

IRAQ-Kurdistan Region

Submission to the UN Universal Periodic Review

Eighth session of the UPR Working Group of the Human Rights Council

Octobers 2014

UPR Report prepared by a Coalition of NGOs in Kurdistan Region

A number of NGOs specialized in different fields of Human Rights in Kurdistan Region have contributed in the preparation of this report, the report explains to what extent Iraq has implemented its obligations toward the International Human Rights Law in the frame of UPR and the recommendations already been issued by the state members in the Human Rights Council for Iraq during the UPR process in Feb 2010 in Geneva. The report reviews as well the steps and actions been taken in terms of prompting and protecting human rights in Iraq in general and Kurdistan Region in particular after Feb 2010.

A Summary of the Universal Periodic Review UPR prepared by the Stakeholders in Kurdistan Region – Iraq 2014

According to the Iraqi constitution of 2005, Iraq has become a federal state, and the constitution has granted and admitted a number of rights and freedoms for the citizens, Iraq has ratified a number of international treaties after 2005, but the past four years has seen many serious violations of human rights, attacking and violating the rights and freedoms incorporated in the Iraqi constitution became a serious phenomenon, violence is noticed and reported on daily bases and in all aspects. The right of life which could be considered as the most significant right has become the one which has been attacked or violated more than the other rights, one cannot omit or neglect the violations and assaults against women and their rights, as well as children and their rights and the violations against the journalists, minorities, persons with disabilities, detainees, prisoners, in addition to the weak performance of the judiciary system and the absence of the monitoring role of the parliament.

First: The Institutional Framework Principal Information, Constitutional and Legislative Framework

However Iraq has ratified a number of International Treaties like ICCPR and ICESCR, adopting the constitution in a public referendum, and that the constitution itself includes many rights and freedoms, and the existence of a number of laws which have incorporated in their articles a noticeable number of rights and freedoms , the recommendations been made for Iraq whether during the UPR process in 2010 or in the other occasions , and in spite of the Iraqi's pledge to ratify the International Conventions and their optional

protocols and adjusting its national legislations with the international human rights laws but still we can see:-

1. That the Iraqi constitution does not hint to any of the international treaties and does not clarify Iraq's position from them, however article 44 of the draft constitution of Iraq was clearly stating that the international treaties have the supremacy VS the national legislations, from the other side the current constitution does not conform with the content of the previous ratified treaties or conventions and there are still many legal provisions that contradicts the international obligations that Iraq should be abided to since such international conventions have been already ratified by Iraq, furthermore the authorities in Iraq have neglected even the current constitution and its provisions which impose the authorities to amend a number of laws, enact many new and suspend some others.
2. However the draft constitution of Kurdistan Region had been finalized in 2008 but it has not been put for public referendum as the law dictates, but so far and because of the existence of many political disagreements among the political entities and the existence of many provisions inside the draft which contradicts the federal constitution and remained without been addressed and the constitution became one of the main problems among the political entities and jurisprudents.
3. The Independent Corporation of Human Rights in Kurdistan Region has been formed but it does not have an administrative and financial independency from KRG and there are many other obstacles related to the structure and composition which make it not to be in compliance with the Paris Principles of 1993.
4. The Directorate of the Non-Governmental Organizations has been established in Kurdistan Region and the law No. 1 in 2011 has been enacted to organize the work of the NGOs but still the law of establishing associations is effective.
5. The Integrity Corporation and its presidency have been formed and assigned and the Regional Parliament has assigned the presidency of the Divan of Financial Monitoring but the selection processes was not transparent and not in conform to the international standards.

Recommendations:

A- Encouraging the Iraqi Government to declare its position from the status of the international conventions and treaties in the national legislations and to ratify the international standards without making any reservations, which leads to paralyzing the commitment with the essence of the convention, encouraging the regional parliament about the same subject as well, and encouraging the two governments to harmonize the national legislations with the international standards, giving priority to the legislations which ensure justice for the citizens, fair trial and the legislations which have direct relation with the rights and freedoms of the individuals, groups and minorities.

B- Encouraging the authorities in Kurdistan region to grant more independency to the Independent Corporation of Human Rights in Kurdistan Region to be fully linked with the parliament and making sure that experience and qualifications are the base and criteria of selecting its employees.

The Legal Framework:

6. Kurdistan Parliament has adopted the law of combating domestic violence but its implementation faced obstacles. And could not reach its expected purpose to provide a legal protection to women because the required instructions for the implementation of law have not been issued.

7. In spite of alleging the principles of democracy and constitutional texts but still the region is legislating laws which lead to the restriction of freedoms and rights ex. The law of organizing demonstration and assembling.

8. In spite of the adoption of the law of privileges and rights of persons with disabilities but the law could not achieve its purpose because it could not meet the expectations of the mentioned marginalized group.

9. Adopting the law of establishing the high council of women in Kurdistan region in 14 Dec 2009 was a positive step toward improving the situation of women in the region but the council lacks a by law and its human and financial resources could be described as weak.

Second: Strengthening the Protection of Human Rights Equality and Non Discrimination

In spite of the ratification of the treaties related to nondiscrimination and the existence of the constitutional texts which stress on nondiscrimination for whatever reasons but we still can see through the effective legislations various cases of which confirm the existence of discrimination because of religion, sex, and other reasons, however Kurdistan Region did some endeavors to address the issue but discrimination still could be noticed and the most dangerous issue is tricking on the texts and resorting to the available alternatives to silent the related parties in spite of being aware about that:

10. The regional parliament has recognized the Quota system for women and minorities in the amendments made in the election law. The law of election but the issue was not away from the exploitations and tricking the texts, secondly there are no fair chances in the shares.

11. In spite of amending the personal status law in Kurdistan region and prohibiting polygamy in the region, but still repeatedly breaches of this happened by processing the marriage contracts in the courts outside Kurdistan Region.

12. However in 2002 Kurdistan Region has amended the article in the Iraqi penal code which was considering killing with honor reasons as an extenuating circumstance to be a normal killing as the other

crimes but the origin old article is still effective in the Iraqi federal as mentioned in the Iraqi Penal Code No. 111 in 1969 and its amendments. In spite of this amendment in the law in the region but we still can see hundreds of murder cases of women and girls and throwing their corpses without finding the perpetrators and punishing them, perhaps the phenomenon of burning women is one of the most common issues of killing women in Kurdistan Region.

Recommendations:

- a. Encouraging the authorities in Iraq to prepare the ground for the political and non-political participation of women and allowing them to handle positions in the three authorities in Iraq and Region.
- b. Encouraging the Iraqi authority to amend the article which considers killing women for honor reasons as extenuating circumstance in the Iraqi Penal Code, as it has been amended in Kurdistan Region.
- c. Encouraging the authorities in Kurdistan Region to address the phenomenon of killing and burning women and find and punish the perpetrators of such crimes.

Civil and Political Rights

Iraq has ratified the ICCPR but there are still many obligations that have not been implemented by Iraq:

Right of Life and Death Penalty:

13. There are still articles in the Iraqi Penal Code No. 111 of 1969 with its amendments, Martial Law, Anti-Terror Law, Anti-Drug Law, The Law of Protecting Foreigners and other laws which lead to death penalty. It is worth to be mentioned that Article No. 287 from the law of Penal Rule Procedures which allows the execution of death sentence for pregnant woman four months after giving her birth.
14. However death penalty is suspended in Kurdistan Region but not officially and the last execution of death penalty took place in 2 Apr 2008.

Recommendations:

Canceling Death Penalty forever and replacing it by life imprisonment.

Freedom of Journalism and Media:

15. Kurdistan Parliament passed the law No. 11 in 2013 (Free Access to Information) but still its implementation is weak.
16. The related legislations to freedom of expression and opinion are weak, and in spite of the existence of a law but still the journalists are subjected to different types of violations and attacks like not allowing them to cover some events, or preventing them to write articles because of the nature of the subjects, still

journalists in Kurdistan region are subjected to be arrested or detained based on decrees issues in the courts which is in contradiction with the law of journalism in Kurdistan region.

17. The Iraqi Penal Code No. 111 of 1969 has in its content restrictions against freedom of expression and opinion, especially those related to publication crimes like criminalizing criticism, publishing information about the state's institutions, publishing information related to the interests of the government, the punishments are between imprisonment and life imprisonment.

18. Article 433 from the Iraqi Penal Code is used to trail the journalists for charges relate to defamation and insultation.

Recommendations:

Encouraging the authorities in the Center and Region to treat the journalists according to a special law of organizing the work of journalism and not according to the Iraqi penal code.

Elections and Rotation of Authority:

19. Iraq and Kurdistan Region both succeeded in building a political system based on the rotation of authority through free and transparent elections, the first election conducted in Kurdistan region was in 1992.

20. 28 Apr 2014 has been assigned for the election of the Provincial Councils in Kurdistan Region after about 9 years of illegality.

21. The issue of the disputed areas among the government has not been finalized which led to the creation of problems for the voters like being forced to vote in areas are not their origin area of voting as happened in the Iraqi elections.

22. In 21 Sep 2013 the parliamentary election has been conducted in Kurdistan Region; in which the system of open list has been adopted after amending the related law but the election of president has been postponed for two years by a parliamentary law, but the election was lack of international standards.

23. In spite of the adoption of specific systems and regulations by the High Commission of Election in Iraq but still the records of voters lack to integrity because it does not rely on official census.

Recommendations:

a. Ensuring disconnection between the districts inside the administrative boarder of the government and between the governments.

b. Ensuring the privacy of voting and not deprive the voters from voting because of missing their names in the records of voters.

c. Conducting the census and not rely on the Ration Card or the statistics of the Ministry of Health.

Administration of Justice:

24. There is a number of restrictions which expose human rights to violations in the trial system like ;
- Articles (49, 50, 51, 52 and 53) from the Penal Rules Procedure do not ensure a fair trial, the mentioned articles call for referring the initial investigation papers to the specialized investigation judge during 24 hours.
 - Noticeable delay in finalizing the cases in the courts and during the other stages of trial in the courts.
 - In spite of the adoption of a special law which allow those who have been detained and later been released and proved to be innocent to apply for compensation, but no indication of implementation of this law could be noticed.
 - Isolated Cells are still existed in the detentions and prisons.
 - The quality of food provided to the detainees and prisoners is not adequate in terms of the required calories and there are not special meals for those who need it.
 - No cases of banning communication between the inmates of detention and prison facilities with outside have been recorded but still it does not match the expectations.
 - The majority of the detention and prisons suffer from overcrowding.
 - A number of cases like escaping or failed attempts of escape, committing suicide or failure to commit suicide were noticed and reported and all of them are related in some way or another to the physical and financial situations of the inmates inside the detention and prison facilities and their families.
 - There are allegations of torture and forcibly extracting confessions by the detainees, their lawyers and relatives, but the phenomenon of ill-treatment is very widespread in the Iraqi detention facilities.
25. Judiciary Independence: in spite of the establishment of the Judiciary Institution but still the process of assigning judges is not transparent and judges are detained according to a presidential decree which threatens the independency of the judiciary system.

Recommendations:

- a. Restricting the authorities of issuing arrest orders in the hands of judiciary system only and canceling the texts that give this right to the executive authority.
- b. Activating the articles that stress on referring the investigation papers to the judge of investigation.
- c. Preparing trained security elements according to the international standards of protecting human rights.

Combating Torture:

26. However Iraq had ratified CAT but it did not ratify its optional protocol of 2002, hence the Iraqi Penal Code does not criminalize torture or inhuman treatment for detainees and prisoners.

27. There is an intervention in the management responsibilities on the prisons and detention facilities in Iraq and Kurdistan Region (Ministry of Interior, Ministry of Justice, Ministry of Labor and Social Affairs, Ministry of Defense and Assayish).

28. Not adopting the classification of detainees or prisoners according to their age, sex and crime in addition to the delay of the management of detention facilities in receiving the detainees from the other cities where detentions and prisons are not available.

29. Harmonizing the management systems of prisons and detentions with the International Minimum Standard of Treatment of Prisoners.

Recommendations:

a. Making sure the Iraqi Penal Code is amended and has incorporated in its content an article which clearly considers all Cruel, Inhuman or Degrading Treatment or Punishment by the managements of the prisons and detention facilities as crimes like the other crimes.

b. Encouraging the Iraqi authorities to ratify the optional protocol of CAT convention and restricting the issue of supervising detentions and prisons by the ministry of Justice only.

c. Improving the situations of detention facilities according to the effective international standards.

d. Issuing a special law to organize the visits of CSOs to the detention facilities.

e. Working toward adopting the system of alternative punishments instead of the punishments that restrict the freedoms of the human beings.

f. Rehabilitating the prisoners.

Rights of Women:

30. Iraq has ratified the Convention of Elimination of all kinds of Discrimination against Women but has made reservations on some articles.

31. There are not an efficient number of women in the composition of the three presidencies (Parliament, Executive and Judiciary).

32. Women are still suffering from the domestic violence as the reports prepared by civil society organizations pointed out in Kurdistan Region-Iraq.

33. The region has encountered a wave of honor killing in spite of the existence of a text which tightens the punishment in such kind of cases.

34. In spite of the existence of the law, but forcible marriages and FGM is still practiced which is considered as a violation against human rights.

35. The law in Kurdistan Region has restricted polygamy but the courts in the disputed areas are still allowing such marriage.
36. According to the official reports issued by the general directorate of combating violence against women , according to the reports the directorate reported 1334 cases of burning, 190 rapes, and usually such kind of cases are usually considered as suicide attempts, in addition to the other cases of threats, kidnaping, beating inside the houses and forcible marriages.
37. In spite of the existence of many laws and regulations but women in Kurdistan Region are still facing violence as according to the media reports about 63 women have been killed in the past three years.
38. In spite of the existence of law and the role of NGOs and governmental institutions but still women prisoners are facing ill-treatment (physical and psychological) in the reformatory centers as happened in Erbil Women and Juvenile Reformatory for 18 women.
39. In spite of the existence of a hot line prepared by the general directorate of combating violence against women which is considered as a positive action and tool for combating violence against women but because of the lack of awareness and some traditional considerations women have not got use of this available hot line.
40. Women NGOs in Kurdistan Region have been succeeded in incorporating a text which criminalizes FGM in the law of combating domestic violence, but the implementation of the law is still slow.

Recommendations:

- a. Encouraging the federal government in Iraq to cancel its reservations on the articles (2 and 9) of CEDAW conventions and to ratify the optional protocol of the mentioned convention.
- b. Establishing a special court to deal with the cases of domestic violence as mentioned in the law of Combating Domestic Violence No. 8 in 2011, and amending the other related laws in a way that removes all kinds of discrimination.
- c. In order to prepare to be reintegrated in the community, there is a need to open a special department for supplementary care in the women reformatories in Kurdistan region.

Child Rights:

41. Iraq had ratified CRC but put a reservation on article No. 14 –first paragraph which is related to giving freedom for children to choose their own religion and believe.
42. Establishing hot lines by the Ministry of Labor and Social Affairs for the protection of children is considered as a positive step.
43. The number of victims among children has increased because of the explosions, an issue led to creating a non-stable situation for the lives of children in a normal way in the disputed areas and Kirkuk.

44. However there are many decisions been issued by the Regional Parliament and Kurdistan Regional Government related to constructing new schools in the governments in the region but still the education rights of the children in the region are violated in the villages and sub districts because of the lack of the schools and non-availability of water closets and healthy drinking water and the absence of the educational aids for child learning, in addition to the weak health system for children and their family's need to money forces most of the children to escape from the schools to work and beg in the streets.
45. The system of protecting children from prostitution is weak.
46. The situation of the Children who have been convicted are suffering from bad situations and spending a long time in the reformatories and implementing sever punishments against them, there is no rehabilitation programs for them in spite of the existence of sufficient number of rooms for supplementary cares inside the reformatories.
47. There are reports and information which states that those children who fail in the exams in the schools will face domestic violence or sometimes because of disputes between their parents, or early marriages for girls.
48. Children in general are suffering from the non-availability of entertainment places and yards which create a feeling of disappointment about their life in future.
49. However the parliament and the government have allocated a special budget to support children but still child labor is noticed in the region.
50. The age of criminal responsibility in Kurdistan region is 11 years old which does not conform to the age of the criminal responsibility in the international standards and there are cases in the juvenile reformatory which considers children with only 3 years old as convicted persons.
51. However law No. 22 in 2011 of the rights and advantages of the persons with disabilities had been passed by the regional parliament, but still the disabled children suffers from the non-availability of proper transportation means and entertainment in the public locations and schools as required by the minimum standard of the rights of children and persons with disabilities.

Recommendations:

- a. Encouraging the Federal Government of Iraq to ratify the optional protocol of CRC.
- b. Amending the Iraqi Penal Code in a way that criminalizes actions of exploiting children, and ensuring proper care and rehabilitation for the children.
- c. Rising the age of criminal responsibility to be 13 years according to the International Standards.
- d. Preparing human rights curriculums in all stages which emphasize on the necessity of respecting human rights and child rights and adopting new and modern mechanism in teaching the curriculums of human rights.

- e. Ensuring the minimum standards of trial and reformatories for the juveniles according to the related International Standards.
- f. Amending law No. 22 in 2011 to fit the international standards of the disabled children and binding the related institutions (private and public) to ensure the required tools and means for their comfort.

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