

**Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences and the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children**

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(Please use this reference in your reply)

10 September 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women and girls, its causes and consequences and Special Rapporteur on the sale, sexual exploitation and sexual abuse of children, pursuant to Human Rights Council resolutions 50/7 and 52/26.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **proposed amendment for the Personal Status Law** No. 188 of 1959 of the Council of Representatives of Iraq (hereinafter the Personal Status Law), which was presented for a first reading on 4 August 2024.

According to the information received:

The Personal Status Law contains the principal rules regulating family and personal status matters, such as in regard to marriage, separation, divorce, and child custody, among other matters. The current Law was drafted by jurists and constitutional experts and reviewed by religious scholars, and it was welcomed nationally as a positive step towards securing a broader range of rights and protection for women and children within the family. The Law mandated that all marriages are contracted before a judge and under the provisions of the secular law to ensure the consistency of jurisdiction across the country. It set the age of consent to 18-years-old, along with strict conditions for polygamy, and enshrined the welfare of children and women as key principles.

The proposed Bill seeks to modify articles 2 and 10 of the Law. The first amendment introduces a paragraph that enables Muslim Shi'a Jaafari and Sunni jurisprudence to regulate all personal status matters, in contrast to the current regulation, which equally applies civil law to all Iraqis on those matters. Similarly, the proposed amendment to article 10 allows *Sunni* or *Shiite* Diwans to conclude marriage contracts, ceasing that faculty to be an exclusive judiciary power. These amendments, if passed, would have negative consequences on the rights of women and children, including girls, and would constitute a serious rollback in a range of protections in Iraqi law across a number of areas, particularly marriage, divorce and child custody. The amendments will also likely exacerbate the prevalence and forms of violence against Iraqi women and girls.

According to article 1 of the United Nations Declaration on the Elimination of Violence against Women, 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, while occurring in public or in private life.

### *Child marriage*

If passed, the amendments could result in lowering the age of marriage in Iraq from 18 years-old to 9 years-old for girls and 15 years-old for boys, in accordance with Shi'a Jaafari jurisprudence, which allows temporary marriages and may normalize polygamy. We are gravely concerned by these proposed amendments which would not only sanction child marriages, but would also encourage them, in violation of Iraq's international law responsibilities. International human rights law and standards prohibit the marriage of children under the age of 18, in recognition that children cannot consent to their own marriage and considers marriage involving a child forced marriage (A/HRC/26/22, para. 6). While boys can be subjected to child marriage, the practice affects girls in greater numbers and with worse consequences to their rights and well-being (CEDAW/C/GC/31/Rev 1 - CRC/C/GC/18/Rev 1, paras. 19-20). Girls who come from marginalized backgrounds, such as low-income households, or girls who themselves or their families are discriminated against on intersecting grounds, are most likely to be affected.

Iraq acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), on 13 August 1986, making the following reservations: "Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g), nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic Shariah according women rights equivalent to the rights of their spouses to ensure a just balance between them. Iraq also enters a reservation to article 29, paragraph 1 of this Convention with regard to the principle of international arbitration in connection with the interpretation of this Convention. This approval in no way implies recognition of or entry into any relations with Israel."

We wish to recall article 19 of the Vienna Convention on the Law of Treaties which governs the making of reservations to treaties and which states that a "State may, when signing, ratifying, accepting, approving, or acceding to a treaty, formulate a reservation unless: (a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty." The CEDAW Committee had expressed concerns that these reservations undermined the object and purpose of the Convention, and emphasized that the reservations to key provisions, especially those concerning equality in marriage and family relations, violate the principle of non-discrimination, which is central to the Convention. The Committee has encouraged Iraq, in its periodic reviews, in particular those conducted in 1998, 2000 and 2014, to reconsider and withdraw these reservations, as they hinder full implementation of women's rights as envisaged by CEDAW. They argued that such reservations are incompatible with the Convention's aim of eliminating all forms of discrimination against women. We join the CEDAW Committee in urging your Excellency's Government to withdraw these reservations.

CEDAW clarifies in article 16(2) that the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. Furthermore, the Convention on the Rights of the Child (CRC), acceded to by Iraq on 15 June 1994, establishes the right

of children to health, education, protection from violence, and protection from sexual exploitation and abuse, all of which are violated by child marriage, according to the CEDAW and CRC Committees. Article 2(1) of the CRC requires States Parties to respect and fulfil the rights to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or their parent's or legal guardian's race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Moreover, article 24(3) of the CRC explicitly calls for the abolition of traditional harmful practices that are harmful to children, which includes child marriage. Furthermore, article 34 of the CRC urges States Parties to protect the child from all forms of sexual exploitation and sexual abuse, and article 35 calls for States Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

The illegality of child marriage is also confirmed by other international human rights instruments. The Universal Declaration of Human Rights states in article 16 that marriage shall be entered into only with the free and full consent of the intending spouses. The International Covenant on Civil and Political Rights (ICCPR), of which Iraq has been a State Party since 25 January 1971, also establishes in article 23(3) that no marriage shall be entered into without free and full consent of the intending spouses. The international community has widely condemned child, early and forced marriage, including through the United Nations General Assembly resolutions 69/156, 71/175, 73/153, and 75/167, among others, which have rejected the practice. The above resolutions recognized that child, early and forced marriage violates, abuses, or impairs human rights and perpetuates other harmful practices and human rights violations that disproportionately affect women and girls (A/C.3/77/L.19/Rev 1). The Human Rights Council has also called on States to end and prevent child and forced marriage in its resolutions, including in resolution 53/23.

In its general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, the CEDAW Committee recalled that identity-based personal status laws and customs perpetuate discrimination against women and that the preservation of multiple legal systems is discriminatory against women. We also recall that the CEDAW Committee recommended to your Excellency's Government to "repeal the discriminatory legal exceptions to the minimum age of marriage for girls contained in the Personal Status Act (No. 188 of 1959) and ensure that the legal exceptions to the minimum age of marriage, set at 18 years for both women and men, are granted only in exceptional cases and authorized by a competent court, for girls and boys, of at least 16 years of age and upon their consent" (CEDAW/C/IRQ/CO/7, para. 36(2)).

### *Polygamy*

Article 3 of the International Covenant on Civil and Political Rights (ICCPR) guarantees equal rights for women and men. We would also like to recall that CEDAW calls for the equality of human rights for women and men in society and within the family. In its general recommendation No. 21 on equality in marriage and family relations, the CEDAW Committee emphasized that polygamous marriage contravenes a woman's right to equality with men and should be discouraged and prohibited, due to serious emotional and financial consequences for her and her dependents (A/49/38(Supp), para. 14). The CEDAW Committee further asserted that polygamy is fundamentally incompatible with the dignity of women and girls,

infringing upon their human rights and freedoms, including their right to equality and protection within the family. The practice of polygamy varies across and within legal and social contexts, though its impact is consistently harmful. It jeopardizes the health of wives — affecting their physical, mental, and social well-being — and tends to lead to material deprivation. Additionally, it causes significant emotional and material harm to children, often with severe consequences for their welfare. Evidence shows that both women and girls are vulnerable in polygamous unions, with girls particularly at risk, as they are more likely to be married or promised to much older men, heightening the potential for violence and rights violations (CEDAW/C/GC/31-CRC/C/GC/18, para. 25). The CEDAW Committee has consistently urged States parties to implement all necessary legislative and policy measures to eliminate polygamous marriages. For women already in polygamous marriages, the CEDAW Committee called on States parties to take appropriate measures to safeguard their economic rights (Ibid.). The CEDAW Committee specifically recommended for Iraq to take all appropriate measures to discourage and prohibit polygamy (CEDAW/C/IRQ/CO/7, para. 36(b)).

#### *Risk to rights to inheritance*

The amendment uses principles found in *Sharia* to determine the distribution of an estate amongst family members. The husband's share is twice the wife's and the son's share is twice that of the daughter's. If adopted, women will risk losing more rights to inheritance. Various international treaties and conventions highlight the need for equal inheritance rights for women and men. For instance, article 2 of the Universal Declaration of Human Rights (UDHR) states that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as sex. In addition, article 17(2) of the UDHR states that no one shall be arbitrarily deprived of his property and article 7 of the UDHR and article 26 of ICCPR states that all are equal before the law and are entitled without any discrimination to equal protection of the law.

In article 2(f), CEDAW calls on States parties to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women. Article 16(1)(h) obligates States parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and to ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for a valuable consideration.

We note that your Excellency's Government has made reservations to both articles in the CEDAW. Nevertheless, we wish to recall that the CEDAW Committee called on your Excellency's Government to adopt a comprehensive strategy to eliminate discriminatory stereotypes and all harmful practices, such as child marriage, temporary marriage, forced marriage (CEDAW/C/IRQ/CO/7).

#### *Increased exposure to sexual exploitation, including the exploitation of prostitution*

The CEDAW Committee had expressed concern that forced marriages and temporary marriages (*mut'ah marriages*) could be used by men to traffic women within Iraq and to other countries for purposes of sexual exploitation

(CEDAW/C/IRQ/CO/7). The CEDAW Committee also called on your Excellency's Government to ensure the registration of all marriages, in line with the Personal Status Act (Ibid., para. 36(c)).

If passed, the amendments would make it easier for some religious authorities to officiate marriages and divorces without registering them with the Iraqi courts as required by the Personal Status Law for all marriages concluded in Iraq, irrespective of the religious identity of the pair getting married. Such measures would render pleasure marriage (*mut'a*), a form of temporary marriage that can theoretically range from one hour to multiple years, as a sanctioned form of prostitution, as they are officiated by clerics and are not legally registered. Under *mut'a*, a woman receives a dowry but has far fewer rights than in a formal marriage. Certain religious doctrines recognize temporary forms of marriage, which are not recognized in Personal Status Law. In a report to the Human Rights Council, the Special Rapporteur on violence against women and girls has indicated that "[w]omen and girls are also sold by their families or intimate partners for prostitution, child or forced marriage with the purpose of sexual exploitation. Certain religious norms are instrumentalized by men with religious authority to justify enslavement or the prostitution of girls through child marriage in fake or temporary marriages known as *nikah mut'ah*" (A/HRC/56/48, para. 9).

#### *Reduced rights of women to child custody*

If passed, the amendment will make it more challenging for mothers to retain custody in equality with men. Currently, Personal Status Law gives mothers custody over children until the age of 10, with a possible extension to 15, even if a mother remarries. In practice, and as mentioned in the report of the Special Rapporteur on violence against women and girls, its causes and consequences (A/HRC/53/36), the lack of specific protections for women victims of violence can expose mothers to unfairly lose custody, as is the case in Iraq. Furthermore, mothers in Iraq who are accused of preventing their children from seeing their fathers can be issued arrest warrants, while fathers who do the same would not face the same consequences (A/HRC/53/35, para. 55).

The amendments may further increase the risks of mothers losing custody of their children at an early stage. Mothers who are victims of domestic violence may be more likely to remain in abusive relationships to avoid losing the custody of their children. We wish to emphasize that Iraq still does not have an act protecting against domestic violence, which also exacerbates the vulnerabilities of women and girls in Iraq exposed to such violence, as recognized by the CEDAW Committee (CEDAW/C/IRQ/CO/7). It should be noted that the CEDAW Committee has also recalled the responsibility of your Excellency's Government to consider the specific needs of women and children in determining child custody by adopting measures to systematically consider domestic violence in child custody decisions (Ibid.). Moreover, the CRC Committee has developed several general comments on the right of the child to be heard, to be free from violence and to have his or her best interests taken as a primary consideration.

As the CEDAW Committee has noted, the implementation of the Personal Status Law appears to be undermined by article 41 of the Iraqi Constitution of 2005, given that it provides for the adoption of different personal status laws according to religious doctrines, to the detriment of the equal rights of women in marriage and

family relations (CEDAW/C/IRQ/CO/4-6 and CEDAW/C/IRQ/CO/7). The CEDAW Committee also addressed the discriminatory legal exceptions to the minimum age for marriage for girls contained in the Personal Status Law, the permission of polygamy, and the increased number of unregistered marriages (CEDAW/C/IRQ/CO/7).

We also wish to recall the principle enshrined in article 27 of the Vienna Convention on the Law of Treaties of 1969, which states that a State party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty. This principle is also stressed by the Human Rights Committee on the supremacy of international human rights obligations over domestic law (CCPR/C/21/Rev.1/add. 13, para. 4). It is also repeated in article 5 of the Vienna Declaration of the Program of Action, which states that while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be born in mind, it is the duty of all States, regardless of their political, economic and cultural systems to promote and protect all human rights and fundamental freedoms.

In conclusion, it is manifestly clear that the passing of these amendments would potentially jeopardize the status of women and girls in Iraq, as well as expose children to increased risks. The effect will be felt by the wider society in Iraq, preventing the rise of women and girls to their full potential.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please clarify the purpose of the amendments and the position of the Government on the matter.
2. Please clarify how the adoption of this law aligns with Iraq's obligations under international human rights law, particularly concerning the duty of non-discrimination and the equality of rights between women and men.
3. Please provide information on the safeguards that will be implemented to prevent the adverse effects on the rights of women and children, particularly in the area of marriage, divorce, child custody, and inheritance.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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