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# REPORT ON CITIZENSHIP LAW: IRAQ

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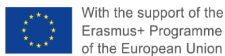
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# Report on Citizenship Law

## Iraq

*Abdullah Omar Yassen<sup>1</sup>*

### 1. Introduction

Nationality (جنسية *jinsiya*) is a legal, political and emotive bond that binds individuals to states and is the means that distributes individuals between countries.<sup>2</sup> Nationality is the component that determines the people in every country. People who hold the nationality of a specific country are considered its citizens. By contrast, those who do not hold the nationality of the same country are foreigners, even if they have permission to remain in the country. This emerges from an exchange of rights and duties. Nationality brings privileges, legal standing, and respectful spiritual nationality between the various components of the State. Therefore, nationality is not only a document that can be granted or withdrawn from an individual, but a pledge which is much more than a document: nationality is a legal, political, emotive and social bond. It brings material and natural obligations, creating a pledge and birth of allegiance from an individual to the state. It brings with it an exchange of rights and obligations from the individual to the state and vice versa. Nationality is thus founded on three pillars: the state, the individual, and the legal and political bond.<sup>3</sup>

This report introduces some of the most fundamental concepts, trends and challenges with regard to nationality in Iraq. In particular, it discusses the history of Iraq's nationality law, alongside important events which have influenced the legislation, such as the Ottoman Empire's role in the enactment of the first nationality law. The country has undergone substantial geo-political and social turmoil and been involved in several civil and international wars and armed conflicts with neighbouring countries.<sup>4</sup> Due to systematic discrimination and the Arabisation campaign, Iraq has always had a complicated relationship with the notion of nationality and which individuals and groups to determine as nationals. Therefore, the understanding of the provisions and definitions of who is and is not regarded as an Iraqi national is challenging and needs to be understood in the historical context. Post-2003,

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<sup>2</sup> In Arabic, the word nationality translates as *jinsiya*. There are other Arab terms of nationality that refer to concepts such as identity, belonging and nationality, but *jinsiya* refers to the concept of a legal bond between an individual and a State, which is the term on which this report focuses its analysis.

<sup>3</sup> (46) 12 (2010) فقد الجنسية العراقية، رعد مقداد محمود، Rafidain Of Law Journal، 85-134

<sup>4</sup> For a comparative study of the citizenship in the Middle East countries and North Africa, see Zahra Albarazi, 'Regional Report on Citizenship: The Middle East and North Africa (MENA) Comparative Report' (RSCAS/GLOBALCIT-Comp, 2017/03, November 2017).

however, domestic nationality legislation and policies have been developed and implemented and now reflect a broader and more internationalised concept of nationality.

The report thus critically reviews the multifaceted reality of nationality in Iraq, first by discussing regional dynamics in the history of nationality regulation, particularly with regards to the questions of colonial history, migration, conflict and more recent regional turmoil. The report then critically analyses Iraq's current nationality regime by highlighting the legal problems surrounding it, and then assesses the current law on the acquisition and loss of nationality included in the GLOBALCIT databases. After discussing Iraq's laws and policies, the report highlights how these laws and policies are implemented in practice —potentially painting a very different picture that one has to keep in mind when contextualising the analysis. The report ends with a summary of current political debates around Iraqi nationality law and proposed reforms.

## 2. Historical Background and Changes

In ancient times, the lands that now constitute Iraq were known as Mesopotamia, a region whose extensive alluvial plains gave rise to some of the world's earliest civilisations, including those of Sumer, Akkad, Babylon, and Assyria. This vibrant region later became a valuable part of larger imperial polities, including Persian, Greek, and Roman dynasties, and after the 7th century it became a key part of the Islamic world. Iraq's capital, Baghdad, became the capital of the 'Abbāsīd caliphate in the 8th century, but modern Iraq was created following World War I from the Ottoman provinces of Baghdad, Basra, and Mosul. Its name comes from the Arabic term used in the premodern period to describe a region that roughly corresponded to Mesopotamia ('Irāq 'Arabī, 'Arabian Iraq'), and modern north-western Iran ('Irāq 'Ajamī, 'foreign [i.e., Persian] Iraq').<sup>5</sup>

Iraq became independent in 1932 but remained under British influence during the next quarter of a century. Political instability on an even greater scale followed the overthrow of the monarchy in 1958, but the installation of an Arab nationalist and socialist regime—the Ba'ath Party—in a bloodless coup ten years later brought new stability. With proven oil reserves second in the world only to those of Saudi Arabia, the regime was able to finance ambitious projects and development plans throughout the 1970s and to build one of the largest and best-equipped armed forces in the Arab world. The party's leadership, however, was quickly assumed by Saddam Hussein, an ostentatious and ruthless autocrat who led the country into the Iran-Iraq War (1980–88) and the Persian Gulf War (1990–91). These conflicts left Iraq isolated from the international community and financially and socially drained; however, through unprecedented coercion directed at major sections of the population, particularly the country's disfranchised Kurdish minority and the Shia majority, Saddam stayed in power into the 21st century, before being toppled in 2003 during the Iraq War.<sup>6</sup>

<sup>5</sup> "دراسة": العراقية الجنسية قانون في والقديم نهاد ، الجديد محمد سناريا (Sulaymānīyah, 2009).

<sup>6</sup> Richard L. Chambers, Gerald Henry Blake and Others, 'Iraq' (Encyclopædia Britannica, 8<sup>th</sup> October 2020). Available at: <<https://www.britannica.com/place/Iraq>> Accessed on 11 January 2021.

## 2.1 The Ottoman Empire Period

For a very long time, the Ottoman Empire took control of most parts of Arabia, including Iraq. Those who lived under the Ottoman Empire were considered citizens (المواطنون Al-muathnun) and the Muslim people of the Ottoman-occupied territories were considered (المستأمنون, Al-mustaminun: trustees).<sup>7</sup> However, non-Muslims were considered (الذميون Dhimmi), and this group of people were foreigners (الأجانب: Al-ajaneb).<sup>8</sup> As a Muslim country, Iraq was subjected to these same principles. Due to the proximity and its close ties of the Ottoman Empire to the West, there was hospitality and welcoming among Ottoman citizens towards trustees; moreover, the interference of Western states in the Ottoman Empire resulted in the expansion of the rights of trustees and exemption from taxes. When the non-Muslims saw the rights and privileges offered to trustees, they also called for similar treatment and asked the Western states to intervene similarly on their behalf. Therefore, the Sultan of the Ottoman Empire sensed danger and ordered a decree in 1839 called Supreme Edict of the Rosehouse (خط طولخانة Edict of Gülhane),<sup>9</sup> which outlined that there should be equality of rights between Muslims and non-Muslims. Following this, the Ottoman Empire provided citizenship rights to those under its care.<sup>10</sup> It took reform in this direction and declared Imperial Reform Edict (Islâhat Hatt-ı Hümâyûnu خط الهمايون ) in 1856.<sup>11</sup> According to this decree, all those under the care of the Ottoman Empire were given equal rights and duties, such as being able to hold official and serving military positions.<sup>12</sup>

This was the first time that a State exercised sovereignty over individuals without discrimination based on religion, resulting in the separation of religion from nationality through the enactment of the Ottoman Nationality Law of 1869. This law enshrined how everyone is entitled to nationality in the Ottoman Empire, whether Muslim, Christian, or Jewish. The law was enforceable in Iraq and the countries within the Ottoman Empire, and in Iraq the law remained valid until independence and its recognition by Turkey (in accordance with Article 30 of the Treaty of Lausanne in 1923 between Turkey and the Coalition). This provision confirms that ‘Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory is transferred’.<sup>13</sup> As a result, the first Iraqi Nationality Law No. 42 of 1924 was passed, called the nationality establishment. According to this law, all those within the bounds of Iraqi jurisdiction automatically acquired Iraqi citizenship.

<sup>7</sup> The trustee is the person who enters the Islamic lands without the intention of continuing to reside there. Rather, his residence is limited to a specific period, in which he enters in the name of a contract called ‘security contract’ or once security is granted, and that is usually with the intention of trafficking. The rule of these people is not to desert or fight, and not to take the tribute from them.

<sup>8</sup> *Dhimmi*: A non-Muslim living under the protection of a Muslim state. He is exempt from the duties of Islam like military service and *zakaah* but must instead pay a tax called *jizyah*. In English, it is commonly referred to as Zakat. BBC, ‘Zakat: charity’ (2009). Available at:

<<https://www.bbc.co.uk/religion/religions/islam/practices/zakat.shtml>> accessed 1<sup>st</sup> April 2021.

<sup>9</sup> (2011) Page 86. الحقوق العراقي اللواء الجنسية قانون شرح في الياسري ، الوافي طاهر السيد ياسين

<sup>10</sup> Cleveland, William L; Bunton, Martin P, A History of the Modern Middle East ( 4<sup>th</sup> Edition, Boulder, CO : Westview Press, 2009) 83.

<sup>11</sup> Ibid. see also, الخط الهومايوني وإصلاحات السلطان عبد الحميد الثاني,

28 December 2015 Available at: <<https://www.turkpress.co/node/16907>> Accessed 11 January 2021.

<sup>12</sup> Herbert J. Liebesny, ‘The Law of the Near and Middle East: Readings, Cases and Materials’ ( Albany: State University Press of New York, 1975) pp 49-52.

<sup>13</sup> Treaty of Peace with Turkey Signed at Lausanne, July 24, 1923. Available at:

<[https://wwi.lib.byu.edu/index.php/Treaty\\_of\\_Lausanne](https://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne)> Accessed 11 January 2021.

### 2.1.1 *Transition to Independence and the Ba'ath Party Period*

The Iraqi Nationality Law of 1924 was drafted by British officials and approved by the Iraqi State. However, the law undermined the notion of equal citizenship when it categorised Iraqi citizens on the basis of the citizenship they had held under Ottoman rule.<sup>14</sup> Afterwards, Laws No. 1 of 1950 and No. 12 of 1951 were also adopted in respect of Jewish people who emigrated to Israel. The former entitled ‘Supplement to Ordinance Cancelling Iraqi Nationality’. Article One stipulated that ‘the Council of Ministers may cancel the Iraqi nationality of an Iraqi Jew who willingly desires to leave Iraq’.<sup>15</sup> This law, therefore, deprived Jews of their Iraqi nationality. In fact, a year later, the Iraqi government adopted Law No. 5 of 1951 entitled ‘A Law for the Supervision and Administration of the Property of Jews who have Forfeited Iraqi Nationality’. This law went further by depriving Jews of their property and froze their assets, subsequently expanding on the confiscation of assets and property of Jews who ‘forfeited Iraqi nationality’.<sup>16</sup> From 1949 to 1951, 104,000 Jews were evacuated from Iraq in Operations Ezra and Nehemiah; another 20,000 were smuggled out through Iran. Thus, a community that had reached a peak of some 150,000 in 1947 dwindled to a mere 6,000 after 1951.<sup>17</sup>

Eventually, the Nationality Law No. 42 from 1924, legislated after the establishment of the Iraqi State, was repealed and replaced by Article 22 of the Iraqi Nationality Law No. 43 in 1963. This law was enacted due to the deficiencies in the 1924 Nationality Law and included new provisions borrowed from the nationality laws of certain Arab countries, and provisions required by the public interest. However, the law also sparked widespread controversy, especially after the change in the Iraqi political system, including amendments made to it by the dissolved Revolutionary Command Council. The Ba'ath Party period was based on exclusion, discrimination, and the hardening of ethnic and sectarian identities, achieved through the drafting and implementation of various laws. For example, Law No. 5 of 1975 Granting Iraqi Nationality to Arabs was adopted because of the 1974 Eighth Regional Conference of the Arab Socialist Ba'ath Party. The law contained only two articles and was established to give importance to Arabs by granting Iraqi nationality, in order to strengthen ties with Arabs in various other countries. The law also sought to build objective foundations for the establishment of unity among Arab people in all their territories and to remove the artificial borders imposed by the coloniser. However, Palestinian citizens were not entitled to this law.<sup>18</sup> This period saw the expulsion of anyone who was deemed a threat to Saddam's dictatorship and party. Minority and ethnic groups such as Faili Kurds were expelled and arbitrarily deprived of their nationality due to race and ethnicity (see Section 0). The government vowed that anyone deemed disloyal to Iraq would be forcibly expelled. What made these practices even more a form of ethnic cleansing was the fact that the government adopted policies and

<sup>14</sup> Zainab Saleh, ‘On Iraqi Nationality: Law, Citizenship, and Exclusion’ (Spring 2013) 21(1) *The Arab Studies Journal* 49.

<sup>15</sup> Law No. 1 of 1950 entitled “Supplement to Ordinance Canceling Iraqi Nationality”, Official Iraqi Gazette, March 9, 1950. Arabic version available at: <<http://iraqlid.hjc.iq/LoadLawBook.aspx?SC=310120067155128>> Accessed 11 January 2021.

<sup>16</sup> Section 2(a) of the Law No. 5 of 1951 entitled “A law for the Supervision and Administration of the Property of Jews who have Forfeited Iraqi Nationality” (Official Gazette, 10 March 1951, English version, p.17). Arabic version available at: <<http://iraqlid.hjc.iq/LoadLawBook.aspx?page=2&SC=120120017421627&BookID=27278>> Accessed on 11 January 2021.

<sup>17</sup> Justice for Jews from Arab Countries, Iraq. Available at: <<http://www.justiceforjews.com/iraq.html>> Accessed 11 January 2021.

<sup>18</sup> This law was repealed by Article 21(b) of the Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <<https://www.refworld.org/docid/4b1e364c2.html>> Accessed 11 January 2021.

passed laws to prioritise Arab Sunnis above all other groups in the country, such as Kurds, Shia and other minorities.

During the turbulence of the Gulf War, the Iraqi government adopted a legislation in the Nationality and Civil Information Law No. 46 of 1990. This law contained 84 articles and was adopted to define the legal link between the individual and the State, and to determine how to acquire, lose and restore Iraqi nationality. The purpose of this law was to establish a unified national identity and civil number to replace the Iraqi nationality certificate and ID card issued in accordance with Law No. 65 of 1972. Although this law was adopted by parliament, it was never enforced due to the Gulf War in 1991 and the uprising of the Kurds in the north and Shias in the south.<sup>19</sup>

### 3. Current Citizenship Regime after the Saddam Dictatorship

The removal of the Saddam regime resulted in Coalition and Iraqi law makers drafting a new constitution for Iraq. The new Iraqi nationality Law No. 26 of 2006 was enacted by parliament and approved by the Presidency Council after the ratification of the new constitution in 2005. The drafters of the new nationality law attempted to resolve many of the problems created by the old and abolished Law No. 43 of 1963 (Amended).<sup>20</sup> Therefore, changing this law was a priority for the Iraqi parliament after the fall of the previous regime in 2003 and, indeed, the law and all the decisions related to it were formally repealed by the Iraqi parliament. Law No. 26 of 2006 was Iraq's first nationality law following the removal of the Ba'ath Party and Saddam Hussein's regime. It addresses the issues of those Iraqi citizens who the old political regime had denationalised and deprived of their original Iraqi nationality, such as the Faili Kurds, and others who had been denaturalised on political, religious, racist or sectarian grounds. The law was adopted both to unify the provisions of Iraqi nationality and repeal texts which revoked nationality for those who had acquired another. In so doing, the law reinstated Iraqi nationality for those who had been arbitrarily stripped of nationality during the regime, to encourage Iraqis in exile to return, despite having another nationality.

Certain features of the current Law No. 26 of 2006 were unavailable in the abolished Law No. 43 of 1963. The new law considers the developments and evolution of politics, economy and society in Iraq due to the regime change and the collapse of Ba'ath Party, and the occupation of US and Allied forces in 2003. The law established laws and principles that were non-existent in previous laws in respect of nationality, such as holding multiple nationalities, and, in disputes on nationality matters, thus enabling individuals to appeal before the competent Iraqi courts, such as the Court of Administration.

Article 18 of the Iraqi Constitution 2005 discusses Iraqi citizenship and nationality law and stipulates that 'Iraqi citizenship is a right for every Iraqi and is the basis of his nationality'. Unlike previous laws on nationality, Article 10(1) of the current Law No. 26 of 2006 and Article 18(4) of the current Constitution allow that 'an Iraqi may have multiple citizenships'.<sup>21</sup> However, although Article 9(4) notes that everyone who holds a senior security or sovereign position must abandon any other acquired citizenship, this provision has not been implemented

<sup>19</sup> This law was repealed by the Article 21(c) of the Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <<https://www.refworld.org/docid/4b1e364c2.html>> Accessed 11 January 2021.

<sup>20</sup> This law was repealed by the Article 21(a) of the Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <<https://www.refworld.org/docid/4b1e364c2.html>> Accessed 11 January 2021.

<sup>21</sup> Constitution of the Republic of Iraq [Iraq], 15 October 2005. Available at: <<https://www.refworld.org/docid/454f50804.html>> Accessed 11 January 2021.



in practice.<sup>22</sup> This may be due to the lack of stability, security and politics in a country where many compatriot politicians do not see Iraq as their long-term home, since many opposed the Saddam regime and returned after the occupation of Iraq by the US and other forces. This is true of the current Iraqi president and prime minister, both of whom hold UK citizenship.

Article 6(3) of the Nationality Law and Article 18(5) of the Constitution note that ‘Iraqi citizenship shall not be granted for the purposes of the policy of population settlement that disrupts the demographic composition of Iraq’.<sup>23</sup> The drafters included this provision due to the policies of Arabisation adopted by the previous regime, and there was fear among minorities that a similar policy would be practised. In the case of disputes arising from nationality provisions, it is the administrative courts which consider the matter.<sup>24</sup> Article 37 of the Iraqi Civil Code No. 40 of 1951 also notes that nationality law matters are regulated by ‘a separate law’ (one specific to nationality issues, i.e. the Nationality Law) in the country.<sup>25</sup> As noted above, this provision was a step forward in comparison to previous laws that did not provide extensive rights and privileges concerning nationality and citizenship.

Despite such efforts, the Iraqi Nationality Law No. 26 of 2006 has attracted many legal and political criticisms, especially regarding dual nationality. In addition, the law contains other controversial cases regarding imposing original nationality and granting nationality through having an Iraqi mother, as well as other legal disputes related to the recovery of a lost nationality and many other legal problems. In addition, the law still does not provide Iraqi nationality to Palestinians to ensure their right to return to their homeland.<sup>26</sup>

However, in 2017 an amendment was made to this law, whereby the drafters exempted Palestinian women married to Iraqi men, giving them Iraqi nationality to retain the unity of the family.<sup>27</sup> It is worth noting here that Palestinian refugees in Iraq are not covered by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) mandate as they are outside its areas of operation.<sup>28</sup>

<sup>22</sup> The Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <<https://www.refworld.org/docid/4b1e364c2.html>> Accessed 11 January 2021.

<sup>23</sup> Article 18(5) of the Constitution of the Republic of Iraq [Iraq], 15 October 2005. Available at: <<https://www.refworld.org/docid/454f50804.html>> Accessed 11 January 2021

<sup>24</sup> Ibid., Article 18(6); Article 19 of the Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <<https://www.refworld.org/docid/4b1e364c2.html>> Accessed 11 January 2021.

<sup>25</sup> Iraq: Civil Code [Iraq], No. 40, 18 September 1951, available at: <<https://www.refworld.org/docid/55002ec24.html>> accessed 14 April 2021.

<sup>26</sup> Article 6(2) of the Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <<https://www.refworld.org/docid/4b1e364c2.html>> Accessed 11 January 2021.

<sup>27</sup> 2017 First Amendment of the Iraqi Nationality Law No. 26 of 2006. Available at: <<https://ar.parliament.iq/2019/03/11/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%AA%D8%B9%D8%AF%D9%8A%D9%84-%D8%A7%D9%84%D8%A7%D9%88%D9%84-%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%AC%D9%86%D8%B3%D9%8A%D8%A9-%D8%A7%D9%84/>> Accessed 11 January 2021.

<sup>28</sup> “UNRWA is a United Nations agency established by the General Assembly in 1949 and mandated to provide assistance and protection to some 5.4 million Palestine refugees registered with UNRWA across its five fields of operation. Its mission is to help Palestine refugees in Jordan, Lebanon, Syria, West Bank, including East Jerusalem and the Gaza Strip achieve their full human development potential, pending a just and lasting solution to their plight”. Available at: <<https://www.unrwa.org/>> accessed 14 April 2021.

#### 4. Acquisition of Nationality: *ius sanguinis*

The acquisition of nationality is '[a]ny mode of becoming a national, i.e. by birth or at any time after birth, automatic or non-automatic, based on attribution, declaration, option or application'.<sup>29</sup> The principle of *ius sanguinis* is,

the determination of a person's nationality on the basis of the nationality of their parents (or one parent or one particular parent) at the time of the target person's birth and at the time of acquisition of nationality by the target person (the two points in time are different in cases of acquisition after birth).<sup>30</sup>

Iraq's Nationality Law is based on the *ius sanguinis* doctrine, with nationality passed on from parent to child. However, a child born in Iraq does not automatically acquire Iraqi nationality. There is also no provision for acquisition of nationality through birth in a territory for a child who would otherwise be stateless (e.g. born to stateless parents or to parents who cannot confer nationality). As such, the European Network on Statelessness and the Institute on Statelessness and Inclusion notes that 'statelessness is an intergenerational issue in Iraq'.<sup>31</sup>

Iraq's Nationality Law clearly states the conditions for the acquisition of Iraqi nationality. Article 3 provides for the acquisition of Iraqi nationality to a child born inside or outside of Iraq to an Iraqi father or mother, or one who is born in Iraq to unknown parents, that is, a child who is 'A foundling found in Iraq shall, in the absence of proof to the contrary, be considered to have been born therein'.<sup>32</sup>

Article 4 adds that the Minister of Interior may consider Iraqi any person born outside Iraq to an Iraqi mother and an unknown or stateless father, if the child chooses Iraqi nationality, within one year of coming of age (reaching the age of maturity), provided that she/he is residing within Iraq at the time of application for the Iraqi nationality.<sup>33</sup> This provision has been criticised for giving the power of authorisation to the Minister to consider granting nationality to a child born to an Iraqi mother outside Iraq, if the father is unknown or stateless. The language in this provision contradicts Article 3, which allows all children of an Iraqi mother to acquire nationality as a matter of right, regardless of place of birth.

In practice, Iraqi women only enjoy the same rights as men to confer their nationality to their children if the child is born in the territory of Iraq. Unlike Article 18(2) of the Iraqi Constitution,<sup>34</sup> Articles 3–4 of the Nationality Law discriminate on the basis of gender with regards to the acquisition of nationality. The UNHCR notes that 'this discrimination is unjustified and is furthermore in violation of Article 14 of the Iraqi Constitution that stipulates

<sup>29</sup> Migration and Home Affairs, *ius sanguinis*. Available at <[https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_search/ius-sanguinis\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/ius-sanguinis_en)> Accessed 11 January 2021.

<sup>30</sup> Migration and Home Affairs, 'Acquisition of Citizenship'. Available at <[https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_search/acquisition-citizenship\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/acquisition-citizenship_en)> Accessed 11 January 2021.

<sup>31</sup> Stateless Journeys, Statelessness in Iraq (Country Position Paper, November 2019). Available at: <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iraq-final.pdf> Accessed 3 January 2021.

<sup>32</sup> Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <<https://www.refworld.org/docid/4b1e364c2.html>> Accessed 11 January 2021.

<sup>33</sup> Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <<https://www.refworld.org/docid/4b1e364c2.html>> Accessed 11 January 2021.

<sup>34</sup> Constitution of the Republic of Iraq [Iraq], 15 October 2005. Available at: <<https://www.refworld.org/docid/454f50804.html>> Accessed 11 January 2021.

equality between men and women'.<sup>35</sup> Additionally, it has been noted that 'the procedural requirements for proving that the father is stateless are strict and often highly difficult to fulfil. As there are a large number of Iraqi women in the diaspora married to non-Iraqi men, this puts many children at risk of becoming stateless'.<sup>36</sup> The UNHCR further notes that 'even if all legal requirements have been established to the satisfaction of the government, it retains the discretion power to deny applications for Iraqi nationality'.<sup>37</sup> In 2013, in a briefing for the Convention on the Elimination of Discrimination Against Women (CEDAW), the CEDAW Committee recommended that,

Iraq in line with its international and national obligations, remove Article 4 of the Iraqi nationality law to ensure a more gender neutral nationality legislation [and] ensure wider dissemination of information about the reform of the law, especially to rural areas of Iraq and the Iraqi Diaspora, by continuing to raise awareness through publicity campaigns [and] withdraw its reservation to Article 9 of CEDAW.<sup>38</sup>

Responding to these recommendations, the Iraqi government withdrew its reservations to CEDAW on provisions to Article 9(1–2) granting women and men equal ability to confer nationality on spouses, and to allow women to confer nationality to their children on an equal basis with men.<sup>39</sup> The withdrawal from this reservation is a step forward by Iraqi authorities in placing women on an equal par with men in terms of conferring nationality to their spouses and children.

## 5. Renunciation and Deprivation of Iraqi Nationality

In Iraq, four documents are issued to Iraqi nationals: a residence card (*bitaqa sakan*), citizenship certificate (or nationality certificate —*shahadat al-jinsiya*), civil status identity card (*bitaqa shakhsiyeh* or *bitaqa hawwiya*) and a Public Distribution System/PDS (food ration) card. Without these documents, an Iraqi individual cannot access public services, as these documents are required to access healthcare, employment, education and housing, and to obtain a passport. However, marginalised populations such as Fails Kurds, Bidoons, the Dom (Roma) and Palestinian refugees, have been deprived of these documents, or have faced difficulties in accessing them, which means they cannot access governmental services and exercise basic

<sup>35</sup> UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness 2019 (8 March 2019) 7. Available at: <<https://www.refworld.org/docid/5c8120847.html>> Accessed 11 January 2021.

<sup>36</sup> The Women's Refugee Commission and Tilburg University Statelessness Programme, Briefing on Qatar, Iraq and Bahrain for the (CEDAW) 57th Pre-Session Working Group, 29th July–02 August 2013. Available at: <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGO\\_IRQ\\_14647\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_14647_E.pdf)> Accessed 11 January 2021. UNHCR, Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons, 2014, paras 38, 44. Available at: <<https://www.refworld.org/docid/53b676aa4.html>> Accessed 11 January 2021.

<sup>37</sup> UNHCR, 'Acquisition of Iraqi Nationality by a Child Born Outside Iraq' (May 2019). Available at: <<https://www.ecoi.net/en/file/local/2007917/5cd198ad7.pdf>> Accessed on 11 January 2020.

<sup>38</sup> The Women's Refugee Commission and Tilburg University Statelessness Programme, Briefing on Qatar, Iraq and Bahrain for the CEDAW 57th Pre-Session Working Group, 29 July–02 August 2013, Available at: <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT\\_CEDAW\\_NGO\\_IRQ\\_14647\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRQ/INT_CEDAW_NGO_IRQ_14647_E.pdf)> Accessed 11 January 2021.

<sup>39</sup> The Institute on Statelessness and Inclusion, the World's Stateless: Deprivation of Nationality (March 2020) 31–32. <Available at: <https://www.refworld.org/docid/5f4e178c4.html>> Accessed 25 January 2021.

rights, such as the right to vote, access healthcare, employment, education and housing.<sup>40</sup> A US Department of State Human Rights Report noted that,

Stateless persons [in Iraq] faced discrimination in employment and access to education. Many stateless persons were not able to register for identity cards, which prevented them from enrolling in public school, registering marriages, and gaining access to some government services. Stateless individuals also faced difficulty obtaining public-sector employment and lacked job security.<sup>41</sup>

In the next section of the report, four marginalised population groups are discussed: Faili Kurds, Bidoons, the Dom (Roma), and Palestinian refugees. These groups are either stateless or on the verge of statelessness.<sup>42</sup> Although the UNHCR has estimated that there are 47,253 stateless persons in Iraq, it has also noted that this figure is only an estimation and it is possible that the actual figures could be considerably higher, pending a more accurate study of statelessness in Iraq.<sup>43</sup>

## 5.1 Faili Kurds

Unlike other Kurds, Faili Kurds are Shia Muslims, of whom there are approximately 1.5 million in Iraq.<sup>44</sup> Their religious identity and affiliation to Shia Iran resulted in discrimination and being deprived of Iraqi nationality during the Saddam Hussein regime. In this time, Decree No. 666 of 1980, the Revolutionary Command Council, declared that ‘Iraqi nationality shall be dropped from any Iraqi of foreign origin if it appears that he is not loyal to the homeland, people, and higher national and social objectives of the Revolution’.<sup>45</sup> Faili Kurds were so categorised by this discriminatory order, and thus the regime waged a wide-scale campaign of expulsion and systematic persecution which led to the deportation of tens to hundreds of thousands of Failis to Iran.<sup>46</sup> Minority Rights Group International suggested that the numbers range from 150,000–500,000.<sup>47</sup> This expulsion was due to the regime perceiving the Faili as a threat, especially with the rise of Shia-led religious opposition in the 1970s and after the 1979

<sup>40</sup> For further analysis *see*, Stateless Journeys, Statelessness in Iraq (Country Position Paper, November 2019). Available at: <<https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iraq-final.pdf>> Accessed 11 January 2021.

<sup>41</sup> US Department of State, Human Rights Report: Iraq 2018, 13 March 2019, at 41. Available at: <<https://www.state.gov/wpcontent/uploads/2019/03/IRAQ-2018.pdf>> Accessed 11 January 2021. For further analysis on the status of stateless persons in Iraq *see*, Stateless Journeys, Statelessness in Iraq (Country Position Paper, November 2019). Available at: <<https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iraq-final.pdf>> Accessed 11 January 2021.

<sup>42</sup> Minorities at Risk Project, Chronology for Sunnis in Iraq, 2004. Available at: <<https://www.refworld.org/docid/469f38a7c.html>> Accessed 11 January 2021.

<sup>43</sup> UNHCR, ‘Global Trends Forced Displacement in 2019’ (18 June 2020) 73. Available at: <<https://www.unhcr.org/5ee200e37.pdf>> Accessed 11 April 2021. See also, UNHCR, Fact Sheet – Iraq, April 2019. <<http://reporting.unhcr.org/sites/default/files/UNHCR%20Iraq%20Factsheet%20-%20April%202019.pdf>> Accessed 11 January 2021.

<sup>44</sup> Minority Rights Group International, Iraq —Faili Kurds, November 2017. Available at: <<https://minorityrights.org/minorities/faili-kurds/>> Accessed 11 January 2021.

<sup>45</sup> Iraqi Revolutionary Command Council, Decree No. 666 of 1980, 26 May 1980. Available at: <<https://www.refworld.org/docid/3ae6b51d28.html>> Accessed 11 January 2021.

<sup>46</sup> Australian Department of Foreign Affairs and Trade, Country Information Report —Iraq, 9 October 2017, at 3.4. Available at: <<https://dfat.gov.au/about-us/publications/Documents/country-information-report-iraq.pdf>> Accessed 11 January 2021.

<sup>47</sup> Minority Rights Group International, Iraq —Faili Kurds, November 2017. Available at: <<https://minorityrights.org/minorities/faili-kurds/>> Accessed 11 January 2021.

Islamic Revolution in Iran. However, even in Iran, the Faili faced discrimination and deprivation of their rights and could not obtain Iranian nationality because they were considered Iraqi.<sup>48</sup>

However, Article 17 of the 2006 Iraqi Nationality Law No. 26 stipulates that ‘Decision No. 666 of 1980 issued by the (defunct) Revolutionary Command Council shall be repealed and Iraqi nationality shall be restored to all Iraqis deprived of their Iraqi nationality under the said provision as well as all other unfair decisions issued by the (defunct) Revolutionary Command Council in this respect’.<sup>49</sup> Article 8 of the 2017 amendment added a paragraph to Article 17 of the Nationality Law to confirm that all Faili Kurds shall be considered to have Iraqi nationality if they have civil status or were registered in the census of 1957, and they are treated in accordance with Article 3(a) of the 2006 Nationality Law. Although UNHCR has reduced the number of stateless persons it has on file for Iraq over recent years – from 120,000 in 2014 to 47,253 currently.<sup>50</sup> But, it is unclear whether this reduction is due to Faili Kurds having accessed citizenship in Iraq since there are no reliable statistics on the total number of Faili Kurds that have had their citizenship been reinstated. Despite the positive steps of reinstatement, there are remaining obstacles, however, that hinder the return of Faili, and in this regard the UNHCR noted that it,

is aware of reports that the process of reinstatement is long and cumbersome, and applicants are often required to travel from their place of residence to the Nationality Directorate in Baghdad to follow up on their applications. Some Faili Kurds started the process but could not complete it due to documentary and financial requirements.<sup>51</sup>

Another obstacle is the failure to ratify the 1954 Convention relating to the Status of Stateless Persons. The Iraqi government, contrary to reports, announced that Iraq has not joined the said convention because there are no statelessness cases in Iraq.<sup>52</sup> However, the UNHCR has confirmed that ‘A number of Faili Kurds [...] also remain stateless and consequently without official documentation, resulting in restrictions on access to public services and formal employment, as well as on their freedom of movement due to difficulties to pass checkpoints’.<sup>53</sup>

<sup>48</sup> For further analysis on stateless in Iran *see*, Eliyeh Delavari, ‘Report on Citizenship Law: Iran’ (Country Report, RSCAS/GLOBALCIT-CR 2020/13, September 2020). Available at: [https://cadmus.eui.eu/bitstream/handle/1814/68415/RSCAS\\_GLOBALCIT\\_CR\\_2020\\_13%5b2%5d.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/68415/RSCAS_GLOBALCIT_CR_2020_13%5b2%5d.pdf?sequence=1&isAllowed=y) Accessed on 11 January 2021; *see also* Jason Tucker, Exploring Statelessness in Iran: Gaps in the nationality law, populations of concern and areas for future research, 2014, at 11. Available at [https://www.academia.edu/7156718/Exploring\\_Statelessness\\_and\\_Nationality\\_in\\_Iran](https://www.academia.edu/7156718/Exploring_Statelessness_and_Nationality_in_Iran) Accessed 11 January 2021.

<sup>49</sup> Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006, available at: <https://www.refworld.org/docid/4b1e364c2.html> Accessed 11 January 2021.

<sup>50</sup> UNHCR, Operation: Iraq (2021). Available at: <https://reporting.unhcr.org/iraq> accessed 22 April 2021. Despite the

<sup>51</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 79. Available at: <https://www.refworld.org/docid/5cc9b20c4.html> Accessed 11 January 2021.

<sup>52</sup> Shafaq News, ‘Despite announcing the naturalisation of Faili Kurds ... Iraqi immigration: stateless does not exist’ (11 December 2019). Available at: <https://shafaq.com/en/iraq-news/despite-announcing-the-naturalization-of-faili-kurds-iraqi-immigration-stateless-does-not-exist> Accessed 11 January 2021.

<sup>53</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 78–79. Available at: <https://www.refworld.org/docid/5cc9b20c4.html> Accessed 11 January 2021.

## 5.2 Bidoon

The Bidoon community (bidoon *jinsiya* بدون جنسية —meaning without nationality) are a stateless Arab minority who came to Iraq immediately after the 1991 Gulf War and the invasion of Kuwait. Although there are various reports as to the total number of Dom in Iraq ranging from 50,000 to 200,000, there are no accurate figures in the country. There is also a lack of information as to the communities' situation and the proportion that are naturalised as Iraqi citizens.<sup>54</sup>

This community has no recognised nationality or official papers in Iraq. Two generations of Bidoons have no access to nationality or other basic rights such as attending school and accessing public services like clean water, electricity, and adequate shelter. They also cannot register land in their own name, sign rental contracts or inherit property, and their birth and death certificates are not registered by the government.<sup>55</sup> However, in August 2017, Iraqi NGO Mercy Hands, in collaboration with the UNHCR, initiated a legal procedure which resulted in nationality being secured and thus the ability to access to basic rights and services. This legal initiative has assisted an average of 500 Bidoon minority per year and returned citizenship hopes for them in Iraq.<sup>56</sup>

## 5.3 The Dom (Roma)

The Dom (also referred to as Roma, عَجْر 'Ghajar' or 'Gypsies')<sup>57</sup> are another minority group that faces discrimination and lack of access to public services in Iraq. The UNHCR is concerned that 'members of the Roma community are reportedly stateless or at risk of statelessness due to the lack of essential civil documentation, further compounding their vulnerable situation'.<sup>58</sup> Since there are no accurate figures for Roma numbers in Iraq, estimates suggest the population is around 60,000, but it is also unknown how many are affected by statelessness.<sup>59</sup> However, their situation deteriorated even further after the removal of Saddam Hussein because they were 'accused of having supported the former President, and conservative local communities as well as Shi'ite militants, who had long resented their

<sup>54</sup> UNCHR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq' (HCR/PC/IRQ/2019/05\_Rev, 2May 2019) 79. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> accessed 22 April 2021. See also, UN Human Rights Council, Report of the Special Rapporteur on Minority Issues on Her Mission to Iraq, 9 January 2017, A/HRC/34/53/Add.1, para. 48. Available at: [www.refworld.org/docid/5899be124.html](http://www.refworld.org/docid/5899be124.html) accessed 22 April 2021.

<sup>55</sup> EASO, Country Guidance (June 2019). Available at: <<https://www.easo.europa.eu/country-guidance-iraq/21510-bidoon>> Accessed 11 January 2021.

<sup>56</sup> Charlie Dunmore and Edith Champagne, 'Citizenship hopes become reality for Iraq's Bidoon minority' (10 October 2019). Available at: <<https://www.unhcr.org/news/stories/2019/10/5d9eda154/citizenship-hopes-become-reality-iraqs-bidoon-minority.html>> Accessed on 11 January 2021.

<sup>57</sup> Institute for International Law and Human Rights, Iraq's Minorities and other Vulnerable Groups: Legal Framework, Documentation and Human Rights, May 2013, at 126. Available at: <[http://lawandhumanrights.org/documents/MinorityHB\\_EN.pdf](http://lawandhumanrights.org/documents/MinorityHB_EN.pdf)> Accessed 11 January 2021. Also, see, Minority Rights Group International, Alternative Report to the Committee on the Elimination of Racial Discrimination – Review of the Periodic Report of Iraq, 2018, at 23. Available at: <<http://bit.ly/2VKsoYo>> Accessed 11 January 2021.

<sup>58</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 78-79. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021.

<sup>59</sup> Institute for International Law and Human Rights, Iraq's Minorities and other Vulnerable Groups: Legal Framework, Documentation and Human Rights, May 2013, at 126. Available at: <[http://lawandhumanrights.org/documents/MinorityHB\\_EN.pdf](http://lawandhumanrights.org/documents/MinorityHB_EN.pdf)> Accessed 11 January 2021.

differing social norms, reportedly attacked and forcibly displaced many Roma from their settlements'.<sup>60</sup> This treatment resulted in many Roma either fleeing the country for Jordan and the Gulf, or remaining in Iraq in dire situations in 'squatted land without access to clean water, electricity, adequate shelter, healthcare, adequate food, education and other basic services'.<sup>61</sup> With many of them internally displaced or forcibly removed from their settlements, they are 'particularly at risk of exploitation, sexual abuse and stigmatisation, due to the absence of birth registration, lack of documentation confirming nationality, extremely low levels of school attendance and widespread involvement in street begging'.<sup>62</sup> Iraq has been criticised for failing to protect the Roma and for their inability to access basic rights and services and 'continu[ously] fac[ing] systematic discrimination and marginalisation in all aspects of life, as a result of which many are reported to live in extreme poverty with high rates of illiteracy and unemployment'.<sup>63</sup> Responding to international criticism and advocacy for reform, the Iraqi government instructed 'all national identity directorates to issue unified identity documents to Roma [...] thereby facilitating their full and equal access to education, healthcare and other basic services provided by the Government'.<sup>64</sup> More recently, the UNHCR noted that it closely monitors the implementation of the instructions of the Iraqi Ministry of Interior, and the treatment of the Roma by various ministries.<sup>65</sup>

#### 5.4 Palestinian Refugees

Iraq falls outside the mandate of the UN Relief and Works Agency for Palestine Refugees (UNRWA), and therefore the protection of these refugees in Iraq is under the jurisdiction of the Iraqi government and the UNHCR. According to Article 6(2) of the Nationality Law No. 26 of 2006, 'Iraqi nationality shall not be granted to Palestinians as a guarantee to their right to return to their homeland'.<sup>66</sup> This means that Palestinian refugees are excluded from naturalisation in Iraq and even those who have been in the country for generations would have no right to acquire Iraqi nationality. Such a clause is commonly enshrined in nationality laws throughout the MENA region. In particular, this deprives subsequent generations Palestinian

<sup>60</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 78. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021.

<sup>61</sup> Institute for International Law and Human Rights, Iraq's Minorities and other Vulnerable Groups: Legal Framework, Documentation and Human Rights, May 2013, at 127. Available at: <[http://lawandhumanrights.org/documents/MinorityHB\\_EN.pdf](http://lawandhumanrights.org/documents/MinorityHB_EN.pdf)> Accessed 11 January 2021. *See also*, Minority Rights Group International, Iraq: Roma, November 2017. Available at: <<https://minorityrights.org/minorities/roma-21/>> Accessed 11 January 2021.

<sup>62</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 78. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021.

<sup>63</sup> Minority Rights Group International, Alternative Report to the Committee on the Elimination of Racial Discrimination — Review of the Periodic Report of Iraq, 2018, at 23. Available at: <<http://bit.ly/2VKsoYo>> Accessed 11 January 2021; UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 78–79. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021.

<sup>64</sup> UN Security Council, Implementation of resolution 2421 (2018), S/2019/365, 2 May 2019. Available at: <[https://reliefweb.int/sites/reliefweb.int/files/resources/s\\_2019\\_365\\_E.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/s_2019_365_E.pdf)> Accessed 11 January 2021.

<sup>65</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 79. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021.

<sup>66</sup> Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <<https://www.refworld.org/docid/4b1e364c2.html>> Accessed 11 January 2021.

refugees born in Iraq, restricts their fundamental rights, and further marginalises them through the denial of public services afforded to citizens.<sup>67</sup>

During the Saddam Hussein regime, Palestinians were treated similarly to Iraqis and in fact in Decree No. 202 of 2001 it was specifically stated that Palestinians who arrived in Iraq in 1948 ‘shall be treated as Iraqis in respect of all rights and duties, with the exception of the right to the Iraqi Nationality’.<sup>68</sup> This meant that Palestinian refugees enjoyed access to a broad range of rights, including the right to work, own property, obtain travel documents and access public healthcare and education. However, this was not the case for those Palestinians who arrived in Iraq in 1967 as they were unable to access the same rights and could only access public services and work in the private sector.<sup>69</sup> However, following the removal of Saddam’s regime, the situation of Palestinian refugees deteriorated, and the public perceived them as being loyal to Saddam and its dictatorship era; thus, they faced widespread discrimination regarding access to the job market. The population figures for Palestinians provide evidence of the difference in treatment, as during the Saddam period there were an estimated 34,000<sup>70</sup> and yet today approximately 8,324 live in Iraq.<sup>71</sup> The UNHCR notes this is due to the fact that ‘worsening conditions since 2003 have forced at least 25,000 Palestinians to flee Iraq’.<sup>72</sup>

In 2017, the situation worsened further for Palestinian refugees when the Iraqi parliament adopted Law No. 76 on the Residence of Foreigners. The law abolished the Saddam era decree which was favourable to the Palestinians and stipulated that ‘[T]he decisions of the (dissolved) Revolutionary Command Council [...] 202 on 12/9/2001 shall be Repealed’.<sup>73</sup> This law restricted their rights and liberties in Iraq. The US Department of State notes that ‘Palestinian refugees [...] faced job insecurity in the public sector due to their ambiguous legal status; the government did not recognise their refugee status nor allow them to obtain citizenship’.<sup>74</sup> The UNHCR was concerned about the ‘significant deterioration of the security and human rights situation for Palestinians in Iraq’ and stated that they are ‘in need of international refugee protection, depending on the individual circumstances of the case’.<sup>75</sup> To

<sup>67</sup> Institute for International Law and Human Rights, Iraq’s Minorities and other Vulnerable Groups: Legal Framework, Documentation and Human Rights, May 2013, at 39. Available at: <[http://lawandhumanrights.org/documents/MinorityHB\\_EN.pdf](http://lawandhumanrights.org/documents/MinorityHB_EN.pdf)> Accessed 11 January 2021.

<sup>68</sup> Iraq, Resolution by the Revolutionary Command Council on the Treatment of Palestinians Permanently Residing in Iraq as Iraqis (2001), 24 September 2001. Available at: <<https://www.refworld.org/docid/5c7558ca7.html>> Accessed 11 January 2021.

<sup>69</sup> EASO COI Query System, ‘Palestinians in Iraq’ (4 January 2018) 4. Available at: <<https://www.refworld.org/pdfid/5a9fe8f14.pdf>> Accessed 11 January 2021.

<sup>70</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 109. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021.

<sup>71</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 109. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021; 3RP, Iraq Country Chapter —2019/2020, 29 April 2019, at 5. Available at: <<https://data2.unhcr.org/en/documents/details/69209>> Accessed 11 January 2021.

<sup>72</sup> Reuters, Palestinians in Iraq fearful after loss of Saddam-era privileges, 20 December 2018. Available at: <<https://www.reuters.com/article/us-iraq-palestinians-rights/palestinians-in-iraq-fearful-after-loss-of-saddam-era-privilegesidUSKCN1OJ2CM>> Accessed 11 January 2021.

<sup>89</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 109. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021.

<sup>73</sup> Iraq, Law on the Residence of Foreigners (2017), 2 October 2017. Available at: <<https://www.refworld.org/docid/5c7561147.html>> Accessed 11 January 2021.

<sup>74</sup> US Department of State, Human Rights Report –Iraq 2018, 13 March 2019, at 39. Available at: <<https://www.state.gov/wpcontent/uploads/2019/03/IRAQ-2018.pdf>> Accessed 11 January 2021.

<sup>75</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 6-7. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021.



date, the lack of adequate state protection has left Palestinians ‘exposed to human rights abuses by both state and non-state actors such as militias or tribes’.<sup>76</sup>

## 5.5 Stateless Syrian Refugees

Syrian refugees who live in the KRI are another group who have been affected by statelessness in the region.<sup>77</sup> They fall broadly into two sub-groups: *Ajanib* (‘foreigner’) and *Maktoumeen* (‘unregistered’) Kurds. Both groups are confronted with restrictions of rights and freedoms to vote, own property, legally marry or register their children, or even access education.<sup>78</sup> Syrian Nationality law 1969 only allows citizenship conferred through the father which means that the acquisition of nationality at birth depends on the father’s nationality. The provisions of the law ‘are aggravated by the gender discriminatory’ [...], which is based upon paternal *ius sanguinis*’.<sup>79</sup>

As noted above, just like the Baath party regime in Iraq, the Baath party in Syria started a discriminative campaign by stripping Kurds of their nationality following a controversial ‘arabisation’ census in 1962.<sup>80</sup> In 2010, UNHCR reported that there are 300,000 stateless Syrians<sup>81</sup> but this number was almost halved to 160,000 at the end of 2013.<sup>82</sup> This was due to Decree 49 passed in April 2011 that created a pathway to citizenship for Syria’s stateless *Ajanib* Kurds. This Decree did not confer such right to the stateless *Maktoumeen* Kurds.<sup>83</sup> In Syria, for *Maktoumeen* a card is issued that does not confer rights or status to unregistered stateless Kurds. This has left this group in a ‘especially precarious’ situation.<sup>84</sup>

According to UNHCR, 244,760 Syrian refugees residing in Iraq almost all of them in the KRI.<sup>85</sup> In 2013, a survey conducted in the KRI found that approximately 10% of Syrian

<sup>76</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, at 110. Available at: <<https://www.refworld.org/docid/5cc9b20c4.html>> Accessed 11 January 2021.

<sup>77</sup> Abdullah O. Yassen, The Prospects for Durable Solutions for Syrian Refugees in the Kurdistan Region of Iraq: A Case Study of Erbil Governorate Camps (2019) 38(4) Refugee Survey Quarterly 448–469. See also, The Institute on Statelessness and Inclusion, the World’s Stateless: Deprivation of Nationality (March 2020) 125–127. <Available at: <https://www.refworld.org/docid/5f4e178c4.html>> Accessed 25 January 2021; and Zahra Albarazi, ‘The Stateless Syrians’ (Statelessness Programme, Tilburg Law School, May 2013). Available at: <<https://www.refworld.org/pdfid/52a983124.pdf>> accessed 22 April 2021.

<sup>78</sup> Stateless Journeys, Statelessness in Iraq (Country Position Paper, November 2019). 16-17. Available at: <<https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iraq-final.pdf>> Accessed 11 January 2021.

<sup>79</sup> The Institute on Statelessness and Inclusion, the World’s Stateless: Deprivation of Nationality (March 2020) 125–127. <Available at: <https://www.refworld.org/docid/5f4e178c4.html>> Accessed 25 January 2021.

<sup>80</sup> Syrians for Truth and Justice, ‘Syrian Citizenship Disappeared: How the 1962 Census destroyed stateless Kurds’ lives and identities’ (15 September 2018). Available at: <https://www.stj-sy.com/en/view/745> accessed 22 April 2021. See also, Dilan Sirwan, Syria’s stateless Kurds can’t afford to become citizens (1 December 2020). Available at: <https://www.rudaw.net/english/middleeast/syria/01122020> accessed 22 April 2021.

<sup>81</sup> UNHCR, ‘Global Trends: Forced Displacement in 2009’ (21 June 2010) 26. Available at <<https://www.unhcr.org/4c11f0be9.pdf>> Accessed 22 April 2021.

<sup>82</sup> UNHCR, ‘Global Trends: Forced Displacement in 2018’ (21 June 2019) 67. Available at <<https://www.unhcr.org/5d08d7ee7.pdf>> accessed 22 April 2021.

<sup>83</sup> European Network on Statelessness and Institute of Statelessness and Inclusion, ‘Country Position Paper: Statelessness in Syria’ (August 2019). Available at <<https://statelessjourneys.org/wpcontent/uploads/StatelessJourneys-Syria-August-2019.pdf>> accessed 22 April 2021.

<sup>84</sup> Stateless Journeys, Statelessness in Iraq (Country Position Paper, November 2019). 16-17. Available at: <<https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iraq-final.pdf>> Accessed 11 January 2021.

<sup>85</sup> UNHCR, Operational Portal Refugee Situation, Iraq (April 2021). Available at: <<https://data2.unhcr.org/en/situations/syria/location/5>> accessed 22 April 2021.

refugees living in the KRI are stateless. Some of them, due to the conflict, were forced to flee and did not have the chance to apply for nationality, while others were not eligible because they had never been registered by the Syrian authorities.<sup>86</sup> Although the 2006 Iraqi Nationality Law No. 26 stipulates that ten years of continuous residence ordinarily makes foreigners eligible to apply for Iraqi nationality, the provision also states that the individual must have entered the country legally.<sup>87</sup> For many Syrian refugees, although they meet the ten-year requirement, as some of them have been living in the KRI since 2004, yet they have entered the country irregularly means that they cannot benefit from this provision.

## 5.6 ISIL Occupation and Stateless Children

In 2014, Islamic State of Iraq and the Levant (ISIL) occupied large part of Iraq and Syria in the name of Islam committed barbaric acts such as rape and carried out forced marriage against minorities and other religious affiliations. The occupation not only impacted the security and livelihood of the civilian population but also impacted civil documentation and confirmation of citizenship, this includes the risk of statelessness for children. A big part of ISIL occupation was the involvement of foreign fighters. UN Security Council estimated that about 12% amounting to more than 40,000 are minors.<sup>88</sup> This figure includes neither the thousands of children likely to have been born in Iraq or Syria, nor those minors born in besieged areas, without proper civil registration.<sup>89</sup> Post ISIL, Iraq has faced numerous challenges to provide civil documentation and establish nationality for these children. There are hundreds of children born in ISIL territories who were issued documents such as birth certificates that are not recognised internationally. There are also children who lost both parents or their fathers and this has created a significant challenge for Iraq where nationality is paternally granted.<sup>90</sup>

In addition to that there are children fathered by ISIL perpetrators who are foreigners (as a result of rape or forced marriage), most of whom are dead or disappeared, and the mothers are Iraqi nationals (such as Yezidi mothers who risk statelessness and are currently facing stigmatisation in the country due to the legal system). As it stands, Iraqi law does not have any provisions for those children nor any legal provisions to explain the legal status of these single mothers.<sup>91</sup> Instead, Article 28(1) of the Regulation of Civil Status No. 32 of 1974 which stipulates that ‘the child born out of wedlock and one of the parents is known, shall be registered in the birth register after providing a decision from the personal status court that includes a proof of paternity, the name of the child, birth date and place. The court will choose the name of the foundling when both parents are unknown and will transfer the child’s register

<sup>86</sup> Amit Sen, Lacking a Nationality, Some Refugees from Syria Face Acute Risks (20 December 2013). Available at: <https://www.unhcr.org/news/latest/2013/12/52b45bbf6/lacking-nationality-refugees-syria-face-acute-risks.html> accessed 22 April 2021.

<sup>87</sup> Article 6(b) and (c), Iraqi Nationality Law [Iraq], Law 26 of 2006, 7 March 2006. Available at: <https://www.refworld.org/docid/4b1e364c2.html> Accessed 11 January 2021.

<sup>88</sup> Security Council, ‘ISIL Now ‘A Covert Global Network’ Despite Significant Losses, United Nations Counter-Terrorism Head Tells Security Council’ (8330TH Meeting (PM), SC/13463, 23 August 2018). Available at: <https://www.un.org/press/en/2018/sc13463.doc.htm> accessed 22 April 2021.

<sup>89</sup> Aïssata Athie, ‘The Children of ISIS Foreign Fighters: Are Protection and National Security in Opposition?’ (18 December 2018). available at: <https://theglobalobservatory.org/2018/12/children-isis-foreign-fighters-protection-national-security-opposition/> accessed 22 April 2021.

<sup>90</sup> Aïssata Athie, ‘The Children of ISIS Foreign Fighters: Are Protection and National Security in Opposition?’ (18 December 2018). available at: <https://theglobalobservatory.org/2018/12/children-isis-foreign-fighters-protection-national-security-opposition/> accessed 22 April 2021.

<sup>91</sup> UNICEF and UNAMI, Analysis of The Legal Framework Governing Civil Documentation in Iraq, 4. Available at: <http://mptf.undp.org/document/download/24287> accessed 22 April 2021.

from the birth register to the civil register'.<sup>92</sup> This means that these children are treated as foundlings and put into state care and the authorities provide them with documents. Due to its sensitivity, a special court is established that requires a DNA test to determine the outcome of the case.<sup>93</sup> The situation is even more complex for these children who either risk statelessness or otherwise must be registered as Muslim, which has caused controversy and fragmentation among the Yezidi community who oppose having children with Muslims.<sup>94</sup> As a result, only few registered cases where the women want to keep their children. This means that children of different ages, some of them only few months old live in precarious situation and face unknown future.<sup>95</sup> 'This lack of identification also means that children are unable to access public health services or civil registration, leaving them in a legal void and facing discrimination'.<sup>96</sup>

## 6. Current Political Debates and Reforms

This section discusses the 2017 First Amendment of the Nationality Law No. 26 of 2006 and the 2019 rejected second draft amendment to the 2006 law.<sup>97</sup> The most contentious points will be highlighted and the legal problems surrounding it will be addressed. In 2017, the lawmakers noted that the Nationality Law no. 26 of 2006 were amended for three reasons:

1. To facilitate citizen affairs as, in practice, citizens face issues and obstacles;
2. To provide Iraqi nationality to holders of other nationalities to facilitate their affairs in the country so they do not face issues;
3. To create equality and justice in society regarding the obtaining of Iraqi citizenship for those entitled after being disadvantaged by the previous regime.<sup>98</sup>

The 2017 First Amendment of the 2006 Nationality Law made favourable changes towards forced displaced people. Article 6(1) of the Nationality Law no. 26 of 2006 states that the Minister may approve naturalisation of non-Iraqis subject to certain conditions, one of which is that the person concerned has been legitimately residing in Iraq for ten consecutive years prior to applying for naturalisation. This provision has been amended to reduce the ten-year period to just one year for those who are forcibly displaced. Article 4 of the 2017 amendment has added a section to Article 6 of the Nationality Law which notes that the Council of Ministers, at the request of the Minister, may grant Iraqi nationality to an individual who has served Iraq and benefited the country, subject to the individual having resided for at least one year in the country prior to applying.

<sup>92</sup> Regulation of the Civil Status Code, Number 32, issued: 20 August 1974, enforced 24 August 1974.

<sup>93</sup> Human Rights Watch, 'Iraq: Step Toward Justice for ISIS Child Suspects' (13 December 2020). Available at: <<https://www.hrw.org/news/2020/12/13/iraq-step-toward-justice-isis-child-suspects>> accessed 22 April 2021.

<sup>94</sup> McGee, Thomas (2020) "Born of ISIS Genocide: Risk of Statelessness and Stigmatised Nationality Acquisition for Children of Yezidi Survivors", Rowaq Arabi 25 (2), pp. 83-96. Available at: <<https://rowaq.cihrs.org/born-of-isis-genocide-risk-of-statelessness-and-stigmatised-nationality-acquisition-for-children-of-yezidi-survivors/?lang=en>> accessed 2021.

<sup>95</sup> Human Rights Watch, 'Iraq: Step Toward Justice for ISIS Child Suspects' (13 December 2020). Available at: <<https://www.hrw.org/news/2020/12/13/iraq-step-toward-justice-isis-child-suspects>> accessed 22 April 2021.

<sup>96</sup> Aïssata Athie, 'The Children of ISIS Foreign Fighters: Are Protection and National Security in Opposition?' (18 December 2018). available at: <<https://theglobalobservatory.org/2018/12/children-isis-foreign-fighters-protection-national-security-opposition/>> accessed 22 April 2021.

<sup>97</sup> عبد صالح محمد هلو (2020) 3 (3) 126-105 لسنة (2006) رقم الجنسية قانون تعديل مشروع حول قانونية دراسة الصمد ،

<sup>98</sup> Haloo Muhamad Salih Abdu Samad, 'Legal Study on the Project of the First Amendment on Iraqi Nationality Law No.26 in 2006' (2020) 2(3) Al Kitab Journal for Humanity Sciences 105–126.

Article 7 of the Nationality Law has also been amended to reduce the five-year period to two years for the approval of the naturalisation of a non-Iraqi married to an Iraqi woman. Likewise, Article 11(2) has been amended to reduce the five-year period to two years to grant the nationalisation of a non-Iraqi woman married to an Iraqi subject when the woman is resident in Iraq. These two amendments could benefit a large number of Iraqis married to non-Iraqis.

In addition, Iraq post-Saddam Hussein has opened its doors to the outside world, and this has increased immigration and emigration of millions of Iraqis returning to the country. In this context, the amendment serves its purpose, and also shows that Iraqi legislators are working towards equal treatment of men and women by conferring nationality to women on an equal par with men. Such treatment is obvious in the 2017 amendment and was not the case in the 2006 Nationality Law.

Article 9 of the First Amendment also repealed Resolution No. 890 of 1985, which noted that ‘the Arab citizen who acquires the Iraqi nationality shall be considered as [...] an Iraqi citizen’.<sup>99</sup>

## 6.1 The New Status National ID Card

Law No. 3 of 2016 concerning the National Identity Card contains 47 Articles and was adopted by the Iraqi Parliament to replace the three documents, namely, the nationality certificate, civil status card, and residence card. The law is intended both to relieve the burden on citizens of having several documents, and to keep pace with developments in the government’s work, in line with the identity cards used in developed countries. Eventually, an integrated network of unified civil information will be created, and one fixed civil identification number will be assigned to every Iraqi individually, and collectively to every family. This is document is also important to protect the security of citizens and the government, because whenever a crime occurs the government can more quickly track the perpetrator.<sup>100</sup>

Since 2017, the new national ID card has been widely implemented in the KRI and Iraq as the main identity document. Despite this, the three older documents mentioned above are still being issued outside larger cities. However, whenever there is a change in civil status, for instance applying for a new passport, marrying or divorcing; then a new electronic and biometric application must be submitted for a new 10-year ID card to be issued.<sup>101</sup> The national ID card helps both ordinary citizens and IDPs who have lost their civil documentation, whether through experiencing conflict or forced displacement, or both. This card allows them to prove their identity, gain access to public services and government assistance programmes and, most importantly, exercise their basic civil rights. The UNHCR Representative in Iraq, Ayman Gharaibeh, noted that ‘The lack of civil documentation among internally displaced persons is a major programmatic priority for the UNHCR and other humanitarian protection actors in Iraq. It has the potential to dramatically improve the lives of Nineveh’s citizens, and assist local authorities to ensure the provision of public services’. Since 2017, the UNHCR in collaboration

<sup>99</sup> National Legislative Bodies/ National Authorities, Iraq: Resolution No. 890 of 1985 (nationality), the Official Gazette No. 38, 18 September 1985. Available at: <https://www.refworld.org/docid/3ae6b4ed24.html> Accessed 11 2021.

<sup>100</sup> Article 2(2), Law No. 3 of 2016 the National Identity Card, published in Iraq Gazzette No. 4396, 01 February 2016.

<sup>101</sup> Kurdistan Region of Iraq (KRI): Report on issuance of the new Iraqi ID card (Country report, the Danish Immigration Service, November 2018). Available at: <https://www.justice.gov/eoir/page/file/1111531/download> accessed 22 April 2021.

with the Directorate of Civil Affairs, Passports and Residency has opened a number of National Identification Document Centres in various cities of Iraq to the displaced persons to prove their identity and access public services.<sup>102</sup>

Despite its wide implementation, the new national ID Card law has faced major criticism from human rights monitoring bodies on the grounds of discrimination, freedom of religion, and lack of equal status for both men and women. For example, Article 19(2) of the National Identity Card Law of 2016 stipulates that ‘The name is considered to be complete if it includes the single name of the person and the correct name of his /her father or the name of the grandfather and the title if any’.<sup>103</sup> This means that the registration of a child's name is only allowed under the father’s name, and the father is the only party who can establish affiliation, as mothers cannot do so alone; nor does the mother have the right to request an identity card for the child. Human rights bodies have noted that this provision ‘is an absolute discrimination between women and men in terms of the right of establishing affiliation’, and they suggest that Iraq abolish the existing discrimination between women and men and amend the provision to include mothers.<sup>104</sup>

In addition, Article 20(2) stipulates that ‘every foundling or whose affiliation is unknown is considered to be Muslim and Iraqi’. This provision removes the right to all other religions.<sup>105</sup> On these grounds, it should be amended to uphold the right of everyone to choose their religion. In a similar line of argument, Article 26 allows non-Muslims to change their religion, but does not make reference to Muslims who might want to change their religion, because the latter practice is considered apostasy according to the concept of Islamic law (Shari’aa).<sup>106</sup> Human rights bodies have called for the amendment of this provision to provide freedom of religion to everyone in accordance with international human rights instruments.<sup>107</sup>

## 6.2 The 2019 Draft Amendment to the 2006 Nationality Law

In 2019, the draft amendment proposed three changes to the 2006 Nationality Law to allow foreigners married to Iraqi women as well as unmarried foreigners living in Iraq for just one year to apply for Iraqi citizenship. This would have lowered the residency threshold from ten to two years in some cases and one year in others. The parliament rejected this threshold and accused the government of trying to serve its own purposes by making demographic changes which would bring more foreigners into the country. The proposal also gave the Interior

<sup>102</sup> UNHCR, ‘Inauguration of the first National Identification Document Centre in Ninewa Governorate’ (Press Release, 31 October 2019). Available at: <<https://reliefweb.int/report/iraq/support-unhcr-inauguration-first-national-identification-document-centre-ninewa>> accessed 22 April 2021.

<sup>103</sup> Article 19(2), Law No. 3 of 2016 the National Identity Card, published in Iraq Gazzette No. 4396, 01 February 2016.

<sup>104</sup> Universal Periodic Review report -Kurdistan region-Iraq 2019. 3-5. Available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=6859&file=EnglishTranslation>> accessed 22 April 2021.

<sup>105</sup> Hammurabi Human Rights Organization, Global Migration: Consequences and Responses (Iraq – Country Report, Legal & Policy Framework of Migration Governance, paper 2018/06, May 2018) 21. Available at: <<http://uu.diva-portal.org/smash/get/diva2:1248408/FULLTEXT01.pdf>> accessed 22 April 2021.

<sup>106</sup> Hammurabi Human Rights Organization, Global Migration: Consequences and Responses (Iraq – Country Report, Legal & Policy Framework of Migration Governance, paper 2018/06, May 2018) 21. Available at: <<http://uu.diva-portal.org/smash/get/diva2:1248408/FULLTEXT01.pdf>> accessed 22 April 2021.

<sup>107</sup> Freedom of religion or belief is guaranteed by article 18 of the Universal Declaration of Human Rights 1948, article 18 of the International Covenant on Civil and Political Rights 1966 and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981.

Minister the power to grant citizenship and was criticised by the Parliament Security and Defence Committee as citizenship, being related to sovereignty, is a delicate matter having huge consequences for the security and safety of the country. Therefore, the committee argued, such power should be held by the Head of State, Prime Minister or House of Representatives. The Committee of Labour and Social Affairs, Migration and Displaced Persons in the parliament also called for an inquiry to hold accountable those who proposed such amendments. Despite this, the parliament still noted that it would listen to the amendment and support a vote on a draft with changes, but it rejected the proposal in its then current form.<sup>108</sup>

These two amendments show that the issue of nationality and citizenship remains contentious. The government and Iraqi legislators are deadlocked with regard to amending certain provisions of the current law. Although parliament has showed willingness to hear projects that would place the current nationality law in compliance with international conventions and human rights standards, the parliament has made it clear that any proposed amendments to nationality will be rejected if they grant more power to the Minister of Interior and impact the sovereignty of the state.<sup>109</sup>

## 7. Conclusion

From the original laws of 1924 to the nationality laws of 2006, there have been obstacles and shortfalls in their provisions. The laws differentiated between people of Ottoman origin and Iraqi origins, with subsequent government adopting the same policies which discriminated against various groups. Nationality laws cover everyone who lives in a country and should not be related to gender, origin, religion or political affiliation. The historical laws attempted to politicise the nationality law by integrating Iraq with other Arab nations, to prioritise Arabs over others in Iraq. The previous regime, through law No. 5 of 1975 Granting Iraqi Nationality to Arabs, wanted to create first class citizenship for Arabs but second and third class to other minorities such as Kurds, Turkmans, Yazidis, and other minority groups.

We have noted in this report that there has been a lack of judicial decision-making on nationality matters in the Iraqi administrative courts, because the Ministry of Interior had full power and its decisions could not be revoked by the court. Now, according to Article 20 of the Iraqi Nationality Law 26 of 2006, the Administrative Court can appeal decisions by the Interior

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<sup>108</sup> Middle East Monitor, Iraq parliament rejects proposed change to Nationality Law, 27 March 2019. Available at: <<https://www.middleeastmonitor.com/20190327-iraq-parliament-rejects-proposed-change-to-nationality-law/>> Accessed 11 January 2021; Asia Monitor, Iraq weighs easing path to citizenship, 19 March 2019. Available at: <https://www.asiatimes.com/2019/03/article/iraq-weighs-easing-path-to-citizenship/>> Accessed 11 January 2021; The Baghdad Post, Iraqis warn against planned amendments to nationality law, 19 March 2019. Available at: <https://www.thebaghdadpost.com/en/Story/37432/Iraqis-warn-against-planned-amendments-to-nationality-law>> Accessed 11 January 2021; Baghdad Post, Nationality draft law need amendments due to defects: Legal MP, 14 May 2019. Available at: <<https://www.thebaghdadpost.com/en/Story/39527/Nationality-draft-law-need-amendments-due-to-defects-Legal-MP>> Accessed 11 January 2021; and The Jerusalem Post, Law amendment would open Iran to Iranian influence, say opponents, 23 March 2019. Available at: <<https://www.jpost.com/Middle-East/Law-amendment-would-open-Iraq-to-Iranian-influence-say-opponents-584337>> Accessed 11 January 2021.

<sup>109</sup> Iraqi Parliament Council, Press statement on Iraqi Nationality Law, 19 March 2019. Available at: <<http://en.parliament.iq/2019/03/19/press-statement-on-iraqi-nationality-law/>> Accessed 11 January 2021; Middle East Monitor, 'Iraq Parliament rejects proposed changed to nationality law' (27 March 2019). Available at: <[https://www.middleeastmonitor.com/20190327-iraq-parliament-rejects-proposed-change-to-nationalitylaw/amp/?\\_\\_twitter\\_impression=true](https://www.middleeastmonitor.com/20190327-iraq-parliament-rejects-proposed-change-to-nationalitylaw/amp/?__twitter_impression=true)> Accessed 11 January 2021.

Ministry on nationality matters. In case of disputes, the matter can be heard by the Iraqi Appeal Court, and this is a key development of the 2006 law.

This same law also provided two other positive developments. One was the removal of the discrimination that existed in other laws between men and women and provided equal citizenship rights to both genders. The 2006 Iraqi Nationality Law obtained from Article 14 of the Iraqi Constitution provides men and women with the same rights for acquisition of nationality and this was a move towards Iraqi compliance with international and human right standards in respect of social, economic and political rights. The other positive development in the 2006 law, which was not the case with previous laws, was the right to hold multiple nationalities. This development was due to the return of thousands of expatriates isolated by the Saddam regime.

Iraqi legislators, in accordance with Article 3(b) of the Nationality Law 2006, permits the acquisition of Iraqi nationality to those children born in the territory of Iraq, and this is also the case for children without a father born in the territory of Iraq. The purpose of this provision is to abolish statelessness in Iraq, as the legislation ensures that all children born inside Iraq can acquire nationality on an equal basis from their mother or father. This development is unique in the region because, in many countries in the region, nationality is only acquired through the father.

The implemented 2006 law also mentions non-Iraqis in its provisions, and this is a positive development for the abolition of discrimination between Iraqis and foreigners living in Iraq. It is also easier to interpret the law. Bearing in mind that Iraq is a nation not only of Arabs but also Kurds, Turkomen and Assyrians, these developments are all positive steps. Having said this, challenges remain, including the lack of full gender equality with regards to the acquisition of nationality.

## 7.1 Recommendations

Throughout history, Iraq has faced many wars and internal conflicts. The lack of political stability has resulted in millions of Iraqis fleeing to neighbouring countries and the rest of the world, to find safety and political asylum. In accordance with Article 21(2) of the Iraqi Constitution, Iraq must lower the threshold for obtaining nationality for asylum seekers and refugees. In particular, in regard to the legality of how they entered the country, as it stands, even if a foreigner meets all the requirements of the Iraqi Nationality Law, if they have not entered the country legally, they cannot apply for Iraqi nationality.

It is also recommended that Article 4 be abolished, as Article 3 already contains the component outlined in Article 4, with both discussing a child's acquisition of Iraqi nationality. It is recommended that a paragraph be added to the same law to provide citizenship to a child born outside of Iraq to an Iraqi mother and father, even if non-resident in Iraq, as the child should not lose its Iraqi citizenship.

It is also recommended that Iraqi legislators amend Article 19 of Law No. 3 of 2016 concerning the National Identity Card which stipulates gender inequality by conferring ID to children from their father and not their mother. The provision, therefore, must add the mother's name, and thereby entitle Iraqi women to determine their children's affiliation without the condition of the presence of the child's father. It is also suggested that Article 20 of Law No. 3 of 2016 concerning the National Identity Card (enshrining that foundling children are

Muslims and only allowing others to convert to Islam) be amended to provide religious freedom and rights for minorities in the country. Therefore, it is suggested that the visibility of religion be decreased regarding the National ID card to allow for a more inclusive society.

It is also recommended that Iraqi legislators adopt a provision that confers nationality to those children born of rape and sexual slavery, where proof of paternity may be impossible, in particular for those children born to Yezidi mothers and ISIL perpetrator fathers who are at risk of statelessness. Current legislation provides no remedies to resolve this issue.



