

MEMORANDUM

Women think Iraq anew

Iraq, December 2017

This Memorandum is the result of an entire year of continuous discussion between women from the Iraqi National Parliament, female politicians, members of the Iraqi civil society, academics and lawyers.

Throughout 2017, during nine workshops, facilitated by the team of elbarlament - cultures of democracy, the participants have intensively analysed the situation of women, the challenges and opportunities of women to participate in decision-making processes, state- and peace-building in Iraq.

The results and recommendations are summarized in this Memorandum and addressed to law- and policy-makers, as well as actors from civil society.

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1. Preface

We are a group of women from the central and southern areas of Iraq, as well as from the Region of Kurdistan, who care about the situation of Iraqi women. We believe in Iraq as a united country although we are from various parts of the population, ethnic origins and religious creeds. We, a group of activists, politicians, lawyers and media workers, are united in our desire to have a democratic system committed to the necessity of the participation of women in all political, social and economic activities.

It is also our desire that this Memorandum be the subject of broad discussion in Iraq's civil society, Parliament, media, and among all the religious authorities. We also seek to develop it into a women's political programme.

Iraq is in the midst of a complex political situation that affects the lives of Iraqis in general and of Iraqi women in particular. The political forces have failed to find solutions for the growing number of problems, e.g. the collapse of socio-economic life, a bad security situation and declining public services.

Since the regime change, the Iraqi government has been unable to apply the principles of democracy enshrined in the Iraqi constitution. Regional and sectarian identities have been reinforced, rather than a common identity of all citizens, which has led to the destruction of the national texture. For the sake of their own interests, the ruling political parties have adopted the course of political wheeling and dealing and discrimination against the country's population along the lines of ethnic origin and religious affiliation. Hence, the spirit of one nation has been smothered for Iraqis, and people in the streets have responded with strikes and protests. Alliances have become fragmented and political blocks and their parties have broken apart. New movements have arisen and the opposition against the policy of the ruling parties has raised its voice.

The complexity of this situation was aggravated when the dark forces (the terrorist ISIL militia) occupied a third of Iraq's territory in 2014, which in turn triggered waves of mass exodus from the areas that fell under its control. The weakness of the Iraqi government facilitated the intervention of foreign and regional powers that sought to implement their own agendas on Iraqi soil, transforming the country into a theatre of conflicts. The result was a widening gap between the population and the ruling authorities. All these developments have had tremendous repercussions on the situation of the Iraqi women.

2. The Situation of Women in Iraq

The women of all sectors of Iraq's population are facing massive challenges. Living under the sway of male thinking that dominates Iraqi society, they suffer from injustice, discrimination, and oppression, and they are still victims of arbitrary conduct and violent practices that are predominantly the result of traditional customs and habits and the erroneous interpretation of religion being placed above the law. After the coming to power of Islamic parties, they applied both sharia and secular law to females according to their whim, supported by fiqh texts that became part of their discriminatory ideology against women. Furthermore, they promulgated the inequality of women and men in order to prevent the former from fully participating in political, social, and even economic life, claiming that keeping Iraqi women out of public affairs is religiously justified and sometimes underpinned by tribal customs.

This narrow-minded view has come to dominate women, confining their role to merely managing family affairs. This is the result of the cultural and social backwardness of the Iraqi society, which draws the limits of a woman's activities and dreams along the lines of *halaal* and *haraam* [permitted and forbidden according to Islamic law]. Even though Iraq is a signatory to the international CEDAW agreement on the elimination of discrimination against women, it has, nonetheless, failed to adapt its national law to its international obligations. The Iraqi society is still suffering from significant deficits in the equality of men and women. Iraqi women have continued to face ordeals due to changing social, economic and political circumstances.

During the three years after 2014 in which the terrorist ISIL militia controlled some of Iraq's provinces, Iraqi women suffered the most horrible crimes that the human mind is able to imagine. They were bought, sold, and raped; their children were killed. Women in general were forced to abide by stringent restrictions in their dress and their personal liberties. A woman was not allowed to leave the house unless she was wearing a *niqaab* and was in the company of a male relative ineligible to marry her. All this isolated her from public life. Yezidi women in particular suffered from the most disgusting crimes ever committed by human beings. Thousands of them were kidnapped; older women were killed and their corpses displayed; girls who were still minors were captured, raped, and traded as slave girls.

They were forced to leave their homes and villages and bear eye witness to the murder of their sons, husbands and parents in the most terrible ways at the hands of ISIL members, as well as the abduction of their daughters into a destiny of repression. Elderly women were humiliated and insulted, and were also even used as human shields.

Women in the other parts of the country, however, had to pay a twofold price for the repercussions of wars, blockade and terror. Many of them were rendered widows, and they also lost sources of livelihood for their families and children due to the shortage of jobs for them resulting from the dominance of male culture in the Iraqi society, especially in the southern areas. Other factors were the lack of state authority and the impact of tribal customs.

Concomitant with the injustice and oppression Iraqi women are suffering, they are also under-represented in parliament. They usually only occupy seats in positions allocated to them by politicians and their parties.

Women have been nominated for parliament as the result of sectarian wheeling and dealing, and not because they deserve such mandates due to their qualifications and leadership abilities. Thus, representation of women in parliament is merely pro forma. Although the developments and transformations Iraq is undergoing require that women play a distinguished role in the country's leadership, we see virtually none of them in the corridors of power. There is no support by the political parties for women's rights initiatives that aim at changing the situation and helping active women in their efforts to assume the roles they deserve. In fact, there are actually some women in parliament who work against women's rights and ambitions, demanding the adoption of oppressive laws that deprive women of their rights.

Furthermore, there are people who want to prevent women from working in certain jobs, arguing that this would violate our customs and traditions. One of the difficulties imposed on female parliamentarians because of political horse-trading is their obligation to show obedience and loyalty to their parties, which in turn subordinates them to the power of the leaders of the parties and political groups to which they belong. However, the sufferings of Iraqi women do not end here. There have also been detentions and killings of women resulting from the poor security conditions prevailing in the country, and women in all groups of the population are longing for stable security conditions that enable their families and them to live in peace and security.

One of the most scandalous abuses is the bill to amend Personal Status Act no. 188 of 1959, which constitutes a major degradation of women's rights and would relegate them back to an embryonic stage by reverting to the legal situation prior to the adoption of the 1959 law. It harks back to a time when Shiite and Sunni personal status courts had the right to deliver legal opinions and rulings in personal status lawsuits, which complicated the situation immensely because of the large variety of fatwas and the diversity of judgements based on Islamic law.

According to the amendment bill, the minimum age of marriage would no longer be fixed and uniformly applied in the entire country, i.e. it would no longer be defined by the prevailing

law. Rather, the people ruling on the appropriate age would be clerics, who would decide in accordance with their religious beliefs: Some accept the age of nine, while others favour the age of thirteen! The diversity of such court rulings and the fatwas delivered by religious authorities would weaken the overall effect of law because among the characteristics of the law is that it should be generally applicable, absolute, and obligatory. This, however, is not the case in the amendment bill.

We should also not forget that the constitutional basis of the amendment bill is Article 41 of the Constitution, which is one of its most controversial articles. Moreover, the article that prohibits any out-of-court marriage would be abrogated, and those who commit such acts would go unpunished. Solemnising marriages by clerics out of court would cause chaos and the dissipation of all women's rights.

3. The Memorandum: Objectives and Target Group

The organisation *elbarlament* has coordinated our work on the implementation of the programme "Women think Iraq anew" with the aim to enforce women's rights. Its participants are Iraqi female parliamentarians, politicians, academics, lawyers, media workers, and activists from various regions of the country and diverse ethnic origins who have collectively written this Memorandum.

3.1 General Objectives

The objectives of this Memorandum are as follows:

- Compilation of a reference for lawmakers, politicians and civil society activists;
- Assisting in the development of female politicians through the call for action on the basis of principles that support the efforts of women to improve their situation and strengthen their role in society;
- Consolidating the role of civil society for the sake of enhanced political participation of women. This is to be achieved by the preparation of sustainable development programmes for the empowerment of women, as well as the organisation of training courses for women, in addition to the pooling of the efforts made by the women's movement throughout Iraq in order to strengthen their political participation, negotiating and peacebuilding skills.

3.2. Specific Objectives

The most prominent specific objectives of this Memorandum are as follows:

- Formulating a joint national plan for the theoretical and practical education of women by female politicians and activists;
- Conveying messages of peace and peaceful coexistence among the various groups in Iraqi society;
- Contributing to the enhancement of the capacities of those institutions that strive for socio-economic development, with a special focus on the struggle against gender-based violence and for the strengthening of human rights;
- Promoting the role of positive media coverage of women in leadership positions beyond quotas;
- Forming a lobby of Iraqi women from the various segments of the population who hold executive positions in different businesses inside and outside of Iraq;
- Bringing about the genuine, not just formal or virtual, inclusion of women in politics.

3.3. The Memorandum's Target Group

The Memorandum on the Women's Rights Empowerment Programme targets the following groups:

- Parliament and the Federal Government;
- Civil society organisations;
- Cultural federations and societies;
- Woman activists;
- Media;
- All religious creeds;
- International organisations

4. Summary of the Women's Rights Empowerment Programme

The Women's Rights Empowerment Programme, organised by the German organisation *elbarlament*, has worked with a group of female politicians, academics, lawyers, media workers and activists from the various areas and national and ethnic groups in Iraq.

This programme deals with the following topics:

4.1. Peace and Dialogue

Women used to be and still are excluded from the current peace processes, which is evident from the following facts:

- Lack of women's participation in the advisory bodies;
- Lack of women's participation in the peace committees;
- Low achievement rate of women in the existing women's committees.

We have identified the following reasons for the exclusion of women from the peace process:

- Low educational level because of a high illiteracy rate;
- Families;
- Firmly rooted tribal (clan) system;
- Culture of the society;
- Inadequate awareness for the significance of women's role;
- Dominance of men due to women's economic weakness;
- Lack of communication and coordination amongst women.

Proposed solutions for the activation of the women's role in the peace process:

- Raising the portion of women among the heads of committees to 25%;
- Raising the portion of women in the executive authorities to 25%;
- Raising the portion of women in the Council of Representatives and the Presidency Council to 25%;
- Raising the portion of women represented in the leading bodies of the ruling political parties to 30%;
- Bringing women into leading academic and institutional positions;
- Women should take their role in civil society institutions and the academic and parliamentary realms;
- Intense training of women to enable them to play a leading role, free from any domination by men, in the political parties.

4.2. Re-Structuring the State and the Federal System

The Iraqi governments after the political change in the country have failed to apply the principles of democracy in the way outlined in the Iraqi Constitution. Instead, they followed the lines of regional and sectarian identities and not those of common citizenship and nationhood. This in turn has destroyed Iraq's national texture. The ruling political parties have adopted the course of political wheeling and dealing and the discrimination against the

citizens on the basis of their faiths, sects and regions, thus killing the spirit of patriotism of many people. Iraq is suffering from a structural crisis with the following results:

- Internal tensions;
- Growing sectarianism;
- Conflict between the Federal Government and the Government of the Region of Kurdistan;
- No peaceful coexistence among the various groups of the society.

We have identified the following causes of this crisis:

- Endemic corruption
- Organising the state by means of political “horse-trading”;
- Multiple loyalties to foreign powers within Iraq;
- The ruling powers show little seriousness in the search for adequate solutions to the crisis;
- Weakness of the controlling bodies;
- Failure to apply the principle of separation of powers;
- Lost trust in the judiciary.

We have discussed the following solutions:

- Establishing a country of institutions built on the rule of law;
- Conducting dialogues among the various parts of the population for the sake of their rapprochement and mutual understanding;
- Respecting national identity, and accepting the duty to respect others;
- Relying on national capacities to resolve the crises;
- Holding fair elections without any partiality and political wheeling and dealing;
- Raising the cultural awareness of the people for their political and economic rights at all levels;
- Isolating religious institutions from governmental institutions;
- Activating the role of the government controlling bodies;
- Activating the role of social organisations in the country’s administration.

4.3. Gender Equality, Violence against Women, the Personal Status Act

Iraqi women from all parts of the population are facing huge challenges. They suffer from injustice, discrimination, and oppression, and live under the dominance of the male thinking that controls the Iraqi society. They are still victims of arbitrary measures and violent practices, most of them resulting from customs and traditions and the misinterpretation of religion. Theological concepts have been placed above the law since Islamic parties have

taken power and have, with the aid of Islamic jurisprudence texts, imposed their own religious laws and regulations on women. These texts have been drawn into their ideology for the policy of discrimination and inequality vis-à-vis women to prevent them from fully participating in political, social, and even economic life.

The authors of this Memorandum emphasize the necessity to deal with each issue individually. Some of the problems are not the result of the absence of legal regulations, but of the failure to apply such legal regulations and certain social and cultural practices. There are, furthermore, religious forces that, for many years, have been pursuing the objective to change Iraqi Personal Status Act no. 188 of 1959 by reducing the minimum age of marriage to nine years.

We think that in many cases, the problem is not a lack of legislation and its contents, but the failure to enforce applicable law.

The problems, from which Iraqi society is currently suffering, in particular after ISIL, are as follows:

- Issue of custody for children whose fathers are unknown;
- Polygamy;
- Minimum marriage age;
- Certain paragraphs in the Iraqi Personal Status Act no. 188 of 1959;
- Trafficking in human beings;
- Passing new laws.

We regard the following legislative activities as indispensable:

- Raising the minimum age of marriage to 18 years all over Iraq, or maintaining this age in regions where it is currently enforced;
- Punishing those clerics who solemnize marriages of minors out of court;
- Imposing stringent conditions – even more stringent than in the Kurdistan Region - on men who intend to marry a second wife;
- Adopting a law stipulating that a child is put under its mother's custody if its father is unknown;
- Changing the law with regard to the crime of trafficking in human beings;
- Continued application of the Personal Status Act with the following amendments:
 - Changing Section 41, Subs. 1 Penal Code, which allows men to discipline their wives and children;
 - Deleting Section 398 Penal Code, which stipulates that a rapist goes unpunished if he marries his victim;

- o Changing the paragraph that provides for mitigation in favour of those who commit honour crimes;
- o Prohibition of polygamy;
- o Activation of the Child Care Act and recognition of the rights of children with unknown fathers;
- o Changing the women-related paragraphs in the law of inheritance;
- o Amending the paragraph that relates to abortion.

Furthermore, we propose the adoption of new laws that regulate the following:

- Legislation against domestic violence;
- Provision of safe havens for women and guaranteed protection of women whose families no longer protect them;
- Implementation of Order no. 13.25 on the rehabilitation of women who are victims of violence;
- Amendment of Section 418 of the Penal Code;
- Amendment of Section 409 of the Penal Code, which relates to crimes of honour;
- Trafficking with human beings.

4.4. The Political Participation of Women

The regions of Iraq are affected to various extents by the political, economic and social situation of the country and the relations between the various components of the society. The upcoming elections, however, are crucial for the improvement of the situation of Iraqi women. We as political activists in the Parliament and the civil society seek to foster women's rights. Toward this purpose, we want to formulate a political programme for the parliamentary elections and the work on strengthening the possibilities of cooperation between the civil society and the Parliament. This relates particularly to women's rights issues and has the aim of passing a law that prohibits domestic violence. Networking between the women in the Parliament and the demand of the activists to strengthen this network is an important part of this initiative. In addition, to address the situation of the Yezidi women and the atrocities committed against them by ISIL-terrorists, and to discuss the role of the youth and their situation in the different provinces are essential tasks that should be undertaken by Parliament during the next legislative term.

All this requires unremitting efforts to fulfil the following tasks:

- Iraq needs to stop the political wheeling and dealing, which is the major driver of corruption;

- Iraq needs to grant women the role they deserve in the society, since despite all the current attempts, this has not yet been achieved;
- The High Electoral Commission should be changed, as it has pursued the same course like its predecessors.
- New laws should be passed with the aid of international organisations in order to improve Iraq's law system because the law is the first remedy for the country's ruination.

5. Recommendations

- Amending the Law on Political Parties to the effect that political parties are approved only under the condition that they have a women's quota of at least 25%; this would be a positive step forward towards gender equality;
- Obligating the parliamentary groups to give women the chance to take one or more of the three presidency positions and to give them posts in the ministries and the diplomatic service;
- Acceptance of female parliamentarians in the defence and security committee;
- Requiring the Parliament to have a proportion of no less than 25% women in the committees formed to negotiate the settlement of conflicts and the implementation of peace at national, regional and international levels;
- Non-intervention in the percentage of women's representation in the case that women have been elected without any recourse to a women's quota;
- Conducting trainings for female politicians and activists to develop their skills in negotiating and political work;
- Conducting trainings for members of civil society organisations to develop their election-observation skills;
- Inclusion of women and men in the candidate lists on an equal basis;
- Arranging trips and meetings at the international level, which are important for political networking and cultural and social exchange.

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