

**EXPLORING UNITED NATIONS HUMAN RIGHTS INSTRUMENTS FOR HUMAN RIGHTS
PROTECTION IN IRAQ**

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Abstract

There are cases of the failure of Iraqi government to monitor and implement measures that are needed for the protection of her citizen and freedom of expression of the fundamental human rights as spelt out by the United nation. The United Nation is actively involved in addressing human right challenges in different districts in Iraq under different Agencies like: The Food and Agricultural Organization (FAO), The International Labour Organization (ILO), The United Nation Children's Fund (UNICEF) etc. The United Nations nine Treaties on Human Rights are also operational in Iraq. This article explores United Nations' instruments for Human Rights Protection in Iraq and safely concludes that the creation of the United Nation's Rights mechanism has done a lot in addressing human right issues in Iraq.

Keywords: United Nation, Iraq, Human Right, Treaties, Charter

INTRODUCTION

The United Nations Charter and the human rights instruments evolution refer to human rights with its fundamental freedoms has a quite number of issues. To be more specific in this issue, the organization has an obligation to encourage "respect for human rights and for fundamental freedoms for all without distinction as to race sex, language, or religion"; this is quoted in the United Nations Charter Articles 1 and in Article 55. Human rights officers are mostly to work in countries where armed conflict has occurred and Iraq is a good example of such country. The creation of a body of international human rights law is the United Nations dream to achieve negotiations and accomplishment .Apparently, there are one hundred approximate universal human rights instruments and huge numbers of regional treaties which covers almost different documents that are used in protection of human rights and standard. These include: legally binding treaties, conventions, covenants, resolutions, declarations, guiding principles and codes of conduct which may be called soft law (O'Neill and Lyth (2001). Discussion on human rights, may refer to the main fundamentals for this body and in the International Bill of Human Rights

that consist of Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on Civil and Political Rights and its Optional Protocols.

However, the United Nations human rights instruments can also be referred to the ten core international human rights instruments and the nine human rights treaty bodies with its Optional Protocol to the CAT which established a Committee of experts to monitor implementation of treaty provisions by its State parties. Iraq is a member state of the United Nations, it became signatory to some of the international treaty bodies that deals with promotion and protection of human rights. Iraq is also a member state of the following international human rights treaty bodies which are:

1. The International Covenant on Civil and Political Civil Rights (ICCPR) that was adopted and opened for signature, ratification and accession by the resolution of the General Assembly 2200A (XXI) of 16th December 1966, in accordance with Article 49(22) on the 23rd March 1976;
2. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) that was adopted and opened for signature, ratification and accession by the resolution of the General Assembly 2200A (XXI) of 16th December 1966, in accordance with Article 27 (23) on the 3rd January 1976;
3. The International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) that was adopted and opened for signature and ratification under the resolution of the General Assembly 2106 (XX) of 21 December 1965 which later came into force 4th January 1969, in accordance with Articles 19 (23) on 13th February 1970;
4. The International Convention for the Elimination of All Forms of Discrimination against Woman (ICEDAW) that was adopted in New York by United Nation General Assembly 18th December 1979 which later came into force 3rd September 1981 , in accordance with Article 30 on 12th September 1986;
5. The International Convention on the Rights of the Child that was adopted and opened for signature, ratification and accession by the resolution of the General Assembly 44/25 of 20th November 1989 which later came into force 2nd September 1990, in accordance with article 49 on 15th July 1994.

According to Article 1 of the Universal Declaration of Human Rights (UDHR) that was adopted by General Assembly resolution 217 (III) of 10 December 1948 assert that: all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood. The second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

When speaking or talking about civil and political rights, people's attention may be focused on the Universal Declaration that started clearly or provide provisions for civil and political rights in Article 3 to 23. The ICCPR which is a legal binding instrument uses by all state members, it mentioned all these civil and political rights in the following Articles which include:

1. The rights to life in Article 6 of the (ICCPR);
2. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment in Article 7 of the (ICCPR);
3. The prohibition of slavery in Article 8 of the (ICCPR);
4. The rights not to be subjected to arbitrary arrest or detention in Article 9 of the (ICCPR);
5. The right of all persons deprived of their liberty shall be treated with humanity in Article 10 of the (ICCPR);
6. The right to freedom of movement & freedom to choose a residence in Article 12 of the (ICCPR);
7. The right to equality before the courts and tribunals, and guarantees in criminal and civil procedure in Article 14 of the (ICCPR);
8. The right to prohibition against retroactive criminal legislation in Article 15 of the (ICCPR);
9. The rights to recognition everywhere as a person before the law in Article 16 of the (ICCPR);
10. The right of equality before the law in Article 26 of the (ICCPR);
11. The prohibition of arbitrary or unlawful interference with an individual's privacy, family, home or correspondence in Article 17 of the (ICCPR);
12. The rights to freedom of thought, conscience and religion in Article 18, expression in Article 19, assembly in Art. 21, and association Art. 22 (ICCPR);
13. The right of every citizen to take part in the government of his or her country in Article 25 of the (ICCPR).

Beside all these rights mentioned above, the ICCPR also prohibits any propaganda for war and any advocacy of national, racial or religious hatred that may contribute provocation to discrimination, hostility or violence Article 20. However, the main protecting members of ethnic, religious or linguistic minority are articulated in Article 27. The Economic, Social and Cultural Rights are provided in Article 22 to 27 of the Universal Declaration. This also further elaborated in detail in accordance to human rights instruments which the International covenant on Economic, Social and Cultural Rights (ICESCR) mentioned or produced in some several Articles:

1. The right to work in Article 6 (ICESCR);
2. The right to education Article 13 (ICESCR);

3. The right to social security Article 9 (ICESCR);
4. The right to protection and assistance of family Article 10 (ICESCR);
5. The right to enjoy just and favorable conditions of work Article 6 (ICESCR);
6. The right to form trade unions and join the trade union of one's choice Article 8(ICESCR);
7. The right to an adequate standard of living, including adequate food, clothing and housing, and fundamental right to be free from hunger Article 11 (ICESCR); and
8. The right to the enjoyment of the highest attainable standards of physical and mental health Article 12 (ICESCR).

According to Article 2(1) of the (ICESCR), member of State parties undertakes “take steps, individually and through international assistance and cooperation to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant”. The principle of non-discrimination in Article 2(2) of the (ICESCR) is universally applies and is a powerful tools for human rights persons to promote and protect economic, social and cultural rights.

At the first session in 1946, the General Assembly considered a draft Declaration on Fundamental Human Rights and Freedoms which was transmitted to the Economic and Social Council. The Commission authorized its officers at its first session early in 1947 to formulate what it termed “a preliminary draft International Bill of Human Rights”. At the beginning, there were different views expressed about the bill of rights should take. The drafting Committee concluded to prepare two documents: one in the form of a declaration, which it aim to set forth general principles or standards of human rights and while the second in the form of convention, which would defined specific rights and their limitations.

During the adoption of the Universal Declaration, the General Assembly requested the Commission on Human Rights to prepare a matter of priority, a draft covenant on human rights and draft measures of implementation. In 1949, the Commission examined the text of the draft covenant and revised the first eighteen articles, on the basis of comments from different Governments. Furthermore, in 1950 the General Assembly declared that “the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent” (resolution 421 (v), sect. E). although, the General Assembly concluded to include in the covenant on human rights economic, social and cultural rights and an explicit recognition of the equality of men and women without any gender discrimination in related rights, as set forth in the Charter. After much debate at the sixth session, between 1951 and 1952, the General Assembly asked the Commission “to draft two covenants on Human Rights, which one to contain Civil and Political rights and the other to contain Economic, Social and cultural rights” (resolution 543 (VI), para. 1). The Assembly noted in the two covenants that

should contain as many similar provisions as possible. It further, concluded to include an article providing that “all peoples shall have the rights of self-determination” (resolution 545 (VI)).

According to the report of International Convention on the Rights of the Child (ICRC) with reference no. E/CN.4/2005/4 9th June 2004, sixty-first session item 4 of the provisional agenda. The ICRC drawn the attention of the Coalition forces of serious violations of international humanitarian law that guarantee the protection of human rights both international and national level. The major violations of international humanitarian law where described by ICRC report which includes:

1. The serious brutality against protected persons capture and put into custody which sometime cause death or insecurity.
2. Physical physiological problem during interrogation to gain information. This is contrary to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment that was adopted on 18th December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution of A/RES/57/199;
3. Prolonged solitary confinement in cells devoid of daylight;
4. Excessive and disproportionate use of force against force persons deprived of their liberty resulting in death or injury during their period of interment;
5. Holding persons deprived of their liberty in dangerous place where they are not protected from shelling;
6. Exposure of person deprived of their liberty to dangerous task;
7. Seizure and confiscation of private belongings of persons deprived their liberty.
8. The government of Iraq fail to monitor and implement the child labor laws to be effectively.

With the establishment of an inspection service during the year by MOLSA to ensure compliance correspondence with the laws that relate to the prohibitions of child labor in both private and public sector, there was information that eighty eight firms were shut down for violations during those years. According the estimated figure given by one of the director general of the KRG's Human Rights Commission, approximately fourteen thousand children were recorded in illegal labor activities in the three IKR provinces. The local authorities in the IKR and the domestic NGO Kurdistan Save the Children supplemented the income of families with children vulnerable to child labor. This was assumed by KMOLSA as management of this program during the year.

UNITED NATIONS ALLIANCE IN IRAQ

The United Nations (UN) work with eighteen (18) governorates of Iraq and operates at the community, governorate and the national level. The National and international staffs are

deployed in every part of the country to work in hand to hand with the local staff and national counterparts in order to ensure promotion and protection of human rights. The United Nations Assistance Mission for Iraq (UNAMI) both together with United Nations Country Team (UNCT) to provide the Government of Iraqis better future. There are twenty members of UNCT, follow by sixteen resident and four non-resident agencies. The following are members of this team of organizations that work in Iraq which include:

1. The Food and Agriculture Organizations (FAO);
2. The International Labour Organization (ILO);
3. The Office for the Coordination of Humanitarian Affairs (OCHA);
4. The Office of the High Commissioner for Human Rights (OHCHR);
5. The World Food Programme (WFP);
6. The World Health Organization (WHO);
7. The United Nations Population Fund (UNPFPA);
8. The United Nations Office of Drugs and Crime (UNODC);
9. The United Nations Office for Project Services (UNOPS);
10. The United Nations Industrial Development Organization (UNIDO);
11. The United Nations Human Settlements Programme (UNHABITAT);
12. The United Nations High Commissioner for Refugees (UNHCR);
13. The United Nations Children’s Fund (UNICEF);
14. The United Nations Conference on Trade and Development (UNCTAD);
15. The United Nations Entity for Gender Equality and the Empowerment of Women (UNWOMEN);
16. The United Nations Development Programme (UNDP);
17. The United Nations Economic and Social Commission for Western Asia (ESCWA);
18. The United Nations Educational, Scientific and Cultural Organization (UNESCO);
19. The United Nations Environment Programme (UNEP).

Furthermore, the UNCT includes both the international Organization for Movement (IOM) and the World Bank as noted by the United Nations.

UNITED NATIONS HUMAN RIGHTS MECHANISMS (BODIES)

The notion of creation of United Nations Rights mechanisms (bodies) and the operation system is one of the greatest achievement in the attempts of many international community to promote and protect human rights. The treaty bodies are mentors of the legal norms establishment by human rights treaties.¹ Due to the legal commitment of the treaty bodies, all state parties

See for example: Christof Heyns and Frans Vijoer, *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, (Kluwer Law International, The Hague, 2002), p. 648.

present a periodic reports on issue concern human rights protection, which review both legislative and policies and make recommendation to States how to acquire success in compliance through human rights obligations. The reporting process was designed as continuous process which can be readdressed at any time when there are lapses in the system, and this may lead to some changes at any time call for. States established the treaty body system to achieve their primary work aim. The States responsibility is to implement all necessary measures which can be of good help to individuals and ensuring their provisions of human rights promotion and protection standard at the national level.

To be more specific, it is good to know how and understand the monitoring system of these instruments of compliance. However, the United Nation human rights has shown an important needs to impact on promoting and protecting the human rights of individuals whose rights are violated. Counting on this, a number of mechanisms have been introduced to address and monitor compliance which deal with human rights treaty. The international human rights treaties have establish various special committees which have been specifically entrusted with the mandate to supervise the way states are abide by their treaty obligations.

The nine treaty bodies which are currently existing, have created relevant United Nations human rights treaties committees which include the followings:

1. The Human Rights Committee (HRC), created under the International Covenant on (ICCPR);
2. The Committee on Economic, Social and Cultural Rights (CESCR), created under the International Covenant on Economic, Social and Cultural Rights (ICESCR); it may receive individual complaints relating to State parties to the Optional Protocol to the ICESCR which came into enforced in 2013.
3. The Committee on the Elimination of Racial Discrimination (CERD), created under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and as it is stated in Article 14, the ICERD may receive individual complaints against States parties.
4. The Committee on the Elimination Discrimination against Women (CEDAW), created under the International Convention on the Elimination of All Forms of Discrimination against Women (ICEDAW); the CEDAW may receive individual communications relating to States parties.
5. The Committee Against Torture (CAT), created under the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); according to Article 22 of the CAT, individual complaints against States parties may be accept when it is relevant.

6. The Committee on the Rights of the Child (CRC), created under the International Convention on the Rights of the Child (ICRC);
7. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), created by the Optional Protocol to the Convention against Torture (OPCAT);
8. The Committee on Migrant Workers (CMW), created under the International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICRMW);
9. The Committee on the Rights of Persons with Disabilities (CRPD), created under the International Convention on the Rights of Persons with Disabilities (ICRPD).

The Committee on Enforced Disappearances is set to be created based on the International Convention for the Protection of All Persons from Enforced Disappearances, which was opened for signature on 20th December 2006. The treaty bodies that were created in accordance with the provisions of sharing common features for human rights dignity are as follows:

1. All composed of experts nominated from various member states to the respective treaty, serve or act based on individual capacity and thus they do not report their various governments. Each treaty body differs and likewise the number of experts. They are experts of high moral persons with competence; this is noted in the Convention on the Rights of the Child Article 43(2). Furthermore, during the election of experts, many things were taken into consideration in order to have equal mandate from different geographical regions without any gender discrimination. Duration of time is another important thing to be considered, just like the office the experts is usually four years. The experts do not normally receive any salary for their work, hence they receive secretarial support from the United Nations.
2. The function and the mandates of each treaty body are specified in the relevant treaty. The treaty bodies are the working tools for ensuring compliance with the treaty provisions. These working tools differentiate among the treaties. However, they are categorized as periodic reporting and individual measures whereby individuals can carry on communications, country visits, complaints or applications.

CONCLUSION

The United Nations has shown a lot of commitment in the protection of human rights by the establishment of different agencies and the formulation of many treaties to address this problem. There is no doubt that tremendous improvement has been made, but a lot is still expected. It's thus the responsibility of the citizen of Iraq to study the various international law provisions as set out by the United Nations, so that they can claim their right and also be well guided should there be a need to challenge human rights violations. This legal parameters of the

United Nations and as well as the international human rights instruments have provided the Iraq National Human Right Commissions the need for promotion and protection of human rights. Despite the United Nations Human Rights mechanisms and regional instruments for gesture of human dignity, it doesn't finally or totally remove the sad situation of violation of human rights.

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