



### Submission to the UN Universal Periodic Review

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Submitted by: Equality Now, the Coalition of Women MPs to Combat Violence against Women, Bagdad Women Association, Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion

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## **Introduction and Summary**

1. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992. Baghdad Women Association (BWA) is a non-profit organization working in Iraq to combat all forms of violence against women and girls and ensure legal protection, equality, respect, and all human rights for women and girls. The Iraqi Women's League is a non-governmental civil society association providing women access to employment and vocational training, as well as physical and mental health services. The Coalition of Women MPs from Arab Countries to Combat Violence against Women is an independent organization established in December 2014, and has members from both legislative chambers from 13 Arab countries. The Global Campaign for Equal Nationality Rights mobilizes international action for the removal of gender-discriminatory provisions from all nationality laws, through its coalition of national, regional and international organizations and activists, including steering committee members Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, and Women's Refugee Commission. The Institute on Statelessness and Inclusion is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion.
2. In this submission, Equality Now, Baghdad Women Association (BWA), the Iraqi Women League, the Coalition of Women MPs from Arab Countries to Combat Violence against Women, the Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion provide information as stipulated in *Universal Periodic Review (Third Cycle): information and guidelines for relevant stakeholders' written submissions*. The submission deals with our concern in regard to the need for the repeal of Article 398 of the Iraqi's Penal Code No. 111 of 1969 entirely, the need for the proposed amendments to Personal Status Law No. 188 of 1959 which would effectively lower the age of marriage and encourage polygamy to be rejected, and the need to amend sex discriminatory articles in the Nationality Law No. 26/2006. This submission is in reference to Equality Now's Actions, "Stop letting rapists go free – Repeal Article 398!,"<sup>ii</sup> and "Iraqi girls face marriage threat and new proposal encourages increased polygamy,"<sup>iii</sup> and Equality Now's report, *The State We're In – Ending Sexism in Nationality laws*.<sup>iii</sup>
3. In 2014, in its twenty-eighth session, countries recommended to Iraq, which it supported, to "review its legislation and practices that are discriminatory against women and set up efforts to eliminate all forms of discrimination and violence against women in all domain of life".<sup>iv</sup>

### **Impunity for Rapists - Article 398 of the Iraq's Penal Code No. 111 of 1969**

4. Article 398 states that if an offender [having committed crimes including rape and statutory rape] then lawfully marries the victim, any legal action becomes void and any investigation or other procedure is discounted. If a sentence has already been passed in respect of such action, then the sentence will be quashed. This sex discriminatory law is thought to preserve the "honor and dignity" of the victim and her family. Repealing Article 398 would be a big step towards ending the re-victimization of rape and sexual violence survivors and ensure Iraq is in compliance with its obligations under international law.
5. In 2017, Parliamentarian Intisar Aljubory, supported by the Coalition of Women MPs from Arab Countries to Combat Violence against Women, submitted a proposal to fully repeal Article 398 which was signed by sixty-six of her fellow MPs. In October 2017, the Coalition

of Women MPs from Arab Countries sent a letter to the Iraqi Speaker of the House demanding repealing article 398. In March 2018, the Coalition started a campaign to repeal the article headed by MP Intisar Aljubory and Women for Peace in Iraq, with the support of the Westminster Foundation for Democracy. In recent years, many international organizations, including the Coalition of Women MPs, WFD, Equality Now and UN Women, as well as local organizations such as Kafa, ABAAD, WCLAC and LECORVAW, have also actively participated in similar successful campaigns to end “marry-your-rapist” laws. These efforts have led to the repeal of comparable laws in neighboring countries including Jordan, Lebanon, Tunisia in 2017 and Palestine in March 2018.

6. Additionally, other countries in the region such as Bahrain are in the process of revoking such provisions. The UN High Commissioner for Human Rights has stated “there is no place in today’s world for such hideous laws,”<sup>v</sup> and Iraq is no exception.

### **Child Marriage and Polygamy – Personal Status Law No. 188 of 1959**

7. The Government of Iraq is also considering a new bill introduced in November 2017, which proposes discriminatory amendments to the Personal Status Law No. 188 of 1959. If passed, the bill would authorize religious sects to define the rights of women and girls in accordance with their beliefs. Some religious sects would support lowering the age of marriage to nine years old, given their interpretations of the Quran and belief that puberty signifies marital readiness.
8. According to UNICEF, 1 in 5 girls are married off as children every year in Iraq. Amending the Personal Status Law No. 188 of 1959 will only serve to increase girls’ risk of child marriage and subsequent abuses including early and forced pregnancy, domestic violence, poverty, and limited education and career opportunities.
9. In addition, on 7 January 2018, MP Muhsen El Sadoon, the Head of the Legal Committee in Parliament submitted a new bill that would encourage polygamy. The proposed Article states that the Iraqi government will pay married men five million Dinar (approx. \$ 4250) if he marries a widow, a divorced woman or a woman who is 30 years old or older and a virgin. The proposed bill would further threaten the stability of families and create a wide range of economic and social problems.
10. Iraq has an international legal obligation as a party to multiple human rights treaties and as a participant in the UN Sustainable Development Goals, particularly goals 5 and 10, to ensure that its laws are aligned with international and regional standards such that women and girls are free from sexual violence and child marriage.
11. In 2014, the UN Committee on the Elimination of Discrimination against Women (CEDAW) notably recommended that the Government of Iraq immediately repeal all laws that enshrine, encourage, facilitate, justify or tolerate any form of discrimination against women, stating that “justice and equality in respect of application of the law...have not been achieved.”<sup>vi</sup>

### **Discrimination in Nationality Law No. 26/2006**

12. Equality Now, local partners, the Global Campaign for Equal Nationality Rights and the Institute for Statelessness and Inclusion welcome the amendments made to Article 3 of the nationality law in 2006, which established the equal right of an Iraqi father and mother to transmit nationality to their children. While we welcome this step, other provisions remain

discriminatory: an unmarried mother cannot pass to child born outside country on an equal basis with an unmarried father (unless the father is stateless or unknown/except under certain conditions) (Art.4); a foreign mother who was born in the country cannot pass her nationality to a child born in the country on an equal basis with a foreign father to a child born in country) (Art.5); a married woman cannot pass nationality to foreign spouse on an equal basis with a married man (husband can apply for naturalization under normal procedures with reduced or waived (Arts. 7 & 11); and a married mother cannot pass to child born outside country (unless father stateless or unknown/ except under certain conditions (Art.4); and if an Iraqi loses Iraqi nationality, his minor children shall consequently lose that nationality (Article 14(II)).

13. In February 2014, in its concluding observations on the combined fourth to sixth periodic report of Iraq, the Committee on the Elimination of Discrimination against Women recommended that Iraq “*amend the discriminatory provisions of Act No. 26 (2006), namely articles 4, 7 and 11, in order to ensure that women and men enjoy equal rights to acquire, transfer, retain and change their nationality, in line with article 9 of the Convention*”.<sup>vii</sup>
14. Gender discrimination in Iraq’s nationality law can also result in the children of Iraqi women being rendered stateless when they cannot acquire their father’s nationality. This can occur for a variety of reasons. Those rendered stateless face obstacles in accessing economic and social rights and have a heightened risk of exploitation, human trafficking, and early and forced marriage. Typically, stateless persons also face barriers in obtaining identity documentation; increased risk of arbitrary arrest and indefinite detention; discrimination and marginality; and barriers to accessing formal employment and justice.

### **Recommendations for Action by the Government of Iraq**

Equality Now, the Coalition of Women MPs to Combat Violence against Women, Bagdad Women Association, Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion respectfully call on the government of Iraq to:

1. Repeal Article 398 of the Iraq Penal Code that pardons rapists from punishment when they marry their victims;
2. Reject proposed amendments to the Personal Status Law No. 188 of 1959 which would encourage child marriage and polygamy;
3. Amend remaining discriminatory articles in the Nationality Law No. 26/2006 to make sure that women and men enjoy equal rights to acquire, transfer, retain and change their nationality on equal basis.

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- <sup>i</sup> Available at: [https://www.equalitynow.org/iraq\\_stop\\_letting\\_rapists\\_go\\_free\\_repeal\\_article\\_398](https://www.equalitynow.org/iraq_stop_letting_rapists_go_free_repeal_article_398)
- <sup>ii</sup> Available at: [https://www.equalitynow.org/urgent\\_alert\\_iraqi\\_girls\\_face\\_child\\_marriage\\_threat\\_new\\_proposal\\_encourages\\_increased\\_violence](https://www.equalitynow.org/urgent_alert_iraqi_girls_face_child_marriage_threat_new_proposal_encourages_increased_violence)
- <sup>iii</sup> Available at:  
[https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/210/attachments/original/1528134344/NationalityReport\\_EN.pdf?1528134344](https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/210/attachments/original/1528134344/NationalityReport_EN.pdf?1528134344)
- <sup>iv</sup> <https://www.ohchr.org/EN/HRBodies/UPR/Pages/IQIndex.aspx>
- <sup>v</sup> <https://news.un.org/en/story/2017/08/563662-un-human-rights-chief-welcomes-rape-law-reform-lebanon-tunisia-jordan>
- <sup>vi</sup> Available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IRQ/4-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IRQ/4-6&Lang=en)
- <sup>vii</sup> CEDAW List of issues in relation to the combined fourth, fifth and sixth periodic report of Iraq, CEDAW/C/IRQ/Q/4-6/Add.1 available at: <https://undocs.org/CEDAW/C/IRQ/Q/4-6/Add.1>