

VERANSTALTUNGSBEITRAG

Konrad-Adenauer-Stiftung e.V.

AUSLANDSBÜRO JORDANIEN

February 27-28, 2013

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A Research on Challenges Facing Iraqi Women in Obtaining Legal Rights

Event: Regional Roundtable Discussion

Date, Place: February 27-28, 2013, Coral Suits Hotel, Beirut – Lebanon

Concept: Suzan Aref, Dr. Otmar Oehring, Dr. Dima Dabbous

Organization: Women Empowerment Organization, Konrad Adenauer Stiftung – Amman Office, Institute for Women's Studies in the Arab World

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Objective

Women's rights in Iraq have had a long lasting history and used to be the most developed ones in the region. At the beginning of the 90s however, these rights continuously decreased and have not recovered until today. While the Kurdish region has been able to make progress in the field of women's rights in the last decade, mostly legally, the Arab part of Iraq is still facing severe problems, legally as well as in practice.

In this context, Konrad Adenauer Stiftung Amman/KAS Amman, the Women Empowerment Organization/WEO, and the Lebanese American University Beirut/LAU organized a regional roundtable on the 27th and 28th of February 2013 on the challenges Iraqi women are facing in the process of obtaining legal rights. Women's rights activists, academics from the field of Gender Studies, as well as high ranking judges participated in the workshop to discuss gender discrimination in the Iraqi law.

The roundtable was moderated by Ta'ameem Jaleel Al Azzawie who is a lawyer and trainer on women's rights from Baghdad, Iraq.

The workshop will be followed by a number of meetings aimed at writing a comprehensive research paper that uncovers the defects in the Iraqi legislation as well as the discrimination of women on the ground - a result of the patriarchic system. Additionally, the study will give recommendations to amend discriminating articles and implement equitable laws.

Welcome Speeches

At the beginning of the workshop the organizers Suzan Aref, WEO, Mr. Peter Rimmele, KAS Beirut, Dr. Otmar Oehring, KAS Amman, and Dr. Dima Dabbous of the Institute of Women's Studies in the Arab World at LAU Beirut welcomed all participants and thanked them for their great commitment and a fruitful

cooperation. They emphasized that it is the combination of participants that makes this roundtable highly efficient. Activists, academics, and legal representatives will network and form qualitatively high focus groups for the subsequent research.



From left to right: Suzan Aref, Peter Rimmele, Dr. Otmar Oehring, Dr. Dima Dabbous

CEDAW and the Importance of Committing to the International Agreements

At the beginning of the first session Ta'ameem Jaleel Al Azzawie explained the background of Iraq and international agreements with a focus on CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women.¹ CEDAW had been signed and ratified by Iraq in 1986. However, the application and implementation of the agreement and its articles on the ground has not been successful. One reason is that legal bodies, such as judges, lawyers etc., have not been committed sufficiently to its articles. The second reason is that Iraq made reservations to Art. 2 (f) and (g), Art. 9 (1) and (2), Art. 16, and Art. 29 of the convention which significantly undermines its efficiency as they are made to core articles of the convention. The reservations have been placed although Iraq has signed the Vienna Convention which forbids

¹ The text of the convention can be found under the following link:
<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

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reservations on main articles of international agreements that undermine the essence of a treaty.

The text of the articles holding reservations would pledge the state to the following:

- Art. 2 (f): To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- Art. 2 (g): To repeal all national penal provisions which constitute discrimination against women.
- Art. 9 (1): States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
- Art. 9 (2): States Parties shall grant women equal rights with men with respect to the nationality of their children.
- Art. 16: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women (...).
- Art. 29: Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration (...).

During the subsequent discussion, participants emphasized with regard to Art. 16 that the main problem of this reservation

is the fact that it denies women the right to freely choose who they marry. Thereby, it also allows parents and judges to marry kids under the age of 16 without any legal consequences.

Thus, the Iraqi constitution is rated over CEDAW which makes the international agreement inefficient. In this context, participants noted that it needs a better harmonization between international conventions, specifically CEDAW, and national legislations. Therefore, legal representatives, mainly judges, have to be involved in the study to be conducted in order to put more pressure on officials to implement international treaties in the national legal systems.

Discrimination Against Women in Iraqi Legislation – Constitution and Personal Status Law

Before interpreting the various discriminating articles in depth, the technical difficulties of the constitutional text were discussed.

Judge Rahem Aligeeli stressed an important point. He explained that the order of the constitution is highly important for the impact of its articles and paragraphs. That means that a paragraph in the constitution stands above the preceding one with regard to the influence of its content. Art. 2 (c), for instance, is valued higher than Art. 2 (b) while (b) is rated higher than 2 (a).

Furthermore, the text of the articles is not clear and leaves too much room for interpretation. This has a huge influence on its application which presents a problem that needs to be tackled as it can lead to legal abuse; especially, because prosecutors are often influenced by their own background and mentality. Here, it needs

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better independent observation bodies to tackle the problem. It was further noted that the style of writing includes women politically but not really in the rights regarding cultural issues.

Additionally, the way the constitution has been created is a reason for its shortcomings: Various people and groups with different social and religious backgrounds participated in the establishment of the constitutional text. The law is an outcome of different official actors, mainly clerics, that were creating the law beneficial for their own confession or tribe and, hence, their self interest. With 17 confessions and a high number of tribes this, of course, had a significant influence on the laws.



Workshop participants

Particularly Art. 41 of the constitution has led to widespread criticism among women's rights activists as it allows for a draconic interpretation of Islam. The text of the article is as followed:

Art. 41: The followers of all religions and sects are free in the:

- (a): Practice of religious rites, including the Husseini ceremonies (Shiite religious ceremonies)

- (b): Management of the endowments, its affairs and its religious institutions. The law shall regulate this.

Second: The state guarantees freedom of worship and the protection of the places of worship.

The main dilemma of the article is the fact that it can be used as an excuse for practices that are not compatible with basic human rights laws. As the law says that every individual is free in practicing its personal status according to its religious rites, it allows for instance the marriage of minors as the age of marriage is different in every religion. Also inheritance or even incest is interpreted differently in the confessions. Moreover, Art. 41 is highly influential on other laws. An example is the custody for a child. In principle the woman should have custody for her child. However, Art. 41 questions this regulation as some confessions have their own rulings with regard to custody. Thus, as there is no clear regulation and the personal status can be dealt with on a private base and on the base of a person's religion the law risks the violation of basic human rights. It also promotes confessionalism by rating it over citizenship which is a dangerous path – civil law should always stand above confessionalism in the name of equality.

Art. 41 can not question and risk the general principles of the constitution but has to be in conformity with the constitution.

Participants subsequently discussed whether an amendment of Art. 41 is the final aim or a reinterpretation by legal bodies in conformity with the general principles of the constitution. The final decision about the article is made by the Constitutional Amendment Committee which needs to be given an incentive.

It was stated that the law has to be abolished or amended as a reinterpretation will not be enough to change the situation on the ground. In order for legal bodies to change their attitude and, hence, amend the

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law it needs encompassing awareness-raising campaigns as well as an involvement of decision makers. The aim should be the preparation of a new law. Even if the suggestion might get rejected it should be proposed to indirectly pressure officials. Here, also judges should participate in such campaigns in order to give it more strength. However, even though some decision makers might share their ideas, convincing them to promote them openly is difficult as officials are often scared of the consequences if they challenge state institutions. If the law is not abolished it will need a new article that makes the misuse of 41 impossible and, hence, clearly defines its interpretation.

Discrimination Against Women in Iraqi Legislation – Penal Code and other Laws)

At the beginning of the third session Ta'ameem Jaleel Al Azzawie listed the main laws of the Iraqi Penal Code (from 1969) discriminating women:² Art. 41 (1) considers as a legal right "The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom."³ Art. 128 and 130 give legal excuses for crimes such as honor killings. Further laws that violate women's rights and do not treat them equally to men are Art. 318, 377, 380, 393, 398, 409, and 427. Most of the laws, participants noted, are in relation with women as victims of violence. Art 427 for instance allows judges to drop charges against a man that i.e. kidnaps or rapes a woman if he marries her after that. As a result violence against women is being legitimized which is a common phenomenon not only in the Penal Code but in the whole Iraqi law system.

These laws are inhumane as they repress the dignity of women.



Ta'ameem Jaleel Al Azzawie about the Iraqi Penal Code

However, the problem is not only with the laws but also the mentality of the people that believe in the justice of these laws. There are cases where parents might not kill their daughter anymore in the name of honor, i.e. due to adultery, but burn her with hot water and claim to the outside that it was an accident or that the daughter wanted to commit suicide. While an examination could find out whether this is in accordance with the facts it is almost never followed up with such cases. Hence, an overall question is whether society recognizes women that were raped as victims or as perpetrators. Additionally, judges often take their own cultural background more into consideration than the law itself which is highly unacceptable and can not be tolerated anymore.

While most laws mentioned above legitimize violence against women participants emphasized that the aim is not to implement the same rights for women but to abolish or amend laws allowing violence and instead to enforce human rights.

² The text of the Penal Code can be found under the following link:
http://law.case.edu/saddamtrial/documents/Iraqi_Penal_Code_1969.pdf

³ In Kurdistan this law is not in power for husbands punishing their wifes but for teachers punishing their kids.

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**Challenges Facing the Elimination of the Discrimination Against Women
Presenting the 2011 Iraqi CEDAW Report**

During the session participants summarized the main points discussed before and named the main challenges Iraqi women are facing:

- Lack of political will to achieve equality and to apply encompassing Human Rights
- The patriarchic mentality of the society
- Lack of awareness among women about their rights and possibilities
- Economic dependence and illiteracy of women
- Discriminating laws and lack of enforcement of laws ensuring gender equality
- Gaps in laws which allows subjective interpretation
- Patriarchic views of judges that influence their jurisdiction
- Absence of mechanisms that implement laws on the ground
- The interference and influence of religious and tribal leaders in the state
- Lack of women in decision making positions, including parties
- No judicial offices focusing on cases related to women's rights
- Lack of academic data and information
- Civil Society is not developed enough which results in a lack of awareness-raising campaigns
- Underrepresentation of the topics human rights, equality, and democracy in school curricula
- Lack of commitment of Iraqi state to enforce international agreements
- Biased media reports on women issues
- Corruption in the public sector
- Underrepresentation of women in security related sections such as the police
- Failure of the Public Prosecution Office in following up with cases discriminating women

While there are many discriminating articles in the Iraqi law there are also various laws aimed at equality as well as other mechanism in the society that, in theory, are supposed to ensure women empowerment - such as quotas. However, in practice these mechanisms are still indirectly serving the patriarchic system. Many women in high positions such as the parliament are not specialized in the field of women's rights and rather serve the interest of a specific group than of the state. Also, in practice quotas in public institutions are often distributed between groups and hence serve the interest of men. Female MPs are often married or related to other politicians and vote according to their will.



Workshop participants

Day 2

Women's Laws in Kurdistan in Comparison with the Rules in the Federal Government

Hazha Salman Mustafa-Madhar gave an overview of the legal situation with regard to women's rights in Kurdistan.

After the Kurdish Uprisings in the early 90s, Kurdistan continuously tried to improve and amend its laws with regard to Human Rights. Thus, various laws on women's rights in the legal system, especially those targeting violence against women, have been changed to the better. Articles of the Penal Code that have been amended are 129, 228, 130 and 115. Additionally, a Higher Council of Women's Affairs has been

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created in 2010 that follows up with laws regarding women's. However, while the situation in theory seems very promising and while various laws have been amended and implemented that protect women and their rights, in practice the situation in Kurdistan is still difficult. Hazha Salman Mustafa-Madhar stated that in 2012 in Erbil 128 cases of torture against women happened, 7 honor killings, 45 suicides by burning, 22 homicides of women and 11 honor killings outside of Erbil.

During the subsequent discussion participants stated that similar to the rest of Iraq the mentality of the people is an influential problem in Kurdistan. Many families are highly committed to their tradition to an extent that women suffer from it. The burning of women as a form of punishment is still common. Also, Female Genital Mutilation (FGM), is a significant problem in Kurdistan, more than in the Arab part of Iraq. The main problem, participants noted, is that the existing laws are not enforced in practice. For instance, the law on polygamy says that a woman has to agree that her husband marries another woman. However, in practice women are often forced to agree on the arrangement so that it can not be classified as a mutual agreement. Judges frequently support these practices.

It was further stated that the Kurdish law is only applicable in the region or territory of Kurdistan. Thus, if a violation of the law happens outside of Kurdistan by Kurds it is not punishable. As a result, many Kurdish people get married, for instance to minors, outside of Kurdistan. Hence, the laws are often inefficient on the ground. However, it should be mentioned that the government of Kurdistan is better following up with the violations on the ground. A further serious and related problem in Kurdistan that needs to be tackled is human trafficking. The region is mainly used as a transit point to Syria and Kuwait but also brings a significant number of women and children into Kurdistan. Kurdish law is the worst in the region with regard to human trafficking.

In a summary, the main challenges for women in Kurdistan are the patriarchic system, the application of the laws on the ground, and the gaps within the laws that leave room for subjective interpretation.

Suggested Strategies for Addressing Women's Rights

During this session participants further discussed the points addressed before, tackled differences and similarities between Kurdistan and Iraq, and summarized the specific challenges they should approach in the near future.

In the context of CEDAW and international agreements it was stated that more pressure has to be channeled towards state institutes to reach a lift of the reservations. The reservations affect many issues related to the personal status such as marriage, divorce, inheritance etc. and are hence, of utmost importance but also sensitive topics. In order to promote the official lifting of the reservations there needs to be a new and better study about the effects of the reservations in practice. It was emphasized that there should be no differences in the law for the various confessions but only one law for all Iraqis. Also, the existing laws in the constitution which do guarantee equality have to be applied encompassing.

In order to secure the situation for women on the ground the security sector has to be involved. For instance, police officers have to be better controlled and trained about the rights of women. Furthermore, the skills and knowledge in the field women's rights of officers in the customs and citizenship department as well as the Ministry of Interior has to be improved as these sections have a crucial impact on the application of the laws.

A pre-condition to work on the issues addressed in a successful way, are solid information sources. Therefore, statistics from various institutions are needed, such as the Ministry of Education, the Ministry of Interior etc. but also from universities und

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independent institutes. To collect encompassing data and analyze them in a sophisticated way deep relations between academia and activists are essential.

All in all, encompassing awareness-raising is needed. This includes the education of women about their laws; to tackle the judiciary; to publicly discuss the role of governmental bodies; and to urge lawyers to look deeper into women's rights.

The Lebanese Experience in Dealing with the Personal Status Law

Joumana Merhi gave a presentation on the Lebanese experience with the Personal Status Law.

The main dilemma she stated, with regard to women's rights in Lebanon, is the gap between basic rights of women and citizenship. The problem is that the laws regulating the personal status are contradictory to the national constitution. Lebanon officially does not have a state religion as for instance Iraq. However, in practice legal issues are highly influenced by religion, respectively the 18 different confessions existing in Lebanon. Here, the state steps back and does allow the confessions to organize themselves with regard to personal affairs. This creates problems as all private affairs are decided on the base of religion which significantly undermines the civil state. Hence, the various confessions are standing between the citizen itself and the state which is dangerous to the extent that the state does not interfere in religious judiciary and thus, is not able to sufficiently protect people from judiciary that might violate their human rights. As a result, since the state has, to some extent given away part of its sovereignty, people's feeling of unity significantly decreased. Instead, the private, religious, and tribal identity is stronger than the national identity which leads to an even deeper gap between the groups. Hence, the absence of a personal status law for all Lebanese raises severe problems for the state. Moreover, since it seems like there

are more rights in practice for confessions than for individuals, people try to use religion for their personal interest and convert for sometimes simple material reasons such as inheritance.

International agreements can be applied to the Lebanese constitution, but on the ground they are more or less meaningless as the constitution itself does not have the value it should have. Indeed, because people do not see themselves protected by the national law they draw back on religious jurisprudence. Political parties as well as the civil society are attached to the various confessions instead of having national agendas.

Participants emphasized that, similar to Iraq, people are not educated enough about existing laws as for them national laws do not make a big difference since their legal issues are dealt with on a confessional base. Therefore, people distance themselves more and more from the state and politics. In this context, participants agreed that there has to be one unified law for whole Lebanon which is not optional but based on equality – between men and women as well as confessions.

The Syrian Experience in Dealing with the Personal Status Law

Sabbah Al Hallak elaborated on the situation in Syria with regard to the Personal Status Law.

She stated that while there is discrimination in all laws, the basic problem can be found in the Personal Status Law which is based on traditional values and lacks modernity. Islam is seen as *one* of the main sources of the law but not *the* main source so that the state can easily claim to the outside to be secular while being highly sectarian in practice. Many of the articles that existed in the past and guaranteed some sort of equality between men and women, have been abolished or replaced by discriminating

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laws. Especially with regard to marriage, divorce, and crimes such as rape Syrian law is violating universal Human Rights. Similar to Iraq the marriage of minors is often backed by judges which shows that also in Syria the mentality and the patriarchic system is one of the main problems. An interesting aspect is the extent to which the law differs drastically among the religions. While Druses do not have polygamy and while only judges are allowed to authorize a divorce; among Muslims divorce is the absolute right of the man but not of the woman. For Christians adultery is a cause and justification for divorce no matter who committed it. Jewish laws are similar to the Muslim laws and sometimes even more discriminating. Thus, due to the high level of confessionalism on the ground, that gives different rights to the people, Sabbah Al Hallak recommended that there should be a Syrian Civil Law for all. Such law could still involve religious backgrounds but it should be clear in points such as under age marriage, rape etc.

During the subsequent discussion it was noted that campaigns that have been launched have not had a desirable effect. Instead, although the official support has been huge, there was no political success. Here, it should be questioned whether the civil society has been strong enough.

Draft for the Research Paper Planning

At the end of the two days workshop a strategy was developed on how to proceed with the project, respectively how to develop the research study. The title of the research to be conducted will for now stay the same - "A research on challenges facing Iraqi women in obtaining legal rights". The study itself is supposed to reflect the gap between international agreements on women's rights and the national Iraqi laws

and the closely linked patriarchic system. The aim is mainly to improve the lobbying power of the civil society. Thus, the study is supposed to give the civil society evidence for the legal situation but also the situation of Iraqi women on the ground and should indirectly pressurize decision makers to act upon the situation as they will not be able anymore to deny facts. Since the study will be written by academics, activists, and judges it will be more convincing as it can not be claimed to be subjective or one-sided.

With regard to the groups participants decided that there will be three groups in total - two in the region of Baghdad and one in Kurdistan. Each group works on the challenges, gaps, and mechanisms as described before.



Workshop Participants

Final Remarks

During the evaluation of the workshop the diversity of the participants was praised with regard to their experience, the gender balance in the workshop, and the diversity of the religious and ethnic backgrounds of the participants. It was further appreciated that the discussions were open and the different opinions were respected. This was also a result of the fact that all participants, regardless of sometimes diverse points of view, have the same values with regard to women's rights.

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On the other side, however, it was noted that maybe it would be better to invite i.e. judges that are not as supportive of women's rights in order to listen to their points of views and, hence, work on strategies on how to refute their arguments. Also, officials from the Iraqi Parliament should be invited as at one point decision makers have to be brought to the table so that amendments of the law are getting promoted in practice.

Conclusion

The workshop can be assessed as a great success. Especially the variety of the group with regard to their profession but their shared vision at the same time has made the discussions highly fruitful. It became clear that neither a pure bottom-up approach nor a top-down approach will be sufficient but that the strategy to improve women's legal rights has to be encompassing.