

**The Hague University of Applied Sciences  
Academy of European Studies & Communication Management**

**"How does the Iraqi legal system, in particular the Penal Code and the Personal Status Law, negatively affect minority women living in Iraqi Kurdistan, and how could their situation be improved?"**

**Rosa de Bruijn 11096853 ES3-3B**

**June 2014**

**Dissertation Supervisor: Ms van den Haspel**

## Executive Summary

This research shows how the Iraqi legal system, in particular the Penal Code and the Personal Status Law (PSL), negatively affect minority women living in Iraqi Kurdistan and explores how these women's situation can be improved. This extensive research was carried out by consulting academic sources (books, reports, (regional) newspapers, periodicals), as well as various databases, and by conducting an interview. The research aims at giving constructive suggestions on how the issue of ambiguities and contradictions in Iraqi Law should be approached to decrease human rights violations against minority women living in Iraqi Kurdistan, and improve these women's living conditions, through conducting in-depth research and analysing the findings.

A detailed interpretation of the results shows that among Iraqi Kurdistan minority women the violations faced are often *similar*, regardless of women's ethnicity. All (major) ethnic groups in the region have reported that they are subjected to forms of domestic violence, honour killings, forced or early marriage and difficulties of participation in the labour force, although the issue of Female Genital Mutilation (FGM), forced marriage and polygamy is mainly related to Kurdish traditions, specifically affecting Kurdish minority women. However, other ethnic groups suffer from these kind of practices as well. Moreover, difficulties in access to employment are unevenly distributed among governorates and between minority groups; for instance, especially the Faili Kurds experience ethnic or religious discrimination in this regard.

The reason why these women are subjected to these violations stems from that fact that Iraq, including its Regional Government, fails to provide for protections that are enshrined in Iraqi Law, indicating that the Central and Regional government have difficulty to jointly develop Iraq as a smoothly working federal Constitutional state. More specifically, from this research it appears that due to ambiguities, contradictions and discriminatory effects between and within Iraqi Constitutional Law, Iraqi PSL, and Iraqi Penal Code, minority women's position has deteriorated dramatically, making them extremely vulnerable.

In addition, similarities exist between Iraqi Penal Code and Iraqi Constitutional Law with regards to the manner in which both branches of Law contradict *other* laws that are applicable in Iraq. As a result, some Articles of these 'other laws' become ineffective, as they cannot be properly implemented. Moreover, it has to be noted that Iraqi Kurdistan is clearly behind when it comes to

implementing Iraqi Laws. Consequently, already existing or new (Regional) Laws that aim to advance minority women have little to no effect. In order to guarantee that Iraqi Kurdistan's minority women are provided with basic human rights, revisions and amendments to the contradictory Articles of the Iraqi Penal Code, Iraqi PSL and the Iraqi Constitution are required.

Despite the lack of implementation of Iraqi Laws, however, there is hope for progress regarding minority women's situation. For example, through the enactment of the new Domestic Violence Law, the Kurdish Regional Government (KRG) has started to take action to tackle many of the serious human rights violations which they are facing. However, there is still a long way to go to properly implement the provisions of this Law as well as other Iraqi Laws.

Apart from the need for law revision and amendments as well as commitment to implementation measures, this research points out that societal support within the region is necessary, possibly leading to a less violent stance towards violence against minority women. It is proven that international support to immediately relief programs of local Non-governmental Organizations (NGOs) could play an essential role in this.

In order to give some recommendations, several suggestions can be made, such as: Paragraph 41 (1) of the Penal Code should be repealed, since it permits a husband to punish his wife. Therefore, repealing this law could help reduce forms of violence within the family. The KRG and/or Central Government should enact separate special Personal Status Laws for non-Muslim minorities or amend the current Iraqi PSL, through this, ensuring that non-Muslim minorities are not subjected to Sharia Law. The KRG or Central Government should repeal Paragraph 398 of the Penal Code in order to prevent perpetrators to escape punishment in case of rape and sexual assault. The Kurdistan Parliament and judiciaries should seriously implement and enforce the Law of 2004 that outlaws reduced sentences for honour crimes, ensuring adequate punishment of perpetrator(s).

All in all, the Iraqi Laws negatively affects minority women in different ways; hence, progress have been made by the KRG, women and civil society organizations to find solutions to their problems, although this requires persistence and a long-term view.

## Table of content

Executive Summary.....	2
Table of content.....	4
Abbreviations and Acronyms.....	5
Introduction.....	6
Methodology.....	9
Chapter 1. 'Gender Equality' Under Current Iraqi Law.....	11
The Actual Situation of Minority Women.....	12
Human rights violations against (minority) women in Iraq.....	12
The region Iraqi Kurdistan: its demographic landscape and their related religions.....	14
Human rights violations against minority women in Iraqi Kurdistan.....	16
Women's movements in Iraq and their struggle for a more progressive PSL.....	22
Effects of the Iraq-Iran War, UN sanctions, and 2003 US-led Invasion.....	24
The effects of the 2005 Iraqi Constitution.....	25
Chapter 2. Kurdish Autonomy Under the 2005 Iraqi Federal Constitution.....	27
The conflicting nature of the 2005 Iraqi Constitution.....	31
The conflicting nature of the Penal Code.....	33
Chapter 3. KRG's Efforts to Address Violence Against Minority Women.....	38
Implementation problems of Domestic Violence Law.....	40
Signs of Implementation of Domestic Violence Law.....	41
Support from NGOs to implement Domestic Violence Law No. 8.....	42
KRG efforts towards honour killings.....	42
Analyses.....	44
Conclusion.....	51
Recommendations to KRG and Central Government and NGO's.....	53
Constitutional Law.....	53
Penal Code.....	53
Iraqi PSL.....	54
Domestic Violence Law (Law No. 8).....	55
Other Improvements.....	55
References.....	56
Appendices.....	61
1. European Studies Student Ethics Form.....	61
2. Informed Consent Form.....	62
3. Interview Transcript- William Spencer; Executive Director IILHR.....	62

**Abbreviations and Acronyms**

Coalition Provisional Authority	CPA
Convention on the Elimination of all Forms of- Discrimination and Violence Against Women	CEDAW
Democratic Party of Kurdistan	KDP
Female Genital Mutilation	FGM
International Covenant on Civil and Political Rights	ICCPR
International Rescue Committee	ICR
Intimate Partner Violence	IPV
Non-governmental Organizations	NGOs
Patriotic Union of Kurdistan	PUK
Personal Status Law	PSL
UN assistance Mission in Iraq	UNAMI
UN Human Rights Council Universal Periodic Review	UPR
United Nations Development Programme	UNDP

## Introduction

According to several provisions of Iraq's Constitutional Law, Criminal Law and its obligations under International Law, at first sight, it seems that minority women and girls of Iraqi Kurdistan are adequately protected under Iraqi and International Law. However, in reality these minority women suffer discrimination, inequality, social exclusion, and many forms of violence, including domestic violence, honour crimes, rape, sexual exploitation, forced and early marriage, and FGM. Their subordinate status in Iraqi Kurdistan affects almost all spheres of life, including health, employment and family life due to entrenched cultural, religious and social factors but also because of many years of constant violence, internal migration, lack of government capacity and contradictions and discriminatory effects in Iraqi Constitutional Law, the PSL and the Penal Code.

Through thorough research at an international, national and regional level this research highlights the human rights violations at hand and outlines which action need to be taken in order to tackle them. This research aims at producing an overview of how Iraqi Laws negatively influence minority women's living conditions within the Iraqi Kurdistan Region and finding possible solutions to their problems from a national and regional point of view and compare those to not only figure out which laws and in what way these laws affect them, but also make the KRG, the Iraqi Central Government as well as International Organizations conscious of the effect of their decisions. To do the latter, this research tries to answer the question: "How does the Iraqi legal system, in particular the Penal Code and the PSL, negatively affect minority women living in Iraqi Kurdistan, and how could their situation be improved?"

Getting a sense of the difficulties per region with regard to human rights violations against minority women is done by answering the sub question "What kind of human rights violations do minority women of Iraq as well as minority women of Iraqi Kurdistan face, and in what way are they negatively affected by these problems". This research took a look at how over the years Iraqi minority women's rights have been developed and answer the sub question: "How have former Iraqi laws, such as the PSL, improved or deteriorated the position of minority women of Iraqi Kurdistan throughout the last decade?". Subsequently, in order to seek for future improvements in Iraqi Law concerning minority women's rights and to better understand these women's current situation this research has answered the question: "Due to what circumstances and what kind of legal acts became Iraqi Kurdistan minority women's rights deteriorated or improved and what could one learn from this?".

Moreover, a comparison between the federal powers of the two governments was done by answering the sub question: "How and under which conditions are federal powers distributed between the Central Government and the Regional Government?". Through this, giving an insight into which federal authority has what power and under which conditions. The answers to this question showed that the Iraqi Kurdistan Region lacks a *final* Regional Constitution and, on the basis of further examination, the reason for this became clear as well as the fact that main political parties of the region fail to form a new Kurdish Government due to political opposition within the region which in turn leads to political turmoil. As a result, the following sub question could be answered: "In what way does this separation of federal powers, including the autonomous Region's current political landscape, affect minority women of Iraqi Kurdistan, and what actions can be taken to improve their situation?".

Furthermore, as the separation of federal powers was mapped out, it became clear which laws apply to the minority women of the autonomous region, subsequently these laws could be examined and answer the sub question "What and in what way does current Iraqi Laws disadvantage Iraqi Kurdistan minority women the most, and what should be done differently in order to advance them, subsequently bringing a real positive change to their lives?".

Yet, this research does not focus solely on how Iraqi Laws affect minority women but also how (mainly) the KRG and women and civil society organizations respond to this and what kind of actions they take against violence towards minority women by answering the question: "What kind of efforts has the KRG and NGOs currently taken to address violence against minority women and what are the positive and/ or negative outcomes of these efforts?". For instance, according to William Spencer of the IILHR, the KRG has done a good job with the establishment and institutionalization of the Directorate for Combatting Violence Against Women<sup>1</sup>, an institute that is authorized to receive and investigate domestic violence cases. However, most relevant parties criticize the lack of implementation of the Domestic Violence Law as well for other Iraqi Laws, including governmental authorities and women and civil society organizations. Apart from the lack of implementation of Iraqi Laws, NGO's such as WADI and International Rescue Committee (IRC) point out that societal support is needed, and both seek to stimulate local communities to reflect on their traditional attitudes regarding violence against minority women within the region.

---

<sup>1</sup> A.k.a. The Directorate for Tracing Violence Against Women

Finally, several recommendations to the KRG, the Iraqi Central Government and NGOs are made. These recommendations focus on not only emphasizing the inconsistencies of Iraqi Law, but also to offering possible solutions to the violations and ensuring, that minority women of Iraqi Kurdistan are treated equally and gain protection under Iraqi Law regardless of sex or ethnicity.



## **Methodology**

The research was conducted in the realms of Law (Constitutional, Personal Status and Criminal Law), Human Rights, and Politics, all regarded from a national and regional point of view, but keeping international standards in mind.

To answer the majority of the sub questions, academic sources were used, such as articles from periodicals, reports, (regional) newspapers, scientific magazines, academic papers, official websites of governmental/ non-governmental organizations and a variety of databases (e.g. Google Scholar, EBSCO-host website etc.) In addition, "Iraqi's Minorities and Other Vulnerable Groups: Legal Framework, Documentation and Human Rights" by the Institute for International Law and Human Rights (IILHR) was another valuable source together with "Iraq's Minorities: Participation in Public Life" by P. Taneja.

Moreover, a personal (digital) Interview with Mr William Spencer, Executive Director at the IILHR, was conducted and turned out to be out of great value for answering several sub-questions. Given Mr Spencer's expertise in the field of post-conflict rebuilding and peace and constitutional negotiations in Iraq and more than 22 years of professional experience in e.g. human rights, International Law and crisis management, his insights appeared to be very useful for finalizing the analysis and recommendations of this research. Moreover, since Mr Spencer has advised the Iraqi Central Government on a wide range of Constitutional and Legislative issues since 2005 and that, he is still visits and works in Iraq on a regular basis, he has a very good understanding of the actual political and human rights situation on the ground. This was highly relevant given the regional focus of this research, Iraqi Kurdistan, and the corresponding continuous changing political landscape of Iraq as a whole.

This way of researching was chosen based on the idea that it is the most reliable in terms of the quality, quantity and relevance of the obtained information.

First of all, all the information was filtered according to its relevance. Secondly, the sources were carefully checked for their reliability and accuracy of the provided information, by comparing results from different sources. Thirdly, the obtained information was used to answer the central question and the sub-questions. Finally, researched results as well as their respective analysis

helped in drawing a conclusion, finding solutions to the issue, and giving recommendation to the KRG, Iraqi Central Government and NGOs.

Given the complexity of the topic, limitations, as to what aspects should be included or what field will be investigated to answer the research question, were needed. Therefore, this research focuses on *a* selection of human rights violations against minority women living in Iraqi Kurdistan, and three fields of Law - Constitutional, Personal Status and Criminal Law- have been selected since these Laws seem to affect them the most. Nevertheless, other violations against minority women might exist within the Iraqi Kurdish Region, and it is likely that more ambiguities and contradictions in Iraqi Law can be found. However, given the timeframe for the realization of this research, to get a grip on certain aspects that highly influence minority women's living conditions, and to keep this research manageable and specific enough, these boundaries were required.

## Chapter 1. 'Gender Equality' Under Current Iraqi Law

Currently, minority women living in the autonomous Iraqi Kurdistan Region remain the targets of threats and violence based on religion, ethnicity and perceived ideology (IILHR, 2013, p. 6). Violence against these women manifests itself in many ways and within all levels of society, both within the private and public domain. In order to understand minority women's vulnerability in greater depth, it is necessary to map out the various problems associated with minority women in Iraq, which are of a legal as well as a social nature, and what impact existing and recently amended legislation has on their lives. In order to do so, it is of utmost importance to examine under which laws the human rights of minority women of Iraq, including Iraqi-Kurdistan, are protected. By doing so, it seems that at first sight Iraqi women are well protected under Iraq's current Constitutional Law, Criminal Law, as well as under International Law. For example, the current Iraqi Constitution, which was approved in 2005, sets out several strong equality rights and protections for women. In particular, Article 14 provides for the principle of equality before the law and it forbids discrimination "based on gender, race, ethnicity, nationality, origin, colour, religion, sect, belief or opinion, or economic or social status" (The Republic of Iraq Ministry of Interior, 2005). In fact, from this, one could conclude that the Iraqi Constitution states that women are equal to men (Taneja, 2011, p. 24). Moreover, Article 20 of the Iraqi Constitution of 2005 provides for the principle of equality in political participation; it gives all citizens of Iraq, whether male or female, certain political rights, such as the right to vote and the right to be elected. Also, the Preamble of the Iraqi Constitution mandates that the people of Iraq should "pay attention to women and their rights" [...] and "spread the culture of diversity". Besides the above-mentioned civil and political rights, Article 29 prohibits all forms of violence in the family, at schools and in society. Furthermore, Article 125 states: "This Constitution shall guarantee the administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law" (Taneja, 2011, p. 24, 29). All these wide-reaching protections are included in the Constitution to ensure (minority) women rights.

Another law that contains anti-discrimination clauses in order to safeguard minorities' rights is the Coalition Provisional Authority (CPA) Order Number 7 of April 2003, which was incorporated by reference to the Penal Code of July 1969. This CPA Order states: "No persons will be discriminated against on the basis of sex, race, colour, language, religion, political opinion, national ethnic or social origin, or birth" (IILHR, 2011, p. 16). The significance of this non-discrimination provision cannot be overstated due to its broad applicability, therefore considered

a strong body of law regarding the protection of Iraqi minorities, including minority women living in Iraqi Kurdistan.

Furthermore, Iraq has acceded to several Conventions, which form the basis of Iraq's obligations under International Law. One of them is the so-called UN Convention on the Elimination of all Forms of Discrimination and Violence Against Women (CEDAW), which dates from 1986, that exclusively refers to women and their position in society. The CEDAW prohibits discrimination on the grounds of gender, and provides a comprehensive definition on what discrimination constitutes (IILHR, 2010, p 22). Another example of a Convention that Iraq, in this case, has ratified is the International Covenant on Civil and Political Rights (ICCPR), dating from 1971, which states that: State Parties must respect and guarantee "the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant" and "without distinction of any kind", including sex (Article 3 & 2) (University of Minnesota, 1998). Moreover, Iraq signed the 1993 Declaration on the Elimination of Violence against Women (Minority Rights Group International, 2011, p. 220). Article 1 of the Declaration sets the meaning of the term "violence against women" as: "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (University of Minnesota, 1998).

On the basis of these examples of ratified Laws and Orders as well as signed Conventions, at first sight it appears that Iraqi (minority) women are adequately protected by Iraq's Constitutional Law, Criminal Law and its obligations under International Law. However, this rather positive vision of the Iraqi rule of law regarding minority women is viewed from an incomplete perspective and reflects a distorted picture of the actual nature of the legislation, as many contradictions exist within the current Iraqi legal system. When researching the existing legislation as well as the associated Iraqi legal system and the autonomous region of Iraqi Kurdistan in greater depth, it becomes clear that the living conditions for minority women are poignant and disturbing. Over the last decades, their position has deteriorated dramatically, making them extremely vulnerable to human right violations and other threats.

## **The Actual Situation of Minority Women**

### **Human rights violations against (minority) women in Iraq**

In reality, currently, a high degree of human rights violations against minority women take place

throughout Iraq. Numerous reports by NGOs and International Organizations stress that Iraqi minority *women* remain particularly at risk, as they represent the most vulnerable group in Iraqi society, both by being a member of a minority community and the fact of being a woman. This results in so-called 'double' discrimination, which in turn results in an increase of exploitation and violence (IILHR, 2013, p. 11 & Taneja, 2011, p. 25 & W. Spencer, personal digital Interview, June 13, 2014). Iraqi minority women also face gender-based repression within their own communities (Minority Rights Group International, 2011, p. 211). The UN Human Rights Council Universal Periodic Review (UPR) on Iraq in 2010 - which is formulated by civil society including NGO's once every four years - reports that minority women are part of the most vulnerable section of Iraqi society (Minority Rights Group International, 2011, p. 219). It concerns a female population that is extremely traumatized due to on-going unstable political, civil and armed conflicts, economic sanctions as well as Iraq's current fragile political order, which has deteriorated the living conditions and status of women in Iraq, putting them at particular risk (UNAMI, 2013).

To give an insight into the scale of the problem of gender-based violence, figures released by the UN assistance Mission in Iraq (UNAMI) show that one in five women aged 15-49 in Iraq has suffered physical violence from her husband. This indicates that domestic violence is a main problem in the country. In addition, 33 per cent of women have been subjected to emotional violence; and 83 per cent have suffered emotional abuse by their husband. The report of UNAMI, which was part of the so-called '16 Days Campaign' against gender-based violence of 2010, also underlines other specific issues related to Iraqi minority women, which are: forced and early marriages, human trafficking, a lack of access to care and justice, and a lack of awareness about their rights (Minority Rights Group International, 2011, p. 219 & Taneja, 2011 p. 23). The Institute for International Law & Human Rights (IILHR) acknowledges the above-mentioned problems, however, in addition, the organization reports that gender-based violence against minority women in Iraq also takes place through sexual violence and 'honour based violence' (IILHR, 2013, p. 12). Furthermore, there is a great reluctance among minority women to report gender-based crimes, when they fall victim to them. The main reason for this is the fear of reprisals. By means of individual meetings with women, researchers found out that many of them had suffered domestic violence, yet they were too scared to report it because of family, religious and community pressure (Taneja, 2011 p. 23-24). Furthermore, even when reported crimes against minority women often go unpunished because of the fact that police, medical and judicial authorities poorly handle them (Minority Rights Group International, 2011, p. 219). Besides these problems, women's freedom of movement, their access to health services and education and

their economic opportunities have been restricted due to the continuous threat of ethnic and religious violence as well as patterns of discrimination in law and in practice (IILHR, 2013 p. 12).

The overall effects of these circumstances make it very difficult for minority women to access employment and education. Regarding access to employment, only 14 per cent of women are participating in the workforce or seeking work compared to 73 per cent of men. Also, for young women, this percentage is considerably higher, namely 27 per cent and for women from urban areas the percentage increases even more. The reason for low participation of Iraqi women in the workforce has to do with their lower level of education, which results in a lack of skills, and cultural, social and legal obstacles (UNAMI, 2013).

In any event, it would be in minority women's interests to educate themselves about their rights in order to strengthen their vulnerable position in Iraqi society (Minority Rights Group International, 2011, p. 220). In addition, an examination of what kind of role society as well as governmental and judicial authorities play concerning human rights violations against minority women is needed in order to find solutions to their problems and improve their future living conditions.

### **The region Iraqi Kurdistan: its demographic landscape and their related religions**

As this research focuses on the equality issues of minority women living in Iraqi Kurdistan and their corresponding legal system, an explanation on the region itself and what kind of ethnic and religious minorities are living in the Kurdish Autonomous Region is necessary in order to understand these women's current situation, and find possible solutions to their problems. With regard to the region, Iraqi Kurdistan gained autonomous status in 1970 through an agreement with the then Iraqi vice President Saddam Hussein. However, this agreement was not taken seriously by Saddam due to its deliberately vague definition of Kurdish territory (Minority Rights Group International, 2008 & Kane, 2011). More recently, its status was reconfirmed as an autonomous entity within the federal Iraqi republic in 2005 through the new Iraqi Constitution (Article 117) (The Republic of Iraq Ministry of Interior, 2005). Currently, the KRG governs the region. Iraqi Kurdistan is situated in northern Iraq and presently consists of the following governorates: Dahuk (a.k.a. Duhok), Erbil, and Sulaymaniya (a.k.a. Slemani)<sup>2</sup> (Kurdistan Regional Government, 2014). Despite the official recognition of Iraqi Kurdistan as an autonomous region

---

<sup>2</sup> The KRG recognized Halabja as a new Iraqi Kurdistan governorate in June 2013. The Iraqi Cabinet agreed to make it the nation's 19th province on 1 January 2014. However, this decision has to be approved by the Iraqi Parliament to be recognized officially. Recently, on 13 March 2014 the KRG officially approved Halabja as the fourth province in Iraqi Kurdistan and are now waiting for approval by the Iraqi Parliament.

by the 2005 Constitution, serious disputes about the exact geographic composition continue to exist mainly due to personal interests by both rivals such as oil-rich regions. The disputes resulted in the so-called Disputed Territories of Iraq, which are located between the Southern governorates of Iraq and the borders of the three officially recognized governorates of Iraqi Kurdistan. Partly due to the vague definition of Iraq's Constitution on both the current boundaries of the Kurdistan region and which areas outside it are under dispute, confusion is created (Kane, 2011). Yet, the official boundary of the Kurdistan region is the Green line, which was the ceasefire line that was unilaterally established by the Iraqi army after suppressing the 1991 Kurdish uprising. However, the validity of the Green line has been brought into question by the Kurds during further negotiations. In addition, the Iraqi constitution contains ambiguities regarding the disputed territories themselves, only referring in Article 140 to "Kirkuk and other disputed territories", thereby leaving room for future and on-going unsolved disputes (Kane, 2011). The lack of clarity sadly characterises the tense relations between the Arabs and Kurds.

When describing the population of Iraq it is of utmost importance to emphasize that there are simply no reliable numbers for Iraq's demographic landscape. According to the IILHR (2013, p. 9), the collection of reliable demographic data was made almost impossible because of "many years of constant violence, internal migration, emigration, lack of government capacity and the politicization of identity". Since 1987, no complete census has been held, as the 1997 census did not include the three Kurdish governorates. In 2008 it seemed that there were possibilities for a national census as the Government of Iraq passed a new census law, however, no census has yet been held because of political tensions between Arabs and Kurds over disputed areas in the northern region of the country, and due to conflicts between Kurds and other ethnic and religious minorities living in the area. Because of this, the presented data in this research is derived from estimates from international organizations, Iraqi NGOs and community leaders rather than governmental sources; however, some Government statistics of Iraqi population exist, which give some insight into the demographic landscape of Iraq (IILHR, 2013, p. 9). According to 2010 statistics of the Government of Iraq, 97 per cent of Iraqi population is Muslim. Shi'a Muslims form a 60 to 65 per cent majority, and are predominantly Arab, but also Turkmen, Shabak, Faili Kurds, a small number of Circassians as well as other groups. Sunni Muslims constituting 32 to 37 per cent of the population and are Kurds, Arabs, a small number of Turkmen, Circassians and others. The remaining three per cent is made up of Christians, Yezidis, Mandaean-Sabeans, Baha'is, Shabaks, Kaka'is and Jews. (IILHR, 2013, p. 9).

Despite the lack of reliable figures on Iraq's population, it is surely known that many different ethnic and religious minorities, and their related female population, are living in current Iraqi Kurdistan. Obviously, the Kurdish people themselves inhabit the autonomous region but Christians - mainly from Assyrian, Chaldean, and Armenian groups -, Yezidis, Turkmen, Mandaean-Sabeans, Baha'is and Faili Kurds also live in the Iraqi Kurdistan region (IILHR, 2013, p. 20).<sup>3</sup> Moreover, the Kurdish population itself do not form a homogenous whole as Kurdistan is divided among Iran, Turkey, and Syria. The Iraqi Kurds who are living north of the Greater Zab river speak Kirmanji Kurdish and have more affinity with Turkish Kurds, while the Iraqi Kurds who are living south of it speak Sorani, as do most Iranian Kurds (Minority Rights Group International, 2008). Iraqi Kurds are mainly Sunni Muslim, and as mentioned above they are by far a minority within Iraqi society, making them highly vulnerable. Yet, Kurds certainly represent the largest non-Arabic minority (Minority Rights Group International, 2008). This does not mean that Iraqi Kurdish women within Iraqi Kurdistan are better off than other minority women in the region. In fact, all minority women in Iraqi Kurdistan remain at particular risk. The reason for their marginalization has to do with a number of factors. Political instability and the continual disputes between Arabs and Kurds, religious and ethnic bias and intolerance, and entrenched patterns of discrimination play a significant role herein (IILHR, 2013, p. 11).

#### **Human rights violations against minority women in Iraqi Kurdistan**

A specific problem that mainly Kurdish minority women of Iraqi Kurdistan face is FGM, which is widely practiced in the Iraqi Kurdistan Region, and is remarkably less common in other parts of Iraq (Jawad, Saleh & Shabila, 2014, p. 2). According to the World Health Organization: "FGM comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non medical reasons" (World Health Organization, 2014). This issue can be considered as very problematic because it obviously involves negative lifelong physical and psychological consequences for women that are subjected to the extreme practice. Therefore, FGM is recognized internationally as a clear violation of human rights of girls and women because it mirrors deep-seated inequality between the sexes and it includes drastic forms of discrimination against women. In addition, the mutilation "violates a person's rights to

---

<sup>3</sup> The above-mentioned minorities also live dispersed throughout Iraq, as the country's ethnic and religious minorities are highly fragmented or even displaced due to many years of turmoil and conflicts. However, this mostly involves small groups, as they are a minority.



health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment" (World Health Organization, 2014).

Several studies have reported contrasting averages of the application of FGM. For example, a study of the Kurdistan Ministry of Health of 2010 stated that 41 per cent of those Kurdish women interviewed said they had undergone FGM (IILHR, 2013, p 31). Whereas, a 2010 study of an Iraqi-German Non-Governmental Organization, known as WADI, shows that 74.8 per cent of Kurdish women interviewed declared that they had experienced FGM. As for the latter, 94.8 per cent of the interviewees were Sunni Muslims while the remaining percentage, that is 5,2 per cent, were Shi'a Muslims, of which 23.1 per cent reported that they had been cut (WADI, 2010, p. 22, 18). These results show the possible impact of religious affiliation and consider that there is a strong correlation between Sunni Islam and the practice of FGM. However, there are different opinions on this assumption. Many Iraqi Kurdish minority women themselves assume that the reason for mutilation is because of their tradition, although just as much Iraqi Kurdish minority women believe that is an act of a religious nature. Nevertheless, when looking at individual (sub) districts or governorates, a totally different outcome appears: Garmyan respondents tend almost exclusively to perceive it as a religious practice whereas in the Erbil governorate Iraqi Kurdish minority women justify FGM as a cultural tradition (WADI, 2010, p. 18, 19).

Despite the slight differences in the outcomes of these studies both in terms of the percentage of occurrence of FGM and in the main reasons for the practice, it appears clear that FGM is widely applied among Iraqi Kurds. In order to gain insights on how Iraqi Kurdish minority women think about the whole issue, the following study by BMC Women's Health seems useful. The study found that among women four different perspectives on FGM exist. These perspectives range from acceptance of the practice to active opposition. More specifically, the study found four main opinions: 1) "positive cultural tradition", 2) "active opponents", 3) "role of law", and the last factor was entitled as "health concerns and passive opposition". In short, only those minority women that chose the first factor experienced FGM as a positive cultural tradition whereas the other three factors reflected the view of those opposing the practice. Yet, there were different levels of opposition. Notably, factor 3 stresses the importance of the role of law regarding the issues of FGM in Kurdistan Region. The women that belong to this third-factor solution recognized the need for (more) meaningful laws or their enforcement. However, they also mentioned that they thought that people would not be deterred from subjecting girls to FGM only because they are afraid of the law. Because of this, these 'third-factor women' stressed the importance of prosecuting FGM practitioners as well as people who subject their daughters to FGM. Those women whose opinion is reflected in factor 4 only acknowledged the health concerns resulting

from the mutilation and opposed the practice, although not in an active manner. The women reflected in factor 2 agreed that FGM is a violation of human rights and therefore openly objected to family members subjecting their daughters to the practice. Factor 1 represents those women that still believe in the practice in order to retain a good position in society or to circumvent cultural embarrassment or stigma (Jawad, et al., 2014, p. 1, 7-10).

Nevertheless, there are signs of progress concerning the practise of FGM. A more recent study of WADI conducted in 2013 announced that in some Iraqi Kurdish regions the prevalence of FGM has declined significantly within the last decade. According to new data, which is based on interviews with 5,000 women and girls, it appears that the "village-by-village" approach of WADI's campaign caused the decrease in the practice. The aim of the campaign was to raise awareness about the medical and psychological consequences of the mutilation. The recent study, which includes the areas of Sulaymaniyah, Halabja, Raniya, Goptata and Garmyan, proclaimed the following: "while 66 to 99 per cent of women aged 25 and older were found to be mutilated, the percentage in the pertinent age group 6 to 10 was close to zero in Halabja and Garmyan". As in both areas FGM was highly practiced, it was in these two areas that the awareness campaign first began in 2004. Moreover, in Sulaymaniyah the rate of FGM among 6 to 10 years old girls is of 11 per cent, in Goptapa 21 per cent and in Raniya it has now dropped to 48 per cent, but this is WADI's most recent operation area where the rate used to be close to 100 per cent (WADI, 2013).

Another major problem that all Iraqi Kurdistan's minority women are dealing with is the high rate of honour killings that are occurring throughout the region. This issue has not gone unnoticed by KRG authorities; the KRG Ministry of Interior confirmed and published the documentation of 102 incidents of women burned around Erbil governorate alone. Moreover, during 2010 the KRG stated that 76 women in the area were killed or committed suicide, while 330 were burned or self-immolated. Several NGOs, such as Organization for Women's Freedom in Iraq, believe that these estimates are rather low (U.S. Department of State, 2011, p. 35). The Iraqi Ministry of Human Rights reported that, in 2010, 249 women were murdered, including honour crimes (IILHR, 2013). However, when looking at the longer term, according to a four-year research report of the IRC, between 2004 and May 2008, circa 1270 honour crimes were reported of which 980 (77 per cent) took place in the Iraqi Kurdish region (International Rescue Committee, n.d., p. 8). Whatever the exact number is, honour crimes remain a major problem in the daily life of minority women that are currently living in Iraqi Kurdistan.

There are organizations that have responded to the issue of honour killings in Iraqi Kurdistan. For example, in 2009, the IRC has introduced a program in two regions of Iraqi Kurdistan in order to

spread an anti-violence message. IRC's program aims to reduce honour killings and violence against (minority) women by contacting and stimulating local communities to consider their traditional attitudes regarding the issue. Furthermore, IRC seeks to improve the response of local law-enforcement and service providers to women survivors of violence. In order to find support from the Iraqi Kurdistan local community for a non-violent stance towards women and family matters, IRC approached the sensitive issue of violence against women as a "women's health issue". Through this, the organization has been able to reach out to religious leaders and it has brought groups of men and women together to talk about sexual attitudes and the issue of violence. Furthermore, IRC has provided trainings on violence prevention and case management to local NGO's, women's shelters and government institutions. In addition, IRC sponsored the "16 days of activism against gender based violence" campaign, which reached more than 30.000 Kurds by means of local radio broadcasts as well as other information programs (International Rescue Committee, n.d.).

Furthermore, as this research already mentioned, domestic violence, which is also known as Intimate Partner Violence (IPV), remains a serious problem throughout Iraq, and therefore also in Iraqi Kurdistan (U.S. Department of State, 2011, p. 34). Since 2007, IPV has become a priority in Iraqi Kurdistan due to advocacy strategies of several women's rights and civil society groups. Nevertheless, NGO's stated that IPV is still a severe problem (Al-Atrushi, Al-Hadithi, Al-Tawil & Shabila, 2013 p. 2). According to a report by the World Health Organization, IPV includes unjust behaviour by the intimate partner, that is, a current or former husband, cohabiting partner, boyfriend or lover. More specifically, IPV refers to "behaviour by an intimate partner that causes physical, sexual or psychological harm" which includes "physical aggression, sexual coercion, controlling behaviours and emotional abuse" (World Health Organization, 2013, vii).

A study that specifically focused on IPV against women in Iraqi Kurdistan concluded that indeed a high prevalence of IPV exists in the autonomous region; more than 58 per cent of the respondents reported that they suffered from any type of lifetime IPV; emotional abuse proved to be the most common form of IPV with 52,6 per cent; followed by physical and sexual violence with 38,9 per cent and 21,1 per cent respectively. This means that a majority of the respondents is dealing with violence by their intimate partner, though it should be taken into consideration that these women were contacted through hospital consults and that the respondents whose husbands accompanied them were excluded from the research in the sense that were not allowed to talk freely about the issue (Al-Atrushi, et al., 2013, p. 3, 9). For this reason, the study outcome percentages might be higher in reality, although this study must be considered as a

sample as it includes findings of participants from Erbil city only. However, the study does indicate that IPV plays a major role in the lives of minority women living Iraqi Kurdistan. In addition, IPV often remains unreported and unpunished, because abuses are usually addressed within the family and tribal structure. When looking at the extent to which women in Iraqi Kurdistan experience and accept IPV (a.k.a. domestic violence), different opinions exist. In Dohuk 45 to 56 per cent of the women believe a husband is justified in beating his wife in certain circumstances, thereby accepting domestic violence more than women in the two other governorates (Erbil and Sulaymaniya), in both of which 14 to 30 per cent of the women consider that a husband is justified to beat his wife in some circumstances. Nevertheless, when comparing the percentages of women that face different types of spousal violence in Iraqi Kurdistan, all three governorates score 18 to 25 per cent, which is considerably lower than the rest of Iraq (UNAMI, 2013). This shows that the stance of women in Iraqi Kurdistan towards IPV is quite progressive, a characteristic for which they are known.

Another worrying issue concerning minority women living in Iraqi Kurdistan is that forced marriage is still practiced heavily, and often involves abduction. Yezidi women of Northern Iraq are especially subjected to these two issues. Since 2003, around 30 cases were reported of Yezidi women being abducted and forced to marry. These reports came from Yezidi activists, claiming that these women were forced to marry members of the Asayish, which is a Kurdish security force (Taneja, 2011, p. 24). The Yezidi communities of these women or girls have almost no choice to refuse unwanted marriages because they will be threatened with reprisals in case of refusing. Besides the sad fact that these women are at the mercy of an undesirable spouse for the rest of their lives, they are also excluded from their family and Yezidi community, as both the Yezidi and Sabean- Mandeian faiths forbid marriage outside the religion, therefore not accepting the renouncement of faith. However, officially, although under certain conditions, under Iraqi Civil and Criminal Law forced marriage is illegal. Also, Kurd Net, a daily online news site, argues that recently the practice of forced marriage has decreased; yet, it still remains a Kurdish tradition (Bahaddin, 2012). Nevertheless, since the violation takes place at a large scale, one might conclude that the implementation of these laws is insufficient, with prosecution rates remaining low. Besides the lack of obeying the law by men and the lack of proper implementation of laws that prohibits forced marriage, the obedience of forced marriage and abduction also has to do with the vision of some of the women and girls in question. According to a 2009 national survey by the Ministry for Sport and Youth it appeared that one-third of young girls shared the opinion that a girl must marry if it is her relative or guardian's wish (Taneja, 2011, p. 24 & UNAMI, 2013).

Forced marriages are often accompanied by underage marriages of Iraqi girls. Since the on-going struggle for the realization of a democratic Iraqi state as of 2003, underage marriages (a.k.a. as early marriages) have increased considerably. One of the main causes of the increase is a poverty gap that has emerged since 1995 due to the UN 1990-2003 embargo on Iraq. According to FAO's statistics, the poverty gap intensified severely in 1995 -1996, "to include 71% of the Iraqi population" (Jaffal, 2012). This affected the living conditions of Iraqi citizens enormously. As a result, more daughters were forced by their fathers or guardians to marry at a very young age in turn for a dowry, mostly consisting of a sum of money. The poverty level in Iraq worsened even more since the US-led invasion of 2003 and the sectarian conflicts that followed. This led to many separated families throughout Iraq and an increase in early marriages as well (Jaffal, 2012).

According to a 2007 socio-economic survey of families in Iraq, 21 per cent of Iraqi girls are married before they turn 19 years old. Another survey, conducted by the Central Organization for Statistics, showed that 5 per cent of Iraqi girls were married under the age of 15, and 22 per cent under those surveyed were married under the age of 18. Another field study, which was led by researcher Sajja Abdel Riddah, revealed that underage marriages continuously increased from January to May 2010. Apart from the warning of the ministry of women's affairs that "girls between 15 and 18 are twice as likely to die during pregnancy and while giving birth than women between the ages of 20 and 24", nowadays, early marriages still take place at an disturbing rate (Jaffal, 2012).

Another issue that is related to marriage and that also affect Iraqi Kurdistan's minority women is the quite common practice by Iraqi men to marry more than one wife. According to Iraqi PSL referred as polygamy. Polygamy is not necessarily related to forced or early marriages; yet, nowadays, it still remains a Kurdish tradition, which has been a topic of discussion for decades within Kurdish society. Opinions differ concerning the tradition; opponents perceive polygamy as an out-dated practice and therefore it is no longer needed, other argue it is still needed in order to marry off single women (Keli, 2010). The actual problem of allowing polygamy before the law in Iraq has to do with the fact that men are more privileged than women, in fact, women have nothing to say about how many women her husband marries. In that sense, both sexes are not equal before the law.

Minority women living in Iraqi Kurdistan also face difficulties to participate in the work force. The outcomes of a survey by Minority Right Group International show that 93 per cent of the surveyed Faili Kurds have experienced ethnic or religious discrimination when applying for jobs. In addition, 100 per cent of them said that they have been subjected to threats outside the home.

This indicates that they are not accepted by society. Women from other minority groups also experienced ethnic or religious discrimination when applying for jobs. In the study's research sample, 38 per cent of the women belonging to another minority belonged to the Yezidi community, 18 per cent to the Sabean-Mandean community, and 19 per cent to the Christian community (Taneja, 2011, p. 26). Due to the poor security situation, and the fact that genders are not treated equally, women's ability to work outside the home is affected disproportionately. Because of weak labour laws and the lack of an equal opportunity employment law women are vulnerable to arbitrary dismissal (U.S. Department of State, 2011, 36, 37). Furthermore, on the basis of a factsheet of the UNAMI it appears that the unemployment rate for female aged fifteen years or older is significantly high in the Al Sulaymaniya governorate, with an average of 30 to 40 per cent. This is the highest possible category of unemployment rate throughout the survey. There are only two other governorates in Iraq that have reached the same rate of women unemployment aged 15+. The Erbil governorates has an unemployment rate of female aged 15+ of 20 to 30 per cent whereas the Dohuk governorate "only" 10 to 20 per cent of female aged 15+ facing unemployment (UNAMI, 2013). This specifically indicates that difficulties in access to employment, although unevenly distributed, are common among women throughout Iraqi Kurdistan and given the outcomes of the survey described above, discrimination of minority women on the basis of religion or ethnicity likely plays an important role herein.

#### **Women's movements in Iraq and their struggle for a more progressive PSL**

On the basis of the above-mentioned problems it is clear that currently the human rights of minority women living in Iraqi Kurdistan are violated in many ways, negatively influencing their daily lives. This high level of human rights violations is remarkable considering the fact that in the post World War II period Iraq was often seen as a Middle East country with a progressive stance towards liberties for women with regard to education and employment. Since 1963, the Ba'ath Party came to power and introduced provisions for women's equality through its ideology (Brown & Romano, 2006, p. 51). In fact, Iraq served as a role model for other countries in the region. The realization of a more progressive Iraq was developed over the years due to decades of struggles of women to become (more) equal to men as well as the overall fight for independence of Iraq. During the 1920s, already, many rights were granted to (minority) women in Iraq. At least, the country allowed far more freedoms to its (minority) women in comparison to other countries in the region. Also during the 1930s, (minority) women were of great importance to Iraqi society in

the fight for independence from Britain. During this period, several independent women's groups were established. An example of such an organization that became highly influential was The League for Defence of Women's Rights, which was created in 1952 (Brown & Romano, 2006, p. 52). These women's groups have pushed for decades for progressive laws of matters of women's status within their families, called Personal Status Laws (PSL) (Clair, 2010, p. 82). More specifically, Personal Status issues are those dealing with marriage, divorce, inheritance, child custody and adoption, all falling under family law (Islamopedia Online, 2011).

After a coup d'etat, Iraq became a republic in 1958. Shortly after, in 1959, a left-leaning revolutionary government finally instituted a new PSL. Due to the modifications, the 1959 PSL was a unified, codified national law that treated all Iraqi citizens as equal irrespective of their sectarian associations, making "PSL the equivalent of Civil Law" (Islamopedia Online, 2011 & Brown, 2005, p. 5). The PSL replaced the previous legal system that consisted of a number of traditional religious courts (wherein every religion had its own set of courts) that adjudicated on matters of personal status on the grounds of their own religious interpretation and training (Al-Ali, & Pratt), resulting in a differential treatment of Shi'a and Sunni Muslims and other religious minorities, such as Christians and Jews. Through the replacement of this former system, these courts now became a branch of the Iraq's regular court system, thereby imposing these judges a new role: to apply and thus implement the codified law, rather than interpret Islamic law on their own (Brown, 2005, p. 5). This diminished the power of religious judges and their establishments, as they were no longer allowed to interpret PSL independently from the state. However, the 1959 codified PSL was not secular in nature nor gender neutral, as it stipulated that judges should resort to Shi'a principles only when the codified text "failed to make explicit provision for a situation" (Brown, 2005, p. 5). Because of this, opinions regarding the final effects on (minority) women's rights through the 1959 PSL differ. However, overall the 1959 PSL is largely seen as a revolutionary breakthrough with many positive effects on (minority) women's lives. In fact, the law did not remove distinctions between husbands and wives, but it sought a better balance between them.

The reason that the government instituted the new PSL was mainly successful advocacy of prominent women in the Iraqi Women's League. The new PSL involved positive advancements for (minority) women, as the 1959 PSL imposed rigorous restrictions on polygamy and modernized divorce laws (Clair, 2010, p. 82). In addition, in 1978, the 1959 PSL was amended by the Ba'ath regime in order to widen the conditions under which Iraqi women could request necessitating a divorce, thereby outlawing forced marriages, and demanding a judge's permission for a man to

marry a second wife (Clair, 2010, p. 82). A decade earlier, in 1968, when the Ba'ath regime seized power, some gains made by the Iraqi (minority) women since 1959 were extended. For example, women were allowed to join universities, to participate in the public sector and some women were even allowed to take part in the private sector. Yet, during the same period, some laws were reversed by the Ba'ath regime, which again had a negative impact on minority women. For example, a girl's inheritance was narrowed to half of a boy's portion (Brown, & Romano, 2006, p. 53). Also, a few years after the instituted 1959 PSL, the 1963 Nationality Law allowed for conferral of nationality to children was only granted to an Iraqi father whereas the former law allowed nationality to pass where either parent was Iraqi (American Bar Association, 2006, p. 2). Though, overall, positive reforms continued to be implemented. For example, in 1970 the Iraqi Provisional Constitution was drafted, declaring men and women equal under law (relates to Article 19) (Al-Azzawi, 2009, p. 4). Furthermore, Article 5 of the 1970 Constitution recognized and offered protection for minority communities (American Bar Association, 2006, p. 2). During the 1970s and 1980s the Ba'ath regime continued to make positive efforts concerning (minority) women's rights in Iraq, such as the attempt to eliminate illiteracy among women, which succeeded significantly (Brown & Romano, 2006, p. 53). In addition, a 1976 compulsory education law guaranteed that both sexes must attend the primary education (Human Rights Watch, 2014, p. 16-17). In 1980, women were granted equal rights as men, such as the right to vote and hold office (Brown & Romano, 2006, p. 53).

#### **Effects of the Iraq-Iran War, UN sanctions, and 2003 US-led Invasion**

These positive developments of Iraqi (minority) women's rights and their position in society greatly decreased after 1980. The challenges for women began during the disastrous enduring Iran-Iraq war and persisted due to the imposed U.N. sanctions that followed in the 1990s. Both conditions led to a rigorous change of Saddam's strategy towards women (Clair, 2010, p. 91). Saddam's regime shifted its focus from Arab social ideals to traditional interpretations of Islam, which was at presence in the region. This interpretation led to less tolerance for female autonomy in the public sphere, as he continuously abolished many of Iraq's provisions for women rights (Brown, & Romano, 2006, p. 51, 54, 55). Saddam's embracement of Islamic and tribal traditions could be understood as a political tool in order to consolidate his weakening power.<sup>4</sup>

---

<sup>4</sup> Before this strategic shift, as explained above, women were, gradually, legally accorded many rights, giving Saddam a slightly positive reputation towards women, however, in reality; he had the ultimate power to annul these rights when it suited him.



Besides these developments, the 2003 US-led invasion as well as the sectarian fight that followed, disadvantaged (minority) women's positions in Iraq even further (Clair, 2010, p. 92). The US invasion of Iraq was expected to advance minority women. Unfortunately Iraqi women soon realized that that was not the case. Before the Iraq War, one of the official goals of the US led invasion included "strengthening women's participation and their legal rights", afterwards perceived as the ultimate way to justify the invasion itself (Clair, 2010, p. 81). How could it happen that their goal was not achieved and what legal acts brought the minority women of Iraqi Kurdistan in this disadvantaged position? In order to answer this question, one needs to explain the effects of Resolution 137 of 2003 and some radical (final) Constitution provisions that followed in 2005. These changes occurred during the U.S.-led transition period of Iraqi governments after the Iraq War.

#### **The effects of the 2005 Iraqi Constitution**

In 2003, the Iraqi Interim Governing Council issued Resolution 137. Many protests led by women activists followed, as the resolution would have revoked the codified 1959 Civil Law of Personal Status. More specifically, the Resolution would have given power to courts to rule in all disputes concerning PSL based merely on religious and sectarian beliefs and interpretations of Sharia law (Zuhur, 2006). In fact, it would have brought minority women in exact the same unfavourable position as prior to 1959. In the end, the political pressure seemed to have effect as L. Paul Bremer the then highest governing U.S. official who finally overruled the Resolution (Zuhur, 2006, p. 6). However, when in 2005 the struggle for the delineation of the new Iraqi Constitution took place, the same discussion concerning women's allegiance to Personal Status Laws arose again. The main question concerned "whether Islam (and thus sharia law) was to be *the* source of law, or *a* source of law"(Zuhur, 2006, p. 7). Ultimately, the debate resulted in an Iraqi Constitution that up until present contains the same ambiguous provisions as of Resolution 137 under the guise of Article 41 that states the following: "Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law" (The Republic of Iraq Ministry of Interior, 2005). Despite fierce opposition from Kurdish leader and current President of Iraq, Jalal Talabani, the majority of Iraqis, mainly Shi'a Muslims, argued for the insertion of sharia principles into the Constitution, and the notion of Iraq as an Islamic state. This resulted in the following Articles of the Iraqi Constitution: Article 2(1) states: "Islam is the official religion of the state and a basic source of legislation". Article 2(1)[a] adds: "No law may be

passed that contradicts the immutable rulings of Islam. The Supreme Federal Court will be the determining body of such a conflict". This means that Iraq's Civil Laws could be invalidated, and stricter versions of Personal Status, Criminal, and other Laws would function in their place, most probably upheld in religious courts (Zuhur, 2006, p. 7). This leaves room for speculation and interpretation by clerics, consequently resulting in the deterioration of minority women's rights due to the fact that most old laws protecting women are now debatable under this more 'flexible' constitution (Al-azzawi, 2007, p. 6).

## **Chapter 2. Kurdish Autonomy Under the 2005 Iraqi Federal Constitution**

Due to the U.S.-British-French enforced no fly zone in the Kurdish northern area, which was established shortly after the 1991 uprising against Saddam's regime, the balance of power shifted in Iraq. This shift provided the Kurds with political autonomy, and shortly after the Iraqi Kurdish Region became essentially independent. This gave Kurds the opportunity to decide on their own business, as they were freed from Saddam's oppressive hand. Because of this, the Kurds were actually able to move forward politically and economically. However, a four-year battle followed, which resulted in a total stagnation of the possible progress, owing to strong tensions between the two main political parties of the region: the Democratic Party of Kurdistan (KDP) and the Patriotic Union of Kurdistan (PUK) (Kelly, 2010, p 719). Yet, after reconciliation of the two political parties in 1998, the two began focusing on developing the region both politically and economically, although maintaining separate governments and militias. After the 2003 U.S. led occupation, the Kurds managed to move the Regional Government into a favourable bargaining position compared to the beaten Sunni Arabs and newly released Shi'a Arab groups. In 2005, the strong position of the Kurds led to the resettlement of autonomy and regionalism within the Federal Iraqi Republic. In other words, Iraqi Kurdistan's autonomous status was reconfirmed as an autonomous entity. Subsequently, this was incorporated into the Iraqi Constitution, which was adopted by a referendum on 15 October 2005. The establishment of the Iraqi federal entity is formulated in Article 1 of the Iraqi Constitution whereas the recognition of Iraqi Kurdistan as an autonomous federal region is formulated in Article 117 of the Iraqi Constitution (The Republic of Iraq Ministry of Interior, 2005 & Kelly, 2010, p. 723-727). In 2006, through a Unification Agreement, the KDP and PUK have merged their administrations into one unified KRG. Currently, the KRG governs the region of which the KDP and PUK still remain the two most influential political parties, although for the first time in decades they are currently experiencing significant opposition from other political parties in Iraqi Kurdistan.

With the federation being established, on grounds of Article 120 the Iraqi Constitution, Kurdistan is entitled to its own Regional Constitution, "provided that it does not contradict this Constitution". This latter condition is also emphasized and enshrined in another Article, which explains that the Kurdish Regional Constitution should exist within the legal framework of the Iraqi Federal Constitution, that is, Article 13 of the Iraqi Federal Constitution: "First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception". "Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be

considered void" (The Republic of Iraq Ministry of Interior, 2005 & Kelly, 2010, p. 727). Thus, Article 13 acts as a supremacy clause since the provisions of the Kurdish Regional Constitution cannot directly revoke the provisions of the Iraqi Constitution. Yet, in case the Iraqi Constitution is silent on a matter, meaning not covering the respective issue in particular, the un-discussed issue would come under the Regional Constitution, thereby giving the KRG an area of authority. However, due to Article 13, federal law often take precedence over state laws. That said, a clarification on the division of federal powers is of great importance in understanding the complexity of the Iraqi legal system. To begin with, Article 116 of the Iraqi Constitution states that Iraq is made of a decentralized capital, governorates, and regions. The Constitution authorises these different powers with different levels of autonomy. For example, the governorates do not enjoy the same level of autonomy as the regions (Saayman, 2013). In order to give an overview of these different powers and their separation of federal powers, a brief explanation on the divisions will be provided here. The first division of federal powers is formulated in section four of the Iraqi Constitution. This section stipulates that the Federal Government is permitted exclusive powers in nine areas. These exclusive powers are set down in Article 110 of the Iraqi Constitution as follows:

"First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy; Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq; Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank; Fourth: Regulating standards, weights, and measures; Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum; Sixth: Regulating the policies of broadcast frequencies and mail; Seventh: Drawing up the general and investment budget bill; Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international laws and conventions; Ninth: General population statistics and census" (The Republic of Iraq Ministry of Interior, 2005 & Kelly, 2010, p. 728).

The second division of federal powers is given in the Articles 112 through 114, which provides for the shared powers of the Iraqi Central and Regional Government. These involve: oil and gas development, antiquities, customs enforcement, electric energy distribution, health policy, water

resources, education, and environmental policy (Kelly, 2010, 728). In contrast to the function of the supremacy clause of Article 113, provides the Constitution for a savings clause in the form of Article 115 that states the following: "All powers not stipulated in the exclusive powers of the Federal Government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the Federal Government and the Regional Government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute". This means that all powers that are not exclusively federal competences belong to the regions- that is Iraqi Kurdistan since it is currently the only official region of Iraq- and governorates not organized into a region, which means all governorates of Iraq except for the ones in the region. In addition, the Article states that if competences are shared and there is a clash, then the regional laws have supremacy over the federal Iraqi Laws. Also, from this Article it appears that preference is given to a geographical division rather than integrating ethnic and religious sections by means of a party structure (Kelly, 2010, p. 728, 729). As Iraqi Kurdistan is establishing and developing itself legally within the Iraqi Federal State, the question remain of how to give meaning to the savings clause of Article 115 and how far the Kurds can go along the road of autonomy (Kelly, 2010, p.727, 729).

In general, after the establishment of a federal state by means of a federal constitution, the entitled region(s) would develop their own regional constitution shortly afterwards. As mentioned before, this is allowed according to the Iraqi Federal Constitution as long as the Kurdish Regional Constitution does not include laws that contradict with the Iraqi Federal Constitution (Article 13) (The Republic of Iraq Ministry of Interior, 2005 & Kelly, 2010, p. 727). This Article is of great importance because it entails major implications with respect to the entitled region, that is, Iraqi Kurdistan, including its Kurdish minority women. However, despite the usual chronological order of the composition of a federal state, the establishment of a Kurdish Regional Constitution for Iraqi Kurdistan has been hindered due to a number of factors which have resulted in the absence of a *final* Kurdish Regional Constitution. To understand the slow process of endorsement of the Regional Constitution, these hindering factors need a bit more explanation. First of all, it is very difficult to comply with the last-mentioned provision of Article 13 since the Kurdish Regional Constitution is expected to contradict quite easily with the Iraqi Constitution considering the very different thoughts of Kurds and the Federal Government concerning Iraqi Kurdistan's geographical composition as well as other disputes. It seems very unlikely that the Kurds will be willing to seek compromise on all provisions of the already existing *draft* Regional Constitution that are currently in conflict with the Iraqi Constitution.

Secondly, the KRG itself has yet not been able to seek endorsement of its drafted Regional Constitution. The drafting process was already finalized many years ago, after the Regional Parliament approved the draft in 2009. However, the reason for the delay of a lack of support for the endorsement of the final Regional Constitution is an increase of political opposition, which arose since the Kurdish Parliament's approval, preventing the Regional draft Constitution from being put to a referendum. Among the opposition, especially three Kurdish opposition forces rose to power and won a considerable amount of seats in the Iraqi Parliament during the 2009 elections<sup>5</sup>. The strong opposition regarding a referendum on the Kurdistan draft Constitution stemmed from the fear that once a parliamentary majority would have approved it, the Kurdish Regional Constitution would become effective. Most criticism is based on Article 60 and Article 65 of the proposed Regional Constitution (Zebari, 2013 & Kelly, 2010, p. 771- 808). In short, the opposition opposed these two Articles because the region's presidency will have wide powers at the expense of parliament, thus the opposition force Movement for Change. Therefore, the opposition demands that the ruling system should be changed from presidential to parliamentary.

Consequently, the two, until recently, major leading parties - the KDP, which is led by Massoud Barzani, the President of Kurdistan Region, and the PUK which is led by Iraqi president Jalal Talabani - feel discontented with the opposition-caused suspension, resulting in even more tensions within the Kurdish political landscape (Zebari, 2013).

To this day, it does not seem likely that a referendum is going to be held soon. This is mainly due to the above-mentioned developments within the political landscape in Iraqi Kurdistan since 2009. Moreover, it also has to do with the up to now failure of the formation of a new Kurdish Government, which still has not been realized since the regional parliamentary elections of September 2013 (Wilgenburg, 2015). The slow process of the government formation was mostly caused by the electoral defeat of the PUK, which won 18 seats whereas the Gorran party defeated the normally second largest party with 24 seats, thereby changing the political landscape drastically (Wilgenburg, 2015). The KDP won 38 seats, making it the winning party of the 2013 Kurdish elections. This political shift means that since decades the PUK and KDP no longer have an absolute majority, and that currently no other party has an absolute majority (Wilgenburg, 2015). This has resulted in formation problems because all five main political parties are trying to form a government and nobody wants to be in opposition. Based on their ideals, parties prefer to make significant future changes and they expect this to be less guaranteed when

---

<sup>5</sup> The three opposition parties were the Movement for Change (25 seats), the Islamic Group (4 seats), and the Kurdistan Islamic Union (6 seats) (Zebari, 2013).

being part of the opposition, which may result in losing future votes. Despite President Massoud Barzani's statement on 2 April 2014, in which he insisted that the new cabinet would be formed before the Iraqi national elections of 30 April 2014, little progress has been made in this direction (Wilgenburg, 2014).

Nevertheless, in case: the political parties succeed to form a new Kurdish Government; to hold a referendum on the draft Constitution; and to be approved by a parliamentary majority, the Kurdish final Regional Constitution will still be considered void by the Iraqi Federal Government when it does *not* exist - meaning contradicting - within the framework of the Iraqi Constitution. As Kelly states: "Iraqi Kurdistan exists today in a *de facto* sense, but struggles to exist in a *de jure* sense" (Kelly, 2010, p. 719). The term *de jure* means "concerning law" that is "in law" whereas *de facto* means "concerning fact" that is "in practice" (Taylor, 2013). In other words, in reality (*de facto*), the Iraqi Kurdistan Region exists. In addition, according to the Iraqi Federal Constitution ("in law") the Iraqi Kurdistan Region is entitled to exist and is provided for certain shared or exclusive powers, yet the semi-autonomous region struggles to develop its own regional laws and Constitution (*de jure*). The political divide among the current leading political parties does not help in the further development of the existence of Kurdistan, both in *de jure* and *de facto* sense.

Given the explanation on the absence of a Kurdish Regional Constitution and the distribution of federal powers under the Iraqi Constitution, it has become clear which federal authority has what powers and under which conditions. On this basis, one could examine in what way this separation of federal powers negatively affects minority women of Iraqi Kurdistan, as it becomes clear which laws apply to them. To gain more insight into how exactly certain laws disadvantage Iraqi Kurdistan's minority women and how their situation could be improved, it is necessary to analyse both current Iraqi laws that apply to them as well as recently amended or proposed laws of the KRG or the Iraqi Central Government that are applicable to them. First, this research will clarify the actual nature of the Iraqi Constitution, as this major law applies to all Iraqi Kurdistan minority women.

### **The conflicting nature of the 2005 Iraqi Constitution**

Apart from the Articles of the 2005 Iraqi Constitution which demand for civil and political rights, when looking a little closer at other Articles of the Constitution it appears that several provisions

contradict each other. Contradictions exist within Articles and between Articles. This means that minority women's rights could be violated because the Iraqi Constitution leaves room for discussion and is highly ambiguous, as many Articles are rather vague or equivocal, which results in different interpretations of a particular piece of law. Therefore, the outcome of a court case could turn out differently for (minority) women, depending on the judge's interpretation. The contradictory elements of the Constitution also stem from the fact that the Iraqi Constitution allows for Islamic Law that in all times has supremacy over federal laws, which most likely (also) leads to a less favourable outcome for (minority) women. This makes the at-first-sight sympathetic and acquainted provisions regarding women rights almost pointless, as these provisions will lose their meaning.

Given that the Iraqi Constitution acts as a very decisive factor concerning the living conditions of Iraqi (minority) women of today, the following part of this research will look into the actual nature of the 2005 Iraqi Constitution, and how it affects minority women of Iraqi Kurdistan.

As already indicated in the beginning of the results section, Article 125 provides for minority rights. Yet, all aspects of this Article can only be seriously implemented when Article 2 (1) does not contain discriminatory provisions, that are: "Islam is the official religion of the State and is a foundation source of legislation" and "No law may be enacted that contradicts the established provisions of Islam". These provisions contradict the second paragraph of Article 2 that calls for "the full religious rights to freedom of religious belief" and Article 125 since Iraqi Islamic Law will overrule federal law in case of conflict, meaning that no federal laws may conflict with Islamic morality (Taneja, 2011, p. 29 & The Republic of Iraq Ministry of Interior, 2005). This discriminatory effect hinders the religious freedom of all minority women of Iraqi Kurdistan enormously.

Given that Article 125 must go hand in hand with a non-discriminatory version of Article 2 (1), this also applies to other Articles of the Iraqi Constitution, such as Article 41. This Article is already discussed in the explanation on the changes of PSL that were made during the ratification of the 2005 Iraqi Constitution. However, this very influential Article cannot be omitted when analysing the actual nature of the Iraqi Constitution concerning Kurdish minority women's rights. Article 41 stipulates that personal status matters "shall be regulated by law" (The Republic of Iraq Ministry of Interior, 2005). Thus, this is linked to Article 2 (1), again meaning that Iraq's Civil Laws could be overturned and stricter versions of Personal Status, Criminal and other Laws would operate in their place. Article 41 lacks a specific provision to preserve the PSL as an option, it only provides for recourse to religious jurisprudence (Elfrati, 2014). The possible negative consequences of



allowing PSL to be interpreted by personal opinions of clerics have been debated already. Yet, in short, Article 2 gives religious establishments the possibility to infringe on women's rights. Moreover, some claim that the Article will possibly reinforce sectarian strife (Taneja, 2011, p. 27). Furthermore, Article 41 is in contradiction with Article 14, as it undermines Article 14's guarantee of equality before the law (Elfrati, 2014 & ICAN, 2014).

Besides the fact that the 2005 Constitution contradicts itself, it also contradicts other laws that are currently applicable in Iraq. For example, Article 44 of the Iraqi Constitution provides for "freedom of movement, travel and residence inside and outside of Iraq" (The Republic of Iraq Ministry of Interior, 2005). Moreover, in 2003 the CPA, which acted as a transitional government after the US-led invasion of Iraq, introduced a law assuring all Iraqis age seven and older the right to acquire passports, and all adult women the right to move without a male guardian. Though, nowadays, Iraqi women are again required a guard's approval to acquire a passport, as the Iraqi Government changed the law in 2004. This Law prevents women to move freely throughout the country, deteriorating women's independence and their security situation (Ahmed, 2010, p. 11).

#### **The conflicting nature of the Penal Code**

Another category of law that highly affects Iraqi Kurdistan minority women's lives is Iraqi Criminal law. Research shows that Iraqi Criminal Law does not always treat women and men equally, especially with issues related to PSL, honour killings and rape. There are several reasons why gender-discrimination takes place on a large scale within Iraqi society. First of all, one should know that the 1969 Penal Code is still in effect in Iraq. It was established during the Ba'athist era, however, the regime did not correctly enforce the laws. Moreover, currently, the Federal Government does not do much to implement the criminal laws. In addition, sometimes, also the Penal Code contradicts with other laws. For example, according to the fourth paragraph of Article 29 of the Iraqi Constitution: " All forms of violence and abuse in the family, school and society shall be prohibited". Though, despite Article 29, under the Iraqi Penal Code a husband is legally permitted to punish his wife "within certain limits prescribed by law or custom" (Paragraph 41 (1)) (Ministry of Justice, 1969 & Minority Rights Group International, 2011, p. 220).

Another example in which women are not equally treated compared to men can be found in Paragraph 409 of the Penal Code, which provides for leniency in cases dealing with honour killings. More specifically, when a man kills his wife (or close female relative) and her lover after

he caught them in an act of adultery, the Paragraph sets a maximum penalty of three years in prison. Besides the extremely low punishment, the Article deprives women, that are the victims, of the right of self-defence (Ahmed, 2010, p. 7). This tolerant stance towards honour killings also occurs in other provisions, as Paragraph 130 of the Penal Code allows penalties of only six months in prison if a man kills his wife (or close female relative) for honour-related motives (Ahmed, 2010, p. 7).

Rape is considered and therefore treated as a private offence under the Iraqi Penal Code. This means that the state can *only* take action with the consent of the complainant or legal guardian. But again, if this is not the case, the state cannot take any action against the crime (Ahmed, 2010, p. 15 & Minority Rights Group International, 2011, p. 220). Yet, legally, women are allowed to file lawsuits in court without the consent of their husband or male guardians, which makes women possible complainants. However, in Iraq, in general, men take care of legal affairs, and in more conservative rural areas courts often demand female litigants to assign male relatives to pursue the case on their behalf. Moreover, Iraqi women are rarely acquainted with their right to access justice. All these circumstances are making it nearly impossible for women to get access to a court. Nevertheless, if, after the consent of the male relatives, rape or sexual assault offenses come before court; various penalties may be imposed, ranging from a minimum of five years to a maximum of 7 to 15 years in prison. The length of the penalty depends on the nature of the crime as well as the age of the victim (Ahmed, 2010, p 6, 7, 15). However, Paragraph 398 enables the perpetrator to escape punishment in case of rape and sexual assault provided that he marries the victim (Minority Rights Group International, 2011, p. 220 & Taneja, 2011, p. 24 & Ahmed, 2010, p 15). Also, according to the law, the suspect is not allowed to divorce the victim within three years without legal justification. In this way, the victim will be punished instead of the perpetrator and is sentenced to a minimum of three years with him. These highly remarkable conditions are making paragraph 398 one of the most controversial provisions of the Penal Code.

In addition to the gender discriminatory effects of Iraqi Criminal Law, it has become apparent that Iraqi Law also discriminates against minority women from so-called 'non- divine' faiths<sup>6</sup> and against minority women that are part of Muslim or non-Muslim communities (Taneja, 2011, p. 27). Especially under the Personal Status Code discrimination on grounds of religion can be found, for example, Paragraph 13 allows restrictions on marriage between members of non-divine faiths. Another example of discrimination based on one's faith is Paragraph 12 that claims the following: "In order for the marriage to be sound, the woman must not lawfully be forbidden

---

<sup>6</sup> In Sharia Law, the Bahá'í, Kaka'i and Yezidi faiths are considered 'non-divine' (Taneja, 2011, p. 27).

to the man who wants to marry her". However, the marriage is not regarded binding in case a Muslim women marries a man of a "non-divine" faith. As a result, her children will be considered as illegitimate. Moreover, Paragraph 17 does not accept marriages between Muslim women and non-Muslim men, while Muslim men are permitted to marry Jewish or Christian women. Also, on the basis of Paragraph 34, divorce must be handled according to Sharia Law. Although, according to Paragraph 37, a man could simply renounce his wife and thereby end the marriage, which is called the right to *talaq* (Taneja, 2011, p. 27). This provision is in conflict with the Sabean-Mandean faith, which states that divorce is not allowed, and thus invalid. In fact, the *talaq* could be used as a tool to disadvantage minority women. Consequently, men have made use of the *talaq*, and some argue that this is due to a lack of substitute family laws that are applicable to the Sabean-Mandean community. In this way, minority women are surrendered to Sharia Law (Taneja, 2011, p. 27).

After giving some examples under which the Personal Status Code discriminates on the grounds of religious belief, Article 37 (2) of the Iraqi Constitution could be considered inadequately implemented since the Constitutional Article settled the right of religious freedom and guaranteed for protection of religious coercion (Ahmed, 2010, p. 10). This shows that many elements of coercion do occur under the Personal Status Code. By means of the above-mentioned discriminatory paragraphs regarding one's faith under the Personal Status Code, it appears that many elements of coercion indeed occur, making Article 37 (2) of the Iraqi Constitution ineffective.

Besides the inequalities between sexes, the Iraqi PSL also contributes to the issue of early marriage of girls in Iraq. According to Iraqi PSL, the minimum legal marriage age for Iraqi women and men is set at 18, however, courts can allow girls to be married at the age of 15 in case of a guardian's approval or as a matter of "urgent necessity" (Section 3, Article 7 & 8) (American Bar Association, n.d. & Ahmed, 2010, p. 12 & Sarhan, 2014 p. 2).

Early marriages are often accompanied by forced marriage in spite of the fact that forced marriage is considered illegal under Civil and Islamic Law (Bahaddin, 2012). In addition, as for the Iraqi PSL, on grounds of Article 9 (1) "No relative or non-relative has the right to force marriage on any person, whether male or female, without their consent". This means that forced marriage is considered illegal and therefore banned by Iraqi Law if consent is not given by the potential forced-married-person. Yet, the Article continues that the contract of a forced marriage is regarded invalid in case the forced marriage is "not yet consummated"; stretching the possibility that forced marriages that are consummated will be considered valid. But again, if the marriage is

not yet consummated, a relative or non-relative has thus no rights to force marriage on any person, however, the same Article also states that: “none of the relatives or other people has the right to prevent whoever is eligible for marriage from being married by virtue of the provisions of this marriage law”, not allowing relatives or other people to prevent the (possible forced) marriage, if the marriage is in line with the provisions of this Article (American Bar Association, n.d.).

As for the Iraqi Civil Code, which was ratified by the Kurdish Parliament in 2008, no one is entitled to force a male or female into marrying someone else. Without the consent of one of the spouses, the marriage is regarded as invalid except when they have had intercourse. The punishment for violators of this law ranges from two to five year imprisonment or they will be fined. In case the offender is a family member of the victim, an imprisonment of three to ten years applies (Bahaddin, 2012).

Apart from these provisions of Iraqi Civil and PSL, nowadays, under-age and forced marriages do take place on a large scale in Iraqi Kurdistan. Although some argue these practices have declined in recent years, they are still heavily practiced by Kurds and appear to be a severe problem in the region. Despite the tragedies the tradition causes, it seems that the Personal Status and Civil Laws that officially ban forced marriage are not sufficiently implemented. As the director of the People's Development Association (PDA) stated: “the laws only exist on paper” (Bahaddin, 2012). Furthermore, the Iraqi PSL provides for polygamy, which allows Muslim men to take up to four wives, under certain conditions and with authorization of the *qadi* (judge) (American Bar Association, n.d. & Social Institutions & Gender Index, n.d.). The conditions will depend on the financial status of the respective men. More specifically, men are allowed to marry more than one wife if they are financially capable of supporting more than one of these wives and as long as they treat them equally (Section one, Article 3 (4) & (5)) (American Bar Association, n.d.). Another requirement for polygamy is that there should be "a legitimate interest". In some cases these conditions are not enforced, for example, in the case that the prospective wife is a widow (Section one, Article 3 (7)) (American Bar Association, n.d.). The penalties that apply to men which do not respect these conditions and thus do not get judicial permission, vary from no more than one year of imprisonment to fines not exceeding 100 Dinars or both (Section one, Article 3 (6)) (American Bar Association, n.d.).

Overall, polygamy hardly encounters obstacles in court since men could easily meet the conditions and therefore get away with it. Nowadays, polygamy is frequently practiced throughout Iraq, reinforcing the perception that Iraqi women must be obedient to Iraqi men, as

well as confirming that Iraqi women have no say in family matters regarding the course of their marriage.

That said, a little explanation on the definition and historical overview of the practice of polygamy in the Arabic world would be useful in order to clarify on the current issue regarding equality of Iraqi men and (minority) women before the law. "Polygamy refers to someone having more than one spouse" (Keli, 2010). Yet, the term 'polygyny' refers to a situation in which a man has more than one wife whereas the term 'polyandry' refers to "the practice of females having more than one husband at a time" (Keli, 2010). Women that lived during the Pre-Islamic Arabia, that is, the Arabic civilization that existed in the Arabian Peninsula before the rise of Islam, were exposed to unlimited polygamy. Some academics claim that at that time even polyandry was allowed and a commonly accepted practice, however, with the arrival of Islam, polyandry was (or became) forbidden (Keli, 2010). Since the Iraqi PSL of 1959 is based on Islamic principles, polyandry is nowadays still prohibited in Iraq while polygyny is allowed. In fact, Iraqi PSL refers to the concept of 'polygamy', but more precisely it actually refers to 'polygyny', since the law only provides for rights for men to marry more than one wife and Iraqi women are not granted any of such rights to marry more than one man.

The question whether polygamy - again, better described as 'polygyny' - is ethical, opinions may differ. However, it appears that, according to Section one, Article 3 of the PSL, Iraqi women do not enjoy the same privileges, and are thus not treated equally, compared to men. This means that Section one, Article 3 of the PSL is in violation with Article 14 of the Iraqi Constitution, as it guarantees that all Iraqi citizens are all equal before the law regardless of sex. One could argue that Iraqi (minority) women should at least be given a free choice on whether or not they accept their husband to have more than one wife. In this way, women could decide for themselves how to deal with family matters concerning the actual meaning and consequences of polygamy.

### **Chapter 3. KRG's Efforts to Address Violence Against Minority Women**

The problem of domestic violence against women has increasingly become an issue of concern within the Kurdish region after the 1991 uprising. Partly due to pressure of women's organizations and activists, International Organizations and local NGOs. The KRG has recently made considerable efforts to advance minority women's living conditions within the autonomous region and to promote these women's rights. This changing attitude of the KRG could not be achieved overnight, yet, since the last decade, the KRG has gradually acknowledged the issue of domestic violence. KRG's sincere effort to actually tackle the severe problem has become slightly plausible from the moment that the Parliament drafted a law on combating domestic violence. The Domestic Violence law (Law No. 8) was approved and finally passed by the Kurdish Parliament on 21 June 2011 (Almesalla Organization for Human Resource Development, 2013, p. 4). It was for the first time in history that such a law to ban domestic violence had been passed in Iraq. For this, it is regarded as a landmark step in the region's transition to a more "women friendly" society, strengthening the hope on and access to legal justice for minority women (UNDP, 2014).

The law defines domestic violence as follows: "any act, statement, threat or omission committed on the basis of gender by one member of the family against another member up to the fourth degree that result in physical, psychological, sexual or economic harm or deprivation of rights". This means that according to this new legislation many acts constitute domestic violence, including forceful marriage, child marriage, FGM, physical punishment "under any excuses", forced sexual intercourse, suicide as the result of domestic violence, psychological harm caused by pressure, intimidating, humiliating etc.

Furthermore, the Domestic Violence Law states that victims are mandated to file complaints of domestic violence in the court or to "inform investigator, police station or the public prosecutor". In addition, the law demands: special courts for domestic violence cases; shelters for victims of family violence, which shall be provided by The Ministry of Labour and Social Affairs; a social security net for victims; health care and rehabilitation for victims, which to be provided by The Ministry of Health in cooperation with The Ministry of Labour and Social Affairs. In terms of the police force, the law would ask for the establishment of "specialized units" mostly occupied by female police officers that act on domestic violence cases. The Ministry of Interior as well as all specialized departments should draw attention to the issues with respect to domestic violence (Almesalla Organization for Human Resource Development, 2013, p. 5).

Moreover, the Law also stipulates that, in addition to the special courts that shall be established by this law, reconciliation committees shall be set up, which will first seek to solve the family issue before referring the case to the specialized Court. The only condition is that, the reconciliation process will not affect the protection procedures.

According to the Domestic Violence Law, perpetrators of domestic violence will be punished by fines between 1 million and 5 million Iraqi dinars<sup>7</sup> or will face imprisonment ranging from three months to 6 years in jail (Article 7) (Almesalla Organization for Human Resource Development, 2013, p. 7-8 & Ahmed, 2011).

Moreover, the Law outlines specific punishments for anyone promoting or administering FGM or participating in the process of FGM. Yet, the imposed penalties vary; fines between one million to ten million Iraqi dinars will be imposed and/or the Court will demand imprisonment. More specifically, promoting FGM will be penalized with a fine ranging from one million to five million Iraqi dinars; anyone administering or participating in the process of FGM will be penalized with a fine ranging from two to ten million Iraqi dinars and/or risks an imprisonment of minimal six months to a maximum of two years; anyone administering or participating in the process of *underage* FGM will be punished the most, as those risk a fine ranging from five million to ten million Iraqi dinars and/ or face a prison term of minimal one year (Almesalla Organization for Human Resource Development, 2013, p. 7).

As Viyan Sleman, Secretary- general of the Kurdistan Women's Union in 2011 stated: "if this law is upheld properly, it will greatly reduce domestic violence" (Ahmed, 2011). Unfortunately, it has been found from interviews that many relevant parties agree that, over the past few years, the Domestic Violence Law has not yet been sufficiently implemented. These parties include victims and complainants, women and civil society organizations, the region's Parliament and Government, police etc. Opinions differ as to the reason of lack of implementation of the new Law. Some argue the Law is too progressive and that Iraqi Kurdistan's society is not ready for such laws yet. Other claim that it has to do with a lack of awareness on the Law whereas other parties believe that the government only enacted the Law in order to "cover-up the increasing violence against women" (Almesalla Organization for Human Resource Development, 2013, p. 22).

---

<sup>7</sup> One Million Iraqi dinars is about 850 US Dollar (Ahmed, 2011)

**Implementation problems of Domestic Violence Law**

A 2013 field survey, carried out by the Warvin Organization, reveals some remarkable results regarding the confidence in the implementation of the new Law. For this survey, thousand women of the Kurdistan Region participated. When asking these women if combating Domestic Violence Law can be implemented in their society, the findings are as follows: 23 per cent answered "yes"; 23 per cent answered "no"; 42 per cent answered "to an extent"; and 12 per cent answered "no opinion". Furthermore, when asking those surveyed whether women have benefited from the new Domestic Violence Law, the outcome is as follows: only 9 per cent of the women were of the opinion that they have seen many women benefiting from the Law; 24 per cent felt that some women benefited from the Law; 25 per cent were of the opinion that they rarely have seen women benefiting from the Law; whereas 42 per cent answered that they have never seen any woman benefiting from the Law (Almesalla Organization for Human Resource Development, 2013, p. 10, 11). These findings show that 67 per cent of those surveyed think the Law had little to no effect on the women they know. 24 per cent believe that the Law has had some effect whereas only 9 per cent argue that the Law has had a substantial effect on the women they know. On the basis of these findings, one might conclude that the Domestic Violence Law has still not effectively reached the majority of Iraqi Kurdistan's women.

Moreover, according to the same survey, most participants did not know of the existence of the Law and most thought that the Law is not in conformity with Kurdish society, its social norms and traditions. However, some of those surveyed argued that the new Law might reduce domestic violence, if punishments are harsher and public awareness about the Law increases (Almesalla Organization for Human Resource Development, 2013, p. 11).

One of the implementation problems indicated in the report is that, although special courts are primarily established in main cities, in the districts and sub-districts such courts are not sufficiently available or not present at all. In this way, minority women that are living in the districts and sub-districts have limited access to investigative Courts that are specialized in domestic violence. The same applies for reconciliation committees; they are principally located in main cities, restricting the ability of minority women to make use of such a commission and reducing the change on reconciliation.

Besides the lack of specialized courts and reconciliation committees outside major cities, a gender expert argued that reconciliation committees should be established outside police stations, as



those institutions may not be reliable or impartial regarding family violence cases and they are mostly staffed by men. Instead, the committees should be established in courts or other civilian institutions (Almesalla Organization for Human Resource Development, 2013, p. 25, 26).

With regard to the special courts in the main cities, for each court, a full-time judge is designated. Another problem these courts face concerning the implementation of the Domestic Violence Law is that the current procedures and capacities are not suitable for the great number of complaints. According to field visits and an additional report by the Almesalla Organization for Human Resource Development it seems that judges devote little time to see domestic violence cases because much of their time is devoted to reviewing complaints.

Also, many minority women are waiting on the resolution of their case owing to slow investigation procedures, slow procedures in police offices and over- bureaucratization. This results in minority women that keep on waiting – still being exposed to violence- or minority women which drop or abandon their case, succumbing to pressure by family relatives.

In the same report, public officials also have pointed out several reasons for the slow implementation of the Domestic Violence Law. According to a designated judge of the domestic violence investigative court in Erbil the staff has limited knowledge on the Law, therefore they are not aware of the gaps in the Law. The designated judge argues that staff knowledge should be gained during the further process of implementation. Moreover, a member of the public attorney has also expressed his concerns about the implementation of the Law and states that the Law is not detailed enough. The member suggested that amendments should be made to the Law, especially to further define the type of domestic violence offences. However, civil society activists believe that amendments are not the best solution, and would prefer further implementation measures, as amendments processes are extremely time consuming.

### **Signs of Implementation of Domestic Violence Law**

However, recently, there are clear signs of actual realization of further implementation of the new Law that outlaws domestic violence. For instance, several earlier promised initiatives have been further developed, such as the launch of a domestic and gender based violence database. The database, which is the first of its kind, aims to track cases of such violence, making it the only accurate source of data on the issue and automatically providing evidence based information to statistical institutions and police forces. The United Nations Development Programme (UNDP) and the Ministry of Interior launched the database on 23 April 2014. The UNDP has assisted the

Directorate for Combatting Violence Against Women over the past three years in order to support in the institutional development and to strengthen capacity building of the staff of the Directorate (UNDP, 2014). The Directorate, which is part of the Interior Ministry, is the only regional institution that is authorized to receive and investigate domestic violence cases. It also offers services to victims that have survived family violence, such as hotlines, which allows women to report violence (UNDP, 2014).

#### **Support from NGOs to implement Domestic Violence Law No. 8**

On 3 March 2014 WADI reported on the involvement of several initiatives supporting the implementation of the Domestic Violence Law. With assistance from the Erbil consulate, WADI introduced a three-month project that aims to draw attention to the issue of domestic violence and to introduce the Law to the public. An important part of the program was the production of two publications and a calendar. The first publication, which was translated to Kurdish, Arabic and English, concerned a copy of the relevant anti-violence Law of which over 4000 copies were distributed. The second publication consisted of a guide explaining how to stop FGM. More than 3000 copies of this text were printed. Both publications were distributed through 12 seminars that were organized throughout the Kurdish Region as part of the second phase of WADI's project. Around 388 people attended to the seminars, of which 326 were women and 62 were men. Moreover, the project gained vast media attention and two newspapers, six satellite channels and four radio broadcasters paid attention to the project activities. Through this project and the media attention that followed, WADI creates awareness of the Law as well as possible legal remedies (WADI, 2014).

#### **KRG efforts towards honour killings**

In the last decade, the KRG has also taken steps to tackle the problem of honour killings within the autonomous region. Since the penalty of Article 409 is extremely lenient, in 2004, the Kurdistan Parliament passed a law banning reduced sentences for honour crimes. Previously, Article 409 of the Penal Code, demanded no more than a three-year prison sentence in the case of a man killing his wife (or female relative) for adultery (International Rescue Committee, n.d.). However, an official of the Warvin Institute for Women's Issues argued that the number of victims is still increasing, indicating that the ban on reduced sentences for honour crimes has not

had much effect yet (Zebari, 2013). Moreover, Kurd Net, a daily news website, confirms that the implementation is still too weak. However, in the same article, Kurd Net reported that on 20 May 2014 the Slêmanî criminal court sentenced “O.O.M” to 15 years in jail after he had killed his wife for honourable motives. This example implies that there is hope for combatting honour crimes in the future, although, so far, such sentences are truly exceptional within the region.

## Analyses

When looking at Iraqi Kurdistan minority women in general, one could come to the conclusion that these women are subjected to various severe problems that could be seen as human rights violations, and that all of these minority women, irrespective their ethnicity, remain at particular risk due to so-called "double discrimination". Moreover, on the basis of the results, it seems the problems among minority women are often *similar*, regardless of women's ethnicity. For instance, minority women of all (major) ethnic groups in the region have reported that they face forms of domestic violence (a.k.a. IPV), honour crimes, forced or early marriage, including abduction and difficulties concerning participation in the labour force. Yet, difficulties in access to employment are unevenly distributed among governorates and between minority groups. For instance, it became evident from a survey that, with 93 per cent, especially Faili Kurds experience ethnic or religious discrimination when applying for jobs. Also, an issue mainly related to Kurdish traditions, and thus specifically affecting Kurdish minority women, is the practice of FGM. Moreover, some issues are entrenched in Kurdish culture such as forced marriage and polygamy; yet, this does not mean that other ethnic groups are not subjected to these practices. For example, cases were reported of Yezidi women being abducted and forced to marry.

On the basis of the results, it seems that the reason that these women are highly subjected to human rights violations has to do with that fact that Iraq, including its Regional Government, is struggling to develop itself as a Federal Constitutional State, as it fails to provide the protections that are enshrined in Iraqi Law.

As indicated in the results, at first glance it seems that Iraqi minority women are adequately protected under Iraqi Constitutional Law and Criminal Law as well as under International Law. However, it has been found that this is viewed from an incomplete perspective, as many contradictions exist within the current Iraqi legal system. In order to gain insight into how these contradictions affect Iraqi Kurdistan's minority women, this research has focused mainly on Iraqi Constitutional Law, Iraqi PSL and the Iraqi Penal Code, in particular with issues related to Iraqi PSL, honour crimes and rape. The reason for this is that it appears that these three Laws highly affect Iraqi Kurdistan minority women's living conditions. On the basis of the results one could come to the conclusion that these effects are mostly negative, as they incite or cause severe human rights violations against these minority women. In fact, many provisions of the Iraqi Penal Code, Iraqi PSL and Iraqi Constitution almost encourage Iraqi (potential) perpetrators to act

violently, rather than to fight it. For example, Article 398 of the Penal Code enables rapists to escape punishment provided that they marry the victim. The rapist is not allowed to divorce the victim within three years without legal justification. Moreover, apart from amendments to Article 409 to ban reduced sentences for honour crimes, the new Law of 2004 does not seem to be properly implemented and enforced. Also, prosecution rates remain low. In fact, in Iraqi Law, punishment avoidance or low punishments for the perpetrator(s) are the rule rather than the exception. Moreover, from the results it turned out that other new laws, such as the Domestic Violence Law, that aim at improving the living conditions for Kurdistan minority women, are not yet properly implemented. Minority women themselves have recognized the need for more meaningful laws and their enforcement; yet, they also stress the importance of prosecuting perpetrators, such as FGM practitioners. In short, in order to bring about a real positive change in Iraqi Kurdistan minority women's everyday life, a serious commitment to implementation is necessary. As a senior legal expert of the IRC stated: "In order for women to access justice, laws have to be implemented, and the law must be viewed as a tool for protection, not harm" (International Rescue Committee, n.d., p. 9).

When looking at contradictory effects of the Articles of the Iraqi Constitution, it can be noted that several provisions are contradicting each other. Contradictions exist within Articles and between Articles, resulting in a very ambiguous Constitution that in turn leads to different interpretations. In addition, similarities exist between Iraqi Penal Code and Iraqi Constitutional Law on the way in which both branches of law contradict. More specifically, both Laws contradict *other* laws that are applicably in Iraq. Because of this, some Articles of these "other laws" become ineffective since they cannot be seriously implemented. In some cases, this means that the Iraqi Penal Code undermines the Iraqi Constitution, such as in the case of Article 29 of the Constitution in relation to Article 41 of the Penal Code. Examples of contradiction within the Constitution itself are Article 125 and Article 41 in relation to Article 2, both resulting in discriminatory effects and giving the possibility to infringe on women's rights. It has to be noted that discriminatory effects are also highly present within the Penal Code and Iraqi PSL, both on the basis of gender and religion, making it a common characteristic for both branches of law. It is evident that these discriminatory effects mostly have an impact on women, and in many cases they particularly have an impact on *minority* women. For instance, Paragraph 409 of the Penal Code deprives (*all*) women of the right of self-defence whereas Paragraph 12 stipulates that a marriage is not regarded binding in case a Muslim woman marries a man of a "non-divine" faith.

Now that it has become apparent that the Iraqi Constitution, Iraqi PSL and Iraqi Penal Code have a conflicting nature, and that especially the Iraqi PSL and Iraqi Penal Code contain discriminatory effects, the question remains how to address these problems in order to improve the situation of the Iraqi Kurdistan minority women. First of all, to ensure basic human rights for Iraqi Kurdistan's minority women and improve their living conditions, revisions and amendments to the contradictory Articles of Iraqi PSL, Iraqi Penal Code and/or Iraqi Constitution are needed. For instance, in order to seriously implement all aspects of Article 125 of the Iraqi Constitution, amendments to the discriminatory provisions of Article 2 (1) of the Iraqi Constitution are needed. Another example of a contradictory Article that needs amendments is Article 41 of the Iraqi Constitution since it lacks specific provisions to preserve the Iraqi PSL as an option. These two examples show that the crucial law amendments require either (partial) removal of certain provision(s) or an addition(s) to the provision(s) in question, thereby avoiding ambiguities and discriminatory effects.

Yet, from this research, it has become clear that violations against minority women are not simply resolved by making amendments to law. It is essential that the overall cultural mind-set of the whole Iraqi society gradually evolve into a much more progressive stance towards minority women despite their ethnic or religious background in order to bring real positive change to their lives. In light of this strategy, several local and international NGOs have joined forces to address the overall tendency of violence towards minority women. It has been found that these organizations are of the opinion that apart from law revision and amendments, societal support is needed to counter human rights violations against these women. This view becomes visible through their approach concerning projects and initiatives that they have implemented in the region. For example, both WADI and IRC, seek to contact and stimulate local communities to consider their traditional attitudes regarding the issue that they are addressing. Moreover, similarities in how to approach a sensitive topic have been found as both organizations approached the sensitive issue of violence against women as a "women's health issue" by mentioning the medical complications, but also pointing out the psychological consequences.

Furthermore, from the results, it has become clear that statistical research could be a useful tool to examine to what extent certain human rights violation occur within the region, or to find out under which ethnic group(s) certain traditions are normally practiced. However, when it comes to the topic of how minority women generally think about a certain issue, it appears that different outcomes could occur depending on whether it is viewed from a regional or (sub) district level.

Therefore, preference might be given to locally based research, since the outcomes of a more general (regional) research tend to not fully correspond with the view of minority women. For instance, as indicated in the results, according to statistical findings that are based on the entire Kurdistan Region, there is a strong link between Sunni Islam and the practice of FGM. Yet, among minority women themselves, opinions differ concerning the reasons for mutilation. Across the entire Kurdistan Region, minority women perceive the practice of FGM as part of their tradition, yet, just as many minority women perceive it as an act of religious nature. However, when looking at individual (sub) districts, minority women almost exclusively justify FGM either as a religious act or as part of their tradition. These outcomes show that the perception of minority women concerning FGM is most likely determined and influenced by their environment, including the local community, and thus not only by the (possible) impact of religious affiliation. In addition, as FGM is considered a private family matter, minority women's plight is in hands of their family guardians or relatives as well as the local community.

That said, this explains why the "village-by-village" approach of WADI's campaign has been very effective so far. WADI tries to involve the entire local community, including men, women, girls and religious or local leaders, in the awareness process regarding the issue. WADI's campaign has shown that once a large proportion of the local community is convinced to change their attitude towards the issue, the FGM rate will most likely decrease.

It also indicates that the above-mentioned opinion of local and international NGOs that societal support could have considerable influence on the improvement of minority women's living conditions, is indeed correct. It has to be mentioned that this would be the ultimate long-term solution; yet this could not be achieved overnight.

Besides the need for changing attitudes in society towards violence against minority women, local and International Organizations seek to provide immediate relief to women that are in danger. In this way, minority women's situation can be improved through the provision of certain facilities. For example, IRC has provided trainings on violence prevention and case management to local NGO's, women's shelters and government institutions. In turn, these organizations can support minority women according to their needs, resulting in a more effective approach by the relevant organization. Therefore, more immediate relief programs are currently required to support local NGO's, women's shelters and government institutions on a larger scale, and through this, reaching more minority women that are at risk. However it has to be noted that, for example, women's shelters or hotlines are not the ultimate solution to the human rights violations on the

longer term. Nevertheless, they provide a certain level of protection and security areas where these women find temporary relief.

That said, it is of utmost importance that minority women are educated about their rights, thereby strengthening their vulnerable position in Iraqi society. This research has shown that in general minorities do not know about their right to access justice. A survey revealed that most participants did not know of the existence of the new Domestic Violence Law. Nevertheless, there is hope for growing awareness among minority women and their local communities concerning (minority) women's rights due to several initiatives, such as the publications and calendar that are recently launched by WADI. These kinds of initiatives are required for the near future, as they generate huge media attention, which could trigger a more progressive stance within Iraqi Kurdistan's society as a whole.

When it comes to Iraqi Kurdistan and taking action to confront the problem of violence against women, it can be noted that Iraqi Kurdistan is clearly behind with regards to the implementation of Iraqi laws. For instance, forced marriage is, although under certain conditions, officially prohibited under Iraqi Civil and Criminal Law. However, this violation still takes place on a large scale, indicating a lack of implementation of the Law. Moreover, as for the Domestic Violence Law, victims and complainants, governmental authorities as well as women and civil society organizations acknowledge that the Law is not yet properly implemented, though opinions differ as to the reason of the lack of implementation.

Women and civil society organizations stress the importance of a higher presence of special courts and reconciliation committees in rural areas since they are not adequately available or not present at all. An extension of both institutions in (sub) districts could increase the possibility on reconciliation and prevent that (all) cases have to go to special courts and it could greatly increase minority women's ability to access legal justice throughout the *entire* region in case the reconciliation process failed. Furthermore, except for a higher presence of both institutions, the exact location where these institutions should be established is of great importance as well. More specifically, reconciliation committees should be established in courts or other civilian institutions, rather than police stations, because they are considered more reliable and impartial concerning family violence cases. Also, it is questionable whether the so-called "special Units", as proposed by the new Law, are the right solution to the problem since the policewomen in charge are still supervised by men, and therefore may not having the ability to act impartially on domestic violence cases.



However, even though the special courts are established at the right institution, it has been found these special courts do not function properly due to the fact that procedures and capacities are not in proportion to the great number of complains, resulting in judges that have less time to look into domestic violence cases. Therefore, new procedures and sufficient staff capacity are needed in proportion with the number of complaints. And again, when special courts and reconciliation committees become more present in (sub) districts, the current special courts will also be relieved of the high number of complaints, increasing efficiency throughout all special courts.

Government authorities blame limited knowledge on the Law by governmental staff as the reason for the poor implementation of the new Law. Women and civil society organizations recognize the lack of knowledge by staff and respond to this problem by supporting governmental institutions that are dealing with the new Domestic Violence Law. For example, the Directorate for Combating Violence Against Women has, in collaboration with the UNDP, tried to respond to the slow investigation procedures through strengthening capacity building of the staff of the Directorate. Despite these efforts, one could come to the conclusion that this initiative has not yet shown enough improvement. However, it is of utmost importance that this kind of collaborative programs be continued in the future, as they seek to address the actual cause of the implementation problems. The UNDP could intensify their support to the Directorate by educating it on how to improve the efficiency of investigation procedures and providing thoroughly knowledge on the new Law, thereby improving capacity building of the staff as well as reducing over-bureaucratization. In turn, this would decrease the number of minority women with pending cases, shortening the time length of exposure to violence.

In addition, the recently introduced domestic and gender based violence database could lead to major improvements in tackling the slow procedures in police stations, as it offers evidence based information. However, despite these future improvements, as already indicated, the police officers' reliability issue regarding family violence cases might still obstruct the speed up of investigation procedures.

When it comes to Iraqi Kurdistan, its functioning as an autonomous region and its functioning within a federal state, it has become clear that the Region faces difficulties to develop itself properly. Given the complexity of the separation of federal power of Iraq and how to give meaning to the saving clause of Article 115, it is difficult to predict how these conditions will affect Iraqi Kurdistan minority women in the future. Yet, one might come to the conclusion that the Iraqi Constitution focuses on geographical divisions rather than unity. Obviously, this has to do with the strong tensions between the Arabs and the Kurds. Furthermore, it has been shown

that the absence of a Regional Constitution due to strong political opposition within the region as well as the up to now failure to form a new government, do not help Iraqi Kurdistan to further develop itself, both in *de jure* and *de facto* sense, subsequently deteriorating minority women's position in the region. Therefore, to begin with, a speedy formation of a new Kurdish Government is desired. This will diminish political turmoil. On the longer term, consensus with regard to a Regional Constitution is required, in order to (further) develop the autonomous region in the *de jure* sense. Yet, it should be in accordance with the Iraqi Constitution, something that will be quite challenging to achieve. Partly "due to the realization amongst Iraq's political leadership that the extreme vagueness and open-ended nature of the Iraqi Constitution works in the favour of several groups and can cloak radically different- even contradictory- approaches to key issues, such as [...] resource allocation" (W. Spencer, personal digital Interview, June 13, 2014). In fact, Iraqi political leaders, including the KRG, make use of Constitutional ambiguity of the Iraqi Constitution to pursue their own interest (W. Spencer, personal digital Interview, June 13, 2014). This indicates that a package of Constitutional amendments to the Iraqi Constitution is needed in order to move forward towards a smoothly working Iraqi Federal State, although this is less likely to be achieved when none of the parties involved are willing to slightly change their attitudes and take a more cooperative approach. However, once a successful reform of the Iraqi Constitution is realized, a consensus of the Regional Constitution - one that is in accordance with the Iraqi Constitution – may be more realizable.

## Conclusion

In order to answer the research question: "How does the Iraqi legal system, in particular the Penal Code and the PSL, negatively affect minority women living in Iraqi Kurdistan, and how could their situation be improved?" one can observe that all minority women, regardless their ethnicity, face serious -mostly common- human rights violations due to ambiguities, contradictions and discriminatory effects between and within Iraqi Constitutional Law, Iraqi PSL, and Iraqi Penal Code. The Iraqi Constitution and the Iraqi Penal Code show similarities in the way they contradict 'other Laws' that are applicable in Iraq, subsequently making these 'other Laws' ineffective. In some cases, this means that the Penal Code or Iraqi PSL undermines the Iraqi Constitution or International Laws or Conventions that are ratified or signed by Iraq, whereas in other cases, this means that the Iraqi Constitution fails to provide for protections that are enshrined in International Laws and/or Conventions.

To safeguard the basic human rights of Iraqi Kurdistan's minority women and to advance their living conditions, revisions and amendments to the contradictory Articles of the Iraqi PSL, Iraqi Penal Code and the Iraqi Constitution are necessary. The aim of the law amendments is to remove equivocal or discriminatory provisions, as a result, minimizing possible speculations and free interpretations of judges and providing equality before the law regardless one's sex or ethnicity.

Moreover, this research has shown that Iraqi Kurdistan is clearly behind with regards to the implementation of Iraqi Laws, causing existing or new (Regional) Laws that intend to advance the situation of minority women to have little to no effect. Nevertheless, the enactment of the Domestic Violence Law by the KRG shows that the Regional Government has started to take action to tackle many of the severe human rights violations against minority women that occur in the region. One could consider the new Law as a milestone in the region's transition to "a culture of respect for human rights" in the case that further implementation measures will be fully achieved and enforced, subsequently reducing the domestic violence rate throughout the *entire* region. Nonetheless, there is still a long way to go with regards to the proper implementation of the provisions of this Law and Iraqi Law implementation in general.

Apart from law revision and amendments as well as proper implementation measures, a societal shift towards a more progressive stance concerning minority women, regardless of their ethnical

or religious background, is desired. In the long term, this could be the ultimate solution to counter human rights violations against minority women. Also, the Executive Director of the IILHR points out that, even it will take decades, "Iraq is moving towards building a culture of respect for human rights. But to continue this forward momentum requires persistence and a long-term view" (W. Spencer, personal digital Interview, June 13, 2014).

In light of this long-term view, civil society organizations have started to address the violations against women and, so far, they have been quite successful in stimulating local communities within the Kurdistan region to reflect on their traditional attitudes. One could come to the conclusion that proper tactics such as approaching the sensitive issues as a "women's health issue", statistical locally based research and a "village-by-village" approach seem to be the most effective way to tackle violations against minority women in Iraqi Kurdistan. However, a continuation of immediate relief programs, such as women shelters and hotlines, are currently needed. Yet these programs are not the final solution to problems of human rights violation, since it only provides temporary relief. It has to be noted that the KRG has taken initiative in providing such programs, yet, "additional institutional support to police and judges and the Directorate" [...] could help the KRG to "take further forward strides" (W. Spencer, personal digital Interview, June 13, 2014). The UNDP could play an import role herein.

In conclusion, if on the one hand, law revision and amendments are made, and proper implementation measures are enforced, minority women's position within the Iraqi Kurdistan Region will be strengthened and improved. Punishment avoidance and low punishments will decrease whereas prosecutions rates and minority women's rights' to access to justice will increase. On the other hand, a continuation of international support as well as a societal shift within the region towards a more progressive and non-violent stance towards violence against minority women is necessarily.

## **Recommendations to KRG and Central Government and NGO's**

### **Constitutional Law**

In order to ensure and implement minority rights of all Iraqi Kurdistan's minority women Article 2 (1) of the Iraqi Constitution should be amended. More specifically, the discriminatory provisions of Article 2 (1) should be repealed, thereby respecting the provision of Article 2 (2) that calls for "the full religious rights to freedom of religious belief", and respecting Article 125 of the Iraqi Constitution that provides for minority rights. In short, by removing the discriminatory provisions of Article 2 (1) "internal consistency between sections on Islamic principles and rights and freedoms" will be guaranteed (IILHR, 2010, p. 10).

As for Article 41, a specific provision to preserve the PSL as an option is required, thereby preventing that Iraq's civil laws could be overturned and stricter versions of Personal Status, Criminal, and other Laws would operate in their place, thereby eliminating the chances that religious establishments can infringe on women's rights. By preserving PSL as an option, minority women are giving the opportunity to recourse to religious jurisprudence or irreligious (regular) jurisprudence, thereby respecting Constitutional Article 14's guarantee of equality before the law.

Furthermore, the KRG and the Central Government should "restart and complete the review and reform process of the Iraqi Constitution in good faith" (W. Spencer, personal digital Interview, June 13, 2014). By doing so, the probability of creating a smoothly working separation of powers is increased, and consequently the possibility of the realization of a Regional Constitution that is in line with the Iraqi Constitution. Both reforms could lead to political stability and mutual respect of both governments.

### **Penal Code**

To ensure that the fourth paragraph of Article 29 of the Iraqi Constitution will be enforced, Paragraph 41 (1) of the Penal Code should be repealed, since it permits a husband to punish his wife (IILHR, 2010, p. 9). Hence, possibly reducing forms of violence within the family provided that Article 29 of the Iraqi Constitution will be properly upheld.

Repeal Paragraph 398 of the Penal Code in order to prevent perpetrators to escape punishment in case of rape and sexual assault. By repealing this Paragraph, preventing that the perpetrator who committed rape can be exonerated by marrying their victim(s). Through this, one could avoid that the victim(s) is forced into a long-term relationship with her rapist.

In addition, judges should enforce that women can file lawsuits in court *without* the consent of their husband or male guardians, since women are legally permitted to do so. By doing so *not* accepting to treat rape as a private offence, allowing the state to take action with the consent of the woman alone.

Furthermore, the Kurdistan Parliament and judiciaries should seriously implement and enforce the Law of 2004 that bans reduced sentences for honour crimes (enacted in response to Paragraph 409 that provides for leniency in cases dealing with honour killings) in order to prevent low punishments for the perpetrator(s).

#### **Iraqi PSL**

In order to guarantee that non-Muslim minorities are not subjected to Sharia, the KRG and/or Central Government should enact separate special Personal Status Laws for non-Muslim minorities or amend the current Iraqi PSL (Taneja, 2011, p. 31). Hence, the new provisions should ensure that all discriminatory provisions will be removed. For instance, removal or amendment of Article 17 of the PSL, which would allow Muslim women to marry non-Muslim men.

Moreover, it is recommended to amend Article 9 (1) of the PSL by removing the condition that a forced marriage is regarded invalid in case that forced marriage is "not yet consummated", eliminating the possibility that forced marriages that are consummated will be considered valid. In this way, the first sentence of Article 9 is respected: "No relative or non-relative has the right to force marriage on any person, whether male or female, without their consent" (American Bar Association, n.d.) and the fact that forced marriage is considered illegal under Islamic law and Civil Law (although under certain conditions for the latter) is respected.

An amendment of Article 3 (4) of the PSL is advised, by adding at least a provision that states that "Marrying more than one woman is not allowed except with" (American Bar Association, n.d.) the authorization of the woman in question. Through this, women could decide for themselves

whether to accept polygamy or not. In addition, in order to respect the actual meaning of polygamy and to respect Constitutional Article 14's guarantee of equality before the law, amendments to Article 3 (4) are necessary, hereby granting Iraqi women to enjoy the same privileges as men.

#### **Domestic Violence Law (Law No. 8)**

The Kurdistan Parliament and judiciaries should seriously implement and enforce the Domestic Violence Law of 2004 that prohibits domestic violence. Therefore the KRG should:

- Establish special courts and reconciliation committees in *all* districts and sub-districts, within Courts or other civilian institutions, thereby increasing minority women's ability in accessing legal justice.
- As for the special courts, they should develop and introduce new procedures and sufficient staff capacity proportionate with the number of complaints, thereby increasing efficiencies throughout all special courts.
- The Directorate should (further) implement the domestic and gender based violence database, as it could avoid slow procedure in police stations and it lead to significant improvements of the investigative procedure.

Moreover, the UNDP should:

- Continue to assist the Directorate and further develop educational programs for the Directorate in which they could learn how to make investigation procedures more efficient and provide in-depth knowledge of the new Law. Through this, the intensification of the collaboration between both institutions could lead to capacity building improvements of the staff as well as a tackling of over-bureaucratization.

#### **Other Improvements**

Immediate relief or public awareness programs provided by NGO's, such as IRC and WADI, are highly desired to support local NGO's, women's shelters and government institutions on a larger scale, subsequently increasing their positive impact on minority women's living conditions throughout the entire region.

## References

- Ahmed, H. (2010). *Women's Rights in the Middle East and North Africa*. Retrieved on April 27, 2014, from the Freedom House website:  
[http://www.freedomhouse.org/sites/default/files/inline\\_images/Iraq.pdf](http://www.freedomhouse.org/sites/default/files/inline_images/Iraq.pdf)
- Al-Atrushi, H. H., & Al-Hadithi, T. S., & Al-Tawil, N. G., & Shabila, N. P. (2013). *Intimate Partner Violence Against Women in the Erbil City of the Kurdistan Region, Iraq*. Retrieved on February 22, 2014, from BMC Women's Health website:  
<http://www.biomedcentral.com/content/pdf/1472-6874-13-37.pdf>
- Al- Azzawi, S. N. (2007). *Deterioration of Iraqi Women's Rights and Living Conditions Under Occupation*. Retrieved on April 6, 2014, from The Brussels Tribunal website:  
<http://www.brusseltribunal.org/pdf/WomenUnderOccupation.pdf>
- Almesalla Organization for Human Resource Development. (2013, December). *Monitoring Report on the Implementation of Domestic Violence Law in Kurdistan Region*. Retrieved on May 17, 2014, from the Iraq Civil Society Solidarity Initiative website:  
<http://www.iraqicivilsociety.org/wp-content/uploads/2014/01/Law-8-English-Final.pdf>
- American Bar Association. (n.d.). *Law No (188) of the Year 1959 Personal Status Law and Amendments*. Retrieved on May 10, 2014, from American Bar Association website:  
[http://apps.americanbar.org/rol/publications/iraq\\_personal\\_status\\_law\\_1959\\_english\\_translation.pdf](http://apps.americanbar.org/rol/publications/iraq_personal_status_law_1959_english_translation.pdf)
- American Bar Association. (2006). *The Status of Women in Iraq: Update to the Assessment of Iraq's De Jure and De Facto Compliance With international Legal Standards*. Retrieved on April 4, 2014, from American Bar Association website:  
[http://apps.americanbar.org/rol/publications/iraq\\_status\\_of\\_women\\_update\\_2006.df](http://apps.americanbar.org/rol/publications/iraq_status_of_women_update_2006.df)
- Bahaddin, S. (2012). *Though illegal, Forced Marriages Still Common in Iraqi Kurdistan*. Retrieved on May 10, 2014, from the Kurd Net website:  
<http://www.ekurd.net/mismas/articles/misc2012/9/state6472.htm>
- Brown, N. J. (2005, March). *Debating Islam in Post-Baathist Iraq*. Retrieved on April 6, 2014, from the Carnegie Endowment for International Peace website:  
<http://carnegieendowment.org/files/PO13.Brown.FINAL2.pdf>
- Brown, L., & Romano, D. (2006). Women in Post-Saddam Iraq: One Step Forward or Two Steps Back?. *NWSA Journal*, 18(3), 51-70. Retrieved on April 4, 2014, from the EBSCOhost website:  
<http://web.b.ebscohost.com.ezproxy.hhs.nl:2048/ehost/pdfviewer/pdfviewer?vid=6&sid=bdafb12a-a4ec-40bb-bec3-12e872929d5d%40sessionmgr111&hid=121>
- Clair, O. t. (2010). Building Backwards: Helping Heal Iraq Through Women's Rights. *Texas Journal Of Women & The Law*, 19(2), 81-98. Retrieved on March 5, 2014, from the EBSCOhost website:  
[http://content.ebscohost.com.ezproxy.hhs.nl:2048/pdf25\\_26/pdf/2010/6MQ/01Mar10/61208044.pdf?T=P&P=AN&K=61208044&S=R&D=aph&EbscoContent=dGJyMMTo50SeqLY4y9fwOLCmr0yep7BSr6e4SrKWxWXS&ContentCustomer=dGJyMPGrrki2rLZJuePfgex44Dt6fIA](http://content.ebscohost.com.ezproxy.hhs.nl:2048/pdf25_26/pdf/2010/6MQ/01Mar10/61208044.pdf?T=P&P=AN&K=61208044&S=R&D=aph&EbscoContent=dGJyMMTo50SeqLY4y9fwOLCmr0yep7BSr6e4SrKWxWXS&ContentCustomer=dGJyMPGrrki2rLZJuePfgex44Dt6fIA)



- Efrati, N. (2014, March). *Will Iraq's Proposed Law on Women and Personal Status Further Derail Democracy There?*. Retrieved on April 27, 2014, from the Informed Comment Website: <http://www.juancole.com/2014/03/proposed-personal-democracy.html>
- Human Rights Watch. (2014). *"No One is Safe". The Abuse of Women in Iraq's Criminal Justice System*. Retrieved on March 13, 2014, from the Human Rights Watch website: <http://www.hrw.org/sites/default/files/reports/iraq0214webwcover.pdf>
- Institute for International Law & Human Rights (IILHR). (2013, May). *Iraq's Minorities and Other Vulnerable Groups: Legal Framework, Documentation and Human Rights*. Baghdad: Institute for International Law & Human Rights
- Institute for International Law & Human Rights (IILHR). (2011). *Minorities and the Law in Iraq*. Retrieved on March 8, 2014, from Institute for International Law and Human Rights: <http://lawandhumanrights.org/documents/womenandlawiniraqEN.pdf>
- Institute for International Law and Human Rights (IILHR). (2010). *Women and the Law in Iraq*. Retrieved on February 19, 2014, from Institute for International Law and Human Rights: <http://lawandhumanrights.org/documents/womenandlawiniraqEN.pdf>
- International Rescue Committee. (n.d.). *"Honor Killings" in Northern Iraq: IRC Works to Break the Cycle of Violence and Revenge*. Retrieved on May 26, 2014, from the International Rescue Committee website: <http://www.rescue.org/news/honor-killings-northern-iraq-irc-works-break-cycle-violence-and-revenge-6869>
- International Rescue Committee. (n.d.). *Working Together to Address Violence Against Women and Girls in Iraqi Kurdistan*. Retrieved on May 26, 2014, from the International Rescue Committee website: <http://www.rescue.org/sites/default/files/resource-file/IRC%20Addressing%20Violence%20Against%20Women%20in%20Kurdistan%205-12.pdf>
- Islamopedia Online. (2011, August). *Religion, Law, and Iraq's Personal Status Code*. Retrieved on April 4, 2014, from the Islamopedia Online website: <http://www.islamopediaonline.org/country-profile/iraq/islam-and-legal-system/religion-law-and-iraq's-personal-status-code>
- Jaffal, O. (2012). *Underage Marriages of Iraqi Girls Rises*. Retrieved on May 19, 2014, from the Al Monitor website: <http://www.al-monitor.com/pulse/ar/culture/2012/12/the-underage-marriage-crisis-in-iraq.html>
- Jawad, R. K., & Saleh, A. M., & Shabila, N. P. (2014, January). *Women's Perspectives of Genital Cutting: Q-methodology*. Retrieved on March 10, 2014, from BMC Women's Health website: <http://www.biomedcentral.com/content/pdf/1472-6874-14-11.pdf>
- Kane, S. (2011, March). *Iraq's Disputed Territories*. Retrieved on April 12, 2014, from the United States Institute of Peace website: <http://www.usip.org/sites/default/files/resources/PW69.pdf>
- Keli, H. (2010, February). *Polygamy in the Muslim World and New Restrictions in Iraqi Kurdistan*.

Retrieved on May 22, 2014, from the Kurdish Herald website:  
<http://www.kurdishherald.com/issue/v002/001/article08.php>

Kelly, M. J. (2010). The Kurdish Regional Constitution Within the Framework of the Iraqi Federal Constitution: A Struggle for Sovereignty, Oil, Ethnic Identity, and the Prospects for a Reverse Supremacy Clause. *Penn State Law Review*, 114(3), 707-808. Retrieved on April 6, 2014, from the Penn State Law Review website:  
<http://www.pennstatelawreview.org/articles/114/114%20Penn%20St.%20L.%20Rev.%20707.pdf>

Kurdistan Regional Government. (2014). *Kurdistan's Geography and Climate*. Retrieved on April 4, 2014, from the Kurdistan Regional Government website:  
<http://www.krg.org/p/p.aspx?l=12&s=020000&r=303&p=213>

Ministry of Justice. (1969). *The Penal-Code With Amendments*. Retrieved on February 19, 2014, from the Case Western Reserve University website:  
[http://law.case.edu/saddamtrial/documents/Iraqi\\_Penal\\_Code\\_1969.pdf](http://law.case.edu/saddamtrial/documents/Iraqi_Penal_Code_1969.pdf)

Minority Rights Group International. (2011). *State of the World's Minorities and Indigenous Peoples 2011*. Retrieved on February 22, 2014, from Minority Rights Group International website: <http://www.minorityrights.org/10848/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2011.html>

Minority Rights Group International. (2008, April). *Kurds*. Retrieved on March 10, 2014 from Minority Rights Group International: <http://www.minorityrights.org/5748/iraq/kurds.html>

Saayman, M. (2013, December). *Could Restructuring the Federal Relations in Iraq Create a Lasting Peace?*. Retrieved on May 19, 2014, from the Conflict & Security website:  
<http://conflictandsecurity.com/blog/could-restructuring-the-federal-relations-in-iraq-create-a-lasting-peace/>

Sarhan, Y. (2014). *Iraqis' New Personal Status Ja'fari Law is Sectarian*. Retrieved on May 10, 2014, from the Wilson Center website:  
[http://www.wilsoncenter.org/sites/default/files/iraqis\\_new\\_personal\\_status\\_jafari\\_law\\_is\\_sectarian.pdf](http://www.wilsoncenter.org/sites/default/files/iraqis_new_personal_status_jafari_law_is_sectarian.pdf)

Social Institutions & Gender Index. (n.d.). *Iraq. Discriminatory Family Code*. Retrieved on May 20, 2014, from the Social Institutions & Gender Index website:  
[http://genderindex.org/country/iraq#\\_ftn28](http://genderindex.org/country/iraq#_ftn28)

Spencer, W. (2014, June 13). Email Interview.

Taneja, P. (2011, November). *Iraq's Minorities: Participation in Public Life*. Retrieved on March 10, 2014, from Minority Rights Group International website:  
<http://www.minorityrights.org/11106/reports/iraqs-minorities-participation-in-public-life.html>

Taylor, R. (2013, March). *In Law Rather Than Or As Well As In Practice*. Retrieved on May 19, 2014, from the Humanities 360! website: <http://www.humanities360.com/index.php/in-law-rather-than-or-as-well-as-in-practice-1824/>

- The Republic of Iraq Ministry of Interior, General Directorate for Nationality. (2005). *Iraqi Constitution*. Retrieved on February 19, 2014, from:  
[http://www.iraqinationality.gov.iq/attach/iraqi\\_constitution.pdf](http://www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf)
- UN Assistance Mission for Iraq (UNAMI). (2013, March). *Violence Against Women in Iraq Factsheet*. Retrieved on March 28, 2014, from the UNAMI website:  
<http://unami.unmissions.org/LinkClick.aspx?fileticket=xqx9gxy7lsk%3D&tabid=2790&language=en-US>
- UNDP. (2014, April). *Launch of the First Domestic and Gender Based Violence Database in Kurdistan Region of Iraq*. Retrieved on May 17, from the United Nations Development Programme website:  
<http://www.iq.undp.org/content/iraq/en/home/presscenter/pressreleases/2014/04/23/launch-of-the-first-domestic-and-gender-based-violence-database-in-kurdistan-region-of-iraq/>
- University of Minnesota. (1998). *The Human Rights of Women. International Covenant on Civil and Political Rights*. Retrieved on March 21, 2014, from the University of Minnesota website: <http://www1.umn.edu/humanrts/instreet/women/engl-wmn.html#icesc>
- U.S. Department of State, Bureau of Democracy, Human Rights and Labor. (2011). *Country Reports on Human Rights Practices for 2011*. Retrieved on March 28, 2014, from U.S. Department of State website: <http://www.state.gov/documents/organization/186638.pdf>
- WADI. (2010). *Female Genital Mutilation in Iraqi Kurdistan*. Retrieved on March 10, 2014, from the Stop FGM in Kurdistan website:  
[http://www.stopfgmkurdistan.org/study\\_fgm\\_iraqi\\_kurdistan\\_en.pdf](http://www.stopfgmkurdistan.org/study_fgm_iraqi_kurdistan_en.pdf)
- WADI. (2013). *Significant Decrease of Female Genital Mutilation (FGM) in Iraqi-Kurdistan, New Survey Data Shows*. Retrieved on March 28, 2014, from the Stop FGM in Kurdistan website:  
<http://www.stopfgmkurdistan.org/html/english/updates/update018e.htm>
- WADI. (2014, March). *Support for the Implementation of Law No. 8 to Combat Violence Against Women in the Kurdish Region*. Retrieved on May 31, 2014, from the WADI website:  
[http://en.wadionline.de/index.php?option=com\\_content&view=article&id=1127:support-for-the-implementation-of-law-nr-8-to-combat-violence-against-women-in-the-kurdish-region&catid=15:presseerklarungen&Itemid=109](http://en.wadionline.de/index.php?option=com_content&view=article&id=1127:support-for-the-implementation-of-law-nr-8-to-combat-violence-against-women-in-the-kurdish-region&catid=15:presseerklarungen&Itemid=109)
- Wilgenburg, W. (2014, April). *Iraqi Kurds Still Deadlocked Over New Government*. Retrieved on April 25, 2014, from the Al Monitor website:  
<http://www.al-monitor.com/pulse/originals/2014/04/kurdistan-iraq-regional-government-elections-deadlock.html>
- World Health Organization. (2014). *Female Genital Mutilation*. Retrieved on March 28, 2014, from the World Health Organization website:  
<http://www.who.int/mediacentre/factsheets/fs241/en/>

World Health Organization. (2013). *Responding to Intimate Partner Violence and Sexual Violence Against Women. WHO Clinical and Policy Guidelines*. Retrieved on April 1, 2014, from the World Health Organization website:  
[http://apps.who.int/iris/bitstream/10665/85240/1/9789241548595\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/85240/1/9789241548595_eng.pdf)

Zebari, A. H. (2013, January). *Iraqi Kurds Endure Seven-Year Wait for New Constitution*. Retrieved on April 25, 2014, from the Al Monitor website:  
<http://www.al-monitor.com/pulse/originals/2013/01/iraqi-kurdistan-constitution.html>

Zebari, A. H. (2013, February). *KRG Fails to Combat Violence Against Women in Kurdistan*. Retrieved on June 8, 2014, from the Al Monitor website: <http://www.al-monitor.com/pulse/originals/2013/02/violence-against-women-kurdistan.html>

Zuhur, S. D. (2006, December). *Iraq, Women's Empowerment, and Public Policy*. Retrieved on April 11, 2014, from the Strategic Studies Institute website:  
<http://www.strategicstudiesinstitute.army.mil/pdffiles/pub748.pdf>

## Appendices

### 1. European Studies Student Ethics Form

**Your name:**

**Supervisor:**

#### Instructions/checklist

Before completing this form you should read the APA Ethics Code (<http://www.apa.org/ethics/code/index.aspx>). If you are planning research with human subjects you should also look at the sample consent form available in the Final Project and Dissertation Guide.

- a. [  ] Read section 3 that your supervisor will have to sign. Make sure that you cover all these issues in section 1.
- b. [  ] Complete sections 1 and, if you are using human subjects, section 2, of this form, and sign it.
- c. [  ] Ask your project supervisor to read these sections (and the draft consent form if you have one) and sign the form.
- d. [  ] Append this signed form as an appendix to your dissertation.

#### Section 1. Project Outline (to be completed by student)

**(i) Title of Project:**

**(ii) Aims of project:**

**(iii) Will you involve other people in your project – e.g. via formal or informal interviews, group discussions, questionnaires, internet surveys etc. (Note: if you are using data that has already been collected by another researcher – e.g. recordings or transcripts of conversations given to you by your supervisor, you should answer ‘NO’ to this question.)**

**YES/ NO**

**If no: you should now sign the statement below and return the form to your supervisor. You have completed this form.**

This project is not designed to include research with human subjects. I understand that I do not have ethical clearance to interview people (formally or informally) about the topic of my research, to carry out Internet research (e.g. on chat rooms or discussion boards) or in any other way to use people as subjects in my research.

Student's signature \_\_\_\_\_ - date \_\_\_\_\_

**If yes: you should complete the rest of this form.**

**Section 2 Complete this section only if you answered YES to question (iii) above.**

**(i) What will the participants have to do? (v. brief outline of procedure):**

**(ii) What sort of people will the participants be and how will they be recruited?**

**(iii) What sort stimuli or materials will your participants be exposed to, tick the appropriate boxes and then state what they are in the space below?**

Questionnaires[            ]; Pictures[            ]; Sounds [            ]; Words[            ]; Other[            ].

**(iv) Consent:** Informed consent must be obtained for all participants before they take part in your project. Either verbally or by means of an informed consent form you should state what participants will be doing, drawing attention to anything they could conceivably object to subsequently. You should also state how they can withdraw from the study at any time and the measures you are taking to ensure the confidentiality of data. A standard informed consent form is available in the Dissertation Manual.

**(vi) What procedures will you follow in order to guarantee the confidentiality of participants' data?** Personal data (name, addresses etc.) should not be stored in such a way that they can be associated with the participant's data.

**Student's signature:** ..... **date:** .....

**Supervisor's signature** (if satisfied with the proposed procedures): ..... **date:** .....

**2. Informed Consent Form**

**3. Interview Transcript- William Spencer; Executive Director IILHR**

**Interviewer:** Rosa de Bruijn

**Interviewee:** William Spencer

**Questions asked by Email.**