

Women's Right to Equal Employment Opportunities in Kurdistan Region of Iraq



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ABSTRACT: Women have been struggling for their rights for centuries in the male-dominated societies. When females are involved in economic and social aspects of their lives, it helps improve their families, communities and countries' health, welfare, prosperity and security. Kurdistan, as a part of Iraq, is one of the State Party to CEDAW and is under an obligation to take the measures required by the convention to eliminate discrimination against women and ensure the equal enjoyment of human rights by women. There are different agents and factors that can contribute to the enforcement of human rights, however, state power plays the foundational and major role in establishing and enforcing the legal rights of women.

The study will identify the extent to which national legislation correspond to CEDAW conventions. Our instrument of analysis would be Article 11 which is focused on women's employment. Our findings include that no substantial legal discriminations disadvantaging women exist.

KEYWORDS: Employment, Women's Right, CEDAW, Equality, Discrimination.

1. INTRODUCTION

The right to work entitles women employees to have the opportunity to earn a living by freely selected jobs and working circumstances that are secure and healthy and that do not affect human dignity. Workers need to be promised a fair salary that enables them and their families to have a good life.¹ Jobs or promotion should not be based on biases and gender stereotypes. Equivalent work should be rewarded with equal wage and employers should allow regular and paid holidays to their employees.² The right to work also involves the right to be associated and to negotiate better working circumstances, the right to participate in trade union of their choices and the right to strikes as long insofar it complies with country's legislations.³ Forced labour and trafficking are clearly illegal under international law and are serious human rights violations. State governments must guarantee that under a certain age child labour is forbidden and that extra safeguards must be in place when girls do work.⁴

The UDHR identifies work as a basic human right needed for the individual's growth. Article 23(2) deals directly with the concept of wage equality, which says that everyone has the right to equal pay for equal jobs without discrimination.⁵ The ICESCR convention also mentioned the concept of wage equality for jobs of equal value.⁶ Fair salaries and equal compensation for jobs of equal value without any discrimination, specifically for women, they should enjoy equal pay for jobs or equal value to those of men.⁷

The concern with job and employment has been the focus of CEDAW. It demands that "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights". It states that the right to work as an inalienable for all human beings. Access to the similar employment opportunities and being assessed on the bases of same criteria are also regarded as parts of human rights. Other cluster of rights in regard to work include; The right to free choice of profession and employment, the right to promotion, job security and

¹ International Network for Economic, Social and Cultural Rights and International Women's Rights Action Watch Asia Pacific, 'Claiming Women's Economic, Social and Cultural Rights : A Resource Guide to Advancing Women's Economic, Social and Cultural Rights Using the Optional Protocol and Convention on the Elimination of All Forms of Discrimination Against Women and the Optional Protocol and International Covenant on Economic Social and Cultural Rights'(New York 2013) 13.

² Ibid 14.

³ Ibid.

⁴ Ibid.

⁵ United Nations, *Universal Declaration of Human Rights* < <http://www.un.org/en/universal-declaration-human-rights/> > accessed 23 May 2019

⁶ High Court, *The Australian Law Journal Reports* (Law Book Company of Australasia 1996) 702.

⁷ Jean- Michel Servais, *International Labour Law* (Kluwer Law International 2011)202

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all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training. CEDAW also focuses on to equal remuneration, including benefits, and to equal treatment in respect to work of equal value. Social security, retirement, and unemployment, sickness, and invalidity benefits are all rights that CEDAW demands adherence to them without gender based discrimination. CEDAW also pays attention to the issue of safety at work and thus demands the provision of protection for health and to safety in working conditions, including the safeguarding of the function of reproduction should be equal for men and women.⁸

Article 11 (2) of CEDAW is concerned with marriage, pregnancy and maternity. The relevant issues here would be the possibility that women are penalized because of pregnancy, marriage and maternity. CEDAW Convention calls on State Parties to take measure to provide; paid maternity leave; support from social services to enable parents to combine family obligations with work responsibilities and public life, particularly the provisioning of network of child-care facilities; and special protection to women during pregnancy in types of work proved to be harmful to them.⁹

2. LEGAL MEASURES TO GUARANTEE EQUAL EMPLOYMENT RIGHTS AND OPPORTUNITIES

According to Article 22 of the Iraqi Constitution (2005): (1) Work is a right for all Iraqis in a way that guarantees them a dignified life: (2) The law shall regulate the relationship between employees and employers on economic bases and while observing the rules of social justice: (3) The State shall guarantee the right to form and join unions and professional associations, and this shall be regulated by law.”

Article 16 of Iraqi Constitution also says that all Iraqis shall have equal opportunities and the State shall guarantee that the required steps are taken to attain this. Moreover, the Article 30 (2) of Iraqi Constitution states that: “The State shall guarantee social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphan-hood or unemployment, shall work to protect them from ignorance, fear and poverty, and shall provide them housing and special programs of care and rehabilitation, and this shall be regulated by law.”

Employment relations in Iraq are regulated by 2015 Labour Law No. 37. But this law has not been approved in Kurdistan. Instead, an employment relation in Iraqi Kurdistan Region is governed by Iraqi Labour Law No. 71 of 1987.¹⁰ The New Labour Law applies to all employees in Iraq whether Iraqis or migrant workers (excluding as said KRI). As the Law No. 71 of 1987 does not make a reference to foreign workers, Kurdistan Region has issued the policy No. 3 of 2013 aiming at protecting the rights of foreign workers. According to this policy, private companies, which bring workers, are demanded to comply with the policy and the rights of foreign workers be protected. In reality, though, the rights and lives of foreign workers are far from being guaranteed. The main reason for this is the failure to implement the policy, as we will discuss that later in chapter four.

3. EQUAL RIGHTS OF EMPLOYMENT AND TREATMENT

Now since we focus on the legal measures that are affecting women in Kurdistan, we will need to examine the Iraqi Kurdistan Law No. 71 of 1987 in terms of whether it involves discrimination against women or not. Our assessment of the law is that it includes significant labour rights clauses and provides for powerful guarantees of equality, for example in the introductory section, Article 2 Labour Law No. 71 of 1987 states that this Code guarantees, on equal status and with equal opportunities, the right to work for all citizens who can work without discrimination on the grounds of sex, race or religion. Each citizen shall therefore have the opportunity to pursue vocational training within the restrictions established by the State with regard to the quantity of jobs and the nature of the job in each occupational branch. Article 4 of the same law deals with the rights of employees to earn adequate wages to satisfy their fundamental requirements and to help their families. Therefore, in determining salaries, the following factors must be taken into consideration: the type and quantity of job conducted by the employee and the principle of equal pay for equal jobs. However, The Iraqi Labour Act (law No. 37, 2015) goes further than Law No. 71 of 1987 because equality between men and women is clearly mentioned, where it is stipulated that “wages must be equal between women and men for the same type of work.”¹¹

There are, on the contrary, a few provisions on the right to work that treat women and men differently. For example, Articles 81 and 82 respectively state that it shall be prohibited, to employ women in arduous work or work which is harmful to health, as

⁸ Suruhanjaya Hak Asasi Manusia Malaysia, *Round Table Discussion: Rights and Obligations Under CEDAW* (Kuala Lumpur, Malaysia 2006) 42

⁹ Yvonne Donders and Vladimir Volodin, *Human Rights in Education, Science and Culture: Legal Developments and Challenges* (UNESCO 2007) 158

¹⁰ Al Sarab Law Office, *Recruitment and wage and hour law in Iraq* <<https://www.lexology.com/library/detail.aspx?g=0e747d4b-2352-4703-b8e8-5f595fe15657>>, accessed 10 August 2019

¹¹ Iraqi Labour Law No. 37 of 2015, Article 53 (5)

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specified in the instruction referred to in Article 57¹² of this Act,¹³ and to assign pregnant women additional work which is likely to endanger their health or the health of the foetus. Furthermore, Article 83 (1) stated that it shall be prohibited to make women work at night, unless the performance of night work is required by the necessity of preventing loss or raw materials or perishable products. Women workers shall be entitled to a period of at least 11 consecutive hours of rest each day, and that period must include 7 hours falling between 9 p.m. and 6 a.m.¹⁴ Section 1 of the Article 83 (Labour law No. 71 of 1987) does not, however, apply to women working in administrative jobs, in health or recreational facilities, in transportation or in communications services. This means that in these types of jobs other regulations or policies apply.

It can be seen that Articles 81, 82 and 83 (Labour law No. 71 of 1987) exercise positive discrimination by protecting them from being forced to undertake difficult or strenuous work. The Iraqi laws of Article 85(1) (2) and Article 86 (1)(2) of the Labour Act (law No. 37, 2015) have exactly similar effect to the Kurdistan laws expressed in Articles 81, 82 and 83, concerning disallowing forcing women to take certain jobs or work under certain circumstances. However, these positively discriminating Articles are said to be suspected of being a bit paternalistic. The criticism concerns that some women might like the challenge of taking up challenging jobs. They refer to the fact that we have female fighters, and that fighting is far more dangerous than any civilian jobs. Their point is that: why not allowing women a bit of freedom while also providing them with protection against being forced to do jobs that are harmful to their health?

In regard to civil servants and public employees, the Civil Service Act No. 24 of 1960 is the legal measure in force in Kurdistan. According to this law, persons applying for work are subject to the same tests and criteria, with preference being given to those achieving a higher assessment in the required qualifications, including certificates, experience and previous training. There is nothing in Government policy to prevent a woman from choosing her profession or type of employment. Annual evaluation of all State employees is carried out in accordance with central indicators that exclude gender and rely on criteria of ability, years of service and efficiency. The same criteria are applied to both sexes in determining wages and salaries, in accordance with instructions and regulations issued pursuant to the Civil Service Act, No. 24 (1960, amended).¹⁵

We can infer from the examining the laws governing labour that, overall, there is no discrimination against women in regard to work and labour. Indeed, there is a positive discrimination which would be very welcome, although it was still criticised on the bases that it did not take account of women who like taking up challenging jobs.

4. NURSING MOTHERS AND MATERNITY LEAVE

In Kurdistan region the 1987 Labour Code No.71 deals in Part VI, Chapter 1, with the protection of women workers. This chapter ensures certain rights for women in the workplace, for example Article 80 states that any employer who employs one or more women must post a copy of the regulations on the safety of women employees at the workplace. Nursing mothers throughout working time shall have a nursing break of up to 1 hour; nursing break shall be counted as an hour of work. Also, if one of her children is ill and requires her care, a woman with one or more children under the age of six may be absent from work without salary for up to three days.¹⁶ Each employer must provide resting facilities for female staff in compliance with their job demands.

Every women worker is entitled to 72 days' maternity leave at full pay – this is not as generous as the Iraqi labour law No. 37 of 2015 which grants women at least 14 weeks paid maternity leave per year.¹⁷ A pregnant worker may, upon the presentation of a medical certificate from the competent service, begin the above-mentioned leave 30 days before the projected date of confinement and may take the remaining days after confinement. The competent medical service may extend the period of leave for up to 9 months in the case of a difficult childbirth, the birth of more than one child, or the appearance of complications before or after confinement.¹⁸

The provisions of this Chapter do not extend to women involved in a family business in which only members of the family are employed and which is under the supervision and power of the father, mother, uncle, husband, or brother of the women.¹⁹

The above is obviously accords with CEDAW's convention; the only shortcoming is that women working within family-run-enterprises seem to have been left out without much protection from the laws. That is why CEDAW General Recommendation

¹² The number of hours of work per day shall be reduced for work which is arduous or harmful to health. Employers shall determine such types of work and the number of maximum working hours applicable to them in accordance with instructions drawn up by the Ministry of Labor and Social Affairs based upon proposals made by the National Center for Occupational Health and Safety.

¹³ Labour Law No. 71 of 1987, Article 81

¹⁴ Labour Law No. 71 of 1987, Article 83 (2)

¹⁵ Iraqi Civil Service law No. 24 of 1960

¹⁶ Labour Law No. 71 of 1987, Article 87(2)

¹⁷ Iraqi Labour Law No. 37 of 2015, Article 87 (1)

¹⁸ Labour Law No. 71 of 1987, Article 84

¹⁹ Labour Law No. 71 of 1987, Article 89

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No. 16 of 1991 stated that "State governments must take the required measures, according to the CEDAW Committee, to ensure payment, social benefits and social security for women who operate without such advantages in family-owned businesses."²⁰

The Kurdistan parliament has, according to Law no. 23 of 2003, amended the Civil Service Act, No. 24 (1960). The amended law states that a woman, who works at public sector, has the right to a one-year post-delivery leave with complete pay and allowances.²¹ As such, this law is noteworthy in its generosity toward working mothers. These regulations and laws accord with the provisions of Article 11(2) of CEDAW convention.

5. WORK AGREEMENT

A contract gives both employee and employer certain rights and obligations. The most common example is that you have a right to be paid for the work you do. Your employer has a right to give reasonable instructions to you and for you to work at your job.

According to law No. 71 of 1987 in Kurdistan Region, work agreements are the main ways to protect the rights of workers. In the Article 29, 30, 31 and 32 of the Iraqi Labour Code (No. 71 of 1987), it shows how important and necessary the agreement between employers and employees is. Here, too the Kurdistan and Iraqi laws do not contradict any provisions of CEDAW, in the sense, that there are no clauses or provision that discriminate on the bases of gender.

6. RIGHT TO SOCIAL SECURITY AND PENSION

Worker's pension and social security law sets up a comprehensive scheme, funded in part by the government and in part by private employers, to ensure that workers are fully protected. Pension and social security for workers act No. 39 of 1971 apply to all workers covered by the provisions of the Workers Pension and Social Security No. 112 of 1969 as amendment. However, the Kurdistan Region amended some of the Articles of law No. 39 of 1971 by law No.4 of 2012. Provisions of this law shall apply to all workers and staff of private sector enterprises and companies operating in the Region regardless of the number of staff members. The following shall be exempt from the application of this law: Employees of state departments and enterprises or that are subject to Civil Service Law; Workers in international organisations and foreign diplomatic delegations; Members of national security forces and the Region's guards.²²A paragraph under the sequence of paragraph (K) shall be added to Article 48 of the law, which shall be valid in Kurdistan –Iraq Region and shall read as follows: An insured working woman may, after giving birth, request a maternity leave for no more than one year with half salary, provided that such a salary is not less than the amount of social security benefit she could receive otherwise from social security welfare.²³ When the case does not fall under the Worker's Pension and Social Security Law, those private sector workers who do not hold a permanent job, and in the case they have been contributing to social security fund, they will be entitled to social security benefits, provided that they are not recipient of salaries from Region's institutions.²⁴

Under law No. 39 of 1971 workers are granted up to 8 days of full paid sick leave, with treatment and medicine paid for.²⁵ The secured worker shall be entitled at the termination of his service to pension salary in one of the following cases:²⁶if the man completed his sixtieth year of age or if the women completed her fifty fifth year of age and any one of them has twenty years of insured service at least;²⁷If the man has at least 30 years insured service and the women at least 25 years insured service.²⁸

This provision provides for different ages before pensions may be granted for men and women. The Pension and Social Security Law for Workers No. 39 of 1971, in Article 50 states that if a male or a female worker is ill – this applies when the female worker falls ill after childbirth – and if he or she is deemed disabled after having spent the upper limit of sick leave stipulated in the Law, he/she shall be granted pension salary due to illness, whose value will be based on the rules stipulated in article 68 of this Law.²⁹If the illness is not followed by complete recovery and the disability was 35% or more, the person shall be granted pension salary due to partial illness on the basis of his/her partial disability.³⁰

²⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations Nos. 16, 17 and 18, adopted at the Tenth Session, (1991) Contained in Document A/46/38* <<https://www.refworld.org/docid/453882a322.html>> accessed 23 March 2019

²¹ Maternity Leave Law No. 23 of 2003 Kurdistan Regional Government.

²² Law No. 4 of 2012 Law of amendment of the application of Law of Pensions and Social Security for Workers No. 39 of 1971 amended in Kurdistan –Iraq Region, Article 1

²³ Law No. 4 of 2012 Law of amendment of the application of Law of Pensions and Social Security for Workers No. 39 of 1971 amended in Kurdistan –Iraq Region, Article 4

²⁴ Law No. 4 of 2012 Law of amendment of the application of Law of Pensions and Social Security for Workers No. 39 of 1971 amended in Kurdistan –Iraq Region, Article 9

²⁵ Pension and Social Security for Workers Act No. 39 of 1971, Article 43

²⁶ Pension and Social Security for Workers Act No. 39 of 1971, Article 65

²⁷ Pension and Social Security for Workers Act No. 39 of 1971, Article 65(a)

²⁸ Pension and Social Security for Workers Act No. 39 of 1971, Article 65 (b)

²⁹ Pension and Social Security for Workers Act No. 39 of 1971, Article 50(a)

³⁰ Pension and Social Security for Workers Act No. 39 of 1971, Article 50(b)

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In regard to public employees, sick leave is regulated in Law No. 24 of 1960 of Civil Service, Articles 46, 47, 48, and 49, the length of the leave decided variously according to the conditions of employees.

By assessing the aforementioned laws and regulation we can infer confidently that there is no discrimination based on gender. Women in certain conditions rightly enjoy more lenient terms which take their physical constitution and maternity roles into consideration.

CONCLUSION

The Region of Kurdistan is still using the Iraqi Work Law No. 71 of 1987. The Iraqi parliament had drawn a new law in 2015. Despite that the Kurdistan parliament had not yet adopted this new Iraqi Law. However, the Kurdistan Parliament had issued a Law in 2012, which amends some of the articles of the Pension and Security Law for Workers, No. 39 of 1971, and as we have examined it, this amendment meets the gender equality as required by CEDAW. It also meets the stipulations of the international conventions of labour.

In regard to the rights of working women, it devotes an entire section which makes many demands: the employer is to inform the female employees about their rights and duties through noticeboard placed in the workplace. Certain kinds of jobs should not be forced on women to take on account arduousness and harmfulness of these jobs to health particularly during pregnancy. This law also allows working women the right to specified periods of rest. Accordingly, we can note that from a legal point of view, Kurdish women enjoy equal employment rights to those of men, and they have even been given some degree of positive discrimination. Although, this positive discrimination has come under some criticism for being too paternalistic.

Overall, we could say that the laws that govern employment, enjoyment of pension and social security including maternity leave and support for ill-health meet CEDAW's expectations.

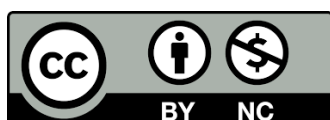
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Legislation

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