



# LEGAL GUIDE TO CHILD'S RIGHTS IN IRAQ



## Acknowledgements

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Othman from Ramadi (Photo: Ahmad Kaka/NRC)



## 1. BACKGROUND AND INTRODUCTION TO GUIDE

**The ‘Legal Guide to Children’s Rights in Iraq’ is a legal resource for lawyers and humanitarian professionals working with children in Iraq, including Iraqi, refugee and foreign national children. It brings together in one document the various laws, directives and policies directly relevant to the legal protection of children in Iraq. By consolidating the relevant laws into a single document, practitioners will be able to get a better overall picture of the inter-connected legal framework affecting children’s rights.**

The guide covers the various areas of law that are relevant to the protection of children’s rights including **the legal capacity of children, family or personal status law affecting children including guardianship, custody and age of marriage, laws on the general protection of children from abuse and mistreatment, and the rights of children to health, education and social assistance. Additionally, the guide covers the rights to legal identity and nationality for children as well as standards and procedures on juvenile justice for children in contact with the law.** The guide is structured per thematic area of law or topic so that users can go directly to the section of relevance. The guide also sets out the various Ministries and government agencies that are responsible for children’s welfare issues in Iraq.

Whilst Federal Iraq and the Kurdish Region of Iraq (KRI) have different legal frameworks, the majority of the laws and requirements relevant to children remain common at this stage. In the future this may change as the KRI Parliament adopts new laws and practices, including administrative requirements. Any different laws or procedures in the KRI, such as in relation to labour law, are noted where possible.

The guide does not comment on the adequacy of the laws, protection issues in the country or practical challenges in implementation of the laws. Nor does it provide any analysis or commentary on international human rights law other than to note some of the key international human rights law (IHRL) and international humanitarian law (IHL) treaties and regional agreements ratified by Iraq.

The Iraq guide is part of a series of guides developed for the Middle East region<sup>1</sup> based on legal research conducted by NRC and White & Case lawyers. The guide also draws on past research and reports by NRC in relation to personal status and civil documentation in Iraq.

<sup>1</sup> Other country guides include those for Jordan, Lebanon, Libya, Palestine, Syria and Tunisia. See [The Legal Protection of Children in the Middle East: Programming Guide and Legal Resources | NRC](#).



Whilst the guide is intended to be used as a general legal resource it should not be relied upon for individualized advice. Instead, legal advice should be obtained from qualified legal practitioners in relation to the persons being assisted.

All efforts have been made to ensure that the guide is as complete and accurate as possible, as of the date of publication. However, the legal accuracy of the guide cannot be guaranteed, particularly considering the frequent number of legislative and policy changes in Iraq. Nor does the guide cover legal and administrative practices, both formal and informal, that may be prevalent in different parts of Iraq including at the level of courts, government offices and local municipalities. The guide covers the legal framework up to November 2024.



Band of brothers (Photo: Beate Simarud/NRC)



Fawzia and Zeinab (Photo: Ahmad Kaka/NRC)



## 2. INTERNATIONAL HUMAN RIGHTS TREATIES AND CONVENTIONS RELEVANT TO CHILDREN

Whilst this Guide focuses primarily on the domestic legal framework for children in Iraq, **international treaties and conventions ratified by Iraq** are included as a reference point and guide to the commitments made by the State for the legal protection of children. International human rights treaties provide an important normative framework and reference point, including on issues of implementation of international obligations.

Iraq has signed various international and regional conventions and treaties relevant to the protection of children including the Convention on the Rights of the Child (CRC). International treaties ratified by Iraq have the force of law in Iraq and constitute a higher law by which all national laws must be interpreted and implemented.<sup>2</sup> This allows practitioners to use provisions of human rights treaties ratified by Iraq in individual casework and policy work.

### 2.1 Key international human rights and humanitarian law treaties ratified by Iraq

**The Convention on the Rights of the Child (CRC)**, as ratified by Iraq, is the key international human rights treaty in relation to the rights of children. Further selected treaties or conventions ratified by Iraq with relevance to the legal protection of children's rights are set out below.<sup>3</sup>

Name of Treaty or Convention	Ratification Date
<b>▶ Specific Child Rights Treaties</b>	
➤ Convention on the Rights of the Child (CRC)	15 June 1994
➤ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	24 June 2008

<sup>2</sup> Article 17 of Law No. 35 of 2015. The law provides that for an international treaty to be effective in Iraq, it must be ratified by the Council of Representatives with a two-thirds majority, as outlined in Article 61 of the Iraqi Constitution. After this, the treaty must be signed by the President and published in the Official Gazette. Once a treaty is ratified and published, it becomes part of Iraq's legal framework, and its provisions must be implemented and enforced domestically.

<sup>3</sup> See [Human Rights Treaties and Conventions ratified by Iraq](#).



Name of Treaty or Convention	Ratification Date
➤ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	24 June 2008
➤ United Nations Convention against Transnational Organised Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children	9 February 2009
<b>▶ General International Human Rights Treaties</b>	
➤ Universal Declaration of Human Rights (UDHR)	19 January 1949
➤ Convention on International Civil and Political Rights (ICCPR)	25 January 1971
➤ Convention on Economic, Social and Cultural Rights (ICESCR)	25 January 1971
➤ Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	7 July 2011
➤ Convention on the Elimination of Racial Discrimination (CERD)	14 January 1970
➤ Convention on the Elimination of Discrimination Against Women (CEDAW)	13 August 1986
<b>▶ International Humanitarian Law Treaties</b>	
➤ Geneva Conventions, 1949	14 February 1956
➤ Additional Protocol (I) to the Geneva Conventions	4 January 2010
<b>▶ Treaties relevant to Work Rights and Child Labour</b>	
➤ ILO Convention 182 on the Elimination of the Worst Forms of Child Labour	9 July 2001
➤ ILO Convention 138 on the Minimum Age for Admission to Employment and Work	13 February 1985

Several significant human rights treaties and conventions have not been ratified by Iraq. Iraq has not signed the 1951 Refugee Convention, nor the 1967 Protocol relating to the Status of Refugees. Nor has it signed the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on Reducing Statelessness.<sup>4</sup> The government has recently signed the UN Declaration on Children, Youth and Climate Action.<sup>5</sup>

## 2.2 Regional Agreements

**Regional treaties** can be a useful point of reference for the interpretation of human rights standards within a social or cultural context. Whilst such treaties are not formally binding on Iraq, they are relevant as reflecting, to some degree regional, cultural and religious values and shared commitments and can be invoked in support of broader child rights arguments.

<sup>4</sup> For more information on Iraq and the Refugee and Statelessness Conventions, see [UNHCR Iraq profile, situation analysis](#).

<sup>5</sup> UNICEF, [UNICEF commends the Government of Iraq for signing the Declaration on Children, Youth and Climate Action | United Nations in Iraq](#), 20 November 2023.





Regionally, the **Arab Charter on Human Rights**, as ratified by Iraq in 2008, protects a wide range of human rights including those relevant to children. It protects the right to a legal identity<sup>6</sup>, to education<sup>7</sup> and the right of youth to greater opportunities to develop their physical and mental abilities.<sup>8</sup> The family is acknowledged as the fundamental unit of society and the State is obliged to ensure special protection for the family and children.<sup>9</sup>

The **Cairo Declaration on Human Rights in Islam** list a number of human rights specifically applicable to children including the prohibition on discrimination on the basis of the child's parent's or legal guardian's race, color, sex, language, religion, sect, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.<sup>10</sup> The Declaration further notes the right to such measures of protection as are required by the child's status as a minor, including "nursing, education as well as material, and moral care, on the part of his family, society and the State".<sup>11</sup> Other rights include the right to birth registration and nationality.<sup>12</sup>

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- 6 Article 18, [Arab Charter on Human Rights](#).  
7 Article 34, Arab Charter on Human Rights.  
8 Article 39, Arab Charter on Human Rights.  
9 Article 38, Arab Charter on Human Rights.  
10 Article 7(a), [Cairo Declaration on Human Rights in Islam](#).  
11 Article 7(a), Cairo Declaration.  
12 Article 7(b), Cairo Declaration.



Time to rest (Photo: Beate Simarud/NRC)



Concentrating Hard (Photo: Ahmad Kaka/NRC)

### 3. NATIONAL POLICY FRAMEWORK



The **national policy framework** covers the overall legislative and administrative structure put in place by the Iraqi government to ensure the protection of children. This includes policies and commitments made by the government as well as government agencies responsible for implementing the protection of children's rights.

The **Iraqi Constitution** expressly protects the family as the foundation of society and notes the obligation of the State to preserve it and its religious, moral, and national values. Special guarantees are provided for the protection of children and youth.<sup>13</sup>

The Social Welfare Law No. 126 of 1980 states that the child is the future of the nation, and protecting and caring for children is a national duty and a fundamental right. Consequently, the State undertakes to provide care for children through various means, including through the establishment of state institutions, and by ensuring social, health, educational, and material care for children.<sup>14</sup>

#### 3.1 Government Child Rights Frameworks and Policies

Various government initiatives exist in relation to the protection and support of children in Iraq.

These include:

- **The National Child Protection Policy (NCP)**.<sup>15</sup> This policy aims to protect Iraqi children from violence, abuse, exploitation, and neglect. In addition, it provides services and support to children that have experienced such harm. The policy was adopted by the government at the national level in 2017 and has since been implemented at both the federal and the regional levels.
- **Action plan.** The Government of Iraq, alongside the Ministry of Labor and Social Affairs (MoLSA) and the United Nations, signed an action plan in 2023 to prevent the recruitment and use of children by the Population Mobilization Forces (PMF).<sup>16</sup>

<sup>13</sup> Article 29, Iraqi Constitution.

<sup>14</sup> Article 6, Social Welfare Law No. 126 of 1980.

<sup>15</sup> UNICEF Iraq, [Child Protection Sectoral and OR+\(Thematic Report\)](#), 2018.

<sup>16</sup> Office of the Special Representative of the Secretary General for Children and Armed Conflict, [The Government of Iraq, supported by the United Nations, strengthens its commitment to prevent the recruitment and use of children by armed forces](#), 30 March 2023.



- **UNICEF Iraq Child Protection program.**<sup>17</sup> UNICEF has been heavily involved in child protection programs in Iraq. Some key areas for UNICEF's child protection program in Iraq include:
  - **Protection from Violence, Exploitation, and Abuse:** UNICEF works to protect children from various forms of violence, exploitation, and abuse. This includes efforts to prevent and respond to child trafficking, child labor, and other forms of exploitation.
  - **Reintegration and Support for Former Child Soldiers:** In areas affected by conflict, UNICEF is involved in programs to support the reintegration of children who may have been involved with armed groups. This includes providing psychosocial support, education, and vocational training.
  - **Access to Education:** UNICEF supports initiatives to ensure that children affected by conflict have access to quality education. This includes efforts to rehabilitate schools, provide learning materials, and support teachers.
  - **Birth Registration:** UNICEF works to ensure that all children have their births registered. Birth registration is a fundamental right and provides legal recognition and protection for children.
  - **Psychosocial Support:** UNICEF provides psychosocial support to children who have experienced trauma and stress due to conflict or displacement. This may include counseling and recreational activities.
  - **Family Tracing and Reunification:** In situations of displacement, UNICEF supports efforts to trace and reunify separated children with their families.

### 3.2 Ministries and National Agencies Responsible for Child Welfare Issues

The responsibility for child welfare or protection in Iraq is shared among various government **ministries and agencies**. The main ministries and entities involved in addressing child welfare and protection issues include:

- **Ministry of Labor and Social Affairs (MoLSA):** Through its Child Welfare Directorate, the MoLSA plays a central role in formulating and implementing social welfare policies, including those related to child protection.
- **Ministry of Education:** The Ministry of Education is responsible for issues related to education, including the protection and well-being of children within the educational system.
- **Ministry of Health:** The Health Ministry is responsible for ensuring the health and well-being of children, including matters related to maternal and child health.
- **Ministry of Justice:** Various legal aspects of juvenile justice and child protection are addressed by the Ministry of Justice. They are instrumental in the development and enforcement of laws related to child rights.
- **Judiciary and Courts:** The judicial system, including Personal Status courts, plays a key role in ensuring the protection of children and addressing issues such as child abuse and neglect.
- **Ministry of Interior:** The Ministry of the Interior is responsible for law enforcement and public safety, which can be crucial in addressing child protection issues.
- **Ministry of Youth and Sports.** The Ministry of Youth is responsible for the intellectual, scientific, social, cultural and sports development of youth in Iraq and operates cultural and sports programmes.
- **Iraqi High Commission for Human Rights (IHCHR).** The Iraqi High Commission for Human Rights monitors and reports on human rights issues, including the rights of children. It plays a role in advocating for children's rights and ensuring that the government meets its obligations under international treaties.
- **National Council for Childhood.** The Council is responsible for coordinating efforts to promote child welfare, including between government Ministries, as well as formulating child protection strategies and generally promoting efforts to respect child rights.

17 UNICEF Iraq, [Child Protection](#).



### 3.3 National Laws

The laws **most relevant for child rights in Iraq** are as follows:

- **Iraq Constitution (2005).** Iraq's Constitution includes provisions related to the protection of human rights and, by extension, the rights of children, such as protection from forms of violence and abuse in the family, school and society and the right to education.
- **Personal Status Law (Law No. 188 of 1959).** This law addresses various aspects of personal status, including marriage, divorce, legal guardianship and custody of children.
- **Juvenile Welfare Law (Law No. 76 of 1983).** This law addresses matters related to juvenile justice, the welfare of juveniles, and the protection of their rights, including the procedures and guidelines for dealing with juvenile welfare issues.
- **Iraq Penal Code (Law No. 111 of 1969).** The Iraqi Penal Code lists crimes and offences under Iraqi law including crimes that may be committed by children as well as against children. It also sets out the minimum age of criminal responsibility.
- **Iraq Labor Law (Law No. 37 of 2015).** The Labour Laws sets out the work rights and entitlements for all workers in Iraq, including special rights and protections for working age children.
- **Family Violence Law (Law No. 8 of 2011).** While not specific to children, this law addresses domestic violence, which can have implications for child protection within the family.
- **Compulsory Education Law (Law No. 118 of 1976).** The Law confirms that education is compulsory for all children from the age of six years of age.
- **The Anti-Trafficking in Persons Law (Law No. 5 of 2018).** While not child-specific, this law addresses human trafficking, including the trafficking of children, and aims to protect victims.
- **The Yazidi Female Survivors Law (Law No. 8 of 2021).** This law addresses the rights and protection of women, children and other persons, including Yazidis and other ethnic and religious minorities, who were victims of violence and displacement at the hands of ISIS.

### 3.4 Child Rights Law

A new **Child Rights Act** had its first parliamentary reading in Federal Iraq in 2022 whilst a revised Child Rights Act has been submitted for approval in the Kurdistan Region of Iraq (KRI). However, these laws remain under discussion at the time of publication of this guide and neither of those laws have yet come into effect.

### 3.5 Principle of Non-discrimination

**Iraq's Constitution** notes that:

*"All 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>18</sup>*

18 Article 14, Iraqi Constitution. See also Article 2 of the Constitution which guarantees religious freedom of the different religious denominations in Iraq.



My ABC (Photo: Beate Simarud/NRC)

## 4. LEGAL CAPACITY OF CHILD



Children are acknowledged as having **different levels of legal capacity for different issues** under Iraqi law. The **age of full legal capacity is 18 years old**; however, children are accorded a significant number of rights from the age of 15, including the right to work and the right to decide which parents to live with if the parents are separated.<sup>19</sup> The age of criminal responsibility is nine years old.<sup>20</sup>

### 4.1 Definition of Child

The Iraqi Civil Code defines a child as **“every human being below the age of 18 years old”**.<sup>21</sup> Throughout this guide, the terms **child, minors and juveniles** are used interchangeably as referring to persons below the age of 18. The terms ‘child’ and ‘minor’ are taken to refer any persons under the age of 18, whilst the term ‘juvenile’ is typically used to refer to older children, such as those over the age of criminal responsibility for the purposes of criminal law.

### 4.2 Age of Majority and Capacity to take Legal Action

A person has **human personality as a natural person in Iraq from the date of birth** and is thus capable of taking actions and being the subject of State responsibility throughout their life.<sup>22</sup>

The **age of full legal capacity in Iraq is 18 years**. Every person over 18 who is in full possession of his or her mental faculties and who is not subject to any form of guardianship, is fully competent to exercise his or her civil rights.<sup>23</sup> Further, once an individual reaches the age of 18, they are considered legally competent to take legal actions, such as entering into contracts (including marriage) and filing lawsuits, without the need for parental consent.<sup>24</sup>

19 Personal Status Law No. 188 of 1959.

20 Article 39, Penal Code; see also Article 47, Juvenile Welfare Law.

21 Article 1, Civil Code.

22 Article 34, Civil Code.

23 Civil Code.

24 Civil Code and Personal Status Law.



### 4.3 Age of Criminal Responsibility

In accordance with the Penal Code, the **minimum age for criminal responsibility** is nine (9) years in Federal Iraq,<sup>25</sup> although it is 11 years old in the KRI. According to the new draft of the Juvenile Welfare Law No 76 of 1983, the age of criminal responsibility in Iraq will be raised to 11 years. However, the draft law remains under consideration with the Iraqi parliament and as such the age of criminal responsibility is presently nine (9) years.



## 5. LEGAL IDENTITY, CIVIL STATUS AND REGISTRATION OF CHILDREN

### 5.1 Birth Registration

#### 5.1.1 Issuance of Birth Certificates

**Birth certificates** are technically issued by the Civil Affairs Directorates (CADs) based on information provided by health authorities, typically the hospital or clinic where the child is born.<sup>26</sup> The notification of birth must be provided by health authorities to the CAD within 30 days from the child's birth, or 45 days from the date of birth for persons living in rural areas. The CAD will then record this information electronically. If births are not registered within 30 or 45 days respectively, the parents must obtain a court order for birth registration.

Birth certificates must be produced in the format approved by the Ministry of Health.<sup>26</sup> They must include the child's full name, which is considered complete only if it includes the child's first name, the father's and grandfather's names, and the surname, if any.<sup>27</sup>

Different procedures are applicable for birth registration, depending on whether the birth was registered within 30 or 45 days with the CAD, whether the birth was registered late or where paternity is unclear. In such cases, court proceedings may be necessary.

#### **The process for issuance of birth certificate within 30 days of birth (or 45 days if in a rural area) involves three steps:**

##### **Step 1: Prepare the necessary documents**

- Ensure you have the following documents ready:
  - National ID: Original and 2 photocopies.
  - KRI residential card: Original and 2 photocopies.
  - Alternatively, provide the original and 2 photocopies of the marriage certificate.
- Original documents are for presentation purposes only.

##### **Step 2: Obtain Birth Certificate from the Hospital or Health Support Centre**

- Request the birth certificate document from the hospital or health support centre where the child was born.
- Three copies of the birth certificate will be issued by the hospital, or by a certified nurse/midwife if the birth occurred outside a hospital.

25 Article 39, Penal Code; See also Article 47, Juvenile Welfare Law.

26 Article 12(1), Unified National Card Law.

27 Article 19(2), Unified National Card Law.



- Births in hospitals must be registered within 15 days, while home births within 30 days for urban residents and 45 days for rural residents.

### Step 3: Visit Civil Affairs Directorates

- Present the birth certificate to the nearest Civil Affairs Directorate (CAD),
- Verification of identity is necessary; therefore, provide either a National ID, KRI residential card, or Marriage Certificate.
- Depending on the office, vaccination of the child may be required, along with providing proof.
- Pay the birth certificate fee at the Directory of Health, Office of Births and Deaths.
- The legal fees vary and can be between 3,000 to 15,000,000 IQDs.
- Receive the Birth Certificate.

### For births outside of the statutory birth registration period, a court order is necessary as follows:

- **Proof of Birth:** A proof of birth order is applicable in cases of late birth registration, i.e. births not registered within the 30 or 45 day statutory birth registration period. The order is issued by the Personal Status Court in the presence of the parents and the child and is only applicable if the child is between three months to ten years old. It is issued under the authority of a judge. If the birth was a home birth or the child was not born in a health centre or hospital, witness evidence might be necessary. Before issuing the proof of birth order, the judge will refer the child to a doctor to provide an estimation of the age of the child.
- **Proof of Lineage:** A proof of lineage order is issued by the Personal Status Court where one of the parents is missing or unable to attend, or if the child is older than ten years old. It is used to establish the person's lineage. In such cases the court may require the following information:
  - Marriage certificate or proof of marriage,
  - Death certificate or official confirmation that father is missing,
  - Witness evidence in relation the identity and paternity of the children,
  - DNA tests from the paternal side of the family.

For further information on the procedures for birth registration, see NRC's KOBLI webpage; [KOBLI Birth Registration](#).

## 5.1.2 Births Outside of Marriages or in Informal Marriage

It is not possible to register the births of children **born outside of a registered marriage**, except by order of a Juvenile Court in the exceptional case of children of unknown or unproven parentage.<sup>28</sup> Persons who contract their marriages outside of court can be penalized under the law.<sup>29</sup> However, marriages that have been informally conducted in the community can later be legally registered. During the conflict with ISIS, many marriages conducted in areas outside the control of the government could not be registered with government courts at the time but were later registered and validated once the government re-assumed control.

Informal or external marriages can also be registered in court if the wife takes legal action against the husband to compel registration of the marriage. The court must then conduct an investigation to establish the circumstances. Once the investigation is complete and if the marriage is proven, the marriage is officially recognized, and the parentage of any children of the marriage is legally established. The court ruling that confirms the parentage of the children serves as a substitute for a birth certificate, and based on that ruling, the children are registered in the database of records for the unified national ID under their parents' names.

<sup>28</sup> Children of unknown parentage or 'foundlings' in Iraq may be granted Iraqi nationality pursuant to Article 3 of the Nationality Law.

<sup>29</sup> Article 10(5), Personal Status Law No. 188 of 1959.



Legal counseling in Anbar (Photo: Ahmad Kaka/NRC)



## 5.2 Registration and Civil Documents

### 5.2.1 Registration, Family Registry and Residence Cards

Births in Iraq are recorded in the civil information system managed by CADs throughout the country, as well as by other Iraqi government authorities. The system is electronic and contains information on civil status, residence and nationality and is stored in a central database.<sup>30</sup>

Essentially, this database contains the child's identification number, its residential address, its lineage, date of birth and other personal information.<sup>31</sup> The information should be updated by the *“head of the family, or his/her legally authorized representative”* within 60 days of each new civil status event, such as a birth, marriage or death.<sup>32</sup>

Information for each family is recorded in a ‘family registry’ in the database and each family is allocated a unique ‘family identification number’.<sup>33</sup> Information from the family registry is recorded within the individual record in the database and can be accessed by any member of the family who is registered in the system to obtain the data of other members.<sup>34</sup>

Fines can be imposed if an individual fails to register their place of residence at the Office of Residential Information within 30 days of moving to a new residence or within 30 days of arrival in Iraq for first time registrants.<sup>35</sup> A Residence (or housing) card is then issued for the head of household covering all the persons in the household, including children. The Office of Residential Information is managed by the General Directorate for Nationality.

### 5.2.2 Issuance of Unified National ID Cards

The **unified ID card** is a national ID card which confirms legal identity and Iraqi nationality and is used to access most government services in Iraq.<sup>36</sup> It is provided to all Iraqi nationals, including parents and children. The unified card replaces four previous civil documents, known as the ‘Golden Square’, namely the Civil Status ID card, Nationality Certificate, Residence Card (also known as the Housing Card) and the Public Distribution Scheme (PDS) card.

30 Articles 1, 27 and 27(2), Unified National Card Law.

31 Article 1(8) and Article 10(1), Unified National Card Law.

32 Article 11, Unified National Card Law.

33 Article 27(2), Unified National Card Law.

34 Article 1(2), Unified National Card Law.

35 Articles 10 and 39, Unified National Card Law.

36 Article 34, Unified National Card Law.





The unified ID card has been issued since 2016 and includes biometric data such as retinal scans and fingerprints. Applications for the unified ID card are made online and it is issued through the CADs. The first-time issuance of the card, or renewal upon expiration of the validity period of a unified ID card, costs IQD 5,000. Similarly, fees are applied for the replacement of damaged or lost national cards of between IQD 10,000 to IQD50,000.<sup>37</sup>

Applications for unified ID cards are made as follows:

- An application for the card must be made online. An appointment date and time will then be issued at the closest CAD.
- The applicant must attend the appointment with proof of their identity and personal status., including the following documents and information:
  - Other Iraqi issued official civil documents, if available, including the Civil Status ID, Nationality Certificate, Residence card, PDS card
  - Birth certificate or extract of civil status register if the applicant does not have any of the cards listed above,
  - Any documents relevant to the applicant's personal status such as marriage or divorce certificates,
  - Two passport photos.
- During the appointment, the CAD officer will check the applicant's identity documents and take biometric details including fingerprints and iris scans.

Children must attend their appointment with their parent or legal guardian, including their father as the legal guardian, who must bring proof of their relationship to the child, such as their unified ID card, child's birth certificate, marriage certificate or other relevant proof. In the father's absence, the mother may act on the child's behalf, provided she has a guardianship or custody document.

For further information on the procedures for obtaining a unified national ID card, see NRC's KOBLI webpage; [KOBLI - Unified National ID card](#).

### 5.2.3 Security Clearances and *Tabriya* Processes

Under current practice, **security clearances** for parents, mainly the father, are typically required by Iraqi authorities before a legal identity or civil document will be issued, even for a child. Whilst this was initially introduced as a step to vet persons coming from areas formerly controlled by ISIS, it has now become a widespread requirement, despite the lack of a clear legislative basis for the practice and despite the existence of some decisions by courts and authorities clarifying that a security clearance is not a necessary pre-requisite for the issuance of civil documents.<sup>38</sup> The practice is also more common in some areas, such as in Ninewa governorate, than in other parts of the country.

For the spouse of an alleged ISIS member to obtain a security clearance covering herself and her children, she is compelled to complete the so-called *tabriya* or *ikhbar* process.<sup>39</sup> The *tabriya* process can vary per court or jurisdiction, but typically involves the wife declaring that her spouse, or family member, was a member of ISIS, renouncing them and their activities and denying any involvement or criminal responsibility for any acts committed by their spouse.<sup>40</sup>

37 Article 37, Unified National Card Law.

38 In September of 2019, the Iraqi High Judicial Council issued a directive to the Ninewa Court of Appeals requiring judges to issue documents without first requiring applicants to complete the *tabriya* process or obtain security clearance. In 2019, the Ministry of Interior authorised CADs to process civil documentation regardless of whether the family in question had a security clearance. See [NRC, NRC Life on the Margins: Re-examining the needs of paperless people in post-conflict Iraq](#) p 17, NRC, [Tracing Civil Law Violations Against Families of Perceived Affiliation to the Islamic State in Iraq](#), December 2022, p 8, or [UNDP Pathways to Reconciliation: Families Formerly Associated with ISIL](#), February 2021, p 16.

39 Article 4 of Anti-Terrorism Law. See also IOM, [Protracted Displacement in Iraq: Revisiting Categories of Return Barriers](#), Jan 2021, p 31.

40 NRC, [Civil Law Violations](#), p 10.



The Investigative Court will then review the statement and decide whether to accept it or not. To finalise the process and obtain access to civil documents, spouses of alleged ISIS members must normally also file for divorce to officially separate themselves from their spouse. Once the *tabriya* process is completed, a security clearance is usually issued, and official documents can be obtained. However, there are indications that the strict application of this process by authorities is now softening.

#### 5.2.4 Correcting and Amending Official Records

Where information contained in official records is incorrect, such as in relation to names, dates of birth, marriage, or details of death, it can be corrected after verification and in accordance with administrative procedures. The Director General of the General Directorate for Nationality, or an authorized representative, may make corrections to any data in the civil information system maintained by CAD arising from errors, provided there is a compelling reason to make the change.<sup>41</sup> This can happen through a written request from the record holder, the guardian of a minor, or relevant official authorities. The Director General also has the authority to add information to the record based on official documents issued by a competent authority. If an application for a correction to information is rejected, the Director General may reconsider this decision within 30 days from the issuance of the decision, as long as the applicant has submitted new official documentation sufficient to justify the required correction.<sup>42</sup>

Individuals are permitted to correct their full name (or errors in the names of their parents or grandparents as listed in their personal records) only once. The correction must be recorded in the family registry.<sup>43</sup> After correction, a person is not allowed to return to the previously corrected name and surname.<sup>44</sup>

If multiple errors are found in the registry to the names of the child's father and/or grandfather, and multiple parties want to make a claim for correction, such claims must be merged into a single lawsuit unless there is a legitimate reason to split the case.<sup>45</sup>

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41 Articles 22(1) 29(1), Unified National Card Law.

42 Article 29(2), Unified National Card Law.

43 Article 21(1), Unified National Card Law.

44 Article 23, Unified National Card Law.

45 Article 30, Unified National Card Law.



School Days (Photo: Ahmad Kaka/NRC)



Nabaa and Children (Photo: Ahmad Kaka/NRC)



## 6. NATIONALITY AND NON-NATIONALS, INCLUDING FOREIGN RESIDENTS

### 6.1 Eligibility for Iraqi Nationality

Under the Constitution, **Iraqi nationality is derived both paternally and maternally.** As a result, anyone born to either an Iraqi father or mother is eligible for Iraqi nationality under the law.<sup>46</sup> Accordingly, children of Iraqi mothers have the right to Iraqi nationality, regardless of the whereabouts, identity or the nationality of the father. Iraq also permits multiple nationality.<sup>47</sup> Additionally, individuals born in Iraq to unknown parents will be considered Iraqi, in the absence of any proof to the contrary.<sup>48</sup>

Iraq also recognizes the possibility for individuals born in Iraq to a non-Iraqi father who is also born in Iraq and whose habitual residence was in Iraq at the time of the child's birth, to obtain Iraqi nationality, provided they apply for such nationality.<sup>49</sup> Similarly, if a non-Iraqi acquires Iraqi nationality, his minor children will be considered Iraqi, provided they are residing with him in Iraq.<sup>50</sup> Persons who are born outside of Iraq to an Iraqi mother and either a non-Iraqi father or an unknown father, may apply for Iraqi nationality within a year of their date of adulthood, provided that they are a resident of Iraq at the time of the application.<sup>51</sup>

In practice, the situation is quite different and the Personal Status law, which draws heavily on Sharia law and Islamic jurisprudence, relies upon paternal lineage, as passed through marriage, to validate a child's personal and civil status. Authorities rely upon proof of paternal identity and marital status, and typically the physical presence of the father, when issuing civil documents for children, including birth certificates and unified national ID cards.<sup>52</sup>

46 Article 18, Iraqi Constitution.

47 Article 18(4), Iraqi Constitution.

48 Article 3, Nationality Law.

49 Article 5, Nationality Law.

50 Article 14(I), Nationality Law.

51 Article 4, Nationality Law.

52 See also [NRC, Barriers from Birth: Undocumented children in Iraq sentenced to life on the margins](#), 2019, p 24. In July 2022, the High Judicial Council issued a letter to the Ninewa Directorate of Migration and Displacement, at the request of the Chief Judge of the Ninewa Appeals Court, indicating that children born to Iraqi mothers and fathers of foreign or unknown nationality who had been involved with ISIS would be prohibited from both birth registration and obtaining Iraqi nationality. However, in the same letter, the High Judicial Council states that women whose children are the products of forced marriage to IS combatants may register the children regardless of the father's identity. See NRC Life on the Margins, p 19.



The unified national ID replaces the formerly issued Nationality Certificate as proof of identity and nationality. In cases where the father is deceased, a death certificate is required as well as proof of their Iraqi nationality. If the father is missing, proof of their Iraqi nationality will also be required.

Where there is an allegation that the father was involved with ISIS, the father will have a negative security clearance, and this issue must be resolved before a child of the father can be issued with proof of Iraqi identity and nationality. Very often the mother is compelled to renounce the father through a so-called *tabriya* or *ikhbar* process in Iraqi courts to distance herself from the activities of her spouse and obtain civil documents in her name and for her children. However, this practice is inconsistent and Iraqi authorities stated in 2018 that the *tabriya* process was not necessary to obtain documents.

## 6.2 Stateless Persons

Whilst Iraq has not signed the Statelessness Convention, individuals born in Iraq to unknown parents can be registered as Iraqi nationals under the law, in the absence of any proof to the contrary.<sup>53</sup> In practice, 'foundlings' or children of unknown origin, are brought to the attention of authorities who conduct an investigation to try and establish the identity, parentage and background of the child. Where no information is available, the Juvenile Court will make an order registering the name and identity of the child as an Iraqi national. The child will then be fostered into an Iraqi family.

No Iraqi citizen by birth may have his or her citizenship withdrawn, for any reason. In the event it is withdrawn, the person may request its reinstatement.<sup>54</sup> However, this does not apply to naturalized citizens. Iraq recognizes the possibility of withdrawing the citizenship of naturalized Iraqi citizens in cases regulated by law.<sup>55</sup> For example, a naturalized citizen may have his or her nationality withdrawn if the person is found guilty of jeopardizing, or attempting to jeopardize, state security or safety, or for the provision of false information in the submission of the nationality application.<sup>56</sup>

## 6.3 Residency and Registration of Foreigners

The **residency and registration of foreigners** is governed by the Law on Foreigners Residence No. 118 of 1978.<sup>57</sup> A foreigner is defined as any person not holding Iraqi nationality.

Foreigners, including refugees, require a residency permit to reside in Iraq. Procedures for residency permits vary slightly between Federal Iraq and KRI. Any foreigner wishing to stay in Iraq for more than the period of time stipulated in their visa must obtain a residence permit through the Residency Office of the Ministry of the Interior (MoI) before the expiry of their visa. Residency permits are valid for one year. One month prior to the expiration date of the residence permit, they may apply for an extension from the Residence Office for a further year.<sup>58</sup> The Residence Office may refuse to grant or extend the residence to a foreigner in special circumstances and the foreigner may, within 15 days from being notified of the refusal, object and appeal the decision to the Minister of Interior whose decision shall be final.<sup>59</sup>

Any foreigner whose residence is refused by a final decision and has not left the country, shall be notified for deportation by the Director of Residence within the MoI.

53 Article 3, Nationality Law.

54 Articles 18(1) and 18(2), Iraqi Constitution; see also Article 7, Nationality Law.

55 Article 18(3), Iraqi Constitution.

56 Article 15, Nationality Law.

57 Law on Foreigners Residence No. 118 of 1978, as amended by Law No. 195 of 1980.

58 Article 11(1), Law on Foreigners Residence.

59 Article 11(2), Law on Foreigners Residence.



Haitham and Family (Photo: Ahmad Kaka/NRC)



## 7. PERSONAL STATUS AND FAMILY RIGHTS

The Iraqi Constitution, preserves principles of human rights, including the **right to family life**, noting that *“The family is the foundation of society, and the State shall guarantee its protection.”*<sup>60</sup>

### 7.1 Marriage

#### 7.1.1 Age of Marriage, including Child Marriage

In Iraq, the legal age of marriage varies depending on several factors including religious affiliation and the type of marriage being considered. According to Iraqi civil and personal status law, the legal age of marriage is 18 years old for both males and females. This is in line with international standards set by the Convention on the Rights of the Child, which Iraq ratified in 1994. However, there are exceptions to this rule and the age can differ based on Sunni or Shi'a personal status law.

Whilst the legal age of marriage is 18, marriages can be conducted with minors from the age of 15 years old in accordance with the Personal Status Law, provided that certain conditions are met, including maturity, physical capability, legal puberty, and the presence of extreme necessity.<sup>61</sup> This applies to both Sunni and Shia sects.

In the KRI, there has been an amendment to the Personal Status Law, setting 16 years of age as the minimum age. For other religious sects, marriage is governed by the personal status laws specific to each community, and judges rely on the decision of the relevant religious authority. For example, the Yazidi Spiritual Council does not approve marriages if the applicant has not reached the age of 15. Christian denominations generally adhere to the 18-year minimum age, but religious authorities may allow exceptions for women under 18 under certain conditions. Such exceptions require both legal consent and approval from the church, ensuring that the marriage aligns with both civil law and religious principles. Whilst the minimum age for both Sunni and Shia marriages is 15, in some cases marriages at a younger age will be approved by a judge in exceptional circumstances and if the judge decides this is in the best interests of the child. One such circumstance may be when the girl is either pregnant or has a child outside of a formal marriage.

60 Article 31, Iraqi Constitution.

61 Article 8 of Personal Status Law.



According to a draft of the new Personal Status Law in Iraq, the Sunni Endowment Office and the Shia Endowment Office would be responsible for drafting a code of religious rulings for each sect, which must include all details (marriage age, custody period, who is entitled to custody and rules on spousal, child and family maintenance). The courts would be required to rely on this code for personal status matters related to each sect. Additionally, permission would be granted for marriage contracts to be performed outside of courts by religious figures, with subsequent certification in the courts. However, this draft has not yet become law in Iraq and is controversial in many respects.<sup>62</sup>

'Temporary marriages' (*zawaj al-mut'a* or *nikah al-mut'a*) also take place in Iraq in Shia communities. These are short-term, transactional marriages which can be agreed for a payment of dowry or *mahr*. The duration of the marriage and the amount of *mahr* must be agreed in advance through either a written or verbal agreement. Commentators have noted that such marriages are very often exploitative in practice.<sup>63</sup>

## 7.1.2 Documents Necessary for Marriage Registration

Marriages are normally conducted in accordance with a marriage contract which must be registered in a special record in the Personal Status Court, according to the following conditions:<sup>64</sup>

- The contract must show the identity of the two parties to the contract, their age, the amount of the dowry (*mahr*), and the absence of any legal impediment to the marriage. The document should be signed and certified by the *mukhtar* (mayor) of the district, or by two local citizens of good standing.
- The contract must be supplemented by a medical report confirming that the two spouses in question are free from communicable diseases and health impediments.
- The contract must be written and signed by the two parties to the contract, through a written signature or a thumbprint, in the presence of the judge who then certifies the marriage and provides the spouses with the marriage evidence (*hujja*).
- The marriage contract, once registered, is binding and enforceable. The amount of the dowry and conditions for payment of the dowry are enforceable as long as they are not subject to an objection before the competent courts.

The usual steps for registration of marriage are as follows:

- Make an online reservation with the Personal Status Court or attend the court in person to get a hearing date,
- Collect all necessary documents including unified national ID and Residence cards for bride and groom,
- Conduct a blood test for both bride and groom at an authorised medical centre,
- Obtain a non-objection letter,
- Attend on the date of the hearing with all necessary documents and two witnesses.

The non-objection letter is issued by the CAD to confirm that there are no conflicts in the civil records of both parties, such as another marriage.

For further information on the procedures for marriage registration, see NRC's KOBALI webpage; [KOBALI - Legal Aid Platform Marriage Registration](#).

62 Human Rights Watch, [Iraq's Amended Personal Status Law Could Make 9-Year-Olds Brides](#), 19 September 2024.

63 See for example, ECPAT, ['Iraqi children forced into temporary marriages'](#), 6 January 2020; Daraj, ['Pleasure Marriages; Thinly Veiled Legal Prostitution'](#), 24 March 2023.

64 Article 10, Personal Status Law.



### 7.1.3 Informal Marriages

**Legal Recognition:** Informal marriages cannot be legally recognized in Iraq unless they are later formally registered with the relevant authorities. If the marriage is not formally registered, the marriage lacks legal standing and does not provide the same rights and protections as formal marriages under Iraqi law.

**Formal Registration:** It is often possible to later formalise an informal marriage by registering it with the appropriate government authorities. This process may involve providing documentation and meeting certain legal requirements, such as proof of identity and consent of the parties involved.

According to the Personal Status Law, any man who concludes his marriage contract outside the court is punished with a period of imprisonment of between six months to a year or charged with a fine of between IQD300-1,000. If a man concludes another marriage outside the court when he is already married, the penalty is imprisonment penalty for between three (3) to five (5) years.

Many informal marriages previously took place in Iraq in areas under ISIS control due to the inability of spouses to register with government courts. Whilst many of those marriages have now been formally registered, and marriage certificates backdated to the time of marriage, not all such marriages have been registered. In many cases, male spouses are missing or deceased. In some cases, the identity of spouses cannot be verified or is unknown, including in cases of foreign fighters.

In other cases, the identity of the spouse may be known but his family are uncooperative as there are allegations of ISIS affiliation, and the family do not want to attract the attention of authorities. In such cases it can be hard to prove the existence of the marriage and paternity of any children of the marriage or even to register the case with the court.

Confirmation of an informal marriage requires a lawsuit before the Personal Status Court with witnesses who can confirm the existence of the marriage. Typically, both parties should be present at the court hearing. However, if the spouse is not present, the court can rely upon witness testimony from the female spouse or witnesses called on her behalf. If the spouse is now deceased, a death certificate can be submitted. Women whose husbands are not suspected of affiliation with ISIS may prove their marriage through witness testimony in accordance with the Evidence Act.<sup>65</sup>

However, in some cases Iraqi courts have argued that marriages to persons suspected of ISIS affiliation can only be registered if the husband is present.<sup>66</sup> Courts do, however, have the power to summons witnesses from the family of the male spouse and can require DNA testing to confirm the parentage of any children of the relationship.

Children of unregistered marriages with alleged ISIS members whose mothers have formally remarried may face challenges in proving their legal identity. Unless the previous informal marriage between their mother and father is registered, birth certificates cannot be issued for them, nor can they obtain any proof of legal identity.

## 7.2 Divorce

Different types of **divorce** exist in the Personal Status Law.<sup>67</sup> The husband has the unilateral right to initiate a divorce by verbally declaring *talaq* (divorce) three times, with waiting periods (*iddah*) between each declaration.<sup>68</sup> After the third declaration, the divorce is irrevocable, and the spouses cannot remarry without an intervening marriage to another person.

65 Article 25, Evidence Act; See also NRC, Civil Violations, p 15.

66 See for example, NRC, Civil Violations, p 15.

67 Article 38, Personal Status Law.

68 Article 37, Personal Status Law.



The grounds of divorce are much more limited for women. These can include *khul*, (mutually agreed divorce initiated by the wife in return for payment of compensation to the husband)<sup>69</sup> or other specified grounds, including cruelty or abuse,<sup>70</sup> failure to provide financial support,<sup>71</sup> impotence or inability to have marital relations,<sup>72</sup> adultery or infidelity,<sup>73</sup> abandonment or desertion,<sup>74</sup> irreconcilable differences<sup>75</sup> and incompatibility.<sup>76</sup> Other grounds can include substance abuse, gambling or coercion,<sup>77</sup> taking a second wife, imprisonment of the husband for three months or more,<sup>78</sup> disappearance of the husband for four years or more or health conditions which make conjugal relations harmful.<sup>79</sup>

Divorce can be initiated by either the man, the woman, an authorized representative, or a judge, following Sharia law principles.<sup>80</sup> However, a proxy<sup>81</sup> is not accepted in divorce proceedings, social investigations, or arbitration on issues of divorce. Notification of divorce proceedings can be made in the absence of the spouse.<sup>82</sup> An announcement must be placed in two local newspapers providing a deadline for responding to the divorce request. If the individual named in the announcement does not respond within the deadline, they are considered properly notified and the divorce proceeding can go proceed in the absence of the spouse.<sup>83</sup>

Certain individuals, such as those who are drunk, insane, mentally incapacitated, or terminally ill, cannot initiate divorce. If a husband dies due to a fatal illness, his wife inherits his legacy.<sup>84</sup> A divorce must be complete and unconditional to be valid.<sup>85</sup>

After a divorce is initiated, there is a waiting period (*iddah*) during which time the wife cannot remarry. The length of the *iddah* period varies depending on the circumstances.

Custody of children is typically awarded to the mother during the child's early years (up to a certain age), after which custody may be transferred to the father.

Non-Muslims, such as Christians, Yazidis and other religious denominations in Iraq, have different divorce procedures governed by their respective religious communities.

Many women whose spouses are missing in the conflict in Iraq have chosen to apply for divorce. In some cases where husbands are accused of affiliation with ISIS, women have been encouraged to formally denounce husbands through a court-sanctioned process called *tabriya* (denunciation); also known as *ikhbar* (notification).<sup>86</sup> If the statement by the female spouse is approved by the court, the judge issues a document certifying the innocence of the family member.<sup>87</sup> This also allows the female spouse to obtain a security clearance. In order to finalise the process and obtain access to civil documents, spouses of alleged ISIS members must normally also file for divorce.

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69 Article 46, Personal Status Law.

70 Article 40, Personal Status Law.

71 Article 38, Personal Status Law.

72 Article 39, Personal Status Law.

73 Article 42, Personal Status Law.

74 Article 37, Personal Status Law.

75 Article 41, Personal Status Law.

76 Articles 37-43, Personal Status Law.

77 Article 40, Personal Status Law.

78 Article 43, Personal Status Law.

79 Article 43, Personal Status Law.

80 Article 34, Personal Status Law.

81 A proxy is someone who is given the authority to formally represent someone else or stand-in for them, such as a family member or friend.

82 Article 21, Civil Procedures Law No. 89 of 1969.

83 NRC, Civil Violations, p 14.

84 Article 35, Personal Status Law.

85 Article 36, Personal Status Law.

86 NRC, Civil Law Violations, p 10.

87 UNDP Pathways to Reconciliation, p 18; Haley Bobseine, The Century Foundation, [Tribal Justice in a Fragile Iraq](#), 7 November 2019.





Mother and daughter time (Photo Itunu Kuku/NRC)

## 7.3 Parental Responsibilities

Issues of **parental responsibility, legal guardianship, duties of care and custody of children** are closely linked in *Sharia* law and **clearly defined in the Personal Status Law**. These duties are aimed at protecting the well-being, rights, and interests of children. Parents are responsible for the physical, emotional, and financial well-being of their children.<sup>88</sup> This includes providing for their basic needs such as food, shelter, clothing, education, and healthcare.

Whilst both parents have responsibility for the upbringing of the child, the mother has a greater formal role under the concept of '*hadana*' in *Sharia* law which involves custody of the child and daily care and responsibility, including raising the child and attending to daily needs. The *hadana* is always given to a female relative if the mother cannot perform this duty, such as the maternal grandmother, a sister, aunt or any viable female relative. Legal guardianship or '*wilaya*' typically rests with the father.

### 7.3.1 Guardianship of Children

Legal guardianship involves control over a child's education, medical treatment, career guidance, consent to marriage and any other affairs concerning the minor's interests and formally ends once a child turns 18. The father, or the paternal grandfather in the absence of the father, has legal guardianship over children of the marriage as well as over any possessions of the child.

There are two types of guardianship, namely legal guardianship (*wilaya*) which involves guardianship over the minor/person (*al-wilayat ala al-nafes*) and appointed guardianship (*wisaya*) which involves guardianship over the minor's property (*al-wilayat ala al-mal*).<sup>89</sup>

Appointed guardianship (*wisaya*) applies in cases in which a guardian is appointed by the family or court. These are typically situations in which the father or paternal grandfather is not available or not considered suitable to act as guardian. For example, an appointed guardian may be organized by a father who is living overseas, or through the court for a father who is in prison. Further, the court can appoint a guardian for an unborn child in situations of pregnancy and can relieve the guardian from his or her duties. The appointed guardian can be either a male or a female. The mother is typically appointed as legal guardian in the event of the father's death or if the father is imprisoned.

88 See also Article 29, Constitution.

89 See Articles 75-85, Personal Status Law.



If the child does not have a guardian chosen by the father or by the paternal grandfather, a judge of the Sharia Court can appoint a guardian to manage the child's affairs, taking into account the best interests of the child. The judge appoints a temporary guardian for a particular task or for a specified period according to the child's need.

Any other person who wishes to become a guardian for a child must obtain a guardianship certificate from the Sharia Court. Such certificates are usually for a certain objective, such as representing the child in a proof of birth lawsuit in order to issue a birth certificate for him/her and in relation to financial affairs. Such temporary guardianship arrangements are usually very strict and for a certain period of time.

The process for applying for a legal guardianship order in the Personal Status Court is as follows:

- **Request for Guardianship.** A formal request for guardianship is submitted to the court.
- **Proof of identity of person seeking guardianship.** A civil registry extract for the person requesting guardianship (such as the mother) must be submitted as part of the application. The court must issue a letter confirming the relationship.
- **Submission of documents to support the application for guardianship.** Depending on the reasons for requesting guardianship, it may be necessary to provide proof of certain issues. For example, proof of divorce, a death certificate for the father, confirmation that the father is missing, overseas without contact or in prison, medical proof that the father is incapacitated and unable to exercise their guardianship responsibilities or proof that the father or existing guardian is unable or unfit to be the guardian.
- **Guardianship and custody proceedings.** A consent letter must be obtained from the Directorate of Child Welfare, agreeing to the guardianship arrangements.
- **Court hearing.** Two witnesses must appear before the judge to confirm the suitability of the person seeking guardianship.
- **Guardianship and custody decrees.** Following these procedures and provided the court is satisfied with the suitability of the guardian, the court will issue a guardianship order.

In cases in which the father is serving a prison sentence, the court will require proof of the father's imprisonment, such as a confirmation from the prison or court order and will also require the father to sign a statement authorizing the mother to act as the legal guardian of their children.

A guardian can lose guardianship in the following cases:

- If he is convicted of a dishonorable crime or a felony,
- If he is sentenced to more than a one-year period of imprisonment,
- If a legal litigation or family dispute occurs between the minor and one of the guardian's ascendants or descendants, or his wife in a way that might harm the minor's interest,
- If the court deems the guardian's actions negligent and threatening to the minor's interest,
- If fraud has occurred in the accounts of the guardian.<sup>90</sup>

90 Article 35, Personal Status Law.



Girls in Al Qaim (Photo: Ahmad Kaka/NRC)

### 7.3.2 Missing Fathers

In practice, and due to the large number of Iraqi men who are missing and presumed dead, during the conflict with ISIS, mothers are often appointed as legal guardians for their children with full responsibility to manage their affairs.

Under Iraqi law, a missing person is defined as someone whose whereabouts are unknown and who is declared missing by a concerned party, such as a close relative.<sup>91</sup> Clarification of the status of a missing family member has important consequences for relatives, including children of the missing person. If the missing person is a father, a new legal guardian must be appointed for his children and custody arrangements confirmed. Any assets they own must be administered by relatives or legally appointed custodians. If they are later declared dead, their assets will be distributed in accordance with rules on inheritance.

As cases of missing persons have both an official and personal aspect, cases are handled by both Investigative and Personal Status Courts. **Investigative courts** determine the official status of the individual, including the later confirmation of a presumption of death, whilst **Personal Status courts** determine family matters, such as legal guardianship, custody, divorce and inheritance.

The **investigative process** involves firstly reporting the missing person to the local police station to allow the police to commence their investigation and make an official report. The police will question family members and other witnesses about the circumstances of the disappearance and the background of the missing person. They may conduct a forensic examination, such as an exhumation if the whereabouts of the remains of the missing person are known. They will provide a case number and date of opening the file to the family members reporting the disappearance. After this, family members must place a notice in two local daily newspapers declaring the person missing and requesting information about their whereabouts. Contact details of family members must be provided in the notice as well as sufficient information to be able to identify the missing person.

The family must then file a complaint to the Investigative Court with a copy of the police report and any information or witness statements about the missing person. The judge will consider all the evidence and then make a decision about the status of the missing person.

To clarify the **personal status** of the missing person, the family member must make an application in the Personal Status Court seeking guardianship over the missing person. They must also provide a copy of the civil registry status or unified national ID card of the missing person, as well as details of their personal status, such as a marriage certificate.

91 Article 36, Paragraph 1 Civil Law No. 40 of 1951, as well as Law No. 78 of 1980 regarding the Care of Minors.



The Directorate of Child Welfare is formally responsible for missing persons within the Iraqi government and must provide a letter of consent for the proceedings. Following a court hearing with witnesses, the court will then issue a guardianship and custody decree.

If there is no information about the whereabouts of the missing person after either two (2) or four (4) years, depending on the circumstances, the court will declare the missing person presumed dead and issue a Declaration of Death. The declaration can be issued **two (2) years** from the date of the court decree if circumstances indicate the presumed death of the missing person or if conclusive evidence of their death is found. In other cases, a person will be missing, presumed dead after **four (4) years**.<sup>92</sup> Inheritance proceedings can commence if a person is declared dead. The spouse of the missing person will be obliged to perform the four-month mourning period (*iddah*) after the declaration of death. After this they are permitted to remarry.

Women whose husbands are missing but were allegedly affiliated with ISIS cannot declare their husbands 'missing' under the usual processes available in Iraqi law to persons whose whereabouts are unknown for a significant period of time.<sup>93</sup> This also has implications for inheritance of their property and assets by their wife and children and other family members, which can only be commenced if a person is declared dead.<sup>94</sup> Instead, they are formally declared as 'fugitives from justice'. If the remains of the spouse are identified and verified, a death certificate can be issued.

### 7.3.3 Custody

Under Sharia law, in cases of divorce or separation, **custody of children** is typically granted to the mother until a certain age (usually puberty for boys and menarche<sup>95</sup> for girls), after which time custody may transfer to the father or other male relatives.<sup>96</sup> The mother usually has the right of custody until the child turns ten (10) years old, although it can be extended to 15 years if the court considers it is in the child's best interest. The father continues to act as the legal guardian with formal responsibility for the child's upbringing, education and major life decisions. Once the child is 15, the child can normally choose which parent they want to live with although this is subject to the court's approval to ensure the decision is in the best interests of the child.

The judge typically takes into account various factors when determining custody arrangements including the best interests of the child, the age of the child and the suitability of the parents for custody.<sup>97</sup> In the event of a dispute, the court will choose the most suitable person for the custody of the child. If neither parent is considered suitable, the court will place the child in the custody of an appropriate guardian.

Where the father is missing, or in the event of divorce, the mother must go to court to obtain an order over the custody of the child. Such issues can be sensitive where the mother later remarries. In such cases, the court will be guided by the best interests of the child. However, a mother does not forfeit her right to custody over her children upon remarriage.

Instead, the court decides whether the mother or father has the better claim to raise the child, in the light of the child's best interests.<sup>98</sup> The new spouse is sometimes required to provide a written pledge that he will not harm the child and will prioritize the child's interests. If he refuses, the custody may go to the child's father.<sup>99</sup>

92 Article 45, Civil Code.

93 Under Iraqi law, a missing person is defined as someone whose whereabouts are unknown and who is declared missing by a concerned party, such as a close relative. Article 36, Paragraph 1 of Iraqi Civil Law No. 40 of 1951, as well as Law No. 78 of 1980 regarding the Care of Minors. For details information about the missing persons process in Iraq, see ICMP, [Legal Framework Relative to the Issue of Missing Persons in Iraq](#), 11 March 2021.

94 In practice, the property and assets of many alleged ISIS members are confiscated under Iraq's Anti-Terrorism Law.

95 Menarche is the first occurrence of menstruation.

96 Article 57, Personal Status Law.

97 See Simaet Bhata webpage, [Child Custody](#).

98 Article 57, Personal Status Law.

99 Article 57, Personal Status Law.



Ali Khalaf and daughter (Photo: Ahmad Kaka/NRC)

'Disobedience' by the wife (*nushooz*)<sup>100</sup> is considered a valid reason for separation between spouses, and either the husband or the wife can request custody of any children after the disobedience ruling becomes final. Disobedience is normally not considered a reason to strip the mother of custody of the children, but this is subject to the discretion of the judge. If the wife is found to have been 'disobedient', the wife loses her right to alimony and the deferred dowry.<sup>101</sup>

According to the Personal Status Law, custody ceases under the following circumstances:

- The death of the minor,
- The minor reaches 18 years (unless the court decides that custody must continue),
- After completion of the work the guardian was appointed to supervise or the expiration of his temporary appointment period.<sup>102</sup>

## 7.4 Paternity of Children

Where the identity of the father is unknown, disputed or must be proven for the issuance of a document, such as a birth certificate, the mother or another relative can apply to the Sharia court for **proof of lineage**. The court will hear from witnesses, including the mother, and may require other forms of evidence, such as DNA testing.

**Paternity** is usually established through a lawsuit filed by the mother or her immediate relatives requesting that the court issue confirmation of birth. The lawsuit should include the names of the parents, evidence of the marriage, such as a marriage certificate, evidence of birth, such as a birth certificate or attestation from a *mukhtar* or documents from the Office of Birth and Deaths. The court normally writes to the family of the alleged father and asks them to provide a written confirmation of paternity, including in cases in which the father is missing or dead.<sup>103</sup> If the family acknowledges paternity, the court issues the confirmation of birth naming the father.<sup>104</sup>

100 Disobedience or *nushooz* has multiple interpretations and can include acts such as woman's refusal to fulfil marital obligations or to follow directions from the husband and her refusal to engage in sexual relations with him.

101 Articles 25, Personal Status Law.

102 Articles 3, Personal Status Law.

103 Articles 21-25, Evidence Code.

104 NRC, Civil Law Violations, p 14.



In contested cases or cases in which the father or family do not respond, the court has the power to order DNA testing from male paternal relatives.<sup>105</sup> The Department of Forensic Medicine in Baghdad conducts such tests.

The Evidence Act gives judges the power to establish paternity through different means in situations where the father is missing. This can include written attestation,<sup>106</sup> witness testimony in court under oath<sup>107</sup> or other supporting evidence, such as a relative's DNA sample.<sup>108</sup> A child born to a woman is considered the descendant of her husband if the marriage is registered or proven, under two conditions: firstly, if the duration of the marriage is equal to or longer than the duration of the pregnancy, and secondly, if sexual intercourse between the spouses is plausible.<sup>109</sup>

Proof of paternity is important in cases arising from the conflict with ISIS in Iraq where the father is missing or is unknown. This includes cases in which the father is alleged to have been a member of ISIS, either as an Iraqi or a foreign national, or where the child may have been born of rape, as is the case with many Yazidi women kidnapped by ISIS. In cases of alleged ISIS affiliation, courts are rigorous before issuing a proof of lineage and have been known to impose additional evidential requirements, such as multiple DNA tests, or to require the physical presence of the father, even if he is considered to be missing in the conflict.

## 7.5 Maintenance

The Personal Status Law outlines the **financial obligations of the parties to the marriage**. There are separate obligations for maintenance of the spouse and for children of the marriage. Spousal maintenance<sup>110</sup> continues during the marriage and in limited circumstances after separation and divorce.

Fathers are responsible for financially supporting their children until any of their daughters are married and any sons are employed. They are also responsible for financial support of their children whilst they are studying or undertaking higher education.<sup>111</sup> If the father is unable to fulfill his obligation to provide for his children, the responsibility falls on whoever is responsible for the duties of the guardian in the absence of a father. Any such financial support provided constitutes a debt owed to the provider which the father is obligated to repay should his financial circumstances improve.<sup>112</sup>

The Personal Status Law also includes financial obligations towards other family members who are unable to support themselves. This can include disabled family members, elderly family members, students at school or university, siblings who are unemployed and unable to find work or those who are working but whose income is insufficient to cover their living expenses.<sup>113</sup> The financial responsibility in such cases falls on family members who are in a stronger financial position to support, particularly relatives who would inherit from the person who is financially incapable, in accordance with the proportion of their share of the inheritance. Such obligations can be enforced through court proceedings.<sup>114</sup>

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105 Articles 74, 98, Evidence Code. Court decisions on DNA testing are inconsistent. In March 2021, the Baghdad Court of Cassation insisted that a DNA sample from the (missing) father was necessary to prove paternity in an appeal on a decision from a court in Kirkuk. This was despite the existence of other proof of paternity. Other courts, however, have resorted to the use of DNA evidence from other paternal relatives, such as grandfathers or uncles, to help establish paternity. In subsequent decisions, the Court of Cassation has continued to deny the probative value of DNA obtained from other paternal relatives. However, this jurisprudence, contradicts some previous decisions of the Court from 2017 in which it held that DNA testing was adequate proof of paternity in the absence of the father. In March 2022, the Forensics Department of the Ministry of Health in Baghdad wrote to a court in Hawija asking that the applicant in paternity testing cases submit three DNA samples from paternal uncles. This practice has now been adopted by courts in Anbar, Ninewa and Kirkuk. In July of 2022, the High Judicial Council issued a letter to the Ministry of Migration and Displacement confirming the requirement of multiple DNA tests for paternity testing. See NRC, Civil Law Violations, p 14.

106 Articles 21 and 25, Evidence Code.

107 Article 74, Evidence Code.

108 Articles 98-102, Evidence Code.

109 Article 51, Personal Status Law.

110 Articles 27-33 and 59-63, Personal Status Law.

111 Articles 59-63 of Personal Status Law.

112 Chapter 7, Personal Status Law.

113 Articles 59-63, Personal Status Law.

114 Chapter 7, Personal Status Law.



Thalia from Haswa (Photo: Ahmad Kaka/NRC)

## 7.6 Visitation Rights

After divorce, the non-custodial parent continues to have the **right to visit and spend time with their child or children**.<sup>115</sup> If the parents cannot agree on visitation arrangements, the parents can apply to the Personal Status Court for an order confirming visitation arrangements.<sup>116</sup>

In making such decisions the Court will take account of the circumstances of the parents, their relationship with each other, any wrongdoing or breach of previous orders or promises by parents, their financial capacity and the history between the parties. In reaching a decision, the court will also prioritise the best interests of the child.<sup>117</sup> However, the child must reside overnight only with the custodial parent.

## 7.7 Travel with Children

There are no official policies which cover the rules and requirements on **travel with children**.<sup>118</sup> In practice, women in Iraq require permission from the child's father to travel abroad with their children, while there is no similar restriction imposed on men.<sup>119</sup>

The Federal Court of Cassation has ruled that the custodian does not have the right to travel with the child to another country for the purposes of migration in a way that would prevent the father from overseeing the child's upbringing and education.<sup>120</sup>

In contrast, Law No. 6 of 2015, which amended the Personal Status Law in the KRI, explicitly states that the custodial child's travel outside the country requires the consent of both parents.<sup>121</sup>

115 Chapter 57, Personal Status Law.

116 Chapter 58, Personal Status Law.

117 Chapter 59, Personal Status Law.

118 See for example, HRW, [Trapped: How Male Guardianship Policies Restrict Women's Travel and Mobility in the Middle East and North Africa](#), 18 July 2023.

119 HRW, [Trapped: How Male Guardianship Policies Restrict Women's Travel and Mobility in the Middle East and North Africa](#), 18 July 2023.

120 Article 57(2), Personal Status Law.

121 As indicated in Article 57(4), Personal Status Law.



## 7.8 Inheritance

The father, or other appointed guardian, acts as legal guardian for any possessions of the child, including **inheritance**. (*al-wilayat ala al-mal*). This includes managing, saving or investing any possessions of the child under guardianship, including any funds or properties.<sup>122</sup> However, the guardianship may be revoked if the legal guardian misuses the funds, there is a risk of the possessions being lost or the guardian is missing, imprisoned or arrested. In such cases a temporary guardian may be appointed. Nor may the legal guardian donate, invest in or sell the properties of the child without the approval of the Child Welfare Directorate.<sup>123</sup>

Generally, inheritance rights between men and women are unequal under principles of Sharia law and male siblings are entitled to inherit twice the amount of female siblings.<sup>124</sup> However, daughters are permitted to inherit an entire property in the absence of a son under the Personal Status Law.<sup>125</sup> This is applicable to both Sunni and Shia schools of law in Iraq.<sup>126</sup>

Children born of informal marriages and unregistered births whose parentage is not confirmed are unable to inherit property. As a further practical note, the Anti-Terrorism Law authorises confiscation of the property of alleged ISIS members. As such, children of alleged ISIS members may be unable to inherit property from their parents.

## 7.9 Children of Unknown Parentage

Where a **child is found abandoned**, local authorities, such as the police, are notified. The child is then taken to a designated facility or institution for immediate care and protection. This initial care is often provided by institutions under the authority of the Ministry of Labor and Social Affairs or specialized child welfare organizations.

The Child Welfare Directorate is responsible for overseeing the welfare and placement of children in state care. They are tasked with ensuring that children receive appropriate care and protection. The Directorate coordinates with other entities to manage the child's placement and support. In practice, the Directorate takes the following steps:

- **Family Search:** They first attempt to locate any extended family members or close relatives who might be able to take the child in. This search involves reviewing family records and reaching out to communities.
- **Guardianship:** If no family members are available, the Directorate may place the child with a guardian, which could be a close friend or someone from the community who is deemed suitable.
- **Institutional Care:** If no family or suitable guardians are found, the child may be placed in a childcare institution or foster care system, where they receive care and support until a more permanent solution is found.

The Juvenile Court must then conduct an investigation into the circumstances of the child, including where the child was found and any information that might identify the child or provide information about its parents, background or origin. If the identity and the parentage of the child remain unknown, the court will issue a decision choosing the name of the child, the date and place of birth, noting the institution where the child has been accommodated and the date on which the child was found.<sup>127</sup>

122 Article 48, Personal Status Law.

123 Article 43, Minor's Welfare Law.

124 Article 89, Personal Status Law.

125 Article 91(2), Personal Status Law.

126 Musawah, [Positive Developments in Muslim Family Laws](#).

127 Article 20(1), Unified National Card Law.





The court decision will then be sent to the Ministry of Health and the Directorate of Civil Status so that a birth certificate and proof of identity can be issued for the child with their chosen details, including name, date and place of birth. Additionally, when a child's parentage is unknown, the child will be considered an Iraqi Muslim citizen, unless proven otherwise.<sup>128</sup>

Once the identity and legal status of the child has been clarified, the Juvenile Court must issue a decision to place the foundling with a family, if requested. This is done in coordination and consultation with the Child Welfare Directorate. The court is required to send a copy of this decision to the Directorate of Civil Status for registration in their records. Additionally, an acknowledgment of lineage will be issued in accordance with the Juvenile Welfare Law. If a person of unknown parentage has not or cannot be placed with a suitable foster family, the Juvenile Court judge will order their placement in an orphanage or child welfare institution.

Iraqi law does not provide for adoption, only for guardianship arrangements, and either foster care with suitable carers or placement in an orphanage or child welfare institution. Thus, long-term care and custody typically involve family or institutional solutions rather than adoption.

## 7.10 Alternative Care Arrangements

Children who **cannot be cared for by their family or by extended family** will be placed in state care facilities, managed by the Social Welfare Department of the Ministry of Labour and Social Affairs. This includes orphans, children subject to abuse or neglect at home, children with special needs and children with difficult behavioural issues. State care facilities include residential care centres which provide housing, education and support as well as rehabilitation centres which additionally provide specialized programmes for children in conflict with the law or who need extra support.<sup>129</sup>

The State guarantees that children who cannot be cared for in their home environment will receive their needs met free of charge, including housing, clothing, food, healthcare, and suitable education. The Minister for Labour and Social Affairs is responsible for ensuring that every beneficiary of state care institutions is included in social welfare and security assistance programmes.

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128 Article 20(2), Unified National Card Law.

129 Article 29, Social Welfare Law No. 126 of 1980.



Ahmad out of school (Photo: Ahmad Kaka/NRC)



Photo: School in Sulaimaniya (Photo: Ahmad Kaka/NRC)

## 8. RIGHTS TO HEALTH, EDUCATION, SOCIAL WELFARE AND OTHER RIGHTS



The rights to health care<sup>130</sup> and education<sup>131</sup> are protected under the Iraqi Constitution.

### 8.1 Right to Health

The Public Health Law is one of the main laws regulating the right to health in Iraq.<sup>132</sup> It includes special protections for children, such as services in relation to school health. In addition, Iraq has introduced the Health Insurance Law which provides a mandate for the health insurance scheme in Iraq.<sup>133</sup>

#### 8.1.1 Health Care Services and Entitlements for Children

According to the Ministry of Health in Baghdad, **access to health care and medical assistance** does not require civil documentation, apart from for inpatient treatment.<sup>134</sup> In practice, proof of identity is typically necessary to access health services or visit a hospital, although practices vary throughout the country.

For children accessing health services, health providers often require a copy of the national ID of the mother as well as their marriage certificate. The birth certificate or national ID of the child must also be provided. Without such documents, health services are often denied.<sup>135</sup>

In some cases, hospitals have said that they will allow women to access hospitals for birth but will not issue birth certificates without the ID documents of both the mother and father. Without birth certificates, children cannot obtain vaccinations.<sup>136</sup>

130 Article 34, Iraqi Constitution.

131 Article 34, Iraqi Constitution.

132 Public Health Law No. 89 of 1981.

133 Health Insurance Law No. 22 of 2020.

134 NRC, [Paperless People of Post-Conflict Iraq; denied rights, barred from basic services and excluded from reconstruction efforts](#), 2019, p 13.

135 NRC Barriers from Birth, p 13.

136 NRC Barriers from Birth, p 13.



## 8.1.2 Children with Disabilities

The State is required to care for **persons with disabilities** and special needs and to help them integrate into society.<sup>137</sup> This includes the provision of appropriate educational support, such as inclusive educational programs and special needs schools. It also includes access to medical care, rehabilitation services and necessary medication. Families with disabled children are entitled to receive financial aid or allowances to help cover additional costs.

Finally, programs and initiatives aimed at integrating children with disabilities into society and ensuring their participation in community activities must be established. Article 30 of the Iraqi Constitution specifically guarantees social and health security to Iraqis in the case of disability.

The Social Welfare Law includes specific obligations on the State to care for persons with disabilities. This includes making efforts to reduce the incidence of disabilities in society and to provide care for those with physical and mental disabilities by rehabilitating them and preparing them for work according to their abilities, with the goal of integrating them into society.

The State is also obliged to care for those who are completely unable to work, addressing their material, health, social, and psychological needs.<sup>138</sup> Special care homes and institutions are to be established which are regulated by instructions issued by the Minister of Labor and Social Affairs.

## 8.2 Right to Education

### 8.2.1 Basic Education and Compulsory School Enrolment

**Primary education is mandatory**, and the state undertakes to combat illiteracy. Free education is guaranteed under the Constitution as a right for all Iraqis at all stages.<sup>139</sup> The right to education of minorities in their own languages, including Turkmen, Syriac, and Armenian, is guaranteed in government educational institutions in accordance with educational guidelines.<sup>140</sup>

### 8.2.2 Documents Required for School Registration

A copy of the unified national ID, or a copy of the data and photo pages of the passport of the student, is required for school registration. Students who are being transferred from another school should also provide transcripts from their previous schools. It may not be possible to sit exams or obtain graduation certificates unless the student has a unified national ID card.

Where the father is deceased, an official death certificate must be provided to the school administration. Where the father is missing, schools may require official proof. However, practice varies between schools.<sup>141</sup>

In the past, unregistered children were permitted access to schooling in some cases.<sup>142</sup> In February 2022, the Directorates of Education in Ninewa and Salah Al-Din governorates advised that undocumented children and children with incomplete civil documentation could continue their education and obtain official diplomas provided they submitted copies of their civil documents before the end of the school year.<sup>143</sup>

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137 Article 32, Iraqi Constitution.

138 Article 7, Social Welfare Law.

139 Article 34, Iraqi Constitution.

140 Article 4, Iraqi Constitution.

141 NRC, Paperless People, p 11.

142 NRC, Barriers from Birth, p 11.

143 NRC, Life on the Margins, p 15.



Remedial classes in Salahadin (Photo: Ahmad Kaka/RC)

## 8.3 Right to Social Welfare and Assistance

**The right to health and social security** are constitutionally guaranteed in Iraq.<sup>144</sup> Social security schemes are intended to help secure a basic income and appropriate housing for vulnerable groups, including special programmes of housing, care and rehabilitation.<sup>145</sup>

### 8.3.1 Social Welfare

Iraq's Social Protection Law outlines the social protection scheme in Iraq for families and individuals who live below the poverty line, as well as foreign nationals residing in Iraq permanently, continuously and legally.<sup>146</sup> Social protection is provided to certain vulnerable groups including those with disabilities and special needs, widows, unmarried young girls, the disabled, orphans and others.

### 8.3.2 Social Assistance

According to the Social Protection Law, every individual or family living below the poverty line has the right to receive cash benefits and social services.<sup>147</sup> In addition, there are two main social assistance programs in Iraq, namely (1) the Public Distribution System (PDS), which provides food rations to almost all households in the country; and (2) the Social Safety Net (SSN), a poverty-targeted conditional cash transfer.<sup>148</sup>

The **Public Distribution System (PDS)** is a social scheme which provides a monthly food ration to families who meet the eligibility criteria. It is managed by the Ministry of Trade. The head of the household must apply for a PDS or 'food ration card' which lists all members of the household.

The **Social Security Net** is provided to persons without any form of income. This includes female-headed households, households with no income and persons who are unemployed. Individuals or families eligible under the scheme are granted financial assistance for one year after which their case is re-assessed. The allowance is provided on a quarterly basis for a total amount of IQD270,000 to IQD315,000 (dependent upon family size) every three (3) months for one year.<sup>149</sup>

144 Article 30, Iraqi Constitution.

145 Article 30(2), Iraqi Constitution.

146 Social Protection Law No. 11 of 2014.

147 Article 6, Social Protection Law.

148 ILO Iraq, [Social Protection](#).

149 NRC, Paperless People, p 14.



**Unemployment assistance** is provided to any person between the ages of 18-45 without a job or income. Applicants can register online and choose between a loan of money, a donation of material or supplies or vocational training.

**A disability allowance** is provided to anyone with a medical certificate that proves he or she is the caregiver of a person with a disability rate above 50 per cent. The caregiver then receives a quarterly allowance of IQD105,000.<sup>150</sup>

Other government agencies within the Ministry of Labour and Social Affairs providing social assistance entitlements include the following:

- Authority for Rights of Persons with Disabilities and Special Needs,
- Child Welfare Directorate

To qualify for social assistance, applicants need to provide their unified national ID card for all household members, as well as a Residence card. Registration for all services is online.

## 8.4 Right to Freedom of Expression and Association

The Constitution guarantees **freedom of expression** in a way that does not violate public order and morality.<sup>151</sup> Additionally, the Constitution highlights the freedom to form and join associations, which must be regulated by law.<sup>152</sup>

## 8.5 Right to Social Development

The **right to culture** is protected under the Constitution which states that cultural activities and institutions should be promoted in a manner that befits the civilizational and cultural history of Iraq and which seeks to support indigenous Iraqi cultural orientations.<sup>153</sup> The practicing of sports is also guaranteed as a right of every Iraqi and the government undertakes to promote sporting activities by providing for their requirements.<sup>154</sup>

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150 NRC, Paperless People, p 15.  
151 Article 38, Iraqi Constitution.  
152 Article 39, Iraqi Constitution.  
153 Article 35, Iraqi Constitution.  
154 Article 36, Iraqi Constitution.



Feeding the chickens (Photo: Beate Simarud/NRC)

## 9. WORK RIGHTS AND CONDITIONS FOR CHILDREN



Iraq's labour laws set out basic rights and protections for **children of working age**. There are separate labour laws in Federal Iraq, which uses Labour Law No. 37 of 2015, and KRI, which uses the older Labour Code No. 71 of 1987. A new Labour Law is currently under discussion in KRI.

Iraq has also ratified several international conventions related to the regulation of child working rights and child labor, including the Convention on the Right of the Child, ILO Convention No. 138 on the Minimum Age of Employment (1973) and ILO Convention No. 182 on the Worst Forms of Child Labor (1999).

### 9.1 Working Age for Minors

The minimum working age in both Federal Iraq and KRI is 15.<sup>155</sup> Minors, even under the age of 15, who are engaged in a family enterprise are allowed to work provided they are under the authority or supervision of the minor's spouse, father, mother or sibling.<sup>156</sup>

Child labour is prohibited<sup>157</sup> and is punishable by imprisonment for up to six (6) months as well as a fine of IQD 1,000,000.<sup>158</sup> The Ministry of Labor is responsible for investigating cases of child labour.

### 9.2 Prohibited Work

Minors cannot be employed in sectors whose **nature or work conditions may harm their health, safety or morality**. This includes working with dangerous machinery, difficult or unhealthy environments, night work or mixed schedule work. Nor shall minors be present on premises where such work is carried out.<sup>159</sup> The terminology used in the law for Federal Iraq is almost identical in KRI where minors cannot be employed in any work which can lead to occupational or contagious disease or to serious contamination or work which presents a danger to the life, morality or health of the person.<sup>160</sup>

155 Article 15, Labor Law (Federal Iraq), Article 91, Labour Code (KRI).

156 Article 98, Labour Law (Federal Iraq), Article 96 of Labour Code (KRI).

157 Article 6, Labour Law (Federal Iraq).

158 Article 105, Labour Law (Federal Iraq).

159 Article 95, Labour Law (Federal Iraq).

160 Article 90, Labour Code (KRI).



### 9.3 Special Conditions and Entitlements for Minors

Minors must not work more than four (4) consecutive hours without a break and are entitled to 30 days of leave per year.<sup>161</sup> Within KRI, minors over 15 years old can be employed in day work, but not more than seven (7) hours per day. Minors who are 17 years of age can also be employed in night-work and overtime work.

### 9.4 Employer Obligations to Minors

Employers must organize a medical certificate for minors confirming their fitness to work.<sup>162</sup> The minor's physical health is subject to medical supervision until he or she has reached the age of 18 years or up to 21 years for occupations involving a high health risk.<sup>163</sup> Employers must maintain a register listing which minors are employed in the workplace.<sup>164</sup> Wages for minors are to be paid directly to them.<sup>165</sup>

### 9.5 Supervision of Workplaces Employing Minors

The respective Ministries of Labour in Federal Iraq and KRI are responsible for the supervision of workplaces employing minors. In situations in which minors are working underage, the employer must pay the minor the minimum wage and cover any work accidents or injuries suffered by the minor, regardless of who was at fault.<sup>166</sup> The employer will also be subject to imprisonment and fines.

161 Articles 98 and 99, Labour Law (Federal Iraq), Articles 93-94, Labour Code (KRI).

162 Article 96, Labour Law (Federal Iraq), Article 91, Labour Code (KRI).

163 Article 97, Labour Law (Federal Iraq).

164 Articles 93-94, Labour Code (KRI).

165 Article 49, Labour Code (KRI).

166 Article 102, Labour Law (Federal Iraq), Article 95 of Labour Code (KRI).



Getting some water (Photo: Itunu Kuku/NRC)



At play (Photo: Ahmad Kaka/NRC)



## 10. PROTECTIONS AGAINST ABUSE OF CHILDREN

### 10.1 Physical Abuse

The Constitution prohibits **all forms of psychological and physical torture and inhumane treatment as well as violence and abuse** in the context of the family, schools or within society more generally.<sup>167</sup> In KRI, the Family Violence Law of 2011<sup>168</sup> prohibits and punishes domestic violence, including corporal punishment and verbal abuse.

In addition, the Penal Code<sup>169</sup> and the Code of Criminal Procedure<sup>170</sup> prohibit the use of physical and psychological coercion in investigations, regardless of the age of the individual.<sup>171</sup> Similarly, corporal punishment is prohibited in detention and prison facilities.<sup>172</sup>

Exploiting the needs or inexperience of a person below the age of 18 for one's benefit at the cost of harm to that person is prohibited.<sup>173</sup> The Labor Law imposes a maximum penalty of six (6) months imprisonment and/or a fine of IQD 1,000,000 in respect of an individual who abuses children in the workplace.<sup>174</sup>

In addition, Iraq has implemented a number of broad initiatives and strategies to protect children from violence and abuse, as follows:

- a National Child Protection Policy, including increased availability of relevant services, improved human resourcing for child protection and gender-based violence case management and increased capacity of the social workforce directed towards the protection of children,
- the Iraq Monitoring and Reporting Mechanism for grave violations of child rights,

167 Articles 29(4) and 37(c), Constitution.

168 Iraqi Federal Law No. 8 of 2011.

169 Penal Code.

170 Code of Criminal Procedure Law No. 23 of 1971.

171 Article 333, Penal Code.

172 CPA Memorandum No. 2 Management of Detention and Prison Facilities 2003, Section 11(8).

173 Article 458(1), Penal Code.

174 Article 11(2), Labour Law of 2015.





- a national strategy for the release of children from participation in armed groups/forces and their reintegration,
- engagement with religious leaders with regards to social norms permissive towards child violence and child marriage,
- increased availability of child protection services,
- UNICEF-supported Gender Based Violence programming, which includes training for case workers to register and track cases effectively,
- mobile case management teams, established in cooperation with non-governmental organizations, to provide services, including case management support, to individuals located in Internal Displaced Person camps and other relevant locations.<sup>175</sup>

## 10.2 Sexual Abuse

The Penal Code contains various crimes against the **sexual abuse of children**, including penalties for rape, sexual assault and for sexual acts involving children, especially when force, threats or coercion are involved.<sup>176</sup>

The exploitation of children for sexual purposes is criminalized.<sup>177</sup> This includes the use of children in prostitution, pornography or any other form of sexual exploitation. Sexual harassment is prohibited in general, including of children.<sup>178</sup> The Penal Code also criminalises the corruption of minors which can include any form of encouraging or facilitating immoral acts, including sexual acts with minors.<sup>179</sup>

The trafficking of minors, which may involve the sexual exploitation of minors, is also punishable under the Penal Code.<sup>180</sup> Sexual abuse and harassment is prohibited in the context of the workplace, including in relation to working children.<sup>181</sup>

## 10.3 Neglect

Parents or legal guardians have **general responsibilities for the protection, welfare and care of children**. Any legal guardian or person with custody or obligations of necessary care towards a child under the age of 15 who abandons that child is punishable by law.<sup>182</sup> Persons who place children under the age of 15 in positions that endanger their health or cause them to suffer may be penalized.<sup>183</sup>

## 10.4 Trafficking of Children

The **trafficking of minors** is criminalized under the Penal Code<sup>184</sup> as well as under the Constitution.<sup>185</sup> This includes practices of forced labour or slavery. The Labor Law also prohibits the trafficking of children.<sup>186</sup>

175 UNICEF – Iraq – Child Protection, Sectoral and OR+ (Thematic) Report – January to December 2018; UNICEF, [Country Office Annual Report Iraq 2022](#).

176 Articles 393-400, Penal Code.

177 Article 401, Penal Code.

178 Article 402, Penal Code.

179 Article 403, Penal Code.

180 Article 443, Penal Code.

181 Article 1, Labor Law of 2015.

182 Article 398, Penal Code.

183 Article 399, Penal Code.

184 Article 443, Penal Code.

185 Article 37, Constitution.

186 Articles 9 and 11(2), Labour Law.



Um Aisha and family, Fallujah (Photo: Ahmad Kaka/NRC)

## 10.5 Recruitment of Children into Armed Conflict

There is no military conscription in Iraq and the minimum age for recruitment into the army is 18 years.<sup>187</sup> The only armed groups that are permitted to exist in Iraq are those operating under the control of the Iraqi government,<sup>188</sup> to which the minimum age of recruitment would apply. As part of its National Child Protection Policy, the government has adopted a national strategy for the release of children from participation in armed groups forces and their reintegration.<sup>189</sup>

## 10.6 Economic Exploitation of Children

In accordance with the Constitution, the **“economic exploitation of children in all of its forms shall be prohibited, and the State shall take the necessary measures for their protection.”**<sup>190</sup> The employment of children under the age of 15 is prohibited under the Labour Law<sup>191</sup> and child labour is expressly penalized.<sup>192</sup> Children between 15 and 18 cannot be employed in any work which may harm their health, safety or morality, such as hazardous or dangerous work.<sup>193</sup>

Trafficking of children<sup>194</sup> and the sexual exploitation of children, including for economic purposes such as pornography or prostitution, is criminalised.<sup>195</sup> The Anti-Trafficking Law No. 28 of 2012 criminalizes unpaid and forced labor.<sup>196</sup>

## 10.7 Protection of Children in Media and Access to Information

The right to personal privacy is protected under the Constitution and this arguably applies to the protection of a person's privacy online and in social media.<sup>197</sup>

187 Article 1(4), Military Service Law of 1969.

188 Article 9(b), Constitution.

189 UNICEF – Iraq – Child Protection, Sectoral and OR+ (Thematic) Report – January to December 2018; UNICEF, [Country Office Annual Report Iraq 2022](#).

190 Article 29, Iraqi Constitution.

191 Article 7, Labour Law.

192 Article 6, Labour Law.

193 Penal Code.

194 Article 443, Penal Code.

195 Article 401, Penal Code.

196 Anti-Trafficking Law No. 28 of 2012.

197 Article 17, Iraqi Constitution.



The current Iraqi legal framework does not specifically protect the privacy of children online or provide protection against cyberbullying or other harmful practices, although there are protections against the sexual exploitation of children generally.<sup>198</sup> The future Child Law may include protections for children in the media and online.

## 10.8 Rehabilitation and Re-integration of Child Victims

The Yazidi Female Survivor's Law provides special protection and support to women and girls who have been subjected to crimes of sexual violence including kidnapping, sexual slavery, sale in slave markets, family separation, religious conversion, forced marriage, pregnancy and forced abortion or the infliction of physical and psychological harm by ISIS from the date of 3 August 2014.<sup>199</sup>

The law applies not just to Yazidis, but also to members of the Christian, Turkmen and Shabak communities subjected to the same crimes, to children who were kidnapped by ISIS and to survivors of mass killings.<sup>200</sup>

A special General Directorate within MoLSA is established to help administer compensation, rehabilitation and reintegration schemes. Services to be provided include schemes for care and support of victims, provision of health services, including psychological rehabilitation centres, educational and employment opportunities for female survivors and their children. Additionally, continuing efforts must be made to locate missing persons and to identify the remains of victims.<sup>201</sup> A monthly pension must be paid to survivors and a plot of land or a free housing unit is to be allocated to them.<sup>202</sup>

The government has adopted a national strategy for the release of children from participation in armed groups forces and their reintegration

## 10.9 Mandatory Reporting of Child Abuse

Whilst there is no legal framework requiring reporting of actual or suspected child abuse or neglect, the UN Protection Cluster (UN GBV Sub-Cluster) have noted that institutions may have policies in place that require employees to report such cases to the police or management.<sup>203</sup>

All government employees are required to report crimes, both misdemeanors and felonies, to the police. Such crimes can include rape, sexual assault and even neglect, under the Penal Code. This would cover all public officials including public school teachers and government-employed social workers. Government employees who are obliged to report such matters but choose not to report them, may be subject to detention or fine.<sup>204</sup>

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198 Article 401, Penal Code.

199 Article 1, Yazidi Female Survivors Law of 2021. See English translation: [Yazidi Female Survivors Law](#).

200 Article 2, Yazidi Female Survivors Law.

201 Article 5, Yazidi Female Survivors Law.

202 Article 6, Yazidi Female Survivors Law.

203 GBV Sub-Cluster, UNFPA, p 20, [SOP for Prevention and Response to GBV in KRI](#).

204 Article 247, Penal Code.



Camp Kids (Photo: Ahmad Kaka/NRC)

## 11. JUVENILE JUSTICE



The Penal Code,<sup>205</sup> Juvenile Welfare Law,<sup>206</sup> and the Code of Criminal Procedure<sup>207</sup> all contain important provisions and protections in relation to juvenile justice.

### 11.1 Age of Criminal Responsibility

The **age of criminal responsibility** in Iraq is nine (9) years of age,<sup>208</sup> whilst in the KRI it is 11 years.<sup>209</sup> Criminal proceedings cannot be brought against a person who is under the age of criminal responsibility at the time of his or her commission of an offence. According to the new draft of the Juvenile Welfare Law, the age of criminal responsibility in Federal Iraq will be raised to 11 years.

### 11.2 Special Principles for Dealing with Juvenile Offenders

When minors (or juveniles) are arrested or detained, their families must be informed of this, and the reason for arrest provided as soon as possible. Juveniles must be tried in closed sessions which are not open to the public, and in the presence of their parent, guardian or relative, as well as their defence lawyer. Relevant employees of government agencies providing social and health services, or associations concerned with juvenile affairs, may also be present.<sup>210</sup>

### 11.3 Juvenile Courts

Juvenile Courts are established to deal with crimes and offences involving juveniles. If a juvenile reaches the age of 18 during the investigation, he or she is referred to the Court of Misdemeanors. If he or she reaches this age after being referred to the Juvenile Court, then the Juvenile Court will continue to hear the case.<sup>211</sup>

205 Penal Code.

206 Juvenile Welfare Law No. 76 of 1983.

207 Code of Criminal Procedure Law No. 23 of 1971.

208 Article 39, Penal Code; see also Article 47, Juvenile Welfare Law.

209 KRI Law No 14 of 2001.

210 Article 58 of Juvenile Welfare Law No. 76 of 1983; also Article 238 of Code of Criminal Procedure of 1971.

211 Article 233, Code of Criminal Procedure; see also Article 79 of Juvenile Welfare Law No. 76 of 1983.



## 11.4 Criminal Procedures for Juvenile Offenders

The investigating judge shall carry out the initial investigation and is responsible for ensuring the legal protection of the rights of the juvenile during the criminal process.<sup>212</sup> Due to their age and reduced mental awareness of the nature and consequences of their actions, juveniles are considered as a vulnerable group and judges must ensure that juveniles understand the process and any offences they are charged with or are being investigated for.

The judge must provide an opportunity for the juvenile and his or her guardian to speak before the court, with adequate time to prepare for this. Juveniles must be made aware of their constitutional and legal rights which include the right to remain silent, the right to freely appoint a lawyer and the right to have his or her case heard promptly and without undue delay.<sup>213</sup>

The juvenile may be interrogated only after he or she has been informed of the right to have his or her lawyer present during the interrogation. Every person accused of a felony or misdemeanour in Iraq shall have a defence lawyer appointed by the court at the cost of the State.<sup>214</sup>

## 11.5 Reform and Care Measures for Juveniles

If a pre-adolescent (i.e. a juvenile over nine (9) years old but under 15 years of age) commits a felony punishable by life imprisonment or death, the Juvenile Court can decide to place him or her in a rehabilitation school for pre-adolescents for five (5) years.<sup>215</sup>

The following centres have been established for the rehabilitation of juveniles convicted of offences:

- The **Observation House** in which juveniles are detained, by order of the court or the competent authority, for purposes of a physical and mental examination and a study of their character and conduct by the Office for Character Studies in preparation for their trial,
- The **Rehabilitation School for Pre-adolescents**, a reform school in which pre-adolescents are placed for the period specified in the court decision in order to support their vocational or educational rehabilitation and social reintegration,
- The **Rehabilitation School for Adolescents**, a reform school in which adolescents are placed for the period specified in the court decision in order to support their vocational or educational rehabilitation and social reintegration,
- The **School for Adult Youth**, a school in which persons over 18 years of age are placed after being convicted in order to support their vocational or educational rehabilitation and social reintegration,
- The **Juvenile Rehabilitation Centre** in which juvenile vagrants or delinquents are placed, by order of the Juvenile Court, until they reach the age of 18 years. Attached to the Centre is a wing for young adult females, where a homeless or behaviorally delinquent young woman, or one who has completed her term but lacks family care, is housed until she turns 22, or until her situation becomes more secure, including, through marriage, returning to her family, or through finding suitable employment.<sup>216</sup>

212 Article 52(a), Code of Criminal Procedure.

213 Heartland Alliance, [Guidelines for Judges and Prosecutors on the Juveniles Welfare Act No 6 of 1983](#).

214 Article 19(11), Iraqi Constitution.

215 Article 10, Juvenile Welfare Law No. 76 of 1983.

216 Article 10 of Juvenile Welfare Law.



## 11.6 Police Special Procedures

The Penal Code<sup>217</sup> and the Code of Criminal Procedure, No. 23 of 1971 prohibits the use of physical or mental coercion during the conduct of investigations.<sup>218</sup>

Every decision, procedure or judgment in relation to the investigation or prosecution of a juvenile must be communicated to the juvenile and his or her parents or guardians where possible.<sup>219</sup>

## 11.7 Detention of Juveniles

Juveniles can be detained for a misdemeanor or felony offence, for the purpose of an investigation or where they cannot be released on bail. If they are accused of an offence punishable by death, and they are more than ten (10) years old, then detention is mandatory.<sup>220</sup>

A judge shall not order the detention of juveniles in the investigative stage unless; (i) there is a fear that the juvenile might abscond, (ii) if his or her release might have a negative impact on the procedures of the investigation or (iii) if his or her release might cause harm to his or her life.<sup>221</sup>

The arrest of a juvenile is governed by the Juvenile Welfare Law.<sup>222</sup> For example, it is not permissible to detain juveniles accused of misdemeanors punishable by imprisonment for a period of three (3) years or less or a fine as long as he or she has a known address of residence and has a guarantor. However, juveniles shall be detained if the investigating judge or the court believes on reasonable grounds that there is a risk to his or her life, physical or psychological wellbeing.<sup>223</sup>

## 11.8 Implementation and Other Issues

The laws on criminal procedure for juveniles are contained within the same procedural acts for adults, with separate chapters indicating where additional or different practices are applicable due to the age of the accused.

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217 Articles 332 and 333, Juvenile Justice Law.

218 Article 127, Code of Criminal Procedure.

219 [Guidelines for Judges and Prosecutors on the Juveniles Welfare Act No 6 of 1983.](#)

220 Article 236, Criminal Procedure Code.

221 [Guidelines for Judges and Prosecutors on the Juveniles Welfare Act No 6 of 1983.](#)

222 Article 52, Juvenile Welfare Law.

223 [Guidelines for Judges and Prosecutors on the Juveniles Welfare Act No 6 of 1983.](#)



No birth certificate (Photo: Ahmad Kaka/NRC)



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