

Iraq's New Anti-LGBTQIA+ Legislation: A Regressive Step in Upholding Human Rights and Dignity

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Introduction

The acceptance and legal recognition of individuals from the LGBTQIA+ community has progressed at varying rates across different nations. Some have embraced legislative reforms: decriminalising same-sex relationships (Supreme Court of India, *Navtej Singh Johar v. Union of India*, 2018), permitting gender marker changes on official documents (United Kingdom policy), or legalising same-sex marriage and adoption (Greece - on 15 February 2024 is the first Christian Orthodox-majority country to legalise same-sex marriage, (Human Rights Campaign)). But these advancements are not uniformly observed. Certain nations and cultural contexts remain deeply influenced by homophobic attitudes, manifesting in both legal frameworks and societal behaviours. Homophobia reflects binary thinking which underlines a structural oppression through power imbalance (Murphy, 2006). Whilst not the sole determinant, it permeates societies with strong religious foundations, heightening resistance to recognising and accommodating diverse sexual orientations and gender identities. Religious beliefs and teachings can perpetuate homophobic attitudes (Janssen & Scheepers, 2018; Singhal & Gupta, 2022) that view non-heterosexual identities as "abnormal" or "unnatural" (Yip, 2005). Three core factors underlie this dynamic: (i) the perception that homosexuality is a changeable condition or choice; (ii) the propagation of social ideologies emphasizing traditional values; (iii) the perceived threat of homosexuality to cultural norms, belief systems, and conventional gender roles (Whitley, 2009).

Such attitudes increase LGBTQIA+ community's vulnerability, legitimizing abuses. At the heart of these abuses is the right to life and the right to dignity. International human rights protect the right to life by Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights, Article 3 of the European Court of Human Rights, and Article 4 of the American Convention of Human Rights. States have a positive obligation to protect the right to life of individuals under their jurisdiction and without any discrimination. The State must take concrete and individual measures, preventing any acts that endanger the right to life of individuals by any public agents or private individuals (ECtHR: *Osman v. United Kingdom*; *Marro v. Italy*; Human Rights Committee, *Vaca v. Colombia*). States must take a series of procedural measures against violation of right to life (ECtHR, *Ergi v. Turkey*; Inter-American Court of Human Rights, *González v. Mexico*). From a procedural perspective, when an individual in good health is arrested and detained, and subsequently suffers injuries or dies while in custody, the State bears responsibility of providing a plausible

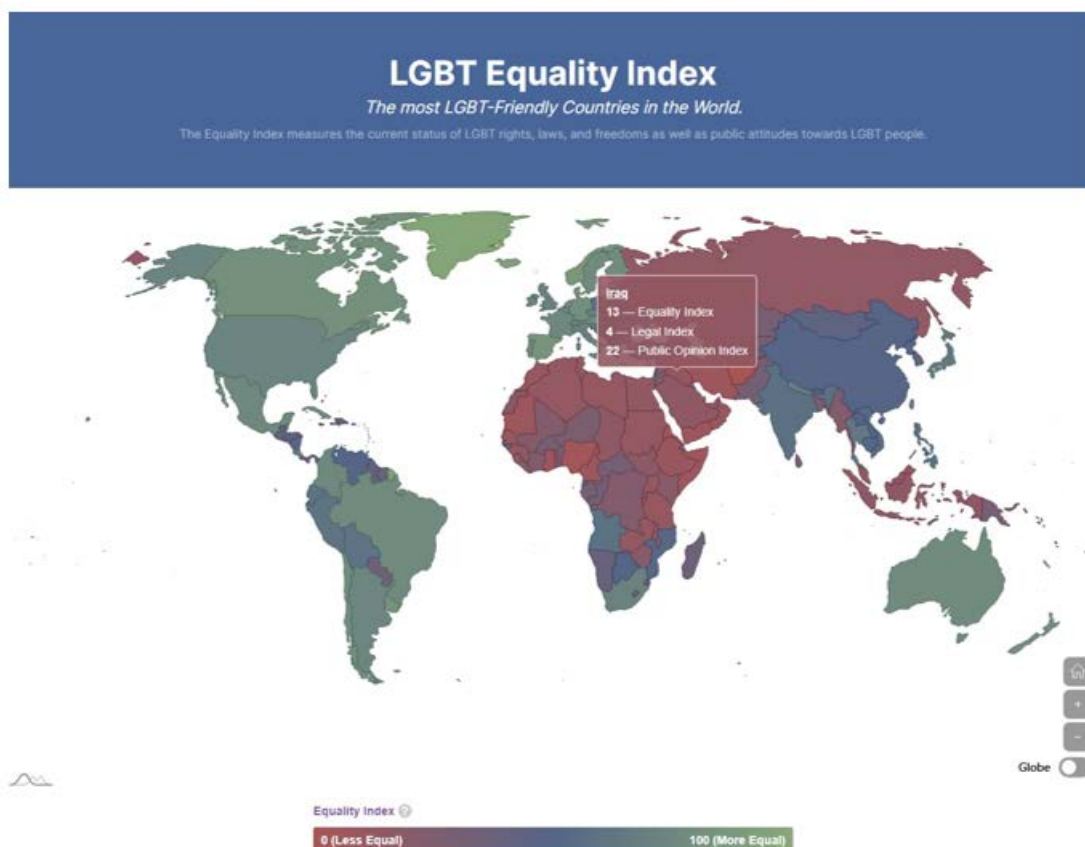
and credible explanation for the origins of the injuries or cause of death (Human Rights Committee, *Moidunov and Zhumbaeva v. Kirghizstan*, 2011).

This report focuses on Iraq's new legislation of 27 April 2024, and its impact on the LGBTQIA+ community. The country amended its 1998 anti-prostitution law in a session where 170 deputies out of 329 were present, backed mainly by conservative Shia Muslim parties (LeMonde, 2024; Aljazeera, 2024).

1. General situation in Iraq

Iraq ratified core human rights conventions - CAT (2011), CCPR (1971), CED (2010), CEDAW (1986), CERD (1970), CESCR (1971), CRC (1994), CRPD (2013), but refused individuals' complaints procedures before the treaty bodies, aggravating the human rights' situation (image 1).

Image 1: The place of Iraq on the LGBT Equality Index



The LGBTQIA+ community faces extra-judicial killing, abductions, sexual violence, online targeting (image 2), verbal abuse, arbitrary arrest, disappearance (CESCR, 2024, para.22). Members are thrust into clandestinity (LeMonde, 2024), and individuals lack legal recourse to challenge these abuses via courts or government institutions.

Image 2: The role of militia



This violation of the right to life is tied to the right of human dignity. It underlies the interpretation of this right (Wicks, 2012). Dignity is an inseparable facet of human personality as Alexis de Tocqueville stressed:

“Whenever I find myself in the presence of another human being of whatever station, my dominant feeling is not so much to serve him or please him as not to offend his dignity.”

For the LGBTQIA+ community, the pursuit of dignity implies their recognition as “fully human” instead of considering their sexual orientation a "disease" or "disgusting". In 1994, the

American Psychological Association declared: “homosexuality is neither mental illness nor moral depravity. It is simply the way a minority of our population expresses human love and sexuality.” Yet, in 2023, the Iraqi Communications and Media Commission instructed media outlets to replace the term "homosexuality" with "sexual deviance" (Amnesty International, 2023). This stance denies the inherent dignity and psychological well-being of LGBTQIA+ individuals. Such actions contradict the landmark 1999 Canadian Supreme Court ruling in *Law v. Canada*, where human dignity encompassed fundamental self-respect and self-worth of individuals and groups. Whilst governments and judicial bodies bear responsibility in upholding the right to dignity, this obligation ultimately extends to society.

Abuses because of appearances and suspicion of belonging to the LGBTQIA+ community, are often committed by armed groups (since 2005), police, and abetted by patriarchal social norms, a culture of impunity, and the absence of accountability (Impunity Watch, 2018). On 25 September 2023, militias linked to Popular Mobilisation Forces allegedly shot and killed Noor Alsaffar in Baghdad, a popular TikTok gay, makeup artist, threatened regularly on social media (W-TV, 2020). Recently (15 February 2024), a 28-year-old transgender blogger, Simsim, was killed with multiple knife stabs in Diwaniyah province (Shafaq news, 2024). Abuses multiplied as the “fight” against the community becomes a political tactic (Human Rights Watch, 2022 (b), 21) backed by the judiciary. Political parties justify such attacks by claims that homosexuality spreads disease, nor do investigators follow proper investigation procedures or just procedures. Yet, States have an obligation to investigate violations of the right to life and when it is brought to its attention. This echoes the right to an effective remedy promoted by Article 13 of the European Convention of Human Rights and Article 25 of the American Convention of Human Rights. On 31 May 2023, the Sulaymaniya Preliminary Court’s in the Kurdistan region of Iraq ruled the closure of Rasan Organisation, one of the only human rights organisations that supported the LGBTQIA+ rights in the area (image 3). This ruling was later confirmed by the Presidency of the Cassation Court (Country reports on human rights practices, 2023, 72). In September 2023, the Kurdistan Regional Government ordered the arrest of 2 transgenders in Erbil for their posts on Instagram showing them wearing women's clothes and makeup (Country reports on human rights practices, 2023, 72). They were detained in prison for 5 days and underwent a medical exam to identify their gender. These “forced” medical examinations violate core human rights: privacy, non-discrimination and dignity.

Image 3: Closure of the Rasan Organisation by the Sulaymaniya Preliminary Court



The Iraqi Penal Code provides a legal framework for human rights violations against the LGBTQIA+ community. It does not specifically criminalise same-sexual relations, but uses legal mechanisms to target this group. Akin to many former colonies (e.g., Section 377 of the Indian Penal Code, which criminalised "unnatural offences" until 2018), Iraq's penal code is a product of British rule and Ottoman laws influenced by France. In total, 11 articles of the Iraqi Penal Code aggravate human rights violations: (i) Article 41(1) allows parents and husbands to “punish” their wives and children in total impunity; (ii) Article 128 identifies honourable motives as an excuse to an offence allowing honour killings of members of the community;

(iii) Article 200(2) establishes a seven year imprisonment for individuals seeking to change the Constitution's fundamental principles or core laws of society, thus impacting the freedom of expression of groups working on "problematic" issues; (iv) Article 210 prohibits any ideas disturbing public peace, thus allowing targeting of activists; (v) Article 394(1) forbids sexual intercourse outside marriage or for individuals aged under 15 and between 15 and 18 – this can be used to prosecute LGBTQIA+ individuals; (vi) Article 398 allows perpetrators of rape to escape prosecution by marrying the victim; (vii) Article 401 decrees punishment up to 6 months detention and a 50 dinar fine for individuals committing an "immodest act" in public; (viii) Article 402(1) establishes a 30 dinar fine and maximum 3 months detention for "indecent advances" in public; (ix) Articles 403 and 404 condemn obscene and indecent public speech with 1 to 2 years imprisonment; (x) Article 409 decrees maximum 3 years imprisonment if a wife or relative is caught in the act of adultery; (xi) Article 502 forbids public loitering and condemnation of individuals to 10 days detention or a fine. In 2022 the Human Rights Committee asked Iraq to revise Articles 394 and 401 that are "allegedly" used to prosecute individuals because of their sexual and gender orientation and therefore violate Articles 2,3,7 and 26 of the ICCPR (Human Rights Committee, 2022). Under the Penal Code, LGBTQIA+ individuals can be condemned for being considered too 'effeminate'. Stereotypes like "farak" (in Arab chick), "sousou" or even "fagot" (Human Rights Watch, 2022(b), 12). stigmatize and dehumanize individuals, besides legitimising discrimination and violence (Madrigal-Borloz, 2022, 5).

2. The new anti-LGBTQIA+ legislation

In 2021, Iraq contended before the Human Rights Committee that its Constitution and statutory laws do not explicitly provide for individual freedom in sexual orientation (Human Rights Committee, 2021, para.48). The new legislation punishes not only same-sex relations but also gender-transition. This direct criminalisation is a form of State-sponsored discrimination and is contrary to international human rights law and States obligations. The legislation decrees (i) 3 years imprisonment for gender-transition not only for individuals who undergo such surgery but also for doctors who perform gender reassignment (BBC, 2024); (ii) 10 to 15 years imprisonment for same sex-relations; (iii) up to 7 years imprisonment and a fine of 10m dinars (£6000) for any organisation that promotes "sexual deviance" (*The Guardian*, 2024).

In the given context, access to gender-affirming healthcare services and legal recognition of one's gender identity presents significant challenges for transgenders. It is legally forbidden for transgenders to obtain gender affirmation surgery or hormone replacement therapy in Iraq. Furthermore, transgenders face substantial barriers in acquiring legal documents that reflect their gender identity, regardless of whether they have undergone gender-affirming procedures abroad or not. The inability to obtain identification documents corresponding to one's gender identity and expression poses severe risks and limitations for transgender persons. Firstly, it heightens their vulnerability to violence and discrimination. Secondly, it impedes their access to essential services, from healthcare to employment opportunities. Thirdly, it can exacerbate mental health challenges, by perpetuating societal invalidation and marginalization of transgenders (IraqQueer, 2018, 9). In 2018, the Indian Supreme Court underlined that “gender identity is one of the most fundamental aspects of life” (Supreme Court of India, 2018, para. 5). It is central to individuals' dignity and autonomy (US Supreme Court, *Planned Parenthood of Southeastern Pa. v. Casey*, 1992). Liberty as a concept must be given its due place in the right to dignity, for both are connected to the right to life.



Local Iraqi politicians defend this new legislation as upholding societal and religious values and protecting children from “moral depravity and homosexuality” (BBC, 2024). The UK and the USA have critiqued the impact of such legislation on business and economic growth in the country, and its human rights impact (image 4).

Image 4: International reaction on X



Overall, this legislation aggravates the situation of the LGBTQIA+ community (image 5) by legalizing current practices under the Iraqi Penal Code. It underlines the challenges of achieving equality. Equality is linked to development of opportunities, that allow individuals to realise their full potential within social relationships (Albertyn & Goldblatt, 1998).

Image 5: LGBTQIA+ rights in Iraq

Homosexuality 		Gay Marriage 			
X Illegal (imprisonment as punishment)		X Unrecognized			
Censorship	X Imprisonment as punishment	Changing Gender	X Illegal	Gender-Affirming Care	X Banned
Non-Binary Gender Recognition	X Not legally recognized	Discrimination	X No protections	Employment Discrimination	X No protections
Housing Discrimination	X No protections	Adoption	X Illegal	Intersex Infant Surgery	Unknown
Military	X Illegal	Donating Blood	X Banned (1-year deferral)	Conversion Therapy	X Not banned
Age of Consent	N/A				

Conclusion

International human rights bodies, particularly the CESCR, strive to raise global awareness about LGBTQI+ community's situation. In its observations on the 7th periodic report submitted by Belarus, the CESCR expressed concern over the lack of effective remedies for victims of discrimination against LGBTQI+ persons (CESCR, 2022, para.9). In its observations on Bolivia, the CESCR stressed "the violence and discrimination experienced by lesbian, gay, bisexual, transgender and intersex persons on the basis of their sexual orientation and gender identity, and about the impunity with which such act " (CESCR, 2021, para.20). In the Iraqi case, the new anti-LGBTQIA+ legislation represents a significant step backward. Proponents of the law claim to uphold societal and religious values. However, fundamental human rights and dignities afforded to all individuals, regardless of their sexual orientation or gender identity constitute a more solid foundation to societies.

Bibliography

- Albertyn, C., & Goldblatt, B. (1998). Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality. *South African Journal on Human Rights*, 14(2), 248–276.
- Aljazeera, ‘Iraq criminalises same-sex relationships with maximum 15 years in prison’, 27 April 2024, <https://www.aljazeera.com/news/2024/4/27/iraq-criminalises-same-sex-relationships-with-maximum-15-years-in-prison>.
- Amnesty International, “Iraq: authorities must immediately reverse media ban on the terms “homosexuality” and “gender””, 9 August 2023, <https://www.amnesty.org/en/latest/news/2023/08/iraq-authorities-must-immediately-reverse-media-ban-on-the-terms-homosexuality-and-gender/>.
- BBC, “Iraq criminalises same-sex relationships in new law”, 28 April 2024, <https://www.bbc.co.uk/news/world-middle-east-68914551>.
- CESCR, Concluding observations on the 5th periodic report of Iraq, E/C.12/IRQ/CO/5, 14 March 2024.
- CESCR, Concluding observations on the seventh periodic report of Belarus, E/C.12/BLR/CO/7, 24 March 2022.
- CESCR, Concluding observations on the third periodic report of the Plurinational State of Bolivia, E/C.12/BOL/CO/3, 5 November 2021.
- Country reports on human rights practices, “Iraq 2023 Human Rights Report”, United States Department of State, Bureau of Democracy, Human rights, and Labor, 2023.
- Equaldex (a), “LGBT Equality index, the most LGBT-Friendly countries in the world”, <https://www.equaldex.com/equality-index>.
- Equaldex (b), “LGBT Rights in Iraq”, <https://www.equaldex.com/region/iraq>.
- European Court of Human Rights, *Ergi v. Turkey*, 66/1997/850/1057, 28 July 1998.
- European Court of Human Rights, *Marro v. Italy*, 29100/07, 8 April 2004.
- European Court of Human Rights, *Osman v. the United Kingdom*, 87/1997/871/1083, 28 October 1998.
- Gov.UK, “Apply for a Gender Recognition Certificate”, <https://www.gov.uk/apply-gender-recognition-certificate>.
- Human Rights Campaign, “Marriage Equality Around the World”, M <https://www.hrc.org/resources/marriage-equality-around-the-world>.

- Human Rights Committee, Concluding observation on the 6th periodic report of Iraq, CCPR/C/IRQ/CO/6, 16 August 2022.
- Human Rights Committee, *Luis Asdrúbal Jiménez Vaca v. Colombia*, CCPR/C/74/D/859/1999, 15 April 2002.
- Human Rights Committee, *Moidunov and Zhumbaeva v. Kirghizstan*, 1756/2008, 2011.
- Human Rights Watch (a), “Iraq: impunity for violence against the LGBT people- killing, abductions, torture, sexual violence by armed forces”, 23 March 2022, <https://www.hrw.org/news/2022/03/23/iraq-impunity-violence-against-lgbt-people>.
- Human Rights Watch (b), “‘Everyone wants me dead’ killings, abductions, torture, and sexual violence against LGBT people by armed groups in Iraq”, 2022.
- Impunity Watch, “Sexual and gender-based violence (SGBV) in Iraq”, 2018, <https://reliefweb.int/report/iraq/sexual-and-gender-based-violence-iraq-2013-2018-mapping-report-enar>.
- Inter-American Court of Human Rights, *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Series C No. 205, 16 November 2009.
- IraqQueer, “Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq”, 2018.
- Janssen, D., & Scheepers, P., “How religiosity shapes rejection of homosexuality across the globe. *Journal of Homosexuality*, Volume 66, Issue 14, 2018, Pages 1974–2001.
- LeMonde, “En Irak, une nouvelle loi anti-LGBTQ+ prévoit jusqu’à quinze ans de prison”, 28 April 2024, https://www.lemonde.fr/international/article/2024/04/28/irak-une-nouvelle-loi-anti-lgbt-prevoit-jusqu-a-quinze-ans-de-prison_6230328_3210.html.
- Madrigal-Borloz, V. “Right of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity”, Human Rights Council, A/HRC/50/27, 22 November 2022.
- Murphy, M. K., ‘The fire will not consume us’: Exploring the link between homophobia and sexism in US feminism. *Journal of Gender Studies*, Volume 15, Issue 3, 2006, Pages 209–221.
- Shafaq news, “Transgender blogger "Simsim" assassinated in Diwaniyah”, 15 February 2024, <https://shafaq.com/en/Iraq/Transgender-blogger-Simsim-assassinated-in-Diwaniyah>.
- Singhal, S., Gupta, V., “Religiosity and Homophobia: Examining the Impact of Perceived Importance of Childbearing, Hostile Sexism and Gender”, *Sex Res Soc Policy*, Volume 19, 2022, Pages 1636–1649.

Supreme Court of Canada, *Law v. Canada (Minister of Employment and Immigration)*, 1999 CanLII 675 (SCC), [1999] 1 SCR 497.

Supreme Court of India, *Navtej Singh Johar v. Union of India*, 2018, 2018 INSC 7900.

Supreme Court of the United States, *Planned Parenthood of Southeastern Pennsylvania, et al. v. Robert P. Casey, et al.*, 505 U.S. 833 (1992).

The Guardian, “Human rights groups and diplomats condemn Iraq’s anti-LGBTQ+ law”, 28 April 2024, <https://www.theguardian.com/world/2024/apr/28/human-rights-groups-and-diplomats-condemn-iraqs-anti-lgbt-law>.

Whitley, B. E, “Religiosity and attitudes toward lesbians and gay men: A meta-analysis”. *International Journal for the Psychology of Religion*, Volume 19, Issue 1, 2009, Pages 21–38.

Wicks, E., The Meaning of ‘Life’: Dignity and the Right to Life in International Human Rights Treaties, *Human Rights Law Review*, Volume 12, Issue 2, June 2012, Pages 199–219.

Yip, A. K., “Queering religious texts: An exploration of British non-heterosexual Christians’ and Muslims’ strategy of constructing sexuality-affirming hermeneutics”, *Sociology*, Volume 39, Issue 1, 2005, Pages 47–65.

W-TV, 2020, نور بي ام يكول تعرضت للتهديد و يتكلم عن سبب تغير شكله من ولد الى بنت !!! شا,
<https://www.youtube.com/watch?v=cR4HnW63LW0>