

FROM INSTRUMENTAL ADAPTATION TO INSTITUTIONALISATION OF NORMS

Protecting Women from Honour Violence
in Kurdistan Region, Iraq



Master Thesis in the Theory and Practice of Human Rights
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Security forces in Kurdistan Region learning about human rights

Source: Civil Development Organisation



Kurdistan Regional Government celebrating the 60th anniversary of UDHR

Source: www.krg.org

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1 Introduction

Reports by international NGOs suggest that the human rights situation in the Kurdistan Region in Iraq has improved over the last years. The political parties in power express strong wishes to conform to human rights norms, but at the same time there are reports of serious human rights violations. This case study seeks to assess the level of implementation of human rights in the Kurdistan Region by applying the “*spiral model*” of human rights change as it is presented in *The Power of Human Rights* (Risse et al 1999). The main focus will be on the status of protection of women against honour violence.

1.1 Political background

While the Kurds enjoyed autonomy under the Ottoman Empire, after the 1830s the modernization and centralization of the empire ended this situation. Turkey, Iraq, Syria and Iran have since seen Kurdish identity as a threat to the nation-state.

In 1991, following the Saddam-regime’s crackdown of the “Intifada” (uprising) half a million refugees were stranded in mountain passes between Iraq and Turkey, because Turkey denied access to its territory. The UN Security Council adopted Resolution 688 which stated that Iraq’s “...repression...in Kurdish populated areas...threaten international peace and security in the region.” Although Resolution 688 did not explicitly authorize it, US, UK and France used the resolution as a pretext to declare a no-fly zone north of the 36th parallel in Northern Iraq and to place ground forces that created several safe encampments. Saddam Hussein withdrew his forces from the three northern governorates on 20 October 1991. The KDP and PUK, who were the dominant parties of the Kurdistan Front established in 1987, filled the power vacuum.

The Kurdistan Front, consisting of eight different parties held elections in May 1992, which led to the formation of a regional parliament in June (Gunther 1999:67). The vast majority of the population participated in the elections. Only the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) met the 7 per cent threshold that was required

to be represented in the regional assembly.¹ The KDP and the PUK together formed a government in July, inviting some of the other parties to be represented in the cabinet as well (Gunther 1999:67).

Having no realistic option of creating an internationally recognised Kurdish state, the only hopes of maintaining some sort of autonomy, the Kurdish leaders of northern Iraq envisioned post-Saddam Iraq as a federal democratic state (Ahmed and Gunther 2005:71-75).

The Iraqi opposition conference, held in London in December 1992, drew up a draft constitution for the Iraqi Kurdistan region and for Iraq. A section of both of the draft constitutions guaranteed a number of basic rights: equality before the law, non-discrimination, freedom of expression and freedom from torture (Ahmed and Gunther 2005:79).

Under the heading “What does KDP stand for” on KDP’s website the following is stated:

The KDP is founded on the most important objectives, to seek and achieve all basic human and national rights including the right of freedom of expression and association and to support all democratic principles for all ethnic, and other, oppressed peoples. We adhere to the principles of human rights and fundamental freedoms as set out in the Universal Declaration of Human Rights, the Charter of the United Nations (U.N.) Organization, the U.N. sponsored International Human Rights Covenants and Protocols, and the European Convention on Human Rights.

Iraq was among the world’s five worst performers on human rights protection in the period 1976-2000 (Landman 2005:98-104). Bearing in mind the atrocities committed by the Iraqi central regime in the late 1980s, when between 50-100 000 civilians were massacred in the ‘Anfal’ campaign of 1988,² there is no doubt that the human rights situation in general has improved considerably in the Kurdish-controlled area after the central government

¹ Human Rights Watch World Report 1992

² Human Rights Watch World Report 1993

withdrew in 1991. According to HRWs 1996 country report on Iraqi Kurdistan human rights groups could operate openly, though not without risk of detention or other harassment by the PUK or KDP.³ Such activity would at the time be unthinkable in government-controlled Iraq. At the same time there have been many reports of *inter alia* cases of torture and prolonged detention of political opponents.⁴

1.2 Theoretical framework

Different theoretical perspectives on international law and international relations can be used to explain processes in which states adopt norms by being part of international regimes. A *realist* perspective will focus on power and utility as the basis for such processes and as the motivating factor for actors. A *constructivist* approach can give an alternative or additional explanation of how human rights are implemented in domestic practice through “internalized identities and norms of appropriate behaviour” (Landman 2005:16).

In *The Power of Human Rights* (Risse et al 1999) Thomas Risse and others presents a model that aims to explain the socialization of human rights norms into domestic practices. In this model both realist and constructivist theory are used to interpret state policies on human rights. Risse et. al discuss the conditions under which ideas become human rights norms that are implemented into domestic practices. While the human rights situation in Kurdistan Region is still very far from the “success stories” of Risse et al. (ex. Poland and Chile), authoritative sources like HRW claim, as shown above, that there have been substantial improvements over the past few years.⁵ Risses model lists different factors as vital to implementation of human rights norms. They show how change can come about by a momentum of political transformation in combination with transnational networks that link with domestic NGOs and together influence domestic practices, partly by bringing attention and pressure from the international community (UN, Western states).

³ Human Rights Watch World Report 1996

⁴ Ibid

⁵ Human Rights Watch World Report 2002

The *spiral model* consists of 5 phases of human rights change: *repression; denial; tactical concessions; prescriptive status; role consistent behaviour*. The model with its 5 phases contains a continuum of different ideal types of socialisation processes: strategic bargaining; argumentation, dialogue and persuasion; habitualization and internalization.

The originality of the model is the way in which it builds on socialisation theory and combines a *realist* and *constructivist* approach. “Instrumental adaptation” to norms is found in “the early stages” of socialisation. At this stage rational choice and a *realist* perspective can explain behaviour. Actors need not believe in norms to adapt to them. At a later stage however, socialisation may partly be guided by another dynamic, namely internalisation of norms resulting from argumentative discourse and identity construction, values and conception of the self.

In *Protecting Human Rights – A Comparative Study*, Landman (Landman 2005) constructs an empirical model to measure both the growth and effectiveness of the international human rights regime. Unsurprisingly, Landman finds that ratifications of human rights treaties do not in itself guarantee human rights protection. He therefore introduces several independent variables that influences the level of protection and mediate the relationship between norms and rights: democracy; economic wealth; international interdependence (participation in IGOs and presence of INGOs, trade); internal/external conflict; population size and geographic region (Landman 2005:26-31). The inclusion of the international interdependence-variable in the model is inspired by the findings of Risse et al’s *The Power of Human Rights* (Landman 2005:29).

Human rights treaties impose certain obligations on states. Different typologies of state obligations imposed by human rights treaties have evolved since H. Shue first introduced one in 1980. Others include Asbjørn Eide’s tripartite typology that was first presented in 1987 in *Food as a human Right* has since become a widely applied typology to describe human rights implementation (Sepúlveda 2003:157-73). Steiner and Alston have presented

a scheme of five types in *International Human Rights in Context* (Steiner and Alston 2000:180-185). A concept originally introduced by van Hoof in 1984, Steiner and Alston included *promote* as a type of state duty (Sepúlveda 2003:163).

1.2.1 Relevance of theory

A modified version of Steiner and Alston's typology is applied in chapter 4 to structure the descriptive presentation of measures of protection of women against honour violence in Kurdistan Region. As several examples will demonstrate, this typology is particularly relevant since it includes *promote* among the state duties. The *spiral model* is a theoretical approach and a tool to analyze and understand the role of the translational human rights network in the process of human rights implementation. The model represents a tool to organise the empirical facts and to guide the discussion (chapter 5) around factors that conditions and develop human rights implementation. With its listing of factors necessary for change, the *spiral model* will also be helpful in a discussion of what potential for continued human rights implementation exists today in Kurdistan Region. In the final analysis (chapter 5), Landman's variables will supplement Risse et al's focus on networks and socialisation.

1.3 Methodology

1.3.1 Which rights

Risse et al. focus on the right to life and freedom from torture and arbitrary arrest and detention, because they see this as a core of rights where they most expect human rights norms to have made an impact on human rights practices. The present study focuses on the right to life and freedom from torture as well, but primarily by looking at protection of women at risk of honour killing and other forms of honour-related violence.

At the initial stage of the study women's rights⁶ seemed central in the regional governments human rights policy. E.g. the revision of 2000/2002 of the Iraqi penal code in the KRG-area regarding mitigating circumstances for honour killings (Begikhani

⁶ The content of the term *women's rights* is discussed in chapter 2.

2005:216). Other measures giving this impression was an award that was installed by the government in 2007 to be given to independent forces that work to combat violence against women. Several western NGOs support local organisations that work for women's rights. There are quite a few women's rights NGOs in the KRG-area.

The seemingly central position of women's rights in the KRG's human rights policy is somewhat surprising given the gender-based gap in the enjoyment of rights and freedoms in Middle-East countries in general, and in the tribal and traditionalistic Kurdish society in particular. This apparent paradox motivates the focus on women's rights in this study.

The rights that Risse et.al. build their study around are rights where the state or a persons in an official capacity is the primary violator. Domestic violence on the other hand takes place in the private arena, and the state's human rights obligation is to take the necessary measures to protect women from such violence (discussed further in chapter 2). Despite this important conceptual difference a focus on certain women's rights in light of the *spiral model* – seems relevant not least because of the focus and interest from the government

The thematic focus is also connected to the fact that a variety of research sources (especially women's rights NGOs and -activists) seemed at the outset to be available, in contradiction to what seemed to be the case with e.g. issues like arbitrary detention or torture.

1.3.2 The research question

The KRG's claim that it is committed to women's rights could be a way to divert attention away from lack of implementation of these, as well as other rights. It could also be a sign that human rights are in fact implemented to some extent. The phase of the spiral model when human rights are starting to become institutionalised - and thus start to mean something in practice for individuals in a society - is when the process enters into the *prescriptive phase*. Thus, the following research question appeared relevant at the initial stage of the study:

Has protection of women against honour related violence in Kurdistan Region reached the level of “prescriptive status” of the spiral model?

1.3.3 Methodological approach

The thesis takes the form of a case study, using a qualitative research method, collecting data by unstructured interviews and analyzing various types of documents (reports, newspaper articles, web-pages of various NGOs and the regional government). The collected data are then structured by the theoretical approach (the *spiral model*).

In November 2008 the author spent one week in Erbil and Sulaimania, the two main cities of the Kurdistan Region, and conducted 16 interviews with various actors. Two earlier visits (2001/2004) provided useful context.⁷

Chapter 2 contains a presentation of the legal context and obligations under human rights law, relevant for Kurdistan Region on the issue of honour violence, thus involving a legal perspective.

1.3.3.1 Validity

To employ implementation of certain women’s rights to discuss the status of human rights implementation in general is not unproblematic in terms of validity. In connection with the issue of domestic violence the state holds an indirect responsibility to secure rights, whereas e.g. with regard to torture of prisoners the state has a direct responsibility to respect. It thus could be expected that (as Risse et al presupposes) freedom from torture, constituting a core civil right, would have been further implemented than e.g. measures to combat domestic violence.

However, how the state and key actors within the state apparatus relates to human rights questions is central to Risse et al’s model. Hence, processes that involve instrumental rationality and identity change can be expected to have relevance for the states approach to

⁷ In the capacity of a Norwegian refugee assisting NGO representative - to inquire into what categories of persons risked persecution and thus would qualify for international protection (refugee status).

human rights in general. E.g. if the state in question has a strategic interest in avoiding negative attention on human rights practices, the type of right in question does not necessarily determine the nature of preventive measures. It is possible that that the same logic would be followed irrespective of the type of right, if and when confronted with criticism.

1.3.3.2 Sources and reliability

The data used in this study includes legal texts and commentaries to such texts such as comments by treaty bodies; NGO- and governmental reports; interviews with relevant actors; speeches and other political statements by political figures; newspaper articles and academic studies on the political situation in Kurdistan Region.

Employees who have worked with the Norwegian Peoples Aid (NPA) in Iraq since 1995 assisted in identifying actors to be interviewed for the study. Hence, the selections of persons interviewed were well informed.

The interviews conducted included three employees at NPA's office in Sulaimania; as well a former head of the office; three practicing lawyers; two directors of women's NGOs – one of whom is a member of the Iraqi national assembly; the human rights minister of KRG Minister for Human Rights; the KRG Minister for Sports and Youth; three representatives of local NGOs; the head of the directorate to follow up violence against women in Sulaimania; the head of the women's committee in the Kurdish regional parliament and the social issues-advisor to the prime minister of KRG.

The different actors that has been interviewed, as well as parts of the written material, represents different roles and interests that could affect both how and which facts are presented to the researcher. Triangulation of sources has been applied to secure the credibility of the factual information received from the different persons who has been interviewed. E.g. state representatives or NGOs affiliated to the government will sometimes exaggerate level of implementation of human rights, just as some NGOs on the contrary could be expected to exaggerate extent of violations e.g. to attract more funding.

The same need to consider possible bias applies to the facts, assessments and opinions collected from the written material.

1.4 Structure of the thesis

Chapter 2 contains an overview of Iraq's legal obligations under international law with regard to relevant rights from ratified conventions as well as describing the contents of these rights (CCPR (arts. 6, 7, 23 in relation to art. 3), CESCR (art. 3), CEDAW).⁸ I will examine in what way some of those rights are reflected in domestic legislation in Iraq and the KRG-area. A definition of the legal status and obligations under international law of the KRG, as part of the federal Iraqi State, is part of chapter 2. Chapter 3 describes the social context and extent of honour crimes against women in KR. Chapter 4 contains an overview of what the KRG have done in terms of implementation of the rights described in chapter 2. Chapter 5 discusses the empirical findings in chapter 4 in the light of the spiral model.

1.5 Terminology

The Transitional Authority Law (TAL) signed on 8 March 2005 (replaced by the Iraqi Constitution on 15 October 2005) enshrined federalism as the basis for the system of government in Iraq and recognized the *Kurdistan Regional Government (KRG)* as a regional government governing the *Kurdistan Region (KR)*. KR consists of the three northern Iraqi governorates Dohok, Erbil and Sulaimania. For the period prior to 8 March 2005 the Kurdish controlled area in Northern Iraq (consisting of the same three governorates) is termed *Iraqi Kurdistan*, as has been commonly done by international news agencies, international NGOs as well as in academic literature.

⁸ These rights are of course not all "women's rights" as such, but are relevant for women in a particular way in the present context, because of the special risks women are exposed to due to certain social/cultural practices in Kurdistan Region.

2 The legal context

2.1 The Kurdistan Region in Iraq - Status and responsibility under international law

Kurdistan in the north is effectively independent. The Iraqi Army is barred from the region, the Iraqi flag prohibited, and central government ministries are not present. The Kurdish people voted nearly unanimously for independence in an informal referendum in January 2005.

(Peter Galbraith, Our Corner of Iraq, The New York Times July 25. 2006)

2.1.1 The Iraqi Constitution – the formal side

The Iraqi constitution was approved by a national referendum held on 15 October 2005. According to article 1 of the constitution, Iraq is a "single federal state". Section 5 article 117 stipulates "This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region." According to article 110 "The federal government shall have exclusive authorities in (...) negotiating, signing, and ratifying international treaties and agreements (...) establishing and managing armed forces...". Article 121 establishes that "The regional government shall be responsible for (...) the establishment and organization of the internal security forces for the region such as police, security forces, and guards of the region." Article 121 further stipulates "In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region." According to article 141, "Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid...".

Being a federal region within Iraq, KR is committed to the Iraqi state's treaty obligations. The KRG Human Rights Minister Dr. Yousif M. Aziz affirmed, when interviewed for this study, that KRG is committed to adhere to Iraq's obligations under international law.

2.1.2 Political situation - the actual side

In the period between 1992 and 2005 the three northern governorates of Iraq (Duhok, Erbil

and Sulaimania) represented a de-facto state entity. It held an absolute territorial control over the area, partly dependent on the "no fly zone" protected by the US, UK and France. From 2005, when the area formally became a region of the federal Iraqi state, the Kurdistan Region in one sense re-integrated into Iraq. This integration is however nominal since the regional authorities has exercised complete control of the territory, with its own armed forces (formally "security forces") since 1992, it is in charge of the civil administration and the regional government even has its own "Department of Foreign Relations" with diplomatic representations in the US and the UK.

2.1.3 The responsible agent and duty bearer

States are according to Cassese "...entities which, besides controlling territory in a stable and permanent way, exercise the principal lawmaking and executive functions proper of any legal order."⁹ States are the primary subjects of international law (Cassese 2005:71) and thus the primary addressees of human rights (Nickel 2007:38). Taking the Iraqi constitution into consideration the Kurdistan Region is clearly not a sovereign state in the formal sense. It is the Iraqi state which is a subject of international law and accountable under international law. The regional government of the Kurdistan region, being part of the Iraqi state, will be expected to conform to Iraq's international legal obligations.

However, since the region in so many ways represents an independent governing structure - that comes very close to Cassese's definition of a state - the regional authorities are for all practical reasons responsible to secure the citizens' enjoyment of their human rights and freedoms.¹⁰ This is illustrated by the fact that Amnesty International, during and after visiting KR, communicates directly with the KRG, and not via Baghdad.

⁹ Cassese 2005, p. 71

¹⁰ It might be more precise to speak of the Kurdistan Region as including two central structures since the two ruling parties (KDP and PUK) each have a separate sphere of influence. Considering the administrative integration-process with the common government as from 2006 it is however becoming more relevant to speak of one structure.

2.2 International legal context - honour violence

2.2.1 Women's rights as a concept/term

In a broad sense the term *women's rights* will include various issues such as the historical struggle for female suffrage, non-discrimination and abortion rights. The Commission on the status of women (CSW), which was established by ECOSOC resolution 11(II) of 21 June 1946, were given the task "to prepare recommendations and reports to the Council on promoting women's rights in political, economic, civil, social and educational fields."¹¹ In this wording the term seem to include how human rights are (or are not) enjoyed by women. Women's *rights* as a term seem to be used rather inclusive, to cover not only specific articles in national or international law, but also when speaking of the *status* and *condition* of women in society¹². The Convention on Elimination of all forms of Discrimination Against Women" (CEDAW) 1979, is often described as the international bill of rights for women¹³, and could thus be said to constitute women's rights in a more narrow sense under international law.

In a society where women are suffering from, or are relatively more exposed to than men are - for cultural or other reasons - particular physical threats, economic or social marginalisation, other human rights can also meaningfully be termed as women's rights. This is in line with CSW mandate referred to above.

2.2.2 Relevant international human rights norms

In a situation where women risk domestic violence and honour related violence, the right to life and freedom from torture and degrading treatment are thus relevant as *women's rights*.

Right to life, CPR art. 6. "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

¹¹ <http://www.un.org/womenwatch/daw/csw/index.html>

¹² Human Rights Watch presents their work to promote women's rights in the following way: "The Women's Rights Division of Human Rights Watch fights against the dehumanization and marginalization of women. We promote women's equal rights and human dignity. The realization of women's rights is a global struggle based on universal human rights and the rule of law." <http://www.hrw.org/women/>

¹³ www.un.org/womenwatch/daw/cedaw/cedaw.htm

Freedom from torture CPR art. 7. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Also of relevance are the CPR's non-discrimination clauses arts. 2.1., 3 and 26.

2.1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The CEDAW Committee's general comment no. 19 from 1992 on violence against women states that such violence, since it "impairs or nullifies the enjoyment by women of human rights (...) is discrimination within the meaning of article 1 of the Convention". The Committee lists the following, in addition to the above mentioned rights, as violated when gender-based violence¹⁴ occur: The right to liberty and security of person; the right to equality in the family; the right to the highest standard attainable of physical and mental health; the right to just and favourable conditions of work.

¹⁴ Defined by the committee as "Violence that is directed against a woman because she is a woman or that affects women disproportionately".

Referring to art. 2 (e), 2 (f)¹⁵ and 5, the Committee also comments that the convention applies not only to violence perpetrated by public authorities, but that the state parties are obliged to

..take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

2.2.2.1 Due diligence

In the present context *to act with due diligence* means the obligation to do everything possible to prevent something from happening. The human rights obligation for the state in connection with violence against women and more particular domestic violence are according to the Special Rapporteur on violence against women, its causes and consequences, to act with *due diligence*. ”...it can be concluded that there is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence.”¹⁶

2.2.2.2 Declaration on the Elimination of Violence against Women

The Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104, 1993) includes the following preamble: “...there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women...”.

2.2.2.3 Special Rapporteur

The United Nations Commission on Human Rights in resolution 1994/45, decided to appoint a Special Rapporteur on violence against women, including its causes and consequences. The mandate was extended by the Commission in 2003.

¹⁵ Iraq has entered a reservation to art 2 (f).

¹⁶ Special Rapporteur on violence against women, its causes and consequences 2006

The Special Rapporteur made the following list of criteria for state adherence to the due diligence standard in her report *Violence against women in the family*:¹⁷

- (i) Has the State Party ratified all the international human rights instruments including the Convention on the Elimination of All Forms of Discrimination against Women?
- (ii) Is there constitutional authority guaranteeing equality for women or the prohibition of violence against women?
- (iii) Is there national legislation and/or administrative sanctions providing adequate redress for women victims of violence?
- (iv) Are there executive policies or plans of action that attempt to deal with the question of violence against women?
- (v) Is the criminal justice system sensitive to the issues of violence against women? In this regard, what is police practice? How many cases are investigated by the police? How are victims dealt with by the police? How many cases are prosecuted? What type of judgements are given in such cases? Are the health professionals who assist the prosecution sensitive to issues of violence against women?
- (vi) Do women who are victims of violence have support services such as shelters, legal and psychological counselling, specialized assistance and rehabilitation provided either by the Government or by non-governmental organizations?
- (vii) Have appropriate measures been taken in the field of education and the media to raise awareness of violence against women as a human rights violation and to modify practices that discriminate against women?
- (viii) Are data and statistics being collected in a manner that ensures that the problem of violence against women is not invisible?

2.3 Iraq's obligations under international law

Iraq has ratified the CCPR¹⁸, CESCR¹⁹ and CERD²⁰ without reservations. In August 2008 Iraq's Presidency Council ratified the Parliaments approval for Iraq to become party to CAT²¹. The CRC²² has been ratified with the reservation "...in respect to article 14,

¹⁷ Special Rapporteur on violence against women, its causes and consequences 1999

¹⁸ International Covenant on Civil and Political Rights

¹⁹ International Covenant on Economic, Social and Cultural Rights

²⁰ International Convention on the Elimination of All Forms of Racial Discrimination

²¹ UN Convention Against Torture

paragraph 1, concerning the child's freedom of religion, as allowing a child to change his or her religion runs counter to the provisions of the Islamic Shariah.” CEDAW²³ was ratified in 1986 with a number of reservations:

article 2, paragraphs (f) and (g): (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

article 9, paragraphs 1 and 2: 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

article 16, with the following comment: The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic Shariah according women rights equivalent to the rights of their spouses so as to ensure a just balance between them.

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

²² Convention on the Rights of the Child

²³ Convention on the Elimination of All Forms of Discrimination against Women

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

art. 29, paragraph 1, with regard to the principle of international arbitration in connection with the interpretation or application of the convention.

These reservations undoubtedly represents far reaching limitations of the scope of the convention. Iraq is no exception in this regard. Most states with constitutional references to the Shariah Islamic law have entered similar reservations upon signing/ratifying the convention. E.g. Saudi Arabia has entered the following short but far-reaching limitation:

In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.

Saudi Arabia's limitation has alongside other states' reservations received objections by several parties to the convention. Norway has made the following objection to the reservations made by Syria "The said reservations, as they relate to core provisions of the Convention, render the provisions of the Convention ineffective".²⁴ Syria's reservations are similar to Iraq's.

2.4 Legislative status with regard to honour related violence in Iraq and the Kurdistan Region

After the establishment of the Kurdish Regional Government in 1992 the Iraqi Penal Code (IPC), enacted in 1969, remained in force in the area. According to the IPC article 128(a) "...the commission of the crime for honourable motives (...) shall be considered a mitigating excuse." In 1973 the Iraqi Supreme Court issued a decision which stated that it "...is legally excused for anyone who commits murder for the purification of shame."²⁵

However, in 2000 and 2001 the PUK and the KDP initiated legal reforms to abolish honour motive as mitigating circumstance for physical assault or murder in the Kurdistan Region.

²⁴ Declarations, Reservations and Objections to CEDAW URL:
<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

²⁵ Begikhani 2005, p. 213

In 2003 the Erbil Supreme court reviewed a case where a man had been sentenced to one year for killing his wife and her lover. The court increased the sentence to fifteen years imprisonment (Begikhani 2005:216).

Many commentators seem to mistakenly consider that this revision “closed the loophole that had previously made honour killings ‘legal’”²⁶. As we shall see in Chapter 4 (4.2.1.) another article of the Penal Law, still makes honour a mitigating condition in certain types of murder.

²⁶ Yildiz 2007, p. 60

3 Honour crimes against women in Iraqi Kurdistan – circumstances and extent

3.1 Definition

Honour crime can be defined as "any act of violence and abuse, actual or threatened, perpetrated against individuals, mainly women, by male members of the family and community in defence of their honour" (Begikhani 2005:210). Such crimes may take various forms, among them murder and forced marriage.

3.2 Social and political context

Traditionally the tribe (with its subgroups of clan, and family) has been the basis of social and political organisation in Kurdistan. Endogamy – marriage inside the same tribe/clan/family - has been vital to the reproduction of the social and political system. Marriage is not an individual, but a collective affair. Although internal displacement²⁷, exile and urbanisation have led to disintegration of the social system, tribe, clan and extended family still play a more or less important role for the everyday lives of the population of the KR. The patriarchal social system, with its honor/shame complex, preserves male domination (Begikhani 2005).

As a part of this system, a tribal council, consisting of elderly religious and political representatives, has the role of resolving conflicts between families or groups. If one family claims a representative of another has inflicted shame upon the family, the council may be given the task of passing a judgement. In the case of a claimed or actual (unsanctioned) romantic and/or sexual relation, the sentence may take the form of requiring the parties to kill a son or a daughter to remedy the shame the family member may have caused. Thus avoiding a blood feud to develop (Begikhani 2005). The formal justice-system partly stand in contradiction to this traditional institution since the object of the modern system is not resolving or preventing tribal conflict, but to penalize individuals for illegal acts.

²⁷ By 2001, at least 600,000 people were internally displaced in Kurdistan Region mainly because of the previous Iraqi regime's policies since the 1970s (source: www.krg.org).

Traditional justice survives in Kurdistan partly because of disdain for a formal system that has been seen as an agent of oppressors. Kurdish nationalism's dependence on clan-based militias is another factor that undermines a modern universalistic legal system. Traditional power structures are moreover reinforced by the long-lasting violent rivalry between the dominant political parties.

3.3 Extent of honour crimes in KR

It should be stated here that it is extremely difficult to collect accurate statistical data on honour killings in any given community. As honour killings often remain a private family affair, there are no official statistics on practice or frequency and the real number of such killings is vastly greater than those reported (...) In Iraq more than 4000 women have been killed since 1991.

Commission on Human Rights, Fifty-eighth session 2002: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy. Para. 23²⁸

Although there are no authoritative sources that can provide a comprehensive account of the problem, there are various sources that may give an indication of the extent of honour based violence affecting the 3,7 million inhabitants of Iraqi Kurdistan.

1) In an interview in 2002 Ronak Faraj, head of the Sulaimania based NGO Women's Information Centre, said that "The number of honour killings in Patriotic Union territory has steadily declined over the last decade, from 75 in 1991 to 15 last year. The drop in Democratic Party territory has been only slightly less dramatic, from 96 in 1991 to 32 last year".²⁹

2) According to Begikhani, estimates on honour killings in Iraqi Kurdistan in the period 1992 to 2005 range from 1250 to 5000 (Begikhani 2005:210).

²⁸ The Special Rapporteur does not in her report to the Human Rights Commission indicate any source or explanation behind this estimate.

²⁹ Kucera, Joshua WENews 7. July 2002 *Political changes reduce Kurdistan honour killings*
URL: <http://www.feminist.com/news/news64.html>

3) The Human Rights Office of UNAMI³⁰ has published 12 reports on the human rights situation in Iraq in the period June 2005 – December 2007. The Human Rights Office has physical presence in Baghdad, Basra, Erbil and Amman. The first 4 reports by the office has no mention of it, but the 8 reports after March 2006 through 2007 all expresses serious concern about honour crimes in the Kurdistan Region.

UNAMI has learned with concern that figures for the period 1 January to 1 July 2006 from the Medico-Legal Institute in the Governorates of Erbil and Sulaymaniya indicate that the number of females killed is 112 and 163 respectively. “Burning” was given as the cause of death in over half of the cases in Erbil and approximately two thirds in Sulaymaniya. Press reports in the Region of Kurdistan have indicated that similar episodes are also found in the Governorate of Dahuk.³¹

UNAMI interviewed a senior police official in April 2007 who claimed that the majority of unnatural deaths among women in Erbil were “honor” killings and that at least one or two deaths were reported daily.³²

After the penal law was reformed in the Kurdistan Region in 2000-02, there has, according to UNAMI, been a dramatic increase in reports of women dying as a result of burning of the skin. The assumption being that this is a way to conceal murder. The police mostly investigate the deaths as “accidents” or “suicide/suicide attempts”.³³ Kerosene cookers are used in most homes in the Kurdistan Region and they are mostly without any safety mechanism, and accidents do occur. Even after close investigation the police will not easily be able to determine whether burning is caused by someone else, self-inflicted or simply an accident.

The extent of injuries from burning and overall circumstances appears, according to

³⁰ United Nations Assistance Mission to Iraq.

³¹ UNAMI Report July-August 2006

URL:<http://www.uniraq.org/documents/HR%20Report%20July%20August%202006%20EN.pdf>

³² UNAMI Report April-June 2007

URL:<http://www.uniraq.org/FileLib/misc/HR%20Report%20Apr%20Jun%202007%20EN.pdf>

³³ UNAMI Report November-December 2006

URL:<http://www.uniraq.org/FileLib/misc/HR%20Report%20Nov%20Dec%202006%20EN.pdf>

UNAMI, to exclude routine claims of accidents or suicides.³⁴ Very few surviving women file complaints with the police, probably because they fear reprisals from their family.³⁵ The numbers of cases investigated and perpetrators convicted are microscopic compared to the overall estimates. From 1992 to September 2007, only 19 persons had been convicted of honour killings in Erbil, the most populated of the three governorates in the Kurdistan Region.³⁶

4) The news agency AFP quoted Aziz Mohammed, the Human Rights minister of the Regional Government, in November 2007 saying that at least 27 women had been killed for reasons of honour in the Kurdish region in the preceding 4 months. He was also quoted saying that 97 women had attempted suicide in the same period.³⁷

5) The Guardian wrote the following in an article under the title "Freedom Lost" in December 2007:

"It is getting worse, especially the burnings," says Khanim Rahim Latif, the manager of Asuda, an Iraqi organisation based in Kurdistan that works to combat violence against women. "Just here in Sulaimaniyah, there were 400 cases of the burning of women last year."³⁸

6) Kurdish Women's Rights Watch, an NGO "...dedicated to supporting and promoting women's rights in the Kurdish community.."³⁹, has published a compilation of media-reports of honour based violence in the Kurdistan Region on their website, covering the period September 2007 – April 2008. It shows that local media⁴⁰ has reported 29 "honour-based murders and attempted or suspected murders", and 71 cases of women "burned,

³⁴ UNAMI Report January-March 2007

URL:<http://www.uniraq.org/FileLib/misc/HR%20Report%20Jan%20Mar%202007%20EN.pdf>

³⁵ UNAMI Report July-December 2007

URL:<http://www.uniraq.org/FileLib/misc/HR%20Report%20Jul%20Dec%202007%20EN.pdf>

³⁶ Ibid

³⁷ AFP 26. November 2007 *27 Iraqi Kurdish women die in 'honour killings*

URL:<http://www.kurdmedia.com/article.aspx?id=14300>

³⁸ URL:<http://www.guardian.co.uk/world/2007/dec/13/gender.iraq>

³⁹ www.kwrw.org

⁴⁰ Nine different newspapers and four electronic media, both independent and with political affiliations.

committing suicide, and other violent incidents”, during that time period.

7) In a news release in May 2008 AFP quoted “Aso Kamal, a 42-year-old British Kurdish Iraq campaigner” saying that between 1992 and 2007 12 500 women were murdered or committed suicide for honour reasons.⁴¹

The estimates given by the different sources vary. E.g. the numbers reported by the Human Rights Minister of the regional government (27 honour killings in four months in the whole region) - though not covering the same period of time - diverge from the Erbil police officials’ estimate (the majority of the 1-2 daily deaths in Erbil governorate alone).

Given the circumstances of deaths resulting from honour killings, and the fact that many victims disappear, it is presently not possible to produce exact statistics on the occurrence of such crimes. Claims that there has been an increase cannot be easily verified since more reported cases might be a result of more awareness.

3.3.1 Increase in honour crimes?

Due to the lack of historical data on the extent of honour crimes in the period after 1992 it is not possible to document an increase of the phenomenon, though this is how different observers seem to perceive the situation. Trude Falch has been residential representative of The Norwegian Peoples Aid (NPA) in KR from 2002 to 2006. She is under the impression that honour crimes have increased since 2002 and that this is related to social change. Young women and girls are growing up under very different circumstances than their parents, and they expect to play a more central role in determining their lives and future. Satellite TV; Internet; a relative freedom of the press; the influence in society of women’s rights activists; and not having grown up under heavy social and political oppression, are all factors that has made the younger generation more inclined to oppose social norms, according to Falch. As attitudes to social norms are changing women becomes more

⁴¹ AFP 24. May 2008 *Surge in violence against women in Iraqi Kurdistan by Shwan Mohammad*
URL: <http://www.france24.com/en/20080524-surge-violence-against-women-iraqi-kurdistan?q=node/1924390/2>

vulnerable because of the reactions they risk from those who feel their authority or identity being challenged by that process.⁴² Bakhtyar Ahmad, who works in the Sulaimania-based NGO Community Development Organisation (CDO) was of the opinion that the increase in self-immolation is a result of a “cultural generation gap”.⁴³

A social study conducted by the NPA in 2002 that included interviews with almost twenty thousand women across the KR, showed that gender based violence were reported more often by literate women than illiterate, more often by women living in the larger urban areas than rural. Correspondingly more often by women with work outside the home as with women organised in a political party (Kosta 2004 pp. 423-46). The study does not document an actual higher occurrence of gender-based violence victims among the first mentioned groups, but merely shows a higher reporting of such violence by that group.

According to Bakhtyar Ahmad in CDO, some women’s rights NGOs exaggerate both the extent of honour violence and numbers of solved cases, in order to attract funding. A “solved case” means in most cases to find a solution with the victim’s family that allows her to move safely back home. One NGO had, according to Ahmad, claimed publicly (Hawlati newspaper) to having solved 369 cases in one year. Given the extensive efforts necessary by the organisation to solve just one case - usually with weeks or months of discussions, negotiations and persuasion - such a high number of successful cases is simply “impossible”, Ahmad said.

3.3.2 Decrease 2008?

Different sources reported a decrease of honour-killings and burning in 2008, after the establishment of, inter alia, Directorate to follow up violence against women (described in chapter 4). On 27 november 2008 the Netherland-based Kurdish news site [rudaw.net](http://www.rudaw.net)⁴⁴ quoted Ari Rafiq, the head of the Directorate to Follow up Violence Against Women in Erbil, who said that before 2008 every month 35 to 40 women were killed, but that the

⁴² Interview 28 August 2008

⁴³ Interview 11 November 2009

⁴⁴ URL:<http://www.rudaw.net/details.aspx?lang=English&page=articles&c=Rudaw%20Exclusive&id=4013>

number has dropped to 7 to 13 women monthly in 2008.

According to statistics provided by the Ministry of Interior in Sulaimania, during the first six months of 2008, 32, 15 and 9 women were killed in Erbil, Sulaimania and Dohuk respectively. In the same period there were 78, 56 and 16 cases of burning. That makes a total of 56 and 150 cases, all of which are considered in police-statistics as being related with honour.

Bakhtyar Ahmad in CDO, commenting on the official statistics, which said that 30-40 women killed every month before the *Honour Killing Monitoring Commission* was established in mid 2007 (described in chapter 4) in his view were clearly exaggerated numbers. He partly based this on the fact that in two years in Erbil not more than 8 persons had been found burned without anyone claiming the body. He said he found the statistics of 2008 “maybe not exact but close to the reality”.

3.3.3 Conclusion

There is no general agreement as to the extent of violence against women or honour violence in KR. Estimates vary, but since the establishment of the *Honour Killing Monitoring Commission*, registering has been given higher priority and become more exact, making the recent estimates more credible. The above data seem however to support the assumption that honour crimes leads to the deaths or serious injuries of hundreds or probably more women in the Kurdistan Region every year. Moreover, indirectly many times more lives are affected by the mere risk of becoming a victim of such crimes.

4 Implementation

In order to structure the following presentation of measures aiming to protect women from honour violence in KR, a tripartite typology of state duties of human rights implementation will be employed. It includes the following types which will be presented in order: *respect*, *protect* and *promote*. This typology is a simplified version of a typology of five types of state duties presented by Steiner and Alston in *International Human Rights in Context* (Steiner and Alston 2000).⁴⁵ In the present context Steiner and Alston's second level ('Create Institutional Machinery') is implicit in *protect*, whereas the fourth type ('Provide') is mostly connected to realisation of CESCRC and thus not of direct relevance for the rights at question.

The duty to *respect* requires the state to treat persons equally, to respect their individual dignity and worth, and hence not to interfere with or impair their rights. *Protect* involves the duty ensure rights and protect against violations, by i.e. providing a police force to protect physical security. *Promote* refers to bringing about changes in public consciousness about a given problem with the purpose of alleviating it (Steiner and Alston 2000:182-84).

Most of the measures listed below are measures taken by the authorities in KR. Some include NGO-activities, but are still relevant to mention as measures to meet (state) duties because it involves some sort of cooperation or agreement with civil society. This can be either through practical collaboration on specific projects, or simply by giving licence to NGOs to conduct certain activities.

4.1 Respect

As noted in chapter 2 the state is not the primary violator in cases of honour violence. The state-obligation to *respect* is therefore not the most important in this context. It could be argued though that the outcome of the NGO Khanzad's successful initiative to improve

⁴⁵ Steiner and Alston's types are 1) Respect 2) Create Institutional Machinery 3) Protect 4) Provide 5) Promote

conditions for imprisoned women could be categorized as a *respect* measure by the authorities. This measure is connected to the issue of honour violence because many of the imprisoned women have been accused of adultery or they have committed illegal acts to protect themselves from honour violence. In Sulaimania Khanzad's initiative resulted the establishment of a women's prison with female management and staff (NPA 2007).

4.2 Protect

4.2.1 The Process of Legal Reform

4.2.1.1 The Kurdistan National Assembly

The Kurdistan National Assembly (KNA) has functioned in two periods. First for two years, 1992-94, until hostility between PUK and KDP broke out, and later on from after elections on 30 January 2005, coinciding with Iraq's national and local council elections.

When asked what started the process of increased awareness of women's rights Pakshan Zangano, leader of the women's committee in the Regional Parliament, said that 5-7 NGOs tried to raise the issue of the inequality in the Personal Status Law during the first working period of the parliament. The issues raised were on polygamy, right to divorce and inheritance. However, the parliament declined to initiate discussions on these issues. Zangano believes that the reason for this lack of will was due to the tense political situation in the early nineties and that that made the political parties afraid of provoking both religious groups in particular and the patriarchal mentality in general.⁴⁶

The first national assembly, which was established after the elections held on the 17th of May 1992, consisted of 7 % women. According to Zangano women had played a more central role in society during the time of uprising in the eighties when many men left for the mountains to become Peshmerga (guerrilla) and fight the central regime, and that was the reason of this limited but still important representation. Ala Talabani, a delegate to the Iraqi National Assembly, was of the same opinion.⁴⁷

⁴⁶ Interview 13 November 2008

⁴⁷ Interview 9 November 2008

4.2.1.2 Revision of the Penal Law

PUK issued Decree No. 59 on 12 April 2000, which read as follows:

Lenient punishment for killing women or torturing them with the pretext of purifying shame shall not be implemented. The court should not apply articles 130 and 132⁴⁸ of the Iraqi Penal Code..()⁴⁹

KDP followed in 2002 with Law No.14 of 2002:

Crimes against women with the pretext of 'honorable motivation' will not be legally liable for lenient punishment and Articles 128, 130 and 131 of the Iraqi Penal Code⁵⁰ (...) will not be implemented.⁵¹

The revision of the Penal Law article 59 in the PUK area in 2000 was the result of a decision by the PUK leader Jalal Talabani. KDP area followed two years later. Ala Talabani, who is also a former head of the PUK women's union, said that Jalal Talabani's decision was influenced by demonstrations, petitions, and articles in newspapers that focused on the problem of honour killings in Kurdistan. She also mentioned the impact of international NGOs such as Amnesty International and Human Rights Watch.

⁴⁸ **Paragraph 130** - If there exists a mitigating excuse for a felony for which the penalty is death, the penalty shall be reduced to life imprisonment or imprisonment for a term of years or detention for a period of not less than 1 year. If the penalty is life imprisonment or imprisonment for a term of years; the penalty shall be reduced to a period of detention of not less than 6 months unless otherwise stipulated by law.

Paragraph 132 - If the court considers that the circumstances of a felony or of the offender call for leniency, it may substitute a lesser penalty for the penalty prescribed for the offence, as follows:

(1) Life imprisonment or imprisonment for a term of years not less than 15 years may be substituted for the death penalty, (2) Imprisonment for a term of years may be substituted for life imprisonment. (3) A period of detention of not less than 6 months may be substituted for imprisonment for a term of years. Source: URL: http://64.233.183.132/search?q=cache:uQrkRjiJNGoJ:law.case.edu/saddamtrial/documents/Iraqi_Penal_Code_1969.pdf+iraqi+penal+law+english&hl=no&ct=clnk&cd=4&gl=no

⁴⁹ Begikhani 2005 p. 216

⁵⁰ **Paragraph 128** - (1) Legal excuse either discharges a person from a penalty or reduces that penalty. Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honourable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse.

(2) The court must identify in its decision the excuse that discharges a person from a penalty.

Paragraph 131 - If there exists a mitigating excuse for a misdemeanour, the reduction of the penalty shall be as follows: (1) If the penalty has a minimum limit, the court will not be bound by that in its assessment of the penalty. (2) If the penalty is detention plus a fine, the court will rule for only one of those penalties. (3) If the penalty is detention without a minimum limit, the court will rule for a fine instead. Source: Supra 48

⁵¹ Begikhani 2005 p.216

Ala Talabani said that the party women's unions were mainly used as a tool for the parties to mobilise support of the party more than women's rights. However some influence was achieved and together with local and international NGOs they were instrumental in bringing about the revision in 2000/2002. Talabani also noted that the women's rights lobby in Iraqi Kurdistan was made up by grassroots' NGOs and women's unions of political parties, not by the decision makers within the parties.

4.2.1.3 Article 409 of the Penal Code

However, according to the former the head of PUK Women's union's media centre, now a practicing lawyer in Sulaimania, Payman Ezadin, little has changed in practice despite these legal reforms. The reason for this is the continued existence of IPC Paragraph 409,⁵² which facilitates honour as a mitigating excuse, and which is practiced by the courts whenever a case involves a male family member who has killed a female member of the family or/and an alleged lover. The reforms of 2000/2002 are thus limited to cover honour-killings or other honour-crimes where the perpetrator does not belong to the closer family circle, according to Ezadin. Because of article 409 any close relative who is found guilty of killing a female family member will receive a prison sentence of less than 3 years. The alleged adultery does not have to be proved, but claiming the perpetrator had been told that the person had committed adultery will be sufficient for the courts to apply article 409. "This law is for the media" Ezadin said, referring to the 2000/2002 reforms.⁵³ Taha O. Rashet, who teaches law at the University of Sulaimania, and has written his Master thesis on women's rights in Kurdistan, gave a similar description of the legal situation.⁵⁴

If Payman Ezadin is correct in her claim that the revision of the penal law of 2000/02 was meant for PR more than anything else, then this seems to have been effective. Amnesty

⁵² Paragraph 409 - Any person who surprises his wife in the act of adultery or finds his girlfriend in bed with her lover and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding 3 years. It is not permissible to exercise the right of legal defence against any person who uses this excuse nor do the rules of aggravating circumstance apply against him.

URL:http://64.233.183.132/search?q=cache:uQrkRjiJNGoJ:law.case.edu/saddamtrial/documents/Iraqi_Penal_Code_1969.pdf+iraqi+penal+law+english&hl=no&ct=clnk&cd=4&gl=no

⁵³ Interview 8 November 2008

⁵⁴ Interview 11 November 2008

reported in its 2003 world report that "...PUK and KDP authorities introduced legislation which made "honour killings" punishable by a maximum penalty of death." (AI 2003) In a special report on women in Iraq issued in March 2009 AI reported that legislation had been introduced in 2002 that had removed "the honourable motive clause in cases involving crimes against women" (AI 2009). Even if the revision represented a step in the right direction, the continued existence of article 409, is evidence that honourable motives still exist as a mitigating cause in the penal law, hence leaving AI's description insufficient.

Diar, an adviser to Prime Minister Necirvan Barzani on social issues, called article 409 "inhuman and discriminatory" when he was interviewed.⁵⁵ He said that a commission had been established with the task to review the penal code in view of human rights norms. Among the members of the commission is a US-prosecutor.

4.2.1.4 The legal reform of 2008

On 13 November 2008, the Kurdish National Assembly, voted with approximately 70 % majority in favor of a reform of the Personal Status Act. Among the issues revised in the law was polygamy. According to the revised law certain specific and strict criteria needs to be met if a man is to legally marry a second wife. In practice polygamy is made very difficult under the new law according to Pakshan Zangano of the women's committee of the Regional Parliament. "It is not what I wanted but I'm very happy now because in this society, at this time, it is very good" she said when interviewed soon after the voting-session in the national assembly.⁵⁶

The discussions in the KNA were broadcast via TV-stations the preceding weeks before the decision and received broad attention in the media in general.

The prime minister of KR, Necirvan Barzani, speaking at a press conference after he had met with a group of mullahs on the day before the voting in the national assembly, said that "...we have three bases of our society: gender equality, human rights and Sharia". Zangano

⁵⁵ Interview 13 November 2008

⁵⁶ Interview 13 November 2008

pointed out that there was symbolic value attached to the fact that gender equality and human rights were listed before Shariah.

4.2.2 Future plans for legal reform

4.2.2.1 Domestic violence

According to various sources, in 2009 the Kurdish Parliament will discuss a law proposal on domestic violence.

4.2.2.2 FGM

In December 2007 a bill was presented to the parliament proposing criminalisation of female circumcision. 68 out of the 120 MPs had signed the bill. The bill was expected to be passed by February 2007 but is one year later still to be discussed by Parliament. Washington Post quotes women's rights advocates who say they believe this is because the government is "reluctant to draw international public attention to the little-noticed tradition".⁵⁷ Washington Post quoted the Minister of Human Rights, Yousif Aziz, commenting that he did not think the issue required action by parliament because "Not every small problem in the community has to have a law dealing with it".⁵⁸

4.2.3 Women's shelters

Women's shelters are both symptoms of specific problems faced by women in society and to some extent recognition of the need to remedy those problems. Women's shelters in a patriarchal society are also a potentially strong symbol for the women's rights movement.

According to Alia Rashid, program officer at Norwegian Peoples Aid in KR, women's shelters are culturally very controversial and have been and still are regarded very negatively by the community because the general perception is that "a woman belongs to her family and problems should be solved within the family".⁵⁹ If a woman does not come home at night (but stays at a shelter), will be perceived as an attack on the whole

⁵⁷ <http://www.washingtonpost.com/wpdyn/content/article/2008/12/28/AR2008122802005.html?hpid=topnews>

⁵⁸ Ibid

⁵⁹ Interview 8 November 2008

community's honour. The political parties in power share this patriarchal mentality, according to Rashid.

According to the adviser to the Prime Minister on social issues, there are currently 5 shelters in KR and the ambition is to build more and better shelters.

In 1996 the Iraqi workers communist party (IWCP), opened the first women's shelter in Sulaimania. NPA assisted the initiative. This shelter was however closed after one year due to a conflict between PUK and IWPC that eventually forced the IWPC to leave Sulaimania.

According to the manager of the women's rights NGO Asuda, Khanim Latif, all the women's NGOs were affiliated with political parties until -96, when the organisation Khanzad was established by the German NGO Hevkari.⁶⁰

In 1997 the PUKs women's union opened a shelter in Sulaimania which still exist. The fact that the leadership in the PUK allowed such an institution to be established by a branch of the PUK shows that the party has been open to pressure from the civil society.

NPA established Asuda in 2001. The organisation opened a women's shelter in the same house as IWPC had their shelter. Khanem, the manager of Asuda, described their activity as aimed at four different but interlinked objectives: protection of women at risk (shelter and social assistance); awareness; research; capacity building of other women's rights organisations.

Khanem said the authorities' lack of will to provide guards for the shelters showed a lack of engagement on the issue of violence against women. However, after a woman who stayed at the shelter was killed by members of her family in May 2008, the police posted guards at the shelter. According to Khanem, this measure was taken by the authorities after international criticism.

⁶⁰ Interview 9 November 2008

Karin Martinussen, head of NPA's program in KR, said that a shelter is not a permanent solution. The shelters offer very little, or nothing, besides physical protection. The only real long term solution for the victims is to find a way to be reintegrated into her family. For a married women this could sometimes mean to get a divorce and move back to her parents. There is no place for a woman outside of a family. Even for a single man it will be almost impossible to live alone in Kurdistan.⁶¹

The Directorate to follow up violence against women is responsible for one shelter in Sulaimania. When the present author visited it, the centre was under reconstruction and was planned to have a capacity to shelter 6-10 women according to the manager of the centre. One woman, accompanied by two children, stayed temporarily at the house because she was due to testify before the court in a case involving her husband, accused of seriously injuring his wife and of killing a man. The shelter was described by NGO-representatives as an emergency house not meant for housing anyone for a longer time.

4.2.4 Honour Killing Monitoring Commission

The Honour Killing Monitoring Commission was set up following a KRG Council of Ministers meeting on 17 June 2007. This may well be a response to the killing of a 16 year old Yezidi girl D'waa Aswad Khalil, on 7 April 2007 by members of her community in a village near the city of Mosul, which received worldwide media attention. Video recordings of the act showed that the local police did not make any effort to prevent the killing, on the contrary, the police were reported to have been encouraging the crowd.⁶²

The commission is chaired by the KRG Minister for Human Rights and include representatives from other ministries, the police and Nazand Begikhani, as an independent expert. The commission reports to Prime Minister Barzani. Begikhani said in an interview with iraqupdate.com that among the commissions broader aims are "eliminating all legal

⁶¹ Interview 9 November 2008

⁶² Kurdish Women's Right Watch 27 April 2007 *KWRW condemns the stoning of teenage Yezidi girl in Kurdistan* URL:<http://www.kwrw.org/index.asp?id=87>

articles that legitimise crimes against women and leave perpetrators unpunished”.⁶³ The commission is also to monitor the police and legal system’s procedures in dealing with honour based violence. Among its achievements is the setting up of departments under the Interior Ministry to “develop practical methods to protect women from all forms of violence, particularly honour-based violence.”⁶⁴ Among its more concrete achievements, the Commission has been able to remove the immunity of the Peshmerga (armed forces) so that judicial bodies have the power to issue arrest warrants for Peshmerga members suspected of honour crimes.⁶⁵

4.2.5 Directorate to follow up violence against women

In 2007 in Sulaimania and in 2008 in Erbil and Dohuk, the ministries of Interior established departments designated to follow up violence against women. The task of these central police agencies, is to provide statistics and analysis, and investigate cases. This was seen as an important step forward by most of the actors that were interviewed for this study, but it was mentioned by several that the departments lacked staff both in terms of numbers and competence. Some said that opinions that had been expressed from some of the staff had proven them unsuited for the job. One staff member had expressed that a woman deserved to be killed if she compromises honour. One observer had been “shocked” by the lack of knowledge among some of the staff. The head of the directorate in Sulaimania, Colonel Nareman Abdulla Qadir, was however seen by most of the informants as a dedicated professional and a “good man”.

Bakhtyar A. Salih of the NGO CDO said that Qadir had told him of a case where a he had arrested a Peshmerga veteran because he was suspected of planning to kill his daughter. The veteran had been surprised of being apprehended, believing his position in society gave him immunity. Col. Qadir had worked hard for many days (“sleeping in his office”), trying to find a solution to the case, he had eventually succeeded, and the girl had been allowed to marry according to her own wish.

⁶³ Iraq Updates 13 March 2008 *Nazand Begikhani – A women’s rights activist discusses honour based crimes*
URL:http://www.iraqupdates.com/p_articles.php/article/28502

⁶⁴ Ibid

⁶⁵ Ibid

Qadir explained when he was interviewed that each of the local police stations in Sulaimania were instructed to contact the directorate directly whenever they were informed of a case of violence or threats against women. The directorate would then follow up the case in cooperation with the local police.⁶⁶ Some observers said that the effectiveness of the local police would vary depending on the attitudes of the responsible officers. Bakhtyar of CDO said he believed the local police would not risk not to follow the instructions and report cases, because such negligence could easily be revealed if a threat was to materialize.

Qadir said the following to Soma, a Sulaimania based English language newspaper: “We dealt with more than 65 cases, and we now have 35 cases to work on, some of them are about to close. Also in this short period, we were able to rescue three women who were facing death threats in Sulaimania and Halabjai Taza,”.⁶⁷

Ari Rafiq, the head of the Directorate to Follow up Violence Against Women in Erbil said to rudaw.net⁶⁸ On 2 April 2009 that his office assisted in the arrest of more than 380 men accused of committing violence against women in the last nine months and that 40 of them were found guilty and sentenced; fourteen of them received death penalty and the rest lifetime imprisonment. Twenty-five women filed lawsuits in 2007 in Erbil and Duhok, while in the period between July to November 2008, 511 women in Erbil and 143 in Duhok have filed lawsuits complaining about violence against them.

Other recent developments include the attorney general now having the competence to complain on behalf of victims, no longer depending on complains from the family as formerly was a condition to initiate investigation, and in Sulaimania there is now a judge who is specialized in cases of violence against women.

⁶⁶ Interview 10 November 2008

⁶⁷ Soma Newspaper 2 April 2009 *No ordinary crime*
URL:<http://soma-digest.com/Details.asp?sid=365&stp=0>

⁶⁸ URL:[http://www.rudaw.net/details.aspx?lang=English&page=articles&c=Rudaw% 20Exclusive& id=4013](http://www.rudaw.net/details.aspx?lang=English&page=articles&c=Rudaw%20Exclusive&id=4013)

According to Salih in CDO there are several obstacles to the government's work to combat violence against women. Among them is lack of clear vision and strategy among the different governmental bodies involved, and no earmarked state funding.

4.3 Promote

4.3.1 Ministry of Human Rights

The minister of human rights in KRG, Dr. Yousif M. Aziz, explained when he was interviewed that the role of the ministry is promotion, observation and protection of human rights. The ministry, which has 12 directorates all over KR, publish books, articles and distribute posters. The ministry is responsible for human rights education in primary and secondary schools. The ministry is responsible for following up human rights for prisoners. According to the minister, when the unified Human Rights Ministry was established in 2006, there were 700 persons detained without a charge in KR, whereas in November 2008 there are only 9 persons without charge.⁶⁹

The minister further explained that a KR is a very young democracy a human rights ministry is necessary because there are still no "powerful" NGOs, and the ministry can help NGOs by being a "channel" and fasten access to the government. According to the minister violence against women is the biggest challenge to KR-society today, followed by "child labour, corruption, terrorism, and promotion of human rights".

More specifically on the issue of violence against women the minister explained that honour as a concept has been removed as a legal concept following the reform of 2000/02, and that article 409 of the penal code was included in this reform –quite to the contrary to the other sources who commented on article 409, including the advisor to prime minister Barzani.

⁶⁹ Interview 12 November 2008

The minister explained that in 2008 KR has passed new legislation on terrorism, securing persons suspected of terrorism the right to be brought before a court of law, and on a law on freedom of the press, in addition to the personal status law.

The KRG will commit to those the international human rights treaties Iraq has signed or ratified, the minister explained. The minister said that KRG and his ministry has “very good” relationship with Amnesty International, and that he was currently working on the follow up of their last report on KR.

4.3.2 Training of security forces in human rights

Among its current projects the Sulaimania based Community Development Organisation (CDO) is a training programme on human rights for security forces. CDO has taught human rights to 15 officers from the Ministry of Interior in a three week long theory course. These officers now conduct the training of the security forces in Sulaimania area. Bakhtyar Salih in CDO explained that the officers, one ranking as high as Colonel, conducting the training has much stronger legitimacy than a civilian would, in the eyes of the security personnel, and thus will be able to instruct much more effectively and with more impact. Besides the “training of the trainers”, CDO’s role in the programme is limited to practical organisational support. Another awareness-project initiated by CDO, in cooperation with NPA, is the introduction of human rights in the curriculum of the compulsory exams police officers needs to pass in order to get the regular promotion. According to NPA, CDO is at present receiving most of its funding from governmental sources. *See photo p. I.*

4.3.3 Government-campaign

On 25 November 2008 Iraq’s First Lady, Hero Ibrahim Ahmed, and Kurdistan Regional Prime Minister Necirvan Barzani presided over the ceremony that marked the end of a week long campaign on Elimination of Violence against Wome under the slogan “Yes to gender equality, no to violence”, initiated by the Ministry of Sports and Youth. The ceremony ended with an award being presented to Mohammad Tahir, who has interviewed

persons imprisoned after committing honour crimes. As is the rule with most public appearances by the Prime Minister the media (TV and newspapers) covered the ceremony.

4.3.4 60th anniversary of UDHR

On 2 December 2008 Prime Minister Nechirvan Barzani and Human Rights Minister Yousif Aziz spoke at a celebration of the 60th anniversary of the Universal Declaration of Human Rights.⁷⁰ The Prime Minister presented awards to five local NGOs for their contribution to raising awareness of and promoting human rights. The Prime Minister said in his speech “It is proper that I refer to the preamble of this document, which explains that dignity and equal rights for all is the foundation of freedom, justice and peace in the world.” The ceremony, which took place in Erbil's Martyr Sa'ad Convention Centre in front of a large banner, displaying the KR emblem with the number “60” as background, was covered by the KR media. *See photo p. I*

4.3.5 KRG-funded academic research by UK-Universities

The Kurdistan Regional Government has commissioned a study on honour-based violence in Kurdistan Region and the United Kingdom. According to the researchers, from Bristol and Roehampton Universities in London, the purpose of the research is to get a better understanding of the nature and consequences of the problem and work towards providing research assistance to the Kurdistan Regional Government. The study will assess the nature and extent of honour-based violence; investigate how it is understood in Kurdish communities; compare the emergence, definitions and development of honour-based violence in Kurdistan Region and the UK, and to provide data to support interventions in both countries.⁷¹

4.3.6 NPA in KR

Norwegian Peoples Aid (NPA) started its programme in KR in 1995 working with implementation of various development projects such as construction and rehabilitation of housing and infrastructure (“rural rehabilitation”), de-mining, micro-credit, psychosocial

⁷⁰ www.KRG.org 2 Dec. 2008 *Prime Minister Barzani speaks on 60th anniversary of Universal Declaration of Human Rights*

URL:<http://www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&asnr=&anr=26842&rnr=223>

⁷¹ Bristol University, UK URL:<http://www.bristol.ac.uk/sps/research/fpcw/vawrg/current.shtml#rw9038>

projects for vulnerable groups and literacy courses. The long-term objective of the first 5-6 years was to enable the population displaced, by the Saddam-regime's destruction of rural areas northern Iraq in the 1980s, to move back to former places of habitation (NPA 2000). NPA has since gradually shifted to partner-based community development programs (CDP) in different parts (rural and urban) of KR (NPA 2001).⁷²

According to the "Country programme strategy for 2001-2005", the long-term objective in KR is that "NPA seeks to contribute to the empowerment of the local population in Iraqi Kurdistan, particularly the disadvantaged and vulnerable groups" (NPA 2001).

The shift towards democratization rather than material reconstruction is reflected in the declared strategies from 2001 onwards, which involve so-called "capacity building" of public institutions and civil society.

The NPA's Rural Rehabilitation and Community Development Programme funds local partners (NGOs, and public agencies) that are involved with various issues, but mainly focusing on human rights education and training in different contexts (e.g. schools, public offices, security forces), and women's rights organizations that among other activities provide shelters for victims of honour crimes (NPA 2007).

4.3.7 NPA's cooperation with women's organisations in KR

NPA provided "material support" to four women's groups⁷³ in 1998 and -99 (NPA 2000). NPA notes the following in an application to the Norwegian MFA in 2000:

"..the womens groups have been difficult to analyse and to get a clear picture on policy and the strategy of the work they are doing. It seems that the various political parties directly form many of the women's groups we have visited, but there are also independent women's groups that need support."
(NPA 2000)

⁷² De-mining has however continued to represent app. half of NPA's annual budget in KR.

⁷³ "The independent Women's Group", "The Barzani Women's group", "Khanzad Center", and "Komalae Herawazy".

In 2001 NPA played an important role in the establishment of the NGO Asuda and has since supported it financially, though to a lesser degree due to the organization's ability in getting funding from other sources (NPA 2004). Asuda now receives funding from various international donors as well as from the local authorities. NPA support other women's organizations involved in social work and sheltering of women.

NPA is one of a very few international NGOs that has maintained its presence in KR continuously since 1995. NPA has worked with several local NGOs, and especially women's rights organizations. The local NGOs have benefited from this "capacity building" by becoming more focused and effective in their activity (NPA 2007). One example of this is the prison reforms resulting from lobbying by NPA-sponsored Khanzad Educational and Cultural Centre for Women (established in 1996).

In 2007 NPA established the NGO People Development Association (PDA) intended to take over the community development work (human rights training) of NPA. This "nationalization" of NPAs activity is part of the organization's overall strategy for the work of supporting civil society in KR.

5 Analysis

5.1 Introduction

In the following chapter the social and political conditions for implementation of norms will be discussed. The *spiral model* presented in Risse et al 1999 will function as the main framework in which these questions are elaborated. The discussion focuses on the role and activity of the domestic level (state and non-state actors) as well as international non-governmental organisations, in addition to a brief look at the intergovernmental level (UN). Thus, pressure from Western states on the KRG is not discussed in substance, but only touched upon indirectly. However crucial this component is in the spiral model it is outside the scope of this study to investigate into that arena.

5.2 Kurdistan Region and human rights - an overview

The ruling parties of KR have never denied the validity of human rights. The political parties that before the uprising in KR in 1991 constituted the opposition referred to human rights violations in Iraq when lobbying internationally for support in their struggle against Saddam's regime.⁷⁴ As described in chapter 4 (4.3.1) KRG today has a Human Rights Ministry, and the Kurdistan National Assembly has a human rights committee.

In 1992-93 KRG cooperated closely with Human Rights Watch in connection with the organisation's extensive work in documenting the atrocities by the Iraqi regime against the Kurdish population. During the Anfal-campaign in 1988 between 50-100 000 people, mainly civilians, were killed by Iraqi forces (HRW 1993). During the uprising in 1991 several tons of documentation connected to the campaign were seized by Kurdish forces. These documents were handed over to HRW. It is not unlikely that HRW by this cooperation established relations that may have made the Kurdish leadership more receptive towards the values of the transnational human rights network.

⁷⁴ Trude Falch, Interview 28 August 2008

During 1993, Middle East Watch met with the principal Kurdish leaders, Jalal Talabani and Masoud Barzani, on several occasions. It also met frequently with lower-level Kurdish officials. A large part of the discussions concerned the documents captured by the Kurds. But current human rights concerns about developments in the self-governing region were also raised. On October 4, Middle East Watch wrote to the Kurdish authorities about alleged abuses, including arbitrary detention, torture and the closure of a newspaper that had occurred in the region under their control over the previous year. (HRW World Report 1994).

However in the period between 1994 and 1997 the former opposition to Saddam, headed by KDP's Masoud Barzani and PUK's Jalal Talabani, in no way demonstrated any democratic disposition. Massive human rights violations took place in KR in addition to grave violations of international humanitarian law.⁷⁵ During the civil war between the KDP and PUK both committed many hundred (or more) forced disappearances of political opponents and the use of torture was widespread, according to HRW.⁷⁶ From all the different variables of Landman's comparative study, civil war proves to have the most negative impact on human rights protection (Landman 2005:168).

Following ceasefire in 1998 many of the prisoners that had been held incommunicado for several years were exchanged, but for many their whereabouts are still unknown. Following 9/11 and armed opposition and terrorist attacks by militant Islamic groups the KDP and PUK both had a pretext to hold suspected insurgents and terrorist incommunicado without access to legal counsel or court hearing.

5.2.1 Arbitrary detention

As noted above, the KRG Human Rights minister claimed that the number of persons detained without a charge had decreased from 700 to 9 from mid 2006 to November 2008. If those claims are correct KRG has increased its' respect of civil rights and liberties for detainees and prisoners, compared with the grave human rights accord of recent history.

⁷⁵ HRW World Report 1995/1998 www.hrw.org.

⁷⁶ HRW World Report 1998 www.hrw.org

When Amnesty International visited KR in May 2008 the head of the security forces (*Asayish Gishti: General security apparatus*) in Erbil informed AI that 670 political detainees were being held without charge or trial. In a correspondence to AI in October 2008 the KRG Human Rights Minister noted that hundreds of detainees had been released uncharged between June and September (Amnesty International 2009:11).

Following the publication of the AI-report *Hope and Fear – Human Rights in Iraqi Kurdistan* that was published on 14 April 2009, the KRG Prime Minister Nechirvan Barzani held a meeting with AI on 23 April 2009. Amnesty issued a press release the same day stating that:

The Prime Minister of Kurdistan Region of Iraq, Nechirvan Barzani, expressed a strong commitment to human rights in a meeting with Amnesty International in the city of Erbil on Thursday....The report said that security forces in Iraq's autonomous Kurdistan Region operate outside the rule of law and regularly abuse their authority. ... At the meeting, Prime Minister Barzani said that a new law was being prepared to make the *Asayish* accountable to the Council of Ministers, though the timetable for this was still unclear. The Prime Minister told Amnesty International that he had personally read the report and that he had instructed that its recommendations be circulated to the detention authorities and to government ministries.⁷⁷

5.2.2 Freedom of the press

Besides a multiparty political system in KR, freedom of the press is the most common issue KRG officials point at when they talk of the democratic nature of KRG. Most news outlets in KRG are however party-affiliated. Two newspapers are frequently mentioned as being independent, the *Hawlati* (established in 2000) and *Awene* (established in 2006). Both papers have online versions.

The authorities may have good PR output from the relative freedom of the press that exists in KR, but when the media steps too close to the power and exposes corruption and

⁷⁷ Amnesty International 23. April 2009 *PRIME MINISTER OF KURDISTAN REGION OF IRAQ COMMITS TO HUMAN RIGHTS*
URL:<http://www.amnesty.org/en/news-and-updates/good-news/prime-minister-kurdistan-region-iraq-commits-human-rights-20090423>

nepotism media workers are put at risk. Journalists have been exposed of intimidations, assaults and many lawsuits are brought against them by government officials. Soran Mama Hama, reporter of the Sulaimania-based Lvin fortnightly magazine, was gunned down outside his home in the city of Kirkuk⁷⁸ in July 2008, shortly after writing about police links to a prostitution ring.⁷⁹

In September 2008 the Parliament approved a new media law that gives greater freedom to journalists. Imprisonment is no longer part of the sanctions that can be brought against journalists. Media workers in KR, among them the Kurdistan Journalist Syndicate and Shawan Muhammad, editor of Awene, welcomed the new law.⁸⁰ The US based INGO IREX that runs a US State Department sponsored program in Iraq aiming to “Support the development of democratic media laws that protect the rights of journalists and media outlets”⁸¹ has described the law as “the culmination of an intense advocacy campaign led by IREX.”⁸²

Even if the new law has decreased imprisonment as a measure against media-workers, journalists in independent media are still subject to impediments from the authorities. According to the Kurdistan Journalist Syndicate, in January alone more than 20 lawsuits were filed against journalists in the KR, mostly based on the defamation clause of article 9 of the new law.⁸³

The Iraqi President and head of PUK, Jalal Talabani, filed a lawsuit against Hawlati in January 2008 for publishing a translated article by US-scholar Michael Rubin, that criticized the Kurdish political for elite abuse of power to enrich themselves, their

⁷⁸ Kirkuk is outside of the Kurdistan Region and the security situation is much more volatile.

⁷⁹ Financial Times Deutschland 6.11.2008 *Kurdistan's press pays for tackling corruption*
http://www.ftd.de/karriere_management/business_english/:Business-English-Kurdistan-s-press-pays-for-tackling-corruption/435007.html

⁸⁰ www.niqash.org 6.10.08 *Kurdish journalist welcome press law*
<http://www.niqash.org/content.php?contentTypeID=227&id=2307&lang=0>

⁸¹ <http://www.irex.org/programs/simi/index.asp>

⁸² http://www.irex.org/newsroom/news/2008/1216_MDD_SIMI.asp

⁸³ <http://cpj.org/2009/03/iraqi-paper-former-editor-fined-for-defaming-presi.php>

famililies and protégées. On 14 March 2009 a Sulaimania Court sentenced the former editor of Hawlati, Abid Aref, to a fine of 3,000,000 dinars (US\$2,590) and the newspaper to a fine of 10,000,000 dinars (US\$8,653). This sentence was passed despite the new law's provision in article 8 that writing about public officials shall not be considered a crime. The paper's financial situation is shaky and it is struggling to raise the funds for the fines, and it threatens the existence of the news company.⁸⁴

Besides being embarrassment to the power holders the small but independent press plays an important role in exposing many social and criminal problems, among them honour based violence, and is thus instrumental in bringing about the international focus on the issue. The vital link in Risse's model between the domestic civil society and the international actors thus depends not least on the Hawlati and Awene newspapers. The Hawlati newspaper receives some funding form the NPA's programme in KR and the London-based Kurdistan Human Rights project (KHRP). The extensive, politically motivated, intimidation and use of courts to hamper the work of independent media proves however that link to be still very fragile.

5.2.3 Ambivalence

By bringing attention to the issue of corruption the independent media clearly poses a challenge to the legitimacy of the leadership in KR. One can ask why the authorities do not crack down even harder on the insubordinate media. There is evidently ambivalence towards the media by those in power. On the one hand they show verbal adherence to the principle of freedom of expression, and use the independent media as evidence of democracy, but on the other side the media poses a threat and both legal and illegal means are used impede media's unmasking of power.

5.3 Domestic pressure

Different actors and institutions exercise domestic pressure on the authorities to improve human rights protection. The main ones, the media; NGOs; associations and independent

⁸⁴ International Committee for Journalists 16.3.2009 *Iraqi paper, former editor fined for defaming president* <http://cpj.org/2009/03/iraqi-paper-former-editor-fined-for-defaming-presi.php>

activists, are presented below.

5.3.1 Political parties

Despite a nominal multi-party system political parties cannot be counted as representing opposition able to exert any substantial pressure on the government. Kurdistan Islamic Union (KIU) is an exception as they represent an alternative to the two dominant parties' power-hegemony - illustrated by the fact that the party ran with a separate list on the 2005 Iraqi parliamentary elections. KIU listed promotion of human rights in its program of the 2005 Iraqi parliamentary elections.⁸⁵

The treatment of the Islamic political opposition in 2005 by the dominant parties demonstrated a lack of ability to play by rules of democracy. An article by the news agency Inter Press Service (IPS) titled "This Democracy Could Be Paper Thin"⁸⁶ reports of violent assaults on members of KIU and attacks of their offices several places in KR before parliamentary elections in 2005. One parliamentary candidate was killed by KDP-supporters in an attack on the KIU's office in the city of Dohuk. The KDP's official website however described the incidents as "having strangled democracy that Kurds have dreamt about for a long time."⁸⁷ IPS quoted Zirak Abdullah, managing editor at the Arbil office of the Hawlati newspaper, on the following statement in connection with the election campaign "This talk of democracy is just paint...The talk of democracy is just on the surface...The real action is under the table."⁸⁸

The other political parties, of which there exist around 11, are for the most part co-opted by KDP and PUK according to Dr. Kamal Sayid Qadir, a Kurdish human rights activist who holds an Austrian citizenship (Qadir 2007). In October 2005 Qadir was arrested in Erbil and was later sentenced to 30 years imprisonment for the crime of "defaming the Kurdish

⁸⁵ http://en.wikipedia.org/wiki/Kurdistan_Islamic_Union

⁸⁶ <http://ipsnews.net/news.asp?idnews=27240>

⁸⁷ *Today's Zaman* 8.12.2005 *Barzani Supporters Attack Kurdish Party Building*

URL:<http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=27281>

⁸⁸ URL:<http://ipsnews.net/news.asp?idnews=27240>

cause”.⁸⁹ He was later released after international pressure.⁹⁰

The relationship between the dominant parties and the other smaller parties, can be illustrated by an offer made to a human rights activist that was interviewed for the present study. He explained that he had been encouraged by one of the two dominant parties to found a political party of his own and had been told that “we will support you”. He assumed their expectation was that his activity could be controlled that way.

KDP and PUK have divided power among themselves. They ran on the same list in elections in January 2006 so as not to compete. When president Barzani was recently asked in an interview who will head the next government of the Kurdistan Region, he showed no intention even to hide the nature of the political system of the KR: “Based on the agreement with the PUK, they are entitled to head the next government.”⁹¹

The political system of KR in practice resembles a one party system (although consisting of two parties). PUK and KDP’s control of the society runs deep. E.g. admittance to university will depend on party membership or loyalty. An employee of an NGO said that he was denied admittance to a Masters programme at the Sulaimania University because of his unwillingness to conform.

After the PUK member Salih Muzali had been sentenced to life in prison for the murder of two women, PUK leader Jalal Talabani intervened to transfer the case to a Komalayati court (a tribally based social court), which set him free after the victims’ families accepted economic compensation (Qadir 2007).

KR is nominally a political democracy but in practice governed by patronage and clan loyalty. Behind the façade, the heads of the Barzani and the Talabani tribes are the real

⁸⁹ Amnesty International 30.11.2005 *IRAQ: INCOMMUNICADO DETENTION/FEAR OF TORTURE OR ILL-TREATMENT: KAMAL SAYID QADIR* <http://www.amnesty.org/en/library/info/MDE14/046/2005>

⁹⁰ URL:http://en.wikipedia.org/wiki/Kamal_Qadir

⁹¹ URL:<http://www.krg.org/articles/detail.asp?lngnr=12&smap=02010200&rn=73&anr=28393>

power holders. The Ottoman political ideology of dynastic rule - where the state apparatus, the territory and its resources are considered as the ruler's property⁹² - thus prevails (Butenschøn 2009:296, 398).

5.3.2 NGOs

There are many nominally independent NGO's and associations in KR. According to several independent observers that were interviewed for the present study, as well as by Kamal Said Qadir (Qadir 2007), most of them are more or less co-opted by the dominant parties.

Of the few local human rights NGOs that operated in KR since 1991, most were closed down as activists feared reprisals from Iraqi security agents, who remained in the area after Iraqi military and security forces were invited by KDP to help evict PUK from Erbil in 1996.⁹³

The Kurdistan Human Rights Organisation (KHRO) was established in 1991. At first it worked exclusively with violations that took place during the Saddam-era. Following the conflict between KDP and PUK in 1994-1997 KHRO were split up - one in each of the two entities – which led to a weakening of the organisation.⁹⁴

There are presently no actual independent domestic NGO's in KR actively operating from a broad human rights mandate. In 2007 NPA has established People Development Association (PDA), an organisation which is supposed to have human rights monitoring more generally as an area of work. It is however too early to know what impact PDA will have, and if they will be able to avoid co-option.

⁹² Michael Rubin, a historian and resident scholar of the conservative think tank American Enterprise Institute in Washington US who has lectured at Universities in Kurdistan Region, has claimed that Masoud Barzani's personal fortune is estimated to 2 billion USD, and that Jalal Talabani's fortune is in excess of 400 million USD. Rubin's does, however, not explain what he bases his estimate on (Rubin 2008).

⁹³ HRW World Report 1997

⁹⁴ Interview with Trude Falch August 28. 2008

The Kurdish Human Rights Project, is a London-based NGO with app. 11 full time staff. In 2008 it received funding from several larger foundations as well as the Dutch government. Its only partner in Iraq is CDO.⁹⁵ Community Development Organisation (CDO) (see 4.3.2) is an organisation that has close links with the PUK according to various sources. The office building of CDO (with a standard similar to ministerial offices) was donated by the PUK, according to sources in NPA. CDO is also a partner of NPA and receives funding for training public officials in human rights.

The head of NPA's community development programme, said that CDO's good relations with the authorities gave them opportunities that otherwise would not be possible.⁹⁶ CDO's training-programme for security forces in human rights was one such example.

Even if the government has tried to put itself in charge of the defence of human rights, it cannot be concluded that it has suppressed all domestic human rights opposition (media, NGOs). Although it is likely that it has and managed to "reduce the political influence of human rights NGOs through cooptation and integration into the government" - like Gränzer showed was the case in Tunisia in the 1990s (Risse 1999:127).

5.3.3 Women's rights NGOs and the women's movement

Following the elections in 1992 parliamentarians and women from the main political parties formed a committee charged with the drafting of an alternative law to the Iraqi family law. The proposition eventually included among other things changes with regard to polygamy (decreasing the allowed number of wives from four to two), equal right to divorce and equal punishment for men and women in cases of adultery. The committee gained public support, including 30 000 signatories in a petition. The parliament did however not let the proposal pass into legislation (Yildiz 2007:61).

The Khatuzeen Centre for Social Action in Erbil was established in 2000 and was, according to Yildiz (Yildiz 2007:62) instrumental in bringing about the 2000/2002 changes

⁹⁵ URL: www.khrp.org

⁹⁶ Interview 12 November 2008

regarding honour killing in the Penal Law. According to Yildiz the organization is “non-politically-affiliated”. On its website Khatuzeen has a list on basic facts about KR, including the following claim: “The Kurdistan regional government is a progressive, contentious, working democracy.”⁹⁷ This description hardly fits the reality, and must be seen as a clear sign of subordination and co-option.

There is one (Khanzad in Sulaimania) or perhaps a few virtually independent NGOs specialised in women’s rights. Since women’s rights in KR has so successfully been put on the agenda funding is available to make a few activists inside these NGO’s able to operate without relying on governmental funding and thus interference. Those activists are too few to be able to exert any broad influence in the society. The women’s rights movement is, however, a quite broad movement in KR and is evidently relatively influential, despite the fact that it is made up mostly by NGO’s, groups and unions with strong ties to the dominant political parties.

5.3.4 The special position of women’s rights NGOs

How should the “privileged” position of the women’s rights movement be understood within the larger context of the human rights movement in KR? One reason is that the women’s unions of the political parties and other activists have lobbied to put the issue on the political agenda, starting in 1992 (*see 4.2.1.2*). According to Prime Minister Necirvan Barzani’s advisor on social issues, cases of honour violence against women of Kurdish origin outside KR, in European countries like Sweden and UK, is the main reason for the international attention on the issue.

Another factor that might explain why the women’s rights movement has been able to grow so strong is the nature of the rights issues in question. The state representatives are not the primary violators, the state (only) has an indirect responsibility (see chapter 2), it cannot be held accountable and criticised quite in the same way as in connection with e.g. the more

⁹⁷ URL:http://www.khatuzeen.org/english/content/about_kurdistan.asp

classical civil rights abuses; arbitrary detention or torture of prisoners. Women's rights are consequently seen as less controversial.⁹⁸

Women's rights movement can also be seen as aiding political interests of the dominant parties in as much as it opposes the conservative views on gender roles held by the Islamists opposition.

Finally, women's rights may function as a showcase for the KRG's dedication to human rights, which in turn divert international focus away from other negative traits of the society, such as lack of respect for other human rights, corruption, clientelism and nepotism.

5.3.5 Associations

In 2006 an Erbil-lawyer successfully prosecuted a civil suit against a KDP military commander accused of forcibly seizing private property. The lawyer was twice attacked by KDP-militia and severely injured. Another example from the same year includes a Sulaimania-lawyer was arrested by PUK-security forces while preparing defence for arrested demonstrators. He was released a week later after the lawyers' union staged a strike (Qadir 2007). Both of these cases were reported by the Hawlati newspaper.

5.4 Contact between NGOs and INGOs

HRW wrote in its 1995 World Report that,

The Kurdistan Human Rights Organization sought to document abuses throughout the region. Its staff have suffered direct threats and intimidations by all the parties to the conflict for their reporting of violations and their cooperation with international human rights organizations.

⁹⁸ An editorial commentary in the Norwegian daily Aftenposten recently criticised the Norwegian foreign ministry for only focusing on "harmless" women's rights when its' deputy minister gave a speech to the UN's Human Rights Council on March 2, 2009 – for the sake of Norway to become elected member of the council, according to Aftenposten. URL:<http://www.aftenposten.no/meninger/debatt/article2964568.ece>

At this time monitoring human rights in KR was highly problematic due to the area being isolated by access restrictions conducted by all neighbouring states. Some information still came through thanks to a few activists in the Kurdistan Human Rights Organisation. This is reflected in the in HRW report above, as well as Amnesty International's reports in the 1990s in which the KDP and PUK are being criticised for its lack of human rights protection.

Until 1996 there were no international organisations operating in KR that supported civil society organisations or cooperated with the authorities to implement human rights.⁹⁹ Since then international presence in KR increased, but most pulled out in 2003 during the war in Iraq. After the war international presence has increased strongly and so has international attention and presence, although focus remains stronger on the conflict areas of the country.

One recent example of the result of contact between international NGO's and domestic ones was when the UK-based NGO Kurdish Human Rights Project in October 2007 presented a report covering both Turkey and Iraq titled "The increase in Kurdish Women committing suicide" to the European Parliament (EP). The report was published on the EP's website.

Amnesty International and Human Rights Watch has conducted regular visits to KR and published reports. Their sources are not revealed in detail, but they will have access to relevant information through some local NGOs (mainly on women's rights) as well as international NGOs present in the area. It is however likely that one of their best asset in terms of identifying human rights problems is the independent media. The online news journals makes it possible to receive relatively credible information even without being in the region, allowing continuous monitoring. Even if the language of the independent papers as well as the online versions is Kurdish, information will be picked up and reported by several English-language Kurdish online news journals in both Iraq and Europe.

⁹⁹ Trude Falch, Interview 28 August 2008

In 2005 Amnesty International published a report called *Decades of suffering, now women deserve better*.

Since the early 1990s the activities of Kurdish women's rights organizations have raised awareness within their own society about the suffering caused by violence in the family – in particular by "honour crimes"....In recent years, reports by Kurdish women's organizations on violence against women in northern Iraq have gained international attention and been echoed in reports by international organizations. (reference).

The change from being almost practically sealed off from the outside world under the UN-sanctions regime in the 1990s to becoming opened up to the world has taken place over a very short period of time, counting less than 10 years. At present, because of the independent media, the authorities cannot violate the norms they claim to adhere to without the risk of disclosure through the media.

5.5 UN Monitoring System

The issue of honour killings in Iraq has been discussed in intergovernmental forums. The CEDAW Committee considered the combined second and third periodic reports of Iraq at its 468th and 469th meetings, and stated the following in its concluding observations:

The Committee is also deeply concerned by the violence against women perpetrated through honour killings. The Committee urges the Government in particular to condemn and eradicate honour killings and ensure that these crimes are prosecuted and punished in the same way as other homicides. (CEDAW 2000 para. 193 and 194)

The UN Commission on Human Rights in 2002 received a report by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, who stated that "In Iraq more than 4000 women have been killed since 1991". (UN Human Rights Council 2002, para. 23)

The concerns by CEDAW and the Special Rapporteur were raised at the same time as PUK and KDP reformed its legislation with regard to honour killings.

5.6 From instrumental adaptation towards adherence to norms – Risse’s model and Kurdistan Region

- We respect human rights now. Not because we are good, but because if we don’t we will come on the black list of human rights. Masoud said we have to be careful now.¹⁰⁰

A senior officer of KDP security forces made this forthright comment to the present author during an informal meeting in Erbil. He also said that the Red Cross (ICRC) now could access prisons and detention facilities at any time and without prior notice. The comment – that would most likely not have been made in a formal context and can thus be termed “back stage”¹⁰¹ – reveals how human rights in KR are still tightly connected to strategic objectives and instrumental adaptation.

The spiral model consists of different factors that together may pave the way for human rights change. The most important components are the existence of a) domestic pressure from a domestic human rights opposition, including NGOs, that can also function as observers and informers for the; b) international human rights organizations that can highlight human rights violations and alert; c) international organizations who in turn can influence; d) Western powers to exert pressure on the state in question. The state needs to be, at least to some degree, receptive to that pressure. In other words, the state needs to have something to gain by giving concessions.

The essential question is whether and pressure “from below” and “from above” and instrumental adaptation to human rights norms is then followed by human rights implementation – and whether actors progressively alter their attitude and internalizes the norms so as to create ground for rule consistent behaviour. There are several potential

¹⁰⁰ Masoud (Barzani) is the President of the Kurdistan Region and the ‘strong man’ of the KDP.

¹⁰¹ In *The presentation of self in everyday life* from 1959 Erving Goffman explores how social actors stage social performances to control impressions on others. Backstage describes the situation when an actor relaxes from front stage images.

conditions that may undermine the change towards human rights implementation. Among them is state-cooption of the domestic NGOs.

In the following the situation in Iraqi Kurdistan/KR will be discussed in light of the different phases of the spiral model.

5.6.1 Repression and activation of network

In Risse's spiral model the first phase is the one of *repression and activation of network*. Iraq was among the 5 states in the world with the worst human rights record between 1976-2000 (Landman 2005:104).

5.6.2 Tactical concessions

The regime change in 1991 undoubtedly improved, in relative terms, the human rights situation in Iraqi Kurdistan quite dramatically. It also introduced a regime that gave strong rhetoric support to human rights, illustrated by the inclusion of basic human rights in the draft constitution that was drawn up at the Iraqi opposition conference in London in December 1992 (Ahmed/Gunther 2005:78). This involved a skipping of phase 2, *denial*.

The third phase of the model is *tactical concessions* phase. In most of the empirical examples at which the *spiral model* is applied in Risse et. al 1999, the transnational network, including a domestic human rights opposition, plays a decisive role when the situation moves from one phase to the next.

Before 1992 the KDP and PUK were the Kurdish embodiment of an essentially nationalist movement (Bjørlo 1993:54-57), with roots dating back to before Iraq's independence in 1932. The nationalist movement - which both relied on and were undermined by tribal structures (Bjørlo 1993:37) - were from time to time able to stage local revolts against the central regime. It was also striving to achieve minority rights (language, culture and self determination), and be recognized as an autonomous region - but did not cultivate individual human rights.

The Gulf war led to a weakening of the central regime and the subsequent establishment of a Kurdish-controlled area. This situation motivated cooperation between the Kurdish nationalist movement and other parts of the Iraqi opposition. The Kurdish nationalist-movement saw this as an opportunity to raise its long held aim of autonomy to a federal solution for the Kurds. A democratic Iraq were seen as a precondition for reaching this goal (Bjørlo:1993:99-102).

It is thus in the light of the Kurdish elite's newfound nationalist vision that the inclusion of human rights in the draft constitution, drawn up at the Iraqi opposition conference in London in 1992, can best be understood. Rather than in a continuous socialisation process of the kind described in many of the examples in Risse et al 1999.

The claimed commitment to human rights and democracy was at the time tactical or instrumental, serving the Kurdish elite's political aim of national independence through a federal Iraq. What can support the position that such a claim was tactical rather than substantial? It cannot, of course, be ruled out that "in their hearts" Barzani and Talabani in 1992 truly were committed to democracy and human rights. However, the fact that Iraqi Kurdistan for centuries had been, and still is, governed by patronage and clan loyalty makes it likely that the future democracy in Iraq were perceived as a guarantee of "self-determination" for the Kurds, rather than as involving individual rights and distribution of power.

With the establishment of the no-fly zone US, UK and France the Kurds in Iraq had a very obvious strategic interest in having good relations with the Western powers. To claim commitment to human rights and democracy were probably seen as means to show loyalty to their protectors as well as to be considered as (part of) a future alternative to the Saddam regime.

Besides the instrumental adaptation to norms discussed above, did a transnational human rights network play a role in the developments in 1991-92?

There is not much evidence that can support a claim that a transnational human rights network with links to the Iraqi opposition had any decisive role in bringing about the international census that led to the establishment of security zone in Northern Iraq in 1991. This rather appears to be a unique case of remedying a refugee crisis (Goodwin-Gill 1996:130), and Turkish fears of destabilisation, as well as an opportunity for the US and allies to make inroads into the Iraqi regime's power.

This is supported by the fact that the genocidal massacres in 1988, including the use of chemical weapons, and extinction of 3000 villages in Northern Iraq did not lead to any substantial reactions from Saddam Hussein's patrons in the West (Yildiz 2007:32).

Hence, there is little evidence to suggest that the landmark parliamentary elections in 1992 came as the result of a process of socialisation where a domestic opposition linked with a transnational human rights network had forced a norm violating state to concessions.

KR is rather a case that shows similarity with the outlier case of Uganda in Risse et al. Idi Amin's dictatorship was in 1979 replaced by civil war between rebel groups and government troops. The situation slowly improved from 1986 when the National Resistance Movement (NRM) took control of the capital Kampala. According to Hans Peter Schmitz, the author of the chapter on Uganda and Kenya in Risse et al 1999, the post-1986 regime of Yoweri Museveni's display of a consistent rhetoric commitment to human rights, coupled with institutionalisation of norms inter alia by acceding to the UN Anti-Torture Convention, made Uganda enter the forth phase "descriptive status" directly. Thus skipping both the second *denial* and third *tactical concessions* phases.

At the tactical concessions phase of the spiral model the norm violating state no longer deny the validity of norms and start giving some concessions, e.g. releasing some prisoners, out of instrumental interest to pacify international criticism. The most important effect of

this phase is not so much a change in the behaviour of the government but to facilitate social mobilisation.

The de facto state and the government that took office after the elections in 1992 had for obvious reasons no history of being subject to neither international criticism nor domestic opposition.

However, as shown above a women's rights opposition appeared already in 1992 when 30 000 signatories were collected in a petition with the objective to reform the family law.

Amnesty International (AI) was quick to initiate dialogue with the newly formed government. In May and December 1992 AI delegations visited Iraqi Kurdistan and held discussions with political leaders, urging them, among other things, to take steps to protect detainees from torture (Amnesty International 1993). In AI's 1993 world report Kurdish authorities were accused of torturing detainees. Some of the torture victims had been detained for political reasons, including four women who had been arrested during a demonstration in Erbil in August 1992.

From 1993 until 1998 AI's annual reports stated that the Kurdish authorities were responsible for committing human rights abuses, including arbitrary arrests, incommunicado detention, torture, forced disappearances and unlawful killings. For the period 1994-96 AI used the term "serious human rights violations". This three-year period corresponds to the period when the dominant parties PUK and KDP were engaged in a bloody civil war.

AI reports to have visited KR regularly in the period and had talks with the political leaders. As was also the case with HRW, Amnesty cooperated with the Kurdish leaders in documenting past persecution by the Saddam-regime. This common interest probably helped AI get access to the Kurdish leaders to raise issues of current violations. AI was promised but received no substantial response to their concerns, other than claims that

efforts had been made to implement recommendations from Amnesty.¹⁰² The organisation also met with and interviewed detainees in 1994.¹⁰³

Although Amnesty International's reports did not have a very detailed level it clearly must have had linkages to domestic groups or individuals to be able to do the kind of reporting it did in the period 1992-1998. This fact could however not be used to conclude that a domestic human rights opposition existed at the time. The very precarious security situation, caused by the civil war, rendered any substantial domestic opposition impossible.

Despite the lack of any substantial or influential domestic opposition between 1992-98, that period could be considered as generally corresponding to the *tactical concessions phase* - if having talks with and allowing AI to conduct investigations at prisons is seen as a form of *concession*. More specifically in terms of women's rights no topical interest seems to have been given to this issue by Amnesty in that period.

5.6.3 Prescriptive status

In September 1998 KDP and PUK met in Washington D.C. and signed a peace agreement. Subsequent meetings took place in Iraqi Kurdistan and in Turkey to discuss implementation of the agreement. The two sides also exchanged prisoners.¹⁰⁴ Despite several earlier unsuccessful ones, the Washington agreement proved to be a lasting one, although implementation took much longer than planned. Not before May 2006 did the two separate entities start unifying the different ministries, a process that was fulfilled by April 2009 when the last ministries were unified. (krg.org)

With the ending of the civil war (1993-1997) the human rights situation in Iraqi Kurdistan started to improve compared with the situation during the civil war. AI and HRW still reported violations but to a lesser degree. In its 2000 world report Amnesty wrote that "Since 1997 the human rights situation had gradually improved ... However, isolated cases

¹⁰² Amnesty International World Report 1996

¹⁰³ Amnesty International World Report 1995

¹⁰⁴ Amnesty International World Report 1999

of human rights abuses continued to be reported...¹⁰⁵ The security operations that followed the several terrorist attacks in the period 2001-2004 may have represented setbacks, but it would still be a valid claim that the overall situation since 1998 has seen a slow but gradual improvement of human rights protection in Iraqi Kurdistan.

Prescriptive status is the fourth phase of the spiral model. In this phase actors regularly refer to human rights norms when commenting on their own behaviour. The validity of the norms is not controversial, even if actual behaviour continues to violate norms. Typical of this level in the model is that accusations of violations of norms are met with argumentation, dialogue and promise of improvement. Words must be matched with deeds, primarily by institutionalization of norms into domestic law and public officials including police are trained in human rights (Risse 1999: 29-31).

The year 2000 may be considered as a point when Iraqi Kurdistan passed into an early stage of the phase of *descriptive status*, both in terms of protection of women against honour violence and human rights in general. This was the year when the first legal reform was enforced with the aim of combating honour killings. It was also the year when the first actually independent newspaper, the Hawlati, was established.

The description in the previous chapter shows that the KRG in fact meets many of the criteria for the due diligence standard listed by the Special Rapporteur in the report *Violence against women in the family* (see chapter 2.2.2.3). Despite the progress though, it is probably still a long way to go before the KR enters the ultimate phase of the model, the *rule-consistent behaviour*. In that phase of the process norms are fully institutionalised domestically and norm compliance becomes a habitual practice of actors and is enforced by the rule of law (Risse et al 1999:33).

¹⁰⁵ Amnesty International World Report 2000

5.6.4 Prospects for the future

At the descriptive status phase there is a risk that the improved situation of a country might lead to a decline in international attention, something that might easily lead to deterioration.

Continued careful and consistent monitoring by INGOs like Amnesty International and Human Rights Watch will be key to secure continued progress of the human rights situation in KR. Despite the scarcity of independent NGO's, a 50 pages detailed report by Amnesty on human rights in Kurdistan Region published in March 2009, is evidence that international NGO's now have access to detailed information on human rights practices in KR thus securing the imperative domestic link in the transnational human rights network that is necessary for sustained human rights improvement. International NGO's are also present in KR, including the ICRC who conducts prison visits.¹⁰⁶

According to Granzer's case study on Tunisia and Morocco (in Risse et al. 1999), successful co-option of parts of the domestic human rights movement in Tunisia in 1988-90 effectively silenced the human rights opposition. The Islamist fraction of the movement were not co-opted, but became suspect and marginalized because of the increase of radical Islam at the time. According to Michael Rubin the Islamist movement in KR gains more support, not mainly due to religion, but because they are seen as a "clean" alternative to the dominant parties' nepotism and corruption (Rubin 2008).

Despite the fact that co-option is a strategy followed by the authorities in KR, civil society is not silent, and the transnational human rights network is in function. This is probably mostly due to the combination of a few independent newspapers, NGOs and various associations (e.g. lawyers union).

Based on the above findings about the domestic civil society human rights infrastructure it is relevant to ask whether the development has passed the stage where the government

¹⁰⁶ URL:<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/iraq-news-2300408>

could - in a given situation - silence civil society and violations could take place unnoticed, entailing a setback for human rights.

Given the totalitarian nature of the dominant parties in combination with their interests in keeping control over the economic resources, it is not likely that they willingly would distribute power to any group or party that would pose a threat to status quo. Recent history has showed that opposition will be sanctioned (see 5.3.1). A setback is thus possible due to the lack of genuine democratic institutions.

Risse's claim that sustainable human rights change in human rights conditions will only be achieved at this stage of the process (*descriptive status*) when the government is continuously pushed "from below" and "from above", thus clearly seems relevant in the present context.

Such pressure will still benefit from certain realities and strategic interests held by the KRG. Seen from the perspective of the political elite in KR, federalism in Iraq is the only realistic way to secure Kurdish self-rule and autonomy, and thus continued privilege and rule of the present holders of power. KRG needs political allies in the West, especially of course the US, to lobby for their political interests. Display of democratic institutions and protection of human rights is likely to give political legitimacy and support by the Western powers.

Oil contracts and other industrial and commercial relations with international companies are very much sought after by KRG. Foreign investments enhance both the economic and political status of the KR within Iraq. In a politically unstable region investors are likely to be reluctant. The display of democratic intentions, by verbal support for human rights, might help ease worries of too risky business investments.

5.7 Identity and norms socialisation

An aspect of *spiral model* is the processes of socialisation of norms that is seen as taking place by an interface between communicative rationality and identity construction. Through a moral discourse where logical arguments, political pressure and psychological factors intertwine, actors might - given the right circumstances - internalise certain norms. Human beings want to belong to and be associated with the right group. In the present context this means that they want to belong to the international club of democratic statesmen.

The Kurdish leadership, including President Masoud Barzani, has along history of travelling frequently to Europe and the US to seek to raise and sustain political and economic support. Human rights is a central issue in meetings with leaders and other actors. The following was reported after President Barzani's latest visit to the UK in the PUK-media online journal on March 13. 2009:

President Barzani also addressed a meeting chaired by Dr John Reid, former Defence Secretary, at Chatham House, the UK's leading think tank for foreign affairs. He reiterated the Kurdistan Region's commitment to the Iraqi Constitution, and added that a constitution for the Kurdistan Region is being drafted that will enshrine human rights, tolerance and peaceful coexistence of all its communities.¹⁰⁷

The fear of "coming on the black list of human rights" might thus have an identity aspect as well as a purely instrumental one. President Barzani, to follow Risse's theoretical assumptions, might want to be looked upon as a democrat by his Western counterparts. The advisor to prime minister Necirvan Barzani pointed out, when he was interviewed for the present study, that he worked for equality for women in KR "not because NGOs and journalists says it is good but because I truly believe in it".

Given both Barzani and Talabani's strong control over their parties and the respect that they are subject to, their personal perception and emphasising of human rights (and

¹⁰⁷ http://pukmedia.com/english/index.php?option=com_content&task=view&id=9848&Itemid=52

possibly internalization of norms) will have a potential of creating wide-ranging impact on public officials' conduct.

5.8 Conclusion

5.8.1 Research question

Since the year 2000 leaders in Kurdistan Region have increasingly referred to human rights and in particular women's rights. Words have to a certain extent been matched with deeds, as shown by the establishment of the "Directorate to follow up violence against women" (see 4.2.5). As concluded above protection of women against honour violence in Kurdistan Region has indeed reached the phase of *prescriptive status* - and has thus reached a level that has practical meaning for individuals.

5.8.2 Relevance of theory

Kurdistan Region was found to be an outlier in relation to most of the examples in Risse et al's *The Power of Human Rights* (see 5.6.2). Risse et al's spiral model still proved to be a relevant tool to assess implementation of human rights in the present empirical context. Among the model's advantages are its process approach and its identification of specific factors necessary for human rights change. However weak it is, the domestic human rights network in Kurdistan Region proved to be able to transfer information to the international human rights organisations, thus securing the vital link between domestic and the international level. The fact that KRG has taken various measures to improve human rights protection as a direct result of Amnesty International's recommendations (5.2.1), gives evidence of the impact on KRG of the transnational network.

5.8.3 Institutionalisation

The findings of this study show a process that seems to have started out as instrumental adaptation, but which is now apparently entering into various forms of institutionalisation. The developments seem to have accelerated over the past couple of years, among them perhaps most notably the establishment of the designated central investigative bodies, the "Directorate to follow up violence against women".

5.8.4 Sustainability of human rights in Kurdistan Region

How sustainable is the development seen so far in Kurdistan Region after 1992? By listing some social and political factors that are at play in Kurdistan Region today it is possible to get an idea of the future prospects. Some factors have the potential of supporting and some of countering human rights implementation. The list includes both elements of the *spiral model* (Risse et. al 1999:20) and of Landman's model (Landman 2005:30).

Factors favourable to implementation:

- Domestic actors that collect information and document violations of norms and a relative freedom of the press.
- International human rights organisations that is linked to domestic actors and who has shown relatively consistent interest in the situation in Kurdistan Region.
- A political leadership that has a very strong interest in having goodwill among the Western Powers, and who considers human rights as central to creating a positive image in the West.
- A relative economic wealth.¹⁰⁸
- A relative absence of armed conflict.
- Trade. KRG welcomes foreign investments.

Other factors (present and potential) simultaneously jeopardize and are unfavourable to sustainable human rights implementation

- Weak and marginal civil society.
- Power hegemony. Lack of a genuine democratic political system.
- Precarious political situation in Iraq, which potentially may involve Kurdistan Region in an armed conflict.

Among the various factors listed above it is evident that the transnational human rights network discussed in this study plays an essential role by providing the pressure from "below" (civil society: NGOs, media and associations) and from "above" (international

¹⁰⁸ KR are entitled to 17% of Iraq's oil revenues.

NGOs) (Risse et al 1999:33). Thus, as long as the network maintains the international attention, the conditions for sustained development are in place. It is therefore crucial that INGOs and Western states avoid being dazzled by the formal democratic structures and the human rights rhetoric from the KRG, but are able to look behind it and keep pointing at the areas where further implementation are necessary.

On the other hand the civil society is not a strong independent factor in society, partly because it to a considerable extent depends on external financial support. The democratic deficit and power hegemony also represents a threat to the further development of civil society. Furthermore, as Landman's empirical model shows, a violent political conflict in Iraq will most likely entail a setback for human rights implementation in Kurdistan Region.

Kurdistan Region is currently in an early stage of the *prescriptive status* phase of human rights implementation. Instrumental interests still play a key motivating role for the leadership and the transnational advocacy network's impact will for the foreseeable future continue to depend on current realities of power and utility. However, provided that sustained institutionalisation of norms is part of the process, human rights protection will ultimately become less dependent on external pressure.

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