many NGOs and activists (m/f) in field of women's rights.

#### **B. The National Strategy for Development of the Status of Women in Iraqi Kurdistan 2016-2026**

The National Strategy for Development of the Status of Women in Iraqi Kurdistan, which was ratified in November 2016, aims at empowering women to enjoy their human rights in all areas of education, health, economic participation, taking part in decision-making, access to resources and control thereto through preparing an environment conducive to women empowerment at political, economic and social levels under an umbrella of laws and national legislation due to its impact on status of women in private and public life. Ratifying this strategy in Iraqi Kurdistan would promote standards of human rights and public freedoms and reject all forms of discrimination in society.

Ratifying implementation mechanisms through orchestrating efforts between the institutions concerned with combating violence against women, the High Council of Women's Affairs, the elected councils, NGOs, United Nations agencies, international organizations on one hand, and governmental institutions affiliate to Ministry of Interior (departments of following-up violence against women), Ministry of Labor and Social Affairs (a refuge for battered women.), on the other hand, was amongst the pursuits to apply terms of the two strategies to real world.

Developing following up mechanisms and evaluating the necessary information and data, by issuing a report on the status of women and gender, including violence against women, were part of the pursuits to confirm strategies of application.

Too many factors assisted in bringing about success to the two strategies including:

1. Iraqi Kurdistan government's official commitment to achieve gender equality through the High Council of Women's Affairs, the ministries and the concerned authorities.

2- Due to the fact that there are many governmental institutions that work directly and indirectly on women's issues all over their lives, which contributes to addressing some sensitive issues as the case with education, health and labor sectors, for example, providing shelters for survivors of gender-based violence by Ministry of Labor and Social Affairs.

3- NGO's effective role regarding women's rights, which is assisted in raising awareness and contribute to strategy's implementation, control its results, and achieve the desired shift.

4- As there are a set of laws and resolutions to the good of women's rights, such as the Anti-domestic violence Law, personal status law & penal code.

5- Openness witnessed by Kurdish people who experienced transformation in social, economic, cultural and political areas which reflected positively on the outlook of Iraqi Kurdistan forecasting a modernized tomorrow.

6- Due to the fact that there are various media institutions and cultural centers, either private or state owned, which provides the possibility to make the best use of all of such institutions, directing them to educate society, eliminate discrimination against women, and achieve gender equality.

In spite of the fact that the efforts exerted at the level of strategies are important, there are a number of common causes and challenges that affect effectiveness of implementing strategies at the required level including:

1-Failure to allocate sufficient financial allocations by governmental institutions to address women's rights issues, (default in applying gender sensitive budgeting).

2-NGOs suffer from the unsustainability of the financial bankrolling provided by governmental international institutions.

3- No matter how important the role assumed by ministry of justice is, in respect of implementing the strategy, especially in the legal field, it was not announced by members of the High Commission to confront violence against women.

4- The war on terror and its impacts on evacuating hundreds of thousands of people living in large number of refugee camps suffering from difficult living conditions.

5- The cultural structure in Kurdistan society, customs and traditions that deepen discrimination in the relations between women and men, which resulted in discrimination in practices and laws.

6- Lack of effective infrastructure and proactive human resources to adopt programs that achieve economic and social integration for women in general which provides mechanisms for women empowerment within the community and within the family, in particular.

7- Lack of (competent personnel concerned with institutional gender) in governmental departments.

8- Lack of awareness of worries and catastrophic impacts resulting from violence against women as well as ignoring the social factors involved and other factors and challenges.

## Recommendations:

1. Preparing a comprehensive strategy in Iraqi Kurdistan to eliminate discriminatory stereotypes and all harmful practices, as referred to in the concluding comments issued by the Committee concerned with elimination of all forms of discrimination against women as per Iraq's seventh periodic report in 2019<sup>11</sup>, in compliant with the recommendations provided in clause (20/A) which states:

14- The committee recommends state party to carry out the following measures:

- A- Ratifying a comprehensive strategy to eliminate discriminatory stereotypes and all harmful practices such as child marriage, temporary marriage, forced marriage, female genital mutilation, and crimes committed under pretext of defending honor, provided that such strategy shall include raising of awareness and education targeting the general public, religious and civil leaders, and mass media in collaboration with NGOs and women's organizations.

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<sup>11</sup> The same previous source

2. Providing sufficient financial and human resources to apply such strategies and plans to the real world.
3. Coordination between the various bodies concerned with these strategies and plans.
4. Building the capacities of competent personnel concerned with implementing the strategies and following up thereof.

## 2<sup>nd</sup> part: framework of legislations and domestic laws

### First: Discrimination against women in Iraqi laws

Further to recommendations of the concluding comments on Iraq's seventh periodic report issued by the Committee concerned with the Elimination of Discrimination against Women submitted to Republic of Iraq in 2019, whereas clauses nos. (14 & 13) in compliant with the concerns and recommendations of the constitutional and legislative framework provides a set of discriminatory laws and provisions that impede women's access to their rights and promote their contributions to the community.

#### Legislative and constitutional framework

The Committee praises State party's resolution to establish a committee within the Supreme Judicial Council, composed of retired judges to review the discriminatory legislation, including Penal Code (Law No. 111 of 1969), Criminal Procedure Law (Law No. 23 of 1971), and Personal Status Law (Law No. 188 of 1959). However, the Committee notes with concern persistence of discriminatory provisions against women, including articles 41, 128, 130, 131, 377, 380, 398, 409 and 427 of Penal Code, as well as provisions stipulated in Criminal Procedure Law as well as Personal Status Law.

14- The committee denotes that articles 1 and 2 of the Convention explains the goal beyond target # 5 of Sustainable Development objectives, which is to eliminate all forms of discrimination against all women and girls everywhere, besides recommending the State party to do the following:

B) Cancellation of all discriminatory provisions provided in the Penal Code, code of Criminal Procedure, and other legislations, regulations and directives.

C) Reviewing and enacting a draft law concerning protection from domestic violence, for purpose of ensuring imposition of appropriate punishments on perpetrators of violence against women.

Although Iraqi Kurdistan Parliament has made amendments to the legislation, as well as issuing some new legislation to fill the legislative gap to protect women's rights, discriminatory provisions and articles against women are still latent in some of the laws in force in Iraqi Kurdistan.

This paragraph targets reviewing some of these discriminatory legislations in force that limit the ability of women to access to justice:

**A- Iraqi Personal Status Law No. 88 of 1959 and Law no. (15) of 2008 stipulates amending application of Personal Status Law in Iraqi Kurdistan.**

Article (121) of the Federal Iraqi Constitution states: "Iraqi Kurdistan authorities have the right to exercise legislative, executive, and judicial powers in accordance with provisions of this constitution, unless otherwise provided for exclusive jurisdictions granted to federal authorities.

Also, "Iraqi Kurdistan authority has the right to amend application of federal law should a contradiction or conflict arises between the federal law and law of Iraqi Kurdistan regarding an issue that does not fall within the exclusive powers of the federal authorities." The Iraqi Personal Status Law was promulgated in 1959 and was amended in 1978 and until the present time no amendment has been made thereto, in spite of the fact that there are discriminatory articles that impede women's access to justice and contradict the basic principles set out in the international conventions relative to women. **Earlier, Iraqi Kurdistan has issued through its parliament a set of resolutions and laws considered as amendment of Personal Status Law No. 188 of 1959. Several resolutions and laws were promulgated to amend articles of Personal status law, including Resolution No. (62) dated 29/4/2000, Law No. (6) of (2001), Law No. (8) of (2001), Law No. (10) of (2001), Law No. (11) of (2001). Promulgation of such resolutions shall be considered as fundamental amendments, but Iraqi Kurdistan did not stop at this point, rather promulgated a law amending application of Personal Status Law No. (15) of 2008, which is considered a qualitative shift in amendments to articles and clauses of Iraqi Personal Status Law since its promulgation in 1959.**

However, some discriminatory articles remained as it is without amendment including:

1. We believe that the amendment law of Personal Status Law's application No. (15) of 2008, in article (8), "first paragraph"<sup>12</sup> allows underage girls to get marriage after completing the sixteenth with consent of the guardian and permission of the judge. Accordingly, Personal Status Law applicable in Iraqi Kurdistan considered observations and recommendations Issued by the Committee concerned with Elimination of Discrimination against Women as stipulated in its concluding observations as per Iraq's seventh report in 2109 <sup>13</sup> mentioned in compliant with

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<sup>12</sup> Amendment law of Personal Status Application Law no. (15) of 2008

<sup>13</sup> Concluding observations issued by the committee concerned with discrimination against women as per Iraq's Seventh report issued in 2019.

the concerns provided in clause no. (35/A) and as mentioned in the recommendations provided in clause no. (36/A) which states:

35) The committee noted the following with concern

A) Legal exceptions to the minimum age for marriage, set forth in the Personal Status Law at 18 for both gender, which allow girls to marry at the age of 15.

36) The committee recommends states party to do the following:

A) Abatement of the discriminatory legal exceptions from the minimum age of marriage for girls provided in Personal Status Law (No. 188 of 1959) and ensure that legal exceptions to the minimum age of marriage, which is set at 18 years, are not granted to both women and men, except in exceptional cases approved by a competent court for girls and boys over 16 years, and upon their explicit consent.

2. Notwithstanding amendment law includes the conditions required to be met before marrying more than one woman, it doesn't prohibit to conclude contract of the second in courts that fall outside jurisdiction of the judicial authority of Iraqi Kurdistan so long as this law has not been amended by the federal government, as referred to by the concluding observations issued by the Committee concerned with the Elimination of Discrimination against Women as per Iraq's seventh periodic report in 2019 <sup>14</sup>, in compliant with the observations and concerns stated in clause (35 / b) and as part of the recommendations stipulated in clause no. ( 36 /b, c) stating:

35) The committee noted the following with concern

B) The permissibility of polygamy in certain circumstances under the Personal Status Law and Personal Status Law No. (15) of 2008 in force in Iraqi Kurdistan.

36) The committee recommends states party to do the following:

B) Taking all appropriate measures to prevent polygamy.

C) Ensuring registration of all marriage contracts in complaint with personal status law.

3. As per article thirty eight (38), which stipulates (revocable divorce/ permitting husband to get back his wife during the legally prescribed waiting period (Iddah) with no need to conclude marriage contract provided that the two parties are desirous to reconcile), i.e., the wife's desire

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<sup>14</sup> concluding observations issued by the committee concerned with the elimination of discrimination against women as per Iraq's seventh periodic report in 2019

to get back to her husband, but this paragraph is not applied in courts as revocable divorce doesn't require wife's consent. Legally, the husband can return his wife to the bond of his marriage after breaking up for the first time during the waiting period, even if the wife wants otherwise.

4. Failure to apply the second paragraph of article (39) of Personal Status Courts, which states, "The husband shall comply with depositing an amount of money with a special fund for family care at the court for (3) months upon initiating legal proceedings of divorce.

### **Recommendations:**

1. Providing measures and procedures to ensure putting an end to violation of Personal Status Law's application, as well as conducting the required amendments in complaint with article # (16) of the convention in respect of abatement of legal exceptions to prevent polygamy and reducing incidents of concluding marriage contracts outside of the court.
2. Making amendment to article (91) of the law and establishing equality between men and women in inheritance should each of them entitle inheritance with presence of the descendant or otherwise.
3. Applying article (38) relative to revocable divorce in courts where consent shall be obtained should the wife desires to complete her matrimonial life.
4. Application of the second paragraph of article (39) precisely in personal status courts.

### **B- Iraqi Penal Code No. (111) of 1969**

Penal Code No. (111) of 1969 includes a set of provisions that demonstrate a commitment to ensuring full protection of the rights of men and women. Also, there are articles on providing protection for women, besides other articles that involve discrimination against women. Such articles are considered a violation of the right of women to access to justice while Iraqi federal government has not made amendments thereto. Since 2001 Iraqi Kurdistan Parliament has started issuing a set of laws to amend the application of Penal Code No. (111) of 1969: Law No. (7) of 2001 concerning wife's exemption from discipline set out in article (41) of the Law, Law No. (9) of 2001 regarding nullifying the second paragraph of article (377) of the law relative to punishment for marital adultery, Law No. (42) of 2004 relative to suspending enforcement of the first paragraph of article (408) of the law relative to penalty for the crime of incitement to commit suicide as well as imposing heavier penalty for whosoever incites a person to commit suicide. The last amendment of

law No. (3) of 2015 regarding suspension of article (409) of the same law, is considered a serious step to protect women and prohibits retaliation beyond scope of law or without a fair trial or murder for reasons of honor, which abandons the woman without legal protection from murder meanwhile allows the murderer escape punishment.

Despite the amendments referred to in this law, there are still a set of articles that discriminate against women in Penal Code including:

### **A- In crime of rape:**

1. Article (398) allows a person that has committed rape to enter into a legal marriage contract with the victim of the rape. He becomes subject to the legal excuse that attenuates the criminal punishment for the rape, and thus the victim would be facing another act of coercion to be added to the rape, i.e. the coerced marriage and the perpetrator's impunity, despite the fact that he has committed a full crime.
2. The law failed to address cases of marital rape, but referred to in article (2) of to the anti-domestic violence law no. (8) of 2011.
3. Article (380) states that every husband incites his wife to commit adultery and she has done so based on this incitation, shall be punished by imprisonment. This means that if there was no material element, i.e. the committing of adultery, the incitation alone shall not constitute a crime, while if the wife has committed criminal conversation based on the act of incitation, and the husband has lodged in a complaint while the wife failed to prove the act of incitation, she shall receive the punishment determined for the act of adultery, and this is a flagrant violation of marital rights, such article was castigated as it doesn't punish for incitation unless accompanied by adultery. The manner that prevent women from reporting ravishment or sexual assault for fear of being charged with fornication.

### **B- Sexual Harassment**

Iraqi Penal Code failed to include articles prohibiting sexual harassment from which the vast majority of women experience in workplace, academic and public places, although the law referred to in articles nos. (400, 401, 402 and 403), but not all sorts of harassment are highlighted. Articles of prohibiting sexual harassment crimes shall be rearranged and to be limited to the Penal Code, but The Iraqi Supreme Judicial Council decided to enforce Iraqi Penal Code that addresses harassment and recommended as per his statement "provisions of articles (48-47) of Code of Criminal

Procedure No. (23) in the cases where harassed women fail to appear in the court before trial judges, as well as enforcement of articles nos. (402/401/400) of Iraqi Penal Code, that impose imprisonment for one year as a punishment and levying fines for whosoever requests indecent acts, besides enforcement of application of provisions of article (10 / first paragraph) of Labor Law No. (37) of 2015, including prohibiting Sexual harassment in employment and profession, whether in relation to jobs hunting or during vocational training or as a prerequisite for joining work.<sup>15</sup>

## **C- State of Abortion**

Iraqi Penal Code addressed the issue of abortion considering it a crime in accordance with articles nos. 417 and 418, hence the law prohibits abortion except necessary conditions such as protecting life and health of the pregnant woman or fetal abnormalities.

### **Recommendations:**

1. Despite making radical amendments in a set of articles of Penal Code in Iraqi Kurdistan, but there are still some discriminatory provisions require to be amended or cancelled, therefore we recommend forming a committee in Kurdistan region similar to that formed in Iraq within the Supreme Judicial Council composed of retired judges who take responsibility for reviewing the discriminatory legislation to amend and cancel such articles of discrimination nature, as pointed out by the concluding observations issued by the committee concerned with elimination of discrimination against women as per Iraq's seventh periodic report of in 2019 <sup>16</sup>, among other concerns raised in clause no. 13 stating:

The committee noted with concern some discriminatory provisions against women including articles nos. 41, 128, 130, 131, 377, 380, 398, 409 and 427 of penal code.

2. Taking all appropriate measures and procedures, including providing training for judges, public prosecutors and judicial investigators to investigate and address sexual violence crimes, and the mechanisms that help women access to justice.
3. Abatement of the discriminatory articles provided in the Penal Code or amendment thereof, including article (398) and the provisions that exempts perpetrators of sexual violence from punishment if they marry the victim.

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<sup>15</sup> Iraqi Supreme Judicial Council

<sup>16</sup> concluding observations issued by the committee concerned with the elimination of discrimination against women as per Iraq's seventh periodic report in 2019

4. Amendment of article (380) to ensure criminalization of incitement by the husband without waiting for the act of adultery to actually take place, expanding the criminal circle thereof to include inciting incestuous adultery as well as imposing severe penalties for this crime with regard to freedom-restricting penalties or levying financial penalties.

### **C- Labor law**

Devoting attention to regulate women's work and providing protection for them is done through development of imperative legal rules, perhaps the reason beyond this lies in increase in women's entry into the labor market. However, the physical formation of a woman differs from that of a man, which led to many problems that the legislator had to sort it out with some restrictions. That was not limited to that only, but acquired an international character as well<sup>17</sup>. Labor relations in Iraq (other than the Kurdistan region of Iraq) are governed by Labor Law No. (37) of 2015 as Kurdistan Parliament has not yet approved this law, while the Iraqi Labor Law No. (71) of 1987 is in force in Iraqi Kurdistan.

Labor Law guarantees the right to work for every capable citizen with equal conditions and opportunities for all (f/m) without discrimination based on sex, race, language or religion, and the Department of Labor shall be responsible for organizing employment of workers in accordance with the job opportunities available in a manner that guarantees justice and equality between them. As stated in Article (2) of labor law in force in the region: "This law guarantees the right to work for every capable citizen with equal conditions and opportunities for all without discrimination based on sex, race, religion or language, in a manner that result in providing every citizen with the opportunity to training on professional activity within the limits set by the state that suit size and type of work in the professional sector."<sup>18</sup>

Labor law guarantees equal pay for women upon performing the same work in the same quantity and quality performed by men, thus guarantees equality in job opportunities and remuneration for both genders. Article (4/second paragraph) stipulates women shall be paid equal wage as the case with men should work is done in a similar environment"<sup>19</sup>

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<sup>17</sup> Umar Musa Jafaar, legal organization of some special categories under the current applicable Iraqi Labor Law No. 37 of 2015 which is available on the following website: 57313=<https://democraticac.de/?p>

<sup>18</sup> Labor law No. (71) of 1987.

<sup>19</sup> The same previous source

The law also stipulates that women should not be employed in arduous or harmful work, and that pregnant women should not work for overtime that could harm woman's health or pregnancy. Likewise, it is not permissible to employ women for night shifts except in special circumstances.

Maternity leave, parental leave, nursing hours shall be maintained and provided as per the law. In spite of this protection, there are a number of challenges in this law including:

1. Labor law in force in Kurdistan Region failed to mention any reference to provide protection for working women from sexual harassment in workplace, in contrast to Labor Law No. (37) of 2015 referred to in article (9) Including prevention of sexual harassment in employment and job, whether in terms of job hunting or vocational training or as part of employment terms.
  2. Failure in determining daily working hours for women with consent of the employer as a prerequisite for one-year maternity leave without pay to take care of the child under one year.
  3. Providing maternity leave relies on unjustified conditions, consequently it undermines rights of working women who shall be granted fully paid pregnancy and childbirth leave, regardless of how long she has joined work and irrespective of volume of the project.
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1. Enforcement of labor law No. (37) of 2015 or enacting a new labor law appropriate to the current work conditions and provides more protection for women's rights, but the failure to legislate a new labor law in Kurdistan Region or failure in enforcement of the Iraqi labor law does not keep up with the developments witnessed by the region regarding initiative of laws' amendment in 2001, whereas the Committee concerned with Elimination of Discrimination Against Women has considered Iraq's Concluding observations in 2019<sup>20</sup> and ratified Labor Law No. (37) of 2015 considering it as an achievement and a positive aspect in field of legislative reforms for Iraq, as indicated in clause (4), paragraph B.

Positive aspects:

4- The Committee welcomes the progress made since consideration of the comprehensive report submitted by the State party concerning the fourth to sixth periodic reports regarding the legislative reforms, in particular adoption of Labor Law (No. 37) of 2015, which guarantees equality between women and men and prohibits discrimination and sexual harassment in Workplace

2. Ensuring that sexual harassment crimes took place in the workplace are reported through the mechanisms that guarantee such right.

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<sup>20</sup> concluding observations issued by the committee concerned with the elimination of discrimination against women as per Iraq's seventh periodic report in 2019

3. Maternity leave shall not be conditional upon terms and approval of the employer, as well as granting pregnancy and childbirth leaves to working women without prior conditions, as indicated in the Committee's concluding observations on the elimination of discrimination against women as per the seventh periodic report of Iraq in 2019<sup>21</sup> in compliant with the recommendations of clause no. (32 /A, E) which states:

The committee recommends the state party to carry out the following measures:

- A) Ensuring enforcement of provisions relative to maternity leave under the Labor Law (No. 37 of 2015).
  - B) Ensuring that sexual harassment crimes are reported and that the perpetrators are prosecuted in accordance with articles 10 and 11 of the Labor Law (No. 37 of 2015)
4. Amending resolutions and regulations for purpose of providing more rights for working women and canceling the texts that allow abuse such rights by departments and employers.
  5. Devoting more attention to affairs of working women by Ministry of Labor and Social Affairs, the relevant departments and institutions.
  6. Emphasis on the Supreme Judicial Council to enforce role of labor courts.
  7. Annexation of domestic helpers in Labor and Social Security Law, given that such sector needs Labor protection which is not currently available in the laws in force.
  8. Educating women workers about their rights set out in the international conventions, domestic laws Including the labor law.
  9. Enacting a special law to regulate foreign workers' affairs.

## **D. Law of nationality**

Article 4 of Law No. 26 of 2006 regarding nationality is subject to review by Ministry of Interior and State Council with purpose of amendment or cancellation thereof, however, it is still: -

1. Iraqi men have the right to transfer their nationality to their children born outside the State party on a basis of paternity, while article 4 restricts the right of Iraqi women to transfer their nationality to their children born outside the State Party shall should father is unknown or stateless, which is conditional upon Minister of Interior's discretionary power.

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<sup>21</sup> concluding observations issued by the Committee concerned with the elimination of discrimination against women as per Iraq's seventh periodic report in 2019

2. Iraqi mother is not entitled to transfer her nationality to the children unless marriage contract is duly authenticated, representing discrimination against children born out of wedlock, prejudicing rights of children of Iraqi women married to foreign citizens, and those born out of coerced marriages of fighters or out of unauthenticated marriages, rendering them without nationality.
3. Children of ISIS fathers or those born as a result of sexual violence committed by ISIS members have limited opportunities to register their births, exposing them to risk of statelessness.

### **Recommendations**

1. Amending the discriminatory provisions in article 4 of Law No. 26 of 2006 on Nationality, to guarantee that women and men have equal rights in terms of acquiring, transferring, retaining and changing their nationality in compliant with article 9 of the convention.
2. Speeding up the efforts to facilitate birth registration through use of modern technology to simplify and ensure affordable birth registration procedures as indicated in the concluding observations Issued by the Committee concerned with elimination of discrimination against women as per Iraq's seventh periodic report in 2019<sup>22</sup> in compliant with recommendations mentioned in clause No. (28/A-B) which states: -

The committee recommends the state party to carry out the following measures:

- A) Amending the discriminatory provisions in article 4 of Law No. 26 of 2006 on Nationality, to guarantee that women and men have equal rights in terms of acquiring, transferring, retaining and changing their nationality in compliant with article 9 of the convention.
  - B) Speeding up the efforts to facilitate birth registration through use of modern technology to simplify and ensure affordable birth registration procedures.
3. Timely ratification of a law concerning survivors of the crimes committed by ISIS, as indicated in the concluding observations issued by the Committee concerned with elimination of discrimination against women as per Iraq's seventh periodic report in 2019<sup>23</sup> in compliant with the recommendations stipulated in clause # (22 / A) which states: -

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<sup>22</sup> The same previous source

<sup>23</sup> The same previous source

## Second: protective legislations

This paragraph aims to highlight the protective legislation in force in Kurdistan Region regarding women's access to justice as well as defining the strengths, challenges, and necessary recommendations for the authorities in Kurdistan Region, based on the concluding observations issued by Women Affairs Committee on the concluding observations as per Iraq's seventh periodic report in 2019.<sup>24</sup>

### A- Anti- domestic violence law no. (8) of 2011 in force in Iraqi Kurdistan

Iraqi Kurdistan Parliament enacted Law No. (8) of 2011 on combating domestic violence in Kurdistan Region. The law included three fundamental components: protection, prevention and imposition of punishment.

Iraqi Kurdistan Region has initiated enactment of a special law that prevents domestic violence, and so far, there is no law in Iraq prevents and criminalizes domestic violence, as indicated in the concluding observations issued by the committee concerned with elimination of discrimination against women as per Iraq's seventh periodic report of Iraq in 2019<sup>25</sup> as stipulated in clause no. (14 /c) in compliant with the recommendations and among the causes of concern mentioned in clause (21 / a) which states:

14) The committee recommends the state party to carry out the following measures:

C) Reviewing and enacting a draft law concerning providing protection against domestic violence, with a view to ensuring that the perpetrators of violence against women are punished with appropriate penalties.

21- In spite of the fact that the committee notes with concern the hereunder:

Although the first draft was completed in 2011 and submitted to House of Representatives for approval on three occasions since 2015, the Anti-Domestic Violence Law has not been ratified due to objections raised by Parliament's Endowment and Religious Affairs Committee.

Significance of anti- domestic violence law lies first in that it recognizes the problem of violence against women, and stresses on the necessity to provide the necessary legal protection for them, to facilitate their access to justice. Despite importance of anti- domestic violence law's enactment in Kurdistan Region, which is a positive step for women in terms of protection and facilitating access to justice, there are problems and challenges that hinder its implementation including:

1- **Definition of domestic violence set out in article (1/ third paragraph)** failed to include the definition of economic violence, but only highlighted physical, sexual and psychological violence. Economic

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<sup>24</sup> The same previous source

<sup>25</sup> The same previous source

- violence means a person's control over his life partner and depriving her of the financial resources, property, or goods, which leads to her failure in taking economic responsibilities such as spending and providing financial support to the family, as well as preventing employment or education, and denying participation in family's economic resolution.<sup>26</sup>
- 2- **Definition of the family set out in article (1 / second paragraph)**, as the law text failed to refer to other forms of coexistence relationships which means that those living under these conditions are not protected from domestic violence as the case with formal relationships resulting from divorce and breakup.
  - 3- **Law giver has listed the crimes set out in article (2), including but not limited to** legislator's failure to comply with principle of legality of crime and punishment which drives the judge to apply analogy through criminalizing the behavior or the act that is not criminalized as per law should such acts have the same serious impacts of the actions referenced under law in a manner that would threaten rights and freedoms of the individuals.<sup>27</sup>
  - 4- **The law fails to denote types of evidence that may be admissible in domestic violence cases.** United Nations Office on Drugs and Crime (UNODC) stipulates that "there is no need to medical evidence and forensic medical evidence to convict the perpetrator", with the possibility of initiating legal proceedings and convicting the perpetrator based on testimony of the complainant / Survivor exclusively<sup>28</sup>. Due to the fact that such assaults are committed inside homes and behind closed doors, where no witnesses except for children who cannot testify. Sometimes the victim delays in filing a complaint, which may affect statements and testimonies. Its worthy to note that criterion should not always be sufficiency of victim's testimony without other evidence, the courts shall render judgments convictions only on the basis of credible testimonies, in compliant with standards of international human rights law, fulfilling requirements of the minimum level of giving testimonies under Iraqi law.
  - 5- **Protection order and providing shelters for women:** article (four) states: first: The competent court issues protection order when necessary or upon requested by family member or the representative whereof as a temporary measure to protect victims of domestic violence, provided that the order shall include period of protection, and the court has the authority to extend it whenever needed.

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<sup>26</sup> 26) <https://www.hrw.org/ar/news/2017/03/19/301308>.<sup>1</sup>

<sup>27</sup> Dr. Sardar Aziz Ali, critical review of anti-domestic violence law applicable in Iraqi Kurdistan under (8) of 2011, Magazine of Political and legal studies, first year, first issue, September 2013, page # 122.

<sup>28</sup> Refer to UN handbook, section # 3.9.5, page # 40

Second: The applicant for protection may waive thereof based on developments, and the court shall ensure that cancellation request was submitted by volition of the person and guaranteeing serving interests of the victim"))<sup>29</sup>. The law fails to differentiate between short-term urgent protection resolutions and long-term ones., Short-term urgent protection resolutions are meant to address risk resulting from breaking up between the alleged perpetrator and the victim. As for long-term protection, article (3 / 3<sup>rd</sup> paragraph) states that: "inclusion of domestic violence cases as part of social protection network services." however, the amount of money provided by social protection network to victims is very small and insufficient to protect victim's life as well as meeting prerequisites of protection.

- 6- **Failure to classify criminal acts:** Law maker, upon criminalizing certain behavior, shall address the possibilities in detail with which crime could be committed in compliant with its scope and determine punishment for all these possibilities or hypotheses as per their seriousness and nature. For example, in article (2/first paragraph) concerning coercion in marriage which shall be considered as domestic violence, even though the relationship between the perpetrator and the victim was not specified in this crime, which is in sharp contrast to article (9) of the amended personal status law No. (88) of 1959. The said law elaborated such crime in detail. As the case with crime of beating up family members and children under any pretext, the issue which was covered in in article (2 / first paragraph/12/), otherwise it failed to specify type of beating and abuse other than the details presented by the Iraqi law maker as per articles (415-412) of the revised Iraqi Penal Code No. (111) of 1969.<sup>30</sup>
- 7- **Preventive protection.** Article # (Three/ Seventh paragraph) states: "The ministries and official bodies concerned with disseminating culture of combating domestic violence."<sup>31</sup> The UN Handbook recommends prioritizing enactment of anti-domestic violence against women, as well as providing a set of measures such as public education programs, awareness- disseminating materials through mass media, providing promotion campaigns using materials and content addresses violence against women and women's human rights in educational courses.<sup>32</sup>It shall include measures such as educational and awareness-raising activities, preparation of educational courses on violence

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<sup>29</sup> Law no. (8) of 2011, anti-domestic violence law in force in Iraqi Kurdistan.

<sup>30</sup> Dr. Sardar Aziz Ali, the previous reference, page # 110-112.

<sup>31</sup> Law no. (8) of 2011, anti-domestic violence law in force in Iraqi Kurdistan

<sup>32</sup> UN Handbook, section no. 3.5.2, page # 27.

against women, women's human rights, promotion and development of healthy relationships, and disseminating awareness of domestic violence in the media.

- 8- **It is noticed that the law is ambiguous from many perspectives.** The law stipulates some criminal acts in article (2/first paragraph), such as failing in maintaining kinship ties and underestimating of others. Such phrases are vague to the extent that it is difficult to understand, and in consistent with the reliable standards. Inclusion of these phrases in such general wording and absolute language contravenes results of the principle of legality of crimes and penalties requires outlining and defining of criminal acts clearly without ambiguity and vagueness.<sup>33</sup>
- 9- Delay in judicial procedures and pleadings in cases relative to domestic violence crimes. No matter how important this law is in Iraqi Kurdistan, domestic violence is still a widespread problem in Kurdistan Region.

### **Recommendations:**

1. Allocating and providing human, technical and financial resources to enforce the law by government of Iraqi Kurdistan. That issue was referred to in the concluding observations issued by the Committee concerned with elimination of discrimination against women as per Iraq's seventh periodic report in 2019<sup>34</sup>, as part of the concerns provided in clause (21/D) which states:

21- The committee notes with grave concern the following:

D/ Lack of allocated human, technical and financial resources in application of law no. (8) of 2011 relative to anti-domestic violence in Iraqi Kurdistan.

2. Establishing a special fund for victims of domestic violence by Ministry of Labor and Social Affairs to provide appropriate, long and short-term protection as well as guaranteeing a decent life for the victim.
3. Providing an adequate number of shelters for victims of domestic violence crimes, as set out in article (3/second paragraph) of the law, since accommodation centers currently located in Kurdistan Region are not good enough, and this matter was referred to in the concluding observations issued by the Committee concerned with elimination of discrimination against women as per Iraq's seventh periodic report in 2019<sup>35</sup>, as part of the concerns provided in clause (22/D) which states:

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<sup>33</sup> Dr. Sardar Aziz Ali, the previous reference, page # 113-114

<sup>34</sup> concluding observations issued by the committee concerned with the elimination of discrimination against women as per Iraq's seventh periodic report in 2019

<sup>35</sup> The same previous source.

14) The committee recommends the state party to carry out the following measures:  
Ensuring availability of shelters for victims of violence throughout the country, reinforcing medical and psychological support services provided to the victims, as well as counseling and rehabilitation services besides guaranteeing providing adequate funding for such services and accessibility thereof, added to providing competent personnel on regular basis.

4. Promulgation of a new law or amending the current law to improve and address all deficiencies and shortcomings of the law in compliant with the standards stipulated in the international conventions, through collaboration with governmental agencies and organizations.
5. Timely initiation of legal proceedings relative to domestic violence crimes, in compliant with the international standards stipulated in article (14/3C) of the International Covenant on Civil and Political Rights of 1969 which stipulates that “every person accused of a crime ... shall be tried without unjustified delay.”<sup>36</sup>
6. Increasing educational and awareness-raising activities on various aspects of violence against women in the media in Kurdistan Region. This task rests primarily with Ministry of Culture and other ministries
7. Inclusion of domestic violence issues in the academic subjects and courses of Ministries of Education and Higher Education, as well as in the various academic stages up to the universities, in addition to allocating financial resources to improve and standardize quality of education as referred to in the concluding observations issued by the Committee concerned with elimination of discrimination against women as per Iraq’s seventh periodic report in 2019<sup>37</sup>, as part of the concerns provided in clause (30/A/H) which states:

30) The committee stresses on its recommendations through repeating the hereunder:  
A) Removal of all discriminatory gender stereotypes from school courses and textbooks.  
5) Allocating adequate financial resources to education sector for purpose of improving and standardizing quality of education, increasing available opportunities for technical and vocational training for girls in non-traditional areas of education, and ensuring that infrastructure in the educational system is inclusive and accessible to all.

8. Training of judges, prosecutors, judicial investigators and law enforcement apparatuses, especially police officers, on domestic violence crimes and how to manage them.

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<sup>36</sup> The international covenant on civil and political rights of 1969, article (14/3/C)

<sup>37</sup> The same previous source.

9. Training and educating clerics of all religions and sects in Iraqi Kurdistan to include domestic violence issues in their speeches and sermons.
10. Reliance on the minimum level of evidence under Iraqi law with the possibility of initiating legal proceedings and conviction by relying exclusively on the complainant's credible testimony in special cases.
11. Formation of investigation and misdemeanor courts for domestic violence cases, as set out in article (three/ First paragraph) of the Law.
12. Creating Special Fund for victims of domestic violence by Ministry of Labor and Social Affairs.
13. Obligating courts, in investigation and trial stages, to deputize an advocate to address domestic violence cases, render legal services and assistance to victims before courts and other governmental institutions.

**B- Law No. (8) of 2012 concerning Combating trafficking in persons**

Iraq has enacted combating trafficking in persons Law No. (28) of 2012 which was enforced in Iraqi Kurdistan, under Law No. (6) of 2018 without any amendment, in accordance with which, all forms of human trafficking, especially cases that threaten women such as prostitution, exploitation, sex, forced labor or work, slavery or servitude etc., shall be prohibited.<sup>38</sup>

The Supreme Committee for Combating Trafficking in persons in Kurdistan Region was formed in accordance with directives No. (5) of 2018 chaired by Ministry of Interior (in addition to the sub-committees within provinces of the region), which includes representatives of thirteen concerned ministries in Iraqi Kurdistan. In spite of the fact that such law was enforced within Kurdistan Region, there are challenges that impede its implementation including:

1. The Judicial Council of Iraqi Kurdistan is not a member of the Supreme Committee of combating trafficking in persons.
2. The law failed to consider facilitating abuse of children and their recruitment in wars as an act of human trafficking, nor did it cover the fetus which was included as part of the incriminating provisions, although some may offer to trade the fetus for a fee as part of mother's body for medical and research purposes, either with consent of the mother or otherwise.
3. Courts of human trafficking crimes have not yet been formed in Kurdistan Region. In Iraq, they have been completed appointing judges specializing in human trafficking in 2015, but it was cancelled in 2017.

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<sup>38</sup> Law of Combating trafficking in persons no. (28) of 2012.

4. Putting human trafficking criminals on trial as per the laws that criminalize prostitution.
5. Foreign labors may also fall victim to trafficking and the agencies that provide legal consultations or such entities responsible for providing a shelter are required to be ready to give assistance to them when needed.<sup>39</sup>
6. Article (11/seventh paragraph) of law of combating trafficking in persons states: "Providing financial assistance for victims and providing a temporary housing in a way that suits their gender and age groups."<sup>40</sup> Taking into consideration that Iraqi Kurdistan suffer from lack of shelters designed to victims of human trafficking, noting that there are some places to accommodate them with others victims of other crimes, but they are not at the required level.
7. Lack of control over companies that recruit foreign labors to Kurdistan Region, in a manner that led Some of such companies violate workers' rights. Currently there are many cases in investigation offices. Failure to maintain confidentiality of the investigation is inconsistent with provisions of Iraqi Criminal Procedures Law, as police stations are keeping documents, then interrogating them, consequently presenting them before the judges and public prosecutor. Routing practices exposes subject of lawsuit papers, then fail to maintain confidentiality of the information therein, especially in the cases presented in provinces where are no offices of human trafficking.
8. Human Trafficking Act pointed out the need for providing legal protection for the victims, but in fact, the required steps were not taken in this respect.
9. Anti-Human Trafficking Law contradicts with Law No. (8) of 1988, as it is difficult even for legal professionals to differentiate between crimes.
10. Human trafficking law in force does not provide for criminalization should there is an attempt to commit a criminal offense in accordance with this law.
11. Lack of victims-related statistics, especially the women who live in camps.

### **Recommendations:**

1. Timely development of a national action plan to combat trafficking in persons as pointed out by the concluding observations Issued by the Committee concerned with elimination of discrimination against

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<sup>39</sup> Replying to the fifth periodic report, seeking to apply accountability and requesting change; a report on A Report on Violations of Women's Rights in Iraq, which is available on the following website:

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRQ/INT\\_CCPR\\_CSS\\_IRQ\\_21863\\_A.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRQ/INT_CCPR_CSS_IRQ_21863_A.pdf)

<sup>40</sup> law of combating trafficking in persons no. (28) of 2012

women as per Iraq's seventh periodic report in 2019 <sup>41</sup>, as part of the concerns provided in clause (24/j) which states:

23) The committee voices its concern for lack of national action plan for combating trafficking in persons.

24) The committee recommends the state party to carry out the following measures:

J) Timely adoption of a national action plan to combat human trafficking, and establish a permanent body to coordinate implementation thereof as well as conducting the required procedures of control.

2. Intervention of Iraqi Kurdistan Judicial Council's representative to the Supreme Committee of Combating Human Trafficking chaired by Ministry of the Interior, which was formed in accordance with directive No. (5) of 2018, as it has the main role in combating human trafficking and providing technical and financial support to the committee as indicated in the concluding observations Issued by the Committee concerned with elimination of discrimination against women as per Iraq's seventh periodic report in 2019 <sup>42</sup>, as part of the concerns provided in clause (24/A) which states:

24) The committee recommends the state party to carry out the following measures:

A) Strengthening mandate of the Central Committee to Combat Human Trafficking and ensure providing support with appropriate human, technical and financial resources

3. We encourage government of Iraqi Kurdistan to take positive steps to enforce Law No. (6) of 2018 and ensuring putting perpetrators of human trafficking, sexual exploitation on trial, establishment of courts for human trafficking crimes, providing training for the judges and public prosecutors, also it should ensure access of victims of trafficking crimes to the essential services, including shelters, accommodation, medical treatment, psychotherapy, legal counselling, providing protection and support by establishing a (nursing home for victims of human trafficking) to receive, care and rehabilitate of victims of both sexes, as indicated in the concluding observations Issued by the committee concerned with elimination of discrimination against women as per Iraq's seventh periodic report in 2019 <sup>43</sup>, as part of the concerns provided in clause (24/B & C) which states:

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<sup>41</sup> concluding observations issued by the committee concerned with elimination of discrimination against women as per Iraq's seventh periodic report in 2019

<sup>42</sup> The same previous source.

<sup>43</sup> The same previous source.

24) The committee recommends the state party to carry out the following measures:

B) Intensify efforts to prevent and combat trafficking in women and girls, including the effective application of Law No. 28 of 2012 concerning combating human trafficking and providing protection and support to victims, involving providing shelter and psycho-social support.

C) Conducting prompt and objective investigations into cases of human trafficking, and ensuring that all convicted has been punished dully besides guaranteeing that all victims will subject to fair trials.

4. Making amendment to the law to include cases that are not set out in the current law to be in compliant with the standards provided in the international agreements and does not contravene any other laws through collaboration with official institutions.
5. Organizing periodic, cultural and analytical campaigns including detailed information on crimes of human trafficking, and ascertaining application of the precautionary measures.
6. Providing training for the personnel in charge of application of this law.
7. Inviting NGOs to take part in assisting victims to empower the concerned agencies at governmental and non-governmental levels.
8. Supporting international and regional cooperation in addressing crime of human trafficking and exchanging information and experiences.
9. Developing effective mechanisms to investigate, prosecute and punish those involved in human trafficking cases, and ensure immediate release of victims of human trafficking of women.
10. Criminalization of facilitating abuse of children and their recruitment in wars and human trafficking.
11. Criminalizing of fetal trafficking.
12. Imposing strict control on companies operating in the field of recruiting labors.
13. Criminalizing of any attempt to commit a criminal act in accordance with this law.
14. Educating the community, especially women, with their rights stipulated in Human Trafficking Law.

## 3<sup>rd</sup> part: framework of working at institutional level

### First: Judiciary and access to justice

#### A. Women in judiciary system

The judicial authority in Kurdistan Region was independent legally and institutionally after promulgation of its Law No. (23) of 2007, after it was affiliate to Ministry of Justice administratively and financially. This step came after separation of judiciary system in Iraq after 2003 from Ministry of Justice and the issuance of Coalition provisional Authority Memorandum No. 3 of 2003. After this step, Judicial Institute Law No. (7) of 2009 was promulgated, accordingly it began to admit students in its first session in 2012.

Establishment of this institute had a great role in increasing number of female judges and female public prosecutors in comparison with the last period. Number of female judges at that time was so few that could be counted on fingers of one hand. This becomes evident when we monitor number of female students admitted to the institute compared to number of males. The first session included graduation of (12) female judges, and (13) in the second session, while number of female judges in Iraqi Kurdistan has now reached (86) judges and around (454) public prosecutors out of (454) including judges and public prosecutors.

As for assuming judicial positions such as membership of the Judicial Council, Court of Cassation, and presidencies of courts of appeal, it depends on the classification under which the judge is classified as well as his term on duty, so the Judicial Council and the Court of Cassation in the region are devoid of female personnel at the present time (June 2020) with the exception of one judge who is a member of the Appeal Court in Erbil , and a Public Prosecutor as Deputy Chief Public Prosecutor. It is remarkable that this matter has been reflected on the criminal courts that do exist in the region where there are ten courts all over Iraqi Kurdistan, which means that there are two judges in total. However, there are only two female judges in the membership of these courts, i.e. only 7%, while the other female judges are distributed over other courts (court of first instance, misdemeanor, personal status, investigation), however, the most important point in this regard is that there is no legal obstacle or restriction that prevents women from assuming high judicial positions unless they reach the required category and obtaining the required judicial degree.

## **B. Women and procedures for filing a complaint with courts of Iraqi Kurdistan:**

The current Iraqi constitution stipulates in its article (14), "Iraqis are equal before the law without discrimination"<sup>44</sup> and article 19/3 states that "litigation is established and guaranteed for all," while the sixth paragraph of the same article stipulates that "everyone has the right to be treated fairly in terms of judicial and administrative procedures."<sup>45</sup>

Article (1) of Iraqi Criminal Procedure Code No. (23) of 1971 failed to differentiate between male and female at all in the possibility and the right to file a complaint by the victim of the crime or who was affected by it before an investigative judge, investigator, an officer in police station, or a judicial officer.<sup>46</sup>

The law of the judicial authority in the region under the judiciary formations and as per types of courts, stipulated in its article no. nine that investigation courts are among the civil courts,<sup>47</sup> which do exist in the center of each governorate and as part of each court of first instance that exist in districts and sub-districts. Such courts are assigned to supervise conduct of investigation operations carried out by police, receipt of complaints and informing about crimes falling within the territorial jurisdiction of each court, issuing the necessary judicial verdicts from recording statements of the parties of the lawsuit, seizure and arrest warrants against the accused, arresting them, collecting material and physical evidence such as witness testimonies, then referring the accused and lawsuit papers to the competent courts of misdemeanor, felony and juveniles.

Article (3) of Anti-Domestic Violence Law stipulated the following: first: A court specializing in lawsuits of domestic violence shall be established according to Region's Judicial Authority Law No. (23) of 2007<sup>48</sup>, and article (49/ First) of Juvenile Welfare Law No. 76 of 1983 stipulates that (The investigation of juvenile cases shall be undertaken by a juvenile investigation judge and should it is not present, the investigative judge or investigator is entitled to consider the case.)<sup>49</sup> Practically speaking, there are several investigative bodies that work under supervision of investigation courts and have interrogative powers to consider crimes take place within the community, as follows:

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<sup>44</sup> Refer to article (14) of Iraqi Constitution of 2005.

<sup>45</sup> Refer to article # (19) of permanent Iraqi Constitution of 2005.

<sup>46</sup> Article 1 of Iraqi Criminal Procedures Law No. 23 of 1971 stipulates: ((The criminal case shall be filed orally or in writing and submitted to the investigating judge or the investigator or any officer in the police station or a judicial officer who is affected by the crime or the one who acts on his behalf legally or any other person aware of its occurrence unless the law stipulates otherwise.)

<sup>47</sup> Refer to article no. (9) of Judicial Authority Law in the Region No. (23) of 2007 issued in 15/11/2007

<sup>48</sup> Refer to article no. (3/first) of anti-domestic violence law # 8 of 2011 in force in Iraqi Kurdistan.

<sup>49</sup> Refer to Juvenile Welfare Law No. 76 of 1983

- Security institutions specialized in investigating crimes of terrorism, drugs, espionage and undermining economy.
- Offices of crime fighting.
- Police stations in neighborhoods and residential areas.
- Integrity investigation offices.
- Directorates and offices for investigating crimes against domestic violence and violence against women.
- Investigation offices specialized in human trafficking crimes

**No matter how important these efforts are, there are some obstacles that impede women's access to justice**

In order to come up with the fact in which women may take effective measures that may assist in achieving timely justice, we shall highlight the notes and remarks to reach the ultimate end in helping the woman to access to justice:<sup>50</sup>

1. The current investigative system fails to match the progress made, hinders achievement of completed justice, leads to bureaucracy and delay in procedures and resolution of investigative papers, besides non-application of provisions of code of Criminal Procedure in force as it is, especially in the preliminary stage of investigation. The exceptional provisions that give specific interrogative powers to the officers in police stations have become the general rule. The role of the judicial investigator, whose name is mentioned (42) times in the Code of Procedure - an indication of his great role at this stage – has become almost like the role of the clerk instead of conducting the actual investigation into crimes, thus the procedures and texts that govern the investigative system shall be reviewed once more, by Iraqi Kurdistan's Judiciary Council.
2. Its imperative to consider the international standards of Human rights.
3. It is imperative to consider specialization in investigation courts, as well as avoidance of generality, as is the case now, especially that investigation courts exist in provincial centers, whereas each court supervises an investigative body concerned with investigation of specific crimes. Hence, Investigation courts in provincial centers will be as follows:

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<sup>50</sup> 50 draft proposals submitted by the Investigator Organization for the Rule of Law to the Judicial Council in Kurdistan Region and to the public opinion in order to restructure the investigative system in Kurdistan Region in a way that is consistent with the current situation as well as getting rid of the erroneous custom that has been practiced for years.

- Assayesh Cases Investigation Court (Security and Combating Terrorism).
  - Court of investigation of crime-fighting offices (burglary and murder).
  - Corruption Investigation Court (Integrity).
  - Domestic Violence and Juvenile Investigation Court.
  - Police station investigation court (traffic accidents and other cases)
  - A court for investigating human trafficking cases (human trafficking, combating prostitution, gender violence and rape, so that investigation procedures are more accurate, effective and far from delay and procrastination.)
4. We note that Article 3 of the Anti-Domestic Violence Law No. (8) of 2011 has not been applied as required. A court specialized in considering domestic violence lawsuits has not been formed in an integrated manner, whether in the provincial centers or districts, with the exception of the Sulaymaniyah district center in which there is an investigation court that hear domestic violence that was established as per a resolution of Presidency of Sulaymaniyah District Court of Appeal. In the courts that do exist in other regions, it is noted that there is a single investigative judge considers domestic violence lawsuits as well as other cases. Although all courts belong to one judicial council and apply the same law, there is a variation in terms of the investigative procedures between the Sulaymaniyah court and the rest of the other courts in other governorates.
5. Highlighting variation in procedures and laws in defined and specific lawsuits between the federal government and Iraqi Kurdistan. This difference constitutes one of the obstacles and impediments that intercept women's access to justice. Here you are two clear examples of that variation:
- The first example: Federal Personal Status Law applicable in Iraqi Kurdistan No. 188 of 1959 was amended by Law No. (15) of 2008. The amendment emphasized that Personal Status Judge would grant permission for a man to marry a second wife provided to meet five conditions for this permission, and the penalty for violating this was require imposing heavier penalty. Due to the fact that the conditions applied in this area fall within the territorial jurisdiction of the federal courts and are more lenient and flexible to give this permission, and as the penalties are less heavier, many of region's citizens circumvent the law and go to those courts to conclude marriage contracts with the second wife, then they return to the region with formal marriage contracts, thus to be exempted from punishment despite the first wife has filed complaint with the courts in this connection.
  - The second example: as for content of the legislative resolution issued by the dissolved Revolutionary Command Council No. (101) of 1999, which states that a woman accused of committing an unintentional crime may not be arrested, whether at the stage of investigation or trial. A very important

decree, but it is not enforceable in the region's courts, as it was promulgated in the period between 1991 and 2003. Each law, directive, or resolution issued during this period is not enforceable in the region, so it is often possible for the accused woman to be arrested and presented to region's courts for committing an unintentional crime, such as car accident, for example. The accused woman is to be detained in the places designed to capture perpetrators of crimes of murder, theft, prostitution and fraud. We have not seen neither the judicial authority in the region, nor the women's organizations nor the parliamentary blocs, calling for enforcement of this resolution in the region, or enactment of a similar legislation, or even amendment of Code of Criminal Procedure.

6. Poor knowledge of many judges regarding the international documents relative to women's rights is one of the important issues that relative to women and the judiciary, therefore it's a matter of importance to include such women-related international covenants in the courses taught at the Judicial Institute in Iraqi Kurdistan.
7. It is noticeable that the criminal judge and even the civil judge shall comply with application of national laws and procedures contained in procedural laws, such as the Code of Civil Procedure, Code of Criminal Procedure, and the procedures stipulated in some other laws, but he cannot apply provisions of international treaties and agreements unless they are interpreted into legal articles and rules constituting a part of the domestic laws, as stipulated in the Iraqi Treaty Law, so the judge is bound and obligated to apply domestic laws, especially when it comes to the criminal field.
8. We have mentioned earlier that number of judges and prosecutors in the region is 454 judges and prosecutors. This number is considered insufficient to consider the lawsuits of citizens in the region whose number is six million people approximately. This number is in consistent with international standards, especially when we come to know that the judge considers dozens of investigative, criminal or civil cases daily, and in many cases the judge is responsible for hearing lawsuits of more than one court, especially in the districts and the outskirts of cities.
9. Citizen's trust in the courts is almost weak or medium at best. The reasons for this are attributed to interference of other authorities or parties and tribal entities in force with Judiciary affairs. When the citizen sees that the courts are no more than buildings including buildings designated for administrative authorities such as deputy governor's building. this concept weakens confidence in the prestige of the judiciary, independence of the judge himself, and his application of international standards on himself before the others.
10. With regard to legal aid, the law regulates articles 293 to 298 of Civil Procedure Law No. 83 of 1969 and articles from 31 to 33 of Notarial Fees Law No. 114 of 1981 concerning provisions of legal aid in the lawsuits

filed by Iraqi courts. Article (24) of the same law stipulates that the fees for affirming divorce lawsuit outside the court shall be incurred by the husband not the wife. Likewise, Article (25) stipulates that the fees for affirming divorce lawsuit occurs outside the court shall be incurred by the husband as well, not the wife. Should the wife is applicant of affirming or endorsement, she will be exempted from fees payment. Articles nos. (123) and (144) of the Code of Criminal Procedure No. 23 of 1971 have regulated the legal aid provisions relating to attorneys' fees and judicial aid relative to lawsuit fees or appeal fees. Legal aid shall include natural and legal persons provided to meet the relative requirements. The legal aid related to attorneys' fees shall be interpreted as exempting the party who requested assistance of a lawyer to defend him as he was unable to pay the attorney fees of Bar Association in civil cases, so the bar shall incur such fees in accordance with the provisions contained in the attorneys' Law, and the state treasury shall incur fees for hearing and trial sessions in case of criminal in accordance with Iraqi Penal Code of Procedure.<sup>51</sup>

### **Recommendations:**

1. Amending the Judicial Authority Law No. 23 of 2007, conducting thorough review of the same by approving criminal and civil specialization system in judges' works within the courts, as well as changing the current applicable investigation system and giving greater and broader powers to the judiciary, represented by investigative judge, the public prosecutor and the judicial investigator, as well as reducing role of police in criminal investigations.
  - Approving mechanisms of specialized investigative courts based on type of crimes, so that the procedures followed will be faster and more effective in all aspects of appeals in the region alike as the previous case, especially when it comes to formation of Courts of investigation and misdemeanor for domestic violence based on article three of Anti-Domestic Violence Law No. 8 of 2011.
2. Standardizing criminal procedures and legislation between Iraqi federal government and Kurdistan Region by enforcing or enacting some laws, especially Resolution No. 101 of 1999 in force in the federal government regarding the inadmissibility of arresting women for unintentional crimes
3. Inclusion of international covenants and conventions relative to human rights, especially women's rights, in Judicial Institutes' courses in Iraqi Kurdistan to assist in qualifying judges and public prosecutors with knowledge of human rights issues and women's rights, in particular.

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<sup>51</sup> Judge/ Medhat Al Mahmoud, an explanation of civil code of procedure, law no. 83 of 1969, and the respective practical applications, legal Library, Baghdad, page # 400.

4. Attaching the Judicial Institute to Region's Judicial Council and disengaging it from Ministry of Justice administratively, similar to the step taken in the Federal Government due to its impact on independence of judges and members of Public Prosecution. This requires a legislative step to be endorsed by parliament of Iraqi Kurdistan via issuance of a legislation to disengage from Ministry of Justice and attach this institution to the judicial authority in the region.
5. Boosting confidence in courts' works through achieving greater independence in work of judiciary system, distancing from any partisan leaning, authoritarian power and tribal interference as well as ensuring an adequate living and security living conditions for the judges and members of Public Prosecution Office to enable them to perform their judicial work to the ultimate extent, besides allocating and constructing special court buildings under possession of the judicial authority not the executive one.
6. Considering the international standards in terms of number of judges and lawsuits to be considered by each judge in various courts, so more judges and public prosecutors are needed to be appointed to achieve greater and faster justice.

## **Second: Law enforcement agencies**

Considering development of society and increase in number of crimes in different ways, it was necessary to rearrange the structure of law enforcement agencies with all its administrative and legal fundamentals in a way that suits development of society, keep up with international and regional developments, keep abreast of these developments by providing training for cadres of these agencies on principles of human rights and to exert efforts to spread a human rights culture among members of society to create an environment in which citizens respect each other under rule of law.

### **A. Organization structure**

#### **1. Ministry of Interior**

Upon withdrawing of service and administrative facilities by Iraqi government in 1991<sup>52</sup> from Iraqi Kurdistan, and for purpose of ensuring filling security vacuum, restoration of justice, maintaining lives of people and their property, Ministry of Interior as apart of the cabinet was restructured in accordance with Law (9) of 1993, after which this law was cancelled under which the ministry at Iraqi Kurdistan<sup>53</sup> once more was restructured pursuant to Law No. 6 of 2009, whereas Ministry of Interior concerned with performing the following missions:<sup>54</sup>

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<sup>52</sup> Website of Kurdistan parliament

<sup>53</sup> Website of Kurdistan parliament

<sup>54</sup> Article no. (2) of Ministry of Interior's laws no. 6 of 2009 in force in Iraqi Kurdistan.

- Implement general policy of Kurdistan Regional Government and maintain both unity and internal security.
- Establishing principle of rule of law, preserving public order, maintaining public and private property.
- Ensuring freedom, democracy and human rights.
- Preventing commission of crimes and maintaining stability and public safety.
- Collaborating with ministries and public authorities in maintaining security and preserving public order and cooperating with the central government and international organizations.
- Disseminating of cultural and security awareness, creating cooperation between internal security forces and various groups of civil society.
- Monitoring immigrants, deportees and residents, making efforts to improve their living conditions, providing Solutions and services for them in collaboration with competent authorities.

## **2. Security apparatuses:**

These agencies were established according to Law No. (5) of 2011<sup>55</sup>, and the security services are one of the fundamentals on which law enforcement agencies in Kurdistan Region were built. Its duties have been defined<sup>56</sup> pursuant to the law. These agencies investigate cases of a security nature such as (terrorism, drugs, economic security, currency forgery, ..... etc.)

## **C. Law enforcement bodies:**

Law enforcement officials shall, at all times, perform the duty assigned to them as per the law to serve society and protect all persons from illegal and works, in a manner consistent with high degree of responsibility required by their profession.<sup>57</sup> It appears that personnel of Law enforcement agencies provide services that are assigned to them to help community members In need of immediate assistance, personal, economic, social, or any other kind of assistance. As the General Directorate of Police is administratively linked to Ministry of Interior according to Paragraph (16) of Article (3). Its powers in conducting investigation are tied and defined according to Code of Criminal Procedure No. (23) of 1973, pursuant to this law, law enforcement agencies were named (judicial officers).

## **3. Judicial Officers**

As per Code of Criminal Procedure No. 23 of 1971, the term "Judicial officers" was repeated 18 times and they shall meet the following characteristics:<sup>58</sup>

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<sup>55</sup> Website of Kurdistan parliament

<sup>56</sup> Article (3) of security apparatus law no. 5 of 2011

<sup>57</sup> Article (1) of the (Code of Conduct for Law Enforcement Officials) that was approved and made public by United Nations General Assembly Resolution 34/169 dated December 17th, 1979 .

<sup>58</sup> Article (1) of Law no. 23 of concerning principles of penal procedures

- Police officers, station officers and commissioners.
- Mayor of the village in charge of reporting crimes, arresting the accused, and detaining the persons who shall be detained.
- Director of the railway station, his assistant, train traffic officer in charge of managing the maritime port or the airport, captain of the ship and aircraft, there assistants.
- Head of the department or governmental authority, official and semi-official institution.
- Persons assigned to perform public service, the persons empowered to investigate and take procedures regarding crimes within the limits permitted as per special laws. Those figures shall have power of Investigation, and they may initiate a criminal case through an oral or written complaint to judge of the investigation or the investigator or any official in police station or a judicial officer, who is harmed by the crime or who is legally acting on his behalf, or whoever knew of its occurrence, or was informed of and submit thereof to public prosecution unless stated otherwise under the law.<sup>59</sup>
- Judicial officers carry out their work within limits of their jurisdiction and under supervision of a member who advises us from public prosecution<sup>60</sup>, and they are subject to supervision of the investigating judge.<sup>61</sup> Also, they are mandated in their areas of expertise to investigate crimes, receipt of reports and complaints, providing assistance to investigative officers, investigators, police officers and commissioners, as well as providing them with the required information relative to crimes from the informants,<sup>62</sup>arresting perpetrators of crimes and handing them over to competent authorities, documenting their acts<sup>63</sup> under official reports that are dully signed<sup>63</sup> by the officers witness procedure, more over they shall take all measures to ensure the preservation of the crime-related evidence<sup>64</sup>. The task of the judicial officer ends upon arrival of investigation judge or the investigator or representative of public prosecution.

### **Directorates and offices of combating domestic violence**

In response to promulgation of Domestic Violence Law No. 8 of 2011, several offices to combat domestic violence affiliated to Ministry of Interior were established throughout the region to investigate cases of domestic violence and violence against women as part of Anti-Domestic

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59 Paragraph (1) of article (1) of principles of code of criminal procedure no. 23 of 1971

60 Paragraph (1) of article (40) of principles of code of criminal procedure no. 23 of 1971

61 Paragraph (b) of article (40) of principles of code of criminal procedure no. 23 of 1971

62 Article (41) of principles of code of criminal procedure no. 23 of 1971

63 Article (42) of principles of code of criminal procedure no. 23 of 1971

64 Article (46) of principles of code of criminal procedure no. 23 of 1971

Violence Law No. 8 of 2011 and in accordance with the organizational structure of General Directorate for Combating Violence against Women affiliates to Ministry of Interior in Kurdistan Region. There are (6) directorates for combating violence against women in all governorates of Kurdistan region, and from these directorates (28) offices are branched and (5) branches are distributed all over the region as well as in the disputed areas such as Khanaqin, Sinjar and Makhmur.<sup>65</sup>

#### **5- Combating human trafficking offices:**

After promulgation of the Law on Combating Human Trafficking in Iraq No. (28) of 2012 and due to increase in number of expatriate workers, and after elapsing 6 years of legal vacuum, Kurdistan Parliament approved Law No. (6) of 2018, which allowed enforcement of Anti-Human Trafficking Law, thus a committee was formed in the Ministry of Interior called ( The Central Committee to Combat Human Trafficking) which is made up of representatives of ministries and relevant authorities, as well as formation of (9) offices at the regional level to investigate such type of crime.

<sup>66</sup>

#### **6- Police stations**

Although there are offices concerned with combating violence against women, there are cases under which police are conducting investigations due to absence of an article criminalizing such acts as per Anti-Domestic Violence Law No. (8) of 2011, but they fall within jurisdiction of the Penal Code No. (111) of 1969.

#### **7- Anti-crime offices:**

Offices affiliate to police directorates in the governorates that specialize in investigating crimes of murders.

#### **No matter how important the role played by these agencies are, there are some challenges impede women from accessing to justice including:**

- Discrimination in distribution of positions between the two genders and absence of a legal text, resolution, or instructions for determining women's quota to take over jobs in these institutions.
- Lack of sufficient information on the way security apparatus works and how it investigates, given that these agencies are relevant of special character and was established under a special law.

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<sup>65</sup> The annual report on statistics and activities of General Directorate for Combating Domestic Violence 2018

<sup>66</sup> Article (2) of law no. (28) of 2012 concerning combating human trafficking

- Absence of a main information center to link all law enforcement agencies in the region.
- Lack of coordination between the courts regarding arrest warrants for the accused.
- **Absence** of an electronic network between courts operate in the region

### Recommendations:

1. Assigning judicial investigators to conduct investigations on domestic violence lawsuits and limiting the duties of police officers to arrest the accused.
2. Increasing women's cadres in the offices of combating domestic violence.
3. Inauguration of a special office to investigate crimes of sexual violence, with female cadres that live close to the court.
4. Training of cadres of anti-trafficking offices including judicial investigators and police officers representing law enforcement agencies.
5. In response to consolidation of human rights principles, it is necessary to provide governmental shelter and compensation for victims of Human trafficking until end of considering their case before courts.
6. Establishing an electronic network to connect all courts in order to facilitate and the judicial procedures.
7. Replacement of Judicial investigator departments with primary investigation offices affiliate to the Judicial Council.
8. Considering gender equality in appointing women and when it comes to assuming positions in law enforcement agencies. The matter which was confirmed by the Committee for Prevention of Violence against Women in its concluding observations as per Iraq's seventh report in 2019 as part of the concerns raised in clause no. (17), and the recommendations provided in clause no. (18/A) stating:

#### **Referring to the previous concluding observations**

17- The Committee notes with concern that the State party does not use temporary private measures in accordance with Article 4 (1) of our convention, in a systematic way in order to accelerate realization of actual equality between women and men in all areas in which women are disadvantaged or underrepresented in the state Party.

18- The committee recommends the state party to carry out the following measures:

A) Taking temporary special measures with time-bound goals, including approving of a quota system, preventing imposition of penalties for non-compliance, in order to accelerate achievement of substantive equality between women and men in all fields in which women,

including rural women, migrant women, and asylum-seeking women, disabled women are underrepresented in a set of fields including the political, public fields, education and employment, the administrative positions, especially in civil service, the diplomatic corps as well as the judiciary

### **Third: social and individual challenges impede women access to justice**

The social challenges that impede women's access to justice are varied in Kurdistan region in particular and Iraq in general including:

1. Social culture: There is no doubt that communities of the Middle East are characterized by the prevalence of male gaze, a matter established by a long history of social traditions and state laws. Masculinity prevents women from accessing to justice and justice enforcement agencies. There are women who are prohibited from litigation because of this perspective, in addition to weak representation of women in decision-making centers in the three authorities, including the judicial and notarial institutions.
2. Tribal and religious beliefs: which range from shame and forbidden, women suffer from lack of access to justice. Shame and social prevention are a social connotation of values that are not accepted within society. These values, which are passed down from previous generations, are very difficult to get rid of easily and within a short period of time. As for the forbidden, it is a religious connotation indicates judgment of punishment and grief for women, sometimes this develops into a ban. An example the announcement of the demand for equality between the two genders, equality in inheritance between men and women, or conversion.
3. Economic challenge; women are assigned to carryout housework. This work does not get paid. The lack of a private financial resource keeps women captive to whosoever provides them with the resource of life and money, so they do not feel economic independence. In exchange for domestic work, family services, and sometimes agricultural as well, women do not get enough of their daily sustenance. The resources of agricultural fields usually go into the pockets of fathers, husbands, siblings, or even children. This destitution and material poverty shackled women and denied them the right to access to justice. Justice requires hiring lawyers, paying their fees, reviewing departments, and paying fees for legal procedures, so how can women do all this with the vulnerability and weakness of their economic and living conditions? Parental control over family affairs, especially with regard to the issue of women, as matters relating to women are often decided

- by fathers without consulting women in all matters related to them, such as marriage under age, circumcision, divorce and inheritance.
4. Mass media: The media greatly helps in veiling many of the deficiencies and gaps that women suffer from. Investigations have reasonably contributed to reducing female circumcision in a large way, but on the other hand, some media outlets play an opposite role by hosting clerics who issue fatwas on talk shows that worsen women's conditions.

#### **Outcomes**

- Increase violence against women with its social implications, especially the cases of honor retaliation.
- Increasing rate of marriage for women under age who are not permitted by law to file lawsuits and recover rights.
- Preventing institutions of justice in rural areas from considering any cases specific to women because such institutions will be threatened and intimidated by families of women.
- Women's failure to enjoy their rights even if stipulated by laws, due to the restriction on legal obligations outside the court (such as the mullah contract) or inheritance distribution.
- The social inferiority view of women, whether from the society in or from the institutions concerned with their access to justice.
- Although there are no official and accurate statistics, female genital mutilation continues in areas of Kurdistan region, especially in the Garmian region, in ages between 4-9 years, which affects the women biologically and instinctively.
- A significant increase in number of girls and boys married under age and an increase in the rate of divorce for them, resulting in drop out and lack behind in education in addition to lack of legal knowledge, given the fact that these cases are in secondary education, then prevented from completing education because of marriage.

#### **Recommendations:**

1. Amending the laws to make education compulsory and to be extended beyond the secondary level.
2. Approving an action plan relative to strengthening issue of defending the legal rights of women, especially in procedures of Litigation and payment of the attorney fees and the financial liabilities that fall due upon default in the lawsuit.

3. Strengthening the female component in justice enforcement institutions so that women are not exposed to exploitation and sexual harassment.
4. Amending Personal Status Law in a way that prevents marriage of women under the age of (18 years) and imposing penalties for those who commit these acts, in addition to prohibiting the interference of clerics in giving view regarding marriage contracts and divorce.
5. Development of educational curricula according to human rights approaches.
6. Building awareness among different members of society on issues of equality and non-discrimination.

'This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of (Women Empowerment Organization and Investigator Organization for The Rule of Law) and do not reflect the views of the European Union'.

