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“My Marriage was Mistake After Mistake”

The Impact of Unregistered Marriages on Women’s
and Children’s Rights in Iraq



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**The Impact of Unregistered Marriages on Women’s
and Children’s Rights in Iraq**

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“My Marriage was Mistake after Mistake”

The Impact of Unregistered Marriages on Women’s and Children’s Rights in Iraq

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Summary

Despite being illegal under article 10 of the Personal Status Law (1959), which governs all family matters for Muslims in Iraq, marriages entered into outside of the Personal Status Court continue to occur in Iraq. These marriages are conducted by religious leaders and are culturally accepted as valid marriages; however, they are not legally valid until they are registered with the Personal Status Court and the couple is issued a civil marriage contract.

Between January and October 2023, Iraqi courts across the country legalized 37,727 marriages conducted outside the courts compared to 211,157 civil marriages. Frequently, people opt for unregistered marriages to circumvent marriage requirements in the Personal Status Law, particularly restrictions on child marriage, forced marriage, and polygamy. In other cases, the husband may refuse to legalize the marriage to avoid having to pay spousal maintenance in the event of divorce. In addition, Iraqis living in Islamic State (ISIS) controlled territory between 2014 and 2017 who married were also only issued marriage certificates by ISIS, which are not recognized by the Iraqi state.

Human Rights Watch has found that unregistered religious marriages are essentially functioning as loopholes enabling child marriage. According to UNAMI, the UN Assistance Mission in Iraq, 22 percent of marriages outside the courts involved girls under the age of 14. Local partners told Human Rights Watch that they estimate most unregistered marriages involved girls under 18. The consequences of child marriage for girls include increased risks of sexual and physical violence, death in childbirth, mental health harms, and being blocked from education. “It steals your future,” said Warda A., who was married at 13. Over the last 20 years, rates of child marriage in Iraq have been steadily increasing.

The Personal Status Law sets the legal age for marriage at 18, or 15 with a judge’s permission and depending on the child’s “maturity and physical capacity,” which already provides a loophole in violation of international law and best practices. However, there are recorded cases of religious leaders authorizing marriages of girls as young as nine years old. In marriages where one or both spouses are underage and present themselves before

the court to have their marriage legalized, judges face a *fait accompli* and most opt to legalize marriages of minors.

The impacts of unregistered marriages on women and girls' rights are significant. First, several public services and social protection schemes are linked to an individual's marital status. For example, women and girls are required to show proof that they are married to give birth in hospitals, contrary to international standards on the right to health. As a result, some girls and women are forced to opt for at-home births, increasing the risk of complications during pregnancy, childbirth, and the postnatal period that threaten the health and lives of girls and women and their infants. Furthermore, without a civil marriage contract, women are ineligible for certain social protection schemes, such as monthly salaries provided to widows, divorcees, and abandoned wives under Social Protection Law No. 11 of 2014.

Second, without a civil marriage contract, women and girls seeking divorce have no legal protection or recourse to claim their rights to dowry, spousal maintenance, and inheritance. To do so, their marriage must first be legalized. This process is particularly challenging in cases involving divorce, death, disappearance, and/or denial of the marriage by their spouse. For many women, the social, financial, and emotional burdens associated with undergoing this process seem insurmountable, leading them to forego legalization – and thus their rights.

These barriers can also create negative downstream effects on their children's rights. Mothers who cannot legally divorce may be denied legal responsibility for their children even if it would be in the child's best interests, which could leave children at risk of neglect or abuse. Also, without being able to give birth in a hospital, children of couples in unregistered marriages reported serious difficulties in accessing birth certificates and other critical civil documentation. Discriminatory and harmful policies prohibit children without this documentation from enrolling in school, applying for work in the private sector, obtaining travel documents, or accessing other social protection schemes, all of which are crucial in ensuring their economic and social rights are fulfilled.

There are no provisions in Iraq's Personal Status Law that punish religious leaders who officiate marriages outside the court, including where such marriages are in violation of the law, enabling religious leaders to violate Iraqi law with impunity. It is possible to initiate prosecutions against religious leaders by using article 240 of the Iraqi Penal Code, which punishes any person who contravenes an order issued by an official body. However, public prosecutors have never used this provision.

The right to legal identity under international law encompasses the recognition and documentation of an individual's existence, legal status, and personal attributes by the state or relevant authorities. The right to legal identity is crucial in ensuring individuals can exercise and enjoy a wide range of other rights, such as the rights to healthcare, education, and employment, among others. This right is enshrined in several international human rights instruments to which Iraq is a state party, including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, and in Iraq's Constitution and other domestic laws. International human rights standards recognize the right of women and girls to live free from physical, mental, and sexual violence, as well as equal protection under the law and freedom from discrimination, yet the majority of child marriages involve adult men and girls. Child marriages are a form of gender-based violence, and they often result in the violation of other human rights, including married girls' right to education, freedom from violence, reproductive rights, access to reproductive and sexual health care, employment, freedom of movement, and the right to consensual marriage.

Recommendations

To Iraq

To the Parliament of Iraq

- Adopt a national action plan to eliminate child marriage in Iraq.
- Set the minimum age of marriage at 18 with no exceptions by removing the exceptions in article 8(1) of the Personal Status Law allowing for the marriage of minors with a judge's permission dependent on proof of physical ability.
- Reform the relevant laws governing citizenship and birth registration to permit the registration of all births and the obtention of Iraqi citizenship and associated legal documents, including for children of Iraqi men and/or Iraqi women with unregistered marriages and children of unknown lineage. This includes the Nationality Status Law of 1972, National Card Law of 2016, Iraqi Nationality Law of 2006, Law for the Registration of Births and Deaths of 1971, Minors Care Law of 1980, and the Personal Status Law of 1959.
- Ensure that people subjected to child or forced marriages can still seek an annulment without undue burden placed on the victim, even after the marriage has been consummated. This can be done by amending article 3(2) of the Personal Status Law to include an exception for underaged and forced marriages and removing the qualification in article 9(1) stating “coerced marriages shall be considered null and void, *if the marriage was not consummated* [emphasis added].” Annulments should not affect the status and legal protections for any children of the marriage.
- Remove the provision in article 25(1) of the Personal Status Law that states a wife may not be entitled to spousal maintenance “if she leaves her husband's home without permission and without legitimate cause; If she is imprisoned for a crime or debt; or If she fails to travel with her husband without legitimate excuse.” Reform other provisions governing divorce to ensure women and men are treated equally in divorce proceedings.
- Fully criminalize marital rape in all circumstances, including registered and unregistered marriages.

- Take the necessary steps to enact a comprehensive domestic violence law by urgently revising the draft to ensure that it meets international standards and then passing it without delay.
- Repeal article 41(1) of the Iraqi Penal Code which gives a husband a legal right to “punish” his wife, and parents to discipline their children “within limits prescribed by law or custom.”
- Repeal articles 128 and 409 of the Iraqi Penal Code, which identify “The commission of an offence with honorable motives” as a “mitigating excuse,” and provide a reduced sentence for individuals who kill or assault their wives if they catch them in the act of adultery or if they catch their female relative engaging in sex outside of marriage.
- Repeal article 398 of the penal code which allows perpetrators of rape or sexual assault to escape prosecution or have their sentences quashed if they marry their victim.
- Amend the Penal Code and Personal Status Law to include punishments for religious leaders who officiate marriages in violation of the Personal Status Law.
- Allocate funding for a number of shelters and shelter beds sufficient to fully meet the needs of the population, in line with international best practices. Remove the requirement that people should have a court order to access a shelter and fund ongoing public awareness to let everyone know about the availability of shelters for people experiencing gender-based violence. Remove prohibitions on non-governmental organizations independently operating shelters.
- Increase and improve access to reproductive healthcare, including information about contraception and access to contraceptive supplies, for all girls and women in rural and urban areas by allocating greater resources from national health expenditure and more personnel.

To the Supreme Judicial Council

- Take steps to reduce the prevalence of marriages outside the courts, including by drafting regulations that:
 - Require religious leaders who conduct marriages to ensure the couple meets the legal requirements for marriage, including by only marrying couples who have already completed a civil ceremony and explicitly

prohibiting them from officiating any marriages involving one or more potential spouse under the age of 18.

- Require religious leaders to submit lists of couples they have married and copies of their marriage contracts to the courts every week.
- Increase the number of judges assigned to the Personal Status Courts to reduce the overwhelming number of cases assigned to each judge.
- Undertake an evaluation of the marriage registration process to identify procedural changes that will lessen bureaucratic inefficiency and barriers to marriage registration.
- Issue guidance and training for judges on assessing individuals' consent to marriage and ensure both parties' consent to marriage is full and free; empower and require judges to refuse to permit marriages to go ahead where the consent of one party is called into question.
- Issue guidance and training for judges on ensuring women and men are treated equally during divorce proceedings.
- Initiate prosecutions against all religious leaders who officiate marriages in violation of the Personal Status Law by using article 240 of the Penal Code, pending revisions to these laws by Parliament to clearly criminalize these actions.

To the Iraqi Ministry of the Interior

- Provide training to law enforcement officials on gender discrimination and violence against women and children, including trainings on investigating child marriages.

To the Iraqi Ministry of Education

- Allow children without documents to enroll in school and obtain education certificates.
- Increase access to education for girls, including by providing incentives for families to keep their daughters in school, such as monthly stipends provided to families contingent on their daughters' continued enrolment and attendance in school.
- Provide continuing formal education and vocational training opportunities for married and parenting girls and women whose education has been disrupted.
- Undertake awareness campaigns on the dangers of child marriage and unregistered marriages, in cooperation with the Supreme Judicial Council.

To the Iraqi Ministry of Health

- End all inquiries about the marital status of girls and women accessing health care and allow in-hospital births for all women and girls, regardless of their marital status.
- Ensure that access to comprehensive sexual and reproductive health care including information about contraception, access to all forms of contraceptive options and supplies, and comprehensive gynecological, pre- and post-natal, birthing, and newborn care, is available to all girls and women in rural and urban areas.
- Ensure access to psychosocial support and rights-respecting mental health services, particularly sensitive to the needs of child brides and survivors of domestic violence.
- Raise awareness among health workers and the public on the importance of registering all births, including home deliveries.

To the Iraqi Ministry of Labor and Social Affairs

- Expand cash transfer and social assistance programs to ensure universal and adequate coverage for mothers with minor children.

To the International Community and Donor Governments

- Direct funding towards organizations on the ground that provide legal assistance to persons wishing to issue or reissue documents and legalize their marriages.
- Urge Iraq to undertake the reforms called for in this report including bilaterally and at the UN Universal Periodic Review.

To NGOs and Civil Society Organizations

- Increase awareness raising activities on the dangers of child marriage and unregistered marriages.
- Increase legal assistance to individuals wishing to issue or reissue documents and legalize their marriages.

Methodology

This report is based on interviews carried out by Human Rights Watch researchers in Iraq and remotely by phone in May 2023. Human Rights Watch researchers interviewed eight women and two men, all of whom were married outside the courts, and one child whose parents had married outside the courts. Given the small sample size, aggregated data is not statistically significant. The researchers also interviewed a judge at Al Bayaa court in Baghdad.

Researchers informed all interviewees about the purpose and voluntary nature of the interviews and the ways in which Human Rights Watch would use the information and obtained informed consent from all interviewees. Interviewees understood they would receive no compensation for their participation in this research. Pseudonyms are used in the report when requested by interviewees.

Human Rights Watch also interviewed representatives from four local non-governmental organizations (Baghdad Women's Association, Model Iraqi Women's Organization, Tamooz, and Burj Babel) and two international non-governmental organizations (International Rescue Committee and UNICEF) involved in issues related to access to civil documentation, women's rights, children's rights, and domestic violence in Iraq.

The report focuses predominantly on federal Iraq, though references are made to the Kurdistan Region of Iraq (KRI). The report only considers unregistered Muslim marriages. Since the Personal Status Law of 1959 is based on Islamic law principles, recognized religious minority groups are exempted from it and must instead follow their own religious principles regarding marriage, though they are still required to register the marriage with the Personal Status Courts for it to be considered legally valid.¹

¹ There are 17 recognized religious groups in Iraq, including Muslims. All recognized religious groups in the country, except for Yazidis, have their own personal status courts responsible for handling marriage, divorce, and inheritance issues. See US State Department, Office of International Religious Freedom, "2021 Report on International Religious Freedom: Iraq," June 2, 2022, <https://www.state.gov/reports/2021-report-on-international-religious-freedom/iraq/>. Danish National ID Centre, "Iraq: Marriage Registration and the Issuance of Marriage Certificates," March 9, 2021, <https://nidc.dk/-/media/344BF356FA9E4429A2AE40EC6D64701D.pdf> (accessed February 26, 2024).

Human Rights Watch shared its research findings with the Supreme Judicial Council on August 1, 2023, and requested additional information. In response to the letter, the Supreme Judicial Council arranged a meeting between Human Rights Watch, the head of the Judicial Supervision Authority, and a representative of the Human Rights Department of the Ministry of Foreign Affairs on September 17, 2023. Their responses have been reflected in the report.

Background

Marriage Under Iraq's Personal Status Law of 1959

Iraq's Personal Status Law (PSL) of 1959 delineates the circumstances and requirements that must be met for a Muslim marriage to be considered valid.² The law nominally sets the legal age of marriage at 18 years old and requires the spouses to be of sound mind.³

However, the law also provides exceptions for children as young as 15 to marry if they have a judge's approval, contingent on the child's "lawful maturity and physical capacity."⁴ In cases where the guardian objects to the marriage, a judge may overrule the guardian if the judge finds the guardian's objection to be unreasonable.⁵

Article 3 forbids polygamy without a judge's permission and requires the husband to prove that he is financially able to support more than one wife, and that there is a legitimate interest in allowing more than one marriage.⁶ Article 9 forbids forced marriages, stating that "coerced marriages shall be considered null and void, if the marriage was not consummated."⁷ Anyone found to have coerced someone into marriage is punishable with imprisonment and/or a fine.

The PSL requires marriages to be registered with the Personal Status Court. It requires the couple to submit a statement containing "the identity of the parties to the marriage contract, their age, dowry amount, and proof of no legal impediment to the marriage," and a medical report affirming they are "free of contagious diseases and health impediments to the marriage."⁸

If a couple enters into an unregistered marriage, the bride is not punished and the groom is punishable with "a minimum of six months and a maximum of one year, or a minimum

² Personal Status Law, No. 188 of 1959, see <https://www.refworld.org/docid/5c7664947.html>.

³ Personal Status Law, art. 7.

⁴ Personal Status Law, art. 8(2).

⁵ Personal Status Law, art. 8(1).

⁶ Personal Status Law, art. 3.

⁷ Personal Status Law, art. 9(1).

⁸ Personal Status Law, art. 10.

fine of three hundred (US\$0.23) or a maximum of one thousand (\$0.77) dinars.” The imprisonment time is increased to a minimum of three years and a maximum of five years if he enters into another unregistered marriage while already married.⁹ As discussed below, the Supreme Judicial Council has instructed judges not to apply the punishment by imprisonment.

There are no provisions in the PSL nor the Iraqi Penal Code explicitly punishing religious leaders who officiate unregistered marriages, even if the marriage is impermissible under the PSL.¹⁰

The PSL goes on to further delineate marital rights and provisions (dowry and spousal maintenance), the dissolution of a marriage contract (divorce, judicial separation, elective separation), lineage/parentage, nursing/breastfeeding and custody, and inheritance.

Driving Factors for Marriage Outside the Courts

Culturally in Iraq, religious marriages are considered legitimate even though they are not officially recognized by the state until registered with the Personal Status Court. Some couples may not think they need to register the marriage with the courts or may be unaware of the risks of having an unregistered marriage, while others wishing to do so may face bureaucratic or financial obstacles in completing the process.

But frequently, people opt for unregistered marriages to circumvent marriage requirements in the PSL, notably restrictions on child marriage, forced marriage, and polygamy, according to a judge and four local organizations Human Rights Watch spoke with.¹¹ In part, this is made possible by the fact that religious leaders who perform marriages are not legally obliged to ensure that couples meet the necessary requirements to be married or to ensure they later register their marriage.¹² In addition, Iraqis living in ISIS controlled territory between 2014 and 2017 who married were only issued marriage certificates by

⁹ Personal Status Law, art. 10(5).

¹⁰ Human Rights Watch interview with a judge at the Supreme Judicial Council, Baghdad, September 17, 2023.

¹¹ Human Rights Watch interview with a judge at the Supreme Judicial Council, Baghdad, September 17, 2023.

¹² Human Rights Watch interviews with Baghdad Women’s Association, Baghdad, May 7, 2023, and Model Iraqi Women’s Organization, Baghdad, May 4, 2023.

ISIS, which are not recognized by the Iraqi state, leaving them unable to register their marriages.¹³

Second, although the PSL forbids forced marriage, the practice continues in Iraq, particularly outside the courts.¹⁴ Such marriages may be contracted to reduce the family's economic hardship or because parents believe it will secure their children (most often daughters) a better future.¹⁵ Less commonly, forced marriages may also occur as part of the harmful practice of *fasliya*, whereby family members, usually women and children, are traded to settle disputes between communities.¹⁶

Furthermore, article 398 of the Iraqi Penal Code allows perpetrators of rape or sexual assault to escape prosecution or have their sentences quashed if they marry their victim.¹⁷ Victims frequently face intense pressure to marry their rapists out of concern for family reputation, shame from society, and a perception that they will be unable to find a different husband following the rape.¹⁸ Though such marriages are usually forced and should be considered illegal according to article 9 of the PSL, they continue to take place both inside and outside the courts.

In other cases, men may opt for an unregistered marriage to avoid having to pay spousal maintenance in the event of divorce or to deny their wives inheritance rights in the event of

¹³ "Iraq: Families of Alleged ISIS Members Denied IDs," Human Rights Watch news release, February 25, 2018, <https://www.hrw.org/news/2018/02/25/iraq-families-alleged-isis-members-denied-ids>.

¹⁴ Personal Status Law, art. 9.

¹⁵ Miriam Puttick, "The Lost Women of Iraq: Family-Based Violence during Armed Conflict," Ceasefire Centre for Civilian Rights and Minority Rights Group, November 2015, https://minorityrights.org/wp-content/uploads/2015/11/MRG-report-A4_OCTOBER-2015_WEB.pdf.

¹⁶ "In Iraq, Tribal Traditions Rob Women, Girls of Rights," *France 24*, April 18, 2019, <https://www.france24.com/en/20190418-iraq-tribal-traditions-rob-women-girls-rights> (accessed February 26, 2024).

¹⁷ In the past decade, Tunisia, Lebanon, Jordan, Morocco, Egypt, and Palestine have all repealed similar laws, many of which were colonial legacies originated in the French Napoleonic Code of 1810. See, for example: Rothna Begum, "Middle East on a Roll to Repeal 'Marry the Rapist' Laws," Human Rights Watch, August 24, 2017, <https://www.hrw.org/news/2017/08/24/middle-east-roll-repeal-marry-rapist-laws>; "Iraq: Penal Code of 1969," accessed July 7, 2023, see <https://www.refworld.org/docid/452524304.html>.

¹⁸ Madeline Jones, "A Call to Repeal Iraq's Rape-Marriage Law," *Michigan State International Law Review*, March 20, 2023, <https://www.msuir.org/new-blog/2023/3/20/a-call-to-repeal-iraqs-rape-marriage-law> (accessed February 26, 2024); UNAMI Human Rights Office, "Submissions to the UN SRVAW Thematic Report On Rape As A Grave And Systematic Human Rights Violation And Gender-Based Violence Against Women," 2021, <https://www.ohchr.org/Documents/Issues/Women/SR/RapeReport/un/unami-iraq.docx>.

death.¹⁹ Without a civil marriage certificate, a wife has no legal recourse to claim her rights to spousal maintenance or inheritance.²⁰

Finally, people who are missing documentation may be unable to present the necessary identification required to register their marriages and thus have no choice but to marry outside the courts.

Legalizing Unregistered Marriages

On paper, the steps to legalize a religious marriage are bureaucratic and can be costly but are relatively straightforward if the couple are both willing to register their marriage.²¹ The couple must first file a ratifying lawsuit before the Personal Status Court, present their unified national ID cards (or the personal status ID, Iraqi citizenship, and residence cards), the religious marriage contract, two witnesses to the marriage, and photographs of the husband and wife.²²

The husband and wife are then referred to the Investigation Court. The PSL assigns culpability to the husband for an unregistered marriage, presenting him as the perpetrator and the wife as a witness.²³ If the marriage occurred after the amnesty law issued on January 1, 2008, the couple will then be referred to the minor offenses court.²⁴

The minor offenses court will then order the husband to pay a nominal fine of 500 IQD (US\$0.38) and refer the couple back to the Personal Status Court to certify the marriage contract or issue a new contract.²⁵ The PSL includes a provision for punishment by imprisonment for “a minimum of six months and a maximum of one year” (article 10),

¹⁹ Human Rights Watch interviews with Baghdad Women’s Association, Baghdad, May 7, 2023, and Model Iraqi Women’s Organization, Baghdad, May 4, 2023.

²⁰ Essam Asaad Al-Kaabi and Ansam Awni Al-Nuaimi, “The Effect of Personal Status on Women in Iraq,” Baghdad Women’s Association, 2019, <https://bwa-iraq.org/wp-content/uploads/2021/04/The-Effect-of-Personal-Status-on-Women-in-Iraq.pdf>.

²¹ “Marriage Contract Outside Courts,” Simaet Bhatha, June 12, 2022, <https://www.simaetbhatha.com/hc/en-us/articles/4414518696599-Marriage-Contract-Outside-Courts> (accessed February 26, 2024).

²² “Marriage Contract Outside Courts,” Simaet Bhatha; Human Rights Watch interview with a judge in Al Bayaa Court, Baghdad, May 3, 2023.

²³ Human Rights Watch interview with Judge in Al Bayaa Court, Baghdad, May 3, 2023.

²⁴ “Marriage Contract Outside Courts.”

²⁵ “Marriage Contract Outside Courts.”

though a judge at the Supreme Judicial Council told Human Rights Watch that Personal Status Court judges have been instructed not to issue prison sentences against the husband.²⁶

Legalizing a religious marriage becomes significantly more complicated in cases involving divorce, death, disappearance, or denial of the marriage before it is legalized.²⁷ This is particularly true for cases involving missing civil documentation, or if either spouse is unable to produce proof of the marriage (for example, if the religious contract was oral or is missing).²⁸ The costs of the legalization procedure – including lawyers’ fees, fines, transportation fees, and bribes – are an additional hurdle for low-income families.²⁹

Divorce Procedures for Unregistered Marriages

Divorces of unregistered marriages are often concluded outside the courts, commonly mediated by a couple’s community leaders, and later ratified in court.³⁰ Between January and October 2023, Iraqi courts legalized 45,443 divorces that had been agreed outside the courts.³¹ However, without a legally recognized marriage, the wife has no legal recourse to claim spousal maintenance, child support, and her dowry if her husband refuses to pay, or to ensure legal parental responsibility for the children if the husband refuses to grant it.

To avail oneself of those rights, the marriage must first be legalized and then divorce proceedings may begin. However, couples seeking divorce without a civil marriage contract may find their spouse unwilling to cooperate in legalizing the marriage contract (see “Denial of the Unregistered Marriage”).

²⁶ Human Rights Watch interview with a judge at the Supreme Judicial Council, Baghdad, September 17, 2023.

²⁷ Human Rights Watch interviews with Baghdad Women’s Association, Baghdad, May 7, 2023, and Model Iraqi Women’s Organization, Baghdad, May 4, 2023.

²⁸ Human Rights Watch interviews with Baghdad Women’s Association, Baghdad, May 7, 2023, and Model Iraqi Women’s Organization, Baghdad, May 4, 2023.

²⁹ Human Rights Watch interview with Model Iraqi Women’s Organization, Baghdad, May 4, 2023.

³⁰ Kholoud al-Alamyry, “No Waiver, No Divorce: Half of Iraqi Women Blackmailed into the Worst Deal, When Leaving Marriage,” *Al Menasa*, March 31, 2022, <https://www.al-menasa.net/en/2022/03/31/no-waiver-no-divorce-half-of-iraqi-women-blackmailed-into-the-worst-deal-when-leaving-marriage/> (accessed February 26, 2024).

³¹ Data from the Supreme Judicial Council website, see: <https://www.sjc.iq/view.71297/> (accessed February 26, 2024).

Either spouse can seek a judicial separation in certain cases laid out in Iraq's Personal Status Law, including if the marriage contract was constituted before either spouse turned 18 without a judge's consent, if the marriage was constituted outside the court by coercion and was consummated, or if the husband married a second wife without permission from the court.³²

Women can seek separation if their husbands have been absent for two or more years, imprisoned for three or more, or declared missing for four or more.³³ However, legalizing the marriage in such cases entails an additional set of complications (see "Post-Mortem Legalization of Unregistered Marriages" and "Disappearance or Abandonment").

Denial of the Unregistered Marriage

If a husband denies an unregistered marriage and refuses to participate in the legalization process, the wife must file a petition against the husband with supporting documentation to prove that she was married to him.³⁴ The documents must show the husband's last known address, which is used to subpoena his presence in court. If the couple has children and the husband or family in-law have denied the union, Iraqi law allows for authentication of the child's lineage through DNA testing.³⁵

Such cases typically happen because the woman is seeking divorce and the husband either refuses the divorce or does not wish to pay spousal maintenance.³⁶

A lawyer representing a woman undergoing this process told Human Rights Watch that it costs around 3 million IQD (\$2,290), including legal fees, case expenses, and bribes, and a 150,000 IQD (\$114.55) fee for each attempt to deploy a police patrol to arrest the husband.³⁷ The lawyer explained:

³² Personal Status Law, No. 188 of 1959.

³³ Personal Status Law, No. 188 of 1959.

³⁴ USAID, "Values of Access to Justice and Unregistered Marriages in Iraq," March 2014, https://pdf.usaid.gov/pdf_docs/PAooK2Z4.pdf.

³⁵ USAID, "Values of Access to Justice and Unregistered Marriages in Iraq," March 2014, https://pdf.usaid.gov/pdf_docs/PAooK2Z4.pdf.

³⁶ Al-Kaabi and Al-Nuaimi, "The Effect of Personal Status on Women in Iraq."

³⁷ Human Rights Watch interview with Model Iraqi Women's Organization, Baghdad, May 4, 2023.

Legally she can do it without an attorney, but in practice it's impossible. She would need to go to the police station to file a complaint, where she may be exposed to harassment, especially if the police know her husband. It is unacceptable in her community to have the police arrest her husband, and she may be exposed to societal stigma or tribal retribution when the police deliver the subpoena.³⁸

Fatima B., who first married at 14, is in a similar situation, she told Human Rights Watch. Her husband abandoned her a year after their marriage and is refusing to ratify their religious marriage contract. "I filed a complaint against my husband, but due to threats that my family received from his tribe, I withdrew the complaint."³⁹

For many women, the social, financial, and emotional burdens associated with undergoing this process seem insurmountable, leading them to forego legalization – and thus their rights – in favor of leaving the marriage. In a questionnaire submitted to 1,765 women undergoing divorce proceedings in Baghdad, 925 said they gave up their rights in order to finalize their divorce.⁴⁰

Post-Mortem Legalization of Unregistered Marriages

If a spouse has died, post-mortem legalization of the marriage is possible with provision of an official death certificate, two witnesses testifying to the marriage, the religious contract, and other additional evidence (for example, photos of the wedding ceremony).⁴¹

However, only 70 to 79 percent of deaths are registered in Iraq.⁴² If no death certificate or proof of death exists, the surviving spouse must declare the deceased spouse as missing for two years before a court will issue a death certificate.⁴³ To do so, the surviving spouse

³⁸ Human Rights Watch interview with Model Iraqi Women's Organization, Baghdad, May 4, 2023.

³⁹ Human Rights Watch interview with Fatima B., Baghdad, May 7, 2023.

⁴⁰ This equaled 925 women out of 1,765 who responded to the questionnaire. al-Alamyry, "No Waiver, No Divorce: Half of Iraqi Women Blackmailed into the Worst Deal, When Leaving Marriage."

⁴¹ USAID, "Values of Access to Justice and Unregistered Marriage."

⁴² United Nations Statistics Division, "Birth and Death Registration Completeness," April 2023, <https://unstats.un.org/unsd/demographic-social/crvs/>.

⁴³ Death certificates are issued by hospitals in case of natural death, and by the investigation court in case of unnatural death (such as murder or suspicion of felony. Proof of death statements verify the death of a person when issuance of a

must submit an application to a local police station, with either two male witnesses or four female witnesses, informing them of the circumstances under which the person went missing.⁴⁴ This law, giving less weight to female witnesses, is also in violation of Iraq's obligations under international law.⁴⁵ A file will then be opened with the Criminal Investigations Court, and the family is required to post a public notice of the missing person in local newspapers.⁴⁶ After four years without news from the missing person, a spouse will be able to request the Personal Status Court to declare the missing person as dead, at which point the surviving spouse will be able to register the marriage and update their civil status ID to be registered as a widow(er).⁴⁷

Disappearance or Abandonment

If one spouse has abandoned the other or disappeared (but is not presumed dead), the abandoned spouse must file a lawsuit against their husband or wife with supporting documentation to prove that they were married and provide the court with the disappeared spouse's last known address. The court will then subpoena the relevant Local Council for a confirmation of said address.⁴⁸ Once confirmed, the court will issue a subpoena for the spouse to present themselves in court.⁴⁹

death certificate is not possible, for example in cases of disappearance or inaccessibility of a hospital. "Iraqi Death Certificate," Simaet Bhatha, June 12, 2022, <https://www.simaetbhatha.com/hc/en-us/articles/4404243093015-Iraqi-Death-Certificate>.

⁴⁴ "Iraqi Death Certificate," Simaet Bhatha, June 12, 2022, <https://www.simaetbhatha.com/hc/en-us/articles/4404243093015-Iraqi-Death-Certificate>.

⁴⁵ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981.

⁴⁶ "Iraqi Death Certificate," Simaet Bhatha, June 12, 2022, <https://www.simaetbhatha.com/hc/en-us/articles/4404243093015-Iraqi-Death-Certificate>.

⁴⁷ USAID, "Values of Access to Justice and Unregistered Marriage"; Al-Kaabi and Al-Nuaimi, "The Effect of Personal Status on Women in Iraq."

⁴⁸ Al-Kaabi and Al-Nuaimi, "The Effect of Personal Status on Women in Iraq"; USAID, "Values of Access to Justice and Unregistered Marriage."

⁴⁹ Al-Kaabi and Al-Nuaimi, "The Effect of Personal Status on Women in Iraq"; USAID, "Values of Access to Justice and Unregistered Marriage."

A Child Marriage Loophole

Child Marriage Inside and Outside the Courts in Iraq

Over the last 20 years, the rate of child marriage in Iraq has steadily increased. A 2021 study by the Ministry of Planning and the Central Statistical Organization found that 5.2 percent of women were married before 15. The same study found that 25.5 percent of married women in Iraq were married before they were 18.⁵⁰ According to UNICEF, 28 percent of girls in Iraq are married before the age of 18.⁵¹ Six of the eight women interviewed by Human Rights Watch were under eighteen at the time of their first marriage, and both men interviewed by Human Rights Watch had married their wives before she was eighteen. Of these eight unregistered marriages involving underage wives, one was married at 13, five were married at 14, and two were married at 15 and 17 respectively. Child marriage is associated with devastating long-term consequences for the health and lives of married children and their families.⁵²

According to UNAMI, the UN Assistance Mission in Iraq, 33.9 percent of marriages in Iraq are unregistered, with 22 percent of them involving girls under the age of 14.⁵³ Though UNAMI did not provide data on what percent of marriages involved girls under the age of 18, local partners working on this issue told Human Rights Watch that based on their experience they estimate the majority of unregistered marriages involve girls under 18.⁵⁴ This perspective was reiterated by a judge at the Supreme Judicial Council, who told Human Rights Watch that child marriage was one of the main drivers of unregistered marriages.⁵⁵

⁵⁰ Central Statistical Organization and Kurdistan Regional Statistical Office, “Iraqi Women Integrated Social and Health Survey,” April 1, 2022, https://iraq.unfpa.org/sites/default/files/resource-pdf/iwish_summary_report_-_final_june2022.pdf. Central Statistical Organization and Kurdistan Regional Statistical Office.

⁵¹ UNICEF, “The State of the World’s Children 2023: For Every Child, Vaccination,” April 2023, <https://www.unicef.org/media/108161/file/SOWC-2023-full-report-English.pdf>, p. 181.

⁵² “Q & A: Child Marriage and Violations of Girls’ Rights,” Human Rights Watch news release, June 14, 2013, <https://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights>

⁵³ United Nations in Iraq, “Iraq Common Country Analysis 2021,” April 2022, <https://iraq.un.org/sites/default/files/2022-04/CCA%20Iraq%202021%20final%20version%20FINAL%20W%20AR.pdf>. United Nations in Iraq.

⁵⁴ Interview with Baghdad Women’s Association, May 7, 2023, and Model Iraqi Women’s Organization, May 4, 2023.

⁵⁵ Human Rights Watch interview with a judge at the Supreme Judicial Council, Baghdad, September 17, 2023.

Some families may opt for an unregistered religious marriage while one or both spouses are underage, with the agreement that the marriage will be legalized once the underage spouse or spouses turn 18. However, this can cause significant issues if the wife becomes pregnant, the couple divorces, or a spouse dies or disappears before the marriage is legalized.

Several interviewees who were married as children told Human Rights Watch they were too young to understand the consequences of having unregistered marriages and getting married so young. “I wasn’t old enough to comprehend the steps involved in not having a legal marriage contract, but my mother kept asking me to ask my husband to sign one, and every time I did, he continued delaying,” Fatima B., who was married at 14, told Human Rights Watch.⁵⁶

Wissam M., a 30-year-old from Diyala governorate, married his wife in 2016 when she was 14. Because she was a child, they did not register their marriage. They have three children between two and five years old, none of whom have their civil documents, even though they have since registered their marriage. He told Human Rights Watch:

I completed my marriage contract in 2020, but I didn’t disclose to the judge that I have children because I was afraid they would demand payment or jail me. I attempted to register them, but the procedure is challenging since I need to transfer my civil documentation records from Diyala to Baghdad. I work as a daily worker and cannot pay the 1.5 million IQD (\$1,143) that the lawyer requested, nor can I do it myself without taking time away from my job. I don’t have the time or the money to finish it. It will take me months. My older kid will turn six years old next year, but he is unable to enroll in school since he lacks an ID.⁵⁷

When a couple where one or both spouses are underage presents themselves before the court to have their marriage legalized, the judge faces a *fait accompli*. If the judge refuses to legalize their marriage, the outcomes for the couple and their children would be

⁵⁶ Human Rights Watch interview with Fatima B., Baghdad, May 7, 2023.

⁵⁷ Human Rights Watch phone interview with Wissam M., May 8, 2023.

negative. On the other hand, judges continuing to ratify the religious marriage contracts of minors weakens the rule of law and does little to reduce the prevalence of child marriage in Iraq. Caught between a rock and a hard place, most judges opt to legalize the marriages of minors.

Human Rights Watch witnessed this predicament at Al Bayaa court, west of Baghdad, in May 2023. A 17-year-old girl, visibly pregnant, entered with her father and her 20-year-old husband. They married a year earlier and were seeking to legalize their marriage ahead of the birth of their child. Without deeper inquiry into the circumstances of the marriage and wishes of the underage bride, the judge asked her, her father, and her husband whether they consented to the marriage and then certified it.

If judges apply punishments for child marriage, the fines are nominal (250 IQD, or \$0.19). Under article 9(2) of the PSL, a third party who coerces someone into marriage is punishable with imprisonment, and/or a fine if it is a first degree relative. However, since child marriages are not considered de facto forced, such penalties are rarely applied, particularly as it requires women and girls to file a lawsuit against their relatives with little assurance of state protection.⁵⁸

Furthermore, article 9 of the PSL states that “coerced marriages shall be considered null and void, *if the marriage was not consummated* [emphasis added].”⁵⁹ Such marriages can be consummated by rape, and there are no provisions in Iraqi law that criminalize marital

⁵⁸ The Committees of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) have stated that marriage under the age of 18 is a form of forced marriage. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/134/42/PDF/G1913442.pdf?OpenElement> Iraq is a signatory to both CEDAW and the CRC. See also: <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings>. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Iraq is a signatory, states that the “betrothal” or marriage of a child shall have no legal effect and protects the right of women “freely to choose a spouse and to enter into marriage only with their free and full consent.” United Nations General Assembly, “Convention on the Elimination of All Forms of Discrimination against Women” (1979), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>; Human Rights Watch interview with Baghdad Women’s Association, Baghdad, May 7, 2023, and Model Iraqi Women’s Organization, May 4, 2023.

⁵⁹ Personal Status Law, art. 9.

rape.⁶⁰ Victims of forced marriage, including children, who seek to leave such marriages must initiate divorce proceedings to do so.⁶¹

In November 2021, a court in Baghdad's Kadhimiya district was asked to legalize a religious marriage between a 12-year-old girl, and her 25-year-old husband. The case made headlines when the girl's mother posted a video on social media asking authorities to save her daughter, saying her ex-husband had kidnapped the girl and forced her to marry his second wife's brother, after he raped the girl.⁶² The Kadhimiya Court only revoked the marriage contract after high-level intervention in the case.⁶³ While the girl was able to get a revocation, local activists have attributed this to the media furor and high-level attention her case received, noting the many other cases of child marriage, domestic violence, and sexual abuse that occur with impunity in Iraq.⁶⁴

Amira F., who told Human Rights Watch that she was forced to marry outside of the courts when she was 14 years old, was only able to leave the marriage via a divorce. She was required to first register their marriage, but her husband made her give up her monetary rights and accept a *khul'* divorce to do so.⁶⁵

There are no punishments in the PSL for officiants who conduct child marriages. The only penalty applies to those who officiate marriages in violation of article 3, clauses 4 and 5, which refers to polygamy in cases without a judge's approval.⁶⁶ A judge told Human Rights

⁶⁰ "Country Guidance Iraq 2021," European Union Agency for Asylum, January 2021, <https://euaa.europa.eu/country-guidance-iraq-2021/2162-forced-and-child-marriage> (accessed February 26, 2024).

⁶¹ Article 40(3) allows either spouse to request judicial separation is "the marriage contract was constituted before either spouse turned eighteen, without a judge's consent" and "if the marriage was constituted outside the court by coercion, and it was consummated." However, judicially separated couples are still legally registered as married, and must undergo formal divorce proceedings to terminate the marriage.

⁶² والدّة الطفلة إسراء: تم اختطاف ابنتي واغتصابها أمام والدها وزوجته وتم تزويجها دون علمي، @fallujahtv، قناة الفلوجة خاصة #تغطية خاصة <https://t.co/Nrwww4R6BB>, Tweet, Twitter, November 21, 2021, <https://twitter.com/fallujahtv/status/1462482392690704384>.

⁶³ Dler Mohammed, "12-Year-Old Girl's Forced Marriage Revoked by Iraqi Court," *Kurdistan 24*, November 25, 2021, <https://www.kurdistan24.net/en/story/26368-12-year-old-girl%27s-forced-marriage-revoked-by-iraqi-court> (accessed February 26, 2024).

⁶⁴ Shawn Yuan, "Iraq: Court Hearing Resumes on Marriage of 12-Year-Old Girl," *Al Jazeera*, November 28, 2021, <https://www.aljazeera.com/news/2021/11/28/iraq-court-hearing-resumed-for-the-marriage-of-12-year-old-girl> (accessed February 26, 2024).

⁶⁵ Interview with Amira F., May 8, 2023. A *khul'* divorce is a procedure through which a woman can divorce herself from her husband in Islam, by returning the dower (mahr) and everything she received from him during their life together.

⁶⁶ Personal Status Law, art. 3(6).

Watch that the possibility exists to initiate prosecutions against religious leaders by using article 240 of the Iraqi Penal Code, which punishes any person “who contravenes an order issued by a public official or agent, municipal council or official or semiofficial body in accordance with their legal authority or who disobeys an order issued by those entities.”⁶⁷ However, he said this provision has never been used.⁶⁸

Driving Factors

The prevalence and experience of poverty in Iraq has been exacerbated by cyclical violence and political and social instability, mass displacement, corruption, and mismanagement of government revenues, Covid-19, and rising economic and social inequality.⁶⁹ Furthermore, flaws in the process used to determine poverty status for households eligible for social assistance under Social Protection Law No. 11 of 2014 result in significant exclusion errors that mean those in need of social assistance may be deemed ineligible to receive it.⁷⁰

For many families experiencing poverty, early and forced marriages can be a harmful coping strategy. Because of harmful gender norms, including perceptions that sons can contribute to the household financially whereas daughters should remain at home, girls are frequently seen as economic burdens on a family, and marriage can be seen as a way to lift that burden off the family, obtain a dowry, and perhaps secure their daughters’ future.⁷¹

“In our society, we want girls to get married at an early age to protect them,” Ibtisam A.’s mother said. “I wasn’t worried about her getting married young [at age 14] because it’s normal in our community to get married at 14 or 15.”⁷²

Fatima B. said her family’s economic situation played a role in her family accepting her marriage proposal at 14. “My family didn’t have any concerns about my age. They wanted

⁶⁷ Iraq Penal Code of 1969.

⁶⁸ Human Rights Watch interview with a judge at the Supreme Judicial Council, Baghdad, September 17, 2023.

⁶⁹ World Bank, “World Bank Open Data: Iraq,” World Bank Open Data, 2023, <https://data.worldbank.org/country/IQ>. World Bank.

⁷⁰ International Labour Organization, “Building Iraq’s Social Protection Floor,” August 2022, <https://iraq.un.org/sites/default/files/2022-08/Building%20Iraq%E2%80%99s%20Social%20Protection%20Floor.pdf>.

⁷¹ Emily Heimsoth and Gabrielle Szabo, “Global Girlhood Report 2022: Girls on the Frontline, Save the Children International, October 11, 2022, <https://resourcecentre.savethechildren.net/document/global-girlhood-report-2022-girls-on-the-frontline/>.

⁷² Human Rights Watch interview with Ibtisam A., Tabaruk A., and Lifta A., Baghdad, May 8, 2023.

me to be married because my father was in prison and my family's financial situation was bad.”⁷³

Nada S. was married at 15 after a neighbor's son offered a marriage proposal. “My uncle pressured my mother to accept the proposal because he wanted to get rid of his responsibilities towards her,” Nada S. said. After just one year of marriage, she divorced. “My mom thought I was too young. She didn't like my husband; she already knew his attitudes.”⁷⁴

The experience of poverty in Iraq is also associated with lower educational outcomes and increased dropout rates from school.⁷⁵ This contributes to the prevalence of child marriage in Iraq, given that girls who are deprived of basic education are more likely to enter into child marriage and early childbearing.⁷⁶ Only one of the eight girls and women interviewed by Human Rights Watch who had married as a child completed primary and secondary education. Six NGOs operating in Iraq that Human Rights Watch interviewed pointed to the need to enact policies that expand girls' access to secondary education and encourage them to complete their studies as a key strategy in reducing child marriage in Iraq.⁷⁷

Finally, girls affected by conflict are 20 percent more likely to be married than those living in peaceful areas, according to a 2022 study by Save the Children.⁷⁸ During the 2014 to 2017 conflict with ISIS, thousands of Yezidi women and girls were forced to marry ISIS members.⁷⁹ Increased feelings of insecurity, the breakdown of social safety nets, diminished access to education and livelihoods, and parents' belief that marrying their daughters of will provide them some form of protection, including from sexual violence,

⁷³ Human Rights Watch interview with Fatima B., Baghdad, May 7, 2023.

⁷⁴ Human Rights Watch interview with Nada S., Baghdad, May 8, 2023.

⁷⁵ United Nations in Iraq, “Iraq Common Country Analysis 2021.” United Nations in Iraq.

⁷⁶ United Nations in Iraq, “Iraq Common Country Analysis 2021.” United Nations in Iraq.

⁷⁷ Human Rights Watch interviews with Model Iraqi Women's Organization, Baghdad, May 4, 2023; Tamooz, Baghdad, May 4, 2023; Burj Babel, Baghdad, May 6, 2023; Baghdad Women's Association, Baghdad, May 9, 2023; UNICEF, Baghdad, May 9, 2023; and International Rescue Committee, Baghdad, July 6, 2023.

⁷⁸ Heimsoth and Szabo, “Global Girlhood Report 2022.”

⁷⁹ “Iraq: Forced Marriage, Conversion for Yezidis,” Human Rights Watch news release, October 11, 2014, <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>.

during insecurity have contributed to the increase in child marriage witnessed during and after conflict in Iraq.⁸⁰

Consequences of Child Marriage

Adverse Health Consequences

One of the major health risks to child brides arises with adolescent pregnancy. Girls aged 15 to 20 are twice as likely to die in childbirth as those in their 20s, and girls under the age of 15 are five times as likely to die.⁸¹ These consequences are due largely to girls' physical immaturity where the pelvis and birth canal are not fully developed.⁸²

As discussed, most child marriages in Iraq are unregistered, and without a civil marriage certificate women and girls are unable to give birth in hospitals.⁸³ As a result, girls must opt for at-home births with limited access to emergency obstetric services.⁸⁴ This increases the risk of complications that threaten the life of both the mother and her baby. A child born to a girl under 18 has a 60 percent greater chance of dying in the first year of life than one born to a woman 19 and older.⁸⁵

Child marriage is also likely to have adverse consequences on girls' mental health. In Iraq, wives generally join their husband's households after marriage. From one day to the next, child brides will be expected to take on duties for which they are not physically or mentally prepared, leave their family and social support networks they may have had at school or

⁸⁰ Matthew Goers et al., "Child Marriage among Displaced Populations – a 2019 Study in Kurdistan Region of Iraq," *BMC Public Health* 22, no. 1 (April 21, 2022): 796, <https://doi.org/10.1186/s12889-022-13220-x>.

⁸¹ "Q & A: Child Marriage and Violations of Girls' Rights," Human Rights Watch news release, June 14, 2013, <https://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights>; Abdulkareem Al-Obaidi et al., "An Iraqi-Specific Perspective on Adolescent Pregnancy," in *International Handbook of Adolescent Pregnancy: Medical, Psychosocial, and Public Health Responses*, 2014, 379–99, https://doi.org/10.1007/978-1-4899-8026-7_20.

⁸² "Q & A: Child Marriage and Violations of Girls' Rights," Human Rights Watch news release, June 14, 2013, <https://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights>

⁸³ USAID, "Values of Access to Justice and Unregistered Marriages in Iraq"; Zahra Al Barazi and Chris Creech, "The Campaign to End Statelessness in Iraq" (International Human Rights Clinic: Boston University School of Law, March 2022), https://www.bu.edu/law/files/2022/07/FINAL_Iraq-Report-3.14.22.pdf.

⁸⁴ Al Barazi and Creech, "The Campaign to End Statelessness in Iraq."

⁸⁵ UNFPA, "Adolescent Pregnancy," UNFPA, December 2, 2014, <https://esaro.unfpa.org/en/topics/adolescent-pregnancy>, UNFPA (accessed February 26, 2024).

elsewhere, and adapt to life in a new household.⁸⁶ Child brides in Iraq have reported frequently struggling with feelings of loneliness, isolation, and depression, with limited access to psychosocial support and mental health services.⁸⁷

Describing the psychological effect of her marriage at 13, Warda A., now 29 years old, told Human Rights Watch, “When I was 13, I wasn’t ready to be married. I was still a child, both in my mentality and in my actions. I’m 100 percent against child marriage because it steals your future.”⁸⁸

Limited Access to Education and Employment

Child marriage frequently ends a girl’s formal education forever.⁸⁹ Once married, girls are often expected to take on domestic and familial duties that are prioritized over attending school. Dropping out of school has an impact on girls’ choices and opportunities throughout their lives, not just when they are children.⁹⁰ They have fewer opportunities to provide for themselves and their families and are more vulnerable to poverty when their spouses die, abandon, or divorce them.⁹¹

This exacerbates the gender education gap in Iraq, where 7.6 percent of men and 17 percent of women are illiterate, and women are less represented at all levels of education (primary, secondary, and university).⁹² A lack of education further hampers women’s ability to find jobs in a labor force that skews predominantly male. According to the 2021 Labor Force Survey in Iraq, men accounted for 86.6 percent of the labor force while women accounted for only 13.4 percent.⁹³

⁸⁶ Human Rights Watch interview with Baghdad Women’s Association, Baghdad, May 7, 2023. Puttick, “The Lost Women of Iraq: Family-Based Violence during Armed Conflict.”

⁸⁷ Puttick, “The Lost Women of Iraq: Family-Based Violence during Armed Conflict.”

⁸⁸ Human Rights Watch interview with Warda A., Baghdad, May 8, 2023.

⁸⁹ “Q & A: Child Marriage and Violations of Girls’ Rights,” Human Rights Watch news release, June 14, 2013, <https://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights>

⁹⁰ Heimsoth and Szabo, “Global Girlhood Report 2022.”

⁹¹ Heimsoth and Szabo, “Global Girlhood Report 2022.”

⁹² Central Statistical Organization and Kurdistan Regional Statistical Office, “Iraqi Women Integrated Social and Health Survey.” Central Statistical Organization and Kurdistan Regional Statistical Office.

⁹³ International Labour Organization, “Iraq Labour Force Survey 2021,” Report (International Labour Organization, July 5, 2022), http://www.ilo.org/beirut/publications/WCMS_850359/lang--en/index.htm. International Labour Organization.

Fatima B. said that she stopped attending school when she got married, despite only finishing primary school. Now 20 years old, she said, “although I desire to resume my schooling, financial constraints within my family and societal challenges make it difficult for a young, divorced woman to pursue education.”⁹⁴

Only one of the eight women Human Rights Watch interviewed was able to complete her education through secondary school, and only two hold jobs. Neither wife of the two men interviewed completed her education or has a job.

Sexual and Domestic Violence

In Iraq, married girls and young women between the ages of 15 and 19 with low levels of education are at a greater risk of domestic and sexual violence from their spouses than older and more educated women.⁹⁵ Research by Minority Rights Group International cites spousal age difference, typical of child marriage, as a significant risk factor associated with violence and sexual abuse against girls.⁹⁶

A study by Minority Rights Group International involving 111 cases of forced marriage found that in 87.4 percent of cases there was physical violence, and in 19.8 percent there was sexual abuse.⁹⁷

Some women interviewed by Human Rights Watch spoke of abuse in their marriages. “My husband beat me and physically hurt me on many occasions,” Fatima B. told Human Rights Watch. “His family also demeaned me and provoked him to beat me.”⁹⁸ “Both my [first and second] husbands physically harmed me. I still have marks on my body [from the abuse],” Nada S. said.⁹⁹

⁹⁴ Human Rights Watch interview with Fatima B., Baghdad, May 7, 2023.

⁹⁵ Puttick, “The Lost Women of Iraq: Family-Based Violence during Armed Conflict”; Human Rights Watch, “Q & A: Child Marriage and Violations of Girls’ Rights.”

⁹⁶ Puttick, “The Lost Women of Iraq: Family-Based Violence during Armed Conflict”; Human Rights Watch, “Q & A: Child Marriage and Violations of Girls’ Rights.”

⁹⁷ Puttick, “The Lost Women of Iraq: Family-Based Violence during Armed Conflict.”

⁹⁸ Human Rights Watch interview with Fatima B., Baghdad, May 7, 2023.

⁹⁹ Human Rights Watch interview with Nada S., Baghdad, May 8, 2023.

Marital rape is not criminalized in the Iraqi penal code and attempts to pass a draft law against domestic violence have stalled.¹⁰⁰ Instead, article 41(1) of the penal code gives a husband a legal right to “punish” his wife, and parents to discipline their children “within limits prescribed by law or custom.”¹⁰¹ The penal code provides for mitigated sentences for violent acts, including murder, for “honorable motives”¹⁰² or for catching one’s wife or female relative in the act of adultery or sex outside of marriage.¹⁰³

Iraq has very few shelters for victims of domestic violence, and women are only allowed to enter a shelter with a court order.¹⁰⁴ Some NGOs run underground shelters, which are frequently raided by police and subject to attacks by extremist groups.¹⁰⁵ As a result, women and girls fleeing situations of domestic violence frequently have limited options for escape.

¹⁰⁰ “Iraq: Urgent Need for Domestic Violence Law,” Human Rights Watch news release, April 22, 2020, <https://www.hrw.org/news/2020/04/22/iraq-urgent-need-domestic-violence-law>.

¹⁰¹ Iraqi Penal Code, art. 41(1).

¹⁰² Such motives can include refusal to marry, marrying someone of a different religion, engaging in sex out of wedlock, seeking divorce, or acting in a way contrary to social norms and expectations.

¹⁰³ Iraqi Penal Code, arts. 128 and 409.

¹⁰⁴ Organization for Women’s Freedom in Iraq (OWFI) et al, “Gender-Based Violence and Discrimination Against Women and Girls in Iraq,” January 2019, <https://bit.ly/3KBkLjs> (accessed February 23, 2023). European Union Agency for Asylum, “Country Guidance: Iraq Common analysis and guidance note,” June 2022, p. 135.

¹⁰⁵ Organization for Women’s Freedom in Iraq (OWFI) et al, “Gender-Based Violence and Discrimination Against Women and Girls in Iraq,” January 2019.

Access to Civil Documentation, Public Services, and Social Protection

Impact on Women's and Girls' Rights

Civil documentation is necessary to access most public services and social protection schemes in Iraq, including education, health care, employment, food distribution, and housing.¹⁰⁶ Without a civil marriage certificate, a woman or girl is unable to update her civil status to “married” on her ID. This can block her ability to access public services and social protection schemes that are linked to an individual’s civil status. Without divorce or death certificates, she is unable to remarry should she wish. Furthermore, if the issue of missing civil documentation is not resolved, it risks becoming an intergenerational problem since parents will be unable to transfer their legal status to their children.

Without a marriage certificate, women and girls are not permitted to give birth in hospitals in Iraq and are forced to opt for at-home births, with limited access to emergency obstetric services, which also creates additional complications in obtaining the child’s birth certificate.¹⁰⁷ This discriminatory policy restricts access to healthcare services in violation of women’s right to health.

“I was married when I was 14, and soon after I became pregnant, my husband abandoned our family,” Ibtisam A. told Human Rights Watch. “I was so young, and I had to give birth in my mother’s house with a midwife because I couldn’t go to the hospital. I couldn’t get my daughter her documents, and now she is 16 and still has no documents.”¹⁰⁸

¹⁰⁶ The following domestic legislation in Iraq governs or is relevant to obtaining civil documents: Nationality Status Law of 1972, National Card Law of 2016, Iraqi Nationality Law of 2006, Law for the Registration of Births and Deaths of 1971, Minors Care Law of 1980, and the Personal Status Law of 1959; Danish Refugee Council, International Rescue Committee, and Norwegian Refugee Council, “Life in the Margins: Re-Examining the Needs of Paperless People of Post-Conflict Iraq,” September 14, 2022, <https://reliefweb.int/report/iraq/life-margins-re-examining-needs-paperless-people-post-conflict-iraq>.

¹⁰⁷ USAID, “Values of Access to Justice and Unregistered Marriages in Iraq”; Al Barazi and Creech, “The Campaign to End Statelessness in Iraq.” Al Barazi and Creech.

¹⁰⁸ Human Rights Watch interview with Ibtisam A., Baghdad, May 8, 2023.

There are two main social assistance programs in Iraq; the Public Distribution System (PDS), which is one of the largest food distribution programs in the world and provides food rations to almost all households in the country, and the Social Safety Net, a poverty-targeted conditional cash transfer which covers some 1.2 million Iraqi households.¹⁰⁹

Under the Social Protection Law No. 11 of 2014, widows, divorcees, and abandoned wives living below the poverty line are eligible for social assistance in the form of a monthly salary, as well as access to other services including trainings and vocational education, assistance in finding employment, childcare, and housing assistance.¹¹⁰ However, failure to register a religious marriage means the civil status on an individual's ID will remain as single, thus disqualifying that person from this coverage.

Social Protection Law No. 11 also includes provisions for unmarried women living below the poverty line.¹¹¹ The Ministry of Labor and Social Affairs uses a complex and costly proxy-means testing system to determine poverty status for potentially eligible households, though a 2022 study by the International Labour Organization identified significant exclusion errors that meant those in need of social assistance were deemed ineligible from receiving it.¹¹² Finally, the application process requires the beneficiary to provide all their civil documentation, disqualifying those who lack some or all of this documentation.¹¹³

Fatima B., from southeast Baghdad, was married at 14 and divorced by 15. “My husband refused to ratify the marriage or divorce contract so legally [on my ID], I am still single. I can't claim the monthly salary of 105,000 IQD (US\$80) for divorced women since I have no proof of my marriage or divorce.”¹¹⁴

¹⁰⁹ Lokendra Phadera, Dhiraj Sharma, and Mathew Wai-Poi, *Iraq's Universal Public Distribution System* (World Bank, Washington, DC, 2020), <https://doi.org/10.1596/1813-9450-9155>.

¹¹⁰ “Social Protection Law No. 11 of 2014,” Pub. L. No. 11 (2014), <https://www.refworld.org/pdfid/5c755aa47.pdf>; “Social Welfare Law in Iraq,” Simaet Bhatha, February 28, 2023, <https://www.simaetbhatha.com/hc/en-us/articles/4821407696279-Social-Welfare-Law-in-Iraq>.

¹¹¹ Social Protection Law No. 11 of 2014; “Social Welfare Law in Iraq.”

¹¹² International Labour Organization, “Building Iraq's Social Protection Floor.”

¹¹³ “Social Welfare Law in Iraq.”

¹¹⁴ Human Rights Watch interview with Fatima B., Baghdad, May 7, 2023.

If a man receiving social assistance dies, his benefits are transferred to his widow contingent upon the provision of both marriage and death certificates.¹¹⁵ These documents are challenging to obtain, and widows may be cut off from desperately needed cash assistance until they are able to produce them. The same is true for widows seeking to obtain martyr's compensation through Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions of 2009, or for widows seeking to transfer the pension of their late husband to their name.¹¹⁶

Amira F., a woman from Salah al Din governorate, was forced to marry for the first time at 14 in 1987. Her marriage was unregistered until three years later, when it was ratified so she and her husband could divorce. In 2004, she remarried outside the courts again because her husband refused to register their marriage. In 2007, he was killed during the insurgency in Baghdad. Since she was still registered as divorced on her civil ID from her first marriage, she was unable to claim any martyr's compensation from the state. With the support of her mother-in-law, who testified that her son was married to Amira F. and that he was the father of their three children, she was able to obtain a post-mortem ratification of their marriage. The process took her about one year and 60,000 IQD (\$45.79), and she was ultimately able to claim martyr's compensation.¹¹⁷

Impact on Children Born in Unregistered Marriages

Under Iraq's Birth and Death Registration Law (1971), parents can only obtain birth certificates for babies born in wedlock.¹¹⁸ Parents without a civil marriage certificate must instead obtain a proof of birth document, which they can only do after legalizing their marriage.¹¹⁹ Obtaining the proof of birth document requires the Civil IDs of the father and

¹¹⁵ Social Protection Law, art. 15(4).

¹¹⁶ "Retirement under Iraqi Law: What Are My Rights and How Can I Access Them?," Simaet Bhatha, January 30, 2023, <https://www.simaetbhatha.com/hc/en-us/articles/4404242558999-Retirement-under-Iraqi-Law-What-are-my-rights-and-how-can-i-access-them-> (accessed February 26, 2024); "Law on Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations," Pub. L. No. 20 (2009), <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5e4579204>.

¹¹⁷ Human Rights Watch interview with Amira F., Baghdad, May 8, 2023.

¹¹⁸ "Iraq: Families of Alleged ISIS Members Denied IDs," Human Rights Watch, February 25, 2018, <https://www.hrw.org/news/2018/02/25/iraq-families-alleged-isis-members-denied-ids>.

¹¹⁹ "How to Obtain a Birth Certificate?," Simaet Bhatha, July 19, 2022, <https://www.simaetbhatha.com/hc/en-us/articles/4404242961559-How-to-obtain-a-Birth-Certificate-> (accessed February 26, 2024).

mother, a certified marriage contract, two witnesses, the residency card, a medical assessment to determine the age of the child, and a fee.¹²⁰

As discussed above, the absence of the Civil ID of one or both parents, the absence of an official marriage contract, and the death/disappearance of one spouse severely complicates the legalization of a marriage contract, and by extension the issuance of documentation for a child. In turn, a child without a birth certificate cannot secure any other identity document, such as a Civil Status ID Card, an Iraqi Nationality Certificate, or a Unified ID Card, and is at risk of losing their legal identity or becoming stateless.¹²¹

Tabaruk A.'s parents did not register their marriage, and her mother was abandoned by her father shortly thereafter. Her mother, Ibtisam A., who was 14 at the time, gave birth to Tabaruk in her mother's house, because without a marriage contract, she was unable to give birth in a hospital.

Ibtisam has not been able to prove Tabaruk's lineage, because her husband took her ID and religious marriage contract with him when he abandoned her, and so Tabaruk, now 16, has no documents. "Not having documents really impacts my mental health," Tabaruk told Human Rights Watch. "I can't go anywhere, and I never feel safe. My grandmother is scared to let me go anywhere alone, because if something happens to me or I'm kidnapped there is no way for them to follow up on the case."¹²²

When asked how her life would change if she were able to get her documents, Tabaruk said, "this transformation would have a significant impact, allowing me to return to education and experience a sense of citizenship within my nation. Compared to others, my aspirations might seem modest. One of them involves obtaining an ID, attending school, earning a degree, and eventually securing employment."¹²³

¹²⁰ "How to Obtain a Birth Certificate?"Simaet Bhatha, July 19, 2022, <https://www.simaetbhatha.com/hc/en-us/articles/4404242961559-How-to-obtain-a-Birth-Certificate-> (accessed February 26, 2024).

¹²¹ The Civil Status ID is the main source of identification for Iraqi citizens and serves as the official record of one's identity. In 2016, the Iraqi government began issuing the Unified ID to replace both the Civil Status ID Card and the Nationality Certificate. The Nationality Certificate is the official record of one's Iraqi nationality and is a prerequisite for issuing the Unified ID. Danish Refugee Council, International Rescue Committee, and Norwegian Refugee Council, "Life in the Margins."

¹²² Human Rights Watch interviews with Ibtisam A., Tabaruk A., and Lifta A., Baghdad, May 8, 2023.

¹²³ Human Rights Watch interviews with Ibtisam A., Tabaruk A., and Lifta A., Baghdad, May 8, 2023.

Noor L. also told Human Rights Watch she was not able to get a birth certificate for her son because her marriage is not registered. “I don’t know what will happen to me in the future as well as to my child,” she said.¹²⁴

Proof of paternity is also required for birth certification. Iraqi law does not allow for the registration of a child under the name of just the mother, with the father’s identity listed as unknown or unspecified.¹²⁵ Thus, even though nationality can be passed from mother to child, single-parent families may still end up with stateless children. This problem additionally affects children born of rape and conflict-related sexual violence, whose mothers may not know or may not wish to disclose the identity of the father.

DNA testing can be used to establish parentage for children whose parents married outside the courts if the father is dead, his whereabouts is unknown, or he refuses to recognize the child.¹²⁶ DNA may be taken from a first or second degree relative of the presumed father where it is impossible to obtain his own DNA.¹²⁷

Baneen S.’s parents married outside the courts, and as a result she never got a birth certificate. At 21 years old, she still has no documents. “After my mother died, my father tried to legalize their marriage so I could get my documents,” Baneen S. said. “The court said that since my mother is dead, they would need a DNA test to prove I am her daughter. But that would mean we need to open my mother’s grave. That’s something our community and culture doesn’t accept, so I don’t know what we will do.”¹²⁸

Civil documentation is key to accessing public services and social protection, without which children are unable to enroll in school, apply for work in the private sector, obtain travel documents, or access other social protection schemes.

¹²⁴ Human Rights Watch phone interview with Noor L., June 6, 2023.

¹²⁵ Article 52(1) of the PSL further provides that: “Acknowledgement of fatherhood – even if it was on the death bed – for a person of unknown parentage shall be established, if the recognizing/acknowledging person can bear a child like the person in question 2. If the acknowledging/recognizing person is a married woman or in a prescribed waiting period, the lineage of the child to the father shall only be established with his verification or with proof”.

¹²⁶ Iraq Protection Cluster. “The Use of DNA Testing to Establish Family Relationships/Links in Iraq.” February 2022.

¹²⁷ Iraq Protection Cluster. “The Use of DNA Testing to Establish Family Relationships/Links in Iraq.” February 2022.

¹²⁸ Human Rights Watch phone interview with Baneen S., May 23, 2023.

When Baneen S. wanted to get married, her lack of documents meant she had no choice but to enter into an unregistered marriage herself. She is now pregnant and worries about the consequences for her child. “I am worried about the future of my child. What name will he be given? Will I be able to give birth in the hospital? These are the things that worry me the most.”¹²⁹

In addition to increased health risks for mothers and their children if they cannot access a hospital during birth, at-home births resulting from discriminatory healthcare policies linked to the marital status of the mother mean the child is unlikely to get fully vaccinated.¹³⁰ Iraq has 90 percent vaccination coverage of children under five, with the relatively high prevalence of at home births cited as a barrier to obtaining full vaccination coverage in the country.¹³¹

Later in life, children lacking documentation may face barriers to enrolling in school. A 2023 survey by REACH, an initiative that provides data and analysis in humanitarian contexts, found that households in which all school-aged children possessed birth certificates were more likely to have all school-aged children enrolled in school full-time than those in which at least one school-aged child was missing a birth certificate. Five percent of households possessing all their children’s birth certificates reported none of their children attending school full time, compared to 18 percent of households missing birth certificate(s).¹³²

In September 2018, a document was signed by senior Education Ministry officials that appeared to allow children missing civil documentation to enroll in school.¹³³ This was followed in January and February 2022 by decisions by the Salah Al Din and Ninewa governorates respectively that allowed undocumented children and children with incomplete civil documentation to continue with their schooling and obtain their official

¹²⁹ Human Rights Watch phone interview with Baneen S., May 23, 2023.

¹³⁰ Human Rights Watch interview with UNICEF, Baghdad, May 9, 2023.

¹³¹ Human Rights Watch interview with UNICEF, Baghdad, May 9, 2023.

¹³² REACH, “Missing Civil Documentation in Iraq: Who, Why & How Important Is It?,” March 9, 2023, <https://reliefweb.int/report/iraq/missing-civil-documentation-iraq-who-why-how-important-it-february-2023>.

¹³³ “Iraq: School Doors Barred to Many Children,” Human Rights Watch news release, August 28, 2019, <https://www.hrw.org/news/2019/08/28/iraq-school-doors-barred-many-children>.

diplomas, upon later submission of their civil documents.¹³⁴ However, evidence suggests that this policy has not been fully implemented in practice, and some children without documentation have not been able to enroll in school.¹³⁵

Ibtisam A. said she was only able to enroll her daughter, Tabaruk A., in school because the teachers felt sympathetic about her situation. However, unable to get her documents, Tabaruk A. was forced to leave school in the 5th grade.¹³⁶

People missing documentation are also more likely to struggle to access livelihood opportunities in adulthood. A survey by REACH found that households possessing key civil documentation are more likely to report having access to high-skill livelihood opportunities, while those lacking documentation were only able to engage in casual work or daily labor.¹³⁷

Finally, lacking documentation can negatively impact Iraqis' freedom of movement. Iraqis without documentation are unable to obtain passports and are at increased risk of arbitrary arrest or detention at checkpoints or may be unable to pass them.¹³⁸

¹³⁴ International Organization for Migration, "IOM Welcomes Decisions by Directorates of Education in Salah al Din and Ninewa to Protect Children's Right to Education," February 27, 2022, <https://iraq.un.org/en/173438-iom-welcomes-decisions-directorates-education-salah-al-din-and-ninewa-protect-children%E2%80%99s>, <https://iraq.un.org/en/173438-iom-welcomes-decisions-directorates-education-salah-al-din-and-ninewa-protect-children%E2%80%99s> (accessed February 26, 2024).

¹³⁵ Norwegian Refugee Council, "Twice Displaced: The Unmet Needs of Iraq's Children in Informal Settlements," Norwegian Refugee Council, September 6, 2022, <https://www.nrc.no/resources/reports/unmet-needs-of-iraqs-children-in-informal-settlements/>.

¹³⁶ Human Rights Watch interview with Ibtisam A., Tabaruk A., and Lifta A., Baghdad, May 8, 2023.

¹³⁷ REACH, "Missing Civil Documentation in Iraq."

¹³⁸ Hassin, Ahmed; Al-Jaboory, Mays, Humanitarian Challenges in Iraq's Displacement Crisis, Minority Rights Group International, Ceasefire Center for Civilian Rights, December 2016, p. 5.

Dowry, Spousal Maintenance, Children, and Inheritance

Iraqi women's dowry is usually provided in two installments; one up front upon acceptance of the proposal, with the same amount promised if the marriage ends.¹³⁹ A husband is supposed to pay his wife spousal maintenance (*nafaqa*) during marriage and after divorce to cover food, clothing, housing, medical care, and domestic help.¹⁴⁰ A wife may not be entitled to spousal maintenance "if she leaves her husband's home without permission and without legitimate cause; If she is imprisoned for a crime or debt; or If she fails to travel with her husband without legitimate excuse."¹⁴¹

However, if the marriage and divorce are both concluded outside the courts, the wife has no legal recourse to claim her dowry or spousal maintenance if her husband refuses to pay. Even if she can legalize her marriage, she will still be subjected to a discriminatory legal system which privileges men in the divorce process. Iraqi men can unilaterally divorce their spouses, while women and girls can only initiate divorce proceedings for specific reasons, such as the incarceration of the man for more than three years, impotence, or the husband being infertile.¹⁴² If the wife initiates the divorce, she must undergo mandatory waiting periods and court-ordered mediation and prove her "obedience".¹⁴³

Lawyers told Human Rights Watch that this principle is frequently used to counter-sue claims of spousal maintenance, meaning the wife must prove her "obedience" in court or give up her claim to spousal maintenance.¹⁴⁴ A questionnaire distributed to 50 divorce

¹³⁹ Personal Status Law, art. 21.

¹⁴⁰ Personal Status Law, art. 24(2).

¹⁴¹ Personal Status Law, art. 25(1).

¹⁴² Personal Status Law, arts. 37, 40, and 43.

¹⁴³ Personal Status Law, arts. 41, 47, 48 and 49. There are no prescribed waiting periods for men initiating divorce. Women initiating a divorce must wait three menstrual cycles, or three full months if she has not already experienced menstrual cycles. The prescribed waiting period for the widowed woman shall be four months and ten days for non-expectant (non-pregnant) women. For pregnant women, the prescribed waiting period shall be the date of delivery or that for a non-pregnant woman, whichever is longer.

¹⁴⁴ Human Rights Watch interview with Baghdad Women's Association, Baghdad, May 7, 2023.

lawyers working in Baghdad courts found that in 2021, just over half of women surveyed gave up their rights in order to finalize their divorce.¹⁴⁵

Fatima B. told Human Rights Watch:

My marriage contract gave me 5 million IQD [US\$3,818] as my dowry and 10 million IQD [\$7,636] as spousal maintenance, but it was only a religious marriage. I had a conflict with my husband's family while he was serving his duty in the Iraqi army. He sent me divorce papers and divorced me without me being there. He is refusing to ratify the marriage contract or the divorce, so legally I am still single. I haven't got any of my rights because it was a religious contract. I didn't get my dowry or my spousal maintenance.¹⁴⁶

Article 57(1) of the Personal Status Law states “the mother is more deserving of the custody and upbringing of the child, as long as the marriage is valid and after separation, unless the child in custody is harmed by this measure.”¹⁴⁷ However, a condition is that the responsible parent has reached 18 years of age.¹⁴⁸ Because religious marriages are often used to skirt domestic law on the legal age of marriage, affected girls may be trapped in abusive relationships for fear of losing their children. Furthermore, women and girls may be pressured into giving up their rights to dowry and spousal maintenance in order to keep their children, as was the case with Nada S.: “I was married for 12 years after getting married at 15. When we divorced in 2017, he pressured me to give up my spousal maintenance so I could keep custody of the children. I didn't get anything in the divorce.”¹⁴⁹

Finally, according to Iraqi law, the heirs by kinship and marriage are entitled to inheritance.¹⁵⁰ Without a marriage contract, the wives of deceased spouses have no claim to inheritance without a post-mortem legalization of the marriage. If their children have not

¹⁴⁵ This equaled 925 women out of 1,765 who responded to the questionnaire. Al-Alamyry, “No Waiver, No Divorce: Half of Iraqi Women Blackmailed into the Worst Deal, When Leaving Marriage.”

¹⁴⁶ Human Rights Watch interview with Fatima B., Baghdad, May 7, 2023.

¹⁴⁷ Personal Status Law, arts. 57(1) and 57(5).

¹⁴⁸ Personal Status Law, art. 57(2).

¹⁴⁹ Human Rights Watch interview with Nada S., Baghdad, May 8, 2023.

¹⁵⁰ Personal Status Law, art. 86(2)

obtained birth certificates indicating proof of lineage from the deceased father, they will have no legal claim to the inheritance either. The process to claim an inheritance becomes significantly more complicated if the family has no official death certificate or proof of death, as in the case of husbands who disappeared during conflict.

Legal Obligations

Right to Legal Identity

The right to legal identity is a fundamental human right that encompasses the recognition and documentation of an individual's existence, legal status, and personal attributes by the state or relevant authorities. The right to legal identity is crucial in ensuring individuals are able to exercise and enjoy a wide range of other rights, such as the rights to healthcare, education, and employment among others.

In domestic law, the right to a legal identity and to civil documentation is enshrined in the Constitution of the Government of Iraq of 2005, the Civil Status Law No. 65 of 1972, the Civil Status System Law No. 32 of 1974 and the Iraq Nationality Act No. 26 of 2006. The right is also established and safeguarded in several international human rights instruments to which Iraq is a state party, including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

Child Marriage

Child marriages are “a form of forced marriage, given that one or both parties have not expressed full, free and informed consent.”¹⁵¹ Child marriages involve violations of the child’s rights to autonomy, access to education, freedom from violence, reproductive rights, access to reproductive and sexual health care, employment, and freedom of movement. International human rights standards also recognize the right of women and girls to live free from physical, mental, and sexual violence.

Iraq has obligations under international law to ensure girls’ and women’s rights to equality and non-discrimination. The ICCPR calls for “the equal right of men and women to the enjoyment of all civil and political rights,” including the right to birth registration, to free

¹⁵¹ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, CEDAW/C/GC/31/REV.1, paragraph 20, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-recommendation-no-31-committee> (accessed October 15, 2023).

and full consent to marriage, to equality of rights and responsibilities of spouses during marriage and at its dissolution, to life, to liberty and security of the person, and to freedom of expression.¹⁵²

Right to Social Security

Social security is a human right closely linked with the rights to an adequate standard of living, health, education, and other economic, social and cultural rights.¹⁵³ As a state party to the ICESCR, Iraq is obliged to respect, protect, and fulfill the right to social security, including by making these programs available, accessible, acceptable, and adaptable.¹⁵⁴ This also requires providing benefits, whether in cash or in kind, that are adequate in both amount and duration.¹⁵⁵ As with all other human rights, governments need also to realize the right to social security without discrimination on the grounds of gender, age, disability, race, nationality or immigration, or other status.

¹⁵² ICCPR, arts. 3, 6, 9, 19, 23, and 24.

¹⁵³ “Questions and Answers on the Right to Social Security,” Human Rights Watch news release, May 25, 2023, https://www.hrw.org/news/2023/05/25/questions-and-answers-right-social-security#_Toc134448498.

¹⁵⁴ Katarina Tomasevski, “Human Rights Obligations: Making Education Available, Accessible, Acceptable, and Adaptable,” Raoul Wallenberg Institute, January 18, 2001, https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf.

¹⁵⁵ “Questions and Answers on the Right to Social Security,” Human Rights Watch news release, May 25, 2023, https://www.hrw.org/news/2023/05/25/questions-and-answers-right-social-security#_Toc134448498.

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Annex I: English Translation of Human Rights Watch Letter Sent to the Iraq Supreme Judicial Council on August 1, 2023

August 1, 2023

Mr. Faiq Zidan

President of the Supreme Judicial Council

Supreme Judicial Council

Republic of Iraq

CC: Mr. Mahmoud Attiya

Head of the Human Rights Department

Ministry of Foreign Affairs

Republic of Iraq

Re: Marriage Outside the Court in Iraq

Dear Mr Zidan,

We respectfully write to inform you that Human Rights Watch will publish a report on marriage outside the courts in Iraq, and its impact on women's and children's rights. The report particularly focuses on the right to legal identity and civil documentation, access to government services and social protection, and child marriage. In addition to sharing with you the main findings of that report and providing you with the opportunity for comment, we also request answers to some questions we have about this matter.

Human Rights Watch is an independent international human rights organization that works to document and expose human rights violations



HRW.org

in some 100 countries around the world. We also conduct sustained advocacy with governments, encouraging policies and approaches that will help to better protect and promote human rights.

Human Rights Watch interviewed nine women and two men, all of whom married outside the court, and conducted additional research between May and June 2023. Human Rights Watch also interviewed lawyers, humanitarian workers, and non-governmental organizations working on this issue.

Despite being illegal under Article 10 of the Personal Status Law (1959), marriages continue to take place in Iraq without being registered in court. Our research has found that most frequently, people opt to get married without registering it in court to circumvent marriage requirements in the Personal Status Law, particularly restrictions on child marriage, forced marriage, and polygamy.

Human Rights Watch has found that the impacts of unregistered marriages on women are significant, in particular because many government services and schemes are linked to their marital status. First, spouses are required to change their civil documentation upon marriage, for which they need to show their civil marriage contract. However, this creates obstacles for a woman whose marriage was not registered, and this hinders her ability to avail herself of government services. In particular, women are required to show they are married to access certain forms of sexual and reproductive healthcare (such as obstetrics care), against international standards on the right to health, and social protection schemes, such as monthly salaries provided to widows, divorcees, and abandoned wives under Social Protection Law No. 11 of 2014.

Without a civil marriage contract, women seeking divorce have no legal protection or recourse to claim their rights to dowry, financial support, and inheritance. To do so, their marriage must first be legalized. Women interviewed by Human Rights Watch spoke of several challenges and obstacles in the legalization process, particularly in cases involving divorce, death, disappearance, and/or denial of the marriage by their spouse. In some of those cases, legalization of their marriage was impossible in practice, leaving themselves and their children without documents, a violation of their right to legal

identity. In others, the husband's refusal to cooperate in the legalization process forced them to renounce their rights to their dowry or financial support in order to leave an abusive marriage.

Furthermore, discriminatory policies that restrict access to health care services, such as the requirement for a marriage license to give birth in a hospital, exacerbate violations of women's rights and their right to health. Without a marriage contract, women are unable to give birth in hospitals and are forced to opt for at-home births, increasing the risk of complications during pregnancy, childbirth, and the postnatal period that threaten the health and lives of women and their infants.

These barriers can also create negative downstream effects on their children. For instance, without being able to give birth in a hospital, children of couples in unregistered marriages reported serious difficulties in accessing birth certificates and other critical civil documentation. Discriminatory and harmful policies prohibit children without this documentation from enrolling in school, applying for work in the private sector, obtaining travel documents, or accessing other social protection schemes, all of which are crucial in ensuring their economic and social rights are fulfilled.

Finally, Human Rights Watch has found that unregistered marriages are essentially functioning as loopholes for child marriage. While the Personal Status Law sets the legal age for marriage at 18 and 15 with a judge's permission, Human Rights Watch has found cases of religious leaders authorizing marriages of girls as young as [12 years old](#).

When a couple where one or both spouses are children presents themselves before the court to have their marriage legalized, the judge finds themselves before a *fait accompli*. If he refuses to register the marriage because she is under the minimum age, the couple and their children could face the harms and barriers described above. On the other hand, judges continuing to ratify the religious marriage contracts of children weakens the rule of law and allows the continued prevalence of child marriage in Iraq. Caught between a rock and a hard place, most judges opt to legalize the marriages of children. In May 2023, Human Rights Watch witnessed this predicament play out when we visited Al Bayaa court

to interview a judge, who legalized the marriage of a 17-year-old pregnant girl in our presence.

According to [UNAMI](#), the UN Assistance Mission in Iraq, 22% of marriages outside the courts involved girls under the age of 14. Though UNAMI did not provide data on what percent of marriages involved girls under the age of 18, local partners told Human Rights Watch that they estimate the majority of marriages outside the court involved girls under 18. A [2021 study by the Ministry of Planning, the Central Statistical Organization and UNFPA](#) found that 25.5% of married women in Iraq were married before they were 18, and 5.2% of women were married before 15.

The consequences of child marriage are profoundly detrimental to the physical and mental well-being of children. The [effects](#) last well beyond adolescence as child brides struggle with the physical and mental health effects of getting pregnant too young and too often, their lack of education and economic independence, and increased rates of sexual and domestic violence. Child marriage further exacerbates the gender education gap in Iraq, where 7.6% of men and 17% of women are [illiterate](#) and women and girls are less represented at all levels of education (primary, secondary, and university). Finally, a study by the [Minority Rights Group](#) found that “87.4% of forced marriage cases analysed for this report involved physical violence, while 19.8% involved some form of sexual abuse.”

The right to legal identity is a fundamental human right that encompasses the recognition and documentation of an individual’s existence, legal status, and personal attributes by the state or relevant authorities. The right to legal identity is crucial in ensuring individuals are able to exercise and enjoy a wide range of other rights, such as the rights to healthcare, education, and employment among others.

In domestic law, the right to a legal identity and to civil documentation is enshrined in the Constitution of the Government of Iraq of 2005, the Civil Status Law No. 65 of 1972, the Civil Status System Law No. 32 of 1974 and the Iraq Nationality Act No. 26 of 2006. The right is also established and safeguarded in several international human rights instruments to which Iraq is signatory, including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

International human rights standards recognize the right of women and girls to live free from physical, mental, and sexual violence. Child marriages violate many human rights; including the rights to education, freedom from violence, reproductive rights, access to reproductive and sexual health care, employment, freedom of movement, and the right to consensual marriage.

To ensure these rights are protected, the Iraqi government should reform the relevant laws governing citizenship and birth registration to ensure that children of Iraqi men and/or Iraqi women with unregistered marriages are able to access legal documents and government services, including education, and remove the exceptions in Article 8 of the Personal Status Law allowing for child marriage. The authorities should also ensure women and girls can access government services, particularly healthcare, without needing to prove their marital status. The authorities should set out a national strategy to combat child and forced marriages, ensure that women and girls are able to have their marriages annulled, and are able to seek assistance from abuse.

In light of the above, we would highly appreciate your responses to the following questions:

1. What are the reasons behind the increasing prevalence of unregistered marriages, despite provisions in Iraq's Personal Status Law that expressly forbid them?
2. What steps have the authorities, including the Supreme Judicial Council, taken to reduce the prevalence of unregistered marriages, particularly where they include child and forced marriages?
3. In how many cases have men been punished for marrying outside the court? Please provide a breakdown by year for the past 5 years, specifying whether the punishment was a fine or imprisonment.
4. What punishments, if any, exist for religious leaders, and other officials who perform or otherwise facilitate marriages that are unlawful, particularly forced and child marriages? If such punishments exist, please indicate how many religious leaders have been punished for performing such marriages in the past 5 years, and what their punishments were.
5. What regulations, if any, exist for religious leaders who perform marriages outside the court?

6. Can you confirm whether or not the penalty in Article 3(6) of the Personal Status Law against those who officiate polygamous marriages in violation of Article 3, clauses 4 and 5, would also apply to religious leaders officiating marriages outside the court in addition to judges?
7. What protections has the Supreme Judicial Council put in place to ensure all Iraqis are able to avail themselves of the right to legal identity and nationality?
8. What health care services are limited to married women and girls? Please provide information about what women and girls need to show to prove their marital status (e.g., a marriage contract).
9. Are child marriages in Iraq considered de facto forced, and if not, why?
10. Is a woman or child subject to a forced marriage able to have her marriage annulled, including where it has been consummated?
11. What steps is the Supreme Judicial Council taking to ensure that women can access their right to health care regardless of marital status?
12. What steps is the Supreme Judicial Council taking to ensure that children born outside of registered marriages can access social protection and public services essential for the realization of their human rights, including education, and health care without any discrimination due to their birth?

We kindly request a written response to these questions and any other comments to XXX@hrw.org by August 31, 2023.

Please do not hesitate to have your officials contact me by e-mail should you need more information prior to responding.

We would also appreciate the opportunity to discuss our findings with you or your staff after publication and would be happy to schedule a meeting at your convenience.

Thank you for your assistance in this matter.

Sincerely,
Lama Fakih
Director
Middle East and North Africa Division
Human Rights Watch

“My Marriage was Mistake After Mistake”

The Impact of Unregistered Marriages on Women’s and Children’s Rights in Iraq

Each year, tens of thousands of Iraqi couples enter marriages officiated by religious leaders but never registered in Iraqi courts. These unregistered marriages often function as a loophole for child marriage or to evade other marriage restrictions under Iraqi law (such as forced marriage and polygamy). Child marriage in Iraq puts girls at increased risk of sexual and physical violence, death in childbirth, mental health harms, and being blocked from education. Without a civil marriage contract, women and girls are unable to give birth in hospitals, access social protection schemes, or claim their rights to dowry, spousal maintenance, and inheritance. Children born in unregistered marriages are unable to obtain birth certificates or a legal identity unless their parents’ marriage is first legalized through a lengthy and complicated process. If left unresolved, these children may be barred from enrolling in schools, accessing employment opportunities, obtaining travel documents, owning property, or getting married later in life. Religious leaders officiating marriages in violation of Iraqi law are not being punished, enabling them to act with impunity.



*A wedding dress store in Duhok, Iraq,
October 12, 2015.*

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