

Submission to Iraq Commission

14 June 2007

Introduction

- 1- The International Coordination for Gender Justice in Iraq (ICGJI) was formed last year with a mission to work for gender justice in Iraq based on respect for human life and human dignity; coordinating such efforts and working together with diverse partners on common issues.
- 2- The ICGJI executive committee is made up of Iraqis living in the UK, and those interested in Iraq together with representatives currently residing in Iraq. There is almost daily contact with those living in Iraq and thus the ICGJI is fully apprised of the situation in Iraq on a regular basis through a variety of direct sources.
- 3- The ICGJI seeks to uphold the rule of law, increase awareness of international agreements regarding women, support the participation of women in the legal system within Iraq and ensure the voice of women is heard through all possible means. The ICGJI has been involved in the training of Iraqi judges and NGO's in gender equality issues such as gender justice.
- 4- A report of the training of judges is attached.

Executive Summary

- 5- Women have played important roles throughout Iraq's history. The Iraqi women's movements made great stride towards achieving social, cultural, political and economical progress. Despite its limitation, the Family or Personal Law number 188 of 1959 was a milestone in asserting as near equality as possible at that time.
- 6- Iraq was the first country in the Middle East to have women engaged in the diplomatic corps and the first female judge was Iraqi.
- 7- The effect of the policies of the regime of Saddam Hussein was felt across the country. Repression, violence, mass graves, the use of chemical weapon, the war of genocide against the Kurdish people, mass executions, mass expulsions, ethnic cleansing during the Anfal campaign, systematic repression against Shie and the Marsh Arabs. The wars against Iran and the invasion of Kuwait summarise the credentials of the regime. Sanctions added

to the suffering of the Iraqi people. Society was destroyed and women were in the forefront of that suffering.

- 8- Rape of imprisoned or re-located women was wide spread. Furthermore Saddam started appeasing religious fundamentalists and other conservatives, bringing in anti-woman legislation such as a 1990 presidential decree granting immunity to men who committed "honour" crimes. In addition there is documentary evidence of thousands of rapes committed by the regime as a conscious act against opponents.
- 9- The removal of Saddam Hussein and the collapse of his regime in April 2003 brought new opportunities and hope of recovery and reconstruction. Women re-organised and began to campaign for their equality and rights and influence the political process. Despite the challenges many women's groups formed and were active across the country. A scoping by DFID of women's organisations documented this in 2004.
- 10- However a period of instability and insecurity was soon to follow. Iraqi women and girls became victims of abduction, rape and trafficking for sexual exploitation. There is a resultant growth of prostitution of Iraqi girls and women in surrounding countries such as Syria. In addition women and girls are the victims of the climate of fear, sectarian division and reactionary orders by the militias, the terrorists groups and part of the religious establishment. Both divides of the Islamic sects seem to compete at demoting women to second class citizens.
- 11- It is not possible to obtain actual figures, but the anecdotal evidence is strong that the majority of households are female headed. This is due to the high numbers of men killed or disappeared through war, regime pogroms or sectarian activity. Consequently the increased restriction in independence for women, both to move out of the home and to obtain a livelihood, is having a severe impact on the economic stability of the country. In addition the inability to find reasonable employment is forcing women and girls to resort to other forms of income generation such as prostitution or to suffer increasing poverty.
- 12- The situation women and girls are facing in Iraq has led to an unprecedented increase in mental health deterioration. As the number of female headed households is so high this has a significant effect on the situation of children and young people.
- 13- The lack of security and the threats to girls has resulted in fewer numbers of girls and young women attending school and higher education. In addition the rate of illiteracy among women has grown substantially over the last few years.

- 14- Our submission will focus on the issues effecting women's rights from a legislative and political development perspective.

Progress and Retreat

- 15- There is no doubt that women have secured many positive legislative and political advances since the collapse of Saddam's regime.
- 16- Women actively campaigned against and finally overturned Resolution 137 issued in February 2004, which would have "cancelled" Iraqi Family/Personal Status law and moved family issues from civil to religious jurisprudence. Women also campaigned for a quota of 40% in the legislative bodies and managed to secure 25%. Women won 86 seats in the present Parliament out of 275 (31%). There are women ministers in the government and there is a ministry dedicated to women's affairs. These are important steps in the development of women's rights regardless of the effectiveness of such posts.
- 17- However Iraqi women are living in an environment of increasing fear and violence. They die from or suffer extreme physical abuse if they defy prohibitions on dress code and behaviour applied across Iraq by Islamist militants, both Sunni and Shia. They face discrimination and violence in the street, at work and at home. "That guarantee (25% representation) has turned instead into a fig leaf hiding what women activists now call a 'human rights catastrophe for Iraqi women'" (The Observer).
- 18- In almost every major area of human rights, women are suffering from serious discrimination, in some cases seeing their conditions return to those of females in the Middle Ages. There is a massive increase in killings and crime in the name of "honour". The government itself is not immune from gender violation. Some ministries and educational establishments insist on women staff wearing a headscarf at all times. Lately a decree forbade women under 45 to leave Iraq without a male relative to escort them.

The Constitution and Women's Rights

- 19- It is because of these circumstances and deteriorating women's rights that the struggle of the Iraqi women for changing the Constitution is so vital. Every effort should be affected by the international community to support this struggle.
- 20- Iraq's interim constitution (the "Transitional Administrative Law") of March 2004 included many clauses protecting gender equality. (For example, Articles 12, 20B, and 30C).

- 21- The permanent Constitution includes many positive provisions for the protection of women's rights. However the Constitution is contradictory in some of its clauses.
- 22- The Constitution has a sectarian overtone.
- 23- We are concerned about the negative impact of **Article 41** on women's rights. The Article effectively cancels the Family/Personal Status Law.
- 24- The Family or Personal Status Law Number 188 of 1959 which drew its legislation from the Jaafari, Hanbali, Maliki and Shafi'i sects is one of the most important successes achieved by Iraqi women in their long struggle for equality. When the Transitional Government led by Abdul Aziz Al-Hakeem tried to abolish the Law in 2004 there was wide-spread protest from women. The attempt was defeated.
- 25- The Personal Status Law is concerned with marriage, divorce, alimony, custody, separation, etc. it, therefore, concerns women and their relationship with the family and society. Despite its limitations, the Personal Law equates, to a large extent, between men and women in these issues. The Constitution has returned to sectarian division and returned women back to a long gone age when women were subservient to and owned by men.
- 26- Furthermore there are other clauses which will limit the positive impact of other clauses.
- 27- **Article 14** states all "are equal before the law without discrimination because of sex...". But the law will discriminate between men and women because the Constitution allows people to follow Personal issues in accordance with their own religion or belief. This Article, therefore, has lost its spirit and meaning.
- 28- The Constitution gave women "the right to participate in public matters and enjoy political rights, including the right to vote and run as candidates". No mention is made of their economical, social and cultural rights.
- 29- **Article 2**, where the state is forbidden from enacting laws that contradict Islamic laws, is being used more and more against women particularly in calculating inheritance. (The man inherits double the amount inherited by a woman)
- 30- **Article 44** of the draft Constitution was repealed prior to the referendum. This Article commits Iraq to comply with the international treaties and conventions.

- 31- The family is required to run on “religious values”. Thus, if the abolition of the Personal Status Law, the lack of reference to social and economical rights, the conditions of compliance with the Islamic rules (Article 2), the repeal of Article 44 of the Draft, the need to comply to “religious values” within the family, is noted in conjunction with the spirit of the Constitution and its general direction, it is only possible to conclude that women will effectively be relegated to a status akin to that prior to the advent of Muhammad.
- 32- The constitutions of Syria (Article 45), Yemen (Article 36) and the proposed Palestinian constitution (Article 23) give clearer and greater protection to women. All these constitutions equate between men and women in every aspect of political, economical and social life compared with the limitation on the political rights in the Iraqi Draft Constitution. Furthermore the Palestinian Constitution punishes any one that affects women's rights.

Conclusion

- 33- The international community, particularly multi-national force countries, have a duty to bring stability to Iraq and secure its borders. (This latter has been requested by Iraq women's organisations from the outset and publicly requested at the UN Commission on the Status of Women in 2004).
- 34- In compliance with UN Security Council Resolution 1325, it is incumbent upon the international community to ensure that women are consulted fully post conflict and that they are at the peace table. If the legislation prevents the full participation of women in the discussions on a sustainable peace, Iraq is in contravention of UNSC1325 with the international community also accountable if they do not act strongly to uphold this important resolution.
- 35- The statutes of the Iraq High Tribunal mirror those of the International Criminal Court and the work of Iraqi women's organisations has enabled the judiciary to gain in understanding of the use of international instruments to ensure justice for women. It is vital that this work continues bearing in mind the opinions of that court and the training of those judges will affect domestic law and implementation once the Tribunal is disbanded. In the recent Prosecutors comments, rape was cited in the charges. This is a significant advance. In addition the issue of rape as torture is an important advance and will influence the long-held views on crimes in the name of honour. International support for this work is vital. (A document outlining this is attached).
- 36- It is incumbent on the international community to bring pressure to bear on the Iraqi government and political institutions to affect a reversal of the reactionary legislation and thereby secure the protection of human rights and

women's rights. Compliance with international treaties needs to be reinstated into the Constitution.

- 37- Civil society organisations have emerged as a strong force in the struggle of women in Iraq. There is thus an increasing opportunity for the international community to assist in the stabilising and development of Iraq through providing training, capacity building, and administrative support to ensure women's human rights are advanced through the legal process. It is thus essential that these civil society organisations are well supported.
- 38- In addition the economic independence of women needs also to be established in order for them to be free to develop their political and social rights, responsibilities and influence. These civil society organisations are active in assisting women to develop skills that enhance their civil activity in addition to poverty reduction as well as working on constitutional change and political awareness.
- 39- The international community must support the women's organisations if the MDGs are to be reached in regard to Iraq.
- 40- The ICGJI is happy to have the opportunity to present this statement to the Iraq Commission and we look forward to your conclusions which we are sure will include a strong component on the rights of women. We remain active and able to assist in the work to empower women in Iraq to play their full part in society and look forward to continuing to work with other entities engaged in this endeavour.