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Violence and Discrimination against Women in Iraq

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1. This report is submitted by MADRE (an ECOSOC accredited NGO) and The Organization of Women's Freedom in Iraq (OWFI). It focuses on violations of the rights of Iraqi women suffering violence and discrimination. The information was gathered through field visits, drawn from the primary documentation of personal testimonies gathered in Iraq since 2010 in both English and Arabic, and is supported by reports by news agencies, governments, and international human rights organizations.

I. Background and Context

2. While all Iraqi citizens face daily insecurity due to terrorism and civil strife, women and girls experience additional and unique forms of violence and discrimination because of their sex. Despite numerous provisions under Iraqi law that aim to protect women's human rights, violence against women remains egregious and widespread.¹ Weak rule of law and judicial process, in combination with social tolerance, have fostered the growth of organized crime, impunity for gender-based and domestic violence, trafficking, rape, and a resurgence of harmful traditional practices based on tribal and religious law as well as exclusion from the public sphere and the denial of equitable access to legal protections and public services.

3. This report documents five main areas of concern: (i) sex and labor trafficking of women and girls by organized crime; (ii) gender-based violence such as rape and sexual assault, including in state detention; (iii) domestic violence in the form of spousal abuse as well as underage, forced, and/or temporary marriages; and (iv) honor crimes that target women.

¹ April 2012 of Iraq's Independent Commission for Human Rights (ICHR), which lists among its objectives the protection of women's human rights, has made no discernable impact.

II. Trafficking

4. Iraq has become a major source and destination for trafficked women and children in the region. Ongoing instability and increased refugee mobility within Iraq and in neighboring Syria has exacerbated this trend, and the number of Iraqi victims is growing.² Iraqi law explicitly prohibits forced labor, slavery, trafficking in women or children, and the sex trade.³ April 2012 saw the passage of comprehensive anti-trafficking legislation that features provisions for the protection of victims and prosecution of offenders.⁴ Yet weak governance and low enforcement have nevertheless established Iraq as a regional trafficking hub.⁵

5. A common practice is to record the rape of women and girls and use the film to coerce victims into prostitution, or to post bail for incarcerated women to extort them into sex work via debt bondage.⁶ Widespread killings, kidnappings, and the arbitrary detention of men by security services leave behind women and children in extreme financial hardship, increasing their vulnerability to being trafficked for the purpose of forced labor, prostitution, or temporary marriages (discussed below).⁷

6. A major concern is that women may be prosecuted for crimes they were forced to commit while trafficked. Although the Penal Code explicitly addresses trafficking in persons⁸, there have been reports that security officers and judges are not educated about the law and courts continue

² US Department of State, “Trafficking in Persons Report 2013 – Iraq,” 19 June 2013. <http://www.state.gov/documents/organization/210739.pdf>

³ The Iraqi Government ratified in 2009 Annex II of Resolution 55/25, which is the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.”

⁴ The Iraqi Constitution,

http://portal.unesco.org/ci/en/files/20704/11332732681iraqi_constitution_en.pdf/iraqi_constitution_en.pdf

⁵ Hafaza International, “Combating Human Trafficking: Iraq Initiative.” 2013. http://hafazainternational.org/wp-content/uploads/2013/12/Hafaza-International_Combating-Human-Trafficking_Iraq-Initiative_November-2013-1.pdf;

⁶ US Department of State, *supra* note 2.

⁷ *Id.*

⁸ The Iraqi Penal Code, Trafficking In Persons Law, art. 6.

to prosecute trafficking victims under laws criminalizing prostitution.⁹ A US Department of State report found that victims of trafficking have been incarcerated, fined, or otherwise penalized for unlawful acts committed as a direct result of being trafficked.¹⁰ In one case, a minor forced to work in a brothel for one year was convicted and sentenced to six months' imprisonment.¹¹

7. Migrants are also at increased risk of trafficking and exploitation. Women from Bangladesh, Nepal, the Philippines, and Uganda are deceived, forced, or falsely promised legitimate employment.¹² This vulnerable population has difficulty accessing justice and repatriation, as evidenced by a case handled by OWFI in which nine Ugandan women were provided with temporary shelter. They reported broken ribs from abuse, starvation and sexual violence in the homes of employers and/or recruiters.

8. There has been minimal enforcement by the Iraqi government to combat trafficking. While the government conducted some investigations and at least one prosecution under the 2012 Anti-Trafficking Law, Iraqi courts have so far not issued any rulings in human trafficking cases.¹³ Moreover, the Government has consistently failed to investigate or punish Government officials who face allegations of complicity in trafficking-related offenses.¹⁴

⁹ Human Rights Watch. "World Report 2014: Iraq", <http://www.hrw.org/world-report/2014/country-chapters/iraq>.

¹⁰ US Department of State, *supra* note 2.

¹¹ Sherizaan Minwalla, William H. Pryor, "Advancing Access to Justice for Sex Trafficking Victims in Iraq." International Law News 42(4), Fall 2013, http://www.americanbar.org/publications/international_law_news/2013/fall/advancing_access_justice_sex_trafficking_victims_iraq.html.

¹² US Department of State, *supra* note 2.

¹³ Amal Sakr, "Iraq a hotbed of human trafficking," Al-Monitor. (Jan. 20 2014), [http://www.al-monitor.com/pulse/originals/2014/01/iraq-human-trafficking-absence-law.html?utm_source=Al-Monitor+Newsletter+\[English\]&utm_campaign=eb6937b2e0-January_9_2014+8_2014&utm_medium=email&utm_term=0_28264b27a0-eb6937b2e0-93145825##ixzz2sNIvDJlu](http://www.al-monitor.com/pulse/originals/2014/01/iraq-human-trafficking-absence-law.html?utm_source=Al-Monitor+Newsletter+[English]&utm_campaign=eb6937b2e0-January_9_2014+8_2014&utm_medium=email&utm_term=0_28264b27a0-eb6937b2e0-93145825##ixzz2sNIvDJlu).

¹⁴ US Department of State, *supra* note 2.

III. Gender-Based Violence against Women

9. Gender-based violence (GBV) is pervasive in Iraq. Rape and sexual assault, while criminalized in the Penal Code, continue to be met with apathy. Impunity prevails. The Criminal Code states that perpetrators of crimes involving sexual violence may be exonerated if they marry their victim.¹⁵ In cases where rape results in the death of the victim, the Penal Code does permit a maximum sentence of life imprisonment, though this is rarely enforced.¹⁶ At present, there are no reliable estimates of the incidence of rape in Iraq or the effectiveness of Government enforcement of the Penal Code law.¹⁷

10. Rape victims in Iraq are also unlikely to press charges against perpetrators and pursue legal remedies due to societal pressures and norms, as well as pressures from their families to maintain family honor. A United Nations Development Program (UNDP) report highlighted several instances of rape in Iraq in which the families of the rape victim encouraged that victim to marry her aggressor.¹⁸ According to this report, when these women refused these marriages, some families pressured judges to force the marriage between survivor and rapist.¹⁹

11. GBV, including rape, torture, and sexual assault in state prisons and detention centers is extensive and systematic.²⁰ The Ministry of Human Rights has consistently failed to investigate allegations of abuse within prisons, and the criminal justice system remains unreformed.²¹ Women are subject to arbitrary arrest without a warrant, and detained without trial for periods of

¹⁵ Iraqi Criminal Code, art. 427.

¹⁶ UK Foreign and Commonwealth Office, "Human Rights and Democracy 2012: Iraq," <http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/iraq>.

¹⁷ *Id.*

¹⁸ US Department of State, "Iraq 2012 Human Rights Report," www.state.gov/documents/organization/204572.pdf.

¹⁹ *Id.*

²⁰ According to Human Rights Watch, female detainees are reported to number more than 1,100 as of June 2013.

²¹ UK Foreign and Commonwealth Office, *supra* note 16.

up to a year.²² There is also evidence that many women are targeted as reprisal for crimes allegedly committed by male family members.²³ Detained women may subsequently face social or familial ostracism for their perceived dishonor.²⁴

12. Overt and pervasive discrimination in the legal and criminal justice system limits women's recourse in the case of a crime. Reports indicate that lawyers often refuse cases of rape or sexual assault for fear of harassment. A lack of adequately trained police and judicial personnel impedes efforts to bring perpetrators to justice.²⁵ The Iraqi legal system also places onerous restrictions on women and girls. According to local Iraqi women's rights NGO, OWFI, staff members assisting a female Iraqi minor, whose entire family had been murdered, were told that she could not obtain identification documentation without the presence of male relatives until she reached 18 years of age. This left her unable to attend school, obtain social care or access a range of other public services.

13. GBV and discrimination thus de facto exclude women and girls from the public sphere forcing them to forfeit their rights to education, employment, legal and other public services.²⁶ In 2013, UNAMI reported a ratio of .94 females to males in primary school, and .85 females to males in secondary school. Further 28.2% of women aged 12 yrs or older remain illiterate, as

²² Human Rights Watch. "No One is Safe: The Abuse of Women in Iraq's Criminal Justice System," 7 February 2014.

²³ *Id.*

²⁴ *Id.*

²⁵ US State Department, *supra* note 18.

²⁶ Center for Research on Globalization, "US War Crimes: The Continuing Deterioration of Women's Rights in Iraq," 2 February 2014, <http://www.globalresearch.ca/the-continuing-deterioration-of-womens-rights-in-iraq/5367085>.

opposed to 13% of males from the same age range.²⁷ Large employment discrepancies also exist, with a mere 14% of women working or seeking employment, compared to 73% of men.²⁸

14. In the absence of Government sponsored services and legal remedies to address GBV, local Iraqi NGOs are at the forefront of providing the necessary services to protect and heal victims. However, NGOs and women's rights defenders that seek to assist women and girls encounter regular harassment, arbitrary surveillance, and warrantless searches. Many human rights organizations are forced to operate illegally and clandestinely, especially those who shelter women fleeing violence, which remains illegal for NGOs in Central and Southern Iraq.

IV. Domestic Violence

15. Domestic violence receives widespread societal acceptance as well as implicit or explicit legal sanction in Iraq. Traditional social attitudes tend to regard relations within a marriage or family home as a private matter outside of the purview of the formal legal system. The Penal Code seems to reinforce this attitude with provisions such as Article 41, which allows a husband to resort to physical violence against his wife "within certain limits prescribed by law or by custom."²⁹ Marital rape is not recognized by the penal code. According to the UN, 56% of Iraqi men believe they have a right to beat their wife if she disobeys.³⁰ A 2012 report noted that 21% of married Iraqi women reported being beaten by their husbands.³¹

²⁷ UNAMI, "Women in Iraq Factsheet," March 2013, <http://unami.unmissions.org/LinkClick.aspx?fileticket=xqx9gxy7Isk%3D&tabid=2790&language=en-US>.

²⁸ *Id.*

²⁹ The UN Secretary-General's database on violence against women, <http://sgdatabase.unwomen.org/searchDetail.action?measureId=42003&baseHREF=country&baseHREFId=654>.

³⁰ UNAMI, *supra* note 27.

³¹ UK Foreign and Commonwealth Office, *supra* note 16.

16. The Government of Iraq has failed to show commitment in enacting comprehensive national legislation against domestic violence. A draft law on domestic violence appeared in 2012, but has not entered into effect. According to a report by Human Rights Watch, there have since been highly troubling developments around a new personal status law drafted by the Justice Ministry and sent to the Cabinet for approval in October 2013.³² The law is reported to threaten a number of women's rights by establishing that religious, rather than civil, courts address personal status disputes for Iraqi Shi'as. This would lower the marrying age for females to as low as 9 years old in addition to potentially changing custody, adoption, and inheritance rights.³³

17. Underage and forced marriages are a growing problem. According to the Iraqi Ministry of Planning, 11% of all married women had been married underage. Yet among women between 20-24 years of age, a full 25% had been married before their 18th birthday.³⁴ "Uneven" and underage marriages, once largely limited to rural areas, are now more common in cities as religious and tribal codes gain traction in the country.³⁵

18. Forced marriages remain a reality for many Iraqi women. Forced marriage may include "bride exchanges" among families, or often arise in the aftermath of rape, where a criminal trial may be suspended if the rapist agrees to marry the victim³⁶. Women are particularly likely to suffer abuse in forced marriage as part of *diyya* (blood money) settlements, whereby a woman from the killer's family is forced to marry into the family of the deceased.³⁷ Despite the

³² Human Rights Watch, *supra* note 9.

³³ *Id.*

³⁴ Population Reference Bureau (PRB), "Ending Child Marriage in the Arab Region." Policy Brief, May 2013, <http://www.prb.org/pdf13/child-marriage-arab-region.pdf>. This attests to the limited enforcement of the Personal Status Law No. 188, which sets the official minimum age of marriage for males and females at 18 years

³⁵ Al-Monitor, "Underage marriages growing in Iraqi cities," 14 February 2014, <http://www.al-monitor.com/pulse/originals/2014/02/underage-marriage-iraq-continues.html#>.

³⁶ Pursuant to the Penal Code, art. 427.

³⁷ Al-Monitor, "Iraqi Women Victimized by Tribal Marriage Customs," 12 September 2013, <http://www.al-monitor.com/pulse/originals/2013/09/iraq-women-forced-marriage-tribal-customs.html>.

widespread nature of forced, semi-forced, or arranged marriages in tribal custom, the Iraqi legal system has few provisions for their prevention or prosecution. Forced marriages are not addressed in courts unless a woman files a complaint, whereby she must prove that she was subject to coercion.³⁸ The law does not afford any legal immunity or assurances of safety following a complaint, which means women may subsequently be vulnerable to retribution from powerful family members.³⁹ Suicides, especially by self-immolation, have spiked as young women protest forced marriage arrangements.⁴⁰

19. Financial desperation and widowhood have also led to a rise in temporary marriages. Temporary, or *muta'a* (pleasure), marriages had previously been very rare in Iraq, but have reemerged under the growing influence of Shi'a religious sources.⁴¹ In these controversial marriages, women and girls are “married” in the presence of a religious figure for a fixed period of time, which can be as short as several hours. In practice, this is often under family duress or personal desperation in cases of extreme poverty, because the man is obliged to pay a “dowry” to the woman or her family.⁴² Iraqi State law neither recognizes nor regulates these marriages, which leaves women vulnerable to various forms of GBV, as well as trafficking and possible criminal charges related to prostitution.

20. While the Central Government in Iraq has failed to effectively address domestic and other forms of violence against women, legislative progress has been made at the regional level. In 2011 the Kurdish Regional Government (KRG) passed Domestic Law No. 8, The Law against

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Center for Research on Globalization, *supra* note 26.

⁴² IRIN (UN Office for the Coordination of Humanitarian Affairs), “IRAQ: Women’s groups blast ‘temporary’ marriages,” 23 January 2006, <http://www.irinnews.org/report/26074/iraq-women-s-groups-blast-temporary-marriages>

Domestic Violence in the Kurdistan Region of Iraq, which addresses various forms of domestic violence, including physical abuse, female genital mutilation, spousal rape and threats, and psychological abuse. Since the law's passage, the KRG, as well as local NGOs, have taken steps toward raising public awareness of the law through the use of town hall meetings with civil society, as well as targeted training of police and judges in the proper handling of domestic violence cases. According to local Kurdish NGO Women's Organization for Legal Assistance (WOLA), awareness of the law has also spread to activists and organizations from central and southern Iraq that draw on the principles of the law, and the example of its passage, to fuel similar legislative initiatives in their cities.

21. While the region has experienced positive progress with regard to the law, including the establishment of domestic violence courts and anti-domestic violence centers in the three provinces of Sulaymaniyah, Erbil and Duhok, monitoring and evaluation of the law reveal that full implementation is limited. According to a report released by WOLA, despite the existence of domestic violence courts, these courts continue to try both domestic violence and other criminal cases, and no system has been created to disaggregate data on domestic violence cases alone.⁴³ Under Article 6 of the law, provinces are mandated to create specialized domestic violence units within police stations, composed primarily of female officers. However, WOLA reports that this is also slow in coming, as ministries continue to assert that women do not like to join the police force because of social traditions.⁴⁴ Similarly, Resolution 199/25 of October 2012 calls on the ministries of the interior to establish female-run police offices with the specific mandate of addressing domestic violence, but 16 months after the resolution's passage, only two of these

⁴³Women's Organization for Legal Assistance, "Report on the Supervision of the Domestic Violence Law Implementation," February 2, 2014.

⁴⁴ *Id.*

offices are now open in Sulaymaniyah and Erbil, respectively, and only one exists in Duhok. According to WOLA, though open, these police centers are not as active as their mandates call for them to be, and many people remain unaware of their functions and the services they offer.⁴⁵ WOLA notes that “Great indifference from the KRG and the judicial authority...is felt...in regard to the implementation of the domestic violence law. The attempts made appear to be more ceremonial than serious.”⁴⁶

V. Honor Crimes

22. Honor crimes, which predominantly take the form of honor killings, are committed against women in Iraq by family or community members as a way to restore collective honor. Reports highlight that honor killings remain a serious problem throughout all parts of Iraq, and are often arranged to appear as suicides. As a result, the statistics and numbers generated with regard to honor crimes are grossly inaccurate and do not reflect the severity of the situation.⁴⁷

23. Tolerant attitudes and legislation foster an environment in which arrests related to honor crimes are infrequent and judges often hand down extremely lenient sentences, even for murder.⁴⁸ The Penal Code furthermore permits honor considerations to mitigate sentences.⁴⁹ Clemency on the part of the justice system sends a message to Iraqi women and society at large that such gross acts of violence are tolerated.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ US Department of State, *supra* note 43.

⁴⁸ International Gay and Lesbian Human Rights Commission, “Iraq Baseline Study,” January 2013, <http://iglhrc.org/sites/default/files/Iraq%20Baseline%20Study%20Final%20with%20Table%20of%20Contents%201.29.13.pdf>.

⁴⁹ US Department of State, “Iraq 2011 Human Rights Report,” http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186428#wrapper.

24. A 2012 annual report published by the Implementation and Protection of Rights Unit at the Iraqi Ministry of Human Rights indicated that between 2012 and 2013, the Supreme Judicial Council only made a final decision in ten cases of honor killings.⁵⁰ This degree of impunity emphasizes how the law protects the perpetrators, rather than victims, of honor crimes. The reluctance on the part of authorities to enforce laws against honor killings often relates to sympathy for the perpetrators, and traditional codes justifying the practice.⁵¹

25. In the absence of protection mechanisms and legal remedies people threatened with honor crimes have limited recourse; some are forced to flee the country with no guarantee of safe haven, and some, feeling a sense of deep injustice and powerlessness, are led to suicide. A 2013 report from the US Department of State notes that in the Kurdistan region of Iraq, suicidal women used self-immolation as a method of killing themselves, and authorities dismissed certain cases as “accidents.”⁵²

VIII. Recommendations

26. We respectfully request that the Human Rights Council ask the Iraqi government to do the following:

- A. The State should continue to use the anti-trafficking law to prosecute human trafficking offenses, including those in which government employees are complicit;
- B. The State should institute guidelines for police, labor inspectors, and other officials to proactively identify and refer trafficking victims to protection services, including non-governmental services and shelter;

⁵⁰ International Gay and Lesbian Human Rights Commission, *supra* note 46.

⁵¹ *Id.*

⁵² US Department of State, *supra* note 43.

- C. The state should implement a policy to provide protection to trafficking victims from punishment of crimes committed directly related to being subjected to human trafficking, including forced prostitution and immigration violations;
- D. The State should establish a legal framework for NGOs to operate shelters that provide assistance to victims of all forms of gender-based and domestic violence;
- E. The State should train its police and judicial personnel to deal appropriately with victims of GBV and domestic violence;
- F. The State should take steps to end the practice of forced and temporary marriages that entrap girls in sexual and domestic servitude; and undertake a public awareness campaign to raise awareness of sex trafficking and forced labor;
- G. The State should outlaw honor crimes, including honor killings, and prosecute perpetrators to the full extent of the law.