

# THE CAMPAIGN TO END STATELESSNESS IN IRAQ

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*THE CAMPAIGN TO END STATELESSNESS IN IRAQ*

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## **I. INTRODUCTION**

Iraq has struggled with concepts of citizenship – and who belongs in its citizenry – since its formation as a modern state. From the time of its independence from Britain in 1932, the country has been home to many stateless communities, as well as many refugee and migrant populations, some of whom now face statelessness. The causes of statelessness in Iraq are varied, but relate to discrimination on the basis of gender, religion, and ethnicity; administrative barriers to accessing civil documentation; colonial legacies that include demographic manipulation; and prolonged displacement due to conflict in Iraq, the Middle East and North Africa (MENA) region. The United Nations High Commissioner for Refugees (UNHCR)<sup>1</sup> estimates that 47,000 individuals are stateless in the country.<sup>2</sup> However, given that neither governmental nor non-governmental experts have completed a profile of populations facing statelessness in the country, the actual number is believed to be considerably higher. UNHCR itself indicates that this figure is only an estimate pending a more accurate study of statelessness in Iraq.<sup>3</sup>

Iraq is party to a number of international and regional treaties and agreements that address aspects of statelessness and access to nationality. Despite Iraq's obligations towards them, many individuals and families who are stateless live precarious and unstable lives with little access to basic rights and services. Based on research and fieldwork conducted over the course of 2020-2022, this Report examines the domestic, international, and regional laws relevant to statelessness in Iraq. It identifies gaps in Iraq's laws and their implementation that perpetuate statelessness, discusses the major consequences of statelessness, and describes some of the main stateless communities in Iraq. The Report also highlights the achievements of various stakeholders in addressing issues of statelessness in Iraq, and concludes with recommendations aimed at reducing barriers to legal status that would significantly mitigate statelessness in the country. The Report seeks to contribute to a deeper understanding of the

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<sup>1</sup> UNHCR is the UN agency in charge of registering refugees (other than Palestinians), with the aim of providing them humanitarian assistance and protection, and promoting permanent solutions for refugees, including resettlement to a third country. Susan M. Akram, *The Search for Protection for Stateless Refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan*, 30 INT'L J. REFUGEE L. 407, 409-10 n.6 (2018).

<sup>2</sup> It is important to note that certain stateless refugee populations are not included in this statistic; significant populations such as Palestinians and stateless Kurds displaced from Syria by the conflict and living as refugees in Iraq. See *Factsheet – Iraq November 2021*, UNHCR, <https://reporting.unhcr.org/document/1009> (last visited Jan. 21, 2022) [hereinafter UNHCR Factsheet Nov. 2021].

<sup>3</sup> *Id.*

issues specific to Iraq, and sets out proposals for reform more broadly relating to statelessness across the region. This research does not address stateless communities of Iraqi origin living outside of Iraq.

While this Report focuses on Iraq, it is part of a region-wide project addressing statelessness in the MENA region, and is one of four country reports mapping issues of statelessness in the region. As illustrated by prior research, conducted by the Boston University International Human Rights Clinic (BU IHRC) in Lebanon and Jordan (with additional research published concurrently on Egypt), there are similarities in the issues underlying statelessness across the region, but also significant differences that reflect unique circumstances in each country. This Report contributes to the region-wide effort to illuminate situations of statelessness and advocate for more inclusive citizenship practices.

## **A. Problem Statement**

UNHCR launched the #iBelong Campaign in 2014 to End Statelessness by 2024 and has since mobilized governments and civil society around issues of statelessness.<sup>4</sup> This initiative has propelled decade-long advocacy addressing statelessness in the MENA. In 2019, as part of the UNHCR Executive Committee's High-Level Segment on Statelessness, 252 States (along with 70 civil society organizations and 38 international and regional organizations) made specific pledges to further the #iBelong Campaign's goals, including commitments to reform citizenship laws, change administrative policies, and introduce legislative amendments. Notably absent from pledging countries were stakeholders from the MENA region: Iraq made no pledge to address statelessness.<sup>5</sup>

However, Iraq is a party to a number of international conventions that guarantee the right to nationality and citizenship, including the Convention on the Rights of the Child (CRC), the Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with

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<sup>4</sup> *Global Action Plan to End Statelessness: 2014-2024*, UNHCR, <https://www.unhcr.org/54621bf49.html> (last visited Jan. 21, 2022). The #iBelong Campaign to End Statelessness by 2024 encourages States, among other actions: (i) to ensure that no child is born stateless; (ii) to remove gender-discriminatory nationality laws; (iii) to grant protection to stateless migrants and facilitate their naturalization; (iv) to issue nationality documentation; (v) to comply with UN conventions relating to statelessness; and (vi) to improve data on stateless populations. *Id.* at 2-3.

<sup>5</sup> *Results of the High-Level Segment on Statelessness*, UNHCR, <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/> (last visited Jan. 21, 2022). The only country from the MENA region to make any pledge was Mauritania. *Id.*

Disabilities (ICPRD), and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>6</sup> Iraq is also State Party to regional instruments that guarantee the right to nationality and citizenship, including the Arab Charter on Human Rights (Arab Charter) promulgated by the League of Arab States (LAS).<sup>7</sup> In contravention of the protections afforded by these international and regional instruments, Iraq's nationality laws, policies, and civil registration system do not adequately protect the right to nationality in the country, leaving many individuals and populations either stateless or at risk of statelessness. These deficiencies leave large segments of the population deprived of essential human rights and social entitlements. Currently, the status of statelessness is not legally recognized in Iraq – as in most countries across the MENA region – and there is no clear legal framework to aid officials in navigating the issue.

There are various legal and practical factors prolonging or causing statelessness in Iraq. The current Nationality Law of 2006, although a substantial improvement from prior nationality laws, contains a number of provisions that violate Iraq's international obligations.<sup>8</sup> In addition to the law's non-compliance with the country's international obligations, there are substantial problems in Iraq's civil registration procedures.<sup>9</sup> Many Iraqis are not able to access various registration procedures, such as birth and marriage registration, due to these administrative barriers.

Alongside these challenges in ensuring that every person has access to documentation, and those who are eligible can perfect or obtain nationality in Iraq, there are also cases of historically stateless populations, i.e., populations that have been left without the possibility of

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<sup>6</sup> See Convention on the Rights of the Child art. 2(1), Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; International Covenant on Civil and Political Rights art. 24(3), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention on the Elimination of All Forms of Discrimination Against Women, art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; Convention on the Rights of Persons with Disabilities art. 18(1), May 3, 2008, 2515 U.N.T.S. 3 [hereinafter ICRPD]; International Convention on the Elimination of All Forms of Racial Discrimination art. 5, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD]. See also *UN Treaty Body Database – Iraq*, Office of the High Commissioner for Human Rights (OHCHR), [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=82&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=82&Lang=EN) (last visited Jan. 21, 2022).

<sup>7</sup> Arab Charter on Human Rights art. 3(1), May 22, 2004, League of Arab States [hereinafter Arab Charter]; Mohammed Amin Al-Midani, Mathilde Cabanettes, and Susan Akram, *Arab Charter on Human Rights* 24 BOSTON U. INT'L L.J., 147, 147-149 (2004) (providing a separate English translation of the Arab Charter, and briefly reviewing the drafting history of the 2004 Arab Charter). See also MERVAT RISHMAWI, *THE LEAGUE OF ARAB STATES HUMAN RIGHTS STANDARDS AND MECHANISMS* 10 (2015) (noting that Iraq is one of the original member states of the LAS). Iraq ratified the Arab Charter in April 2013. *Id.* at 70.

<sup>8</sup> See *infra* Part II.B.2.

<sup>9</sup> See *infra* Part II.B.8-9.

acquiring Iraqi – or any other – nationality for decades.<sup>10</sup> Examples of non-refugee populations facing statelessness or risks thereof discussed in this Report are: the Faili Kurds, the Dom community, the Bidoon community, and the Yezidis.

There are a large number of refugees and internally displaced persons (IDPs) living inside of Iraq,<sup>11</sup> as well as many Iraqi refugees dispersed across the world (the latter group is not discussed in this Report).<sup>12</sup> Other populations that are stateless or at risk of statelessness discussed in this Report are those from protracted refugee populations living in Iraq – most notably Palestinians and Syrians. An unknown number of stateless Kurds of Syria are living in Iraq, many of whom were unable to access their Syrian nationality before becoming refugees. The severe challenges of multi-generational displacement and conflict that affect the country hinder Iraq’s ability to address statelessness. Massive and ongoing displacement continues to impede Iraq’s efforts to address access to nationality for all.

Furthermore, statelessness can be hereditary, as the country does not have safeguards for children who are born in the territory to obtain Iraqi nationality who have not acquired any other nationality. Multigenerational displacement of Iraqis and others inside Iraq exacerbates the struggle of families to ensure their children and grandchildren receive documentation to prove their Iraqi nationality, and threatens to continue perpetuating the status without corrective governmental action.

The following sections of Part I provide the methodological foundation for this Report and the relevant historical context that informs the current situations of statelessness in Iraq. Part II.A examines Iraq’s obligations under international law and regional treaties that are relevant to statelessness. Part II.B addresses the current state of Iraq’s laws and policies, as well as the resulting gaps in the law. Part III examines some of these issues as they pertain to specific populations in Iraq, each of which face statelessness or risks thereof. Part IV examines some of the consequences of statelessness in Iraq as they pertain to fundamental rights such as children’s rights, social and economic rights, and civil and political rights. Part V acknowledges some of the efforts made to address statelessness in Iraq, both problematic and positive. Part IV provides

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<sup>10</sup> See *infra* Part III.

<sup>11</sup> There are an estimated 287,749 refugees living in Iraq. This includes 249,733 registered refugees from Syria and 38,016 from other countries (as of November 2021). See UNHCR Factsheet Nov. 2021, *supra* note 2.

<sup>12</sup> There are approximately 259,000 Iraqi refugees living in the MENA region. UNHCR, INTERNATIONAL PROTECTION CONSIDERATIONS WITH REGARD TO PEOPLE FLEEING THE REPUBLIC OF IRAQ 25 (2019).



recommendations to relevant stakeholders on steps that should be taken to address statelessness and the gaps in law highlighted throughout this Report.

## **B. Methodology**

This Report is based on primary and secondary qualitative research on issues related to statelessness in Iraq conducted over the course of a year and a half, from 2020-2022. It relies on an extensive literature review of the relevant laws and policies, reports and studies from non-governmental organizations (NGOs), international non-governmental organizations (INGOs), intergovernmental organizations (IGOs) and academics. Building on the literature review, field research was conducted with Iraqi stakeholders, although due to COVID-19 restrictions, all fieldwork interviews were held online. Interviews were held between April and July of 2020 with individuals from the communities advocating on the issue; individuals working at INGOs and NGOs; aid organizations; academics, lawyers, and activists working on statelessness and related issues in Iraq.<sup>13</sup> There is no one organization working exclusively on statelessness in Iraq, but several organizations address access to nationality or citizenship as part of their main work on gender equality, non-discrimination, displacement, or access to civil documentation. In particular, the staff at the Norwegian Refugee Council (NRC) provided information, research, and guidance for this Report.<sup>14</sup>

A workshop, co-hosted by NRC, was conducted online in July 2020 with a variety of experts working on the issue to share information and ideas. Individual stakeholders in and outside the MENA region, along with the Boston University International Human Rights Clinic team, attended the workshop. Workshop participants addressed the following issues: (1) populations of stateless persons, refugees and others at risk of statelessness in Iraq; (2) barriers to civil registration (focusing in particular on Syrian refugees, individuals who lived in former

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<sup>13</sup> The organizations interviewed included: the Danish Refugee Council [DRC], Harikar, Iraqi Al-Amal Association, Heartland Alliance International in Iraq, Laissez-Passer, the Norwegian Refugee Council [NRC], Oxfam, Women's Leadership Institute, Zoa, Lawyer A. Abdullah, Lawyer R. Hussein, and Lawyer K. Khalil. Many of the sources requested that the identities of either their organizations or their individual staff remain anonymous, and therefore some individual names have not been included in the relevant citations throughout this Report.

<sup>14</sup> The NRC, an INGO based in Oslo that works across the MENA region, provides, along with a wide range of other services, legal aid and assistance for those trying to navigate the civil registration system. *Information, Counselling and Legal Assistance (ICLA)*, NRC, <https://www.nrc.no/what-we-do/activities-in-the-field/icla/> (last visited Jan. 22, 2022). The NRC's Information, Counselling and Legal Assistance (ICLA) programme conducts research and provides assistance in accessing nationality and obtaining civil registration documents in the country.

Islamic State (IS) controlled areas, and stateless Kurds in Iraq); and (3) next steps to establish a statelessness network in the MENA.

Following the research and workshop, this Report was drafted and sent for feedback among stakeholders. In December 2021, the findings of this Report were presented at the Inauguration of the Statelessness Platform and Research and Advocacy Network on Statelessness in the MENA in Cairo.<sup>15</sup> Additional editing based on input after the Cairo conference was conducted until publication of the report in March, 2022.

### C. Historical Context of Citizenship in Iraq

Iraq has been characterized by ethnic and religious diversity throughout its history, from the mass influx of Arab populations of the Gulf region in the seventh century to the Ottoman conquests during the sixteenth century.<sup>16</sup> Citizenship and nationality as core features of an individual's identity were creatures of the nineteenth century, and were defined at a later stage of the Ottoman legal system.<sup>17</sup> Under the Ottoman Empire, citizenship was determined by the Law of Ottoman Nationality of 1869.<sup>18</sup> Based in part on the Napoleonic Code, the 1869 Nationality Law "specified the criteria for the acquisition of Ottoman citizenship (on the basis of paternal lineage and residence), the acquisition of a foreign nationality, and the loss of the Ottoman nationality."<sup>19</sup> This law was the foundation for later developments defining Iraqi nationality. The rules of paternal descent and residence within the Ottoman Empire were retained in the 1924 Nationality Law and in the first Iraq Constitution of 1925, which was written by British officials.<sup>20</sup>

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<sup>15</sup> See Center for Migration & Refugee Studies AUC (@CMRS\_AUC) (Dec. 6, 2021, 10:11 PM), [https://twitter.com/CMRS\\_AUC/status/1467874464360710150](https://twitter.com/CMRS_AUC/status/1467874464360710150).

<sup>16</sup> *History of Iraq*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Iraq/History#ref22883> (last visited Jan. 22, 2022); see also GÖKHAN ÇETINSAYA, OTTOMAN ADMINISTRATION OF IRAQ, 1890-1908 4 (2006) (noting that "Iraq was conquered in stages by the Ottomans in the first half of the sixteenth century: Mosul was taken in c.1516–17, Baghdad in 1534, and Basra between 1538 and 1546.").

<sup>17</sup> Will Hanley, *What Ottoman Nationality Was and Was Not*, 3 J. OTTOMAN AND TURKISH STUD. ASS'N 277, 277 (2016). Importantly, while the 1869 Nationality Law "resembled nationality laws of other states issued before 1869 and after . . . the Ottoman nationality law has been identified as the origin point of a . . . [particular] set of practices: those of modern political identity and citizenship. *Id.* at 278.

<sup>18</sup> *Id.* at 277.

<sup>19</sup> Zainab Saleh, *On Iraqi Nationality: Law, Citizenship, and Exclusion*, 21 ARAB STUD. J. 48, 53 (2013). Ottoman law also prohibited marriage between Ottoman and Iranian subjects. *Id.* at 53-54; see generally KAREN KERN, IMPERIAL CITIZEN: MARRIAGE AND CITIZENSHIP IN THE OTTOMAN FRONTIER PROVINCES OF IRAQ (2011).

<sup>20</sup> Saleh, *Law, Citizenship, and Exclusion*, *supra* note 19, at 54-56.

The dismantling of the Ottoman Empire following World War I left a significant political void in the MENA region that was swiftly filled by colonial occupations -- Britain in Palestine, Iraq, Jordan, and Egypt; France in Syria and Lebanon; and Italy in Libya.<sup>21</sup> Colonial occupation entrenched the influence of foreign powers in the region, in tandem with imposing European nationalism as a political concept.<sup>22</sup> A significant consequence of this has been extreme sensitivities about demographic pluralism.<sup>23</sup> Iraq's territory was combined from three regions ('*vilayets*') of the Ottoman Empire—the coastal province of al-Basrah, the central region of Baghdad, and Mosul in the north (with a predominantly Kurdish population, in addition to some Assyrian and Turkman communities).<sup>24</sup> In November 1914, British troops landed on the Fao Peninsula in then-Ottoman territory, and by April 1920 the British government “formally accepted responsibility for building an Iraqi state” after the dissolution of the Ottoman government.<sup>25</sup>

Under the British mandate government, a Hashemite monarchy was established in 1921 to retain British control over the region while formally detaching Iraq from Turkey through the 1923 peace treaties.<sup>26</sup> Britain determined that Faisal bin Hussein bin Ali Al-Hashemi (previously installed by Europe in, and subsequently forced out of, Syria) would “become the monarch of a pro-British Iraq, which would be governed by Britain at arm's length under one of the new

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<sup>21</sup> CHRISTINE M. HELMS, *ARABISM AND ISLAM: STATELESS NATIONS AND NATIONLESS STATES* 13 (1990).

<sup>22</sup> *Id.* at 17. The colonial occupations of this period were hardly the first interference by European powers in the Ottoman territories. Since the 1830s, European countries had significant economic interests that enabled them to exert commercial influence, develop educational institutions and religious missionaries, and establish consuls in almost every provincial center in the Ottoman empire. ÇETINSAYA, *OTTOMAN ADMINISTRATION OF IRAQ*, *supra* note 16, at 127.

<sup>23</sup> HELMS, *ARABISM AND ISLAM*, *supra* note 21, at 22-23 (governments throughout the MENA region commonly disregard or ignore religious and ethnic differentiation).

<sup>24</sup> Martin Walker, *The Making of Modern Iraq*, 27 *WILSON QUARTERLY* 29, 30-31 (2003). In 1914, the population of Ottoman Iraq was highly ethnically diverse and numbered approximately 3,650,000 people divided between Baghdad (1,300,000), al-Basrah (1,150,000), and Mosul (828,000). ÇETINSAYA, *OTTOMAN ADMINISTRATION OF IRAQ*, *supra* note 16, at 13 (noting also that the population, especially in the Mosul vilayet, was “divided along ethnic lines: Arabs, Kurds, Turkomans, Persians, Assyrians, Armenians, Chaldeans, Jews, Yezidis, Sabeans, and others. Ottoman Iraq . . . could be divided into three major religious zones: predominantly Arab Shi'i (south), predominantly Arab Sunni (west), and predominantly Kurdish Sunni (north). It also contained numbers of Christians, especially in Mosul, and a large Jewish community in Baghdad.”). Furthermore, “[l]ike other outlying provinces which joined the Empire late, such as Egypt and the Yemen, Iraq was never fully integrated into the Ottoman administrative system, and the Porte did not maintain an all-embracing political control there.” *Id.* at 4.

<sup>25</sup> Toby Dodge, *The British Mandate in Iraq, 1920-1932*, 2 *MIDDLE EAST ONLINE SERIES* 1 (2006); *see generally* ARTHUR JAMES BARKER, *THE FIRST IRAQ WAR, 1914-1918: BRITAIN'S MESOPOTAMIAN CAMPAIGN* (2009); CHARLES TRIPP, *A HISTORY OF IRAQ* (2002).

<sup>26</sup> GIANLUCA PAROLIN, *CITIZENSHIP IN THE ARAB WORLD: KIN, RELIGION AND NATION-STATE* 76-77, 82 (2009).

League of Nations mandates.”<sup>27</sup> British advisers were installed in a variety of important posts to maintain a significant degree of control. However, to accommodate pressures from anti-colonial Arab movements, Britain modified its original 1922 treaty with Iraq, that was the framework for governance, multiple times to make it more favorable to the Iraqi government.<sup>28</sup>

It was in this context that Iraqi nationality, the first to be regulated after the Treaty of Lausanne, was negotiated.<sup>29</sup> Law No. 42 of 1924 was drafted and instituted under the British Mandate government, in part with the goal of increasing the Iraqi population and favoring “the option for [acquiring] Iraqi nationality and hindering its renunciation.”<sup>30</sup> Drawing significantly from the 1869 Ottoman Nationality Law, the 1924 Nationality Law considered Ottoman subjects habitually resident in Iraq from the date of August 23, 1921 (i.e. the coronation date of King Faisal I) to be Iraqi nationals.<sup>31</sup> The 1924 Nationality Law encompassed a broad notion of ‘native’ in order to permit “all former Ottoman subjects residing abroad to opt for Iraqi nationality even if not ethnically belonging to the majority of the Iraqi population.”<sup>32</sup> Acquiring Iraqi nationality through a naturalization process merely required three-year residency in the region.<sup>33</sup> The law incorporated elements of both *jus sanguinis* – having an Iraqi father – and *jus soli* criteria –being resident in Ottoman or Iraqi territory.<sup>34</sup> The 1924 Nationality Law, besides incorporating a relatively short, three-year, residency requirement for naturalization, was also gender discriminatory as it relied on paternal *jus sanguinis* in acquiring Iraqi nationality.<sup>35</sup> The law placed restrictions on the ability to renounce Iraqi nationality if the individual was not a dual citizen.<sup>36</sup> Importantly, the 1924 Nationality Law “categorized Iraqi citizens on the basis of the citizenship they had held under Ottoman rule, and whether they were at the time Ottoman or

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<sup>27</sup> Walker, *The Making of Modern Iraq*, *supra* note 24, at 30; Zaid al-Ali, *Constitutional Reform Processes and Security Sector reform: Principles for Practice: Iraq Case Study*, in SECURITY SECTOR REFORM IN CONSTITUTIONAL TRANSITIONS 191, 192 (Zoltan Barany et al., eds. 2019) (the influence of the British military occupation officers made Iraq “perhaps unique in that the seeds of its militaristic tendencies were planted even before the modern Iraq state was created.”).

<sup>28</sup> Walker, *The Making of Modern Iraq*, *supra* note 24, at 32 (one consequence of the British focus on irrigation and public health projects at the time led to a significant population boom that nearly doubled Iraq’s population from the period of 1920-1932).

<sup>29</sup> PAROLIN, CITIZENSHIP IN THE ARAB WORLD, *supra* note 26, at 82.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 83.

<sup>32</sup> *Id.* (citing Iraqi Nationality Law No. 42 of 1924, art. 7).

<sup>33</sup> *Id.* (noting generally that the 1924 Nationality Law was the “first piece of legislation in the Middle East to promote an ‘open’ concept of nationality.”).

<sup>34</sup> *Id.*

<sup>35</sup> Saleh, *Law, Citizenship, and Exclusion*, *supra* note 19, at 56.

<sup>36</sup> Iraqi Nationality Law No. 42 of 1924, art. 13 (Iraq).

Persian citizens,” laying the foundation for the Iraqi government to instrumentalize citizenship in the 1980s.<sup>37</sup>

In 1932, the Kingdom of Iraq was formally granted independence and became a member of the League of Nations.<sup>38</sup> The acceptance by the League of Nations of Iraq as an independent state belied Iraq’s enduring dependence on Britain and the consolidation of power in a small political clique that “could not control the country without the bombs and machine guns of the [British] Royal Air Force.”<sup>39</sup> Following the death of King Ghazi bin Faisal in 1939, the British engineered a regency that consolidated power in Nuri Said. Rashid Ali seized power within a year, and remained as head of state with German support during World War II until the reinstatement of Nuri Said by British and U.S. forces.<sup>40</sup>

After World War II, the creation of the state of Israel on Palestine by European and Western powers led to an influx of Palestine refugees to Iraq in 1948, and again after the 1967 war, and once again in 1991 following the First Gulf War.<sup>41</sup> Iraqi forces joined in the 1948 and 1967 conflicts with Israel, allied with other Arab states. As each conflict ended in defeat due to support of Israel by the U.S. and Europe, Iraq’s Jewish population of approximately 120,000 persons departed or fled, “virtually *en masse*.”<sup>42</sup> In response to these events, Law No. 1 of 1950 stated that the Council of Ministers “may cancel the Iraqi nationality of an Iraqi Jew who willingly desires to leave Iraq.”<sup>43</sup> One year later, the Iraqi government adopted Law No. 5 of 1951, which further tightened restrictions on the properties of denationalized Jewish Iraqis that were placed under government administration.<sup>44</sup> These actions came in retaliation for Israel’s passing of the Return and Absentee Property Law of 1950, which retroactively denationalized Palestinians and expropriated their properties.<sup>45</sup> By 1951, a mere 6,000 Jews remained in Iraq.<sup>46</sup>

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<sup>37</sup> Saleh, *Law, Citizenship, and Exclusion*, *supra* note 19, at 49.

<sup>38</sup> PAROLIN, *CITIZENSHIP IN THE ARAB WORLD*, *supra* note 26, at 82.

<sup>39</sup> *Id.*

<sup>40</sup> Walker, *The Making of Modern Iraq*, *supra* note 24, at 35-36.

<sup>41</sup> JOSHUA CASTELLINO AND KATHLEEN CAVANAUGH, *MINORITY RIGHTS IN THE MIDDLE EAST* 219 (2013).

<sup>42</sup> Walker, *The Making of Modern Iraq*, *supra* note 24, at 35; *see also* Carole Basri, *The Jewish Refugees from Arab Countries: An Examination of Legal Rights – A Case Study of the Human Rights Violations of Iraqi Jews*, 26 *FORDHAM INT’L L.J.* 656 (2002).

<sup>43</sup> Supplement to Ordinance Canceling Iraqi Nationality, Law No. 1 of 1950, al-Waqā’i’ al-‘Irāqīyah [Iraqi Official Gazette], Mar. 9, 1950; *see also* ABDULLAH OMAR YASSEN, *REPORT ON CITIZENSHIP LAW: IRAQ* 4 (May 2021).

<sup>44</sup> A Law for the Supervision and Administration of the Property of Jews who have Forfeited Iraqi Nationality, Law No. 5 of 1951, Sec. 2(a), al-Waqā’i’ al-‘Irāqīyah [Official Iraqi Gazette], Mar. 10, 1951.

<sup>45</sup> Law No. 5710-1950, “Absentees’ Property Law”, Laws of the State of Israel No. 37 (Mar. 20, 1950).

<sup>46</sup> YASSEN, *REPORT ON CITIZENSHIP LAW: IRAQ* *supra* note 43, at 4.

Iraq became a center of the pan-Arab movement that swept the region in the 1950s and 1960s.<sup>47</sup> The ideology of pan-Arabism is intimately linked to the history of Iraq and its nationality law. It was the rising power of nationalist parties in Iraq that drove Britain to enter into treaties with “these new political actors . . . (alongside Hashemites and local tribal leaders), instead of attempting to administer the country under the terms of the Mandate System.”<sup>48</sup> Furthermore, from the 1940s-1970s, Iraq participated in some of the voluntary unification efforts that took place between Arab states, particularly with Syria (1946, 1949, 1963, 1978, and 1979), Jordan (1946, 1951, and 1958), and Egypt (1963), although none of these unification negotiations were ultimately successful.<sup>49</sup> In large part an expression of de-colonial ideology, pan-Arabism remains an underlying rationale for the exclusion and marginalization of many non-Arab minorities from being granted nationality, or for revoking previously-held nationality in Arab-majority countries.<sup>50</sup> Despite almost unanimous expressions of solidarity with Palestine and Palestine refugees across the region, most states in the MENA region have explicitly prohibited granting citizenship to Palestinians ostensibly to protect their Palestinian nationality.<sup>51</sup>

In July of 1958, the overthrow of the monarchy by army officers also defeated those in the military who were considered to be aligned with pan-Arabist ideology (i.e., Ba’athist Party members and supporters).<sup>52</sup> Between 1958 to 1963, Iraq distanced itself from the larger pan-Arab movement.<sup>53</sup> Subsequently, political instability led to the downfall of the ruling party in 1962, and the triumph of the Ba’ath Party.<sup>54</sup>

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<sup>47</sup> For more information on this ideology, see GEORGE ANTONIUS, *THE ARAB AWAKENING* (1938); Mohammad-Mahmoud Ould Mohamedou, *The Rise and Fall of Pan-Arabism*, in *ROUTLEDGE HANDBOOK OF SOUTH-SOUTH RELATIONS*, 168 (Elena Fiddian-Qasmiyeh & Patricia Daley eds., 2019).

<sup>48</sup> Mohamedou, *The Rise and Fall of Pan-Arabism*, *supra* note 47, at 171 (citing TOBY DODGE, *INVENTING IRAQ* 22 (2003)).

<sup>49</sup> *Id.* at 172-73 (noting also that of these efforts, amongst others by various Arab states, only the temporary formation of the United Arab Republic (UAR) between Egypt and Syria was successful—the two countries formed a union from 1958 to 1961).

<sup>50</sup> A significant example of this would be the Kurds of Syria, many of whom were stripped of their nationality in the 1960s in the context of the pan-Arabism sweeping the country at the time. *See, e.g.*, Zahra Albarazi, *The Stateless Syrians*, Tilburg Law School Research Paper No. 011/2013, 13-15 (May 24, 2013).

<sup>51</sup> For an overview of the positions of several key Arab states and the UN’s history in engaging with Palestine refugees, *see* Susan Akram, *UNRWA and Palestine Refugees*, in *THE OXFORD HANDBOOK OF INT’L REFUGEE LAW* 643, 643-660 (Cathryn Costello, Michelle Foster, & Jane McAdam eds., 2021).

<sup>52</sup> John F. Devlin, *The Baath Party: Rise and Metamorphosis*, 96 *AM. HIST. REV.* 1396, 1401 (1991). For a foundational and fundamental history of Iraq throughout the turbulent revolutionary period, *see* HANNA BATATU, *THE OLD SOCIAL CLASSES AND THE REVOLUTIONARY MOVEMENTS OF IRAQ: A STUDY OF IRAQ’S OLD-LANDED AND COMMERCIAL CLASSES AND OF ITS COMMUNISTS, BA’THISTS, AND FREE OFFICERS* (1978).

<sup>53</sup> Devlin, *The Baath Party: Rise and Metamorphosis*, *supra* note 52, at 1401.

<sup>54</sup> Walker, *The Making of Modern Iraq*, *supra* note 24, at 39.

By 1963, the “Arab Socialist Ba’ath (Resurrection) Party began its half-century of existence as a movement standing for Arab nationalism, freedom from foreign rule, and the establishment of a single Arab state.”<sup>55</sup> In a military coup by ‘Abd al-Salam Muhammad Arif al-Jumayli, the Ba’ath party took control of the government.<sup>56</sup> The ascent of the Ba’ath party was followed swiftly by changes to the Iraqi nationality law. Law No. 42 of 1924 (and its amendments) was formally repealed by Law No. 43 of 1963.<sup>57</sup> The new Nationality Law provided that every person “in or outside Iraq of a father possessing Iraqi Nationality” and every person born in Iraq of an Iraqi mother, an unknown or stateless father,” as well as foundlings in Iraq (unless evidence indicating otherwise) would hold Iraqi nationality.<sup>58</sup> In addition, the 1963 Nationality Law provided that persons bearing Ottoman nationality who were habitually present in Iraq on August 6, 1924, would be deemed Iraqi nationals from the date of August 6, 1924.<sup>59</sup> It also provided several sets of circumstances under which Iraqi nationality could be withdrawn. Although amended several times, Law No. 43 remained the primary nationality law of Iraq until the fall of the Ba’ath regime in the 2000s. Law No. 43 retained the gender-discriminatory elements of prior nationality laws. For example, Article 12 of the 1963 Nationality Law states that a foreign woman of Arab descent who marries an Iraqi is entitled to Iraqi citizenship upon approval, yet a non-Arab woman can only apply for citizenship after residing in Iraq for three years. The same article provides that if an Iraqi woman marries a foreigner who does not have Iraqi citizenship, she will lose her Iraqi citizenship.<sup>60</sup>

The 1963 Nationality Law was re-drafted following another internal coup in November of 1963, leading to Law No. 206 of 1964.<sup>61</sup> However, in 1968, the Ba’ath party, now led by Ahmed Hassan al-Bakr and Saddam Hussein, regained power through a subsequent coup, and returned to the project of reshaping Iraq’s nationality law.<sup>62</sup> A series of further amendments of

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<sup>55</sup> Devlin, *The Baath Party: Rise and Metamorphosis*, *supra* note 52, at 1396.

<sup>56</sup> PAROLIN, CITIZENSHIP IN THE ARAB WORLD *supra* note 26, at 83. *See* Nationality Regulations No. 1 of 1965 (Iraq) (noting that the regulation was promulgated pursuant to Article 25 of Law No. 43 of 1963).

<sup>57</sup> Iraqi Nationality Law No. 46 of 1963, art. 22 (Iraq).

<sup>58</sup> *Id.* at art. 4.

<sup>59</sup> *Id.* at arts. 2, 3.

<sup>60</sup> *Id.* at art. 12.

<sup>61</sup> PAROLIN, CITIZENSHIP IN THE ARAB WORLD *supra* note 26, at 83 (citing Law No. 206 of 1964).

<sup>62</sup> *See* Devlin, *The Baath Party: Rise and Metamorphosis*, *supra* note 52, at 1405 (describing how Bakr and Saddam consolidated power by forcing out influential Ba’athist officers. Saddam in particular “purged potential rivals and promoted supporters . . . [and in 1979] he pushed Bakr into a retirement that amounted to virtual house arrest, discovered a ‘plot’ against himself, and executed a score of colleagues, including five on the Regional Command.

the nationality law were implemented over the following years.<sup>63</sup> Resolution No. 972 of 1972 reinstated Iraqi nationality to Assyrians who participated in 1933 rebellions against the government.<sup>64</sup> Resolution No. 536 of 1974 allowed naturalized Iraqis to be nominated for official/semi-official state offices, from which they were previously excluded.<sup>65</sup> In 1974, a Regional Conference of the Arab Socialist Ba'ath Party was held, leading to Law No. 5 of 1975 that granted Iraqi Nationality to any Arab “without restriction to the conditions of naturalization” stipulated in Law No. 43 of 1963. Law No. 43 was subsequently repealed. Palestinians were exempted from the expansion of the naturalization provisions in the Nationality Law.<sup>66</sup> Further reflecting Ba'athist exclusionary orientation, Resolution No. 518 of 1980 expressly excluded persons of Iranian origin from obtaining Iraqi nationality.<sup>67</sup>

Regulation of Iraqi nationality “was modified in 1980 shortly after Saddam Hussein’s takeover” by Law No. 207.<sup>68</sup> New conditions for naturalization were stipulated in the 1980 law,<sup>69</sup> including a provision requiring foreign women to remain married and live with their husbands in Iraq in order to become Iraqi nationals.<sup>70</sup> If a foreign woman did not obtain Iraqi nationality, she would forfeit her right to reside in Iraq. These discriminatory criteria against non-Arab women were not in the previous law. The changes left foreign women marrying Iraqis in precarious status and formally excluded persons of Iranian origin from the possibility of naturalizing.<sup>71</sup> Of particular relevance, Decree No. 666 of 1980 explicitly permitted the “deprivation of citizenship on account of disloyalty.”<sup>72</sup> This Decree authorized the denationalization of “so-called Iraqis of Iranian origin” primarily Shi’a Arabs or Kurds who had Persian nationality under the Ottoman Empire. The Decree resulted in massive expulsions, imprisonment, and death by the Regime of

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[Saddam’s] control of all instruments of government was complete.”). *See also* Zaid al-Ali, *Constitutional Reform Processes and Security Sector Reform*, *supra* note 27, at 194.

<sup>63</sup> PAROLIN, *CITIZENSHIP IN THE ARAB WORLD*, *supra* note 26, at 83 (stating that the 1968 coup “led to new amendments to the 1963 Law in 1968 (Law 147/ 1968), in 1970 (Law 60/1970), in 1972 (Law 131/1972) and – in a pan-Arab spirit – in 1975 (Law 5/1975)”).

<sup>64</sup> Resolution No. 972 of 1972, art. 1 (Nov. 25, 1972).

<sup>65</sup> Resolution No. 536 of 1974, art. 1 (May 15, 1974).

<sup>66</sup> *See* Granting the Iraqi Nationality to the Arab Law No. 5 of 1975, art. 1 (Iraq).

<sup>67</sup> PAROLIN, *CITIZENSHIP IN THE ARAB WORLD*, *supra* note 26, at 83.

<sup>68</sup> *Id.* (citing Law No. 207 of 1980).

<sup>69</sup> *Id.* (citing Law No. 180 of 1980).

<sup>70</sup> Naturalization Resolution No. 180 of 1980, art. 5(c) (Iraq). *See also* Nationality Resolution No. 722 of 1987 (Iraq).

<sup>71</sup> PAROLIN, *CITIZENSHIP IN THE ARAB WORLD*, *supra* note 26, at 83 (citing Law No. 518 of 1980).

<sup>72</sup> *Id.* (citing Nationality Decree No. 666 of 1980 (Iraq)).



such populations, considered suspect by the government.<sup>73</sup> The consequences of these exclusionary laws remain today, as demographic balance remains sensitive (particularly between Shi'a-Sunni and Arab-Kurd populations), and demographic balance and confessionalism are at the heart of discussions on nationality regulation.<sup>74</sup>

A number of additional regulations were issued throughout the 1980s. Resolution No. 329 of 1984 provided for the investigation and restriction of nationality to foreign women married to Iraqi officials.<sup>75</sup> Resolutions 890 and 1096 of 1985 reaffirmed privileges for Arab citizens who had acquired Iraqi nationality.<sup>76</sup> Resolution No. 850 of 1988 prohibited Iraqis from changing their nationality to another for any reason, and imposed a punishment of one year imprisonment for those who contravened the prohibition.<sup>77</sup>

Historically, there were attempts at making other changes in the nationality law which did not materialize. For instance, during the Gulf War in 1991, the Iraqi government included new provisions in the Nationality and Civil Information Law No. 46 of 1990 governing how an individual can acquire, lose and restore Iraqi nationality. The Law provided for a unified nationality identity and civil registration number to replace the prior nationality certificate and identification card system.<sup>78</sup> However, because of the Gulf War and the country's internal conflicts, and despite being adopted by Parliament, this provision was never implemented.<sup>79</sup> The Iraq nationality law therefore remained relatively consistent during the reign of Saddam Hussein, until it was amended in 2006 by the newly-elected Iraqi government.

These developments highlight how the Iraqi government, reflecting similar patterns across the MENA region, used citizenship as a political tool. Unfortunately, the changes prior to 2006 led to regressive and more exclusive Iraqi nationality law and discriminatory regulations. Since the removal of the Ba'ath regime through Western military intervention, much has changed in Iraq's legal structure. The Coalition Provisional Authority (CPA) and the Iraqi Governing Council (IGC) implemented an interim constitution from 2003-2004, until the

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<sup>73</sup> Saleh, *Law, Citizenship, and Exclusion*, *supra* note 19, at 48-51. Over 40,000 people were deported to Iran in 1980 alone, followed by expulsions of between 40,000-400,000 Iraqis. *Id.* at 67.

<sup>74</sup> The demographic and confessional balance in Iraq is the subject of significant debate and raises challenges beyond questions of nationality. *See* RANJ ALAALDIN, *SECTARIANISM, GOVERNANCE, AND IRAQ'S FUTURE* (2018).

<sup>75</sup> Resolution No. 329 of 1984 (Mar. 26, 1984).

<sup>76</sup> *See* Resolution No. 890 of 1985 (Sep. 18, 1985); Resolution No. 1096 of 1985 (Nov. 13, 1985).

<sup>77</sup> Resolution No. 850 of 1988 (Dec. 21, 1988).

<sup>78</sup> YASSEN, *REPORT ON CITIZENSHIP LAW: IRAQ*, *supra* note 43, at 5.

<sup>79</sup> Remote Interview with Harikar, NGO (Jan. 14, 2020).

passage of a permanent constitution.<sup>80</sup> In 2005, the present Constitution of the Republic of Iraq was promulgated, which includes the right to nationality in Article 18.<sup>81</sup> On October 15, 2005, despite significant opposition from Iraq’s Sunni Muslim population, “nearly ten million Iraqis cast ballots in a national referendum on [the] new constitution,” ultimately winning “the approval of over seventy-eight percent of Iraqi voters nationwide.”<sup>82</sup> The 2005 Constitution entered into force two months later, followed by the election of a new National Assembly government.<sup>83</sup> In 2006, Iraq also promulgated a new nationality law, Law. No. 26, which remains in force today and is a primary focus of this Report. Despite being substantially less discriminatory and exclusionary than previous law, the 2006 Law still presents various legal and practical challenges that create or prolong statelessness in Iraq. These are addressed in the following sections.

## **II. LAW AND LEGAL FRAMEWORK**

Iraq’s obligations relevant to statelessness arise from the international treaties to which it is a State Party, as well as regional law of the LAS and the Organization of Islamic Cooperation (OIC). These obligations, along with Iraq’s current nationality laws and registration procedures are set forth below in Part II.A, followed in Part II.B by gaps in the laws and policies that perpetuate statelessness.

### **A. Iraq’s Obligations Under International Law**

While Iraq’s Constitution does not establish a hierarchy between domestic and international laws, Article 8 states that “Iraq shall observe the principles of good neighborliness, adhere to the principle of noninterference in the internal affairs of other states, seek to settle

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<sup>80</sup> Noah Feldman and Roman Martinez, *Constitutional Politics and Text in the New Iraq: An Experiment in Islamic Democracy*, 75 *FORDHAM L. REV.* 883, 894-96 (2006) (providing a detailed account of the process of drafting the final Iraq Constitution (referred to during the process as the ‘Transitional Administrative Law’) from 2003 to 2005).

<sup>81</sup> Article 18, *Dustūr Jumhūrīyat al-‘Irāq* [The Constitution of the Republic of Iraq] of 2005 [hereinafter Constitution of Iraq] (“Iraqi citizenship is a right for every Iraqi and is the basis of his nationality.”).

<sup>82</sup> Feldman and Martinez, *supra* note 80, at 883; *see generally* Zaid Al-Ali, *Constitutional Legitimacy in Iraq: What Role Local Context*, in *CONSTITUTIONALISM IN ISLAMIC COUNTRIES: BETWEEN UPHEAVAL AND CONTINUITY* 635, 635-644 (Rainer Grote & Tilmann Röder eds., 2012) (critiquing the legitimacy of the 2005 Iraq Constitution as a matter of law and praxis in its development and its acceptance in Iraq generally).

<sup>83</sup> Feldman and Martinez, *supra* note 80, at 883.

disputes by peaceful means, establish relations on the basis of mutual interests and reciprocity, and respect its international obligations.”<sup>84</sup>

Iraq is not a party to either the 1954 Convention Relating to the Status of Stateless persons nor the 1961 Convention on the Reduction of Statelessness.<sup>85</sup> Iraq is also not a party to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol Relating to the Status of Refugees.<sup>86</sup> However, it does have other obligations under international and regional law to ensure the right to a nationality. Among the most relevant of these are: (1) the right to a nationality; (2) the child’s right to a nationality; (3) gender equality in nationality law and practice; (4) Palestinian refugee protection; and (5) protection of fundamental human rights for all, including stateless persons.

### 1. *Right to a nationality*

The right for everyone to have a nationality is a fundamental human right. Article 15 of the Universal Declaration of Human Rights,<sup>87</sup> provides that: “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”<sup>88</sup> In essence, the right of States to decide who their nationals are is not absolute and, in particular, States must comply with their obligations under international law concerning the granting and loss of nationality.<sup>89</sup> This is affirmed in Article 1 of the 1930

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<sup>84</sup> Constitution of Iraq, *supra* note 81, at art. 8.

<sup>85</sup> See Convention Relating to the Status of Stateless Persons, art. 1(1), Sept. 28, 1954, 360 U.N.T.S. 117; Convention on the Reduction of Statelessness, 30 Aug., 1961, 989 U.N.T.S. 175.

<sup>86</sup> See Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 137; *Convention Relating to the Status of Refugees*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en) (last visited Feb. 28, 2022); *see also* Protocol Relating to the Status of Refugees, 28. Jan. 31, 1967, 606 U.N.T.S. 267; *Protocol relating to the Status of Refugees*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-5&chapter=5](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5) (last visited Feb. 28, 2022).

<sup>87</sup> While it is a nonbinding resolution, the rights set out in the UDHR are considered customary international law. *See, e.g.*, Mirna Adjami and Julia Harrington, *The Scope and Content of Article 15 of the Universal Declaration of Human Rights*, 27 Refugee Survey Quarterly, 93, 93-109 (2008).

<sup>88</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 15 (Dec. 10, 1948).

<sup>89</sup> It should also be noted that these obligations remain binding under the more difficult circumstances of armed conflict, both in terms of human rights law and international humanitarian law (IHL). In particular, it should be noted that Geneva Convention IV provides that “no protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise . . . are prohibited.” Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva IV), 12 Aug., 1949, art. 33, 75 U.N.T.S. 287. *See also* Anne van der Wolff, *The Denial of Identity Cards to Islamic State Affiliates: a Recipe for Renewed Radicalisation?*, 4 MIDDLE EAST RESEARCH INSTITUTE 1, 3 (May 2019).

Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which is considered customary international law (CIL),<sup>90</sup> and states that “[i]t is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.”<sup>91</sup> This means that Iraq must respect international conventions and law when regulating who is and who is not a citizen. There is still an “absence of universally accepted standards on attribution of nationality,”<sup>92</sup> but the customary law rule remains in international law that every person is entitled to a nationality as a human right.<sup>93</sup> There is, however, no clarity concerning which entity is the *duty-holder* that must grant nationality if there is more than one state to which it might be ascribed.<sup>94</sup> International law implies the right of each individual to acquire, change and retain a nationality, and Iraq is bound by the obligation to ensure a nationality to those who would otherwise not have an effective nationality, or those without access to another nationality.

Iraq is party to various international legal instruments that guarantee the right to nationality, and in particular, prohibit discrimination in the acquisition or loss of nationality. These include ICERD (Article 5(d)),<sup>95</sup> ICCPR (Article 24),<sup>96</sup> CRC (Articles 7 and 8),<sup>97</sup> CEDAW

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<sup>90</sup> Customary International Law (CIL) consists of rules that are derived from the practice of states and are accepted as legally binding, come from "a general practice accepted as law" and exist independent of treaty law. *International Law*, BLACK'S LAW DICTIONARY (11th ed., 2019). See also Int'l Law Comm'n, Draft Articles on Diplomatic Protection with commentaries, 48-49, U.N. Doc. A/61/10 (2006) (noting that the definition of Article 1(1) provided by the 1954 Statelessness Convention is considered to have acquired a customary nature); see generally UNHCR, Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons, U.N. Doc. HCR/GS/12/01 (Feb. 20, 2012).

<sup>91</sup> League of Nations, Convention on Certain Questions Relating to the Conflict of Nationality Law, Apr. 13, 1930, 179 L.N.T.S. 4137.

<sup>92</sup> Serena Forlati, *Nationality as a Human Right*, in THE CHANGING ROLE OF NATIONALITY IN INTERNATIONAL LAW 18, 19 (Serena Forlati & Allesandra Annoni eds., 2013).

<sup>93</sup> See, e.g., G.A. Res. 50/152 (Dec. 21, 1995) (recognizing the fundamental nature of the prohibition of arbitrary deprivation of nationality); Human Rights Council, Human rights and arbitrary deprivation of nationality: Report of the Secretary-General, U.N. Doc. A/HRC/25/28 (Dec. 19, 2013) (summarizing the fundamental protection of the right to a nationality and the obligation on states to avoid actions causing statelessness). For a comparative perspective within regional mechanisms, see, e.g., Robert John Penness v. Tanzania, Afr. Court H.P.R., Judgement Nov. 28, 2019, App. No. 013/2015, ¶ 87 (stating "the right to nationality is a fundamental aspect of the dignity of the human person."); see also Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica, Inter-Am. Comm'n H.R., Advisory Opinion OC-4/84 (Jan. 19, 1984) Series A No. 4, paragraphs 32-33 (nationality is an "inherent right of all human beings.").

<sup>94</sup> Serena Forlati, *Nationality as a Human Right*, *supra* note 289, at 20.

<sup>95</sup> ICERD, *supra* note 6, at art. 5(d).

<sup>96</sup> ICCPR, *supra* note 6, at art. 24.

<sup>97</sup> CRC, *supra* note 6, at arts. 7-8.

(Article 9),<sup>98</sup> and the ICRPD (Article 18).<sup>99</sup> The following sections discuss the scope of nationality rights in these instruments as relevant to Iraq.

## 2. *Child's Right to a Nationality*

Iraq's treaty obligations include the guarantee of children to a nationality. ICCPR Article 24 specifically states that: "Every child has the right to acquire a nationality."<sup>100</sup> The Human Rights Committee has interpreted ICCPR Article 24 as a prohibition against discrimination with regard to "the acquisition of nationality." According to the Committee, domestic law should ensure nationality rights, whether "between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents."<sup>101</sup>

The CRC states more specifically that "[t]he child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality." Article 8 also places the obligation on states to "respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."<sup>102</sup> The Committee of the CRC has commented that states must implement the rights of the child to a nationality and birth registration "in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."<sup>103</sup> The CRC stipulates the state's role in ensuring a child maintains legal status.<sup>104</sup> Further, "where a child is illegally deprived of some or all of the elements of his or her identity, [the State] shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."<sup>105</sup> Importantly in Iraq's context, the right of the child in accessing birth registration is highly dependent on the status of the parents.

Iraq is also bound by regional agreements that guarantee children the right to a nationality. Most importantly, the Arab Charter<sup>106</sup> requires States Parties to guarantee the right to a nationality,<sup>107</sup> and to "take such measures, as they deem appropriate, in accordance with their

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<sup>98</sup> CEDAW, *supra* note 6, at art. 9.

<sup>99</sup> ICRPD, *supra* note 6, at art. 18.

<sup>100</sup> ICCPR, *supra* note 6, at art. 24.

<sup>101</sup> Human Rights Committee, 'General Comment No. 17: Article 24 (Rights of the child)' 1989, para 8.

<sup>102</sup> CRC, *supra* note 6, at arts. 7-8.

<sup>103</sup> CRC, *supra* note 6, at art. 7(2).

<sup>104</sup> *Id.* at art. 8(1).

<sup>105</sup> *Id.* at art. 8(2).

<sup>106</sup> Arab Charter, *supra* note 7, at art. 26(1).

<sup>107</sup> *Id.* at art. 29(1).

domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child."<sup>108</sup> The OIC Covenant on the Rights of the Child in Islam<sup>109</sup> (CRCI), although an instrument that has not yet entered into force, guarantees the child's right to a name, to be registered with the authorities, to have a nationality, and to know the child's parents and all relatives.<sup>110</sup> The CRCI requires Iraq "to make every effort to resolve the issue of [child] statelessness," to protect children's rights in accordance with their domestic law, and to provide these rights to both the State Party's citizen children and refugee children within its territory.<sup>111</sup>

Although neither the CRCI nor the Arab Charter expressly require States Parties to grant nationality to all children born on their territories or to children with stateless or unknown parents, the rights guaranteed in the CRC establish a standard for interpreting the best interests of the child. The standard set by the CRC is to ensure the child's right to a nationality, especially when the child would otherwise be stateless.<sup>112</sup> The phrase "in accordance with their domestic laws" in the Arab Charter does not relieve States Parties of their obligations under regional and international law.<sup>113</sup> The provision does not permit states to undermine the child's right to a nationality in their territories through inconsistent state measures, and Iraq thus must guarantee that all children in its territory have an effective nationality.<sup>114</sup>

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<sup>108</sup> *Id.* at art. 29(2).

<sup>109</sup> Research for this Report could not verify whether Iraq was a signatory to the CRCI.

<sup>110</sup> *See* Covenant on the Rights of the Child in Islam, art. 23, 2005, Organization of Islamic Cooperation [hereinafter CRCI] (stating the requirement for twenty states to ratify to enter into force); *see also* Outcome Document of the Thematic Debate on Revisiting the OIC Covenant on the Rights of the Child in Islam to Reinforce the Rights of Children in Member States, OIC Independent Permanent Human Rights Commission (Apr. 2017) (noting that "only 8 Member States have so far signed the Covenant, out of which only two have ratified it. On the other hand, all the OIC Member States have signed and ratified the UN CRC, which substantiates the claim to review the OIC Covenant to bring it in conformity with the international human rights instruments and make it more representative, broad based and implementable"); *see* Mahmood Monshipouri and Turan Kayaoglu, *The OIC and Children's Rights*, in *THE ORGANIZATION OF ISLAMIC COOPERATION AND HUMAN RIGHTS 198* (Marie Juul Petersen and Turan Kayaoglu eds., 2019).

<sup>111</sup> CRCI, *supra* note 110, at arts. 7, 21.

<sup>112</sup> CRC, *supra* note 6, at art. 7.

<sup>113</sup> Arab Charter, *supra* note 7, at art. 29(2).

<sup>114</sup> As a matter of treaty law, States parties to successive treaties governing the same subject must comply with the provisions of each treaty and interpret them consistently. Thus, Iraq is obliged to implement the most rights-protective legal standard. *See* Vienna Convention on the Law of Treaties (VCLT) arts. 26, 27, 30, 1155 U.N.T.S. 331 (May 23, 1969). *See also* UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en) (last visited Apr. 17, 2020). Although Iraq is not a party to the Vienna Convention on the Law of Treaties, the Treaty is a codification of customary international law. Karl Zemanek, Vienna Convention on the Law of Treaties, U.N. Audiovisual Lib. of Int'l Law, <https://legal.un.org/avl/ha/vclt/vclt.html> (last visited Apr. 17, 2020).

### 3. Gender-Discrimination

Historically, men and women have been treated differently with respect to nationality and citizenship rights. British and French colonial administrations introduced discriminatory nationality laws in their colonial territories and entrenched patriarchal structures which persist today. These systemic patterns have made ensuring gender equality in nationality an ongoing global challenge, particularly in the Middle East.<sup>115</sup> Iraq is a party to CEDAW, which sets the international standard for gender-equality in the law, including with respect to nationality. Article 1 of CEDAW provides a broad definition of discrimination against women.<sup>116</sup> Its Article 9 affirms that:

[s]tates Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband . . . . States Parties shall grant women equal rights with men with respect to the nationality of their children.<sup>117</sup>

Further, under Article 15(4), states are required to “accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.”<sup>118</sup>

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<sup>115</sup> Laura van Waas, Zahra Al-Barazi, and Deirdre Brennan, *Gender Discrimination in Nationality Laws: Human Rights Pathways to Gender Neutrality*, in INTERNATIONAL HUMAN RIGHTS OF WOMEN 194, 196 (N. Reilly ed. 2019). For a comparative perspective, see Malak Benslama-Dabdoub, *Colonial Legacies in Syrian Nationality and the Risk of Statelessness*, 3 STATELESSNESS AND CITIZENSHIP REV. 6, 10 (2021) (explaining the legacies of colonial laws of France and Britain in gender-discriminatory nationality law provisions in Syria).

<sup>116</sup> CEDAW, *supra* note 6, at art. 1 (defining discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”). Iraq has made reservations to some articles in CEDAW but none of them are relevant to nationality rights. See *Convention on the Elimination of All Forms of Discrimination against Women*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4) (last visited July 15, 2021) (noting that Iraq has reserved against the provisions of CEDAW Article 2(f)-(g), Article 16, and Article 29(1), while also stating that approval of CEDAW does not imply a recognition of Israel).

<sup>117</sup> *Id.* at art. 9.

<sup>118</sup> *Id.* at art. 15(4).

In addition, the 2004 Arab Charter recognizes that men and women “are equal in human dignity, in rights and in duties, within the positive discrimination established in favor of women by Islamic *shari’a* and other divine laws, [and] legislation,” requiring states to “undertake all necessary measures to guarantee the effective equality between men and women.”<sup>119</sup> This includes gender equality in conferring nationality to children pursuant to Article 29(2).<sup>120</sup> Article 43 notes that the Arab Charter does not impair the rights guaranteed by other international or regional instruments.<sup>121</sup> It is incumbent on Iraq to bring any of its laws that fail to meet the standards of the Arab Charter into conformity with it, as well as with other international instruments to which it is a party. Currently, Iraq does not confer equal nationality rights on women and men, as discussed further in Part II.B.4 below.

#### 4. *Protections Available to Refugees*

Iraq is not a party to the main international agreements that provide for the rights of stateless persons and refugees.<sup>122</sup> However, Iraq must still comply with CIL – for example with the prohibition against *refoulement* of refugees.<sup>123</sup> In 2018, the U.N. General Assembly adopted the non-binding Global Compact on Refugees (GCR) as a framework for heightened responsibility-sharing, which explicitly recognizes the importance of civil and birth registration as a means to prevent statelessness for refugee populations.<sup>124</sup> It remains to be seen if the GCR

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<sup>119</sup> Arab Charter, *supra* note 7, at art. 3(3).

<sup>120</sup> *Id.* at art. 29(2). However, the language of Article 29(2) (“State Parties shall undertake, in accordance with this legislation, all appropriate measures to allow a child to acquire the nationality of his mother with regard to the interest of the child”) may be taken to give states broad latitude to regulate how nationality is conferred. Jonathan Bialosky, *Regional Protection of the Right to a Nationality*, 24 CARDOZO INT’L COMP. POL’Y & ETHICS L. 153, 165 (2015).

<sup>121</sup> Arab Charter, *supra* note 7, at art. 43.

<sup>122</sup> The Statelessness Conventions guarantee a broad number of rights, such as the right to gainful employment, housing, public education, freedom of movement and identity documents. Convention Relating to the Status of Stateless Persons, *supra* note 85, at arts. 17-28. The 1954 Convention furthermore obliges States Parties to “as far as possible facilitate the assimilation and naturalization of stateless persons.” *Id.* at art. 32.

<sup>123</sup> See, e.g., H  l  ne Lambert, *Customary Refugee Law*, in THE OXFORD HANDBOOK OF INTERNATIONAL REFUGEE LAW 797, 797-799 (Cathryn Costello, Michelle Foster, and Jane McAdam eds., 2021).

<sup>124</sup> Rep. of the U.N. High Comm’r for Refugees, Global Compact on Refugees ¶ 82, U.N. Doc. A/73/12 (Part II) (2018). Iraq in particular urged the international community to utilize the GCR to invest in refugees and to “move from words to deeds.” See Permanent Mission of the Republic of Iraq to the United Nations Office, Iraq statement to the Sixth Formal Consultation on GCR 3-4 July 2018 (2018). See Global Compact for Safe, Orderly and Regular Migration ¶ 20(e), U.N. Doc. A/RES/73/195 (2018) (recognizing the objective of strengthening measures “to reduce statelessness, including by registering migrants’ births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State’s territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in



(and the Global Compact on Safe, Orderly and Regular Migration) will promote positive developments in this field that will affect Iraq.

Moreover, Iraq has bound itself to two LAS regional agreements that provide protections to refugees and migrant populations: the Arab Charter – relevant for all on the territory – and the Protocol for the Treatment of Palestinians in Arab States (known as the Casablanca Protocol).<sup>125</sup> As a State Party to the Arab Charter, Iraq must guarantee all individuals the right not to be expelled from or denied the right to return to his country; the right to seek political asylum; the right to a nationality; the right not to be arbitrarily deprived of a nationality; and the right to acquire another nationality.<sup>126</sup>

The Casablanca Protocol provides specific protections for Palestinians. Adopted in 1965 by the LAS to regularize the status of Palestinians,<sup>127</sup> the Casablanca Protocol requires Member States to afford Palestinians the same rights as nationals with regard to employment; the right to leave and return to the Member State; the right to freedom of movement among Member States; and to obtain and renew valid travel documents without delay.<sup>128</sup> In 1991, the LAS adopted non-binding Resolution 5093, which recommended that Member States implement the Casablanca Protocol “in accordance with the laws and regulations of each state.”<sup>129</sup> Member States interpreted this to mean that they could implement the Casablanca Protocol to the extent consistent with their existing domestic laws, which would allow states to ignore its provisions altogether.<sup>130</sup> The LAS also adopted several earlier resolutions governing the treatment of Palestinian refugees in LAS member states: LAS Resolution 714 calls for the issuance of travel documents to Palestinian refugees;<sup>131</sup> LAS Resolution 8 calls on states to treat Palestinian bearers of travel documents on equal terms with citizens of the issuing state.<sup>132</sup> LAS Resolution

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accordance with national legislation.”). See also Susan Akram, *Assessing the Impact of the Global Compacts on Refugees and Migration in the Middle East*, 30 INT’L J. OF REFUGEE LAW 691, 693 (2018).

<sup>125</sup> Protocol for the Treatment of Palestinians in Arab States, League of Arab States (Sept. 11, 1965), REFWORLD, <https://www.refworld.org/docid/460a2b252.html> (last visited Feb. 15, 2021) [hereinafter Casablanca Protocol].

<sup>126</sup> Arab Charter, *supra* note 7, at arts. 27-29.

<sup>127</sup> See Akram, *The Search for Protection for Stateless Refugees*, *supra* note 1, at 433.

<sup>128</sup> Casablanca Protocol, *supra* note 125, at arts. 1-5.

<sup>129</sup> Res. 5093, Sept. 12, 1991, League of Arab States.

<sup>130</sup> BADIL RESOURCE CENTER FOR PALESTINIAN RESIDENCY AND REFUGEE RIGHTS, SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS, 2016-2018 71 (2019).

<sup>131</sup> Res. 714, Jan. 27, 1954, League of Arab States (reprinted in English), cited in ABBAS SHIBLAK, THE LEAGUE OF ARAB STATES AND PALESTINIAN REFUGEES’ RESIDENCY RIGHTS 17-18 (1998).

<sup>132</sup> Special Resolution on the Treatment of Palestinians in the Arab Countries, Res. 8, Dec. 15, 1982, League of Arab States.

2600 provided that states should afford dual citizenship to Palestinians, formally recognizing Palestinian nationality as fully compatible with the citizenship of the host state.<sup>133</sup> These were intended to be codified in the Casablanca Protocol, and illustrate the longstanding commitment of the Arab states to provide minimum standards of rights to all Palestinians in the Arab world.

##### 5. *Protection of Human Rights for Stateless Persons*

Iraq is bound by various human rights treaties that ensure that every individual has access to certain human rights. For example, Article 28 of the CRC requires that all states: “[m]ake primary education compulsory and available free to all”, while Article 24 states provides that states shall recognize that “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.”<sup>134</sup> Neither the right to education nor the right to health specifies that the right is contingent on the child having documentation or legal status in the state. Iraq’s laws regulating legal status, and whether they comply with Iraq’s obligations under the CRC, is discussed below. However, Iraq’s obligation is to ensure to all children the universal rights of health and education set out in the CRC, including stateless persons.

These are among Iraq’s many obligations towards persons within its territory under the ICCPR, CEDAW, CRC, ICERD, and ICRPD. As explored further below, statelessness is not just the violation of the right to a nationality as an independent human right,<sup>135</sup> but in most cases leads to the violation of a host of other fundamental rights.<sup>136</sup> Although certain rights can be reserved for citizens (e.g., pension rights), Iraq has a range of obligations to ensure all

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<sup>133</sup> Res. 2600, Mar. 11 1970, League of Arab States (cited in ABBAS SHIBLAK, *THE LEAGUE OF ARAB STATES AND PALESTINIAN REFUGEES’ RESIDENCY RIGHTS* 38-40, 43 (1998)).

<sup>134</sup> CRC, *supra* note 6, at art. 28(1), 24.

<sup>135</sup> For more discussion on this *See generally* Michelle Foster and Hélène Lambert, *Statelessness as a Human Rights Issue: A Concept Whose Time Has Come*, 28 INT’L J. OF REFUGEE L., 564, 564-584 (Dec. 1, 2016).

<sup>136</sup> For more in depth discussion on the human rights many stateless persons do not have access to, *see, e.g.*, EUROPEAN PARLIAMENT, DIRECTORATE GENERAL FOR EXTERNAL POLICES OF THE UNION, *ADDRESSING THE HUMAN RIGHTS IMPACT ON STATELESSNESS IN THE EU’S EXTERNAL ACTION* 14-16 (2014)

individuals on its territory access to fundamental rights regardless of their legal status.<sup>137</sup> These are addressed in more detail in Part IV below.<sup>138</sup>

## **B. Gaps in Iraq’s Laws with Regard to Statelessness and Nationality Rights**

Stateless status is not recognized in Iraq – as in most countries across the MENA – and there is no legal framework to identify, regulate, or address issues of statelessness. Iraq’s laws only regulate the acquisition and loss of nationality. Historically, regulations and policies regarding nationality in Iraq have been made through governmental decisions outside of the formal legal framework, specifically by way of *ad hoc* decrees. This section explores the country’s legal framework, and how gaps and weaknesses in regulations violate Iraq’s international obligations and lead to new cases of statelessness or prolong existing cases.

### *1. The Iraq Constitution*

The Iraq Constitution of 2005, established after the fall of the Ba’ath regime, stipulates that Iraq recognizes nationality as a right for every Iraqi: “Iraqi citizenship is a right for every Iraqi and is the basis of his nationality.”<sup>139</sup> This statement does not clarify who is an Iraqi or who could benefit from this article, as the details are left to the nationality law to regulate. The current Constitution specifically prohibits citizenship from being used as a political tool, likely in response to the Saddam Hussein regime’s discriminatory use of nationality for political motives, such as the mass denationalization of the Faili Kurds.<sup>140</sup> Article 18.5 states that “Iraqi citizenship shall not be granted for the purposes of the policy of population settlement that disrupts the demographic composition of Iraq.”<sup>141</sup> The 2005 Constitution specifically prohibits using demographic balance – so sensitive to the politics of Iraq – as a goal in regulating nationality.<sup>142</sup>

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<sup>137</sup> Even the exclusivity of the right to a state-sponsored pension has been challenged successfully in some jurisdictions where a stateless person cannot access this right outside of her country of habitual residence. *See Andrejeva v. Latvia*, App. No. 55707/00 (Feb. 18, 2009), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-91388%22%5D%7D>.

<sup>138</sup> *See also* Bill Frelick and Maureen Lynch, *Statelessness, A forgotten human rights crisis*, 25 FORCED MIGRATION REV. 65, 65-66 (2005).

<sup>139</sup> Constitution of Iraq, *supra* note 81, at art. 18(1).

<sup>140</sup> *See infra*, Part III.D.

<sup>141</sup> Constitution of Iraq, *supra* note 81, at art. 18.5.

<sup>142</sup> One issue that has not been explored is whether the language “disrupt the demographic composition” is intended to exclude new populations of non-nationals from naturalizing as Iraqi citizens in the future. *See* Iraqi Nationality

The Constitution establishes gender equality in Article 14, which states: “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.”<sup>143</sup> Thus, Iraqi legislation that discriminates against women violates Iraq’s own Constitution as well as its international obligations.

## 2. *The 2006 Iraqi Nationality Law*

The Iraqi Nationality Law of 2006 regulates the acquisition and loss of citizenship. The law is primarily based on the *jus sanguinis* doctrine, that is, an individual obtains nationality through familial links with another Iraqi citizen – an Iraqi father, mother, or spouse. There are however some elements of *jus soli* (i.e., the principle that the physical place of a child’s birth determines citizenship) in the law. The first is the possibility to naturalize – although there are no statistics on how many naturalizations are granted annually in Iraq. The second is the possibility of acquisition through paternal multigenerational *jus soli* – i.e., if the individual’s non-national father was born in Iraq.<sup>144</sup> However, this is a discretionary procedure and not an automatic conferral of nationality, and there are few known cases of its implementation.<sup>145</sup>

Iraq is one of the few countries in the MENA that guarantees a right to appeal nationality decisions, as stipulated in Article 19 of the Nationality Law: “Administrative courts shall have the competence to hear lawsuits arising from the application of the provisions of this law.”<sup>146</sup> In practice, this means that in cases arising under this law, administrative courts can consider claims, and the federal courts can hear appeals of administrative court decisions. This has troubling implications in the current context, as Iraqi courts frequently examine issues of documentations in trials of suspected IS affiliates, specifically to verify whether the father of a child was a suspected terrorist.<sup>147</sup> Aside from these cases, there is little information about

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Law No. 26 of 2006, art. 6, al-Waqā’i‘ al-‘Irāqīyah [Official Iraqi Gazette] 4019, Mar. 7, 2006 [hereinafter Law No. 26 of 2006].

<sup>143</sup> Constitution of Iraq, *supra* note 81, at art. 18.5.

<sup>144</sup> Law No. 26 of 2006, *supra* note 142, at art. 5 (stating that “*The Minister may consider Iraqi anyone who was born within Iraq to a non-Iraqi father, who was also born in Iraq, had come of age and had been habitually residing therein at the time of child’s birth, provided the child will apply for the Iraqi nationality.*”)

<sup>145</sup> Remote Interview with NRC, INGO (Apr. 7, 2020).

<sup>146</sup> Law No. 26 of 2006, *supra* note 142, at art. 19.

<sup>147</sup> *Ad hoc* courts in Iraq have processed tens of thousands of cases of suspected IS fighters. See, e.g., MARTIN CLUTTERBUCK, CENTRE OF EXCELLENCE FOR CIVIL REGISTRATION AND VITAL STATISTICS SYSTEMS, DOCUMENTING

challenges to nationality decisions, or whether as a practical matter individuals can access the appeals process from a nationality decision in the courts.<sup>148</sup>

Despite its general progressive nature, both in comparison to the past nationality laws it replaced and to other nationality laws in the region, the language of Iraq's 2006 Nationality Law creates a number of challenges, illustrated in the following sections.

### 3. *Child's right to a nationality*

As noted above, Iraq has obligations under international law to ensure no child is born stateless on its territory. Iraq's Nationality Law is based on the *jus sanguinis* doctrine. Article 3(a) states that nationality is passed from parent to child, thus a "person shall be considered Iraqi if . . . he/she is born to an Iraqi father or an Iraqi mother."<sup>149</sup> The majority of children born in the country obtain Iraqi nationality based on this provision.<sup>150</sup>

Article 3 of the Nationality Law guarantees the nationality of children who are foundlings, specifically stating that "[a] foundling found in Iraq shall, in the absence of proof to the contrary, be considered to have been born therein."<sup>151</sup> Article 28(1) of the Regulation of Personal Status (Law No. 32 of 1974) governs situations in which the parents are unknown and the child is a foundling, and provides for issuing the child status documentation.<sup>152</sup> Iraqi law gives no specific age limit for considering a child eligible to nationality protection as a foundling, although it is customary for the limit to be nine years old.<sup>153</sup> This provision appears generally to be well-implemented, but only when children are not found in spaces that are believed to be predominantly resided by non-nationals – such as in refugee camps.<sup>154</sup> In situations where the child is in an area where she or he may be considered to be among non-nationals, Iraqi officials have been known to assume the child is not of Iraqi heritage and fail to provide him or her the

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LIFE AND DEATH: WOMEN'S EXPERIENCES DURING CONFLICT IN IRAQ AND SYRIA 6 (2021); Jo Becker, *Iraq's ISIS Trials Don't Deliver Justice – Including for Children*, HRW (Jan. 31, 2020).

<sup>148</sup> Interviewees for this research did not know of if any appeals had in fact taken place.

<sup>149</sup> Law No. 26 of 2006, *supra* note 142, at art. 3(a).

<sup>150</sup> The law itself is less of a challenge than the administrative process established to implement it. Families trying to confirm nationality for their children face several obstacles in obtaining the evidence needed to prove their child is a national, and in completing the registration process. These obstacles are discussed below.

<sup>151</sup> Law No. 26 of 2006, *supra* note 142, at art. 3.

<sup>152</sup> Regulation of Personal Status Law No. 32 of 1974, art. 28(1) (Iraq).

<sup>153</sup> See also Harith Al-Dabbagh *Iraq*, in *FILIATION AND THE PROTECTION OF PARENTLESS CHILDREN* 103, 103-133 (Nadjma Yassari et al. eds., 2019).

<sup>154</sup> Remote Interview with A. Abdullah, Lawyer (Feb. 15, 2020).

benefit of this provision.<sup>155</sup> In sum, a foundling's nationality does not seem to be guaranteed or implemented if there is reason to suspect that the foundling's biological parents are not Iraqi nationals.<sup>156</sup>

Additionally, the law lacks a general safeguard against statelessness for children born in Iraq. Article 7 of the CRC guarantees a child's right to acquire a nationality.<sup>157</sup> However, the second part of this provision, which requires state parties to implement this right "in particular where the child would otherwise be stateless." is often overlooked or ignored.<sup>158</sup> Although the Committee on the Rights of the Child has not clarified precisely what the right to acquire a nationality means in practical terms, it has stressed that states have an obligation to take every appropriate measure to ensure that no children are left stateless.<sup>159</sup> This would require the Iraqi government to grant Iraqi nationality to children born in the country upon their birth if they have not obtained another nationality. In addition, it would require Iraq to grant nationality to any child born on the territory if the child would otherwise be stateless (e.g., born to stateless parents or to parents who cannot confer nationality). Iraq's Nationality Law does not have such provisions, which would make a substantial difference in preventing future and new cases of statelessness. If the parents of an Iraqi child are stateless, the child will also be born stateless, perpetuating intergenerational statelessness in the country.

#### 4. *Gender discrimination in the law*

Before the 2006 Nationality Law, Iraq was one of the many countries that did not allow women to confer nationality to their own children, regardless of the status of the mother.<sup>160</sup> However, the 2006 law amended some of the main sources of gender discrimination in the previous law. As noted, Article 3 of the 2006 Nationality Law confers Iraqi nationality on any person born to either an Iraqi father or Iraqi mother.<sup>161</sup> This provision was a major step forward in ensuring that mothers can transfer their nationality to their children on an equal basis as fathers. The law was implemented retroactively so that any individual ever born in Iraq to an

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<sup>155</sup> Remote Interview with Oxfam, INGO (Jan. 12, 2020).

<sup>156</sup> Remote Interview with A. Abdullah, *supra* note 154.

<sup>157</sup> CRC, *supra* note 6, at art. 7(1).

<sup>158</sup> CRC, *supra* note 6, at art. 7(2).

<sup>159</sup> OPEN SOCIETY JUSTICE INITIATIVE, CHILDREN'S RIGHT TO A NATIONALITY 1 (2014).

<sup>160</sup> See Law No. 46 of 1963, *supra* note 57, at art. 4.

<sup>161</sup> Law No. 26 of 2006, *supra* note 142, at art. 3.

Iraqi mother could in theory benefit from the provision. Iraqi lawyers claim that authorities implement the retroactive provision of this law efficiently.<sup>162</sup>

However, the Nationality Law's regulations and criteria are internally contradictory, and the provision governing situations where children are born abroad to Iraqi mothers is inconsistent with Article 3. Article 4 states that: "The Minister may consider Iraqi any person born outside Iraq to an Iraqi mother and an unknown or stateless father, if he chooses the Iraqi nationality, within one year from coming of age (reaching the age of maturity), unless he fails to do so, due to difficult circumstances, provided that he is residing within Iraq at the time of application for the Iraqi nationality."<sup>163</sup> According to this provision, equal nationality rights of mothers with fathers only applies when the child is born inside the territory of Iraq. For children born to Iraqi women abroad, the process is no longer on an equal basis to Iraqi men. A child born abroad to an Iraqi father obtains the benefit of automatic citizenship conferral under Article 3. However, a child born abroad to an Iraqi mother and a father with another (non-Iraqi) nationality must apply for Iraqi nationality under Article 4. Such children must reside in Iraq and apply through an administrative process to secure nationality through their mothers.

These two articles are inconsistent and discriminate against Iraqi mothers and their children. In these cases, burdensome procedures must be followed for transferal of nationality, with all steps to be completed inside Iraq.<sup>164</sup> The child born abroad of an Iraqi mother must complete the following requirements within a year from becoming an adult (absent exceptional circumstances): (1) file an application for nationality as the child of an Iraqi mother; (2) prove his residence in Iraq at the time of the application; (3) provide a statement of foreign birth (original copy) certified by the Embassy of the State in which the child was born; (4) provide a copy of the child's foreign passport; (5) submit a copy of the certificate of Iraqi nationality and identity of the Civil Status of his Iraqi mother; and (6) submit the mother's marriage contract translated into Arabic and endorsed by the Iraqi embassy.<sup>165</sup> Further, the marriage of the Iraqi woman must be registered in Iraq's civil status records.<sup>166</sup>

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<sup>162</sup> Remote Interview with R. Hussein, Lawyer (May 29, 2020); *see also* Remote Interview with Iraqi Al-Amal Association, NGO (Feb. 23, 2020).

<sup>163</sup> Law No. 26 of 2006, *supra* note 142, at art. 4.

<sup>164</sup> *Instructions for issuing of Iraqi Nationality Certificate*, EMBASSY OF THE REPUBLIC OF IRAQ IN LONDON, <https://www.mofa.gov.iq/london/en/nationality-cert/> (last visited Mar. 1, 2022).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

The administrative steps are onerous and discretionary, which means officials have the power to reject an application.<sup>167</sup> Numerous obstacles often make this procedure impossible to complete, including that many individuals lack the resources to travel to Iraq, or are unable to travel due to the refugee status of the mother.<sup>168</sup> UNHCR has referred to these requirements as “strict and [which] may be difficult to fulfil in practice . . . even if all legal requirements have been established to the satisfaction of the government, it retains the discretionary power to deny applications for Iraqi nationality.”<sup>169</sup> In a briefing to CEDAW, the Women’s Refugee Commission concluded about the process that “[a]s there are a large number of Iraqi women in the Diaspora married to non-Iraqi men, this puts many children at risk of becoming stateless.”<sup>170</sup>

The risks of statelessness to children of Iraqi women married to non-Iraqi men are significant, especially given the high number of Iraqis living abroad. Considering the dynamics of multi-generational displacement, the present Nationality Law leads to numerous barriers preventing families from establishing paternal filiation. Data on how many women and children are potentially affected is not available, as those affected are likely to be outside of Iraq and dispersed across many countries. Neither are there publicly available figures of those who have applied under this provision. This procedure also contradicts Iraq’s Constitution, as Article 14 establishes gender equality and Article 18(2) states that everyone born to an Iraqi father or an Iraqi mother is an Iraqi.<sup>171</sup>

With regard to Iraq’s international obligations, Article 9 of CEDAW stipulates that women and men must have equal ability to confer and acquire nationality.<sup>172</sup> In 2013, the CEDAW Committee recommended that Iraq “remove Article 4 of the Iraqi nationality law to ensure a more gender-neutral nationality legislation [and] ensure wider dissemination of information about the reform of the law, especially to rural areas of Iraq and the Iraqi Diaspora, by continuing to raise awareness through publicity campaigns [and] withdraw its reservation to

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<sup>167</sup> Remote Interview with Women’s Leadership Institute, NGO (Aug. 10, 2020).

<sup>168</sup> *Id.*

<sup>169</sup> *Acquisition of Iraqi Nationality by a Child Born Outside Iraq*, UNHCR, <https://www.ecoi.net/en/file/local/2007917/5cd198ad7.pdf> (May 2019).

<sup>170</sup> *See* Briefing on Qatar, Iraq and Bahrain for the (CEDAW) 57th Pre-Session Working Group, Tilburg University & Women’s Refugee Commission 3 (2013). *See also* UNHCR, HANDBOOK ON PROTECTION OF STATELESS PERSONS UNDER THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS, ¶ 38, 44 (2014).

<sup>171</sup> Constitution of Iraq, *supra* note 81, at arts. 14, 18(2).

<sup>172</sup> CEDAW, *supra* note 6, at art. 9.



Article 9 of CEDAW.”<sup>173</sup> In response to this recommendation the Iraqi government withdrew its reservations to the article. The withdrawal of this reservation – a major step forward by Iraqi authorities – did not in practice, however, lead to removal of the inconsistent article in the law. Therefore, in 2019 the Committee re-affirmed its recommendation that Iraq “[a]mend the discriminatory provisions of article 4 of Act No. 26 of 2006 on nationality, in order to ensure that women and men enjoy equal rights to acquire, transfer, retain and change their nationality, in line with article 9 of the Convention.”<sup>174</sup>

Another provision inconsistent with CEDAW is the prohibition against married women transferring their nationality to foreign spouses on an equal basis with married men.<sup>175</sup> The residency requirement for a foreign man to qualify for nationality through his Iraqi wife is ten years, while the requirement for a foreign woman to qualify for nationality through her Iraqi husband is five years.<sup>176</sup> Non-Iraqi men married to Iraqi women face additional requirements. Foreign men – but not foreign women – married to Iraqis must prove that they: (1) entered Iraq legally and were Iraqi residents when applying for nationality (other than those born and resident in Iraq and holders of the civil status card); (2) are of good behavior and reputation and have no sentence of felony or misdemeanor involving moral turpitude; (3) are free of infectious disease; and (4) have the means to support themselves.<sup>177</sup>

##### 5. *Other discrimination in access to nationality*

While in 2006 Iraq successfully removed most discriminatory criteria based on race, ethnicity, and religion from the acquisition and loss of nationality, some problems remain in terms of certain populations explicitly excluded from equal citizenship rights by law. The first problem pertains to Palestinians, who are explicitly excluded from the benefit of equal nationality rights. Although it is common practice in all MENA states to exclude Palestinians from access to naturalization, Iraq goes further by providing that: “Iraqi nationality shall not be

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<sup>173</sup> Briefing on Qatar, Iraq and Bahrain for the (CEDAW) 57th Pre-Session Working Group, Tilburg University & Women’s Refugee Commission 3 (2013).

<sup>174</sup> CEDAW, Concluding Observations on the Seventh Periodic Report of Iraq, U.N.Doc. CEDAW/C/IRQ/CO/7, ¶ 28(a) (2019).

<sup>175</sup> Law No. 26 of 2006, *supra* note 142, at art. 6.

<sup>176</sup> *Id.* at art. 7.

<sup>177</sup> *Instructions for issuing of Iraqi Nationality Certificate*, EMBASSY OF THE REPUBLIC OF IRAQ IN LONDON, <https://www.mofa.gov.iq/london/en/nationality-cert/> (last visited Mar. 1, 2022).

granted to Palestinians as a guarantee to their right to return to their homeland.”<sup>178</sup> This follows the Iraqi government’s interpretation of the Casablanca Protocol; however, it leaves Palestinians, some of whom have resided in Iraq for generations, with no valid legal status outside of Iraq and little in the way of protections within Iraq.<sup>179</sup> This is discussed further in Part III.A.

The second problem relates to followers of the Baha’i religion who are excluded from registering under their faith.<sup>180</sup> In Iraq, an individual must have a religion assigned to their identification card. Regulation No. 358 of 1975 issued by the Directorate of Civil Affairs prohibited the recording of ‘Baha’i’ as a religion in the civil status records.<sup>181</sup> Therefore, unless a Baha’i individual chooses to deny his or her religion and registers under another recognized religion, s/he cannot acquire identity documents or access civil registration. This prohibition was officially repealed in 2007, but problems with registration and administrative refusal to register Baha’i children persists today.<sup>182</sup> It is unclear the extent to which this may apply to any other religious minority groups in theory or in practice, and is discussed further in Part III.G.

#### 6. *Loss, renunciation and deprivation of nationality*

The loss, renunciation, and deprivation of Iraqi nationality are regulated through several different laws. Article 18(3)(A) of the Iraqi Constitution states that “an Iraqi citizen by birth may not have his citizenship withdrawn for any reason. Any person who has had his citizenship withdrawn shall have the right to demand its reinstatement.”<sup>183</sup> Iraqis with citizenship at birth can never be deprived of their nationality. This provision safeguards all individuals who are born Iraqi from being rendered stateless. Article 18 of the 2006 Nationality Law provides for reinstatement of nationality for those who lost their status under the previous 1968 nationality

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<sup>178</sup> Law No. 26 of 2006, *supra* note 142, at art. 6.

<sup>179</sup> For further information on the status of Palestinians in Iraq, *see infra* Part III.A.

<sup>180</sup> Similar problems have been noted in the case of Egypt in research done by the Boston University International Human Rights Clinic. *See* BU IHRC, THE CAMPAIGN TO END STATELESSNESS IN EGYPT Part IV.B.2. (forthcoming 2022) (on file with author). *See generally* OLIVER SCHARBRODT, ISLAM AND THE BAHÁ’Í FAITH (2011); Mona Oraby, *Authorizing Religious Conversion in Administrative Courts: Law, Rights, and Secular Indeterminacy*, 17 NEW DIVERSITIES 64 (2015).

<sup>181</sup> Human Rights Council, Report of the Special Rapporteur on minority issues on her mission to Iraq U.N. Doc A/HRC/34/53/Add.1, at ¶ 30 (Jan. 9, 2017) (citing Regulation No. 358 of 1975).

<sup>182</sup> As a result of Law No. 105 of 1970, which excluded the Baha’i religion from a recognized religion, the KRI Ministry of Endowment and Religious Affairs does recognize the Baha’i as a religious minority. Remote Interview with A. Abdullah, *supra* note 154.

<sup>183</sup> Constitution of Iraq, *supra* note 81, at arts. 18, 3(a).

law.<sup>184</sup> This provision is aimed at restoring citizenship to persons whose citizenship was stripped during the Saddam Hussein regime. It states that: “Any Iraqi, who was denaturalized on political, religious, racist or sectarian grounds, shall have the right to restore his Iraqi nationality, subject to submission of an application to this effect. In the case of his death, his children, who have lost their Iraqi nationality consequent to his father's loss of nationality, shall have the right to submit an application to restore Iraqi nationality.”<sup>185</sup> There are no publicly available statistics on how many individuals have benefited from this provision and had their nationality reinstated, although this Report examines the effect of this law on Faili Kurds in Part III.D.

The Nationality Law also includes vague denaturalization procedures that can be applied in an arbitrary manner. Article 15 of the law states that: “The Minister may, following a final court judgment, withdraw Iraqi nationality from a naturalized non-Iraqi if he is proved to have perpetrated or attempted to perpetrate an act considered to jeopardize State security or safety or has provided wrong information of himself or his family upon submitting the application.”<sup>186</sup>

Although there are no official statistics available to indicate if and how these criteria are being implemented, the overbroad and undefined language of ‘jeopardizing state security’ can too easily be manipulated, and unfounded accusations be used to denaturalize individuals on these grounds.<sup>187</sup> This is particularly problematic in the current context, when accusations of terrorism are regularly raised in courts trying alleged members of IS.<sup>188</sup>

Article 14(2) of the Nationality Law also states that if an Iraqi loses his Iraqi nationality, his minor children will also lose Iraqi nationality.<sup>189</sup> The article provides that the child may apply to have nationality restored after having resided in Iraq for at least one year.<sup>190</sup> However, there is no requirement that the individual or his children must be guaranteed to have another nationality before Iraqi nationality is revoked, an omission which can lead to statelessness. This unjustifiably punishes an individual or child for an act of the parent, and violates Iraq’s obligations to ensure all children possess a nationality.<sup>191</sup>

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<sup>184</sup> See *supra*, Part I.C.

<sup>185</sup> Law No. 26 of 2006, *supra* note 142, at art. 18.

<sup>186</sup> *Id.* at art. 15.

<sup>187</sup> Remote Interview with NRC, *supra* note 145; Remote Interview with A. Abdullah, *supra* note 154.

<sup>188</sup> See Jo Becker, *Iraq’s ISIS Trials Don’t Deliver Justice – Including for Children*, HRW (Jan. 31, 2020)

<sup>189</sup> Law No. 26 of 2006, *supra* note 142, at art. 14(2)

<sup>190</sup> *Id.*

<sup>191</sup> See *supra*, Part III.A.2.

Iraqi law also allows for an individual to renounce nationality, even if the person has not acquired another nationality. Article 10 stipulates: “An Iraqi who acquires a foreign nationality shall retain his Iraqi nationality, unless he has declared in writing renunciation of his Iraqi nationality.”<sup>192</sup> This may affect Iraqi citizens attempting to naturalize in a country which prohibits dual nationality who must renounce their Iraqi nationality, but then are unable to complete the naturalization process of the second country. It is unclear how common this is, but is likely to occur with some frequency given the large Iraqi diaspora community living abroad. In one reported case, an Iraqi who was attempting to naturalize as a Dutch citizen renounced his Iraqi nationality, but was not able to complete the Dutch naturalization process; he was left stateless for a period of two years until he was able to rectify his status in the Netherlands.<sup>193</sup>

## 7. *Procedural and implementation gaps in Iraq*

The above sections explored the primary gaps in the text of Iraq’s nationality laws that contravene international obligations to ensure the right to a nationality. The following sections discuss the gaps in civil registration procedures and implementation of Iraq's laws that affect access to Iraqi nationality. Civil registration procedures, such as the registration of births and marriages, have important implications for accessing citizenship status, even for persons who are normally eligible for Iraqi nationality. The subsequent sections explore some of the nuances of the procedural and implementation gaps that can create or exacerbate statelessness in Iraq.

### a) Civil Registration

Iraq has a generally functional process for registration of vital events, despite disruption in governance and administrative procedures caused by the conflicts the country has experienced over the past three decades.<sup>194</sup> Iraq has high rates of birth registration for children, recently recorded at more than 95%.<sup>195</sup> However, the latest conflicts have raised new challenges to universal civil registration. The UN Office for the Coordination of Humanitarian Affairs

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<sup>192</sup> Law No. 26 of 2006, *supra* note 142, at art. 10.

<sup>193</sup> Remote Interview with Oxfam, *supra* note 155.

<sup>194</sup> Sulaiman Bah, *The Iraqi civil registration system and the test of political upheaval*, 41 CANADIAN STUDIES IN POPULATION 111, 111-118 (2014).

<sup>195</sup> UNICEF AND UNITED NATIONS ASSISTANT MISSION FOR IRAQ [UNAMI], ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING CIVIL DOCUMENTATION IN IRAQ 1 (2019).

(OCHA) has identified lack of civil documentation, overly complicated registration procedures and inadequate capacity to monitor documentation procedures as an important humanitarian concern – in no small part because civil documentation is necessary for enrollment in social programs.<sup>196</sup>

Additionally, Iraqis who have been displaced or suffered from conflict are likely to have lost or damaged civil documents – documents that are often difficult to replace. In 2019 alone, according to one NRC estimate, approximately 80,000 families across Iraq have family members who lack at least one form of vital documentation.<sup>197</sup> Civil registration is often the only legal evidence of a person’s place of birth, marital status, time of birth, and familial filiation, and is thus critical for establishing nationality.<sup>198</sup> Iraqis and non-Iraqis in the country face a number of significant barriers to accessing civil registration procedures and documents.

First, proving the accuracy and credibility of identity documents can be a major problem in the country, as Iraq’s “procedures for issuing documentation are antiquated. Records are kept manually, and most types of documentation do not have adequate security features.”<sup>199</sup> The flawed record-keeping system adds to the challenges of validating and renewing documents, as if manual records are destroyed, individual records are lost with no backup.

In addition, obtaining or verifying marriage certificates, birth and death certificates can be very complicated for IDPs. This is due to reasons described below, but are generally due to civil registration procedures and their burdensome requirements. Iraq has a federal registration system, comprising eighteen governorates and one region – the Kurdistan Region of Iraq (KRI), which is governed by the Kurdistan Regional Government (KRG). Each governorate has the authority to establish its own procedures. Since there is no unified central system of civil registration and vital statistics, each region may have its own system (although not all do); for example, the procedure for issuing the Iraqi ID card is different in KRI from the rest of Iraq.<sup>200</sup> In

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<sup>196</sup> OCHA, HUMANITARIAN NEEDS OVERVIEW IRAQ 23 (Nov. 2019).

<sup>197</sup> NRC, BARRIERS AT BIRTH: UNDOCUMENTED CHILDREN IN IRAQ SENTENCED TO A LIFE ON THE MARGINS 7 (2019) [hereinafter UNDOCUMENTED CHILDREN IN IRAQ].

<sup>198</sup> For more information on the link between civil registration and statelessness *see* UNHCR, Good Practices Paper – Action 7: Ensuring birth registration for the prevention of statelessness (Nov. 2017).

<sup>199</sup> AUSTRALIA DEP’T OF FOREIGN AFFAIRS AND TRADE [DFAT], COUNTRY INFORMATION REPORT IRAQ ¶ 5.27 (Oct. 9, 2017).

<sup>200</sup> *See* DANISH IMMIGR. SERVICE AND LANDINFO, KURDISTAN REGION OF IRAQ (KRI) REPORT ON ISSUANCE OF THE NEW IRAQI ID CARD (2018).

a country with an estimated 1,774,980 IDPs and thousands of refugees,<sup>201</sup> many who have been displaced more than once, this system fails to provide a clear and uniform civil documentation procedure.<sup>202</sup> IDPs in particular lack identity documents, whether because they have lost or left them behind during displacement, or because authorities or non-state actors have confiscated them.

To replace documents, individuals and their relevant family member must travel in person to the office in their governorate of origin (i.e., where they were registered before they were displaced).<sup>203</sup> This requirement is prohibitive for many reasons, including the restrictions on freedom of movement faced by IDPs, the lack of resources available for travelling, and costly administrative fees.<sup>204</sup> UNHCR has acknowledged that “many IDPs and returnees do not hold critical documentation, restricting access to basic services, limiting freedom of movement, and increasing the risk of arbitrary arrest.”<sup>205</sup> In addition, the requirement of traveling to the governorate of origin can lead to an impossible situation, as there are security checkpoints throughout Iraq that require identification documents in order to pass, so individuals without such documents cannot clear checkpoints to reach the offices that issue them.

The situation is even more complicated for non-Iraqis living in the country – specifically refugee populations and minority groups. NRC estimates that minority groups who have been displaced are unable to access identity documents at significantly higher rates than others.<sup>206</sup> Although the civil registration procedures are supposed to be non-discriminatory and applied regardless of nationality or background, minority communities face additional obstacles. They may not know about the procedures they need to follow, and they may not have the required documentation (specifically legal residence in the country) to benefit from them.<sup>207</sup>

As a consequence of recent conflicts in Iraq, particularly between 2013 and 2017, when substantial areas fell in and out of the control of state authorities and IS, new administrative and

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<sup>201</sup> EUROPEAN NETWORK ON STATELESS AND INST. ON STATELESSNESS AND INCLUSION, STATELESSNESS IN IRAQ COUNTRY POSITION PAPER 4 (Nov. 2019).

<sup>202</sup> Julia St. Thomas King and Dennis Ardis, *Identity crisis? Documentation for the displaced in Iraq*, 65 HUMANITARIAN PRACTICE NETWORK (Oct. 29, 2015). /

<sup>203</sup> Remote Interview with NRC, *supra* note 145.

<sup>204</sup> EUROPEAN NETWORK ON STATELESS AND INST. ON STATELESSNESS AND INCLUSION, STATELESSNESS IN IRAQ COUNTRY POSITION PAPER 9 (Nov. 2019).

<sup>205</sup> UNHCR, INTERNATIONAL PROTECTION CONSIDERATIONS, *supra* note 12, at 48.

<sup>206</sup> NRC, UNDOCUMENTED CHILDREN in Iraq, *supra* note 197, at 7.

<sup>207</sup> Remote Interview with NRC, *supra* note 145 ; *see also* Remote Interview with Heartland Alliance Iraq, INGO (Feb. 17, 2020).

other obstacles have arisen. These obstacles, which are a major source of new cases leading to statelessness in the country, are explored below, but include (1) issuance of documents to individuals living in IS areas that are not recognized as valid by the Iraqi Government; (2) individuals lacking any documents at all; and, (3) individuals lacking civil documentation because of deliberate government policy to withhold documents from people in or coming from IS areas.<sup>208</sup>

#### b) Birth Registration

To establish legal identity and prevent childhood statelessness, it is essential to register all children's births and ensure that they possess valid birth certificates. A birth certificate is also primary evidence of a child's family ties, and therefore helps to establish nationality. Following either *jus sanguinis* or *jus soli* principles, these recorded facts indicate what nationality an individual has a right to obtain. The human rights instruments to which Iraq is a state party protect birth registration as a fundamental right of all children regardless of where they are born, their birth status, the marital status of their parents or their legal or any other status in the country.<sup>209</sup> However, there are a significant number of children in Iraq who have not obtained official birth documentation. In 2018, the OCHA stated that, "[i]n 2019, an estimated 2.1 million children may be at serious risk of not being able to access essential services due to lack of civil documentation."<sup>210</sup>

Birth registration procedures in Iraq include both hospital births and births occurring outside hospitals. For non-hospital births, midwives must report the event. When a birth occurs without the presence of a registered midwife, the mother must take witnesses to the nearest office of the Births and Mortality Directorate to obtain a birth notification that will allow her to start the registration process.<sup>211</sup> Iraq requires a marriage certificate for birth registration, but unlike many other countries in the MENA, does not require the father to be present to register the birth, which makes registration a simpler process than in other countries in the region. The birth notification given by the hospital or midwife must be taken to the Directorate of Health for validation and

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<sup>208</sup> Remote Interview with R. Hussein, *supra* note 162; Remote Interview with Heartland Alliance, *supra* note 207.

<sup>209</sup> ICCPR, *supra* note 6, at art. 24(2); CRC, *supra* note 6, at art. 7.

<sup>210</sup> OCHA, HUMANITARIAN NEEDS OVERVIEW IRAQ 2019 9 (Nov. 2018).

<sup>211</sup> Remote Interview with Women's Leadership Institute, *supra* note 167.

recorded in the Birth and Deceased records.<sup>212</sup> The ID of the parent or parents will be needed to complete this process – in some hospitals, the whole process can be completed before the mother leaves the hospital. The process, as noted earlier, can vary across Iraq; in certain governorates, for instance, one of the parents must take the additional step of delivering a copy of the endorsed birth certificate to the Civil Affairs Directorate so that the birth is registered in the family record. In KRI evidence of residency in the region is also necessary.<sup>213</sup>

Iraqi personal status law requires that birth registration procedures be completed within seven days when the birth takes place in a hospital; within fifteen days if the birth occurred outside of a healthcare facility in an urban area; and thirty days when the birth takes place outside of a healthcare facility and not in an urban area.<sup>214</sup> If the parents cannot meet this deadline, they must go through a court procedure to obtain a birth certificate and pay a fee. The amount of the fee differs from one governorate to another.<sup>215</sup> These court procedures often require a lawyer, and if the family cannot afford a lawyer or access legal aid, they may not be able to complete the process, leaving the child without a birth certificate. Families also face fees for failure to complete the registration process within this relatively short period – a serious burden for families who cannot navigate the process in time.<sup>216</sup> These challenges are exacerbated by governorate discretion and the decentralized, non-federal nature of the system.

### c) Marriage Registration

Registration of the parents' marriage is a fundamental step for a child to obtain Iraqi nationality. Law No. 188 of 1959 (i.e., the Personal Status Law and its amendments) regulates civil marriages in Iraq.<sup>217</sup> Across all recognized religions, to be legally valid in Iraq a marriage must be entered into and registered in a personal status court.<sup>218</sup> Conditions for marriage include:

1. Marrying more than one woman is only permissible with judicial authorization;

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<sup>212</sup> LANDINFO, IRAQ: TRAVEL DOCUMENTS AND OTHER IDENTITY DOCUMENTS 26 (2015).

<sup>213</sup> Remote Interview with Harikar, *supra* note 79; Remote Interview with A. Abdullah, *supra* note 154.

<sup>214</sup> *See* Law of Registration of Births and Deaths No. 148 of 1971, art. 3 (Iraq).

<sup>215</sup> Remote Interview with the Danish Refugee Council (DRC), INGO (June 30, 2020).

<sup>216</sup> LANDINFO, IRAQ: TRAVEL DOCUMENTS AND OTHER IDENTITY DOCUMENTS 26 (2015).

<sup>217</sup> Personal Status Law No. 188 of 1959 (and its amendments) (Iraq). *See Iraq: Personal Status Law and Its Amendments (1959)*, REFWORLD, <https://www.refworld.org/docid/5c7664947.html> (last visited Feb. 28, 2022).

<sup>218</sup> *Id.* at Sec. 4, art. 10. *See also Query response on Iraq: Suleimania: Is religious marriage legal; consequences of religious marriage (e.g., living together)*, AUSTRIAN CENTRE FOR COUNTRY OF ORIGIN AND ASYLUM RESEARCH AND DOCUMENTATION [ACCORD] (Jan. 11, 2021).



2. Two witnesses must bear witness to the marriage contract;
3. Both parties should be sane and have reached 18 years of age (unless authorized by a judge);
4. Forced marriage is illegal;
5. A Muslim man may marry a Muslim, Christian or Jewish woman, whereas a Muslim woman may only marry a Muslim man.<sup>219</sup>

Religious marriage is not sufficient by itself under Iraqi law. Following a religious marriage, the couple must officially register the marriage, which requires: (1) A statement showing the identity of the two parties to the contract. The document must be signed either by the local mukhtar or by two community leaders, and (2) A medical report stating that both are of good health and there are no medical impediments to the marriage. An application for the marriage certificate must then be made through a local registration office.<sup>220</sup> For Christian marriages, the requirements are the same as for Muslim marriages, but the marriage should be entered in a Christian church and subsequently registered in the personal status court.<sup>221</sup>

According to the Iraqi Personal Status Law, the minimum legal age of marriage for females is eighteen years old, but individuals can marry at fifteen years if they are able to obtain judicial consent or in ‘urgent’ cases.<sup>222</sup> Marriages of individuals even younger than fifteen may be legal under Article 41 of the Iraqi Constitution, which permits every sect and religious community to follow its own religious teachings and laws regarding marriage. There is thus no clear legal minimum age for marriage, and it can be at the discretion of the religious judge to determine whether to accept a marriage of an underage male or female. Current statistics indicate that 5% of girls in Iraq are married before the age of fifteen.<sup>223</sup>

Aside from concerns over age, many of the challenges facing families in birth registration are similar to those for marriage registration. First, the requirement that both parties need IDs to complete registration can be a barrier if the ID of one party was lost or destroyed during

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<sup>219</sup> *Id.* at Sec. 2-3.

<sup>220</sup> *Id.* at Sec. 4, art. 10.

<sup>221</sup> DANISH NATIONAL ID CENTRE, IRAQ: MARRIAGE REGISTRATION AND THE ISSUANCE OF MARRIAGE CERTIFICATES 4 (Mar. 9, 2021).

<sup>222</sup> See *COI Summary 2.16.2. Forced and child marriage*, EUROPEAN UNION AGENCY FOR ASYLUM, <https://euaa.europa.eu/country-guidance-iraq-2021/2162-forced-and-child-marriage> (last visited Mar. 4, 2022). See also Shawn Yuan, *Iraq: Court hearing resumes on marriage of 12-year-old girl*, AL JAZEERA (Nov. 28, 2021).

<sup>223</sup> *Iraq: Parliament rejects marriage of 8 year old girls*, HRW (2017).

displacement –as noted, a widespread problem in Iraq.<sup>224</sup> Individuals marrying during conflict, or fleeing shortly afterwards have naturally not regarded registering their marriage after a religious ceremony as a priority.<sup>225</sup> Certain cultural traditions also impede marriage registration. Since 2003, following the rise of political parties that gave Islamic scholars authorization to replace social status laws, the trend of unregistered marriages in Iraq has been growing.<sup>226</sup> Many Iraqi marriages are conducted by local religious figures, and these customary ceremonies are considered sufficient to satisfy religious requirements at the community level.<sup>227</sup> Most underage marriages are also customary marriages conducted by a local religious leader, and are not registered in the legal status courts.<sup>228</sup> The increase in such informal, frequently non-registered, marriages also appears to take place mostly in rural and impoverished areas of the country.<sup>229</sup>

In all of these circumstances, the state does not recognize the marriage as legal, and there is no proof that the marriage took place under Iraqi law. If left unresolved, an informal marriage leaves a child without any legal proof of the link between the child and an Iraqi national parent.<sup>230</sup> The irregular nature of such marriages is exacerbated when children are born from customary marriages and their births cannot be registered. Moreover, Iraqi law states that a woman must show an official marriage certificate to receive state obstetric care. When women cannot provide a marriage certificate, they often do not enter the formal health care system when their children are born. Consequently, an unknown number of children of unregistered marriages are born to mothers outside of the official healthcare system who then do not – or cannot – register the child’s birth.<sup>231</sup>

The various procedural impediments to documentation and registration of vital events result in new cases of statelessness in the country, and prolong the risk of statelessness for those who are undocumented. The next section discusses populations that are historically stateless in

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<sup>224</sup> Remote Interview with Laissez-Passer, INGO (June 29, 2020); Remote Interview with Oxfam, *supra* note 155.

<sup>225</sup> Remote Interview with Al-Amal, *supra* note 162; Remote Interview with R. Hussein, *supra* note 162.

<sup>226</sup> Remote Interview with R. Hussein, *supra* note 162; Remote Interview with Harikar, *supra* note 79.

<sup>227</sup> Remote Interview with R. Hussein, *supra* note 162; *see also* DANISH NATIONAL ID CENTRE, IRAQ: MARRIAGE REGISTRATION AND THE ISSUANCE OF MARRIAGE CERTIFICATES 2-3 (Mar. 9, 2021).

<sup>228</sup> A customary marriage refers to ‘*ketb alkitab*’, where the couple are married under Islamic law but not under Iraqi law.

<sup>229</sup> Remote Interview with Oxfam, *supra* note 155; Remote Interview with Heartland Alliance; *supra* note 207; Remote Interview with R. Hussein, *supra* note 162.

<sup>230</sup> USAID, VALUES OF ACCESS TO JUSTICE AND UNREGISTERED MARRIAGE 19 (2014). MIRIAM PUTTICK, MRGI, THE LOST WOMEN OF IRAQ: FAMILY-BASED VIOLENCE DURING ARMED CONFLICT 23 (2015).

<sup>231</sup> USAID, VALUES OF ACCESS TO JUSTICE AND UNREGISTERED MARRIAGE 19 (2014).

who have been unable to acquire Iraqi nationality, or who are at heightened risk of statelessness due to a number of particular factors.

### **III. SPECIFIC POPULATIONS AT RISK OF STATELESSNESS**

There are specific populations and profiles of individuals in Iraq who are particularly vulnerable to lack of, or inability to obtain, nationality status. This is primarily due to historical legacies of discrimination and exclusion but is complicated by the burdensome administrative procedures and flawed nationality legislation described above. This section describes the main communities who are stateless and/or at risk of statelessness in Iraq. These are displaced populations and stateless populations *in situ*, i.e., those who have historically lived in the territory but have been unable to perfect their citizenship for various reasons.

#### **A. Palestinian Refugees**

The majority of the Palestinian community in Iraq arrived in three waves, but none of the Palestinian refugee communities have a legal pathway to obtaining Iraqi nationality. The first wave of Palestinian refugees arrived in 1948, when Palestinians who had been forced to flee their homes came to the country as a result of the establishment of the State of Israel.<sup>232</sup> Following the 1967 war with Israel, a second wave of Palestinians fled to Iraq,<sup>233</sup> and the third wave arrived in the early 1990s when Palestinians living in Kuwait fled to Iraq after the Iraqi invasion of Kuwait.<sup>234</sup> The population of Palestinian refugees in Iraq before the fall of the Ba'ath government was estimated to be approximately 34,000.<sup>235</sup> Due to subsequent conflicts in Iraq many Palestinians – an estimated 25,000 – are believed to have left the country.<sup>236</sup> An estimated 10,000 Palestinians are still residing in Iraq.<sup>237</sup> In 2019 there were 8,119 Palestinian refugees registered with UNHCR in Iraq.<sup>238</sup>

The 2006 Nationality Law states that Palestinian refugees are ineligible for naturalization

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<sup>232</sup> See, e.g., LANDINFO AND MIGRATIONSVERKET, PALESTINIANS IN IRAQ 6 (2014); Mohammed Wesam Amer, *Palestinian refugees in Iraq: Unsteady Situation*, THE PALESTINE RETURN CENTRE (Aug. 2018).

<sup>233</sup> HUMAN RIGHTS WATCH [HRW], NOWHERE TO FLEE: THE PERILOUS SITUATION IN IRAQ (2011)

<sup>234</sup> *Id.*

<sup>235</sup> UNHCR, INTERNATIONAL PROTECTION CONSIDERATIONS, *supra* note 12, at 109.

<sup>236</sup> *Palestinians in Iraq fearful after loss of Saddam-era privileges*, REUTERS (Dec. 21, 2018).

<sup>237</sup> *Id.* (citing figures provided by the Palestinian embassy in Baghdad).

<sup>238</sup> UNHCR, INTERNATIONAL PROTECTION CONSIDERATIONS, *supra* note 12, at 109.

in Iraq, so even those who have been in the country for generations do not have the right to acquire Iraqi nationality.<sup>239</sup> This is consistent with prior versions of the Nationality Law; Palestinians who arrived in Iraq since the 1950s and before the 2006 law have also been prohibited from obtaining nationality. There are no options available to them through any legal route to obtain Iraqi nationality (by birth, residence, or descent). Therefore, unless they have been able to obtain nationality from another country, they are all stateless.

Unlike Jordan and Lebanon, Iraq does not fall under the mandate of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA).<sup>240</sup> Iraq did not sign an agreement with UNRWA following its establishment in 1949, preferring to address the assistance needs of Palestinian refugees itself. In theory, this means that protection of Palestinian refugees in Iraq falls on UNHCR, while Palestinians remain under the jurisdiction of the Iraqi Government. UNHCR has the mandate to conduct refugee status determination (RSD) procedures and register Palestinians as refugees, provide international protection to them, and to work with the Iraqi government to offer them protection and rights under Iraqi law.<sup>241</sup>

In the past, Palestinian refugees were given protection and their affairs regulated by the Iraqi Ministry of Defense and, later, by the Ministry of Labour and Social Affairs.<sup>242</sup> Palestinians can obtain a blue ‘Republic of Iraq: Palestinian Travel Document’ from this Ministry, which functions as both an identity and a travel document.<sup>243</sup> Under the Ba’ath regime, Palestinians were not required to obtain a residency permit, but relied on this as an ID document for all services and benefits which were available.<sup>244</sup>

Unfortunately, after Saddam Hussein’s reign ended, Palestinians have faced an increasingly hostile environment. Palestinians were perceived to have received favorable treatment and access to rights, and granted higher standards of housing, social, and other benefits

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<sup>239</sup> Law No. 26 of 2006, *supra* note 142, at art. 6.

<sup>240</sup> Following the 1948 Arab-Israeli conflict, UNRWA was established to carry out direct relief and works programs for Palestine refugees. In the absence of a solution to the Palestine refugee problem, the General Assembly has repeatedly renewed UNRWA’s mandate, most recently extending it until 2023. *See* G.A. Res. 302 (IV) (Dec. 8, 1949); *see also Immense Support for the Renewal of the UNRWA Mandate at the UN General Assembly*, UNRWA (Dec. 16, 2019).

<sup>241</sup> *See* Convention Relating to the Status of Refugees, *supra* note 86, at art. 1(D); *see also* UNHCR, Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees (Oct. 10, 2002).

<sup>242</sup> Gabriela Wengert and Michelle Alfaro, *Can Palestinian refugees in Iraq find protection?*, 26 FORCED MIGRATION REV. 19, 19 (2006).

<sup>243</sup> Remote Interview with Harikar, *supra* note 79.

<sup>244</sup> HUMAN RIGHTS WATCH, NOWHERE TO FLEE: THE PERILOUS SITUATION IN IRAQ (2011).

by the Ba'ath party.<sup>245</sup> In fact, the Ba'ath regime provided very limited legal protection to the Palestinian community, despite much rhetoric about liberating Palestine, nor were they afforded formal refugee status by the Iraqi authorities or allowed to naturalize, so their legal status remained precarious.<sup>246</sup> Nonetheless, many Iraqis resented the perceived 'special treatment' of Palestinians, and after Saddam Hussein was removed from power there was extensive backlash against the Palestinian community – societal, institutional, and by armed militias.<sup>247</sup>

The Iraqi government issues two types of documents to Palestinians: (1) a travel document, issued by the Directorate of Residence Affairs, pursuant to Law No. 26 of 1961, that is normally valid for one year and can be extended (this travel document can only be issued or renewed within Iraq by the Directorate of Residence Affairs), and (2) a non-standard identification card.<sup>248</sup> The Permanent Committee of Refugee Affairs of the Ministry of Interior is responsible for registration and issuance of ID cards to Palestinians and provides two forms of ID cards, both of which differ from the standard Iraqi national ID card.<sup>249</sup> The first is a 'red card' given to Palestinians who arrived in Iraq in 1948 and the second is a 'yellow card' given to Palestinians who arrived from 1967 onwards.<sup>250</sup> These documents are valid for a period of three years, and are issued by the Ministry of Interior.<sup>251</sup> After the Saddam regime, Palestinians were required to renew their ID card every few months.<sup>252</sup> This process is complicated, and commonly requires Palestinian refugees to bring all members of their family to the Ministry of Interior offices to renew the permits.<sup>253</sup> Anecdotal reports suggest that this process to obtain a renewal could take weeks.<sup>254</sup> In fact, the current legal status of Palestinians in Iraq is unclear, and appears to be arbitrarily determined.<sup>255</sup> The Ministry of Interior has granted some Palestinians a one-month residency, and granted others a permit for two or three months. Palestinians face

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<sup>245</sup> Remote Interview with K. Khalil, Lawyer (Feb. 1, 2020).

<sup>246</sup> In Accordance with Decree No. 23 of 1992 passed by Iraq's Revolutionary Command Council.

<sup>247</sup> *COI Summary 2.15.10 Palestinians*, EUROPEAN UNION AGENCY FOR ASYLUM, <https://euaa.europa.eu/country-guidance-iraq-2021/21510-palestinian> (last visited Mar. 3, 2022).

<sup>248</sup> LANDINFO AND MIGRATIONSVERKET, PALESTINIANS IN IRAQ 12 (2014).

<sup>249</sup> *Id.* at 11.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> Gabriela Wengert and Michelle Alfaro, *Can Palestinian refugees in Iraq find protection?*, 26 FORCED MIGRATION REV. 19, 19 (2006).

<sup>253</sup> HUMAN RIGHTS WATCH, NOWHERE TO FLEE: THE PERILOUS SITUATION IN IRAQ (2011).

<sup>254</sup> Remote Interview with DRC, *supra* note 215; Remote Interview with K. Khalil, *supra* note 245.

<sup>255</sup> Remote Interview with K. Khalil, *supra* note 245.

severe limitations on their freedom of movement, as most of them have not updated their residency permits and still rely on the travel document.

In addition to these constraints on their legal status, Palestinians face other violations of their rights. Since 2003, many Palestinians have been evicted from their homes, with many living in makeshift camps, disused schools, and derelict buildings, and relying on assistance from UNHCR.<sup>256</sup> In 2017, the Iraqi Parliament enacted laws that further restricted the rights and freedoms of Palestinians in Iraq. Law No. 76 of 2017 in effect classified the Palestinian refugees residing in Iraq as foreigners.<sup>257</sup> This abolished a previous law – Decree 202 of 2001 – which stated that: “Palestinians permanently residing in Iraqi . . . shall be treated as Iraqis in respect of all rights and duties, with the exception of the right to the Iraqi Nationality.”<sup>258</sup> This change in the law has also prevented Palestinians from benefiting from other rights such as subsidized foodstuffs (the Public Distribution System), the right to free healthcare, free education, and pension rights, all of which they were eligible to receive under the prior regime.<sup>259</sup> Palestinians holding state positions were also discharged.<sup>260</sup> Law No. 76 was a blow to Palestinians’ access to rights in Iraq, although it is still unclear what precise change has been made in their status, since the Iraqi government has stated that the 2017 law does not apply to Palestinians, and they are “instead subject to Law [No.] 51 of 1971 as refugees.”<sup>261</sup> This contradicts the actual experiences of Palestinians in Iraq.<sup>262</sup> These changes -- whether implemented or not -- have added to their vulnerability, and have made it difficult for advocates to address the challenges they face and obtain benefits for them. Finally, Palestinians are both unable to obtain Iraqi nationality, and have very limited possibilities for other durable solutions

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<sup>256</sup> See, e.g., BADIL RESOURCE CTR., SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS 2016-2018: VOLUME IX 76 (2019); see also Rupert Colville, *Evicted Palestinians in Baghdad to receive UNHCR aid*, UNHCR (May 9, 2003) (noting that UNHCR feared an estimated 60,000-90,000 Palestinians in Iraq could lose their homes).

<sup>257</sup> BADIL RESOURCE CTR., SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS 2016-2018: VOLUME IX 75 (2019).

<sup>258</sup> Revolutionary Command Council Res. 202 Treatment of Palestinians Permanently Residing in Iraq as Iraqis, al-Waqā’i‘ al-‘Irāqīyah [Iraqi Official Gazette] 3897, Sept. 24, 2001 (Iraq).

<sup>259</sup> *Iraq COI Summary 2.15.10 Palestinian*, EUROPEAN UNION AGENCY FOR ASYLUM, <https://euaa.europa.eu/country-guidance-iraq-2021/21510-palestinian#:~:text=The%20Law%20No.,permanent%20residency%20status%20in%20Iraq> (last visited Mar. 3, 2022).

<sup>260</sup> Remote Interview with K. Khalil, *supra* note 245; Remote Interview with Heartland Alliance, *supra* note 207.

<sup>261</sup> BADIL RESOURCE CTR., SURVEY OF PALESTINIAN REFUGEES AND INTERNALLY DISPLACED PERSONS 2016-2018: VOLUME IX 75 (2019)

<sup>262</sup> *Id.* at 75-76.

as refugees or stateless persons. UNHCR has facilitated resettlement for a very few Palestinians, and there is rapidly shrinking space for any kind of local integration for Palestinians in Iraq.<sup>263</sup>

## **B. Syrian Refugees**

According to UNHCR, there are approximately 248,721 Syrian refugees residing in Iraq.<sup>264</sup> The overwhelming majority – some 99% – live in the KRI because of its proximity to Syria and because many refugees from Syria are Kurdish and have close cultural and linguistic ties with this region. Many live in one of ten designated camps in KRI.<sup>265</sup>

A proportion of these Syrian refugees in Iraq are Kurds who have been stateless in Syria since the 1960s, well before their displacement to Iraq.<sup>266</sup> Although there are no figures to determine the proportion of Syrian Kurds among the Iraqi population, in one 2013 survey of refugees randomly sampled in one of the main camps in the KRI, 5% were found to be from this stateless community.<sup>267</sup> Although there are no exact government statistics available, it has been estimated that approximately 300,000 stateless Kurds lived in Syria before the conflict began in 2011.<sup>268</sup> Many members of the Kurdish minority population were stripped of their nationality by the Syrian government in 1962, following a deeply flawed and arbitrary census in Al-Hassaka city to determine who were the citizens of the region.<sup>269</sup> The stateless Kurds comprise two groups – the Ajanib and the Maktoumeen.<sup>270</sup> The Ajanib are those who tried to register in the census but failed (for example due to a missing document) and the Maktoumeen are those who never took part in the process.<sup>271</sup> There has been one attempt since the Syrian conflict began – Syrian

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<sup>263</sup> UNHCR, GLOBAL REPORT 2009 IRAQ SITUATION (2009).

<sup>264</sup> *Factsheet – Iraq September 2021*, UNHCR, <https://reporting.unhcr.org/sites/default/files/Iraq%20Factsheet%20-%20September%202021.pdf> (last visited Mar. 9, 2022)

<sup>265</sup> *Id.* at 1-2.

<sup>266</sup> ZAHRA ALBARAZI, GLOB. CITIZENSHIP OBSERVATORY, REPORT ON CITIZENSHIP LAW: SYRIA 4-5 (July 2021) (addressing the basis of statelessness for Kurdish populations in Syria).

<sup>267</sup> THOMAS MCGEE, ISI, STATELESSNESS DISPLACED: UPDATE ON SYRIA'S STATELESS KURDS. STATELESSNESS WORKING PAPER SERIES 4 (2016); *see also* Thomas McGee, *Recognising Stateless Refugees*, 65 FORCED MIGRATION REV., 45, 45-47 (Nov. 2020) (noting in particular the importance of recognizing statelessness during RSD process, specifically with regard to Kurdish populations from Syria).

<sup>268</sup> *See generally* Zahra Albarazi, *The Stateless Syrians*, Tilburg Law School Research Paper No. 011/2013 (May 24, 2013).

<sup>269</sup> *See, e.g.*, Latif Tas, *How international law impacts on statelessness and citizenship: the case of Kurdish nationalism, conflict and peace*, 12 INT'L J. OF L. IN CONTEXT, 42, 45 (2016).

<sup>270</sup> DANISH NATIONAL ID CENTRE, SYRIA: THE STATELESS KURDS – MAKTOUMIN AND AJANIB (Feb. 12, 2021).

<sup>271</sup> *Id.* at 2-3.

Decree No. 49 of 2011 – to resolve some of the cases of statelessness among this community.<sup>272</sup> Under this Decree, Ajanib stateless Kurds were given the option to apply for Syrian nationality in Al-Hassaka.<sup>273</sup> Individuals trying to acquire Syrian nationality under this Decree faced severe difficulties, as there were many problems in its implementation, and many Kurds from Syria living in KRI remain stateless.<sup>274</sup>

Ajanib Kurds sometimes possess a ‘red card’ from Syria as a formal ID card issued by the Syrian civil registrar. This card is an official proof of identity (used for official purposes and everyday use) that records the individual as a registered foreigner but is not valid for travel outside Syria.<sup>275</sup> Most of the Maktoumeen Kurds have no status documents or only a ‘*taaref*’ letter that is given from the local Mukhtar.<sup>276</sup> This *taaref* letter has no legal validity and is only useful on an *ad hoc* basis for local entities (such as local primary schools). There has been no official policy by the Iraqi government to address the unique situation and documentation challenges of this stateless community, and their status is often ignored in programming and policies directed towards refugees from Syria.<sup>277</sup> Additionally, UNHCR’s offices in Iraq do not document or address issues relating to persons from the stateless Kurd community.<sup>278</sup>

Aside from those who have fled the Syrian conflict, stateless Kurds have been living in KRI before the conflict in Syria began. Many fled Syria in the early 2000s as a result of persecution towards to this community (specifically after the 2004 Qamishli riots).<sup>279</sup> The Iraqi government has made no provision for or given access to this community to obtain nationality. Despite having lived in the country for well over a decade, the Kurds who arrived in the early 2000’s cannot take advantage of Iraq’s law allowing foreigners who have been resident in Iraq for ten years to apply for naturalization. Stateless Kurds from Syria who arrived in 2004 are excluded from this provision because they are not considered to have entered Iraq legally (as they fled Syria many could not obtain ‘legal’ permission to enter), which is a requirement for

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<sup>272</sup> NRC AND ISI, UNDERSTANDING STATELESSNESS IN THE SYRIA REFUGEE CONTEXT 18 (2016).

<sup>273</sup> *Id.*

<sup>274</sup> See THOMAS MCGEE, UPDATE ON SYRIA’S STATELESS KURDS, *supra* note 267, at 4-5.

<sup>275</sup> NRC AND ISI, UNDERSTANDING STATELESSNESS IN THE SYRIA REFUGEE CONTEXT, *supra* note 272, at 20.

<sup>276</sup> *Id.*

<sup>277</sup> Remote Interview with Zoa, INGO (Jan. 15, 2020); Remote Interview with A. Abdullah, *supra* note 154.

<sup>278</sup> Remote Interview with A. Abdullah, *supra* note 154.

<sup>279</sup> See HRW, REPRESSION OF KURDISH POLITICAL AND CULTURAL RIGHTS IN SYRIA (2009); see also *Syria: Address Grievances Underlying Kurdish Unrest*, HRW (Mar. 18, 2004) (detailing the violence from armed groups affiliated with the Syrian government attacking Kurdish civilians at the stadium in Qamishli in 2004).



naturalization.<sup>280</sup> They will remain stateless until the Iraqi or Syrian governments provide a mechanism to resolve their legal limbo.

In addition to the stateless Syrians in Iraq, there are also Syrians who possess Syrian nationality, but are now at risk of statelessness. This is particularly true for Syrian children born in exile, due to the operation of Syria's nationality law. The nationality law of Syria is gender-discriminatory and does not allow mothers to transfer their nationality to their children; thus, when a child of a Syrian mother cannot prove the child's connection to a Syrian father under Syrian law, the child will not be able to obtain documentation as a Syrian national.<sup>281</sup> In many circumstances it is impossible for the child to obtain the requisite evidence of Syrian parentage, such as when the father died in Syria, the parents' marriage was never registered, or the father's whereabouts are unknown.<sup>282</sup>

Many Syrian refugee families face difficulties accessing civil registration and documenting their connection to Syria and proving their Syrian nationality for a variety of reasons. One such barrier is the difficult process for refugees to navigate the birth registration system in Iraq.<sup>283</sup> There are two main challenges that impede access to registration. First, many families do not have the documents required by the registration procedures. This is because they did not bring essential documents with them when they fled Syria, or because they never possessed such documents. Individuals who have not brought their documents with them from Syria (or were never able to access documents in Syria), must resort to legal or other assistance to obtain them. Syrian lawyers are offering their services to Syrians in refugee camps to access Syrian courts to obtain documents, but these are often at a high price due to the risks involved.<sup>284</sup> Other individuals have taken the risk to travel back into Syria themselves to try and obtain documents.<sup>285</sup>

Second, refugees, even when they understand the importance of registration and especially during initial stages of displacement, lack knowledge of how the civil registration

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<sup>280</sup> Remote Interview with A. Abdullah, *supra* note 154; Remote Interview with Laissez-Passer, *supra* note 224.

<sup>281</sup> See Nationality Law, Legislative Decree No. 276 of 1969, art. 3 (Syria).

<sup>282</sup> See, e.g., NRC AND ISI, UNDERSTANDING STATELESSNESS IN THE SYRIA REFUGEE CONTEXT, *supra* note 272, at 32, 36-38.

<sup>283</sup> Remote Interview with Oxfam, *supra* note 155; Remote Interview with NRC, *supra* note 145.

<sup>284</sup> Remote Interview with NRC, *supra* note 145; Remote Interview with Harikar, *supra* note 79; Remote Interview with Heartland Alliance, *supra* note 207.

<sup>285</sup> Remote Interview with DRC, *supra* note 215; Remote Interview with NRC, *supra* note 145.

system works, especially since the process is different from the system in Syria.<sup>286</sup> With the short fifteen-day deadline to register births, many families cannot register in time, particularly if they have trouble acquiring the documentation they need. Not being able to complete a child's registration process in time leaves the child at risk of not having proof of a legal link to a Syrian father, and thus at risk of statelessness.

### C. Bidoon

The word 'bidoon' refers to the community known as the *bidoon jinsiya* – translated from Arabic as those 'without nationality.' The Bidoon comprise a large stateless community predominantly found across the Arabian Peninsula.<sup>287</sup> The causes of their statelessness vary, but a major cause is the exclusion of nomadic communities from citizenship when the countries in which they resided gained independence and established their citizenship laws.<sup>288</sup> Although the exclusion of Bidoon communities in most of the MENA was primarily due to administrative inattention, there are also other nationalist and discriminatory reasons, and their situation has not been satisfactorily addressed as stateless populations. Much attention and research has been focused on the Bidoon community in Kuwait and other countries in the Gulf. A small percentage of the Bidoon currently reside in Iraq, estimated at approximately 54,000 in 2006,<sup>289</sup> but there is very little research or quantitative data available on their situation.<sup>290</sup> For many decades, this minority community has lived in impoverished circumstances with severely limited access to basic rights.<sup>291</sup>

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<sup>286</sup> Remote Interview with R. Hussein, *supra* note 162; Remote Interview with Heartland Alliance, *supra* note 207; Remote Interview with DRC, *supra* note 215.

<sup>287</sup> See, e.g., Faisal Mukhyat Abu Sulaib, *Stateless 'bidoon' in Kuwait: a crisis of political alienation* 57 MIDDLE EASTERN STUDIES, 134, 134-150 (Oct. 15, 2020) (explaining both the historical situation of the Bidoon and contemporary political alienation in the context of Kuwait).

<sup>288</sup> Ahmad Benswert, *Language and statelessness: the Impact of Political Discourse on the Bidoon Community in Kuwait*, in STATELESSNESS, GOVERNANCE, AND THE PROBLEM OF CITIZENSHIP 87, 98 (Tendayi Bloom and Lindsey Kingston eds., 2021); Faisal Mukhyat Abu Sulaib, *Stateless bidoon in Kuwait: a crisis of political alienation*, 57 MIDDLE EASTERN STUDIES, 134, 134-150 (2020).

<sup>289</sup> EUROPEAN NETWORK ON STATELESS AND INST. ON STATELESSNESS AND INCLUSION, STATELESSNESS IN IRAQ COUNTRY POSITION PAPER 13 (Nov. 2019).

<sup>290</sup> The Institute for International Law and Human Rights and the Special Rapporteur on Minority Issues to the UN Human Rights Council have noted with concern the lack of information on the circumstances of the Bidoon community in Iraq. See *COI Summary 2.15.8 Bidoon*, EUROPEAN UNION AGENCY FOR ASYLUM, [https://euaa.europa.eu/country-guidance-iraq-2021/2158-bidoon#:~:text=Bidoon%20\(short%20for%20'bidoon%20jinsiya,stateless%20Arab%20minority%20in%20Iraq.&text=The%20births%20and%20deaths%20of,usually%20registered%20by%20the%20government](https://euaa.europa.eu/country-guidance-iraq-2021/2158-bidoon#:~:text=Bidoon%20(short%20for%20'bidoon%20jinsiya,stateless%20Arab%20minority%20in%20Iraq.&text=The%20births%20and%20deaths%20of,usually%20registered%20by%20the%20government) (last visited Mar. 3, 2022).

<sup>291</sup> *Id.*

The number of Bidoon living in Iraq has been estimated to be between 54,000 and 125,000.<sup>292</sup> Reliable statistics from the Iraqi government are unavailable, but UNHCR estimates that 125,000 Bidoon either fled or were expelled to Iraq following the Gulf War.<sup>293</sup> They were mostly deported or fled to Iraq in the 1990s due to persecution faced in Kuwait during the First Gulf War.<sup>294</sup> Despite their lack of citizenship, many of the Bidoon community were long-term residents in Kuwait and held positions in the army, but after the invasion of Iraq, they became scapegoats in Kuwait, which suffered significant losses in the war. Many fled to Iraq, as that seemed a viable and comparably safe option.<sup>295</sup> The Bidoon arrived in Iraq as stateless persons, and live predominantly in the southern governorates of Iraq.

Under Saddam Hussein, some Bidoon obtained nationality certificates and passports, as they were considered supporters of the Ba'ath regime.<sup>296</sup> To obtain nationality they had to renounce association with Kuwait and needed sponsorship by a local tribe.<sup>297</sup> Approximately 47,417 individuals from the Bidoon community were granted Iraqi citizenship and were able to enjoy similar rights to those of Iraqi nationals. Although the Bidoon who acquired Iraqi citizenship have access to most rights as citizens, they are not allowed to own property inside the major cities.<sup>298</sup> More recently, the Iraqi NGO Mercy Hands (in collaboration with UNHCR), started a legal process in 2017 to aid other stateless Bidoon individuals to access Iraqi nationality.<sup>299</sup> Since the initiative began, approximately 500 Bidoon individuals have obtained Iraqi nationality annually.<sup>300</sup>

Most other Bidoon families remain stateless, cannot register their children's births, lack basic services and access to rights, and live secluded lives outside mainstream Iraqi society.<sup>301</sup>

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<sup>292</sup> *Id.*

<sup>293</sup> UNHCR, INTERNATIONAL PROTECTION CONSIDERATIONS, *supra* note 12, at 79.

<sup>294</sup> HRW, THE BEDOONS OF KUWAIT "CITIZENS WITHOUT CITIZENSHIP" (1995).

<sup>295</sup> Remote Interview with A. Abdullah, *supra* note 154.

<sup>296</sup> UNHCR, 2010, Email 'Bidoon in Iraq', 8 September; Department of Foreign Affairs and Trade (DFAT), 2010, RRT Information Request: IRQ37183, Report No. 1197, *cited in* Australian Tribunal decision 1218580 [2013] RRTA 279 (2 April 2013), <https://www.refworld.org/pdfid/51c44c6d4.pdf>

<sup>297</sup> *Id.*

<sup>298</sup> See Residency and Nationality Directorate, Australian Government Country Advice, Iraq, 2010, <https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/11/UNHCR%20Advice.pdf>

<sup>299</sup> See YASSEN, REPORT ON CITIZENSHIP LAW: IRAQ, *supra* note 43, at 11 (May 2021).

<sup>300</sup> Charlie Dunmore and Edith Champagne, 'Citizenship hopes become reality for Iraq's Bidoon minority', UNHCR (Oct. 10, 2019).

<sup>301</sup> Remote Interview with Al-Amal, *supra* note 162.

#### D. Faili Kurds

The Faili Kurds of Iraq are a minority population that has historically moved between the borders of Iraq and Iran.<sup>302</sup> Predominantly Shia, they make up approximately 1.5 million individuals in Iraq.<sup>303</sup> Saddam Hussein's Baathist government treated Iraqi Shiites and Kurds with brutal oppression due to their mainly Shia background and Kurdish origin, and the Faili Kurdish community suffered significantly from persecution by Saddam Hussein's regime.<sup>304</sup> With the rise of pan-Arab nationalism in the 1970's and '80's, anti-Kurd and anti-Shia ideology also increased. Under the Iraqi monarchy, Faili Kurds were considered to be immigrants from Iran and largely refused citizenship status; during the early days of republic governance (from 1958 to 1963), "some Faili Kurds were naturalized but the rest were refused Iraqi nationality."<sup>305</sup> Under the Ba'ath party, persecution against the Kurdish minority and other Shi'a communities intensified.<sup>306</sup> Politically, "many Faili Kurds were members of the Iraqi Communist Party and later the al-Da'awa party, which were viewed as anti-Ba'thist."<sup>307</sup> This resulted in the issuance of Decree No. 666 of 1980, which stripped Faili Kurds of Iraqi citizenship, seized their properties, and facilitated their forcible expulsion to Iran.<sup>308</sup>

Although there are no exact statistics, estimates range from tens to hundreds of thousands of individuals who were affected by these policies and practices.<sup>309</sup> Due to the hereditary nature of statelessness in Iraq, the number of those affected by the lack of nationality will have increased substantially since 1980. There were also very few avenues for those who went to live

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<sup>302</sup> Notably, there are other communities who identify as Kurdish that are not addressed in this Report. Some of these communities may also face risks of statelessness; for example, it has been noted by UNHCR that the Kaka'i community has been targeted by Islamic extremist groups, which may result in similar problems faced by other IDPs in Iraq. See UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers* ¶ 35 (2009). See also JOSHUA CASTELLINO AND KATHLEEN CAVANAUGH, *MINORITY RIGHTS IN THE MIDDLE EAST* 206 (2013) (noting that members of the Shabak minority have alleged that the Kurdish Regional Government has engaged in systematic abuses and discrimination against them to further Kurdish territorial claims).

<sup>303</sup> *Iraq – Faili Kurds*, MRGI, <https://minorityrights.org/minorities/faili-kurds/> (last visited Mar. 2, 2022).

<sup>304</sup> JOSHUA CASTELLINO AND KATHLEEN CAVANAUGH, *MINORITY RIGHTS IN THE MIDDLE EAST* 205-206 (2013) more information on this persecution and discrimination see Gawdat Bahgat, *Saddam Hussein's Legacy: A Preliminary Assessment and Future Implications*, 25 SAIS REV. OF INT'L AFFAIRS (2005).

<sup>305</sup> JOSHUA CASTELLINO AND KATHLEEN CAVANAUGH, *MINORITY RIGHTS IN THE MIDDLE EAST* 206 (2013).

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> AUSTRALIA DEP'T OF FOREIGN AFFAIRS AND TRADE [DFAT], *COUNTRY INFORMATION REPORT IRAQ* ¶ 3.4 (Oct. 9, 2017) (suggesting tens of thousands and perhaps hundreds of thousands were expelled from Iraq). *Iraq – Faili Kurds*, MRGI, <https://minorityrights.org/minorities/faili-kurds/> (last visited Mar. 2, 2022) (estimating between 150,000-500,000).

in Iran to naturalize as Iranian.<sup>310</sup> Many of the Faili Kurds could not fulfill Iranian naturalization procedures, as these were discretionary and required legal residence. Since they had been expelled to Iran, they were considered to have entered illegally and could not meet the naturalization criteria. The vast majority of this denationalized group – whether they remained in Iraq or lived in Iran – have remained stateless for decades. Law No. 26 of 2006 includes a provision to resolve the situation of Iraqis, like the Faili Kurds, who were denationalized under prior governments. Article 17 states that: “Decision No. 666 of 1980 issued by the (defunct) Revolutionary Command Council shall be repealed and Iraqi nationality shall be restored to all Iraqis deprived of their Iraqi nationality under the said law as well as all other unfair decisions issued by the (defunct) Revolutionary Command Council in this respect.”<sup>311</sup> The provision in the law was intended to enable this community of Faili Kurds to reacquire Iraqi nationality.

The issuance of this law coincided with a period when Iraq witnessed the return of many Faili Kurds, mainly from Iran, to their cities of origin in Iraq.<sup>312</sup> Many individuals and families did benefit from this article, and it is due to the reinstatement of nationality to many of the Faili Kurds that Iraq has been praised for resolving a substantial number of stateless cases.<sup>313</sup> The Ministry of Immigration statistics show that between 2003 and 2013, 16,580 Faili Kurds had their nationality reinstated, with only 6,853 possessing a national identification document.<sup>314</sup> There are no more recent government statistics, but this covers only a small fraction of the total population of this community.

Despite government attempts to resolve the issue, many of the Faili Kurds of Iraq are stateless today, and challenges remain in the implementation of the 2006 reinstatement provision. In particular, the evidence required to obtain nationality is burdensome. Individuals need to prove they had Iraqi nationality before Decree No. 666 of 1980 was implemented, and must provide a copy of their registration from the 1957 census.<sup>315</sup> They must travel to Baghdad to complete the procedure, a requirement that is not feasible for everyone. Many Faili Kurds lost their documents in the 1980s, and others had all their belongings including their documents

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<sup>310</sup> See generally JASON TUCKER, EXPLORING STATELESSNESS AND NATIONALITY IN IRAN (May 26, 2014).

<sup>311</sup> Law No. 26 of 2006, *supra* note 142, at art. 17.

<sup>312</sup> *Iraq – Faili Kurds*, MRGI, <https://minorityrights.org/minorities/faili-kurds/> (last visited Mar. 2, 2022).

<sup>313</sup> UNHCR, IN SEARCH OF SOLUTIONS: ADDRESSING STATELESSNESS IN THE MIDDLE EAST AND NORTH AFRICA 8 (2016).

<sup>314</sup> MOHAMMED IHSAN, NATION BUILDING IN KURDISTAN: MEMORY, GENOCIDE AND HUMAN RIGHTS 59 (2017).

<sup>315</sup> YASSEN, REPORT ON CITIZENSHIP LAW: IRAQ *supra* note 43, at 10.

confiscated when they were expelled.<sup>316</sup> Reports suggest the process of reinstatement is very bureaucratic, sometimes taking several years to finalize, and frequently involves claimants having to pay bribes to officials.<sup>317</sup> UNHCR has recently critiqued the burdensome nature of the process, stating that:

the process of reinstatement is long and cumbersome, and applicants are often required to travel from their place of residence to the nationality directorate in Baghdad to follow up on their applications. Some Faili Kurds started the process but could not complete it due to documentary and financial requirements (including for repeated travel to Baghdad) . . . . the process can be administratively complex if an individual lacks sufficient documentation to demonstrate Iraqi origin.<sup>318</sup>

The Committee on the Rights of the Child has also called on Iraq to “[a]ccelerate the reinstatement process for the Faili Kurd population, and provide Faili Kurd children with identification.”<sup>319</sup>

In addition, many from this community continue to be displaced –with many also remaining stateless in Iran – and therefore have never been in a position to reacquire Iraqi nationality. They are unable to benefit from a process that requires being in the country to complete.<sup>320</sup>

## **E. Children Born Under IS**

One of the most substantial challenges regarding birth registration in Iraq is due to the consequences of armed conflict over the last decade. This is illustrated in the contrast between the statistics of birth registration of Iraq as a whole and the statistics of the regions that came under IS control. An estimated 870,000 Iraqi children today remain displaced, thousands of whom were born under the rule of the IS.<sup>321</sup> While Iraq’s birth registration rate for children is more than 95%, the latest statistics show that that in the Ninewa governorate (the main

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<sup>316</sup> Remote Interview with Zoa, *supra* note 277.

<sup>317</sup> Elise Karam, *Locked out of Baghdad: the Faili Saga*, AS FAR, (Dec. 12, 2013).

<sup>318</sup> AUSTRALIA DEP’T OF FOREIGN AFFAIRS AND TRADE [DFAT], COUNTRY INFORMATION REPORT IRAQ ¶ 3.4 (Oct. 9, 2017).

<sup>319</sup> Comm. on the Rights of the Child, Concluding observations on the combined second and fourth periodic reports of Iraq, U.N. Doc. CRC/C/IRQ/CO/2-4 (Mar. 3, 2015).

<sup>320</sup> Remote Interview with R. Hussein, *supra* note 162; Remote Interview with Al-Amal, *supra* note 162.

<sup>321</sup> NRC, UNDOCUMENTED CHILDREN IN IRAQ, *supra* note 197, at 7. See Martin Chulov, *Scorned and stateless: children of Isis fighters face an uncertain future*, THE GUARDIAN (Oct. 7, 2017).

governorate occupied by IS) only 76.6% of children's births are registered.<sup>322</sup> This is only one of the governorates that was occupied by IS; it has been estimated that many children in the several governorates occupied by IS at various points in time do not have birth certificates or any other civil documentation.<sup>323</sup> The lower figure of registration of births in Ninewa and other formerly occupied regions is due to the complex situations faced by families, many of whom had their documents confiscated by armed groups, lost their documentation as they fled, or obtained birth certificates under IS administration.<sup>324</sup>

IS-issued documents are considered invalid by the Iraqi authorities, who refuse to recognize documents issued by non-state actors so as not to legitimize IS in any way.<sup>325</sup> Persons with perceived IS affiliations frequently “do not even attempt to obtain new or replacement identity cards or other documents, as many fear they would be arrested or further stigmatized in the process” while other persons “are unable or unwilling to return to their local Civil Service Directorate office, which may be located in an area where their communities will not allow them to return.”<sup>326</sup> Lawyers who attempt to assist such persons also frequently face harassment, which severely limits reliance on the legal system to rectify the situation.<sup>327</sup>

If a child was born under IS governance, the child's birth certificate will not be recognized, and if a couple was married, their marriage certificate will not be accepted.<sup>328</sup> Many individuals also had their documents confiscated by Iraqi security forces for perceived affiliation

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<sup>322</sup> See UNICEF AND UNAMI, LEGAL FRAMEWORK GOVERNING CIVIL DOCUMENTATION IN IRAQ, *supra* note 195, at 1.

<sup>323</sup> *Id.* See also UNICEF, IRAQ MULTIPLE INDICATOR CLUSTER SURVEY 2018 SURVEY FINDINGS REPORT 236 (Feb. 2019). See *Islamic State and the crisis in Iraq and Syria in maps*, BBC (Mar. 28, 2018).

<sup>324</sup> See UNICEF AND UNAMI, LEGAL FRAMEWORK GOVERNING CIVIL DOCUMENTATION IN IRAQ, *supra* note 195, at 3-6 (noting complex situations facing civilians in IS regions, in particular: (1) children born in areas under IS control to parents, both of whom are Iraqi nationals and married prior to IS occupation, (2) married couples with/without children who were married prior to IS occupation, (3) children fathered by IS fighters (through rape or forced marriage), whose father is a foreigner and the mother is Iraqi, (4) children whose parents are both Iraqi nationals, (5) children whose father and mother are foreigners (either as IS fighters or affiliated with IS), and (6) children found in areas that were under IS control, but whose parents are untraceable and the child lacks any form of documentation. There are also a large number of non-Iraqi children born in Iraq under IS occupation. See Nadim Houry, *The “Unreturned”: Dealing with the Foreign Fighters and Their Families who Remain in Syria and Iraq*, in *MILITANT JIHADISM TODAY AND TOMORROW* 59, 70-71 (Serafettin Pektaş and Johan Leman eds., 2019) (noting the birth of at least 730 foreign children under IS, and the ongoing problem of repatriation).

<sup>325</sup> Remote Interview with DRC, *supra* note 215; Remote Interview with Laissez-Passer, *supra* note 224.

<sup>326</sup> Amnesty Int'l, *The Condemned: Women and Children Isolated, Trapped and Exploited in Iraq*, AI Index MDE 14/8196/2018, 23 (2018).

<sup>327</sup> *Id.*

<sup>328</sup> Amnesty Int'l, *The Condemned*, *supra* note 326, at 22.

with these groups.<sup>329</sup> This imputed affiliation is entirely arbitrary, and can be linked to an individual, tribal affiliation, or simply place of residence.<sup>330</sup>

Mothers from prior IS-areas face additional barriers when they want to obtain their own ID documents. A mother will need to show her ID to register the birth of her child, but arbitrary requirements are imposed on mothers from former IS regions. To renew or obtain issuance of her own individual ID card, a woman must establish that her male relatives are not included in the national security database or any of the wanted lists for terrorists.<sup>331</sup> For married women, this means her husband must not appear on any such database. There are no official guidelines for who can be included on the terrorist list, and the process of dealing with those whose names are found on terrorist lists appears inconsistent and arbitrary.<sup>332</sup> Estimates are that there are at least 100,000 men on those lists.<sup>333</sup>

Each governorate has its own specific approach to documentation of IS families. There is no clear, centralized policy, but rather a haphazard set of different directives by different authorities to local offices.<sup>334</sup> For instance, in the western governorates of Al-Anbar, NRC reported that officials received specific directives from the Ministry of Interior to issue civil IDs for children, regardless of their families' suspected affiliation.<sup>335</sup> On the other hand, in the governorates of Ninewa, NRC reports that directives were issued to authorities to refuse granting IDs to children suspected of being born to parents with IS affiliations.<sup>336</sup>

When the father of a child is missing, the procedures for birth registration are further complicated, given the doubt over whether the father was affiliated with certain groups. In order to fulfill birth registration processes, a mother is often required to provide a certificate of absence for the father who is missing to prove that he was not affiliated with armed groups. According to NRC, "regardless of whether the child's father is missing, imprisoned or dead, without government-issued proof of the event, mothers are very often unable to obtain civil documentation for her

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<sup>329</sup> Amnesty Int'l, *The Condemned*, *supra* note 326, at 22-23.

<sup>330</sup> HRW, *WORLD REPORT 2019 – IRAQ*, (Jan. 17, 2019); Amnesty Int'l, *The Condemned*, *supra* note 326, at 22-24.

<sup>331</sup> Amnesty Int'l, *The Condemned*, *supra* note 326, at 22-23.

<sup>332</sup> *Id.* See also Amnesty Int'l, *The Condemned*, *supra* note 326, at 24 (noting that a single woman who does not have the death certificate for a deceased husband also is likely unable to remarry, or inherit her deceased husband's property).

<sup>333</sup> *Id.*

<sup>334</sup> Remote Interview with NRC, *supra* note 145.

<sup>335</sup> NRC, *UNDOCUMENTED CHILDREN IN IRAQ*, *supra* note 197, at 22.

<sup>336</sup> *Id.* at 22.



children, even if she has a government-issued marriage contract.”<sup>337</sup> Iraqi women who have deceased or missing husbands are forced to undergo an even lengthier and more complex process to prove marriage and the reason for their spouse’s death in order to obtain documents.<sup>338</sup> The evidence women produce in such cases is evaluated in summary IS trials where all IS-related prosecutions are tried under Iraq’s broad 2005 counterterrorism law.<sup>339</sup> Instead of a simple registration process, confirmation of a marriage or a spouse’s death in these cases triggers application of Iraq’s counter-terrorism legislation. The entire process creates enormous barriers for families overwhelmed by conflict who are already suffering other conflict-related vulnerabilities. There is no specific legal process for mothers in this situation to follow, forcing them to rely on the discretion of court officials.<sup>340</sup> According to anecdotal reports, mothers have attempted to exhume the dead bodies of the fathers of their children to prove the father’s death in order to obtain birth certificates.<sup>341</sup>

To address the problem of security clearances, Iraqi authorities have adopted the ‘*Tabriya* process.’<sup>342</sup> Under this process, a woman is required to request that the judge open a criminal complaint against a relative who is suspected of being affiliated with IS. The practice allows a woman to make a statement to a counterterrorism court, setting out the suspected criminal acts of her husband as an IS member. The court statement is intended to formally absolve her of responsibility for her husband’s actions, allowing her to acquire documents she was previously denied.<sup>343</sup> Once a woman has successfully made this complaint, she will be given a document by the judge that facilitates a security clearance.<sup>344</sup> This is deeply problematic, as it requires women to take responsibility for the actions of their husbands, and bars them from accessing

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<sup>337</sup> *Id.*

<sup>338</sup> Remote Interview with Al-Amal, *supra* note 162; Remote Interview with Heartland Alliance, *supra* note 207.

<sup>339</sup> Anti-Terrorism Law No. 13 of 2005 (Iraq). These trials are highly problematic; most cases result in a life sentence or the death penalty. Trials frequently last approximately ten minutes, with sentences issued later that same day. In 2017 alone, two mass hangings of 42 and 38 convicted IS members took place after summary trials. *See* Margaret Coker and Falih Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, N.Y. TIMES (Apr. 17, 2018); *Iraq carries out biggest mass execution of prisoners this year*, THE NEW ARAB (Sept. 25, 2017).

<sup>340</sup> Remote Interview with R. Hussein, *supra* note 162.

<sup>341</sup> Remote Interview with NRC, *supra* note 145.

<sup>342</sup> EASO, IRAQ: TREATMENT OF IRAQIS WITH PERCEIVED AFFILIATION TO ISIL COUNTRY OF ORIGIN INFORMATION REPORT (Oct. 2020).

<sup>343</sup> Remote Interview with Zoa, *supra* note 277; Remote Interview with NRC, *supra* note 145.

<sup>344</sup> BELKIS WILLE, HRW, IRAQ: NOT A HOMECOMING (June 14, 2019).

documentation unless they denounce their husbands. However, some families are resorting to this mechanism to try to resolve lack of access to vital documents.<sup>345</sup>

These practices of excluding a wife or child of an alleged IS member from receiving vital status documentation remain widespread and are highly problematic. Whether a child is established to be the child of an IS member, even if it is through a neutral court applying due process, that fact should be irrelevant, as no child should be denied access to the fundamental right of birth registration. Nor should women be forced to take responsibility for the actions of their husbands. Iraq is responsible for adhering to its international obligation to register a child's birth under the CRC and other human rights instruments, regardless of the (non) status of the child's parentage. It is also bound by its obligations under CEDAW and human rights law to avoid discrimination against women in any manner. Moreover, even under the restrictions of IHL, Iraq is bound to avoid the principle of collective punishment, particularly against civilians, let alone children.<sup>346</sup>

### The Yezidi Minority

Yezidis are an ethnic and religious minority group with a particularly long history in Iraq and Syria. Estimates give their total population between 1-1.5 million across the world.<sup>347</sup> The largest population is found in northern Iraq, specifically in the Ninewa and Dohuk governorates. Nearly half a million Yezidis are assumed to live in these regions.<sup>348</sup> For centuries, the Yezidis have faced severe persecution in many of countries in the MENA where they reside, in particular as their religion is viewed as heretical by many Islamic clerics.<sup>349</sup> In Iraq, persecution of Yezidis was exacerbated under IS, resulting in a 'new' rights violation of the community – the risk of statelessness.

The Yezidi community were some of the most persecuted people under IS. IS killings, sexual slavery, enslavement, torture, and inhuman and degrading treatment of Yezidis have been

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<sup>345</sup> CLUTTERBUCK, WOMEN'S EXPERIENCES DURING CONFLICT IN IRAQ AND SYRIA, *supra* note 147, at 7.

<sup>346</sup> See Anne van der Wolff, *The Denial of Identity Cards to Islamic State Affiliates*, *supra* note 89.

<sup>347</sup> *5 things you need to know about the Yezidis*, NRC (2018). See also Kyle Msall, *Humanitarian aid workers' knowledge of minority cultures in Iraqi Kurdistan*, 3 J. OF INT'L HUMANITARIAN ACTION 1, 3 (June 27, 2018) (noting, in particular, the deeply insular nature of the religion, and the lack of cultural awareness or understanding of international development actors who work with Yazidi communities).

<sup>348</sup> Valeria Cetorelli, et al., *Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey*, PLOS MEDICINE (May 9, 2017).

<sup>349</sup> Raya Jalabi, *Who are the Yezidis and why is Isis hunting them?*, THE GUARDIAN (Sept. 11, 2014).

well-documented.<sup>350</sup> The UN reported more than 5,000 Yezidis had been murdered and 5,000 to 7,000 (mainly women and children) had been kidnapped by IS.<sup>351</sup> As noted above, children in Iraq whose mothers had been held captive by IS, and whose fathers were members of IS, are at heightened risk of statelessness. The situation is even more complicated for children born to Yezidi survivors of rape during IS captivity because of the religious nature of the community.<sup>352</sup> Many of the women who were captured became pregnant through rape. These women have faced difficulties in registering births and obtaining civil documentation for children born of rape. Yezidi women who were impregnated by IS men face two choices (1) their children do not acquire documentation or nationality and live as stateless persons; or (2) their children acquire nationality documents that state their religion as Muslim -- a severely stigmatized status for Yezidis -- documents that permanently associate children with their perpetrator fathers.<sup>353</sup>

An amendment to Iraq's National Identity Card Law states that children born to non-Muslim mothers and Muslim fathers are to be considered Muslim regardless of any other fact, as religion is assumed to be inherited through the paternal line.<sup>354</sup> Children born of rape to Yezidi mothers could therefore obtain birth registration and an ID card that states they are 'Sunni Muslim.'<sup>355</sup> A Yezidi mother with a child from an IS member has the option of obtaining status documents stating that the religion of the child is 'Sunni', which links the child to the IS member and alienates him or her from the peer religious group. For many Yezidi women, accessing a stigmatized form of nationality is even more problematic than allowing the child to remain stateless.<sup>356</sup> Not only would the IS father be a permanent stigma on the child's legal status, but for a Yezidi child to assume a religion different from his or her community is highly problematic.<sup>357</sup> Many in the Yezidi community have reacted negatively towards these children, as Amnesty International reports: "the Yezidi community frequently forced women to give up

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<sup>350</sup> See, e.g., *Iraqi Yezidis: 'If we move they will kill us'*, AL JAZEERA (Aug. 5, 2014)

<sup>351</sup> Richard Spencer, *Isil carried out massacres and mass sexual enslavement of Yezidis, UN confirms*, THE DAILY TELEGRAPH (Oct. 14, 2014).

<sup>352</sup> For more information on these crimes see Human Rights Council, 'They came to destroy': ISIS Crimes Against the Yazidis, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016).

<sup>353</sup> Remote Interview with NRC, *supra* note 145; Remote Interview with A. Abdullah, *supra* note 154.

<sup>354</sup> See Law No. 3 of 2015 (National Identity Card Law), art. 26(2) (stating that "children... follow the religion of Islam from the Muslim parents."). See also Ewelina Ochab, *Let the Children be Yazidis*, FORBES (Apr. 3, 2019).

<sup>355</sup> Law No. 3 of 2015 (National Identity Card Law), art. 26(2).

<sup>356</sup> Remote Interview with DRC, *supra* note 215; Remote Interview with NRC; *supra* note 145.

<sup>357</sup> For more information on the documentation plight of the children born of rape to Yezidi women see Thomas McGee, *Born of ISIS Genocide: Risk of Statelessness and Stigmatised Nationality Acquisition for Children of Yezidi Survivors*, 25 ROWAQ ARABI 83 (2020).

such babies and minor children to orphanages under threat of expulsion from the community.... some such children are without parents, identification, clear country of birth, or settled nationality.”<sup>358</sup>

Children in these circumstances have been left with precarious legal status, and if the mother is unable to register her child, at risk of statelessness. When the Yezidi community forces women to give up their children to orphanages before registering them,<sup>359</sup> the child is left without identification or a legal link to an Iraqi parent.<sup>360</sup> Unfortunately, there is little research or knowledge about what happens to such children left in orphanages. There is no clear resolution to the situation of Yezidi children who are left between a stigmatized form of nationality or deprived of nationality altogether.

## **F. Dom**

The Dom are a historically nomadic community from the Indian subcontinent who have resided in the MENA region for centuries.<sup>361</sup> The Dom population is an under-researched and overlooked community, and across the MENA region many Dom suffer discrimination.<sup>362</sup> There are no accurate figures on the number of Dom in Iraq, but estimates suggest the population comprises approximately 60,000 individuals, primarily residing near Mosul, Baghdad, and Basra, while one report estimates there may be as many as 200,000.<sup>363</sup> The human rights situation for Dom in Iraq has always been dire, as they often live on informal and squatted land without access to basic infrastructure and services such as electricity, water, and healthcare.<sup>364</sup> The Dom community were perceived to be supporters of Saddam Hussein because many made a livelihood by entertaining Ba’ath Party officials.<sup>365</sup> As a result, after the fall of the Ba’ath regime in 2003,

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<sup>358</sup> U.S. DEP’T OF STATE, HUMAN RIGHTS REPORT – IRAQ 2018 39 (Mar. 13, 2019).

<sup>359</sup> See, e.g., Cathy Otten, *A Broken Homecoming*, FOREIGN POL’Y (2019).

<sup>360</sup> U.S. DEP’T OF STATE, HUMAN RIGHTS REPORT – IRAQ 2018 39 (Mar. 13, 2019) (stating that “[t]he Yezidi community frequently forced women to give up such babies and minor children to orphanages under threat of expulsion from the community . . . some such children are without parents, identification, clear country of birth, or settled nationality.”).

<sup>361</sup> The Dom are sometimes referred to as Roma as they stem from similar ethnic origins. UNHCR, INTERNATIONAL PROTECTION CONSIDERATIONS, *supra* note 12, at 78-79.

<sup>362</sup> See, e.g., KALKINMA ATÖLYESI, DOM MIGRANTS FROM SYRIA LIVING AT THE BOTTOM ON THE ROAD AMID POVERTY AND DISCRIMINATION (2016).

<sup>363</sup> *Iraq: Roma*, MRGI, <https://minorityrights.org/minorities/roma-21/> (last visited Mar. 2, 2022).

<sup>364</sup> INSTITUTE FOR INT’L LAW AND HUM. RTS., IRAQ’S MINORITIES AND OTHER VULNERABLE GROUPS: LEGAL FRAMEWORK, DOCUMENTATION AND HUMAN RIGHTS 127 (May 2013).

<sup>365</sup> Remote Interview with R. Hussein, *supra* note 162.

they were targeted by many in the Iraqi community.<sup>366</sup>

Although many in the Dom community do have Iraqi nationality, even that status may be precarious. There is no direct discrimination in the nationality law that puts Dom in Iraq at risk of statelessness; rather the challenges are due to a history of discrimination and stigmatization. There are no statistics to reflect how many individual Dom face risks of statelessness. In 2019, UNHCR stated that “members of the Roma [Dom] community are reportedly stateless or at risk of statelessness due to the lack of essential civil documentation, further compounding their vulnerable situation.”<sup>367</sup> This is mostly due to the discrimination they face, and many are often unwilling or uninterested in obtaining nationality in a country where they do not feel welcome.<sup>368</sup> The majority of the Iraqi public view the Dom unsympathetically, a view that is reinforced by the notion that they are not citizens.<sup>369</sup> Public antipathy towards them is coupled with the lack of state protection. Since they face systematic daily discrimination and marginalization, they are less likely to approach state authorities if they lack documents, even if they are faced with severe problems that may require state intervention.<sup>370</sup> The vicious cycle of extreme poverty, high rates of poor health, illiteracy, and unemployment is entrenched by legal exclusion from the state.

Minorities like the Dom face problems due to the arbitrary classifications utilized by civil registration authorities in issuing identification documents. For example, some Dom do possess an ID card, but the documents will often contain the word ‘exemption,’ which excludes them from accessing government employment.<sup>371</sup> Placing this word on documents is not required by law, but local civil registration officials often include it at their own discretion. According to anecdotal reports, when Dom present this ID to officials, they face problems registering their children, and the addition of this word can be stigmatizing in other ways.<sup>372</sup>

Another word authorities sometimes print on civil status documents is ‘*Ghajari*,’ which specifies that the document holder is Dom. The designation can sometimes lead to the ID holder being discriminated against in obtaining benefits and services, leaving them with a lesser form of

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<sup>366</sup> *Iraq: Roma*, MRGI, <https://minorityrights.org/minorities/roma-21/> (last visited Mar. 2, 2022).

<sup>367</sup> UNHCR, INTERNATIONAL PROTECTION CONSIDERATIONS, *supra* note 12, at 78-79.

<sup>368</sup> Remote Interview with Heartland Alliance, *supra* note 207.

<sup>369</sup> Remote Interview with Oxfam, *supra* note 155.

<sup>370</sup> Remote Interview with Heartland Alliance, *supra* note 207; Remote Interview with Al-Amal, *supra* note 162.

<sup>371</sup> Remote Interview with R. Hussein, *supra* note 162.

<sup>372</sup> MRGI, Alternative Report to the Committee on the Elimination of Racial Discrimination Review of the Periodic Report of Iraq 23 (2018).

citizenship than other Iraqi nationals.<sup>373</sup> Some lawyers have stated that the Ministry of the Interior issued directives to administrative offices to stop using the terms ‘exemption’ or ‘*Ghajari*’ on Dom identification documents given their lack of legal significance.<sup>374</sup> However, to benefit from these directives the holder of such a card needs to submit a request to a government office in order to obtain a new identification document. Dom community members report that they suffer regular humiliation from officials, including that their attempts to renew their documents are regularly rejected. Because of the discrimination and abuse many Dom suffer at the hands of authorities, they fear any engagement with government officials, which prevents many of them from trying to obtain documents that do not distinguish them from other Iraqi nationals.<sup>375</sup>

## G. The Baha’i

The Baha’i religious minority in Iraq is very small, approximately 20,000 persons. Law No. 105 of 1070, issued under the Ba’athist Revolutionary Command Council, “made it an offence to practice the Baha’i faith” and Regulation No. 358 of 1975 “prohibited the issuance of a nationality identity card to those claiming to be of the faith.”<sup>376</sup> These regulations were cancelled in 2007, although Baha’is continued to face problems in obtaining identity cards.<sup>377</sup> After 2007, issuance of Baha’i nationality cards was again suspended, indicating that the 2007 cancellation was merely a temporary reprieve.<sup>378</sup> It has been noted that “Iraqi identity cards continue to explicitly note the holder’s religion and Baha’is, whose identity cards were changed to read ‘Muslim’ after Regulation 358 was instituted, as well as Muslims who convert to Christianity, continue to be unable to change their cards to reflect their Baha’i or Christian faith.”<sup>379</sup> The extent to which Baha’is remain without identification documents, and whether other religious minorities face similar issues, requires additional research.<sup>380</sup> Experts familiar

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<sup>373</sup> Remote Interview with Heartland Alliance, *supra* note 207; Remote Interview with R. Hussein, *supra* note 200; Remote Interview with Laissez-Passer, *supra* note 224.

<sup>374</sup> Remote Interview with R. Hussein, *supra* note 162.

<sup>375</sup> MRGI, Report to the Committee on the Elimination of Racial Discrimination, *supra* note 372, at 23, 28.

<sup>376</sup> JOSHUA CASTELLINO AND KATHLEEN CAVANAUGH, MINORITY RIGHTS IN THE MIDDLE EAST 217 (2013).

<sup>377</sup> *Id.* See also Saad Salloum, *After decades of suppression, Baha’is celebrate publicly in Baghdad*, AL-MONITOR (Dec. 8, 2017).

<sup>378</sup> *Iraq Baha’is*, MRGI, <https://minorityrights.org/minorities/bahai/> (last visited Mar. 4, 2022).

<sup>379</sup> U.S. COMM. ON INT’L RELIGIOUS FREEDOM, REPORT OF THE UNITED STATES COMMISSION ON RELIGIOUS FREEDOM ON IRAQ 12 (Dec. 2008).

<sup>380</sup> See UNHCR, SITUATION OF CHRISTIANS IN IRAQ 1 (Jan. 2018) (noting that similar vulnerabilities may exist for the Wahhabi religious minority).

with the community state that because of these laws and the discrimination they have faced, many from the Baha'i faith are unable to obtain ID documents and remain effectively stateless.<sup>381</sup>

## H. Iraqis of African descent

Iraqis of African descent are largely the descendants of East African migrants and slaves who came to the country in the ninth century.<sup>382</sup> Originally, they were mostly from countries in the East of Africa such as Tanzania and Kenya.<sup>383</sup> There are no exact figures of the size of this community in Iraq, but it is estimated to be between 1.5 to 2 million people.<sup>384</sup> The community is significantly marginalized, and among the most impoverished populations in Iraq, often discriminated against and living in the peripheries of Iraqi society.<sup>385</sup> They are known to be “subjected to frequent verbal abuse, including by continually being referred to as ‘*abd*,’ or slave.”<sup>386</sup> Iraqis of African descent reside in impoverished areas in the country, mainly on the outskirts of Basrah and Baghdad, in shanty towns and informal settlements where they are regularly moved by officials from one place to another.<sup>387</sup> Most Iraqis of African descent face significant political and economic exclusion.<sup>388</sup>

The majority of Iraqis of African descent have been able to secure Iraqi nationality, although no figures are available indicating what percentage of the total community have been able to do so. The stigmatization and discrimination this population faces creates risks of statelessness. These risks can be attributed to discrimination from officials working at civil registry offices, who often treat individuals from this community with suspicion, disrespect, and harassment, all of which can impede their access to civil documentation.<sup>389</sup> In addition, because of the poverty and exclusion they have experienced for centuries, many individuals suffer from low levels of

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<sup>381</sup> Remote Interview with Zoa, *supra* note 277; *see also Iraq: Baha'i*, MRGI <https://minorityrights.org/minorities/bahai/> (last visited Mar. 2, 2022).

<sup>382</sup> *Black Iraqis*, MRGI, <https://minorityrights.org/minorities/black-iraqis/#:~:text=Black%20Iraqis%20are%20largely%20the,largest%20community%20residing%20in%20Basra> (last visited Mar. 4, 2022).

<sup>383</sup> Karlos Zurutuza, *To Be Black in Iraq*, INTER PRESS SERVICE (Oct. 12, 2011).

<sup>384</sup> Remote Interview with Laissez-Passer; *supra* note 224; Remote Interview with Oxfam, *supra* note 155.

<sup>385</sup> Remote Interview with R. Hussein; *supra* note 162; Remote Interview with Oxfam, *supra* note 155.

<sup>386</sup> *Black Iraqis Struggle To Shake Legacy of Racism*, AL-MONITOR IRAQ (2013).

<sup>387</sup> *Id.*

<sup>388</sup> JOSHUA CASTELLINO AND KATHLEEN CAVANAUGH, MINORITY RIGHTS IN THE MIDDLE EAST 218 (2013).

<sup>389</sup> MRGI, Report to the Committee on the Elimination of Racial Discrimination, *supra* note 372, at 28.

education.<sup>390</sup> High illiteracy rates lead to many lacking civil documentation, both because they lack awareness of the importance of status documents and because they are marginalized from access to public information, such as documentation awareness campaigns.

#### **IV. CONSEQUENCES OF STATELESSNESS IN IRAQ**

The gaps in Iraq's nationality laws and civil registration procedures leave many Iraqi nationals and others entitled to citizenship frequently unable to access their right to legal status, a right Iraq remains bound to fulfill under international treaties and human rights law.<sup>391</sup> Significantly, there remains no legal safeguard to prevent childhood statelessness, which causes generations of families to remain without nationality status. Stateless persons who have migrated to or arrived as refugees in Iraq, who cannot return to their country of origin or be resettled to a third country, remain in Iraq for decades without status. Communities in situations of *in situ* statelessness often remain stateless for generations. This is problematic not only because in Iraq the key to accessing most rights, freedoms, and services offered by the state is through legal documentation, predominantly citizenship, but also because having a large stateless population in an already fragile country can result in further societal tensions and impoverishment.

The effects of statelessness can be profound on individuals, families, and communities. Some of the major rights violations experienced by stateless persons in Iraq are: lack of access to formal employment, education, social benefits, health care, subsidized food and humanitarian aid. Stateless persons in the country cannot access rights reserved to citizens, such as pension rights or voting rights, but neither can they obtain many rights afforded to non-citizens, as they are undocumented. This section explores some of these consequences in more detail, but is not a comprehensive list of the violations that stateless communities in Iraq face, nor does it address the psychological effect that stateless persons and their families may experience because they remain without security or status for generations. It is important to note that these psychological concerns were regularly raised by interviewees, but require additional research to adequately document.<sup>392</sup>

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<sup>390</sup> Remote Interview with DRC, *supra* note 215; *Iraq Black Iraqis*, MRGI, <https://minorityrights.org/minorities/black-iraqis/> (last visited Mar. 2, 2022).

<sup>391</sup> See *supra*, Part II.A.

<sup>392</sup> Remote Interview with NRC, *supra* note 145; Remote Interview with A. Abdullah, *supra* note 154; Remote Interview with Oxfam, *supra* note 155; Remote Interview with Heartland Alliance, *supra* note 207.



## **A. Child Rights**

A stateless person's life in Iraq often begins with the inability to obtain a birth certificate or to register their birth. Not having an immediate legal status leads to a variety of problems. Without a valid birth certificate, newborns are unable to receive vaccinations or access other basic healthcare.<sup>393</sup> A child needs a valid ID to be able to attend Iraqi state schools, which most stateless children do not have.<sup>394</sup> In 2018, Iraq's Education Ministry issued a document permitting children who lack civil documentation to attend school, but in practice, students can only attend school if their parents commit in person at their governorate's General Directorate of Education to obtain their child's civil documentation by the end of the school year, or within 30 days of making the pledge.<sup>395</sup> This is a burdensome and potentially impossible requirement for many stateless children. Often children can only register in certain schools if the parents have links with the school, through intervention from local community leaders or other connections.<sup>396</sup> However, even if they do manage to attend school, they will not be able to obtain diplomas or certificates, another act that requires a valid State ID.<sup>397</sup> As a result, undocumented/stateless children face serious obstacles in progressing through the Iraqi education system.

## **B. Social and Economic Rights**

Having already started life severely disadvantaged, the situation worsens for stateless persons once they reach adulthood. Stateless persons must rely on citizens for access into and maneuvering through the Iraqi legal system in order to be able to navigate their lives. For example, to buy property or land, an individual must apply through the Civil Affairs Department – the governmental department responsible for the issuance of ID cards to Iraqi citizens – which verifies identities.<sup>398</sup> To rent property, an individual must present an ID or passport before the contract is signed. Stateless individuals who do not have IDs often try to rent or buy property in someone else's name, which leaves them vulnerable, often putting them at risk of abuse by the

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<sup>393</sup> NRC, UNDOCUMENTED CHILDREN IN IRAQ, *supra* note 197, at 7. Remote Interview with Women's Leadership Institute, *supra* note 167.

<sup>394</sup> Remote Interview with Oxfam, *supra* note 155.

<sup>395</sup> Remote Interview with Oxfam, *supra* note 155; *School Doors Barred to Many Children*, HRW (2019).

<sup>396</sup> Remote Interview with R. Hussein, *supra* note 162; Remote Interview with DRC, *supra* note 215.

<sup>397</sup> Requirement stated by the Ministry of Education, <http://www.moedu.gov.iq/>

<sup>398</sup> Real Estate Registration Law No. 126 of 1974 (Iraq).

manager of the property. This is particularly problematic with inheritance, as stateless families cannot prove property ownership, nor can they inherit the property.<sup>399</sup> The citizen who has registered property in his name is not obliged to give it to the rightful owners who lack documents proving ownership.<sup>400</sup> In addition, women are often unable to obtain death certificates for their stateless spouses as they never legally existed, resulting in wives being unable to inherit property their husbands actually owned.<sup>401</sup> Public sector employment also requires an individual to have an ID, as does most private sector employment – leaving many stateless persons working in vulnerable positions in the black market.<sup>402</sup> These families and individuals live invisible lives, as they do not legally exist, and are therefore excluded from formal activities and opportunities.

### **C. Civil and Political Rights**

Iraq's security checkpoints across the country, where authorities require individuals to show their ID documents, curtail stateless persons' freedom of movement. Individuals who cannot provide a legal ID document risk being detained, so stateless persons limit their movement for fear of arbitrary detention.<sup>403</sup> There are a large number of permanent, manned military checkpoints and security stations, as well as temporary ones that appear without warning across the country.<sup>404</sup> Travelling abroad legally with no ID card or passport is impossible for a stateless person. This may only be possible for individuals who can benefit from a separate system of non-national travel documents, such as Palestinians who may be able to get travel documents without proving nationality.<sup>405</sup> Furthermore, stateless persons living in Iraq cannot benefit from or participate in civic and electoral processes. Participating in the political process, standing for election or voting in Iraq, are rights exclusively provided to Iraqi citizens.

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<sup>399</sup> YASSEN, REPORT ON CITIZENSHIP LAW: IRAQ *supra* note 43, at 11.

<sup>400</sup> Remote Interview with NRC, *supra* note 145.

<sup>401</sup> Remote Interview with Women's Leadership Institute, *supra* note 167; Remote Interview with NRC, *supra* note 145.

<sup>402</sup> Remote Interview with Oxfam, *supra* note 155; Remote Interview with R. Hussein, *supra* note 162.

<sup>403</sup> *Iraq/KRG: Displaced People Can't Move Freely Access to Health Care, Family, Work Unlawfully Restricted*, HRW (Oct. 21, 2016).

<sup>404</sup> USSD OSAC, IRAQ 2020 CRIME & SAFETY REPORT: BAGHDAD 2020.

<sup>405</sup> Law on the Palestinian Refugees' Travel Document Systems, No. 26 of 1961 (Iraq).

## **V. ADDRESSING STATELESSNESS IN IRAQ**

Despite the various causes and consequences of statelessness in the country, there has been some effort to try and address the problem. In fact, Iraq has been credited for implementing one of the largest reductions of statelessness in the world through the 2006 reform of the nationality law, in particular allowing Faili Kurds to re-acquire Iraqi nationality.<sup>406</sup> However, given the instability and conflict that the country has suffered over the last decade, there are significant concerns that Iraq's advances will stall or even be reversed.

In Iraq, as in many other countries, statelessness is an issue that invokes controversy and intense debate. This is mostly because, as in other countries in the region such as Lebanon, Jordan, and Egypt, it touches upon fundamental state issues like demography, national identity, and state security. In Iraq, all of these issues play a role in the discourse of who is and is not considered a national and entitled to citizenship. Despite a difficult climate of extreme sensitivity both by government and civil society towards statelessness, coupled with a crackdown on civil society activism in Iraq, many NGOs are very aware of issues of statelessness and have been working strenuously as advocates for change.<sup>407</sup> There are also significant community-led initiatives from stateless communities in Iraq, working to obtain their right to nationality and human rights. They have taken important steps to address the main barriers to obtaining citizenship and preventing ongoing statelessness.<sup>408</sup> Authorities have also made efforts to restrict the risks of statelessness in the country. The efforts of stakeholders in reducing statelessness are highlighted in this section, as well as negative developments.

### **A. Problematic developments**

In 2012 a conference that featured statelessness in its agenda took place in Amman, Jordan that included high-ranking Iraqi officials. The conference resulted in agreement on three actions: “[1] UNHCR and the Government of Iraq will collaboratively quantify and analyze statelessness in the country; [2] the Government of Iraq will look into the benefits of acceding to the 1954 and 1961 Conventions on Statelessness; and [3] . . . further possible improvements in

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<sup>406</sup> See Karel Hendriks, *An unexpected frontrunner – tackling statelessness in Iraq*, EUROPEAN NETWORK ON STATELESSNESS (Feb. 8, 2013).

<sup>407</sup> See, e.g., MRGI AND CEASEFIRE CENTRE FOR CIVIL RIGHTS, CIVILIAN ACTIVISTS UNDER THREAT IN IRAQ (2018).

<sup>408</sup> Remote Interview with K. Khalil, *supra* note 245; Remote Interview with Oxfam, *supra* note 155.

its nationality law.”<sup>409</sup> Despite these commitments, the Iraqi government appears to have taken no steps to implement them. Rather, there has been a reversal of efforts by state actors. For example, the Parliament rejected an amendment to the naturalization provisions, which would have reduced the time period for residency before applying for citizenship. One stated reason for the rejection was that this amendment may change the demographic make-up of Iraq, as prohibited by the Iraq Constitution.<sup>410</sup> The Iraqi Parliament Security and Defense Committee gave its reasoning as “the proposed amendments allow foreigners married to Iraqi women as well as unmarried foreigners who live in Iraq for only one year to apply for the Iraqi citizenship . . . . [t]hese simple terms such as the length of stay and marriage to foreigners are rejected by most countries.”<sup>411</sup> Some experts suggest that the underlying fear that led to the defeat of the amendment was of the influence of Iran and Iranians in Iraq.<sup>412</sup>

A second example is the Ministerial rejection of the 1954 Stateless Convention. In 2019, the Director General of the Ministry’s Legal Department and head of the Refugee Agreements Team of the General Secretariat of the Council of Ministers stated that the Ministry rejected the possible ratification of the 1954 International Convention on the Status of Stateless Persons on the basis that the Convention contradicted domestic laws on nationality and passports.<sup>413</sup> The Director General claimed there were no stateless cases in Iraq, dismissing the issue as non-existent.<sup>414</sup>

In 2017, a group of lawmakers noted that Law No. 26 of 2006 needed to be amended and developed a proposed amendment entitled ‘First Amendment,’<sup>415</sup> although this proposal ultimately failed.<sup>416</sup> This proposed amendment reduced the required ten-year residency requirement for naturalization to just one year for refugees. This would have facilitated naturalization for many refugees living in Iraq. Another amendment authorized the Council of Ministers, at the request of the Minister, to grant Iraqi nationality to an individual who has

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<sup>409</sup> Karel Hendriks, *An unexpected frontrunner – tackling statelessness in Iraq*, EUROPEAN NETWORK ON STATELESSNESS (Feb. 8, 2013).

<sup>410</sup> YASSEN, REPORT ON CITIZENSHIP LAW: IRAQ *supra* note 43, at 18.

<sup>411</sup> *Iraq parliament rejects proposed change to Nationality Law*, MIDDLE EAST MONITOR (Mar. 27, 2019).

<sup>412</sup> Remote Interview with R. Hussein, *supra* note 162.

<sup>413</sup> YASSEN, REPORT ON CITIZENSHIP LAW: IRAQ *supra* note 43, at 16-17.

<sup>414</sup> *Despite announcing the naturalisation of Faili Kurds ... Iraqi immigration: stateless does not exist*, SHAFaq NEWS (2019).

<sup>415</sup> Remote Interview with Women’s Leadership Institute, *supra* note 167.

<sup>416</sup> Haloo Muhamad Salih Abdu Samad, *Legal Study on the Project of the First Amendment on Iraqi Nationality Law No.26 in 2006* 2 AL KITAB JOURNAL FOR HUMANITY SCIENCES 105, 105-126 (2020).

resided in the country for a year, served Iraq and benefited the country. The five-year period for a non-Iraqi married to an Iraqi woman was to be changed to two years subject to residency in Iraq, removing the discrimination between men and women in the transferal of nationality to spouses. The First Amendment proposal also repealed Resolution No. 890 of 1985, which emphasized that “the Arab citizen who acquires the Iraqi nationality shall be considered as . . . . an Iraqi citizen” and gave the Minister of Interior the discretion to grant citizenship.<sup>417</sup>

However, when the proposals were submitted for debate to Parliament in 2019, Parliamentarians reacted harshly to them, accusing the government of trying to manipulate the nationality law to make demographic changes which would bring more foreigners into the country and grant them Iraqi citizenship. The Parliament Security and Defense Committee also criticized them as failing to take the security and safety of the country sufficiently into account. Power to grant citizenship, it was argued, should be held exclusively by the Head of State, Prime Minister or House of Representatives. The Committee of Labour and Social Affairs, Migration and Displaced Persons responded to ongoing backlash by calling for an inquiry to hold accountable those who had made the proposal for the amendments; Parliament went on to reject the proposal.<sup>418</sup>

This experience reflects that the weaknesses and inconsistencies in the nationality law are well-known, and the work that needs to be done to address the gaps that are leading to statelessness is evident. However, remaining discrimination against women in transferring their nationality to their children has unfortunately not been addressed, and there must be much more awareness-raising on this issue. Moreover, the experience with the First Amendment shows how contentious and sensitive discussions on nationality are in the country. Different members of Parliament raised concerns about granting more power to the government to dictate who they wanted to include in their citizenry, and diminishing the sovereignty of the state, concerns that are at the forefront of discourse on nationality.<sup>419</sup>

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<sup>417</sup> Nationality Resolution No. 890 of 1985, al-Waqā’i‘ al-‘Irāqīyah [Iraqi Official Gazette] 38, Sept. 18, 1985 (Iraq).

<sup>418</sup> *Iraq parliament rejects proposed change to Nationality Law*, MIDDLE EAST MONITOR (2019); *see Iraq weighs easing path to citizenship*, ASIA MONITOR (2019); *Iraqis warn against planned amendments to nationality law*, THE BAGHDAD POST (2019); *Nationality draft law need amendments due to defects: Legal MP*, THE BAGHDAD POST (2019); *Law amendment would open Iran to Iranian influence, say opponents*, THE JERUSALEM POST (2019).

<sup>419</sup> Remote Interview with the Women’s League Initiative, *supra* note 203; Remote Interview with Al-Amal, *supra* note 162; *Iraq Parliament rejects proposed changed to nationality law*, MIDDLE EAST MONITOR (2019).

## B. Positive developments

Iraqi authorities have made some positive efforts to regulate documentation issued to individuals in formerly IS-held areas. Efforts have been focused on requiring substitution of IS birth certificates for government-issued ones. Despite challenges to the process – such as the requirement that fathers obtain security clearances before they receive replacement certificates – these steps show that the authorities are aware of the problematic nature of the lack of state-recognized status documents. Government officials have been working with civil society organizations to address the problem, particularly in IDP camps. Registry officials, in coordination with INGO camp management (specifically NRC), have conducted mobile visits to these camps to aid IDPs in obtaining valid documents.<sup>420</sup> The authorities are also accepting witness statements in situations where they refuse to accept IS-issued documentation.<sup>421</sup> Many civil society organizations have undertaken campaigns and initiatives to raise awareness, especially for refugees and IDPS, on how to access civil registration procedures where they live.<sup>422</sup>

There has also been some progress in addressing statelessness for the Bidoon community living in southern Iraq. In 2017, a partnership between UNHCR and the Iraqi NGO Mercy Hands allowed lawyers from Mercy Hands to work on securing Iraqi nationality for some Bidoons. This project has assisted approximately 500 individuals every year to obtain nationality, with lawyers taking the cases through the Iraqi municipal courts.<sup>423</sup> The efforts focus on applying through the naturalization procedure for those Bidoon who can prove a historical link to Iraq. In the absence of available documents, live witnesses are able to testify to the relevant facts to verify the Iraqi heritage of the individual. Establishing the historical link to Iraq replaces the need for legal residency if that has not been satisfied.<sup>424</sup> This is a very positive step, but it is not a solution for all Bidoon, as many come from Kuwait, do not have Iraqi heritage, or cannot prove their heritage.<sup>425</sup>

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<sup>420</sup> CLUTTERBUCK, *WOMEN’S EXPERIENCES DURING CONFLICT IN IRAQ AND SYRIA*, *supra* note 147, at 6.

<sup>421</sup> NRC, *UNDOCUMENTED CHILDREN IN IRAQ*, *supra* note 197, at 17-18.

<sup>422</sup> *See e.g.*, UNHCR et al., *IDP Birth Registration Awareness Campaign in the Kurdish region of Iraq, ‘Register the Birth of Your Children, Protect their Rights!’* (2014).

<sup>423</sup> Charlie Dunmore and Edith Champagne, *‘Citizenship hopes become reality for Iraq’s Bidoon minority’*, UNHCR (Oct. 10, 2019).

<sup>424</sup> Remote Interview with Zoa, *supra* note 277.

<sup>425</sup> *Id.*

In terms of the Dom community, international pressure has at least helped to focus the government's attention to this community. In 2019, the Ministry of Interior ordered "all national identity directorates to issue unified identity documents to Roma...thereby facilitating their full and equal access to education, health care and other basic services provided by the Government."<sup>426</sup> This order can be credited to the United Nations Assistance Mission for Iraq,<sup>427</sup> (UNAMI), which conducted a series of advocacy meetings with government authorities on the issue. It is not clear how effective these reforms have been so far— there are no government statistics on this - especially as the Dom must make a request by attending government offices, places where they have historically experienced discrimination.<sup>428</sup>

For Yezidi women left in limbo, community-led initiatives are trying to resolve their particular hardships. The Yezidi religious leadership led by the Spiritual Council has vacillated on its position towards children of survivors of rape under IS, with indications that at least persons who faced kidnapping may be reintegrated; some of these statements have generated backlash from conservative elements of the Yezidi community, but may represent important steps to reduce the stigmatization of survivors of rape within their community and encourage the registration of more children.<sup>429</sup>

Iraq has signed on to both the Global Compact on Refugees and the Global Compact on Migrants.<sup>430</sup> Regionally, Arab governments in the MENA have been paying greater attention recently to statelessness, focusing mainly on children's nationality rights and on gender discrimination in nationality laws. The League of Arab States (LAS) – in which Iraq is an important member – has been at the forefront of these initiatives, and has emphasized the LAS instruments such as the Arab Charter and its provisions on nationality and non-discrimination. In 2017, the LAS convened a conference in Cairo on Good Practices to Strengthen Women's Nationality Rights, which brought both government and civil society representatives together. The conference resulted in a Declaration that re-affirmed principles in the Arab Charter, CRC

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<sup>426</sup> U.N. Secretary-General, *Implementation of resolution 2421 (2018)*, ¶ 56, U.N. Doc. S/2019/365 (May 2, 2019).

<sup>427</sup> *UNAMI Mission for Iraq*, UN POLITICAL AND PEACEBUILDING AFFAIRS, <https://dppa.un.org/en/mission/unami> (last visited Feb. 27, 2022).

<sup>428</sup> Remote Interview with Oxfam, *supra* note 155; Remote Interview with A. Abdullah, *supra* note 154.

<sup>429</sup> See, e.g., Tom Allinson, *Yezidi women seek acceptance for children born of IS rape*, DW (Apr. 30, 2019). Thomas McGee, *Born of ISIS Genocide*, *supra* note 357, at 83-85. Remote Interview with Zoa, *supra* note 343; Remote Interview with R. Hussein, *supra* note 162.

<sup>430</sup> See Rep. of the U.N. High Comm'r for Refugees, *Global Compact on Refugees* ¶ 82, U.N. Doc. A/73/12 (Part II) (2018); *Global Compact for Safe, Orderly and Regular Migration* ¶ 20(e), U.N. Doc. A/RES/73/195 (2018).

and CEDAW, and called on all Arab states to “reform their nationality laws or to give a clear commitment to reform to grant equal nationality rights for women and men,” Iraq participated in the discussions and signed this Declaration.<sup>431</sup>

Subsequently, in February 2018, the LAS and UNHCR co-hosted a Ministerial Conference on Belonging and Identity in Tunisia, culminating in a Declaration affirming “the importance of strengthening women’s nationality rights and gender equality in nationality according to Member States’ national laws and international human rights treaties that Member States have ratified.”<sup>432</sup> LAS members committed to enacting an Arab Consultative Law to ensure that displaced and refugee children secure nationality at birth. The Declaration also called for Member States to ensure that Palestinian refugees in their territories receive social and economic rights on par with citizens. These documents should provide strong advocacy tools for those working on issues of statelessness in Iraq.

What these efforts demonstrate is that there has been a mix of positive and negative developments with regard to addressing statelessness in Iraq that remain unresolved. The trend shows some movement in trying to address specific concerns of certain stateless communities and causes of statelessness in the country, while lacking an overarching effort to address fundamental causes.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

There has been increased attention recently by governments in the MENA region on statelessness and refugees, focusing both on children’s nationality rights and on gender discrimination in nationality laws. A series of initiatives on refugees and stateless persons has been led by the LAS, which has placed renewed emphasis on the relevant provisions in the Arab Charter that have been discussed in this Report. In light of these, and building on some of the previous efforts to address statelessness in Iraq, more is needed to combat this growing problem and the marginalization and fear that it creates for adults and children.

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<sup>431</sup> The First Arab Conference on Good Practices & Regional Opportunities to Strengthen Women’s Nationality Rights, League of Arab States Secretariat General, Final Declaration (Oct. 1-2, 2017).

<sup>432</sup> Arab Declaration on “Belonging and Legal Identity”, League of Arab States (Feb. 28, 2018)



Most significantly, Iraq needs to ensure that every child born in the country can be immediately registered at birth with a name and nationality to prevent statelessness among future generations. Iraq is bound to respect its international obligations that it is the state where the child is born that must provide birth registration and *guarantee* the child Iraqi nationality if the child does not automatically have another nationality. Iraq's current civil registration processes lack consistency, accessibility and adequate implementation, and require several reforms.

Founded on research and interviews with stakeholders, the following recommendations should be urgently taken up to address the complex problems creating and prolonging statelessness, to fully conform Iraq's policies and practices with its international and domestic legal obligations, and to reduce and prevent stateless cases so individuals can live with full rights protections.

#### **A. Reforming Iraqi Nationality Law and Personal Status Law**

Iraq's Nationality Law does not conform to its obligations under CEDAW, CRC, ICCPR, the CRCI, or the Arab Charter. Discrimination based on gender, ethnicity, race or religion in nationality or in any other sphere is prohibited in the treaties to which Iraq is a State Party. Yet unfortunately discriminatory laws and practices are leading to risks of statelessness in the country. In addition, gender-discriminatory nationality law, personal status law and practice, lack of safeguards against childhood statelessness and discriminatory naturalization law, seriously undermine Iraq's obligations to protect the rights of children born or permanently residing in Iraq. In order to conform to its international and regional obligations, Iraq must take a number of steps to reform its laws.

First, Article 4 of the Nationality Law that discriminates against women must be repealed. Automatic conferral of citizenship, as provided in Article 3, must apply equally to children born abroad of Iraqi mothers and children of Iraqi fathers. The additional onerous requirements to perfect nationality for children in the former category discriminate against Iraqi mothers, and are inconsistent with Iraq's constitutional commitment of equality, as well as with its international treaty obligations.

Second, Iraq must amend the Nationality Law to ensure that any child born in Iraq who does not have another nationality at birth will become an Iraqi citizen. This would mean adding an article that stipulates, as protected in international law, that any child born in Iraq that

does not acquire any other nationality at birth is automatically to be registered as an Iraqi. This needs to be implemented regardless of the marital and/or legal status of either parent.

Third, Iraq must either amend or enact a unified personal status law that standardizes the minimum age to marry as set by the Personal Status Law at age 18. CEDAW Article 16(2) requires States Parties to establish 18 years as the minimum age to marry, and the CRC Article 1 requires States Parties to establish the definition of a child as anyone under age 18. Child marriages are prohibited under international law, and Iraq, as a Party to both these treaties, must conform its legislation to them. Marriages under age 18 must be prohibited no matter the circumstances, and Iraq must amend its legislation that allows them to occur.

Fourth, Iraq must remove all provisions in the Nationality, Personal Status and terrorism-related laws that require women to provide evidence about their spouse's status or suspected criminality as a condition of obtaining personal status or any civil documentation for themselves. This is particularly important in the ongoing IS trials. Women should not be required to provide any information about their spouses as a requirement for perfecting their own nationality status, to obtain ID cards for themselves, or for birth registration of their children. The commitment to equal rights in Iraq's Constitution requires the state to respect women as their own legal agent and not dependent on the status of their male relative.

Fifth, Iraq must review all its personal status laws and regulations to guarantee equality amongst all similarly-situated persons, removing requirements or indications of religious or ethnic background, and making all laws consistent with regard to ensuring equality between males and females. This would include: repealing Law No. 105 of 1970 which prohibits the Baha'i faith in the country; allowing non-Muslim women to define the religion of their children; prohibiting any designation on ID cards or other documents that indicate religion or ethnic affiliation. As a State Party to the ICCPR, Iraq must respect the international standard on the right to freedom of religion or belief and amend its laws accordingly.

## **B. Simplifying Civil Registration Procedures**

The flawed civil registration process for marriages and births seriously encroaches on Iraq's obligations to protect the rights of children born or permanently residing in Iraq. Conflict has posed a key challenge for the civil registration and vital records system in Iraq. Birth, marriage, divorce, and death are not always being recorded, especially with regard to the most

vulnerable. Discriminatory laws and practices, lack of access to information and civil registry offices, and patriarchal norms and values are excluding many from access to vital documents.<sup>433</sup> Most importantly the civil registration processes of Iraq fail to conform to the CRC, the Arab Charter, and the CRCI, that require Iraq to ensure that every child be immediately registered at birth with a name and nationality. The current civil registration processes lack consistency, accessibility, and adequate implementation, and require several reforms.

First, Iraq must ensure that all children born in the country have easy access to registration of their birth, regardless of the status, place of birth or ideological affiliation of their mother or father. Children should not be punished for the actions or suspected actions of their parents. This requires Iraq to take serious and immediate steps to expand access to civil documentation for all those born in non-regime areas. The government's recent positive efforts in collaboration with NGOs to provide civil registration services to people in IDP camps should be continued and expanded, particularly through the use of mobile registration units in rural and remote areas and among marginalized communities.

Second, in addition to ensuring easily accessible universal birth registration without discrimination, the birth registration procedure must be simplified. One of the most important measures in this regard is the need to increase the deadline for birth registration to at least one year without penalty so that parents are not forced to navigate the courts and pay extra costs to register their children's births. The government should undertake a public information campaign throughout the country to make parents aware of deadlines, costs and fines, procedural requirements, changes in legislation, and available resources. Offering amnesties for those who cannot afford fines and costs would ensure increased access to the procedures. Another critical reform needed is for courts to be required to regularize the steps for marriage registration. All judicial or administrative processes for obtaining status documents – whether births, marriages, or deaths – must be standardized and transparent throughout the country. As noted earlier, the standard minimum age of marriage of 18 or over must be required across all religions, with restricted judicial discretion, and all requirements should be well-publicized. For those without all required documents, a range of alternative evidence and witness affidavits should be accepted

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<sup>433</sup> Comm. on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligation of States Parties under Article of the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 31 U.N. Doc. CEDAW/C/2010/47/GC.2 (Oct. 19, 2010).

in lieu of missing documents. Finally, there must be consistent or unified personal status laws and regulations to eliminate the extra challenges for individuals who are living outside of their governorates of origin. This may require unifying the different regional systems to facilitate universal registration and freedom of movement.

### **C. Recognizing the Status and Rights of Stateless Persons and those at Risk of Statelessness**

Stateless persons must be entitled to a status determination with guaranteed rights, a basic requirement that currently does not exist. This obligation is shared by the Government of Iraq and the United Nations agencies mandated to protect refugees, refugees who are also stateless, and non-refugee stateless persons. This would be the minimum requirement for Iraq's obligation to provide a durable solution under their own legal frameworks that recognize stateless persons as requiring temporary or permanent status. In Iraq, such a determination would trigger, at minimum, the obligations under the CRC, CRCI, and Arab Charter, to provide recognized stateless children with Iraqi nationality. To conform to these obligations, Iraq should take the following steps.

First, Iraq should lead the way in the MENA to enact a legal framework on the prevention of statelessness which ensures that all children who are stateless or at risk of statelessness at birth are granted nationality without discrimination against the child. As part of this framework, Iraq should introduce and develop a legislative statelessness determination procedure, ensuring that the procedure is fair, effective, and accessible to all persons in Iraq regardless of their legal status. The procedure should comply with international standards of due process and follow the procedural safeguards outlined in UNHCR's Handbook on Protection of Stateless Persons.

Second, Iraq should affirm that under the Casablanca Protocol, it is obliged to confirm Palestinian nationality and the right to return, but at the same time preserve the human rights of Palestinians in the MENA region and provide dual nationality for Palestinians who need to acquire an effective nationality in a host state. Iraq ratified the Casablanca Protocol without reservation, and its obligations under the Protocol include recognizing that Palestinians retain their Palestine nationality status while residing in Iraq. This Report emphasizes that Iraq, as Jordan or the rest of the world, must confirm the unbroken nationality status of Palestinians and

the right to return to Palestine, but at the same time recognize and grant Palestinians dual nationality in Iraq.

Third, since UNRWA does not operate in Iraq, Palestinians should not be prevented from UNHCR protection and assistance if they meet the operational definition under the 1951 Refugee Convention or the 1954 Convention on Stateless Persons; this should also be the case for Palestinians displaced from former countries of residence such as Syria. UNHCR should incorporate a stateless status definition in its work in Iraq, in tandem with the Iraqi government, and include Palestinians as eligible for that status in the country to allow them access to durable solutions. UNHCR should amend its MOU with Iraq to recognize the status and rights of stateless persons and stateless refugees in Iraq. UNHCR must take the lead in addressing the legal limbo in which stateless persons find themselves. They must ensure that the (risk of) statelessness of their beneficiaries is both recorded and addressed.

#### **D. Providing Non-Discriminatory Humanitarian Assistance and protecting the human rights of stateless persons to Reduce Consequences of Statelessness**

Iraq and UNHCR implement policies that discriminate in terms of prioritizing certain groups over others for refugee processing, distribution of humanitarian assistance, and access to resettlement. UNHCR has had special and accelerated processing for Syrian refugees since the beginning of the Syrian conflict, for example. Although all NGOs recognize the urgent and overwhelming needs of the massive displaced and stateless populations from Syria, they are opposed to aid distribution based on nationality or any other discriminatory basis, since all forcibly displaced persons, refugees and others, have similar vulnerabilities and urgent needs. The stateless communities in Iraq are not only without nationality, but also without access to a broad range of services and rights because of their legal status. In line with its international obligations, Iraq should develop a non-discriminatory approach to access to fundamental human rights and to humanitarian assistance. All actors -- the UN, the Iraqi government and humanitarian organizations and service providers -- must incorporate non-discriminatory policies towards refugees and stateless persons in all their work, including in the following ways.

First, the Iraqi government must allow refugee and stateless Kurds, both recent arrivals from Syria and the longtime resident Kurds in Iraq, access to Iraq's naturalization law, regardless of the manner in which they entered the country. As noted earlier, there has been no official

policy by the Iraqi government to address the unique situation and documentation challenges of the Kurdish stateless community, which is caught between the laws of Syria that denied them Syrian nationality, and Iraqi law which fails to allow them access to residency and citizenship in Iraq. These include the Faili Kurds and the Kurds who have been resident in Iraq before the start of the Syrian conflict. Despite having lived in the country for well over a decade, the Kurds who arrived in the early 2000's cannot qualify for Iraq's law allowing foreigners who have been resident in Iraq for ten years to apply for naturalization because they are considered to have entered the country illegally. Both the government and UNHCR have failed to include them in programming and policies directed towards refugees from Syria. The law must be amended to allow them access to legal status and ultimately to qualify for citizenship.

Second, Iraq must make provision for Syrian refugee children to obtain Iraqi citizenship who are at risk of statelessness because they cannot obtain documentation from Syria to perfect Syrian nationality. Whether this is because they cannot obtain nationality through their mother due to Syria's gender-discriminatory nationality law, or because their father died in Syria, their parents' marriage was never registered, or the father's whereabouts are unknown, any child born in Iraq without another perfected nationality at birth must have access to Iraqi nationality as a matter of right.

Third, Iraq must make birth and other vital registration procedures simpler, not just for Iraqi nationals, as noted earlier, but also for refugees and stateless persons in Iraq. Syrian and other refugee families face difficulties accessing civil registration and documenting their nationality for a variety of reasons, whether because they have lost their documents in flight, left them behind, or did not possess them in the first place. Rather than having to resort to expensive and time-consuming judicial procedures, the government should institute a simple administrative process that recognizes alternative forms of evidence such as affidavits, testimony of relatives or religious leaders, or other credible evidence, in lieu of vital records from the home country.

Fourth, as in Jordan and Egypt, the IHRC strongly urges UNHCR, the Iraqi Government and NGO's providing assistance to refugees and stateless persons to implement a 'one-refugee' approach, which would provide assistance to all refugees on a non-discriminatory basis. Since most humanitarian assistance organizations working with refugees and stateless persons in Iraq operate through implementing partner contracts with UNHCR, they are bound by the Government of Iraq's policies towards aid recipients. Hence, it is UNHCR that must insist on

this approach, and include it in its agreement with the Egyptian Government. Independently of UNHCR, INGO's that receive international aid and are not dependent on UNHCR contracts should immediately incorporate a 'one-refugee' policy. This will not address statelessness directly, but would mitigate the systemic marginalization, poverty and vulnerability faced by stateless and at-risk adults and children who cannot access UNHCR or Iraqi state benefits and services.

Fifth, to address the systemic discrimination Palestinians experience in Iraq and across the MENA, the Iraqi Government should fully implement the Casablanca Protocol in order to ensure that Palestinian refugees in Iraq have access to rights and services. The Protocol requires that Member States grant Palestinians the same employment rights and "treatment regarding visa and residency applications" as their own citizens and grants much wider freedom of movement throughout the Member States.<sup>434</sup>

Finally, it is important for the Iraqi Government to adhere to its commitments to uphold the basic human rights of all persons living in Iraq regardless of nationality. This would embody ensuring universal access to education and healthcare, freedom of movement in Iraq, access to employment and property ownership.

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<sup>434</sup> Casablanca Protocol, *supra* note 125, at arts. 1-5.

## **VII. APPENDIX 1: GLOSSARY**

**Asylum seeker** refers to an individual who: “is claiming or applying for protection as a refugee and who has not yet received a final decision on his or her claim”; or “has not yet submitted an application for refugee status recognition (has not yet formalized the administrative requirements in national law) but may nevertheless be in need of international protection.”<sup>435</sup>

**Citizenship** refers to the relationship between an individual and a state. Citizenship “entitles the individual to the protection of the state, and provides a legal basis for the exercise of many civil and political rights.”<sup>436</sup> For the purposes of this Report, citizenship is used to refer to having identity documents and recognition by a State as a citizen under its domestic laws.

**Civil registration** refers to the registration of life events, including birth, marriage, divorce, and death.<sup>437</sup> Civil registration is required in Iraq to obtain identity documents proving citizenship.

**Civil society organizations** are community-based organizations that operate independently of any government. Civil society organizations may include those that are registered as NGOs but do not include those registered as international NGOs.

**Constitution** refers to the present Constitution of Iraq promulgated in 2005.

**International non-governmental organizations** (INGOs) are NGOs that carry out programming in multiple countries.

**Iraqi Nationality Law** refers to Law No. 26 of 2006, governs the acquisition, transmission, and renunciation of Jordanian citizenship, including the transmission of citizenship to children and spouses.

**Islamic State (IS)**, also known as the Islamic state of Iraq and the Levant (ISIL), Islamic State of Iraq and Syria (ISIS), and Daesh (as an acronym of the Arabic *ad-Dawlah al-Islāmiyah fī 'l- 'Irāq wa-sh-Shām*), is a militant group that between 2014 and 2017 violently took over many cities and areas in Syria and Iraq.

**Migrant** is any person “who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.”<sup>438</sup>

**Nationality** is broadly defined under international law as “membership in a nation or sovereign state.”<sup>439</sup> This definition is used in international and regional treaties and does not attach to a

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<sup>435</sup> EU AND UN, EXPERT GROUP ON REFUGEE AND INTERNALLY DISPLACED PERSONS STATISTICS – INTERNATIONAL RECOMMENDATIONS ON REFUGEE STATISTICS 22 (Mar. 2018).

<sup>436</sup> UNHCR, THE STATE OF THE WORLD’S REFUGEES: A HUMANITARIAN AGENDA CH. 6, 1 (1997).

<sup>437</sup> *Id.*

<sup>438</sup> *IOM Definition of “Migrant”*, IOM, <https://www.iom.int/who-is-a-migrant> (last visited June 1, 2021).

<sup>439</sup> *Nationality: international law*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/nationality-international-law> (last visited May 8, 2021).



particular State's domestic laws. Outside of international and regional treaties, nationality is alternatively defined as the overarching idea of connection between an individual and a territory.<sup>440</sup>

**Non-governmental organizations** (NGOs) are non-profit organizations, operating independently of any government.

**Palestine refugees** (as defined by UNRWA) are those “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict [and] descendants of Palestine refugee males, including legally adopted children.”<sup>441</sup>

**Palestinian refugees** “commonly comprises all persons of Arab origin who were displaced from the territory of the former British Mandate Palestine, but also from the Gaza Strip and the West Bank including East Jerusalem, which Israel occupied in 1967, as well as their descendants.”<sup>442</sup>

**Registered refugee** refers to a refugee who is registered with either UNHCR's registration system, or UNRWA's registration system. Based on their respective mandates, UNRWA registers Palestine refugees, whereas UNHCR registers non-Palestine refugees.<sup>443</sup>

**Right to return** is the term used to describe Palestinians' right to return to their homes in Palestine, as established by United Nations General Assembly Resolution 194.<sup>444</sup>

**Stateless persons**, according to the 1954 Convention Relating to the Status of Stateless Persons, are those who are “not considered as a national by any State under the operation of its law.”<sup>445</sup> Iraq is not a party to the 1954 Convention Relating to the Status of Stateless Persons and does not have a statelessness determination in its domestic legislation.

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<sup>440</sup> *Citizenship and Nationality*, INT'L JUSTICE RESOURCES CTR., <https://ijrcenter.org/thematic-research-guides/nationality-citizenship/> (last visited Mar. 30, 2020).

<sup>441</sup> EU AND UN, EXPERT GROUP ON REFUGEE AND INTERNALLY DISPLACED PERSONS STATISTICS – INTERNATIONAL RECOMMENDATIONS ON REFUGEE STATISTICS 21-22 (Mar. 2018).

<sup>442</sup> MINISTRY OF IMMIGRATION AND INTEGRATION THE DANISH IMMIGRATION SERVICE, PALESTINIAN REFUGEES – ACCESS TO REGISTRATION AND UNRWA SERVICES, DOCUMENTS, AND ENTRY TO JORDAN 7 (June 2020).

<sup>443</sup> INTERNATIONAL RECOMMENDATIONS ON REFUGEE STATISTICS, *supra* note 1001, at 21-22 (Mar. 2018).

<sup>444</sup> G.A. Res. 194 (III), ¶ 11 (Dec. 11, 1948).

<sup>445</sup> *See* Convention Relating to the Status of Stateless Persons, *supra* note 16.

## **VIII. APPENDIX II: STAKEHOLDERS**

### **A. Government**

**The Ministry of the Interior** is the government agency responsible for law enforcement in Iraq. It is composed of several sub-agencies, including the Civil Status and Passports Department that regulate ID and nationality issues.

**Ministry of Labour and Social Affairs** is the government agency responsible for the regulation of Palestinian refugees in the country, specifically providing them with travel documents.

### **B. Non-Governmental Organizations**

**Danish Refugee Council** is an INGO that provides humanitarian assistance to refugees worldwide; in 2003 it began its operations in Iraq and currently has a presence in ten of Iraq's nineteen governorates.<sup>446</sup>

**Harikar** is an NGO that focuses on supporting protection and assistance programming for refugees and IDPs in Iraq, including Water Sanitation, and Hygiene (WASH) and Sexual and Reproductive Health Rights (SRHR) support.<sup>447</sup>

**Heartland Alliance International** is an INGO, with the Iraq program focusing on supporting displaced persons and victims of trafficking (including through education and direct legal services, addressing violence against women, and providing access to justice for juveniles).<sup>448</sup>

**International Rescue Committee** is an INGO that works in Anbar, Salah al-Din, Ninewa, and Kirkuk governorates (with offices in Erbil and Baghdad), providing cash assistance, counselling, education, and community protection monitoring and reporting.<sup>449</sup>

**Iraqi Al-Amal Association** is an NGO established in 1992, with offices in Iraqi Kurdistan and Baghdad; its activities include capacity-building and advocacy.<sup>450</sup>

**Laissez-Passer** is an NGO that examines issues related to documentation and travel using mixed methods across multiple projects.<sup>451</sup>

**Norwegian Refugee Council** is an INGO that provides education, food security, shelter, and humanitarian programming worldwide and in Iraq, NRC Iraq provides legal assistance to

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<sup>446</sup> *Iraq: What We Do*, DANISH REFUGEE COUNCIL, <https://drc.ngo/our-work/where-we-work/middle-east/iraq/> (last visited Mar. 5, 2022).

<sup>447</sup> HARIKAR NGO, <https://www.harikar.org/#services> (last visited Mar. 5, 2022).

<sup>448</sup> *Iraq*, HEARTLAND ALLIANCE, <https://www.heartlandalliance.org/program/middle-east-and-north-africa/iraq/> (last visited Mar. 5, 2022).

<sup>449</sup> Iraq, International Rescue Committee, <https://www.rescue.org/country/iraq#how-does-the-irc-help-in-iraq> (last visited Mar. 5, 2022).

<sup>450</sup> *About Us*, IRAQI AL-AMAL ASSOCIATION, [https://iraqi-alamal.org/?page\\_id=3082&lang=en](https://iraqi-alamal.org/?page_id=3082&lang=en) (last visited Mar. 5, 2022).

<sup>451</sup> LAISSEZ-PASSER, <https://laissez-passer.org/> (last visited Mar. 8, 2022).

increase access to legal identity and civil documentation, as well as housing and employment rights for refugees, IDPs, and vulnerable local community members.<sup>452</sup>

**Oxfam** is an INGO that provides WASH, food security, and livelihoods programming, along with other forms of humanitarian assistance, in various parts of Iraq.<sup>453</sup>

**Women's Leadership Institute** is an Iraqi NGO that provides capacity building for Iraqi women, along with advocacy campaigns with a particular focus on the role of women in peacebuilding operations and the impact of war on women.<sup>454</sup>

**Zoa** is an INGO that provides shelter, peacebuilding, livelihoods assistance, and educational support in Anbar, Ninewa, and Baghdad governorates.<sup>455</sup>

### C. United Nations Organizations

**International Organization for Migration (IOM)** is an agency affiliated with the UN that provides a variety of services to migrants, including humanitarian aid to displaced persons in Iraq.<sup>456</sup>

**United Nations Children's Fund (UNICEF)** provides a variety of services for children in Iraq, particularly humanitarian aid services and educational programming.<sup>457</sup>

**United Nations High Commissioner for Refugees (UNHCR)**, also known as the UN Refugee Agency, is the organization in charge of registering refugees, with the aim of providing humanitarian assistance and, where resettlement to a third country is viable, making a refugee status determination that enables such resettlement.<sup>458</sup> With seven offices across Iraq, located in Baghdad, Basra, Dohuk, Erbil, Kirkuk, Mosul, and Sulaymaniyah, UNHCR works with the Iraqi Government to aid and to protect refugees and persons seeking asylum.

**United Nations Office for the Coordination of Humanitarian Affairs (OCHA)**, is the body present in Iraq whose mandate is to strengthen the international response to complex emergencies; in Iraq this includes addressing issues related to documentation, livelihoods, and housing emergencies.<sup>459</sup>

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<sup>452</sup> *NRC in Iraq*, NRC, <https://www.nrc.no/countries/middle-east/iraq/> (last visited Mar. 5, 2022).

<sup>453</sup> *Iraq*, OXFAM, <https://www.oxfam.org/en/what-we-do/countries/iraq> (last visited Mar. 5, 2022).

<sup>454</sup> WOMEN'S LEADERSHIP INSTITUTE, <https://wli-iq.org/?fbclid=IwAR0rheNarXMIZFJszzHkTvSSeOr9WeosZdc5O-RnAPkNBrjZ-LGDPwqDiI> (last visited Mar. 5, 2022).

<sup>455</sup> *We are here in Iraq*, ZOA, <https://www.zoa-international.com/iraq> (last visited Mar. 5, 2022).

<sup>456</sup> *IOM in Iraq*, IOM, <https://iraq.iom.int/iom-iraq> (last visited Feb. 22, 2022).

<sup>457</sup> *What We Do*, UNICEF IRAQ, <https://www.unicef.org/iraq/what-we-do> (last visited Mar. 5, 2022).

<sup>458</sup> *About Us*, UNHCR, <https://www.unhcr.org/en-us/about-us.html> (last visited Mar. 5, 2021); Convention Relating to the Status of Refugees, *supra* note 86, at art. 1.

<sup>459</sup> *About OCHA Iraq*, OCHA, <https://www.unocha.org/iraq/about-ocha-iraq> (last visited Mar. 5, 2022).

**United Nations Assistance Mission for Iraq (UNAMI)** was formed in 2003 by United Nations Security Council (UNSC) Resolution 1500 at the request of the Iraqi government to support national development efforts.<sup>460</sup>

**United Nations Relief and Works Agency (UNRWA)** was established in 1949 to carry out direct relief and work programs for Palestine refugees, including education, health care, relief and social services, camp infrastructure and improvement, and microfinance and emergency assistance; Iraq does not fall under UNRWA's mandate.<sup>461</sup>

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<sup>460</sup> *United Nations Assistance Mission for Iraq*, UN DEPARTMENT OF POLITICAL AFFAIRS, <https://dppa.un.org/en/mission/unami> (last visited Mar. 5, 2022).

<sup>461</sup> *Who We Are*, UNRWA, <https://www.unrwa.org/who-we-are> (last visited May 7, 2021).