



CSW Communications Procedure  
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27 July 2018

**Re: Communication on the need for the Government of Iraq to repeal Article 398 of Penal Code No. 111 of 1969 entirely and reject proposed amendments to the Personal Status Law No. 188 of 1959**

Dear Commission Members,

Pursuant to Economic and Social Council resolution 76 (v) of 5 August 1947, as amended by Economic and Social Council resolution 341 (XI) of July 1950<sup>1</sup>, we submit this communication<sup>2</sup> on the need for the Government of Iraq to repeal Article 398 of Penal Code No. 111 of 1969 entirely and reject proposed amendments to the Personal Status Law No. 188 of 1959. This communication is in reference to Equality Now's Actions "Iraqi girls face child marriage threat & new proposal encourages increased polygamy"<sup>3</sup> (last updated January 2018) and "Stop letting rapists go free - Repeal Article 398!"<sup>4</sup> (last updated April 2018).

Equality Now is an international human rights organization with ECOSOC status working to promote the equality of women and girls worldwide. Baghdad Women Association (BWA) is a non-profit organization working 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 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 (the Coalition) was formed by Members of Parliament to pursue reform and legislation that will promote and protect women's rights as well as combat violence against women.

<sup>1</sup> The Economic and Social Council has reaffirmed the mandate of the Commission on the Status of Women to receive communications on the status of women in its resolutions 1983/27 of 26 May 1983, 1992/19 of 30 July 1992, 1993/11 of 27 July 1993 and decision 2002/235 of 24 July 2002.

<sup>2</sup> Equality Now hereby waives any claim of confidentiality to which we may be entitled in the communication process.

<sup>3</sup> Available at <https://www.equalitynow.org/action-alerts/iraq-bill-child-marriage-lower-age-9-years-old>

<sup>4</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)

Equality Now and its partner organizations are actively advocating to encourage Iraq to amend its Penal Code by revoking Article 398 and reject proposed amendments to the Personal Status Law to align with international and regional human rights standards.

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

Article 398 states that if an offender mentioned in this Section [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’s family.

Sabiha<sup>5</sup>, a 32-year-old woman, was working late at her medical laboratory job when the security guard, a relative of hers, raped her. As if that wasn’t traumatic enough, her family and community pressured her into marrying her rapist to remove the stigma they believe her rape placed on her family’s “honor.” Through Article 398 of Iraq’s Penal Code No. 111 of 1969, which effectively encourages this practice, Sabiha, a once energetic and highly motivated woman, was re-victimized while her rapist escaped all punishment by marrying her. Although Sabiha was able to eventually divorce her rapist, she was later pressured to marry a 70-year-old man with three children, some of them her same age. Like Sabiha, Article 398 is also a real threat to the lives of women and girls particularly in towns where ISIS controls. As reported by our partners, members of ISIS rely on this article as a way to escape from punishment when rape occurs.

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 and it was signed by sixty-six of her fellow MPs. In recent years, UN Women has also actively participated in similar successful campaigns to end “marry-your-rapist” laws.<sup>6</sup> These efforts have led to the repeal of comparable laws in neighboring countries including Jordan, Lebanon, Tunisia in 2017 and Palestine in March 2018. 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>7</sup> and Iraq is no exception.

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

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. According to UNICEF, 1 in 5 girls are married off as children every year in Iraq.<sup>8</sup> 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.

In addition, on 7 January 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

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<sup>5</sup> Not her real name

<sup>6</sup> Available at <http://www.unwomen.org/en/news/stories/2017/8/news-lebanon-parliament-repeals-rape-law>

<sup>7</sup> Available at <https://news.un.org/en/story/2017/08/563662-un-human-rights-chief-welcomes-rape-law-reform-lebanon-tunisia-jordan>

<sup>8</sup> Available at [https://www.unicef.org/iraq/English\\_small.pdf](https://www.unicef.org/iraq/English_small.pdf)

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 proposal would further threaten the stability of families and create a wide range of economic and social problems.

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. 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>9</sup>

Today, Equality Now, BWA, The Iraqi Women’s League, and the Coalition file this communication to request that the Commission call upon the Government of Iraq to repeal, without delay, Article 398 of Penal Code No. 111 of 1969 and reject proposed amendments to the Personal Status Law No. 188 of 1959. We also urge the Commission to refer this matter to the Economic and Social Council with a recommendation that it takes action to ensure Iraq completes the aforementioned steps to bring them in line with international and regional human rights standards.

Sincerely,



Ms. Wafa Bany Mostafa  
Chairperson, Coalition of Women MPs from Arab  
Countries to Combat Violence Against Women



Intisar Al Mayali  
Secretariat, Iraqi Women’s League



Liza Hido  
Director, Baghdad Women Association



Yasmeen Hassan  
Global Executive Director, Equality Now

<sup>9</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)