

# **The Report of the Haqqey network for human rights defenders on recommendations (14), (16) and (40) of the report of the CEDAW Committee for the year 2020-2021**

## **Introduction**

Iraq had ratified and acceded to CEDAW (26) years ago according to Law (66) in 1986, which includes the elimination of all forms of discrimination against women at all levels, but Iraqi women are still suffering from marginalization, exclusion and gender discrimination at all human, social, economic, cultural and political aspects and levels. Women's opportunities for political participation and decision-making are still stumbling and unavailable due to the absence of political will despite the text of Article (14) of the Iraqi Constitution issued in 2005 which confirms: (Iraqis are equal before the law without discrimination based on gender....etc), as well as the provisions of Article (16) of the Constitution which affirms that equal opportunities are guaranteed to all Iraqis, besides Article (20) of it stated that (citizens, both men and women, have the right to participate in public affairs), but women's assumption of advanced positions remains secondary and not among the government's priorities.

## **Who are we?**

The Haqqey network for human rights defenders is a mass feminist organization officially registered in the Non-Governmental Organizations Department. It worked on preparing this report in partnership and cooperation with a group of women defenders and activists specializing in women's issues. The association contributed with women defenders, along with a wide audience of civil society organizations, in all defending operations and advocacy campaigns to demand the participation of Iraqi women in the political process and the strengthening of their roles in decision-making positions on the basis of the application of the principle of a feminist quota, with no less than a third of the seats in the executive authority. Iraqi women possess high competence in various specializations, leadership and administrative fields, and they can take up the minister position of any ministry and manage it successfully, however, the rights of women were denied in all successive parliamentary sessions since 2003 until the preparation of this report, as women's representation in the executive body declined, and then the Ministry of State for Women's Affairs was abolished in 2015, which left a clear gap in the management of women's issues file and neglected even though Iraq is one of the first countries in the Arab region to develop a national plan for the implementation of Security Council Resolution 1325, which one of its most important pillars is participation.

## Recommendation 14

**A - Cancellation of Article 41 of the Constitution, which currently states that “Iraqis are free to abide by their personal status, according to their religions, sects, beliefs or choices, and this is regulated by law,” with the aim of ensuring equality between women and men, in accordance with the Convention and with Article 14 of the Constitution.**

## Preface

The Iraqi constitution of 2005 included Article 41 of the constitution, which states: “Iraqis are free to abide by their personal status, according to their religions, sects, beliefs, or choices, and this is regulated by law,” With the aim of ensuring equality between women and men, in accordance with the Convention (CEDAW) and with Article 14 From the constitution.. The Iraqi feminist movements formed popular pressure to stop the work of this constitutional article until the Constitutional Amendments Committee responded and considered this article one of the controversial articles. It was frozen to prevent its abolition due to another constitutional text that stands as an obstacle to its amendment or cancellation, which is Article 126 that prevents amendment or cancellation until after two electoral cycles.

Article 41 of the constitution is still posing a serious threat to the personal status, and has provided the opportunity for many influential forces and religious and radical parties to submit drafts (laws) based on sectarian grounds, to amend Personal Status Law No. 188 of the year 1959 in force, as an attempt to undermine many of the guarantees provided by the Personal Status Law for the Iraqi women, family and children, despite its contradiction with the principles of equality, justice and democracy stipulated in the Iraqi Constitution of 2005 in Articles 14 (Iraqis are equal before the law without discrimination based on gender, race, nationality, origin, color, religion, sect, belief, opinion, or the economic or social status), and Clause (B) of the Constitution (It is not permissible to enact a law that contradicts the principles of democracy). It also threatens the unity and independence of the judiciary stipulated in Articles 119, 278 and 88 of the Constitution. The existence of Article 41 remains a threat to social cohesion that is based on mixed family intermarriage.

And because of the discrimination enshrined (consecrated) in Article 41 of the Constitution and its conflict with the Personal and Civil Status Law, especially against women of other religions other than Islam, and the problems faced by many Christians, Sabeans and Yazidis, which requires reviewing discriminatory provisions and taking temporary special measures aimed at creating an environment in which women are not subjected to discrimination. De jure and de facto. (According to the law and according to reality).

## Retreat and serious threats

We find it important to remind the CEDAW Committee of the continuing serious threats posed by the failure to repeal Article 41 of the Constitution, such as:

- 1- Consecrating gender inequality, contrary to what is included in Constitutional Article No. 14: “Full gender equality before the law is guaranteed. Iraqis are equal without discrimination based on gender, race, nationality, origin, color, religion, sect, belief, and opinion, economic or social status.”
- 2- It constitutes a threat to the rule of law and the social fabric of society through repeated attempts to repeal the Personal Status Law No. 188 of 1959 in force by submitting bills that undermine the solid national status (positive) laws.
- 3- Political instability, sectarian tension, and the escalation of traditional attitudes as a result of male domination of power are factors that lead in practice to the application of Article 41 of the Constitution at the expense of women’s rights, which affects the authority of judicial decision in the courts without even adhering to the personal status law, which is one of its manifestations are the large number of underage marriages, marriage outside the court, polygamy, arbitrary divorce, and the weak implementation of women's right to inherit.
- 4- Repetition of the attempts of the religious parliamentary blocs to propose a draft amendment to Article 57 of the Personal Status Law regarding the mother’s custody of her children, and it was first read, and if it is approved, it is the beginning of the enactment of the Jaafari Status Law with the aim of repealing the Iraqi Personal Status Law No. 188 of 1959.
- 5- The return of dangerous tribal and clan manifestations that claimed the lives of hundreds of girls and women, such as the marriage of al-Fasliya (problem resolving settlement), al-Nahwa (marriage stopping), al-Kassa-b-kassa (one to one marriage) and the washing of shame, all of which are heinous crimes that contradict the human, social and personal rights of women despite the issuance of the Supreme Judicial Council in April 2019, after widespread organizational pressure, ordering the implementation of the most severe legal measures and penalties for perpetrators of Nahwa, which is one of the harmful tribal customs that poses a threat to the security of society; this Council has directed (ordered) all courts to tighten the legal sentences for the tribal crime of Nahwa coupled with the threat, and considered it a terrorist act for which the perpetrator is held accountable under Article Two of the Anti-Terrorism Law.
- 6- The continuous monitoring of civil society organizations, for the past two years, to the Personal Status Courts, which were directed to the dismissal of most cases, related to separation, or they are taken in a very specific way such as separation for desertion, on the pretext of high divorce cases. This forces women to accept ‘khula’, which means giving

up their rights and subjecting her to family pressures and bargaining from the husband or his family in exchange for divorce.

### As defenders rights, we emphasize the following recommendations:

- 1- The necessity of repealing Article 41 of the Constitution, which currently states that “Iraqis are free to abide by their personal status, according to their religions, sects, beliefs, or choices, and this is regulated by a law,” with the aim of ensuring equality between women and men by reducing the gender gap in pace with the agreement and with Article 14 of the Iraqi constitution. This is a controversial article and it is proposed to be amended by erase the phrase “Iraqis are free to abide by their personal statuses.” In addition, replace it by the phrase “the Personal Status for Iraqis is regulated the Personal Status Law.”
- 2- Repeal all discriminatory provisions contained in the Penal Code and the Code of Criminal Procedure, specifically Articles 128, 130, 131, 377, 380, 398, 409, 427, and other legislation, regulations, directives and instructions that contradict gender equality.
- 3- Expedite the legislation of the Law on Protection from Domestic Violence, in order to ensure the imposition of deterrent penalties on perpetrators of crimes of violence against women, in addition to recognizing the importance of shelters (safe havens) to protect women survivors of violence and protect them from homelessness, exploitation and trafficking.
- 4- Determining a timetable for follow-up and evaluation to review national legislation and the measures taken to improve and harmonize them in line with Iraq's international obligations towards respecting human rights and women's rights.

### Recommendation 16

**Reinstate the Ministry of Women's Affairs and give it a ministerial portfolio and a clear mandate to promote and protect women's rights and advance gender equality; allocating sufficient human, technical and financial resources for this; strengthening its capacity to influence the formulation, development and implementation of public policies on gender equality; besides strengthening the role of this ministry in the field of coordination and supervision of the preparation and implementation of legislation in the field of gender equality and in mainstreaming the gender perspective in all laws and policies.**

- 1- In 2004, women rejoiced with the creation of the Ministry of State for Women’s Affairs, and some considered its creation a clear message confirming Iraq’s interest in a wide segment of society, rather its most vulnerable segments, while others emphasized that the ministry is the product of political quotas and not the

- government's conviction that women's affairs need a ministry and that it is an essential step in the process of supporting and assisting women and protecting their rights, but it remained an agency that was unable to follow up and meet the needs of women during its tenure of work for more than (10) years; it was unable to advance the situation of Iraqi women and support them as a result of conflicts, political bickering, partisan nepotism, and financial and administrative corruption, being a ministry without full powers and without Financial allocations.
- 2- The Ministry of Women has not been re-worked after its abolition in 2015, but the Department of Women Empowerment was created in the General Secretariat of the Council of Ministers, followed by naming a female advisor to the Prime Minister on women's affairs. An acceptable female figure was not chosen for this position, but rather it was the result of sectarian quotas and to satisfy the ruling parties.
  - 3- The opposition of some Islamic blocs and influential parties is still strong, which deliberately marginalizes the role of women and does not allow them to assume leadership positions in the state or to participate in making political decisions that serve the country.

### Dissimilar Organizational Attitudes

- The issue of female representation (or the body that represents women and continues to pay attention to the issues of Iraqi women and girls) has created a controversy among the organizations themselves, as many of them demanded the re-work of the Ministry of Women as a ministerial portfolio with full powers and financial allocations that would make it able to monitor and follow up on the situation of women and enable them to play real roles outside the frameworks of quotas.
- On the other hand, a group of organizations that have some kind of national and local influence called for the speedy formation of an advisory council for women's affairs only.
- While some organizations (activists and advocates) succeeded in unifying visions, based on the importance of women's issues as a priority that deserves greater attention and concerted efforts, and stressing the need to re-work in the ministry with full powers and financial allocations to enable it to play its role in addition to forming an advisory council for women's affairs on the condition that they should be chosen according to professionalism and women's competence, away from quotas in the sharing of positions; both bodies should work in parallel and in coordination to address (handle) all matters related to women's rights and enhance their participation in all decision-making positions.

## Attitudes and motives that seek marginalization

Despite all the public pressure and the ongoing women's movement, the decision-makers' response was disappointing for Iraqi women, especially in the stages of forming a government in 2018, and the government that came as a result of the Iraqi demonstrations in October 2019, where women's representation remained weak and based on a distasteful quota basis.

While the Department of Women Empowerment remained the only body that works now in the General Secretariat of the Council of Ministers, which is the executive body for women's affairs in Iraq and is concerned with following up the implementation of national plans and strategies aimed at enhancing women's political participation, but it needs a lot of work to go in line with what was stipulated in Recommendation 16 of the Committee CEDAW.

## Recommendation 40

**Ensure that immediate humanitarian assistance and protection needs are complemented by long-term strategies that support the socio-economic rights and "earning a living" opportunities of returnees, internally displaced (IDPs) and refugee women; also, by reinforcement of women to assume leadership positions and their participation in politics, with the aim of enabling them to sustain their livelihoods.**

On International Women's Day, in the Iraqi capital, Baghdad, the signing and ratification ceremonies of the "Yazidi Survivors" law (which the Iraqi parliament had approved on 1/8/2020) were carried out by the president of the republic of Iraq. This law is considered a compensation for survivors in most of its articles and articles except for Article 9, which states that what happened against them and the Yazidi component in general is a genocide. The law stipulates the formation of a general directorate for the affairs of Yazidi survivors, and that its general director should be from the Yazidi component since the majority of victims are Yazidis.

This compensatory law allocates monthly salaries to female survivors as well as child survivors, and these salaries will include them in addition to other privileges such as allocating a plot of land that can be converted into residential land with government support. Women survivors were included with the exception of the age requirement to complete their studies, even in the field of government appointments at the governorate level. A share of 2% of those appointments will be allocated to them; there are many other compensatory materials and paragraphs such as allocating rehabilitation centers, psychological and health treatment for them, and other forms of compensation for this oppressed segment.

However, we find loopholes in the law that need to be addressed. The Survivors' Law emphasized the Yazidis and included other components (Christians, Turkmen and Shabaks). The law did not address the children of survivors.

- 1- The law did not address the children of survivors who were born as a result of rape by ISIS members
- 2- No amounts (budget allotment) have been allocated to government institutions approved by law
- 3- Bureaucratic handling of compensation for survivors. The government routine followed in following up on the status of women survivors despite the law in December 2020, and no measures were taken to implement it under the pretext that there are no financial allocations, knowing that an office for survivors was opened in Mosul and a general manager of the department was appointed
- 4- It is more successful to owning residential homes instead of allocating plots of land or allocating sums and grants to support survivors to build the lands that will be allocated to them.
- 5- Women survivors were not psychologically and healthily rehabilitated, and this was limited to international organizations and civil society.

### The United Nations and the representative of human rights have welcomed

- ✚ the adoption of the law, especially in its reference to the kidnapping of Christian and Turkmen girls, ... etc., and expressed its deep concern about this, and if they became pregnant, mothers often face obstacles to register these children due to the absence of the father, and children of Yazidi women born of sexual exploitation and enslavement by ISIS are not accepted in Yazidi communities.

### Our observations:

Referring to the statement of the human rights representative that “these children are at risk of abandonment, and Yazidi mothers face a difficult choice of leaving their children or their community”. We call on the Iraqi government to strengthen mediation and social cohesion efforts, with the participation of those affected, to protect the rights of both children and their mothers, and support them in achieving a permanent solution to their displacement.

We call on the international community to provide support for victim-centred programs and initiatives in Iraq that contribute to law enforcement, including promoting social cohesion and reconciliation to support durable solutions for IDPs.

Statistics of the Yazidi Kidnapped Rescue Office, as a result of heinous crimes committed by the terrorist organization of the Islamic State in Iraq and al-Sham (ISIS) against the Yazidis, since 03-08-2014

- ✚ The number of Yazidis in Iraq was about 550,000 people
- ✚ The number of displaced people as a result of the ISIS invasion is about 360,000 displaced. The number of those who returned to Sinjar is estimated at 150,000.
- ✚ The number of martyrs in the first days of the invasion was 1293 martyrs. . .
- ✚ The number of orphans produced by the invasion is 2745
- ✚ The number of mass graves discovered in Shingal so far is 82 mass graves. In addition to dozens of individual cemetery sites.
- ✚ The number of religious shrines and shrines bombed by ISIS: 68 shrines.
- ✚ The number of those who immigrated outside the country is estimated at more than 100,000.
- ✚ The number of abducted Yazidis is 6417, of which (females, 3548) and (males of 2869), including children.
- ✚ The numbers of male and female survivors from the grip of the terrorist ISIS are as follows:
  - 1- The total is: 3550, including: (women 1206), (men 339), (female children 1049) and (male children 956).
  - 2- The number of kidnapped Yazidis who were martyred at the hands of ISIS and whose Bodies were found are 104.
  - 3-The number of the rest is: 2763 (Female: 1293) and (Male: 1470).
- ✚ About the victims and abductees of Arab Muslim women in the areas occupied by ISIS:
  - 1- Although there are no official statistics about the number of women victims, it is estimated that there are 800-1200 women in Mosul alone who were liquidated by ISIS (Mosul Development Institute)
  - 2 - The Iraqi government should work on preparing accurate statistics of ISIS victims of all nationalities and religions to ensure access to justice for all and the elimination of discrimination

## attachments:

- 1- Additional information about Article 57 of the Personal Status Law
- 2- Statement by the Director General of the Survivors' Office
- 3-The Human Rights Committee correspondence letters to the General Secretariat of  
the Council of Ministers and the Ministry of Foreign Affairs
- 4-Paragraphs of the Personal Status law
- 5-Notes and Resources