

## Children's right to identity in Iraq

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### 1 Creation of identity

#### Birth registration, including in humanitarian situations:

- Under Law No. 148 of 1971 and Regulation No. 1 of 1972,<sup>1</sup> birth registration procedures must be completed within seven days in cases of hospital births, 15 days in cases of home births in cities and 30 days in cases of home births in villages and rural areas. A birth certificate from the hospital where the child was born, or from the obstetrician, licensed nurse or midwife in case of birth outside health facilities, must first be obtained to register the child. This birth certificate must be submitted to the relevant Directorate of Health for validation and recording in the Birth and Deceased registers, and then a copy is sent to the relevant Directorate of National Card in the place of origin. After the above-mentioned deadlines, a court procedure is required to obtain a birth certificate and a nominal fee must be paid.<sup>2</sup>
- By 2023, 98% of children were registered; however, 470,000 internally displaced children still lacked IDs, including some who needed birth certificates.<sup>3</sup> MICS<sup>4</sup> noted in 2018 that *'the data confirm that more than a third of children who do not have a birth certificate were because mothers or caregivers did not know how to register their children'*. Indeed, according to the same source, 98% of children under age one had a birth certificate, increasing to 99% amongst those between the ages of two and three years and then those from the age of four appear to all have a birth certificate. In 2022,<sup>5</sup> UNICEF linked birth registration with health facilities and provided equipment for 1,600 health facilities and 380 birth registration offices.
- According to a 2023 study, five million Iraqi children have been orphaned, 4.5 million live below the poverty line and 45,000 have no identification documents.<sup>6</sup>
- As ISIS targeted the Yazidi population in 2014 and over 5,000 women and children were taken into captivity, many women and girls gave birth to children as a result of extensive sexual violence, although precise numbers are unknown.<sup>7</sup> While women and girls who survived ISIS captivity have generally been accepted by their communities and families, their children born of conflict-related sexual violence have not, and many women have been forced to disavow their children in order to return to their families. Furthermore, birth certificates, marriage certificates and other civil documents issued by ISIS are not recognised by Iraqi Authorities and must be reissued. Therefore, children born in ISIS territory lack officially recognised civil documents and are at risk of statelessness. Obtaining documentation for children born of ISIS rape and in ISIS territory, whether in Syria or Iraq, is exceptionally difficult.
- There were children born of war during the Al-Qaeda conflict as well, many of whom remain undocumented and/or stateless.<sup>8</sup>
- There are discriminatory policies and practices in Iraq that prevent women from having the same rights as men in registering and procuring identity documentation for their children. While the Iraqi Constitution and Iraqi Nationality Law No. 26 of 2006, Article 3, permit children born in Iraq to inherit nationality from their mothers as well as fathers, all options for registration of a child by his mother only are problematic due to the fact that registration is based on a valid marriage certificate, in line with the Iraqi Personal Status Law No. 188 of 1959 which stems primarily from Sharia;<sup>9</sup> or, if a child is born to unmarried parents, proof of paternity is required; in addition, under Iraqi Juvenile Welfare Law No. 76 of 1983, children with Muslim or "unknown" fathers are automatically registered as Muslim, regardless of the religion of the mother.<sup>10</sup> The *National Card Law No. 3 of 2016* provides that the federal Ministry of Interior will issue a regulation

for the registration of children of unknown parentage;<sup>11</sup> but to date, no such regulation has been issued. In practice, some of these children are registered as "foundling" children, where the court chooses names for them and fake names for their parents. As per *Passport Law No. 32 of 2015*, children are issued passports in the presence of the father and are permitted to travel solely with the father.<sup>12</sup> If the mother requests a passport for the child or intends to travel with the child, the consent of the father or approval from the court is required. This poses obvious difficulties for the issuance of passport and travel documents for children with unknown fathers.

- In addition, according to the Global Survivors Fund, the stigma, trauma and fear of the mother also often prevent the registration of their children born of conflict-related sexual violence. As children are often rejected and ostracised by their families and communities as they are seen as children of the enemy, the relatives and community of the mother often refuse to support the mother or help her to overcome the other barriers to registration. In many cases, securing legal identity documents is not the priority of the mother and child. Instead, they are focused on surviving despite loss of livelihoods, physical and psychological trauma, and exclusion from their families and communities. Children born of rape also face other significant practical barriers to obtaining civil documentation, such as identity cards, residence cards, ration cards and birth certificates.<sup>13</sup>
- UNICEF<sup>14</sup> has also mentioned that the birth registration rate has dropped since the conflict. Children were born in areas under Islamic State of Iraq and the Levant (ISIL) control, where no official birth registration system was functional, and up to 25% of children under five in those locations have no documentation. Research<sup>15</sup> shows disparities between regions: *'(...) there are wide regional differences with Ninewa governorate having the lowest rate at 76.6%, well below the national average. Ninewa was one of the governorates occupied by the ISIL. Following the defeat of ISIL in Iraq in July 2017, anecdotal evidence emerged that many children in the five governorates formerly under ISIL occupation did not have birth certificates or other civil documents such as national identity or citizenship cards. As a result, these children were at risk of no or restricted access to basic services like education and health. This caseload included children born during ISIL occupation who could not be registered because the relevant government facilities had been destroyed (...) There are also cases of children who were born of rape, and children whose fathers were foreign fighters whose identity is unknown, who were not issued any document'*.
- Most recently, the Ministry of Health has spearheaded the launch of the Digital Civil Registration and Vital Statistics (CRVS) for Birth Registration, with the support of UNICEF. It aims to ensure universal birth registration and improve service delivery across Iraq's diverse regions and is poised to revolutionise service delivery in Iraq, ensuring timely and accurate data access for informed decision-making and improved health outcomes.<sup>16</sup>

#### Potential considerations:

- *How does the country plan to reach those children most at risk of not being registered and left behind in the registration system due to the humanitarian situation in the country?*
- *What actions is the government implementing to ensure that all children in Iraq have their identity documented and to ease the administrative burdens involved in the process of obtaining civil documentation for children born of conflict-related sexual violence?*
- *What actions is the State considering or implementing to address discriminatory birth registration and nationality laws and practices that prevent women from having the same rights as men in procuring identity documents for their children?*
- *What actions is the State considering to facilitate late registration and to strengthen the possibility of obtaining a delayed birth certificate, including in areas formerly under ISIL control?*



## 2 Modification of identity

### Humanitarian situation, displacement and family separation:

- UNICEF<sup>17</sup> mentions that, in 2022, the humanitarian situation in Iraq, following the 2013–2017 conflict, caused an influx of Syrian refugees followed by the displacement of over six million Iraqis. The same report notes that ‘an estimated 2.5 million people, including 1.1 million children, were in need of humanitarian assistance, including in-camp and out-of-camp internally displaced people (IDPs) and 1.7 million returnees. Additionally, nearly 249,000 Syrian refugees and their host communities were in need of support, including 109,000 children (MENARO Syrian Refugees HAC 2022), mostly in the semi-autonomous Kurdistan Region of Iraq (KRI). Key concerns included (...) child protection, including legal protections, and protection from gender-based violence (GBV), lack of civil documentation, (...) and barriers to accessing education’. This was confirmed by other organisations stating that ‘up to one million displacement-affected Iraqis lack critical civil documentation that hinders their access to public services and increases their risk of poverty and exclusion’.<sup>18</sup>
- Furthermore, ‘tens of thousands of foreign, Iraqi and Syrian children are being held in detention on suspected ISIS association or terror-related offenses, or in camps. These children are exposed to violence, due process violations and family separation. Securing solutions for these children must be pursued in advance or in parallel with efforts to facilitate repatriation. The UN standpoint is that identified children should be repatriated and children born to nationals be granted citizenship. Further, such children should be considered as having been illegally recruited by violent extremist groups, and thus should be treated primarily as victims and decisions concerning them made in accordance with their best interests’.<sup>19</sup>

### Child marriage:

- ‘Child marriage is most prevalent in the governorates of Missan (where 35% of women aged 20-49 were married before the age of 18), Basra (31%), Karbala (31%), Muthana (27%). While available data is limited, forced and child marriage is reportedly a growing problem for internally displaced Iraqi girls and Syrian girls living in refugee communities in Iraq, and it also been used by armed groups as “a weapon of war”’.<sup>20</sup>
- A 2021 study<sup>21</sup> by the Ministry of Planning and the Central Statistical Organization found that 25.5 % of married women in Iraq had been married before they were 18, and 5.2 % of women were married before 15. UNICEF mentions that if most countries in the Middle East have seen a decline in child marriage over the last 25 years, the rates remain persistently high in Iraq.<sup>22</sup> Likewise, Human Rights Watch mentions in its 2024 report that over the last 20 years, rates of child marriage in Iraq have been steadily increasing.<sup>23</sup>

### Child exploitation:

- MICS<sup>24</sup> reported in 2018 that the percentage of child labour was 7.3%, whilst a 2023 study noted that one million children were child laborers.<sup>25</sup> As for the level of inequality in child labour by type of activity and gender, the results indicate that the percentage of child labour in hazardous condition is 5.9%, which is more in males (9.2%) compared to (2.5%) in females as well as for economic activities, but the proportion is lower, while the percentage of employment in household shores in females is higher than that of males and that the rate of employment in hazardous conditions reaches 16% in the 15-17 age group.<sup>26</sup>
- In a 2022 survey<sup>27</sup> conducted by the International Rescue Committee in five areas of East Mosul, the IRC observed that 90% of caregivers reported having one or more children engaged in labor and ‘85% of children reported that they did not feel safe in their place of work, describing instances of harassment and not having proper equipment to protect themselves during work in factories or on the streets’.
- In June 2023, the Iraqi parliament introduced a draft child protection law, which, if passed, would address crucial issues like child labour, exploitation, and abuse.<sup>28</sup>

### Child recruitment by armed groups:

- The number of children in armed groups is difficult to quantify. A 2019 report<sup>29</sup> noted that ‘in Iraq, children’s association with armed forces and groups is varied. Since the Islamic State insurgency gained ground in 2014, children’s association has fallen broadly into several categories: ISIS-affiliated, Popular Mobilization Forces-affiliated (PMF is an umbrella grouping for multiple armed forces and groups), state PMF-affiliated and non-combatant girls (kidnapped by ISIS, girls used as sex slaves by ISIS fighters). Children can be recruited into armed groups through child marriage, economic vulnerability, a group taking control of their town or village, or being born in areas under the control of armed groups. Under the Sinjar Resistance Units (YBS) in Sinjar, girls take on fighting roles as boys have done under non-state armed groups such as ISIS’.
- In March 2023, the Government of Iraq, through the Ministry of Labour and Social Affairs (MoLSA), and the United Nations, signed an action plan to prevent the recruitment and use of children by the Popular Mobilization Forces (PMF). ‘The Action Plan commits MoLSA and the National Committee for the Monitoring and Reporting Mechanism on Children and Armed Conflict (CAAC) to put in place response and prevention mechanisms within the Popular Mobilization Forces (PMF) to strengthen the existing child protection framework. Among other steps to prevent the recruitment and use of children by the PMF, the Action Plan includes measures to strengthen age verification, in addition to awareness-raising campaigns to prevent child recruitment. The plan also supports the adoption of the necessary legislation and administrative measures to prevent the recruitment and use of children and promptly investigate any allegation of recruitment and use of children’.<sup>30</sup>
- According to a local contact, the Action Plan adopted in 2023 had a year-long duration and has already concluded. Reportedly, there have been no confirmed violations by the PMF over the past three years. While the adoption of the action plan is, in itself, a promising move that represents significant commitment to advancing protections for children associated with state security forces, the fact that it is only applicable to the PMF means that it falls short of addressing the issue more broadly. This leaves considerable legislative and policy deficits that must be rectified, including through strong prohibitions of – and robust strategies to prevent – the recruitment and use of children by any/all armed actors, including non-state armed groups. Additionally, while the action plan is focused on prevention, Iraq lacks a formal, comprehensive strategy that dictates the response to affected children and obligates the government to offer recovery and reintegration support. In addition to leaving children subject to inconsistent processing, adjudication, incrimination, and even prosecution for their perceived affiliation with armed groups, this also means that there is not a standardized approach to meeting the concrete reintegration needs of affected children, including by addressing deficits in identity documentation without discrimination. In the absence of child protection laws and DDR programs in Iraq, it is imperative that the Government of Iraq ensure comprehensive prohibitions against the recruitment and use of children by any/all armed forces and groups are integrated within pending legislation and that a set of minimum standards for reintegration programming is established.
- ‘Innovations in customary processes to help facilitate the return of individuals and families with perceived Da’esh affiliation have also emerged in the wake of the conflict in the form of local peace agreements negotiated and signed by tribal leaders and other stakeholders including government officials and security actors’.<sup>31</sup>
- A report of 2023<sup>32</sup> notes that ‘the lived experiences of rehabilitation and reintegration of the young men associated with Da’esh as children reveal several challenges that undermine their prospects for rehabilitation and reintegration. First, obtaining formal identity documents, necessary for accessing public services and enjoying freedom of movement, is problematic for a significant proportion of children, both boys and girls, across geographies and ethno-religious identities. Their documents may have been confiscated by Da’esh, been lost while fleeing, confiscated by security forces on suspicion of Da’esh association, or issued by Da’esh while it controlled the territory.’



The Government of Iraq does not recognize these documents and so will not replace them. Securing new or replacement documentation is an onerous process taking up to six months if all the paperwork is in order, and seeking to expedite the process or “game the system” can be particularly expensive. Iraqi women whose husbands and/or the fathers of their children are dead or missing are subject to a comprehensive and lengthy process to prove the circumstances of the death and their marriage when applying for documents for their children. Children born to Da’esh members or under Da’esh control must prove their relationship to their parents, which often requires a DNA test in the absence of both parents’ documents. This process aims to ensure that individuals associated with Da’esh can successfully reintegrate into their communities and to safeguard public security’.

#### Alternative care and kafalah:

- Iraq is governed by Sharia Law, which does not recognise adoption as a child protection measure. However, Iraqi law provides for two forms of alternative care: residential care and *damm*, meaning “attachment” and commonly translated into ‘foster care’. According to a local contact, children who live with a foster family will reportedly never be considered the children of that family in terms of registration, documentation, and inheritance. In addition, given the number of children orphaned in the country, the number of children in residential care also appears high.<sup>33</sup>

#### Potential considerations:

- *What is being undertaken to trace children's families and family relations when displaced? How is the identity of these children evidenced?*
- *How will the State prevent child exploitation and marriage, to avoid the possible undue change of identity linked to these violations of rights if the new law does not pass? What is the Iraqi government's plan to implement the new law, including any potential comprehensive plan that guarantees implementation?*
- *What has the Action Plan to prevent recruitment of children by the PMF accomplished? What coordination was the designated government entity, MOLSA, able to establish with the PMF to monitor the implementation of this policy? Now that the Action Plan has concluded, what next steps are being adopted to shore up gains and ensure long-term protections for children against recruitment and use in state forces?*
- *What other actions is the State taking to prevent the recruitment and use of children by all armed actors and groups, to ensure that affected children are protected, afforded the right to due process, and treated primarily as victims of a grave violation and to establish minimum standards for reintegration programming that can meet their needs, including by addressing deficits in identity documentation without discrimination?*

## 3

### Falsification of identity

#### Trafficking:

- *‘Human trafficking is taking place in Iraq in many ways: abuse of children, forced prostitution, and organ reaping. Babies being abducted by their nurses and young women enslaved into prostitution are all major problems in Iraq. Police say they’ve uncovered 60 organised crime gangs, but the U.S. says the Iraqis are failing to meet minimum standards to eliminate human trafficking’.*<sup>34</sup>
- According to a local contact, exploitation and forced labour, including begging is also present in Iraq. *‘The Government of Iraq does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so’.*<sup>35</sup>

#### Potential considerations:

- *What is being undertaken to prevent child exploitation and trafficking of children, including falsification of their identities?*
- *What are the Iraqi government’s specific child protection measures while combating human trafficking?*

## 4

### Restoration of identity

#### Late registration of births:

- To register a child after the legal period, one of the parents needs a court order which should then be personally delivered to the population registry in the same province in which he/she is registered.<sup>36</sup> However, late registration still involves a nominal fee. According to a local contact, there is no fine or penalty for delaying the registration of a child in Iraq. There is only a nominal registration fee,<sup>37</sup> which is 1,000 Iraqi dinars within Iraq. If the birth registration is outside Iraq, 10,000 Iraqi dinars must be paid at the Iraqi embassy.
- In order to catch up on birth registration, in 2023, UNICEF completed training and a hardware development in all primary health care facilities to enhance readiness for digital birth registration. 5,751 children had their births registered with UNICEF support.<sup>38</sup> Furthermore, as mentioned above, the Ministry of Health recently launched the Digital Civil Registration and Vital Statistics (CRVS) for Birth Registration, with the support of UNICEF. It aims to ensure universal birth registration.<sup>39</sup>

#### Humanitarian situation:

- Following ISIS occupation, some children were registered by ISIL officials, but their documentation is not recognised by Iraqi Authorities, and some children have had their documents lost during the multiple displacements.<sup>40</sup> In response, UNICEF documented 2,665 children returning from Al Hol through the Jeddah Rehabilitation Centre in need of documentation in order to obtain IDs during the period from 2021 to December 2023.<sup>41</sup>
- Iraqi civil society launched the *My Name Is Mother's Name* campaign in 2018 to advocate for legal reforms to allow for the recognition of maternal lineage in civil registration, in particular by amending the National Card Law No. 3 (2016) which dictates, among other things, that children must be registered in the names of their fathers and that those of “unknown” parentage shall be considered Muslim. Furthermore, it is engaged in advocacy with key stakeholders to press for flexibility in identifying dignified solutions for the access to identity of children born of conflict-related sexual violence under the existing legislative framework.<sup>42</sup>
- In 2023, 433,000 individuals were missing civil documentation in Iraq and ‘this data also found that a prevalently reported reason for missing documentation was the absence of an attempt to obtain it’.<sup>43</sup>
- Human Rights Watch’s report of 2023 mentions that ‘in March 2021, the Iraqi parliament passed the Law on Yazidi Female Survivors.’<sup>44</sup> The law recognised as genocide many crimes committed by ISIS<sup>45</sup> including kidnapping, sexual enslavement, forced marriage, pregnancy, and abortions forced upon women and girls who were Yazidi, Turkmen, Christian, or Shabak. The law provides for compensation for survivors, as well as measures for their rehabilitation and reintegration into society’.<sup>46</sup> However, while the law entails measures for compensation, rehabilitation, and reintegration of survivors of sexual violence under Da’esh, it does not mention children born of rape.<sup>47</sup>

## Potential considerations:

- What is the State considering to restore the identities of victims of ISIS/ISIL and to ensure that all children have access to registration of their identity?
- What actions is the government implementing to ensure that all children in Iraq have their identity documented and to ease the administrative burdens involved in the process of obtaining civil documentation for children born of conflict-related sexual violence?

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