



THE PROTECTION OF WOMEN AGAINST DISCRIMINATION IN KURDISTAN REGION OF IRAQ

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Abstract

Gender equality is achieved when women and men receive equal rights and opportunities across all areas of social activities, including politics managing finances and properties, and when women and men are given equal dignity and rewarded on the bases of merits and not sex. Gender equality means eliminating deep-seated obstacles to equal opportunities that are embedded in discriminatory legislation, customs, procedures and institutional procedures. It also involves allowing equal liberties for all people, regardless of gender.

Gender equality does not mean that men and women are the same, but that they are of equal value and that they should enjoy equal opportunities. The drive towards equality has become a major preoccupation for educated women and even male feminist. It is reflected in the song “Anything you can do, I can do better” The central issue, however, has been the powerful idea that for humanity to grow and improve, men and women should be considered equal.

The paper gives overviews of discrimination against women. It further discusses the extent to which national legislation corresponds to the articles 1 and 2 of the CEDAW, and identifies legal measures to protect women’s rights.

The findings of this paper are that: There are many influences on whether Kurdistan women will enjoy CEDAW principle or not. There are not conflicting social forces when it comes to according women their rights, even the laws and clauses of the same article of constitution contradict themselves. Whether, women’s rights and equality are respected or not will be decided on the bases of the social and political forces that engage in political campaigns.

1- Introduction

The expression ‘discrimination against women’ means any gender-based differences, rejection or limitation that has the impact or intention of impairing or nullifying women’s acknowledgement, pleasure or practice, regardless of marital status, on the grounds of equality between men and women, of human rights and basic liberties in the political, financial, social, religious and civil spheres. This involves all types of discrimination that



may be undertaken by government actors, private entities or general public, whether through legislation, cultural practices, directly or indirectly.¹

Discrimination against women is apparent in almost every community in the universe in all areas of life, including civil, political, social, cultural, economic, and family life. While the world's cultures vary in different respects, there are some common gender roles that cut across most, if not all, communities.

For example, on the one hand women are traditionally seen as children makers, caregivers in the family and performers of household chores. In the traditional communities, particularly in rural areas, women were also expected to carry the backbreaking of water fetching and caring for cattle and sheep. In contrast, regardless of the amount of jobs men were doing, they were almost always the decision-makers.

This discriminatory perception of the roles of women also meant that boys are usually more likely than women to be educated and sent to colleges or given employable skill-training. Boys may also inherit more property than women, making women less likely to possess significant production factors such as land, estates, farms, cars, or companies.

The structure of stereotypical gender-based role of women within the families has also replicated itself the economic spheres. Men control the positions of owners and executives of manufacturing. They are almost invariably the decision-makers in all industries. Women are given low-paid jobs or jobs around the male bosses where they might also be subjected to sexual exploitation. This means that the whole structures of economy are informed by men's ideas, emotions, and arguments.

Discrimination is also evident in the political sphere. Women are not encouraged to run for election, and tiny proportions of female candidates are elected. This has led to low women's underrepresentation in politically significant positions around the world.

Consequently, against such phenomena reflecting discrimination against women, the CEDAW has been adopted as an international instrument to bring about equality for women. All countries that have ratified the CEDAW are obliged to promote and defend women's rights.²

¹ Dictaan-Bang-oa, E., and Tugendhat, H., *Realizing Indigenous Women's Rights: A Handbook on the CEDAW*, (2013), p.40

² *Ibid.*



2- Direct and Indirect Discrimination

The CEDAW Convention is meant to address both direct and indirect discrimination. Article 1 says, right from the start, that discrimination takes place when gender-based difference are employed to nullify or impair women's appreciation, or women's enjoyment of their rights and equality.³ Direct discrimination against girls and women is usually easier to understand because the discrimination is quite clear. For example, women cannot legally own land in some nations; they are prohibited by law from taking certain jobs; or a community's customs may not allow girls to get higher education.

It can be hard to identify indirect discrimination against girls and women. It relates to circumstances that may seem unbiased but in actual fact lead to girls and women being treated unequally. For instance, a police officer's work may have minimum requirements for height and weight that women may find difficult to meet. Women may not be able to become police officers as a consequence. Discrimination may take place from a legal aspect (de jure) or from a practical aspect (de facto). The CEDAW Convention recognizes and addresses both forms of discrimination, whether contained in laws, policies, procedures or practices.⁴

Discrimination experienced by women in one area can influence their rights and possibilities in another. Discrimination in access to education and training, for instance, could lead to an absence of access to public policy decision-making. Discrimination in access to loan possibilities can be directly linked to discrimination in estate ownership, inheritance and contractual capacity in civil law.⁵

3- Legal Measure to Define 'Discrimination against Women'

As yet, there is no legislation in Iraqi Kurdistan concerning discrimination against women; this entailed that no clear definition of the term 'discrimination against women' is presented in Iraqi or Kurdish legislation. In contrast, the Republic of Rwanda's laws focus rigourously on eradicating discrimination. The Article 16 of the 2003 of the Rwanda's constitution, amended in 2015, says:

"Discrimination of any kind or its propaganda based on, inter alia, ethnic origin, family or ancestry, clan, skin colour or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language, economic status, physical or

³ International Women's Rights Action Watch Asia Pacific, *Our Rights Are Not Optional! Advocating for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through its Optional Protocol*, (2008, Kuala Lumpur), p.33

⁴ *Ibid.*, p.34

⁵ *Ibid.*



mental disability or any other form of discrimination are prohibited and punishable by law.”

The preamble of Rwandan constitution presents its aim as commitment to “building a State governed by the rule of law, based on the respect for human rights, freedom and on the principle of equality of all Rwandans before the law as well as equality between men and women”

Yet in Iraq, the constitution issues two contradictory Articles. Article 41 of Iraqi constitution states that Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law. However, this Article contradicts with the Article 14, which states ‘Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.’

The Article 41 has a number of negative implications. It undermines the unity of domestic law and the rule of law. It also prepares the ground for social disunity between various religious denominations, considering that it allows the clergy within one denomination to have effective authority within his group and thus creates interests for such clergy to divide people by encouraging commitment to the one’s denomination rather than the whole Iraq. Obviously, with the legal and social disintegration the potential for inter communal conflicts and clashes with also increase.

4- Obligations of Countries to Eliminate Discrimination

Many countries have adopted strategies to eliminate discrimination against women by all suitable methods, adopting concrete measures to remove discriminatory legislation, policies and procedures within the domestic legal framework.⁶

A State that is a party to the CEDAW convention is legally compelled to adopt all suitable steps to combat discrimination against women and promote gender equality. Under article 2, States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfil women’s right to non-discrimination and to the enjoyment of equality.

⁶ Government Equalities Office , *Policy paper :Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Articles* , (22 June 2011)

<https://www.gov.uk/government/publications/convention-on-the-elimination-of-all-forms-of-discrimination-against-women-cedaw-articles>



The obligation to equality requires State parties to refrain from creating legislation, measures, regulations, systems, and administrative processes that actively or passively deprive women of the personal, political, financial, social and religious rights.⁷

This obligation also demands that States parties protect women against discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women. The obligation, moreover, requires that States parties to take a wide variety of steps to ensure that women and men enjoy equal rights.⁸

Accordingly, these countries are required to have national legislation and practices so as to comply with CEDAW. Article 2 of CEDAW calls on these countries to reject “all types” of discrimination against women.⁹ Moreover, Article 2 requires that these countries subsume all elements of their legal commitments under the Convention to respect, fulfil and protect the right of women to non-discrimination and enjoyment of equal rights.¹⁰ In fulfilling their duty to CEDAW, these countries are required not to discriminate against women by deeds or omissions; they are also required to respond actively against gender discrimination, irrespective of whether such deeds or omissions are perpetrated by the State or by private entities.¹¹ Discrimination can happen through the inability of States to take needed legislative steps to guarantee that women's rights are fully realized and protected, the inability to implement domestic policies directed at attaining equality between women and men, and the inability to implement appropriate legislation.¹² Similarly, parties to CEDAW have a global obligation to develop and continually improve statistical databases and to investigate all types of discrimination against women in general and women who are more vulnerable in certain circumstances or communities.¹³

⁷ United Nations, *Convention on the Elimination of All Forms of Discrimination against Women: Committee on the Elimination of Discrimination against Women*, (16 December 2010, CEDAW/C/GC/28), P3

⁸ United Nations, *Convention on the Elimination of All Forms of Discrimination against Women: General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, Committee on the Elimination of Discrimination Against Women, (19 October 2010, CEDAW/C/2010/47/GC.2), P.3

⁹ United Nations, *op.cit.*, p.2

¹⁰ *Ibid*, P3

¹¹ United Nations, *op.cit.*, p.3

¹² Ní Aoláin, F., Cahn, N., Haynes, Dina, F., Valji, N., *The Oxford Handbook of Gender and Conflict*, (2018), p.172

¹³ United Nations, *op.cit.*, p.4



5- Legal Measures to Implement the Principles of Equality between Men and Women

Some legal measures that can be taken by states to protect women against discrimination are, among others: incorporating the values of equality in the national constitution, statutes or other regulations and ensuring their practical implementation; establishing organizations to protect against abuse; ensuring that government officials prevent discrimination; and abolishing all current legislation, outlawing customs and regulations that discriminate against women. The Iraqi Constitution of 2005 contains references affirming that the Government's approach is based on principles of equality and participation. The Constitution is the preeminent and supreme law in Iraq,¹⁴ and any text that contradicts it shall be considered void.¹⁵ The preamble to the Constitution states: "We, the people of Iraq ... have resolved with the determination of our men [and] women ... to respect the rule of law [and] to establish justice and equality" for all Iraqis. Moreover the concepts and measures to ensure equality have informed many other articles of the Constitution.¹⁶

However, Iraq still has not fully accepted all CEDAW articles, particularly Article 2 of CEDAW. The reason might be obvious because the clauses (f and g) of Article 2 respectively demands taking "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; To repeal all national penal provisions which constitute discrimination against women", In spite of the fact that the 2005 Iraqi Constitution demands equality before the law and provision of equal opportunities without discrimination, as stated in the Articles 14 and 16. The reactionary spirit of objection to (f - g) of Article 2 is manifest in Iraqi official attitudes towards another international convention. The International Covenant on Civil and Political Rights, ratified by Iraq without reservation, in Law No. 193 (1970) which is still in force, contains clauses identical to (f - g) of Article 2, yet because it does not have the same connotation as defending women's rights it did not face the same objection.

Regarding the Government of Kurdistan, and despite of its being within being in Iraq, has not the followed the suit and made several amendments to the Special Laws, to protect the interest of and reduce the discrimination against women. This not to say that it is progressive like Rwanda but Kurdish political establishment care about its international image and tries to present itself as adopting the International standards.

¹⁴ Article 13 (1) Constitution of Iraq

¹⁵ Article 13 (2) Constitution of Iraq

¹⁶ Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined fourth, fifth and sixth periodic reports of States parties, Iraq*, ((2013, CEDAW/C/IRQ/4-6), para 48



One of the sources of concern in implementing and defending the principle of equality in the interest of women is the Article 2 (1) of the Iraqi constitution states. According to clause A of this Article; “No law may be enacted that contradicts the established provisions of Islam. This clause is immediately contradicted by clause B. “No law may be enacted that contradicts the principles of democracy. Clause C introduces even greater hurdle in the face clause A by saying that; “No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.”

So how these contradictory clauses of the same article in the Iraqi constitution will interact and what effects they will have on Iraqi laws and particularly women’s equality and rights. Obviously, a proportion of important legislation is not based on Islam. These advantage women clearly. The law is governing the equal inheritance protections for “tassaruf” under the Civil Code Article 1188. This law contradict Islamic ruling that grants women half of the share of men. Now if Paragraph (A) of this Article is to be implemented without respecting the other clauses of the Article, such a law and many more will be abolished and women are left with no adequate legal protections.

One might ask why should the clauses of the same Article in Iraqi constitution should be so contradictory. Perhaps, they are meant to be so. The secular and progressive elements in the drafting of the Iraqi constitution wanted to have clauses that counterbalance the Islamic guidelines. So the clause C in some ways protects women from being deprived from their rights if clause A is to be implemented fully. Khawam has stated that Article 2 is arguably inherently contradictory and not open to any genuine or consistent method of interpretation.¹⁷ However, Nathan Brown gives us a warning that we should not drop our guards. Brown rightly says that the future legislation is completely dependent on who has authority to interpret the article. So the conflict over Article 2 is by no means over.

Accordingly, we can deduce that the parliament of Iraq and that of Kurdistan as well bear the main responsibility, at least in principle, of how such inherently contradicting articles be interpreted and applied.

The Supreme Federal Court may also be assigned some role, considering that it is a body that has been called upon to interpret the articles of constitution.¹⁸

The above article of the constitution is further counter balanced by the Article 14 which states that ‘Iraqis are equivalent before the law without gender-based discrimination.’ This means that there are serious hurdles to implement the Islamic Sharia Laws and enforce the clause A of Article 2 of the Iraqi Constitution.

¹⁷ Khawam, J., ‘A world of Lessons: The Iraqi Constitutional Experiment in Comparative Perspective’, (2005) 37 Colum. Hum. Rts. L.Rev. 717, p 747

¹⁸ Nathan Brown, *The Final Draft of the Iraqi Constitution: Analysis and Commentary*, Carnegie Endowment for International Peace.

<https://carnegieendowment.org/files/FinalDraftofIraqiConstitution1.pdf>



Another source of concern to legislation favouring equality between sexes is what we find in the Article 1(2) of Civil Code which states that in the absence of any applicable legislative provisions in the law the court shall adjudicate according to the custom; in the absence of custom it will defer to the principles of the Islamic Shari. However, it can be noted that this law does not favour any school of interpreting Sharia laws.

The reason to be apprehensive about Islamic inspired laws and articles of constitution is that 'Islamic jurisprudence' provides little protection for women's rights given.

Nonetheless, the Iraqi Constitution 'permits the formation of regions and grants them the right to formulate their own constitutions to define the structure of regional authorities and the mechanisms whereby these authorities exercise their powers, provided there is no conflict with the Federal Constitution.'¹⁹

Given that, in accordance with the Constitution, regional officials have the power to practice their right to legislative authority, and regions have the power to enact legislation amending the implementation of federal law in the case of a dispute between federal law and regional law with respect to any matter, unless the exclusive powers of the federal authorities are infringed. On these grounds, the Kurdistan Region enacted Law No. 15 (2008), amending the Personal Status Act, No. 188 (1959).

Conclusion

In the section, our focus was on discrimination in Iraqi Kurdistan, and considering that Iraqi Kurdistan is a region of the federal Iraq and thus obligated to comply with its constitution, we have also focused on some constitutional and legal articles of Iraq that deal with discrimination in one way or another.

We noted that Iraqi Kurdistan does not have its own laws or constitutional articles that deal systematically with discrimination against women. Accordingly, it adopted those legal and constitutional rules that are articulated by law maker of Iraq. This meant that, the Region of Kurdistan does not have a definition of discrimination against women. In this context, we noted the legal measures of Rwanda. Rwanda's leadership seems to have genuine commitment to eradicating discriminations against women. The leaderships in Iraq and Kurdistan have been under many influences some advantageous for women's causes other not as much.

One of the major influences is the signing on and ratification of CEDAW. Iraq and Kurdistan by implication have signed on and ratified the CEDAW, this made them Parties to the CEDAW and entailed obligation to implement the principles of the convention.

However, Iraq has also expressed reservation on clauses (f, g) of Article 2 of CEDAW. So far the effects of this reservation have not impacted in the way of enacting laws discriminatory against women. But this does not mean that there are no risks of having laws disregarding

¹⁹ Article 120 of the Constitution



women's rights and equality. It is assumed that the balance of power between the reactionary and progressives in the parliament will impact on Iraq full commitment to CEDAW.

A third influence on Iraq and Kurdistan's commitment to women equality and rights is the clauses (A, C) of Article 2 of Constitution. We have also noted that these clauses are internally contradictory and that may have been deliberately made to be so, considering the composition of the drafters of the Iraqi Constitution. However, whether clause A is given the upper hand or the other two depends, like it is the case with the reservation on the Article 2 of CEDAW, ultimately on who will dominate Iraqi parliament and the Federal Supreme Court.

A fourth influence, which is specific to Federal Regions, and in this case only Kurdistan is the Article 120 of Iraqi Constitution which permits the federal regions to enact their own constitutions and laws provided that they do not conflict with the federal Constitution. Whether this article will be in the interest of women or against will also depend on the those who draft laws.

Finally, we should mention another influence. It is the international image. The region of Kurdistan, unlike other parts of Iraq, is very sensitive about its international image. This opens the door on a welcomed contribution that the international community can make.

Suggestions

1. The removal of Article 41 considering that it paves the way for inequality.
2. Remove Article 2 (A) of Constitution, which is contradictory with the two other clauses of the same Article.
3. Cancel the Iraqi reservation against the clauses (f. and g) of CEDAW.
4. Kurdistan parliament should articulate in clear terms the aim of achieving full equality and enjoyment of rights by women.