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Constituting Change

Women, Gender and Citizenship in Post-Invasion Iraq

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Despite the rhetoric of liberation, democracy and women's rights, Iraqi women might be the biggest losers in the aftermath of the invasion. Aside from the lack of adequate basic infrastructure, women in particular suffer from the ongoing violence and lack of security. But there are not only the risks of being killed by the occupying forces or the militant resistance that seriously impedes women's mobility and every-day lives. Since the 1990s with the imposition of economic sanctions on Iraq, a devastating economic crisis had a detrimental effect on women and gender relations. The early Baath' modernist developmental policies in the 1970s and 1980s very much encouraged women's education, labor force participation and presence in the public sphere. During the sanctions period, the state had to withdraw its support, such as free childcare facilities and generous maternity benefits, and promoted women's 'traditional roles' as mothers and housewives. Saddam Hussein opportunistically responded to a widespread turn towards religion by changing his secular policies to a fierce religious campaign. However, in the eyes of most Iraqis, his regime and policies are very much associated with secularism and the repression of religious practices and authorities. One of the various reasons Islamist forces in post-invasion Iraq are popular relates to people's wish to break with the previous regime but also resist the occupying forces.
Processes related to Islamization of society and Islamist politics are not only leading to increasing conservatism in gender ideologies and relations, but are also dominating Iraqi political power struggles in the post-Saddam era. One early example of the growing impact of Islamist tendencies was the attempt in December 2003 to scrap the secular family laws in favor of sharia-based jurisdiction (Islamic Law) by the Iraqi Governing Council under the then chair of Abdel Aziz al-Hakim, head of the Supreme Council for the Islamic Revolution in Iraq (SCIRI). The secular code established in 1959 and amended in 1979 was once considered the most progressive in the Middle East, making polygamy difficult and guaranteeing women's custody rights in the case of divorce. Although unsuccessful at the time, the attempt to change the family laws and the discussion around it revealed the current climate and the dangers lying ahead. The debate about the personal status laws in particular and Islamic law in general emerged again in the context of the constitution.

Women's Rights and the Constitution

Members of the National Assembly, voted in on the basis of elections in January 2005, volunteered to join the 55-members constitutional drafting committee and negotiated

the constitution behind closed doors. Less than the 25% stipulated in the Transitional Administrative Law (TAL) of this committee were women and most of the female members belonged to conservative Islamist parties.

In the context of women's rights, the debates mainly revolved around: (1) the question of whether Islam should be a source or the main source of legislation; (2) the role of Islam and its specific interpretation with respect to the personal status laws governing marriage, divorce and child custody; and (3) the women's quota (some wished to increase the 25% to 40%, some did not want to enshrine a women's quota).

It needs to be stressed that there was no debate about the question whether or not Islam should be the official religion of Iraq. Indeed, when I interviewed a number of Iraqi women visiting Amman in the summer of 2005, several told me that they were happy with the call for the implementation of the sharia. Azza A., a mid 50s middle-class professional Shia woman from Baghdad, for example, said: "We are Muslims. Of course we want Islamic law." Yet, the moment I started to discuss possible implications, such as the right to unilateral divorce, restrictions on freedom of movement, increased polygamy, changes in existing child custody laws etc., most women I talked to expressed shock and acknowledged that they had been unaware of these implications.

It became obvious to me and was confirmed by several Iraqi women activists that there was an acute lack of information and dissemination about the constitution in general and the actual potential implications of Islamic law in particular. One of the problems, both inside Iraq but also in terms of western societies is the depiction of Islamic law: rather that thinking about the sharia as a set of rules and regulations set in stone and compiled neatly in one book, one needs to think about sharia as a dispersed set of rough guidelines and laws, very much open to interpretation and change. In other words, if the relatively moderate Shia cleric Sistani interprets Islamic law, women might not have to worry too much. However, no one safeguards women from a radical conservative Islamist who could turn Iraq into another Afghanistan.

On a positive note, the constitution, passed last October, does state in the preamble: 'We the people of Iraq (…) are determined (…) to (…) pay attention to women and their rights (…).' Moreover, the constitution states that Iraqis are equal before the law without discrimination because of sex, ethnicity, nationality, origin, color, religion, sect, belief, opinion, social or economic status (Art. 14). It guarantees equal opportunity to all Iraqis (Art.16), the right of men and women to vote and to run as candidates (Art. 20), and – very importantly and unusually in the region – grants both the Iraqi fathers and Iraqi mothers the right to pass on Iraqi nationality to their children (Art. 18).

However, a close scrutiny of the constitution reveals a high level of ambiguity and compromise where women's rights are concerned. Whilst not the only source of legislation, Islam is the official religion and a basic source of legislation. Moreover, no law can be passed that contradicts the 'undisputed rules' of Islam (Art. 2).[1] Neither the previous TAL nor the current constitution explicitly mentions women's rights in the

context of marriage, divorce, child custody and inheritance. Instead, Art. 39 states that 'Iraqis are free in their adherence to their personal status according to their own religion, sect, belief and choice, and that will be organized by law'.
Women did not only loose in terms of more progressive personal status laws being replaced by potentially more conservative laws, depending on who does the interpreting. Ambiguity in the context of increasing social conservatism and influence of Islamist forces within government and resistance might prove to be extremely dangerous to and harmful for women. But, even worse women's rights or lack thereof, are ultimately tied up with communalism and potentially increased sectarianism as different regions within Iraq might use different interpretations of family laws:

> "Since family law is not the preserve of central government, this devolves authority to the regions to specify family law. Already, the constitution stipulates that laws passed in the Kurdish region since 1992 will remain, unless they are against the constitution or amended according to the laws of the Kurdistan region (Article 150). Kurdish political leaders are generally perceived to be more secular in orientation and the Kurdish parliament rejected Resolution 137 when it was passed by the Interim government at the end of 2003. In other words, rather than women being divided by religion/sect, different regions of Iraq could implement different family laws. The outcome could be a more secular-oriented, civil family code in Kurdistan and a religiously-inspired, conservative family code in the Shi'a south." (Pratt 2005, 12)

What complicates matters even further is the instrumentalization of women's issues and women's rights by the occupying forces and the resistance alike. Women are squeezed between the rather half-hearted paying lip service to women's rights by American neo-cons, and calls for resistance to western feminism and loose moral values by conservative Islamist forces. Unfortunately the louder the cry for women' rights in the context of the occupation by outside constituencies, the greater the backlash might be for women inside Iraq. Given these extremely precarious and difficult parameters, an ambiguous constitution might be a long term threat to Iraqi women.

Notes

1 Nathan Brown (2005, 2) translates 'undisputed rules' as 'the fixed elements of the ruling of Islam'.

References

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