



## Iraqi Alliance of Disability

The Parallel Report for Government's Report on  
The Convention on the  
Rights of Persons with Disability (CRPD)

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## List of Abbreviations

CBR	Community-based Rehabilitation
CCPDSN	Commission on the Care of Persons with Disabilities and Special Needs
CRPD	Convention on the Rights of Persons with Disabilities
CwD	Children with Disability
HCHR	Higher Commissioner for Human Rights
IAD	Iraqi Alliance of Disability
IDP	Internally Displaced People
MDM	Ministry of Displacement and Migration
MoE	Ministry of Education
MoH	Ministry of Health
Mol	Ministry of Interior
MOLSA	Ministry of Labor and Social Affairs
MoT	Ministry of Transportation
PwD	People with Disability
SGCM	Secretariat-General of the Council of Ministers
UNCAT	United Nations Convention against Torture
UNHCR	United Nations Higher Commissioner for Refugees
WHO	World Health Organization
WwD	Women with Disability

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## Introduction

Iraq is among the nations that have the biggest disability rates as a result of the wars since 1973 till now. Other factors include the unexploded war remnants, mines, terrorist attacks (including the war against ISIS), medical conditions like abnormal births due to the pollution caused by different weapons used by coalition forces during the wars of 1990 and 2003. Other disabilities may be attributed to traffic accidents (due to the unplanned importation of huge numbers of cars), medical mistakes, senility and chronic diseases. These factors altogether contribute to the growing PwD numbers that are estimated by 10% of Iraq's population and even more.

Unfortunately, there are no official accounts about PwD. Some considerable indices indicate that the situation of such class is worsening due to the negligence and indifference of relevant authorities. However, other indices mark positive changes especially following the ratification of CRPD by Iraq on March 3<sup>rd</sup>, 2013, and the issuing of the Act of the Welfare of People with Disabilities and Special Needs (Law 38) on September 5<sup>th</sup>, 2013. Law 38 included plenty of PwD rights and privileges. At the same time, the gaps and negative aspects of the law were identified by the concerned national monitoring NGOs.

Social legacy, customs, traditions, and beliefs play a pivotal role in the attitudes towards disability and its development. The attempts of improving disability reality in Iraq is so much interrelated to the general scene of state's attitude and reluctant practical measures taken by the government for the sake of going in line with the principles and provisions of international conventions and covenants signed and ratified by it. Disability has witnessed a remarkable shift in 1980 when Iraq enacted the Welfare Law of People with Disabilities and Special Needs (Law 126), although it has adopted a medical caregiving perspective. This law has faced the same obstacle and barriers that encountered Law 38 (2013) by not implementing certain provisions due to the absence of necessary practical regulative rules and measures.

Unprecedentedly, the Secretariat General of the Council of Ministers has called upon all governmental bodies concerned to disability (such as MoH, MOLSA, Ministry of Interior and State Consultancy Council) in addition to IAD, as the requesting party and representative of civil society organizations, to draw a law for PwD affairs in 2006. Nevertheless, it took seven years to draw Law 38 (2013) that was based on Article (32) of the Iraqi constitution<sup>1</sup>. The law did not include rights-enhancing provisions but rather it contained care-giving provisions that do not meet PwD expectations. Although the overall measures have an undeniable impact in activating the social and legal movement, there are some reservations about the bases of such a law as it did not attempt to move from the caregiving perspective towards the rights-based one, and consequently, it did not achieve the anticipated harmonization with the general principles and provisions of CRPD. In other words, the difficulties faced by PwD on the ground, and the direct and indirect discrimination and exclusion practiced against them as they try to exercise their and when accessing the public services may not be eradicated.

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<sup>1</sup> <http://www.shakwmakw.com/vb/showthread.php?t=136654>

## **Method of Working**

A team was set up to compile the parallel report to the governmental report through involving disability experts, academics, representatives of PwD organizations besides other organizations that have the same objectives and PwD volunteers by taking the geographical distribution of team members into consideration. A common method of working was agreed with organizations and syndicates working in Kurdistan Region, as follows:

1. A guiding committee to be composed of (7) coordination representatives of other organizations.
2. Reviewing national legislations, laws, rules, disciplines, and strategies related to PwD rights and to what extent they are harmonized with the CRPD.
3. Monitoring should include the documentation of both positive and negative points.
4. Conducting a field survey for all PwD activities to recognize the tasks done by these organizations and syndicates and to obtain their studies and surveys.
5. Identification of gaps regarding PwD rights.
6. Setting up different focus groups for various PwD groups.
7. Supplying IAD database with necessary data about PwD.
8. Conducting personal interviews with experts, activists, representatives of local and international organizations and civil society organizations working on disability in Iraq.
9. Writing the preliminary draft of the report and discussing it with other organizations.
10. Doing regular and continuous follow up for the websites of the administrative and national bodies that are related to the articles of the report.

## **Challenges Encountered during Report Preparation**

The challenges faced while compiling the report can be summarized in the following points:

1. The extensive scarcity of official information about PwD rights and issues.
2. Lack of accurate official data about PwD not only regarding their numbers but also regarding the extent to which they exercise their rights and liberties and the access to basic services, the qualities and geographical distribution of such services.
3. Confusion about the roles and authorities of different executive bodies, which required a great effort by team members to identify the actual roles of the stakeholders in order to obtain information and to survey the comprehensiveness of the projects and services provided by such parties.
4. Violation and discrimination cases against PwD are not adequately documented.
5. Unawareness of most officials and executive bodies about the legislations and conventions addressing PwD rights.
6. Uneasy communication with governmental and semi-governmental bodies as it requires passing through lengthy bureaucratic administrative channels.
7. Difficulty in reaching some poor rural and distant areas so that the maximum number of people get involved in the surveys.
8. Poor communication via email or internet services with PwD and some of their organizations.
9. Poor material accommodation in transportation means and in the places assigned for interviewing PwD or their organizations.

## 10. Security situation.

### **Executive Summary**

The report has reached a set of findings and conclusions according to the following provisions:

#### **FIRST: the reality of terms and definitions in the adopted legislations and policies:**

The report has concluded that various legislators and strategy and policymakers in Iraq adopt a medical caregiving approach in their definition of disability and PwD. They describe them as mere cases of restricted capacities or underperformance, as described in Law 38 (2013) “Welfare Law of People with Disabilities and Special Needs”, without taking the role of environmental and behavioral barriers into account.

#### **SECOND: the extent to which PwD rights and issues are in addressed in public opinion.**

When the plans, strategies, and programs of most executive bodies are examined, it is seen that PwD rights and issues are not at their top priority. Some of these bodies tackle PwD within a mere medical caregiving approach that cannot achieve active inclusion and involvement in its broad sense that is adopted by CRPD in its general principles and detailed provisions.

#### **THIRD: Ineffectiveness of the Legal Provisions Related to PwD Rights**

So that Law 38 (2013), like any other law, can be implemented properly, it requires issuing a set of regulative measures and in-laws. This law, which was the result of the prolonged efforts of PwD and their organizations has not been implemented adequately to date because it was not supplemented with special rules, and regulations that govern it. Some exceptions include the initiatives of the Ministry of Higher Education and Scientific Research as it disseminated forms enrolling PwD in postgraduate studies<sup>2</sup> and allocating a seat for PwD within each specialization. Similarly, the social security network, financed by MOLSA<sup>3</sup>, distributed subsidies for PwD who are incapable of working.

#### **FOURTH: Institutionalization of Some Discrimination Types by Iraqi Legislature**

Some legal legislations concerning PwD enshrine certain unaccepted negative forms of discrimination that play a crucial role in excluding PwD and violate their rights systematically. For example, Article 495 of Iraqi Penal Code 111 (1969) states that “shall be punished with imprisonment for no more than one month or a fine, not more than 20 Dinars, anyone who releases, in any way, a dangerous mad person or a harmful or a predator animal into the street”. In this text, the legislator equalizes the harmful predator animal with some people with mental disabilities or the “mad” which reflect a clear discriminatory stereotype. In the same way, the provisions of the Civil Code 40 (1951)<sup>4</sup> and the Code of Personal Status 188

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<sup>2</sup> <http://www.cope.uobaghdad.edu.iq/PageViewer.aspx?id=173>

<sup>3</sup> <http://www.molsa.gov.iq/upload/upfile/ar/520.pdf>

<sup>4</sup> <http://www.nazaha.iq/images/laws/kadaa/21.doc>

(1959)<sup>5</sup> adopt a discriminatory philosophy against people with mental and intellectual disabilities concerning the right of enjoying legal capacity as these provisions have deprived them of such a right. Consequently, this means stripping them of exercising many rights and liberties, and this makes the legal acts done by them to be voidable

**FIFTH: Real Examples of Discrimination and Violation of PwD Rights about:**

1. Detention and the restriction of liberties on a disability basis.
2. Vulnerability to violence and inhumane treatment, detention of people with mental and intellectual disabilities seem to be more prevalent in rural and distant areas.
3. Accessible environment and transportation.
4. Education, where reasonable accommodation measures are not provided to ensure inclusive education in the Ministry of Education.
5. Health sector, the absence of reasonable accommodations and accessible environments are reconsidered as the major dilemma that prevents hinder accessibility.
6. Employment, where Article 16 of Law 38 (2013) stipulates the provision of special measures that ensure minimum accessibility of PwD for employment and work opportunities.

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<sup>5</sup> <http://www.iraqld.iq/LoadArticle.aspx?SC=020220151037642>

#### Articles (1-4):

- Purpose.
- Definitions.
- Principles.
- General Commitments.

Despite the foundation of the Commission of Care of Persons with Disabilities and Special Needs (CCPDSN) in accordance with Article 4 of Law 38 (2013) and annexing it to the Ministry of Labor and Social Affairs (MOLSA), the name of the Commission itself is inconsistent with the goals of the Convention of the Rights of People with Disabilities (CRPD) since the Commission is only devoted to the concepts of caring and medical support. However, CRPD aims to shift the widespread charity-based perception of disability to a rights-based one. The foundation of the Commission and annexing it to MOLSA was incompatible with the Paris Principles since it deprives the Commission of its independence.

Law 38 (2013) is considered as a medical caring model that can be felt in its name “The Law for the Care of People with Disabilities and Special Needs”. Such a law is consistent with constitutional Article 32, meanwhile, it is not in line with CRPD. Although the law was enacted after the ratification of the Convention by the Iraqi government on 20/3/2013, Article 1 of this law reaffirmed the adoption the medical approach by Iraqi legislature which is based on a unilateral perception of disability as a medical condition, overlooking all environmental and behavioral constraints that play a key role in excluding and discriminating PwD while practicing their basic rights and liberties. According to the provisions of Law 38 (2013), a Person with Disability is defined in Article 1 as “anyone who has lost the partial or total ability to participate in the community like others due to a physical, mental or sensory impairment that led to his or her functional underperformance”.

It is noted that this definition clearly refers to the (abilities) of the individual in exercising some of the basic rights (work, rehabilitation, and education) compared to the conditions of his non-disabled counterparts.

Regarding the extent to which the general principles and commitments of the Convention are included in the national legislations, Law 38 (2013) represented a legislative precedent, by containing a section of the two articles (2 and 3) about the reasonable accommodation in line with the articles of the International Convention. However, this achievement has not culminated in executive tools that may guarantee their realization effectively and adequately. Until the moment of releasing this report, no instructions or rules have been issued by the stakeholders concerning the inclusion of reasonable accommodation in the strategies, plans, and programs of the different executive bodies, as stated in Article 15 of the Law (functions of ministries) and their harmonization with the articles (24, 25, 26, 27) and other articles of the

Convention. This might be attributed to the charity-based perception, which is centered on providing PwD with direct services based on the apparent immediate needs. Such an approach is clearly seen during the developing of certain policies and following up their implementation by means of individual services that usually instigates confusion about the nature of its mission, as described in Article 33 of this report.

Article 15 [X] -I- states “among the functions of the Ministry of Health is the determination of disability degree through a specialized medical committee in accordance with the instructions of the Ministry of Health for the determination of disability degree, issued on 16/11/1998 according to which, the categories of people with disabilities and special needs are covered in the provisions of this law”. The provision of medical reports for PwD as the main service appears to be an institutionalization of the medical caring model in exercising rights and liberties. Consequently, there will be an evident conflict with the principles of equality, equal opportunity and non-discrimination.

Regarding the collection and classification of information and data about countering discriminatory measures against PwD, relevant national policies did not include any reference to the necessity of establishing particular mechanisms for documenting anti-discrimination and for monitoring violations. Annual reports of OHCHR about the extent of Iraq’s commitment to the provisions of the Convention did not refer to such data and information. These reports have only assessed the legislative framework and on-the-ground practices from a service-oriented perspective for PwD which reflects the rights-based perspective on PwD issues even on the agendas of human rights institutions.

In terms of the rights which are suspended or still being enacted or implemented, it is noted that decision makers in Iraq did not issue, until launching this report, any regulations or executive instructions required for implementing Law 38 (2013). Any action taken, either comes in the form of individual initiatives, or it is not considered at all. For instance, the legal provisions that undermine the legal capacity of PwD were kept in the Civil Code, Personal Status Law, and in legal provisions that adopt the medical model when PwD practice their basic rights and liberties and access public services. It is worth noting that special education has dominated the education inclusion in the education sector for PwD throughout different stages of basic education.

In the light of this legislative and policy framework, national legislation module is unlikely to contain more effective standards or measures to promote PwD rights and the counter the discrimination against them.

#### **Issues:**

1. Why Law 38 (2013) has not adopted an exhaustive human right-based definition based on the Convention and not incorporated it into various national policies and legislation?
2. When the concept of reasonable accommodation shall be promoted and incorporated into the strategies and plans of different ministries and executive bodies?
3. When necessary measures shall be taken to amend the provisions of Law 38 (2013) and other provisions related to PwD rights and issues in all other laws to reflect the general principles of the Convention?

4. What is the time frame for issuing executive rules and regulations that may ensure the fulfillment of the provisions of Law 38 (2013) and other relevant legal provisions that serve the end of the Convention?

## Article 5

### EQUALITY AND NON-DISCRIMINATION

The Iraqi Constitution contains some provisions that stress the prohibition of discrimination on different grounds, as stated in Article 14, "Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status" without referring to disability. Concerning PwD rights, there are some signs that indicate the beginning of a legislative trend that tends to adopt non-discrimination as a philosophy and a legislative source, albeit on a small scale. These references can be extrapolated from the provisions of Law 38 (2013), which included a sound definition of disability-based discrimination, which conforms to the minimum level of human rights principles and mimics, to some extent, Article 2 of the Convention. Article 1 [VI] of Law 38 (2013) defines disability-based discrimination as "any distinction, exclusion or restriction due to disability or special needs resulting in damages or nullification of recognition of any right established under the legislation or prevent from enjoying or exercising them on an equal footing".

Despite the existence of such provisions in the Iraqi constitution and Law (38) 2013, it can be said that many national legislations institutionalize several forms of discrimination against PwD. Article 495 of the Penal Code 111 (1969), for example, states "Whoever releases a mad person to be feared of, or a predatory or harmful animal in any way into the public road, shall be punished by imprisonment for a period not exceeding one month or by a fine not exceeding 20 dinars". This clearly indicates that the legislature adopts a stereotypical discriminative approach towards PwD, especially those with psychosocial disabilities as they are compared to predatory or wild animals. In addition, plenty of legal provisions in the Civil Code, the Personal Status Law and the Law of the Notary are abundant with discriminatory provisions against PwD, that regard them as a child who has not reached the age of seven in terms of legal actions as well as administrative and individual transactions.

The rights of work, education, health, accessible environment and reasonable accommodation are among the areas in which violations and discrimination were noted by stakeholders on the basis of disability according to the priorities set by PwD and their organizations who participated in compiling this report and also participated in the consultative meetings that presented its findings and recommendations. However, some disability-based discrimination is realized when some schools do not accept students who are physically disabled.

The adoption of care-based approach by national policymakers and legislators while dealing with PwD rights has led to a general trend reflected in plans, programs and legal provisions with the priority of meeting the immediate individual needs of PwD, in isolation from working to establish a rights-based legal culture that promote human rights principles and resorting to justice to counter discrimination and to protect and promote their rights.

## Issues:

1. Have necessary measures been taken to adopt an anti-discrimination policy as a legislative framework for laws and policies relevant to PwD rights and issue?
2. What are the time frames that can be adopted for reviewing the national legislative system and revocation of all provisions that call for any form of disability-based discrimination or on any other bases?
3. Have a set of effective practical measures been developed and reinforced to combat discrimination to be regarded among the criteria and rules to be followed during planning, program designing, and in providing and assessing services?
4. Have certain measures been taken to consolidate human rights culture and acceptance of the other at all levels: (decision-making centers, executive bodies, local communities, media, PwD and their organizations)?

## Article 6

### WOMEN WITH DISABILITIES (WwD)

Studies indicate that women with disabilities do not receive adequate health, educational, social and rehabilitation services if compared to males due to many social factors. Illiteracy, for instance, is increasing among WwD and they do not receive their primary educational rehabilitation services. The same thing is true for secondary and tertiary education, and for finding appropriate job opportunities. Subsequently, the chances of including them into society will be reduced and their active participation in the society will retard. Some of them face discrimination, violence, and abuse and they have low chances of getting married and achieving a decent life like other non-disabled members of society, as stipulated in Articles 24, 25 and 26 of the report.

Undeniably, WwD encounter a compound discrimination that is both disability and gender-based, and perhaps on the basis of social status, place of residence (for those living in remote areas) and other imaginable bases for discrimination. It is noted that in terms of national policies and plans relating to women in general, they do not adopt the issues of WwD as a priority to be highlighted and addressed, such as the National Strategy for Combating Violence Against Women, the National Strategy<sup>6</sup>, the National Strategy for Promoting Women<sup>7</sup>, the National Plan and the Emergency Plan for Resolution 1325<sup>8</sup> which gave the women a quota in the political representation. Such an attitude is adopted because these issues are addressed from a caring-based perspective that is based on the special needs theory; a theory that originates from the medical frameworks, although new horizons were

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<sup>6</sup> <http://www.bwa-iraq.org/ArticleShow.aspx?ID=187>

<sup>7</sup> <http://www.mop.gov.iq/mop/resources/Web%20Group/fainal.pdf>

<sup>8</sup> <http://www.molsa.gov.iq/index.php?name=News&file=print&op=PrintPage&sid.>

opened with the Department of WwD Women Empowerment in the Secretariat-General of the Council of Ministers (SGCM).

WwD are prone to many violations with sufferings from the tribal traditions exceeding those suffered by men. The tribe perspective is often based on shame on her family. Therefore, she is not allowed to leave the house or to be seen by others or even receive treatment. She is often held in a separate room to prevent her from committing a wrongdoing. WwD live in a complicated condition as they face multiple and aggravated forms of discrimination based on sex, property, age, culture or any other factor. Many women and girls with disabilities complain that their lives are always at risk and their fate is unknown whether inside or outside their homes as a result of negligence, violence, maltreatment, and abuse or exploitation, although they are needed to be integrated in order to promote the full enjoyment of human rights and fundamental liberties of PwD. Many women indicate that they face countless physical and social obstacles and that they lack proper job opportunities.”

No changes have been made on the Penal Code so as to cope with the National Strategy<sup>9</sup> and Recommendation 32 for the promotion of women which stresses on changing the criminal legislations. Iraqi Civil Code 40 (1951) also deprived the mother from being a guardian of her minor in Article 102, where it states: " Minor’s guardian is his father, then his father’s guardian, then his true grandfather, then his grandfather’s guardian, then the court or guardian appointed by the court."

#### **Issues:**

1. Are there any plans to empower WwD in the sectors of health, education, employment, and rehabilitatio?
2. Have necessary measures been taken to incorporate WwD rights and issues in the domestic strategies and plans relevant to women?
3. When crimes committed against women and punishment of their perpetrators shall be excluded from governmental pardons issued on the basis of political consensus within the framework of national reconciliation? When actions should be taken to redress and rehabilitate women victims?
4. Have the necessary measures been taken to enact the law of the protection from family violence and the criminalization of circumcision?
5. What are the measures that may be taken to amend Act 102 of Civil Code in order to cope with Article 6 of the Convention?

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<sup>9</sup> <http://www.mop.gov.iq/mop/resources/IT>

## Article 7

### CHILDREN WITH DISABILITIES (CwD)

Despite the fact that Article 30 in the Iraqi Constitution states that "The State shall guarantee to the individual and the family - especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing", as well as Iraq's accession to the Convention on the Rights of the Child in 1994<sup>10</sup>, and international laws and conventions, which all stipulate that the child must enjoy an environment suitable for living and education. However, the Iraqi Child Bill is still not enacted by the parliament which, in turn, lacks the culture of child protection. Among the positive aspects of the Department of the Caring of People with Special Needs (an Affiliate of MOLSA) is the adoption of a strategy for implementing the Social Welfare Law 126 (1980) through the affiliated institutes according to the Director-General of the Department of Welfare of Persons with Special Needs in MOLSA<sup>11</sup>. In the area of social integration and family life, Article 15 [IV]-G of Law 38 (2013) has dealt with the concept of "alternative care for children with disabilities in the event of family failure to care for the child", although no measures or criteria, till now, have been taken to explain how this concept is applied and the terms of its enactment.

The institutes lack specialized staff and necessary spaces to accommodate PwD as they are obsolete and not well rehabilitated. They also lack visual aids and necessary collective transportation means" (see the annex). The scarcity of services provided by the Department of Special Needs Welfare was referred to by the Director-General of the Department during an interview with the monitoring group, and he attributed it to " the lack of resources and the current economic crisis in Iraq, the fight against terrorism, and the transfer of powers to the provincial councils of governorates under Law 21 (2008), according to the decree of SGCM No. 25489 on 5/8/2015 has all led to the failure in providing services to the beneficiaries.

### ISSUES:

1. What are the reasons behind the delay in the enactment of the Children's Act in Iraq, and dedicating a chapter that deals with CwD issues in line with CRPD?
2. Have necessary measures been taken in terms of reviewing national policies and legislations through including CwD issues on the same bases as the rights of other children, based on human rights and the provisions of relevant international conventions, in particular, the principles and foundations of CRPD?
3. Are there any steps to amend the Penal Code, the Code of Criminal Procedures and Law 38 (2013), so as to maximize the penalties for committing acts of violence, physical and psychological abuse, ill-treatment and exploitation in all its forms, whether in the family, or in educational or

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<sup>10</sup> <http://www.arabccd.org/page/631>

<sup>11</sup> In an interview with Dr. Abeer Al-Chalabi, Director-General of the Department of Social Welfare on April 23<sup>rd</sup> 2017.

assistance institutions provided that these acts are caused or based on disability?

## Article 8

### AWARENESS-RAISING

Disability issues and the separation between equality and non-discrimination and changing the negative stereotypes attached to PwD and their issues on the one hand, and on the other hand the prevention that comes under the public health all were negatively reflected on the implementation of programs and activities under the name of raising awareness regarding PwD rights. Meanwhile, these programs that target the public does not consolidate the culture of diversity and accepting the other and does not change the negative stereotype attached to it, they rather view PwD from a discriminative perspective and deal with disability as a fierce attack that requires maximum cautious measures to prevent it. Nevertheless, it is observed that these media initiatives are transient initiatives that are not based on a clear media plan aiming at raising public awareness regarding PwD rights and they are based on reaction and media competition. Some of these programs have already ceased due to the shuffling of their management, and some of these initiatives are characterized by the lack of the content that is supposed to enhance diversity, acceptance of the other, equality and non-discrimination. In many cases, these programs adopt the negative stereotype that PwD always need training, and they are a burden on society, and they need aids and donations, instead of adopting awareness-raising programs that should emulate the principle of countering the disability-based discrimination and fostering a culture of diversity and acceptance of the other.

HCHR<sup>12</sup> and civil society organizations indicated that educational awareness-raising programs concerning the PwD rights were not followed in media and educational curricula in Iraq. Despite all that, there were several media agencies that adopted a professionalism by highlighting the bright side of disability and the need to fully include it in the society.

On the other hand, some other media agencies deliberately violated PwD rights by putting them in ridiculous situations and stripped them of their dignity in regular weekly or daily programs. Government media is still adopting occasional treatment of disability during certain events, and there is no clear strategy regarding PwD in their programs and curricula. The non-governmental media is not so much different; there have been some unique experiences in some Iraqi satellite channels, but they did not last too long. Some channels commit violations through mocking of PwD without having any deterrent or act that prevent this even in Law 38 (2013) which does not clearly refer to this matter. There is a scarcity of utilizing sign language in television channels while presenting news and other programs.

### ISSUES:

1. Are there any measures taken by the Iraqi government to Include PwD issues in media policies of the different parties in such a way that reflects the human-

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<sup>12</sup> The Annual report on the Condition of Human Rights in Iraq (2015)

rights-based perspective and to resist the prevailing stereotypes about disability, and to positively affects community behavior to achieve non-discrimination and to strengthen the culture of diversity and accepting the other, with the full and effective involvement of PwD and their organizations?

2. When necessary measures shall be taken to amend the provisions of Law 38 (2013) through deleting the provisions and measures related to the prevention of disability and including them in the Public Health Law?
3. Have been any review for all forms of media-related legislations in order to incorporate PwD issues and rights in these legislations?
4. Are there any addition of subjects into curricula to promote PwD rights, and to establish a culture of diversity and accepting the other, to overcome negative stereotypes whether pathetic or exaggerated admiration?

## Article 9

### ACCESSIBILITY

Iraq does have all legislative frameworks needed to implement its obligations to provide the accessible environment in its comprehensive sense, in line with Article 9 of CRPD. Article 15 [VIII] of Law 38 (2013) stipulates that among the functions of the Ministry of Construction and Housing is “ensuring adequate housing for persons with disabilities and special needs in accordance with the governmental housing plan, and implementing the requirements and standards of institutionalized buildings for persons with disabilities and the special needs which are issued by the relevant authorities during the rehabilitation”. Meanwhile, Article 15 [VII] stipulates that among the duties of the Ministry of Transportation is the "provision of free public transportation means for them and their families, and obliging tourism companies to ensure PwD transport" in order to achieve equality and equal opportunities for PwD.

The field study carried out by IAD in cooperation with researcher Dr. Qais Al-Kalabi<sup>13</sup> reached the following findings through a questionnaire about PwD accessibility:

CwD are most vulnerable to discrimination regarding access to schools, except private institutes, because most schools do not accommodate wheelchairs and are often very remote. Other obstacles include the existence of stairs, narrow entrances, unsuitable seating or inaccessible toilets. This is attributable to the absence of proper design and planning in the education system. As result, attending university is very challenging due to the lack of adequate infrastructure in primary and secondary education that perpetuates inequality in accessing higher education.

Most websites in Iraq, including university sites, public libraries, and government agencies, lack international standards of accessibility, which is a real obstacle to PwD in general, and people with visual disabilities in particular to information and different available electronic resources. People with mental and auditory disabilities have the same difficulty in browsing

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<sup>13</sup> Through circulation of a questionnaire that scrutinizes the situation of disability Iraq in 2013

websites, and accessibility is almost absent for them, as it was shown in the answers of the study mentioned earlier.

#### **ISSUES:**

1. Are there any steps concerning amending the legislations relevant to PwD rights when facilities are built and when licenses are granted, and incorporating strict and effective financial and administrative penalties in this regard?
2. Have any time table been discussed for the inclusion of the issues of accessible environment in the strategies, plans and projects of the Ministry of Transportation, Ministry of Construction and Housing, the Secretariat of the Capital, the Engineers Syndicate and the Private Transportation Authority?
3. Was there any promotion for the concept of accessible environment in its broadest sense by developing training and awareness-raising programs targeting a wide range of bodies, ministries, civil society organizations and the private sector?
  
4. When shall technical and electronic accessibility standards be adopted for people with visual, auditory, mental, intellectual, physical and mobility disabilities, both in terms of adapting computers and other electronic communication devices, or in terms of designing pages and websites of ministries, governmental and non-governmental bodies, universities, scientific institutes, libraries and companies?

#### **Article 11**

##### **SITUATIONS OF RISK AND HUMANITARIAN EMERGENCIES**

Civil Defense Law No. 44 (2013) is the basis for the management of emergencies and crises at the national level as the tasks of civil defense are defined in Article 3 as the authorized body for managing crises and emergencies and drawing up relevant policies and plans. Article 14 of the same law entrusted the Directorate of Civil Defense<sup>14</sup> the functions of providing medical services, transportation, fire extinguishing, evacuation, reconstruction, control of electrical power, detection and clearance of polluted areas as well as relief operations. What is remarkable about this law alongside the rules and regulations attached to it, is the absence of any reference to the accessible accommodation required for rescuing PwD, which makes them at risk more than other people in the event of an emergency or disaster.

Law 38 (2013) did not refer in any way to emergency and rescue services and the accessible accommodation necessary in this regard. Concerning IDPs, according to the Ministry of Displacement and Migration (MDM), there are more than 4 million IDPs, with 10% of them being PwD according to UN estimates (because there are no official accurate figures about PwD). We are talking about one of the most calamitous humanitarian disasters throughout

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<sup>14</sup> <http://www.moj.gov.iq/uploaded/4297.pdf>

the history. After passing more than three years on the liberation of cities and villages and the return of huge numbers of IDPs to their homes, the latest number of IDPs all over the country according to MDM is 94217 families in 177 camps. During the monitoring of HCHR and civil society organizations, the procedures and practices for dealing with PwD by the government during displacement, were found to be below required level concerning the provision of accessible accommodation during their rescue, which made them more vulnerable in emergencies or disasters. Iraq has witnessed enormous displacement waves following the control of terrorist gangs of Daesh over vast areas in Iraq, however, there were no special procedures and measures that took into account the health and physical conditions of PwD.

The government stressed that it is passing through a severe financial crisis and that it will be unable to improve the living conditions of IDPs, it sought assistance from civil society organizations, to play an active role in this regard and to the support of the disabled and people with special needs. Small loans have been granted to employ PwD and to open small shops, or workshops in which handicrafts are taught for those who did not lose their hands. There were also some projects that facilitate their motion, such as distributing wheelchairs or the establishing accessible facilities. Civil society organizations can do much to improve the living conditions of this group in IDP camps.

This indicates that the executive bodies in charge of dealing with emergencies and humanitarian disasters have not fulfilled their obligations to provide all living requirements and to provide urgent relief to displaced families suffering from hunger, cold and deprivation of the most basic daily needs such as food items, baby milk, and drinkable water etc.

In a study entitled “The Perspective of Social Quality concerning the Safety, Dignity and Privacy in Camps and Quasi-Camps in Iraq” , the International Organization of Migration indicated, “Adolescents and CwD are the most vulnerable to violence”.

With regard to the situation of refugees with disabilities and the services provided to them, it should be noted that Iraq is not among the signatories of the UN Refugee Convention adopted in 1951, despite the influx of large numbers of refugees from Syria owing to wars and armed conflicts and its geographic location. UNHCR has registered about (245,000) Syrian refugees in Iraq, with the vast majority (97%) living in Kurdistan Region, and 3% in other areas. The chief basic needs of PwD (education, livelihood, food security, water, hygiene, and health) are still not provided in addition to the absence of refugee protection in camps and host communities; this is a chronic emergency context. In fact, if Iraq did not sign this agreement, this will create a considerable legislative vacuum and leave the rights and conditions of refugees to judgment and estimation of the government, which originally suffer from an internal displacement crisis. This makes the issues of accessible environmental and reasonable accommodation in the refugee besides other general services to be totally absent. Therefore, the absence of PwD issues from emergency-response policies is considered a legislative and executive shortcoming .

#### **ISSUES:**

- 1- Have the strategies, plans, and programs in emergencies response rules and measures issued by the Directorate of Civil Defense, the Armed Forces and others been incorporated into the international standards of accessible environment and reasonable accommodation?

- 2- Have specialized training programs for rescue teams been organized based on sign language, and various forms of accessible accommodation to actively communicate with PwD in cases of emergency, rescuing and evacuation?
- 3- Was there any review for the conditions of PwD whether among IDPs or refugees to identify their needs so that equality and equal opportunities can be achieved for them in terms of accessing services?

## Article 12

### EQUAL RECOGNITION BEFORE THE LAW

Iraq has ratified the International Convention and has not declared its reservation to any article, particularly Article 12, concerning "the legal capacity." However, Iraqi national legislations enshrine serious forms of discrimination against the right of PwD to fully enjoy and practice legal capacity on the basis of equality with others, and even, in some cases, these legislations totally deprive PwD of their economic, political and civil rights.

Article 46 (II) and Article 94 of the Civil Code 40 (1951) and Article 7 of the Personal Status Law stipulate that "He shall not be entitled to exercise his civil rights if he was incapable of distinguishing because of his little age, dementia or madness" . In fact, these texts which set the general rule in dealing with PwD and persons with intellectual and mental disabilities in particular and what is known in jurisprudence as "mental" disability, involve the maximum levels of discrimination and exclusion based on unfair generalized provisions, as they principally do not recognize the legal personality of persons with mental and intellectual disabilities. How the legal provision stating that "these persons are not entitled to the exercise of civil and personal rights" can be interpreted when legislators view it as children who are under guardianship or parental care, as the legislator himself makes clear and reiterates it in various laws, including Law 128 of the Civil Law "the mad is treated as a child who cannot distinguish", (who is under the age of seven), and that the insane is treated as a child who can distinguish, (his age is between seven and fifteen)!! according to article 107 of the same law.

In terms of ownership rights, legal conduct, financial management and contracting, the provisions of the Civil Code, the Personal Status Code and the Law of Notaries all have definitive statements that may restrict the freedom of PwD to exercise these acts on an equal basis with others leading sometimes to the denial of the original right and its subordinate rights and liberties. The Civil Code stipulates in Articles 94 and 95 that the child, the mad, and the insane are reserved for themselves, but the prodigal or the stupid shall be judged by the court and the reservation shall be removed from them in accordance with the rules and regulations prescribed by law. The legislator, therefore, emphasizes the discriminative philosophy against people with mental and intellectual disabilities by stating that they are not qualified to carry out legal acts. Eventually, this will restrict or even deny the capacity of PwD and which leave them unable to contract and manage their financial and personal affairs.

If this is the legislator's view of PwD in procedural domains, what can be the case in the practice of fundamental rights and liberties, where PwD face violations and different forms of discrimination. The right to access banking services, the privacy of PwD is breached each time

they try to exercise their right to open bank accounts and during withdrawal as banks in Iraq do not recognize the eligibility of people with visual and hearing disability to benefit and access these services, as the President of Braille Organization in Iraq<sup>15</sup> said that the PwD should be accompanied by two male witnesses every time (s)he wants to withdraw from her/his own account, and these two witnesses have to see the details of the banking transaction and the most accurate details of bank accounts.

In conclusion, the Iraqi legislator has adopted a general rule denying PwD the right to enjoy and exercise their legal capacity on an equal basis with others.

#### **ISSUES:**

1. What has been done to review the national legislations and amending the provisions of legal capacity to achieve full recognition of PwD before the law on an equal basis with others without a disability-based discrimination?
2. What are measures taken to amend the guardianship provisions to achieve the individual independence and privacy of PwD. PwD are supported to help them take the decisions they actually wish through providing the necessary reasonable accommodation that enables them to express their will?
3. What were the steps undertaken to review and amend the banking in-laws, rules and regulations, and all condition imposed on PwD to bring one or more witnesses for cash withdrawal transactions. PwD should be recognized on an equal basis with others by fully recognizing the signature, stamp or fingerprint of PwD. Accessible accommodation and the general design should be provided in different banks facilities which facilitate easy access and full enjoyment of the services of all banks for PwD to achieve the principle of non-discrimination, equality and equal opportunity?

#### **Article 13**

##### **ACCESS TO JUSTICE**

Article 19 of the Iraqi Constitution is the general rule that gives litigation right to everyone, regardless of their nationality or origin, whether they are PwD or not. This article states: "Litigation shall be a protected and guaranteed right for all." Article 15 (VI) -A- of Law 38 (2013) states that among the functions of the Supreme Judicial Council and the Ministry of Justice is the "taking health conditions of people with disabilities and special needs into account in detention places and prisons if the nature and circumstances of the case require such measures". This text shows that it adopts a medical perspective while dealing with the PwD right for litigation as the phrase "care for health conditions." is mentioned verbatim. This perspective, which views PwD as patients, seems consistent with the dominant general trend in national legislation and in relevant policies, plans, and programs as set out in several places of this report.

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<sup>15</sup> In an interview with Dr. Sadiq Al-Maliki, the President of Braille Organization in Iraq

The Iraqi legislature stressed this trend when referring to the right to litigation in many places in the system of national legislation in question. Article 11 of the Code of Criminal Procedure 23 (1971), for example, states that "If the person who is harmed by the crime is not eligible to a civil lawsuit, he shall be legally represented by someone and if there is no one to represent him, the investigating judge or the court shall appoint a person to claim the civil right on his behalf ". where the phrase "not eligible for a civil lawsuit" is interpreted as a child or has a disability in his mind. In fact, this text reflects the legislative philosophy towards people with mental and intellectual disabilities, which was mentioned in Article 12, where the legislator in the Civil Code (Article 94) viewed people with mental and intellectual disabilities as children who either reached or did not reach age of discernment, as determined by physicians or courts.

The legislators of criminal code adopted this approach with a narrower perspective, when they determined that having a "mental disability" can be enough to justify the rejection of plaintiff's complaint, regardless of the degree and nature of disability, through transferring this right to the guardian, which can be considered as another legislative form that enshrines some types of disapproved discrimination, in which the impact of reasonable accommodation is neglected during decision-making.

The lack of clarity of the conditions and the gaps in the definition of obstacles of legal capacity in the Civil Code all have been reviewed because this code has assumed the duty of interpreting the meaning of "madness whether complete or incomplete", not only in relation to legal acts but also in controlling the obstacles of criminal liability as it was described earlier. Therefore, the juvenile court when interpreting the meaning of "non-eligible" will always refer it to the civil law. This means that if the guardian was judged to have a mental or intellectual disability in (based on a medical diagnosis that considers disability as a mere medical condition) this will be adequate to justify separating him from his father or his mother or those with authority over him. Apart from those provisions stated in juvenile legislations, judicial and executive bodies do not seem to have taken measures to guarantee that CwD have the right to litigate on an equal basis with others.

Iraqi legislators addressed the issue of reasonable accommodation through a narrow perspective and confined it to the translation of the sign language to deaf people, whether they were plaintiffs, defendants, witnesses or suspects. In the same direction, Article 15 (VI) - B- of Law 38 (2013) states that among the functions of the Supreme Judicial Council and the Ministry of Justice, is "the provision of assistive technologies for PwD, including the translation of sign language or any other techniques". It is noted that these texts, although they stress on sign language, they did not indicate in any way, translator's requirements to ensure the Court can achieve the maximum degrees of effective communication. The translator should be a noteworthy and reliable expert because there are limited experienced translators in this field.

In an interview with one of signal language interpreters on this issue, he reported that he was an eyewitness to an incident in Diyala province, where the defendant was deaf. An

incompetent interpreter was assigned by MOLSA and his translation before the judge was seriously harmful to the deaf but the expert of sign language interfered and corrected the speech in favor of the defendant deaf<sup>16</sup>. The number of PwD visiting courts for different reasons annually is estimated by (600) people and those visiting notary offices by (1500) people. Concerning accessible accommodation in the courts and the departments attached to them, they lack the most basic forms of accessible environment necessary for the access of PwD. In an interview with IAD President, it has been indicated that PwD generally suffer when entering courts or justice departments because they are not accessible to them. They lack ramps, elevators equipped with sound-control systems, tactile pavements for blind people or signposts for the deaf. Hence, PwD are forced to delegate someone else to visit these places<sup>17</sup>.

#### ISSUES:

- 1- What has been done to review and amend the Code of Criminal Procedure as well as its relevant legislations, rules, and decisions. The Juvenile Welfare Act should also be amended by including the provision of equal opportunities and equality of litigation right for PwD, including CwD, without discrimination, by providing reasonable accommodation and accessible environments in courts, litigation procedures, assistance homes and rehabilitation center?
- 2- Have any plans been laid down for training staff of the legislative, administrative and judicial bodies in terms of human rights and in particular PwD rights?
- 3- Was there any training and technical courses for the employees working in the judiciary and security authorities to achieve the maximum degrees of equal opportunities for PwD in various phases of litigation. These include training on sign language and communicating with people with intellectual disabilities, as well as providing copies of lawsuits and other documents printed in Braille by consulting PwD organizations and CCPDSN?

#### Article 14

##### LIBERTY AND SECURITY OF PERSON

It is noted that the Penal Code serves as a general principle that regards persons with mental and intellectual disabilities as a "threat to public safety" according to Article 495 [IV] which states that "shall be punished by imprisonment for a period of not exceeding one month or a fine of not exceeding 20 dinars any individual who releases in the public road, a mad person whom people are afraid of or a predatory or harmful animal in any way". The punishment of PwD will be much greater than others because they are basically viewed by the administrative governor or by national legislators as "a threat to public safety". Article 105 of the same law states that "the convicted individual suffering from a mental disability shall be placed in a therapeutic shelter in a hospital, mental health facility or any place designated by the

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<sup>16</sup> In an interview with a sign-language interpreter on May 16<sup>th</sup> 2017

<sup>17</sup> In an interview with Mouwaffaq Al-Khafaji, the head of IADO on June 27<sup>th</sup> 2017

government for this purpose, in accordance with the conditions prescribed by law, for less than six months for his care and welfare. "

It should be noted here that detention places in hospitals or clinics are made up of rooms that resemble custody places; there are heavy iron doors, chains and handcuffs used with the so-called "dangerous" people, and during treatment with electric shocks. In the same regard, Article 7 [II] of Law 1 (2005) "Law of Psychiatric Health" states that " a psychiatrist in government hospitals and medical units can decide to deposit a mental patient to a closed therapeutic unit for (72) hours, if it is found that the patient constitutes a threat to himself or to others. The patient during this period should be referred to a medical specialist committee to assess his condition .<sup>18</sup>"

Owing to the sanctity of individual liberty, it is often stipulated in the main articles of constitutions so that it can dominate other legislations. Most constitutions stipulated the preservation of individual liberty and protecting it through practical rules and judicial guarantees like the principle of *Presumption of Innocence, and the Legality of Punishments* and the prevention of violent arrest or treatment without legal justification or the imposition of severe penalties for those who violate them.

Some repressive practices are carried out on a large scale, especially in rural remote areas, where families detain PwD inside the house, and in some cases, the person is bound by iron chains and shackles to the bed or the window. These practices are mostly done to conceal the disabilities within the family so that they are not socially stigmatized. Most of these discriminatory practices are carried out against people with mental and intellectual disabilities, although some people with visual, physical and hearing disabilities may be also affected by such practices, especially the girls.

In an interview with the deputy president of IAD, he indicated that there were several cases of PwD being detained in a nearby area and in a wealthy family. Four males aged over 20 with cerebral palsy were detained and quarantined inside a rented house for them and they were followed up by servants<sup>19</sup>.

With regard to places of detention and judicial custody, reports of the organizations and HCHR indicate that detention and arresting places are not accommodated for PwD as prescribed in Article 13, mentioned above. These reports stress that the concepts of accessible environment and accessible accommodation are completely overlooked by those who supervise these places, which exposes detainees and convicts with disabilities to face very difficult conditions, where there is no equality nor equal opportunities when compared to what is available to their counterparts who have no disabilities.

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<sup>18</sup> <http://www.iraqlid.iq/LoadLawBook.aspx?page=1&SC=280220061960012>

<sup>19</sup> In an interview with Mouwaffaq Al-Khafaji, the head of IADO on June 27<sup>th</sup> 2017

## ISSUES:

- 1- Was there any Review or amendment of legal provisions that deal with people with mental and intellectual disabilities as a potential source of threat to public safety or a source of harm to themselves or others?
- 2- What are the legal, administrative and awareness-raising measures which have been developed to prohibit all forms of forced institutionalization whether it is for treatment, education or care?
- 3- Was there any programs of family rehabilitation and guidance and programs of technical support, especially in remote rural areas to establish the principle of acceptance PwD as a natural human diversity?

## Article 15

### FREEDOM FROM TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

National legislations does not include any definition of torture that is in full compliance with what has been described in Article 1 of UNCAT which was ratified by Iraq in 2008 without ratifying its optional protocol so far. The Iraqi legislator only provided an implicit description of torture in Iraqi Penal Code 111 (1969).

Provisions of Law 38 (2013) did not include special provisions relating to the prohibition of experimental medical practices or those involving some forms of torture or violence against PwD.

Physicians' Code of Conduct (1985)<sup>20</sup> criminalize experiments "unless they were performed for mere scientific purposes in a research center or in a training scientific center". This article describes the practice as a form of torture punishable by law, which is "not permitted by law", which clearly indicates that torture may be legitimized whenever authorized or approved by law or custom. If this text is read in conjunction with Article 41 of the same law which states that "shall not be criminalized if the act is committed in the exercise of a right established by law", and it also states in Paragraphs 1 and 2 to include "the types of discipline through which the parents punish their children in such a way as not to cause harm to them as permitted by public custom". Certain practices are not classified as a crime although they involve a physical or psychological harm to the individual.

So, people are not properly protected from the inhumane household practices that will be committed frequently under the guise of "discipline and custom". Due to the fact that PwD are more vulnerable than others to violence and abuse owing to stigmatization and stereotypes (which is indicated in several places in this report), the weak protection offered

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<sup>20</sup> <https://iraqma.com>

to them is a matter of great concern and deserves immediate review in order to provide a solid legal protection at the household, institutional and community levels.

Although the law did not directly mention in its articles the issue of domestic violence against CwD, the law can provide a lot for this group if it is applied. The prevalence of the phenomenon of violence against CwD may not only be the fault of the family itself, but also the community and charities concerned with that segment as well as the government. The adoption of special education by Iraq at the expense of inclusive education and the active involvement of PwD in general and CwD in particular is among the most significant factors contributing to the creation of exclusive environments that evade control and lack the criteria ensuring that PwD enjoy a firm legal protection against violence, torture or other inhumane treatments or punishments.

#### **ISSUES:**

- 1- What are the measures taken to incorporate special provisions in Law 38 (2013) that criminalize the harmful practices towards PwD on the basis of their disability, whether practiced in an institution or inside or outside the family?
- 2- How the monitoring and following up mechanisms were established to protect CwD from any practice involving torture, punishment or inhuman treatment that may be committed in educational or social welfare institutions?
- 3- What are the steps taken to provide technical support and family guidance through community-based rehabilitation programs for families on how to deal with disabilities and the necessary reasonable accommodation, especially in remote and rural areas?
- 4- What are measures taken to ratify the optional protocol of UNCAT?

#### **Article 16**

##### **FREEDOM FROM EXPLOITATION, VIOLENCE, AND ABUSE**

The Ministry of the Interior (MoI) has established the Directorate of Family and Child Protection from Domestic Violence<sup>21</sup> on the recommendation of the High Committee for the Protection of the Family formed under the Diwani Order 80 of 2009. This department belongs to MoI and currently consist of the headquarters of the Directorate besides 16 departments with two in Baghdad, and other departments are distributed in other governorates. The Directorate deals with cases of domestic violence, such as physical, sexual, mental, intellectual or economic abuse committed or threatened to be committed by any member of the family against another family member, and is judged as a "misdemeanor, felony or breach" according to law.

These initiatives and measures did not clearly include regulations for PwD in terms of defining, characterizing and classifying violence, whether it is caused by stigmatization (still regarded by some people as a component of customs, to the extent that certain practices are legitimized although involving violence or ill-treatment, under the guise of "discipline and

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<sup>21</sup> <http://moi.gov.iq/index.php?name=Pages&op=page&pid=111>

what is permitted by law or custom." according to the provisions of Article 41 of the Penal Code.

Family violence against CwD, whether physical or psychological, is one of the most serious and widespread phenomena in Arab societies in general and in Iraqi society in particular. It can be attributed to several factors, some are related to the society in general and, sometimes, families who have children with disabilities and special needs are shown in a bad light. Sometimes it may be attributable to social and cultural factors or to the nature and behavior of CwD themselves. The phenomenon of violence against CwD seems to be something normal and permissible as a type of controlling them. There are many forms of violence against CwD such as beating, negligence, imprisonment, preventing them from eating or leaving them on the streets for hours or even days without any care. Some families hide their CwD when they fear that their disability may prevent their brothers and sisters from getting married. The families may completely deny them and even hold them in a distant place in the house to avoid the negative attitudes of people or because some people believe that these diseases are hereditary and thus can reappear in the remaining family members who have not disabilities after their marriage in particular women with intellectual disabilities. Some cases of physical disabilities such as paralysis, blindness or other disabilities that are not related to the mind, may be transformed by ill-treatment and violence into psychological and neurological diseases. Thus, parents or society contribute to exacerbating such problems.

In fact, national legislations and policies of protection from violence, exploitation, and abuse generally lack the effectiveness and the assumed deterrence of such practices. On the other hand, there is a weakness in national strategies and plans for protection from violence in general and those related to protection against domestic violence of PwD, in particular, WwD.

#### **ISSUES:**

- 1- What has been done to review the provisions of the Penal Code, and cancellation of "discipline and custom" as a reason for allowing violence and abuse against children and women?
- 2- Are there any measures taken to develop a national plan to eliminate all forms of domestic and non-domestic violence and exploitation, and ensuring that PwD and their organizations have real representation and active involvement in designing, implementing and monitoring such a plan?
- 3- What are the accommodation measure taken to design specialized programs for family counseling and awareness-raising, especially in remote areas and poor communities, to promote a culture of diversity and acceptance of others and to eliminate social stigma and stereotypes about disability?

## Article 17

### PROTECTING THE INTEGRITY OF THE PERSON

For medical treatment, the Iraqi legislature adopts a perspective that requires patient consent who should be free and well-informed about treatment methods and techniques, as a "general base", as stipulated in the relevant legislation. Sub-paragraph -B- in Paragraph [IV] of Article 91 of the Public Health Act 89 (1981) states that "surgery may be performed only with the consent of the patient himself, if he is conscious, or one of his accompanying relatives if he is unconscious or minor, excluding the situation of death or danger, if delayed. In this case, it is permissible to perform surgery, to save the life without the consent of the patient" .

In the same direction, the Iraqi Penal Code regarded the medical treatment among the reasons of permissibility provided that the patient was satisfied. Paragraph 2 of Article 41 of this law states in that the physician will not hold responsible for "surgical operations or treatments when performed with the consent of the patient or his legitimate representative, or was performed without a consent of both in urgent cases." Article 7 [I] of the Mental Health Act 1 (2005) states that "an involuntary patient shall not be detained or treated involuntarily unless he poses a threat for himself or for the society".

In the same direction, in the Law of Medical Syndicate No. 81 (1984)<sup>22</sup>, in "disciplinary provisions", Article 23 states that "any member who violates the duties of the profession or performs any prohibited act or an act that derogates the profession or fails to implement the decisions of the Syndicate according to the provisions of this law will be subjected to the penalties contained therein without prejudicing any action taken against him by other laws" .

Although these provisions require patient's consent for any medical practice or treatment, such a consent is restricted in cases of "incapacity and disability", and the consent authority becomes fully vested to the guardian or custodian". This is limitation in the light of the stereotypical view of legislators towards PwD, especially those with mental and intellectual disabilities, as incapacitated, as someone who lacks legal capacity, there will be inevitably a restriction and coercion of therapeutic medical practices, as determined by the guardian or custodian alone, without being challenged. There is no mechanism to follow-up to the implementation of the right of PwD to physical integrity. This point was supposed to be on the agenda of the National Center for Human Rights for it is the national institution that monitors the situation of human rights in Iraq besides the Monitoring Department for Human Rights, however, the annual reports of the Center totally lack the analytical and statistical aspects of PwD rights in general.

### ISSUES:

- 1- What are the step taken to adopt a general national policy for PwD and their organizations by ensuring that they have an active role. This policy should ensure a strong framework of civil and criminal protection of physical integrity and safety?
- 2- What can be done to prevent all sorts of violations against PwD through amending the provisions of the Public Health Act and the Medical Syndicate Law to limit

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<sup>22</sup> <http://wiki.dorar-aliraq.net/iraqilaws/law/6952.html>

- physician's authority to forced treatment or forced institutionalization and to guarantee the right of PwD to have a free and well-informed consent to any medical practice done for them?
- 3- To what extent reasonable accommodation is taken into consideration in the adoption of the decision-support model for people with mental and intellectual disabilities to ensure their right to decision-making and self-determination in therapeutic medical practices?
  - 4- What are the measures taken to review the functioning of mental health hospitals and designing their facilities to achieve unrestricted inclusive treatment, within the framework of full respect for the person's will, privacy, and dignity?

## Article 18

### LIBERTY OF MOVEMENT AND NATIONALITY

Nationality Law 26 (2006) clearly discriminates against persons with mental and intellectual disabilities. Paragraph -C- of Article 1 "terms" states that "age of majority" in Iraqi law means "the age of majority in which a person with a full capacity enjoys all his rights and fully accountable towards others and he held responsible for all his acts. However, not all people reaching majority age have the full capacity as there maybe a person who exceeds this age even though the partial capacity or may be deprived of eligibility at all due to some reasons that make the person lose his eligibility partially or totally.

These reasons fall under what is called the impediments of legal capacity which include madness, insanity, dementia, and negligence which are all related to the discrimination of the person, which consequently affect the eligibility. The legal provisions of the Iraqi law have adopted such a discriminatory perspective; nationality is not granted to those people unless their guardian or custodian is present with a verifiable fingerprint as it is described in several places in this report, especially Article 12 relating to legal capacity. Then, Article 6 of this law<sup>23</sup> stipulates the conditions for granting Iraqi nationality, after a long stay (10 years) for non-Iraqis. The conditions are; he must be "of majority age" (Paragraph -A-), "free of communicable diseases" (Paragraph -F-), (which include diseases like acute flaccid paralysis and poliomyelitis).

This clearly emphasizes the legislator's discriminatory view towards PwD as far as granting and obtaining nationality is concerned and dealing with it as a general base. These provisions clearly show that the Iraqi legislature expressly excludes people with mental and intellectual disabilities. The law goes further through excluding all PwD from the right of acquiring nationality for non-Iraqis, considering that PwD are "burden on society". It is unclear how the legislator determines a person is considered a burden or a producer. There is no doubt that the final criterion for deciding this will be either the personal assessment of the employee

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<sup>23</sup> <http://www.mofa.gov.iq/ab/submenu.php?id=58>

concerned or a medical report from a relevant committee to which he refers in every right exercised by PwD. This approach by the legislator, actually, contradicts the principles and purpose of the Convention. It also contradicts the provisions of Article 18 of the Convention. As for registering of CwD immediately after birth, it is mandatory and Article 15 [I] -F- of Law 38 (2013) referred to the "registration and following up children born with a higher risk of disability."

#### **ISSUES:**

- 1- Have any measures been taken to revoke the discriminative provisions stipulated in Nationality Act 6, Section VI, Clause (b) that deprives people with Acute Flaccid Paralysis or Poliomyelitis from acquiring nationality since these two diseases are regarded infectious? similarly, what are the steps adopted to ensure the registration of newly born children regardless to their disability?
- 2- What are the measures taken to adopt a national policy in which PwD and their organizations play an effective role. Such a policy should aim at eliminating environmental and behavioral obstacles in all government departments, airports and harbors and ensuring PwD right to move from and to the country with a complete independence and privacy?
- 3- Have been any practical training courses organized for employees working in government departments, airports, harbors and border crossings on human rights and PwD rights?

#### **Article19**

##### **LIVING INDEPENDENTLY & BEING INCLUDED IN THE COMMUNITY**

Article 17 of the Iraqi Constitution guarantees the right to independent living and the sanctity of housing, and Article 2 [II] of Law 38 (2013) refers to "creating the requirements for the inclusion of people with disabilities and the special needs into society". Article 15 [IV] -F- refers to "training the families of persons with disabilities and special needs on how to deal with them properly and care in a manner that does not affect their dignity and humanity."

It is clear that Iraqi legislators do not adopt a clear concept of the right of PwD to live independently; the medical caregiving approach is dominant during legislator's handling of this issue, which aims basically to promote integration, equality and equal opportunities. This demonstrates that legislators consider that the measures of habilitation, rehabilitation, and support services for integration should be within the framework of institutional care, and this does not go along Article 19 of the Convention.

Among the advantages of Law 38 (2013) is that it contains measures and provisions of personal companions for PwD. Article 19 states that "people with disabilities whose degree of disability prevents them from meeting their normal life requirements and who require a caregiver to meet their needs continuously and which is determined by a medical committee, are entitled to have a dedicated assistant on the expense of the Government". The work is underway by the CCPDSN for the purpose of enabling PwD financially, as the Commission

deems appropriate, regardless to the allocation of forms of humanitarian assistance as a personal assistant in accordance with Article 19 -B.

Article 15 [I] -H- refers to the "providing community-based rehabilitation (CBR) for persons with disabilities through describing individual and joint projects in accordance with their health condition and providing technical advice to the parties that provide and prepare housing for them.". This text is supposed to achieve the principle of integration and enabling the family psychologically, economically and medically by building the capacity of the family to reach a safe community that integrates PwD. Inclusive CBR through the CBR matrix<sup>24</sup> that makes the services inclusive and accessible to all PwD, their organizations and their families, in accordance with the provisions of CRPD and included in the guidelines for CBR programs of WHO.

In order to achieve independent living and inclusion in society, all rights and liberties ensuring the equality of PwD with others must be obtained in terms of providing reasonable accommodation and full integration into the family and community and to prevent them from social isolation. Work is underway for the gradual repealing of sheltering.

## ISSUES

1. What are the measures that are expected to be available in order to develop the capacities of the staff of the ministries of Education, Health and Labor for the sake of broadening the concept of social rehabilitation, which in turn ensure the independence of PwD?
2. What are the accommodation measures adopted to support the guidance programs and domestic support to consolidate the acceptance of disability within the family?
3. What are the measures that can be taken to determine the requirements of the accessibility of social services on the local levels and how to adapt them to PwD? Has there been any fund allocations in the public budget to support PwD independence and inclusion in the society?

## Article 20

### PERSONAL MOBILITY

Article 15 [VII] of Law 38 (2013), regarding the functions of the Ministry of Transportation (MoT), stipulates "A- The provision of transportation means to ensure the free, safe and secure movement of people with disabilities and special needs as well as their companions, B- Obliging tourism companies to secure at least one accessible vehicle to transport them easily. C- Reducing the price of air tickets for people with disabilities and special needs by 50% twice a year. However, only Clause (C) is really implemented as an initiative from the Ministry of Transportation. Meanwhile; the adopted Traffic Act 86 (2004)<sup>25</sup> does not include any reference to PwD rights. The right of PwD of enjoying a personal mobility is attributed to a

<sup>24</sup> [http://apps.who.int/iris/bitstream/10665/44405/40/9789290218777\\_empower\\_ara.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/44405/40/9789290218777_empower_ara.pdf?ua=1)

<sup>25</sup> <http://www.iraq-ig-law.org/en/node/358>

developed view that takes the priorities of these people into consideration. Therefore, the efforts in this context are supposed to begin with the believe in the significance of this right so that it can be provided in the suitable and required manner.

#### **ISSUES:**

- 1- What are the time frames for the provisions of Law 38 (2013) should include measures and provisions concerning PwD right to movement and personal mobility, separated from the functions and requirements of the Ministry of Transportation?
- 2- How accommodation is taken into consideration during providing the necessary tools and techniques for moving from well-known sources, as well as providing them in local markets at low prices, and developing local sources to manufacture them in accordance with international specifications and standards?
- 3- What are potentials to hold training a specialized staff about the art of orientation, movement and mobility with the focus that the trainers to be themselves?

#### **Article 21**

##### **FREEDOM OF EXPRESSION, OPINION, AND ACCESS TO INFORMATION**

Although the Iraqi Constitution has guaranteed the right of expression for all people in accordance with Article 38, "The State shall guarantee in a way that does not violate public order and morality: a) freedom of expression using all means; b) freedom of press, printing, advertisement, media and publication, and c) freedom of assembly and peaceful demonstration, and this shall be regulated by law. "To date, no law has been enacted regarding freedom of expression or the right to information, including Law 38 (2013). On the ground, the exercise of PwD of their right to express, to access and to receive information reflects this gap in legislation and policies.

All research centers and newspapers in Iraq do not have publications accessible to PwD so that they can read and benefit from them effectively. In a meeting with a group of students with visual disabilities at the University of Dhi Qar, a large number reported that they face a real difficulty in accessing information because references and publications related to their specialties are inaccessible which makes it impossible for them to use them freely and independently on an equal basis with others. Balsam, a postgraduate student with visual disabilities, said she was unable to obtain information, and she was forced to buy references from abroad to complete her research<sup>26</sup>.

Although MOLSA has developed a unified dictionary for sign language and prepared qualified interpreters while there are not specialized schools or institutes for sign language interpretation. However, governmental institutions lack such facilities which aggravates the suffering of those with hearing disabilities when they visit hospitals and service and judicial entities since they have to request sign-language interpreters from MOLSA during these visits.

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<sup>26</sup> In an interview with the student Balsam on July 11<sup>th</sup> 2017

There are initiatives by various parties to provide some tools and techniques supporting PwD to easily access information. For example, the presidency of the University of Dhi Qar has distributed computers equipped with screen reader program on students with visual disabilities. Some organizations, in coordination with MOLSA, distributed computers to some students of Noor Institute in Baghdad.

Access to information is one of the most important elements in the process of social integration of this group through using computers equipped with Braille or talking technology. However, such computers are not affordable for all PwD. On the other hand, PwD are rarely taken into consideration in daily communications and transactions. For example, official news bulletins are confined to sign-language interpreting in the Iraqi satellite channel, for only one hour per a day. There are official and non-official media initiatives by satellite channels at certain events in Iraq, where their audio-visual coverage does not exceed ten minutes because disability is not a priority for media decision-makers despite the athletic and artistic achievements of PwD. This means a lack of interest in this subject and the marginalization of this class of society in media and press. Furthermore, there is no specialized press in this regard.

After conducting these interviews, it was shown that access to information can be another barrier for people with hearing and visual impairments, and there is scarce accessible information to PwD. Fortunately, PwD gained some information about rehabilitation centers when they deal with the medical referral system. Otherwise, PwD seem to have great difficulty in accessing information about centers for children's education, social support centers, and vocational training. The improper dissemination of information seriously hampers access to services.

#### **ISSUES:**

- 1- What are the measures expected to be available in various governmental or private entities in their publications and bulletins regarding environmental accessibility and reasonable accommodation to provide an equal access to information, data, and statistics?
- 2- What are the reasons that prompt the Ministry of Education not recognize the dictionary of sign language? Is there any preparation of adequate numbers of qualified interpreters?
- 3- What are the reasonable accommodations adopted to guarantee the right of access to information and placing it within the framework of the right to expression, as stipulated in the general principles and commitments of CRPD?
- 4- Are assistive devices, tools and various forms of reasonable accommodation are provided as they contribute to elimination of environmental and behavioral barriers that prevent PwD from enjoying their right to expression and accessing information, based on a strategic framework?

## Article 23

### RESPECT FOR HOME AND THE FAMILY

The adoption of the discriminatory perspective by the Iraqi legislature concerning the legal capacity of PwD in general, and people with mental and intellectual disabilities in particular, and on-the-ground practices of various systematic forms of violation of the right to privacy as described before in this report, all act as a stumbling block to PwD to enjoy their right to have a family and to prevent respecting their family life on an equal basis with others. The Personal Status Law 188 (1959) stipulates in its third chapter "eligibility section" in Article 7 that "1-marriage capacity requires sound mind and age of 18 years shall be completed." 2.

The judge may authorize the marriage of a mentally ill spouse if his marriage does not harm the community if it is in his personal interest provided the other spouse accepts the marriage explicitly". This text clearly demonstrates the extent to which national provisions are discriminatory against PwD in relation to their right to marry and form a family. The legislator stipulates the prerequisite of "sound mind" as a general rule for the marriage of individuals and then mentions an exception to that rule, which is not less discriminatory and exclusory against people with mental disabilities. The legislator showed that this exception is only a warrant that the judge may or may not resort to. The legislator also introduced further discriminatory restrictions required for the implementing this provision which is "the existence of interest". In addition, the provision view PwD as a potential source of danger to society or they may genetically pass the disability to its offspring. It is interesting to note that the entire text relies on medical reports to determine the interest and danger level, which clearly enshrines the absolute medical authority in all matters relating to PwD and the exercise of their basic rights and liberties.

Article 15 [IV] (G) and (H) of Act 38 (2013) sets forth a number of provisions concerning the family life of PwD in paragraphs (F) and (G). These provisions were about the need to "train families to deal properly with persons with disabilities", rehabilitating CwD and providing "alternative care in case the family was unable to do so." The Act, however, did not referred to the economic empowerment of the families that have CwD in order to meet their needs without depending on the regulations of the Ministry of Planning concerning the controversial poverty line, and it did not specify what is meant by the alternative care and when it should be provided, however, the general trend tends to be sheltering, which does not achieve full and effective inclusion for CwD.

PwD with all types of disabilities face real discrimination by families trying to establish marriage relations with them; in most cases, they are rejected. Such a discrimination is not confined to PwD themselves but extends to their sisters, brothers, and relatives. In an interview with a sign language interpreter, who is a son of deaf parents, he indicated that the marriage of him and his brother was refused for believing that their marriage will inevitably produce children with hearing impairments. They finally married women with hearing disabilities because they understand the problem, and they gave birth to children with normal senses, especially hearing.

## ISSUES:

- 1- What is the nature of measures taken to promote the right of all PwD to marry and form a family should be free from any form of restriction or discrimination?
- 2- Was there development of standards and rules for alternative care measures for CwD if they have been denied by their families or the families were unable to care for them. Such standards and rules should ensure nurturing them in an inclusive family environment that supports their active involvement in society?
- 3- What are the measures taken by the state regarding the economic empowerment of families that have CwD?

## Article 24

### EDUCATION

Iraqi constitution guaranteed the right to education for all Iraqis in Article 34. Also, Article 15 [II] (A) of Law 38 (2013) stipulates the "providing opportunities for public and private education as well as vocational and higher education for people with disabilities and the special needs for those capable of it". Article 15 [II] and 15 [III] ( duties of the Ministries of Education and Higher Education) stipulate the "provision of primary and secondary education for people with disabilities and special needs according to their abilities, as well as special education programs, inclusive educational integration, and parallel education. Educational and learning curricula should be developed to suit the readiness of people with disabilities and special needs. Higher education should be provided through allocating one seat in each field of graduate studies for people with disabilities and special needs" .

Law 22 (2011) in Article 14 [II]<sup>27</sup> states that "the Ministry may establish classes and schools to ensure: a. welfare and education of people with slow learning and people with hearing or visual impairments. b. the welfare of the outstanding and talented." MoE has created the Special Education Division within the Directorate of Public Education. However, special education systems are not inclusive at all, because it is based on opening schools with assistance classes that include PwD students, without having any sort of inclusive education. Although the national strategic plan for education in Iraq covers the period from 2011 to 2022<sup>28</sup>, it has stopped at grade Four which is isolated from the rest of the school in the so-called "special education class". Concerning plan, work is underway implementing the project of the complementary stage for the special classes of grades Five and Six by means of the academic and vocational education which is equivalent to the primary education. The project is also implemented through developing curricula and preparing manuals for workshops and handcrafts.

The Director-General of Education in Karkh, in an interview with the Monitoring Group<sup>29</sup>, stressed on the importance of inclusive education in line with its general principle that prioritize the achievement of inclusive education for students. However, Education Act 22

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<sup>27</sup> <http://www.iraq-ig-law.org/ar/content0-2011-لسنة-22-التربيه-رقم-22-لسنة-2011>

<sup>28</sup> <http://iraqieconomists.net/ar/wp-content/uploads/sites/2/2013/07/3-5-2012-strategy-1.pdf>

<sup>29</sup> In an interview with Mr. Qais Al-Kilabi, Director-General of Karkh Directorate of Education on June 28<sup>th</sup> 2017

(2011) indicated that it aims at promoting the departments and staff of Special Education within the Ministry and all its affiliate directorates in the governorates. Moreover, Article 38 (2013) refers in some way to the concept of special education when it states “a. providing various types of primary and secondary education for those with special needs according to their capacities, and the curricula of special education, inclusive education and parallel education”.

“The education system for PwD in Iraq is somewhat good but needs more attention and development so that it can be fully inclusive”, the Director General of Karkh Education II said (see Annex III). Inclusive education in the national strategy emphasizes the concept of integration and increasing the numbers of inclusive schools, in line with its general objective which prioritizes inclusive education for CwD students, and Law 38 (2013), gives priority to strengthening the departments and staff of special education in MoE and its various departments in all governorates. Owing to the scarcity of accurate and detailed data on all issues related to disability in general, and the lack of education, in particular, makes it difficult and complicated to determine the numbers of CwD students and classify them according to sex, class and the nature of the institution they are enrolled in. What it is more, the Directorate of Special Education rarely releases data concerning their activities and figures.

Most observers confirm that MoE has only one single statistical statement that shows the number of students with learning difficulties enrolled in the "special classes" which are isolated classrooms inside mainstream schools. These classes are called “resources rooms” and they lack the simplest visual aids, in which students with learning difficulties are assessed and individual plans for teaching them are developed. Statistical data collected by the Department of Educational Planning in the academic year (2012-2013) (see Annex IV).

Concerning MOLSA, Regulation 4 (1991)<sup>30</sup> on the Institutes of Welfare and Education of Disabled People, also emphasized the isolationist and exclusive trend while dealing with PwD, especially in the field of educational services. The regulation further confused the overlapping roles and powers in educational facilities for PwD. Under this regulation, the authorities of licensing and follow-up PwD institutes are restricted to MOLSA-Social Welfare Department. In Iraq, there are (17) institutes for the education of people with mental disabilities and autism disorder, with (6) in Baghdad and (11) in other governorates. These institutes provide the following services; education and learning, health, social services, recreational services, free transport means. Meanwhile institutes of physical disability cover hearing, speaking, and physical disability, blind and vocational rehabilitation. There are (34) institutes with (23) in Baghdad and (11) in other governorates. These institutes provide the following services: education, curricula, health, social services, recreational services, free transport service<sup>31</sup>.

It becomes clear that there are multiple executive and supervisory bodies with overlapping roles in educational institutions, which are very important and sensitive institution. In fact, the main reason behind the adoption of the special education approach that dominates inclusive education is the same medical caregiving approach that views PwD as patients, and

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<sup>30</sup> <http://wiki.dorar-aliraq.net/iraqilaws/law/14111.html>

<sup>31</sup> In an interview with Dr. Abeer Al-Chalabi, the Director-General of the Directorate of Social Welfare on June 24<sup>th</sup> 2017

not equal people before the law, with the same rights and duties once the necessary environment and equal opportunity were enabled for all. Medical reports issued by the disability diagnosis centers or other accredited health institutions are still the prerequisite for CwD students to access different education stages. The provisions of Regulation 4 (1991) on the Welfare Houses and Institutes for Persons with Disabilities states that "the general requirements for admission to the House or Institute are: first, the disabled person should be diagnosed by disability diagnosis center in Baghdad or other technical committees in the governorates, to determine the type and degree of disability from the, except the elderly; second, free of communicable diseases", in addition to other conditions and regulations.

This measure does not seem to be sufficient to diminish the unilateral medical perspective of disability as it completely ignores the involvement of the stakeholders themselves in setting the criteria and requirements needed for exercising the right to education, particularly when it comes to the identification of environmental and behavioral barriers and the holistic view of disability, away from judgments based on the unilateral care-giving perspective that forms the basis of special education in its traditional sense. As this science alongside its applications does not pay attention to the principles of human rights and CRPD and the general obligations imposed on the signatories to ensure equal opportunity and equality for PwD in exercising their right in education in an environment free of various environmental, exclusionary and discriminatory barriers.

The adoption of diagnostic medical reports as a condition and a criterion for exercising the right to education of PwD leads to some serious consequences. For example, some poor families may need to issue medical reports that contain inaccurate information about the type and degree of their child's disability in order to obtain specific financial benefits, such as the monthly allowance granted by the social protection network in MOLSA to people with severe disabilities including severe mental disabilities, cerebral palsy or multiple disabilities.

These families seek the issuing of a report which indicates that their child has a disability covered by the allowance, which also determines the institution to which the child will be enrolled. CwD will not be accepted in institutes unless he has a severe mental disability or cerebral palsy. If disability was simple or moderate, CwD will not receive significant educational programs and services, and even they may have negative impacts because there should be specific educational programs and measures for CwD with a simple or intermediate mental disability. In the same token, some families seek to have a medical report indicating that their child has a moderate mental a disability either to enroll him in a mainstream school or to avoid the social stigma that will be inflicted on the family if neighbors and relatives know that one of them is enrolled in a welfare or sheltering institute for children with severe or moderate mental disabilities.

In an interview with a parent, he said that "some medical committees are responsible for distorting the image of special-education classes by accepting certain problematic cases such as deafness, severe mental retardation in the special classes due to administrative corruption or favoritism. This greatly motivates parents to prevent their children from joining these special classes". According to data from MOLSA-Directorate of Social Welfare, the total number of CwD students enrolled in the classes that belong to PwD welfare institutes was (3096) in 2015 (1946 males and 1150 females). Ironically, a focus group has told the Monitoring Group that at the Institute oh Hearing and Speaking Disabilities (which has 1480

students), "the first four grades are almost the same as the curricula of MoE, while the fifth and sixth grades have eased curricula and some materials are cancelled, while the seventh grade is a vocational qualification, while it is supposed to be taught within the curriculum of vocational rehabilitation institutes. So, MoE does not equalize their certificates as a primary degree, despite the objections of the Department of Social Welfare on this matter.

In an interview with the director general of the Department, she stressed that "In 2015, there was cooperation between their department and the directorates of MoE regarding the development of special curricula for people with hearing and speaking disabilities so that they can get certificate of primary education, but she was surprised by the decision of MoE not to grant students with hearing disabilities the primary education certificate even they passed the examinations specified to them" . Therefore, students with hearing disabilities were stripped of their right to education and they were forced to join vocational education only (like carpentry, blacksmithing, tailoring, car mechanics, painting on glass) because no reasonable accommodation was adopted to enable them to easily exercise their right to education. Apropos of reasonable accommodation and the adaptation of curricula, Article 15 [II] (C) stipulates the "development of educational curricula commensurate with the preparedness of persons with disabilities and special needs".

There are, however, considerable limitations in this regard that prevent equal opportunities and the accessibility of PwD to basic and higher education as well as to services provided to students without disabilities.

Respecting students with visual disabilities, the curricula in basic education are printed in Braille at the Nur Institutes of MOLSA, meanwhile, in high schools, they are taught through listening in inclusive schools. For mathematics, it is taught in a simplified way; during exams, blind students are exempted from mathematics, chemical equations, mathematical questions in physics and drawings of biology. The tests are performed through accompanying. The hardest obstacle facing the blind students is the English exam because the person being assigned to him for writing his answers should not be an English teacher and the exam requires spelling and writing of words by the authorized person. This is why blind students get the lowest marks, and they were forced to print the English language curriculum at their own expense in Egypt so that they can spell words to the authorized person. Another barrier for students with visual disabilities is that they should pursue the literary branch and not allowed to the scientific or commercial branch. Therefore, their options are very limited in higher education and confined to the faculties of law and arts.

Students with mild and moderate mental disabilities are among the most discriminated and excluded PwD in the field of education. The Department of Welfare of Persons with Special Needs has shown that students with mental disabilities are accepted and classified according to their age (6-15 years). "People with mental disabilities and autism disorder receive lessons in computational and linguistic skills and religious education in accordance with special curricula developed by the Department of Mental and Intellectual Disabilities. These services do not include curricula approved by MoE in mainstream schools. To date, no student with a mental disability has reached the level of higher education, nor has any of them received a high school diploma because they are excluded from the mainstream education on the pretext of "incapability or inability to learn".

The medical report is what determines whether children with mental disabilities can be admitted to mainstream education schools, or in institutes of mental retardation and autism disorder, regardless to environmental and behavioral obstacles and lack of accessible environments and reasonable accommodation necessary for full and effective enjoyment of children of their right to education on an equal basis with others out of any form of discrimination. In terms of accessible environmental in public schools and colleges in general, as noted in Article 9 of this report, it is noted that all schools are not fully accessible to accommodate PwD students. On the higher education level, only University of Baghdad can be regarded to some extent accessible to PwD with mobility disabilities.

In an interview with Mahmood, a third-year student at the faculty of Law<sup>32</sup> suffering from quadriplegia, he said, "the university stage is one of the most difficult stages in my life because the college building is not accessible. My class is on the top floor, and I had a great suffering because there was no elevator and the students always carried me to the hall until they got bored of carrying me. In the second year, all my colleagues left me alone on the upper floor for two hours which prompted me to despair and cry. The dean saw me and started laughing. I felt that I was a burden on society. Then I had a state of frenzy and shivering resulting from excitement". This is what we always emphasize in more than one previous article concerning the negligence of PwD.

In this case study, there are other obstacles faced by Syrian children refugees with disabilities who live in the camps and these obstacles are related to their tragic situation. Actually, there are no inclusive schools in the camps and these children cannot attend public schools due to their official documents, which are often taken by the authorities. In addition, there is also a language barrier if the refugees were in camps of Kurdistan region .

#### **ISSUES:**

1. What are the measures taken to ensure the accessibility of CwD to education facilities according to the legal commitments regarding inclusive education?
2. Is there any deadline defined to review and amend Education Act 22 (2011) and Act 38 (2013) to ensure equality and equal opportunities in terms of various stages of education according to the principles of the Convention?
3. When the MoE shall acknowledge the certificate of the primary level of persons with hearing disabilities?
4. What are reasonable accommodation measures offered to CwD in mainstream and inclusive schools, if any? Is there any database about their needs?
5. When accessible environment shall be adopted in schools and universities and when curricula shall be adapted to ensure that students with disabilities will have equal education opportunities?
6. What has been done to promote sign and braille language and training the educational staff to use it effectively?

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<sup>32</sup> In an interview with the student, Mahmood on July 4<sup>th</sup> 2017

## Article 25

### HEALTH

Iraqi constitution has stipulated in Article 31 [I] "Every citizen has the right to health care. The State shall maintain public health and provide the means of prevention and treatment by building different types of hospitals and health institutions. Article 15 [I] (B) stipulates "the development and implementation of preventive programs and health education, including laboratory and field surveys for the early detection of disabilities". There should diagnosis, scientific classification and medical reporting to be carried out for PwD.

This provision has led to the medical caregiving approach in dealing with disability which consequently undermined PwD right to health. This right is was devoted to educating and warning them about disabilities and how to avoid them and prevent them, instead of ensuring that PwD can access different health services, on an equal basis with others.

Public Health Act 89 (1981) does not include any provision or measure relating to PwD right to health on the basis of equality with others, except what is stated in Article 24 "in the field of mental, intellectual and neurological health, and providing health care to the following cases: a) mental retardation, b) senile dementia, and c) epilepsy. Respecting health insurance for PwD, Article 15 [I] (E) of Law 38 (2013) stipulates "granting free health insurance to people with disabilities and special needs" (however their families are not covered by such an insurance) through health services provided by various facilities of MoH in Iraq.

There are 239 hospitals in the public sector and the hospitals are classified as general hospitals, hospitals for gynecology and pediatrics, emergency hospitals and specialized hospitals with (4) hospitals for medical rehabilitation. There are (2331) primary healthcare centers, (126) specialized centers including (21) PwD rehabilitation centers.

There were some ironical answers highlighted by focus groups<sup>33</sup> conducted in the cities of Baghdad, Karbala, Amara and the outskirts of the provinces and rural areas. The respondents reported that after 2015, they face great difficulties in exercising the right to treatment; hospitals are not prepared to receive PwD, there is difficulty in communicating with medical and administrative personnel, poor experience in dealing with PwD, lack of physical therapy centers in remote and rural areas, lack of sign language interpreters in health facilities, and the high costs of medical and therapeutic services. Some institutions are self-financed, although the law stipulates that the services provided to PwD should be free of charge. Surprisingly, PwD were exempted from paying the wages of seeing a doctor and the other services by the letter No. 20832 on 27/3/2016 provided that they show PwD IDs according to Law 38 (2013) although CCPDSN has not issued such IDs to date. However, this exemption is exercised by healthcare authorities in a subjective way; some PwD are exempted while others are not. This is a violation of the exercise of his rights in accordance with the law, the Constitution, and the International Convention.

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<sup>33</sup> In an interview with a group made up of various disabilities in Baghdad on July 9<sup>th</sup> 2017 and in Karbala on August 9<sup>th</sup> 2017.

Article 15 [I] (C) of Law 38 does not give rise to much optimism. In this regard, as it is confined to mentioning the need to "provide different levels of medical and psychosocial rehabilitation services and treatment services," without any reference to reasonable accommodation, accessible environment or training of medical personnel on human rights and disability issues, especially PwD right to choose and decide the practices and methods of treatment or rehabilitation. Regarding reproductive health, PwD face clear exclusion and discrimination while accessing these services. The pregnancy of physically or mentally disabled mothers is an important issue since it causes immense psychosocial and social suffering because it is governed by the social trends that are not limited to the public, but extends the specialists concerned, including physicians, such as obstetricians, counselors, family and community doctors. The plan of MoH did not include any measures that would ensure that PwD, especially WwD, had access to maternal, child health and reproductive health programs in general.

One of the sign-language translators reported that "when his deaf father went to a hospital due to an emergency, accompanied by his brother, who was unable to translate sign language properly. Hence, he was unable to communicate with the treating doctors. The doctors did their best to examine him; however, they described him as a medicine to treat a disease he had not complained about at all"<sup>34</sup>. It gets more complicated when it comes to medical and drugs leaflets for people with visual, mental and even hearing disabilities who are not able to read, as these leaflets are not available in accessible formats, whether in Braille, large print, simplified language, or sign images.

#### **ISSUES:**

- 1- What has been done to insure the provision of free health insurance for PwD as stipulated in Law 38 (2013), and issuing health cards to facilitate implementing the law?
- 2- What are the measures taken to combat disability-based discrimination to ensure the access of PwD to medical services, especially the reproductive and sexual health?
- 3- What are the measures taken to insure importing drugs and medical supplies from well-established origins and with high quality?
- 4- What are the reasonable accommodation and accessibility that should be developed in the medical leaflets and campaigns carried out by health institutions to ensure PwD access on an equal basis with others?

#### **Article 26**

##### **HABILITATION AND REHABILITATION**

Article 32 of the Iraqi Constitution states that "the State shall care for the handicapped and those with special needs, and shall ensure their rehabilitation in order to reintegrate them into society, and this shall be regulated by law", as well as in the text of definitions (1)

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<sup>34</sup> In an interview with the monitoring group on July 15<sup>th</sup> 2017

“rehabilitation: is a coordinated process to exploit medical, social, psychosocial, educational and professional services to assist people with disabilities and special needs to achieve the maximum possible degree of functional efficiency to empower them to cope with the requirements of their natural and social environment and to develop their capacities to rely on themselves and make them productive members of society, as much as possible ”.

Legislation, policies, and plans related to PwD have generally linked disability, regardless to its nature and context, to habilitation and rehabilitation, based on the care-giving medical perspective adopted by legislative and executive bodies while dealing with disability as a condition of illness or disability. Therefore, in best cases, the concept of habilitation and rehabilitation often takes the medical therapeutic approach or professional perspective which always relies on the individual abilities of the person, apart from the environmental and behavioral obstacles that play a major role in the emergence and aggravation of disability. Citing the phrase *as much as possible* in the definition of rehabilitation reflects a clear contradiction in dealing with PwD; the weakness and ineffectiveness of rehabilitation programs will often become conditioned by the "abilities of PwD". This justifies the disability to be a reason for implementing these programs, and at the same time to be used as a pretext for their ineffectiveness whenever the concerned officials wanted that.

In a further step in legislation, Article 15 [I] (H) of Law 38 (2013) stipulates "community rehabilitation for PwD through designing individual and joint projects in accordance with their health condition and providing technical advice to professional bodies through providing and preparing housing for them". This provision is important as it applies effective CBR programs in the slums and remote and rural areas which usually are poorer, which resonate well with the principles of CRPD, especially with regard to empowerment, integration and promotion of involvement in community, through WHO's CBR matrix which consists of five main components (health, education, employment, social status and empowerment).

While acknowledging the benefits of such a positive trend, the tasks of MoH are criticized since it made the "diagnosis, early detection, physical therapy, medical and psychosocial treatment, and the provision of assistive devices and prostheses" the focus of habilitation and rehabilitation programs without ensuring that all these steps should aim at consolidating the culture of diversity and acceptance of the other and to promote PwD involvement to play their role as key actors in decision-making processes and the formulation, and evaluation of policies, plans, and programs on both levels of local and federal government.

The same article of Law 38 (2013) stipulates "the provision of medical and psychosocial rehabilitation services and treatment services at various levels" which are the duties of MOH that provided such services through (4) specialized hospitals, (21) specialized rehabilitation centers and (19) centers for artificial limbs. These services declined significantly after 2014, after the number of distributed assistive devices (wheelchairs, crutches, and walkers) for 2014 was (33242), then dropped in 2015 to (23575). These data can serve as an indicator for the decline in services provided for PwD in 2016 and 2017. Moreover, in the context of the right to work, according to Article 15 [IV] (A) which stipulates "vocational training and work" in vocational rehabilitation institutes, according to the instructions issued in 1995.

Article 2 states that "the institutes aim at habilitating and PwD professionally in accordance with their physical and intellectual abilities, in order to facilitate their integration into society

and so that they can rely on themselves to earn their living and to allow them to contribute, alongside their non-disabled counterparts, to economic activities through using modern scientific, technical and educational means to play their role in building the society". In fact, vocational training for work reflects the narrow perspective towards PwD rights which has been associated in the minds of many people with handicrafts or occupations that do not require specific scientific qualifications. CCPDSN is hoped to promote habilitation and rehabilitation after opening a new department within its administrative structures in accordance with Article 10 [III] of Law 38 (2013) which stipulates "constituting the Department of Medical, Community-based, Educational and Vocational Rehabilitation", which must be in charge of promoting the effective integration and involvement of PwD and their families as a form of reasonable accommodation aimed at providing an environment free from physical and behavioral barriers in pursuit of equality and equal opportunities for PwD in conformity with the principles of the Convention and its general provisions.

Most meetings indicate that there is a serious shortage or lack of habilitation and rehabilitation in remote and rural areas and even in some districts and sub-districts regarding various fields. Some families of people with intellectual disabilities raised the issue of violating their children's right to equal access to habilitation and rehabilitation services as these services are mainly provided in city centers. In fact, people with autism disability, or what some special education workers call "autism disorder or autism spectrum," face exclusion and discrimination in terms of habilitation and rehabilitation due to the lack of knowledge and scientific practice in designing and implementing specialized rehabilitation programs for this disability, and the high cost of services provided by private sector centers (average monthly cost is 250.000-300.000 IQD), because there are limited numbers of government institutes concerned with autism.

The field visit to one of the rehabilitation centers in Baghdad indicates that these centers lack new equipment and the suitable place for physiotherapy despite the presence of specialized cadres, who are not coping with new programs because they have not received adequate training by MoH<sup>35</sup>.

#### **ISSUES:**

- 1- What are the measures taken to incorporate comprehensive and clear provisions in Law 38 (2013) regarding PwD right to habilitation and rehabilitation based on of CRPD principles and provisions stated in Article 26, and what has been done to amend the definition of habilitation contained in Article 1 of this law and to replace it with a definition that is based on the holistic approach towards disability far away from the unilateral medical perspective?
- 2- What are the measures can be taken in the absence of the strategy of employment and vocational and technical training should include clear data and indicators about the current condition of PwD in terms of exercising their right to empowerment through enacting the CBR matrix in the areas of health, education, and employment. PwD access and use of social services available to all should also be investigated?

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<sup>35</sup> A visit conducted by the monitoring group to Mustafa Rehabilitation Center on June 28<sup>th</sup> 2017

- 3- Announcing the time frame needed for the implementation of what has been stated in Law 38 (2013) concerning the qualification and rehabilitation programs for PwD with mental disorders, especially those with autism?
- 4- Was there any progress in urging private sector institutions to reduce the cost of services provided to PwD?

## Article 27

### WORK AND EMPLOYMENT

Based on these legislations, it can be seen that PwD right to work does not raise any problem unless the legislator has institutionalized the discriminatory practices imposed on PwD during their work for decades based on a unilateral medical legacy that does not take environmental barriers into consideration although they contribute to violating PwD right to work, and result in discriminating and excluding them from labor market. Law 38 (2013), Law 22 (2011) in the Kurdistan Region and Decree 205 of the Council of Ministries all adopted the percentage approach, or what is known as quota, as a means of guaranteeing minimum work in the public, mixed and private sectors. Civil Service Law 24 (1960) did not specify a body and rules to verify this exceptional restriction related allowing the nature of work to employ PwD. The reference in that is the authority of the doctor always and forever which relies on the mere medical examination and diagnosis which constitutes an unprecedented dedication of the authority was given to doctors in determining the fate of PwD and whether they deserve to exercise their rights and liberties on an equal basis with others.

A prime example of this case was manifested when the College of Education for Girls declared its request for a lecturer for teaching the subject of human rights. A blind candidate holding a master degree in international law applied for the job, but he was rejected due to his blindness - now he is unemployed. The medical committee Rule No. 5 (1992)<sup>36</sup> defined the conditions required applying for employment in the public sector.

For example, the applicant must pass the medical screening, and (s)he must be intact from any physical, mental, sensory and intellectual impairments. PwD were excluded from employment in public jobs. This illustrates the extent of exclusion and discrimination exercised by these texts against people with apparent and hidden disabilities in one of the most important human rights that guaranteed the provisions of the International Bill and constitutional rights and liberties without any form of discrimination.

Therefore, a strategy is needed for enhancing PwD involvement in the labor market through providing them with vocational training skills and awareness raising in coordination between MOLSA, Vocational Training and Social Security Corporation and NGOs to accomplish economic integration for PwD. WwD suffer from a compound discrimination and they are less likely to have access to rehabilitation, training and education services in general due to the disinterest of the government's public policies. It should also be noted that private sector institutions adopt in their internal regulations and instructions the same discriminatory

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<sup>36</sup> <http://wiki.dorar-aliraq.net/iraqilaws/law/14339.html>

philosophy established by the national legislator regarding PwD employment, and even the oppressive dismissal of them on the basis of disability.

## Vocational Training

Law 38 (2013) stipulates that among the tasks of MOLSA is “Providing vocational training suitable for people with disabilities and special needs and development of their abilities according to the requirements of labor market”. Social welfare units have provided the following numbers of beneficiaries in vocational rehabilitation institutes and workshops according to the type of disability, rehabilitation, training and sex in 2015 (as shown in appendix 1):

- Total beneficiaries = 389 PwD.
- Males = 215
- Females = 174

If these figures are compared with the size and type of disabilities in Iraq, the number of beneficiaries of vocational training in 2015 will be insignificant. Therefore, the government should increase their efforts to cover the largest number of PwD so that they can get involved in the labor market.

عدد المستفيدين الموجودين في (معاهد التأهيل المهني والورش) حسب نوع العوق والتأهيل والتدريب والجنس لسنة ٢٠١٥															
Number of current beneficiaries existed in (professional rehabilitation institutions and workshops) by disability condition, kind of rehabilitation and training															
Table (40)	2015														
	جدول (٤٠)														
	kind of rehabilitation and training	المجموع													
		Total		Multi		Visual		Phycical		Hearing		Mental		نوع التدريب والتأهيل	
مج		أ	ذ	أ	ذ	أ	ذ	أ	ذ	أ	ذ	أ	ذ		
T	F	M	F	M	F	M	F	M	F	M	F	M			
sewing	158	112	46	10	0	0	0	2	0	92	26	8	20	خياطة	
carpentry	27	0	27	0	0	0	0	0	1	0	23	0	3	نجارة	
electricity	14	0	14	0	0	0	0	0	0	0	14	0	0	كهرباء	
printing	0	0	0	0	0	0	0	0	0	0	0	0	0	طباعة	
cultivation	0	0	0	0	0	0	0	0	0	0	0	0	0	زراعة	
Ceramics	24	3	21	0	0	0	0	1	2	0	0	2	19	سيراميك	
Flower industry	0	0	0	0	0	0	0	0	0	0	0	0	0	صناعة الورود	
Bamboo industry	7	5	2	0	0	0	0	0	0	5	2	0	0	خيزران	
Structured products	1	0	1	0	0	0	0	0	1	0	0	0	0	اعمال تجميعية	
Weaving	0	0	0	0	0	0	0	0	0	0	0	0	0	حياكة	
Other	158	54	104	4	14	6	12	4	23	35	10	5	45	أخرى	
Total	389	174	215	14	14	6	12	7	27	132	75	15	87	المجموع	

## ISSUES:

- 1- What were the measures taken to provide job opportunities for PwD on the basis of equality with others in the absence of a strategic national plan to employ them that

- should be supplemented by financial allocations within the public budget of the state?
- 2- What are accommodation measures about the accessibility of PwD to work markets and forms of accessibility required to provide obstacle-free work environment?
  - 3- What are the positive measures for the adoption of reasonable accommodation in implementing the operational and productive projects that PwD seek to start and fund them?
  - 4- What are the expected measures to employ the maximum number of PwD in private sector?

## Article 28

### ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTION

Ministry of Planning declared that "poverty rate in the country has grown to 30% in 2016<sup>37</sup>, after it was 22% in 2014 after a number of provinces were taken by Daesh, in addition to the decline in oil prices in global markets". It also indicated that unemployment rate among young people who are able to work and the graduates was 42% due to the security and economic crises. According to the statistics of international organizations, the highest proportion of these estimates were recorded for PwD (up to 80%). The poverty rate increased in Kurdistan Region, from (3%) to (12.5%). Poverty in Kirkuk and Diyala rose to 18%, while in southern governorates it was 31.5%, in central governorates, it was 17%, and in Baghdad was 13%.

The Act of Social Welfare 11 (2014)<sup>38</sup> dedicated salaries for all kinds of disability according the criterion of poverty line. According to this criterion, any person is eligible to receive this salary if his monthly income is less than (105.000 IQD). Act 38 (2013) also stipulates "the provision of monthly allowances for PwD and persons with special needs who are unable to work according to law". Based on both texts, it is seen that medical reports are the basis for determining beneficiaries according to the regulations and criteria vis-à-vis ion capacity rate. However, if the case of PwD brought to close scrutiny based on the criteria set in the Act of Social Welfare Network, it turns out that they should enjoy two rights since they are below the poverty line and they are unable to work.

In an interview with the head of CCPDSN on the empowerment PwD<sup>39</sup>, he said "in order to financially support PwD who have medical reports issued by the medical committees, where the proportion of their disability is rated between (85-100)% as a single disability and cannot meet their needs, Article 19 [II] of Law 38 (2013) stipulates that "an unemployed assistant who is not employed in State Departments shall be given a monthly salary equal to the minimum wage in the salary scale of employees". The minimum wage was agreed to be 170.000 IQD (about 135 USD) and there were 34 beneficiaries so far. Although Pension and Social Security Law 39 (1971)<sup>40</sup> and its amendments ensure PwD rights, the medical authority remains the only acknowledged criterion that determines beneficiaries according to the law.

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<sup>37</sup> <http://www.almadapress.com/ar/NewsDetails.aspx?NewsID=81158>

<sup>38</sup> <http://www.molsa.gov.iq/index.php?name=News&file=print&op=PrintPage&sid=2896>

<sup>39</sup> In an interview with the judge Asghar Mousawi, the head of CCPDSN

<sup>40</sup> [http://www.iraq-ig-law.org/ar/webfm\\_send/140](http://www.iraq-ig-law.org/ar/webfm_send/140)

In general, PwD are subject to the same conditions in terms of work injury, nature, degree and the extent to which it influences person's ability to work. The same law sets forth conditions and rules for reimbursing a pension to PwD who's disability reach at least 35% which all determined by a medical committee, which also determines the ability of a person to perform a given job, independently of environmental and behavioral barriers and the necessities of reasonable environmental accommodations.

Regarding the accessibility of potable water to PwD, data from the Ministry of Planning<sup>41</sup> indicate that the average rate of accessible water is 300 liters per person. However, most people indicate that the personal consumption is below 128 liters. Drinking water is generally available for about 79% of the population, with 92% in urban areas and 57% in rural areas. Two-thirds (65%) of households access to water via pipe networks. Surface water and tankers are the main sources of potable water, especially in rural areas. The head of the Central Bureau of Statistics in the Ministry of Planning declares that the survey showed that more than 60% of households believe that there is a shortage or scarcity in water supplies in Iraq, and nearly three-quarters of the community believe that the water is not suitable for drinking because 60% of the community believe that sanitation networks should be improved, and the services provided by municipalities need to be enhanced. They also believed that there should be a cooperation between citizens and not to misuse the sewerage networks or drinking water network and to the removal of garbage and to pay more attention to hygiene and health awareness.

For the subject of providing adequate housing for PwD, Law 38 (2013) stipulates that "among the tasks of the Ministry of Construction and Housing is to provide adequate housing for people with disabilities and special needs in accordance with Government's plan for housing". The housing deficit ranged between (1 - 3.5) million housing units until 2015. The estimates differ according to the assumptions adopted in calculating the demographic growth rates, average family size, the percentage of housing units to be replaced and restored, the size of completed housing projects, and to what extent rural and urban areas are covered by these estimates and others.

The Minister of Construction and Housing said in a press release<sup>42</sup> that "the plan set by the Ministry aimed at reducing the implementation period of Phase I of the Tajiyyat residential project that accommodates 500 units out of 1380 units alongside its infrastructure (water, sewage, roads and electricity) to 18 months from the starting date by the Ministry companies exclusively. The plan, however, did not include any significant measures for PwD in terms of ensuring access to housing services and adapting them according to international standards, which makes PwD much less likely to benefit from these projects and programs in general.

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<sup>41</sup> <http://www.mop.gov.iq/mop/index.jsp?sid=3&nid=1708&y=2015&m=5&d=16>

<sup>42</sup> In an interview with Al-Mada paper

## ISSUES:

- 1- What are the measures taken to insure that Law 38 (2013) include measures and provisions that ensure PwD's access to social services available to all without discrimination or isolation, especially in remote and rural areas?
- 2- What has been done to enact Article 15 [VIII] (A) which stipulates that "among the tasks of the Ministry of Construction and Housing is ensuring the adequate housing for persons with disabilities and special needs in accordance with the Government's plan for housing" in accordance with international standards?
- 3- What are the reasonable accommodations taken to provide a safe access to potable water for PwD through overcoming obstacles and barriers by the Ministry of Water Resources and the Secretariat of Baghdad and concerned authorities in all provinces?
- 4- Is there any databases on PwD, indicating the age and gender and geographical distribution of the poorest classes, and to what extent they have access to social services, especially WwD in remote and rural areas?

## Article 29

### PARTICIPATION IN POLITICAL AND PUBLIC LIFE:

Article (20) states "Iraqi citizens, men, and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office". The national legislations regulating participation in political and public life in Iraq are among the most prominent discriminatory texts against PwD in general and people with mental and intellectual disabilities in particular. Their legitimacy derives from the Iraqi Constitution in Article 49 [II] which states that "A candidate to the Council of Representatives must be a fully qualified Iraqi". According to the Iraqi Civil Code 40 (1951), "Every person of the age of puberty who has mental strength and is not reserved shall be fully competent to exercise his civil rights." Similarly, Article 5 [II] of Parliament elections law 45 (2013) "requires the voter to be fully capable". These legislations denote the absolute deprivation of exercising the right to vote for those restricted by medical reports that indicate that a person has a mental or intellectual disability as set forth in Article 12 of this report. The Elections Law went further as it states in Article 8 that "the candidate for Parliament membership shall be requires conditions met in the voter in addition to other conditions".

What is more, the law of the elections of provincial, districts and sub-districts councils in Iraq 36 (amended in 2008)<sup>43</sup>, also contains similar provisions regarding the right of people to vote and stand for election as Article 5 states that "the voter is required to be, First: Iraqi. Second: Fully eligible. Third: He is over 18 years when elections are held. Fourth: Registered in the voting register in accordance with the provisions of this law and instructions to be issued by the Elections Commission". Thus, people with mental and intellectual disabilities were excluded from registration, which is seen as a discriminatory move in line with the orientation

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<sup>43</sup> <https://www.zowaa.org/nws/ns7/n220708-4.htm>

adopted by Iraqi legislators towards PwD in general. The NGO Law 12 (2010)<sup>44</sup> establishes a similar restriction on the right of people with mental and intellectual disabilities to establish or engage in associations as members as Article 4 [II] stipulates that the founding member should be: (a) an Iraqi citizen or a resident of Iraq; (b) fully eligible and 18 years of age for the natural person". This article involves a further discrimination against PwD such as the requirement of (full eligibility) in accordance with the prevailing legal definition, which is adopted for employment and work as described in Article 27 of this report.

Parties Act 36 (2015)<sup>45</sup> includes a restriction on the legal capacity of a person who seeks for establishing or membership of a political party in Articles 9-10, which prescribe the conditions for establishing or belonging to parties. This provision stipulates that a person should enjoy "legal capacity". Thus, doctors are the only authority that determines the legal capacity and degree of enjoyment. Involvement in elections is supposed to be a participatory decision-making process, which must be expressed and shared by different segments of society, whether on a personal initiative to participate or through empowering PwD to participate. The Independent High Electoral Commission (IHEC), previously launched an awareness-raising campaign for PwD to participate in political life albeit did not rise to the required level. Monitoring teams found that most polling stations are not ready to receive and this group of community that has various disabilities for nomination and election; they should take all reasonable measures to facilitate the arrival of PwD to polling stations. Media is responsible for calling for the need for effective participation of PwD as citizens with rights and duties. The overground reality of election and nomination processes indicates that there is a low participation level of PwD, whether as voters or as candidates, for a number of reasons. Among the most important reasons is the disinterest of the big parties towards disability, as well as disinterest of PwD themselves to participate in these elections, as only five PwD had run for the parliamentary elections previously, two of them with visual disability and two had a mobility disability and one dwarf but none of them succeeded.

Therefore, IAD discussed with the other decent and disability-related organizations in Iraq the issue of proposing temporary electoral quotas for PwD as a special measure that does not constitute discrimination in accordance with the provisions of the International Convention. Because such a measure is a necessary means to accelerate and enable equality and equal opportunity, and to empowering decision-making and developing national policies to ensure that PwD issues are included in them as a result of the stereotype of most party candidates towards PwD as "medical situations", the issue of political participation is not their priority.

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<sup>44</sup> <http://www.ngoao.gov.iq/ArticleShow.aspx?ID=140>

<sup>45</sup> [http://www.iraq-ig-law.org/ar/webfm\\_send/1615](http://www.iraq-ig-law.org/ar/webfm_send/1615)

## ISSUES:

1. What has been done to empower PwD to run for elections like others free from any discrimination?
2. What has been done to insure that PwD can win Parliamentary seats as well as provincial, district and sub-district councils in order to influence the decision making process and influence the national policies related to PwD issues?
3. What are the measures taken to include PwD rights and issues in the plans and programs of political parties?
4. What are the measures taken to ensure PwD right to access various types of polling stations, to access adequate information about the electoral process and their right to participate in public life ?

## Article 30

### PARTICIPATION IN CULTURAL LIFE, RECREATION, LEISURE AND SPORT

Iraq pays particular attention to the participation of PwD in sport events inside and outside Iraq. PwD have been awarded the highest honors in this field and there are also some clubs which were founded for the same purpose; however, they are not evenly distributed throughout various provinces. In the last three years, the participation of PwD in Iraqi teams has decreased in international competitions due to financial obstacles in the Iraqi Paralympic Committee due to public austerity policy. Culturally, people with visual disabilities do not have access to Braille-printed cultural books, and the lack of subsidized accessible computers, which turns them unaffordable to most of them. In the same context, people with mobility disabilities suffer from lack of accessible environments in public places for entertainment and cultural taste which are available to the public. So far, Iraq has not ratified Marrakesh Treaty for Visually Impaired Persons since this treaty has a humanitarian dimension that clearly aims at promoting the society. However, its main goal is setting a number of obligatory restrictions and exceptions for the benefit of Visually Impaired People to access publications.

Hearing impaired people suffer from the absence of sign language in cultural and entertainment television programs that are limited to news bulletins. The monitoring team has recorded several observations on this article, including the scarcity of entertainment places in public parks, cultural theaters, and cinemas, especially outside Baghdad. PwD also cannot enjoy Tigris banks or any nearby water surfaces. Some of these rights might be provided albeit on a limited scale; thus, relevant governmental and private bodies are required to provide or assist in the providing various means to empower PwD to exercise their rights according to the International Convention, including their right to culture and recreation. This category has to be offered an opportunity to develop their talents not only to serve their own interest but to enrich society as well.

## ISSUES:

- 1- What has been done to support the cultural and sports activities of PwD in general and people with mental and intellectual disabilities in particular?
- 2- What are the measures taken to promote PwD right to access tourist and cultural facilities on an equal basis with others, and to train the staff working in this area on the concepts of human rights and diversification culture?
- 3- What has been done to adapt tourist, cultural and sport facilities in accordance with CRPD principles and general provisions within a specified time frame?

## Article 31

### STATISTICS AND DATA COLLECTION

The scarcity of statistics, data and accurate information about disability is one of the biggest challenges facing the initiatives of promoting PwD rights and changing the policies and legislation in Iraq. Although Article 15 [VIII] of Law 38 (2013) clearly stipulates the “providing a database on people with disabilities and special needs in the Republic of Iraq by age and type of disability through conducting family surveys and relevant sectors that serve them”, on-the-ground indicators suggest that there is a large gap in this area, which requires an effective effort to develop legislative frameworks and policies harmonized with the principles of human rights and the detailed CRPD provisions that require signatories to conduct surveys and establish a database that enhances PwD rights, and assist and achieve development and improvement of programs and services provided. All strategic plans of ministries and executive bodies lack accurate statistics, data and information about PwD covered by these ministries or bodies programs and services and the extent of accommodation and their geographical distribution. According to the data of the Ministry of Planning / Central Bureau of Statistics, based on Washington Disability Group's criteria in classifying disability level. According to the survey of the map of poverty and maternal mortality in 2012. PwD accounted for (8.4%) of the total population according to the census of 2012.

- Disability indicators according to the results of the survey of the map of poverty and maternal mortality:

Difficulties	Level of Difficulty (%)	
	Narrow Definition	Broad Definition
Sight	0.8	3.4
Hearing	0.4	1.4
Mobility	1	2.4
Understanding and perception	0.4	0.7
Communication	0.4	0.6
Total	3	8.4

These figures are inconsistent with WHO estimates about disability, which counts to (12-15%) of the total population in Iraq based on the latest statistics of the Ministry of Planning in 2016 that estimated Iraq's population is 36 million. Hence, PwD number exceeded 3 million according to the standards of Washington Group, and if compared to WHO rate, a significant increase in the PwD number can be seen in Iraq (exceeds 5 million) which is closer to the real figure due to several wars by Iraq as well as the terrorist operations, cancer and congenital malformations during childbirth caused by Uranium and forbidden bombs used during the war.

Meanwhile MoH, in cooperation with WHO, had started a registration and statistics program for PwD, and registered 42116 PwD since 2011 as registration and statistics mechanism was based on the flow of PwD to rehabilitation centers or health centers although many PwD are reluctant to go to these centers because they either do not provide them with required services or they may be situated in distant areas. While acknowledging the benefits and significance of such initiatives, the definition of disability adopted in this regard is not clearly established. Is it a purely medical definition (as stated in Article 1 of Law 38 (2013))? Or it is consistent with CRPD. In a meeting with one of the data collectors in the Statistics Department at the Ministry of Planning, he said "the definition adopted by them in conducting any estimation of PwD is the medical definition stipulated in Law 38 (2013), which explains discrepancies in the figures provided by WHO.

It is noted that data collection mechanisms used by the relevant statistical departments, including MoH and CCPDSN, lacks PwD involvement and their organizations in carrying out this important task, which will be the base for policies, plans and programs aimed at changing reality and promoting PwD rights, guaranteeing equality and equal opportunities and ensuring effective access to public services. It is noted that IAD has collected PwD data and their types at a local level in the absence of cooperation and participation of the concerned executive authorities .

#### **ISSUES:**

- 1- What are the steps adopted to collect, document and update data and information as part of their operational strategies and plan?
- 2- What has been done to adopt a broad and comprehensive definition of disability and PwD during collecting data and information?
- 3- Establishing a coordination mechanism between the Central Statistical Bureau and other concerned executive bodies to consolidate efforts to found a comprehensive national database that embraces wide-ranging information on the obstacles faced by PwD while exercising their rights.
- 4- What are the reasonable accommodation measures that can facilitate the provision of data and information in accessible ways for PwD without affecting their privacy?

## Article 32

### INTERNATIONAL COOPERATION

Law 38 (2013) did not include explicit provisions on strengthening international cooperation, as required by the provisions of Article 32 of the International Convention. However, the Iraqi legislators, through certain provisions, pointed out to the importance of international cooperation in promoting disability issues and promoting PwD rights in general. Although Article 3 [II] of Law 38 (2013) is totally dedicated to "Accession to the International Conventions and agreements on the Welfare of Persons with Disabilities and Special Needs", achieving the objectives of international conventions in this regard is among the most important functions of the CCPDSN, since it is the main body for policy-making and follow-up their implementation. The first paragraph of this Article stipulates "developing special plans and programs to guarantee the rights of persons with disabilities and special needs in accordance with the provisions of the law and the international conventions and covenants to which the Republic of Iraq is a party".

Concerning the achievement of sustainable development, MOLSA has shown its adoption of the objectives that are in line with its specialties to protect Iraqi families and achieve sustainable development in its three dimensions (economic growth, environmental protection and the social integration), as well as its prospective policies and mobilizing its human and financial resources and capacities to overcome critical challenges particularly poverty. Moreover, other specialties of the ministry that are in line with the goals (1, 2, 3, 4, 5, 8, 9, 10 and 17) of development. Recently, a number of positive steps have been taken by CCPDSN to emphasize the need to include PwD issues on the agenda of international cooperation programs. The Chairman of CCPDSN attended the meeting of the United Nations Economic and Social Commission for Western Asia (ESCWA) On 4 July 2017. This move is a significant step for reminding the governmental bodies responsible for international cooperation relations about their obligations under the provisions of Article 32 of the Convention. However, it is important to stress that the executive bodies and those responsible for formulating policies and following-up their implementation in Iraq are also obliged by the general principles of the Convention during any international, regional or bilateral cooperation contracting. Therefore, such bodies should not invest international grants or expertise in designing or implement programs that do not conform to the principles of the Convention and their ultimate objective should be achieving the full inclusion.

### ISSUES:

- 1- What has been done to ensure that the strategies of the Ministry of Planning include measures ensuring that international cooperation programs are comprehensive and inclusive?

- 2- What has been done to insure coordination and consultation between the Ministry of Planning and CCPDSN alongside PwD and their organizations during submitting project proposals to obtain international support and funds?
- 3- What are the measures taken to prioritize the accomplishment of sustainable development goals in relative ministries and to allocate adequate funds in public budget to facilitate their implementation?

### **Article 33**

#### **NATIONAL IMPLEMENTATION AND MONITORING**

The existence of many executive bodies and the overlapping of their competencies and powers and the poor coordination among them regarding disability is one of the biggest obstacles that impede enacting the provisions of the Convention and its principles at the national level and promoting of the rule of law.

The Directorate provides assistance through rehabilitation services and supervising a part of the education sector for specific groups of PwD, as described in Article 24 of this report, as well as the granting licenses to institutions and centers working in the field of disability. CCDPSN was originally founded to achieve CRPD requirements regarding the existence of national coordinating mechanism. According to Article 4 [I] of Law 38 (2013), CCPDSN works for promoting and following up the implementation of the provisions of the Convention at the national level. Article 9 [I] states that "the tasks of the board of directors" as stated in paragraph (A) is the "determination and approval of the Commission's general policy for the welfare and rehabilitation of PwD and their special needs as well as following-up their implementation". Regardless of care and service provided, this text clearly sets the foundation CCPDSN work by describing it as the major authority responsible for the formulating and follow-up policies relating to PwD rights and issues, through coordination mechanisms that ensure the commitment of all executive bodies to functions described in Law 38 (2013). According to Article 15, the policies of CCPDSN are implemented through integration between various tasks assigned to these bodies, as described in Article 32.

The article states that "the implementation of international conventions and covenants is one of the tasks of the Commission", as Article 3 [III] of Law 38 (2013), emphasizes that "the development of special plans and programs to guarantee the rights of people with disabilities and special needs in accordance with the law and the international conventions and covenants to which the Republic of Iraq is a party". This conclusive text indicates that the Commission has a legal obligation to promote the application of the provisions of the Convention since it is the main international document on PwD rights. This text is criticized for simplification for the role of the Commission as if it only invites it to "participate" in achieving the objectives of international conventions on PwD rights, while it is expected to be the primary policy maker in disability matters and to lead ministries and other government agencies. It is supposed to have a pivotal role in transforming the model from the medical model to the holistic rights-based model.

With regard to monitoring the implementation of the Convention on the national level, HCHR and the Directorate of Performance Monitoring and Protection of Rights have monitored and

documented PwD issues in their annual reports. Tackling PwD rights by human rights reports is undoubtedly a good indicator for commencing a shift by considering those rights as part of the human rights system. Concerning PwD involvement level in implementing and monitoring the Convention and national laws, there is an urgent need to expand and deepen the quality of involvement. Law 38 (2013) allocates 7 seats to representatives of PwD organizations, which have been nominated and not elected according to clear and agreed upon criteria, with the absence of many PwD from this process, especially people with mental and intellectual disabilities and people with hidden disabilities.

The non-ratification of Iraq of the Optional Protocol to the Convention is an obstacle to the promotion of the legal protection of PwD every time their rights are violated or discriminated. State's willingness to proceed with reform and the establishment of human rights principles puts PwD organization and their activists under pressure bear their responsibilities to urge the State to ratify the Optional Protocol as soon as possible.

## ISSUES

1. What are the measures taken to activate the role of CCPDSN as the body which is authorized to lay down the policies and to implement the treaties?
2. What are the measures that can insure a transparent national monitoring process by the the Higher Commission of Human Rights in Iraq and the Department of Monitoring the Performance of Rights Protection in collaboration with PwD and their organizations?
3. What are the measures that can be adopted to follow up the implementation of national laws and strategies within a particular time frame?

## References

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35. The Matrix of Community-based Rehabilitation.
36. Traffic Act 86 (2004).
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38. The National Strategic Plan for Education (2011-2022).
39. Regulation 4 (1991) of the Institutions of people with disabilities and their education.
40. Regulation 5 (1992) of the medical committees.
41. Decree 205 (2013) of the Council of Ministers about the Employment Quota for people with disabilities.
42. Act 11 (2014) for the Social Protection Network.

## Annex I

Through the monitoring of the High Commission for Human Rights (HCHR) and civil society organizations specialized in disability, when compared to the government report presented for CwD, the following observations were reached:

1. After visiting Al-Duha Institute specialized in autism disorders, communication difficulties and speech impediment, it was reported that the institute accommodates 35 children aged 2-12 years. The institute is provided by security forces and is self-financed, and it needs 7 air-conditions and a generator
2. When Al-Noor Institute for the Blind in Al-Tobji area was visited. I mentioned that the total number of blind students is (81) students (from both sexes), with their ages ranging between (6-10 years). The institute has a computer center equipped with the newest Braille printer, but it needs the special paper. The center is not provided with any basic materials and misses a specialized staff to maintain it, and there is a shortage of Braille boards.
3. When a visit was performed to the Institute of Hope for Mental Disability in Jamila neighborhood – Baghdad, I pointed out that the number of beneficiaries in the Institute is (318) while the actual number of those present was (97).
4. A visit was conducted to the Department of People with Special Needs Welfare in Najaf – Al-Ajial Al-Thania Kindergarten. It was pointed out that the accommodation capacity is 100 children while the actual number is 20 males and 8 females, and that the kindergarten needs 2 female caregivers, and one worker to take care of the drinking water system. The toys are very old and need to be replaced with new ones. The children have to be provided with meals as they spend 5-6 hours there.
5. A visit was conducted to Al-Hanan House for Severe Disabilities in Holy Karbala after receiving some news that there could be death cases in this house. It was pointed out that the house is overcrowded as the accommodation capacity is 90 people, meanwhile, the actual number is 134. The house is poorly ventilated since ventilators are out of service, lightning is poor, the sanitary system is not valid and is often blocked jeopardizing the hygiene of dwellers, most windows are broken, the beds are broken, the clothes and the bedding are torn, the building is old, inhabitable and needs restoration. Furthermore, a new incinerator should be built for burning harmful wastes. Beneficiaries suffer from malnutrition and severe drought.
6. A visit was done to the alternate site of Al-Hanan House for Severe Disability in Holy Karbala. It was pointed out that the situation there was very tragic. Beneficiaries are placed in empty halls as they were before accompanied by their monitors and workers without any security guards. All doors were open and there was intolerable smell because these small spaces are very overcrowded.
7. A visit was conducted to the Department People with Special Needs Welfare in Najaf - Raja Institute for Mental Disability. It was pointed out that the capacity of the Institute is (60) handicapped. The actual numbers are (55) with (46 males) and (9 females). It was found that the Institute does not have a vehicle for transporting the handicapped from districts and sub-districts to the institute. The Institute should be also provided with a specialized social worker and a caregiver to take care of the

- disabled. In addition, recreational means (parks, toys, tourist trips) should be provided to PwD. Health care should be offered through regular visits by specialized physicians and by providing basic meals since they spend (5-6) hours there.
8. A visit was conducted to the Institute of Mental Disability in Muthanna. It was noted that there were (19) male and (5) female beneficiaries. The institute was not equipped with visual aids and it is not visited by NGOs. The furniture has to be replaced because it is very old and damaged.
  9. A visit was conducted to the Department of Special Needs Welfare- Al-Amal Institute for the Deaf and Mute in Muthanna. It was pointed out number that there were (20) male and (13) female beneficiaries. There are no visual aids and the furniture has to be replaced because it is very old and damaged.
  10. A visit was conducted to the Orphanage of People with Special Needs. It was pointed out that there were only (19) male beneficiaries and that the orphanage needs new furniture.
  11. A visit was conducted to the Department of People with Special Needs Welfare in Najaf - Al Noor Institute for the Blind. It was noted that it can accommodate up to 50 people, while there are (10) female and (24) male beneficiaries. The institute needs a vehicle to transport the blind from the districts and sub-districts. There should be recreational means like parks, toys, and tourist trips. Healthcare should be provided through regular visits of physicians specialized in optics and general medicine. Beneficiaries need to be served with meals as they spend (5-6) hours there.

## Annex II

- Paragraph (I), regarding the requirement of Iraqi law that all modern buildings used by the public, should be accessible to PwD. The answers were as follows:

85% : of responses were YES, such a legal provision really exists.

15% : Partially YES.

Such legislations, which sets standards for the benefit of PwD really exist but their implementation is sometimes stumbled which might be attributed to the absence of strict control bodies that hold accountable and deter anyone who violates these laws.

- Paragraph (II): the timeframe for existing buildings:
  - 91% : There is no time frame specified by legislation
  - 9% : Inapplicable

Iraq is clearly in its early stages of implementing the provisions of CRPD and there is no clear policy concerning adequate housing for PwD.

- Paragraph (IV) concerning the emergency early warning system (EWS):
  - 95% : No EWS was designed to be accessible to PwD.

5% : Inapplicable

### Annex III

A survey was conducted on a group of PwD through asking the following question (Is a PwD entitled to free and compulsory basic education in the mainstream education system? The results were as follows:

65%: Yes, all CwD has the right to receive free and compulsory basic education in the mainstream education system.

35%: Yes, partially.

According to the statistics of the Directorate of Educational Planning for the academic year (2012-2013), The number of students in special education classes (Classes 1 - 4) was (13005) from both sexes taught by (1612) special educators, while the number of inclusive schools was (1517) that accommodated (1015101) CwD students.

### Annex IV

There are (1396) special education classes within (1213) mainstream schools, and the numbers of special education students from Grade 1 – 4 is (13005) from both sexes who are taught by (1612) special education teachers. However, the number of schools that adopt inclusive education is (1517) that accommodate (1015101) students with disabilities and special needs.

### Annex V

According to the data of the Directorate of Social Welfare that belong to MOLSA, the numbers of students who attended PwD institutes in the Ministry in 2015 was (3096) (males= 1946, males= 1150).

### Annex VI

The price of admission ticket is 1000 ID, X-ray is 2000 ID, hospitalization is 500 ID, minor operations is 5,000 ID, the middle operations is 10,000 ID, major ones is 15,000 ID, grand operation is 20,000 ID, the lab test is 1000 ID, blood test before marriage 14.000 ID, ordinary sonar is 2000 ID, colored sonar 4000 ID, birth certificate 5000 ID, CT scan 5000 ID, MRI 5000 ID, solid or soft collar 1500 dinars, medical crutches 2500 ID, and artificial insemination is 225.000 ID.

