

PATHWAYS TO LEGAL IDENTITY

Exploring the legal framework and barriers to obtaining lineage and nationality in post-conflict Iraq



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International Organization for Migration
Address: UNAMI Compound (Diwan 2), International Zone, Baghdad/Iraq
Email: iomiraq@iom.int
Website: iraq.iom.int

This report is authored by Jazmine Elmolla

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GLOSSARY OF ABBREVIATIONS AND KEY TERMS

CAD	(in Arabic: دائره الاحوال المدنيه) Civil Affairs Directorate, the Government offices at which applications for identity and civil documents are made
Copy of civil registration record	(In Arabic: صورة قيد) a document with a summary of a person's details and family relations, as recorded in the civil information system
CRC	United Nations Convention on the Rights of the Child
IDP	Internally displaced person
Ikhbar	(in Arabic: اذخار) the formal act of reporting on a relative who was an member of the Islamic State of Iraq and the Levant (ISIL) before the court, according to which a person who has some link with ISIL, either as wife, father, brother, or even son, goes to court with at least two witnesses to declare they have a family member who was affiliated with ISIL
IOM	International Organization for Migration
IQD	Iraqi dinar
Iraqi Nationality Law	(in Arabic: قانون الجنسية العراقية رقم ٢٦ لسنة ٢٠٠٦) Iraqi Nationality Law 26 of 2006
ISIL	(in Arabic: داعش) Islamic State in Iraq and the Levant.
KII	Key Informant Interview
Mukhtar	(in Arabic: مختار) a village leader
National Card Law	(in Arabic: قانون البطاقة الوطنية رقم ٣ لسنة ٢٠١٦) National Card Law 3 of 2016
PDS	Public Distribution System, a food ration system implemented by the Government of Iraq
Personal Status Court	(in Arabic: محكمة الأحوال الشخصية) implements the Personal Status Law 188 of 1959. Similarly, the Personal Articles Court implements the Personal Status Law for non-Muslims. Both the Personal Articles Courts and the Personal Status Courts are bound by precedents set by the Court of Cassation, which is an appellate court in Baghdad
Personal Status Law	(in Arabic: قانون الأحوال الشخصية لعام 1959) Personal Status Law 188 of 1959
Proof of marriage application	(in Arabic: دعوى اثبات زواج) a court process for couples wedded outside of the court and wishing to legitimize their marriage
Proof of lineage application	(in Arabic: دعوى اثبات زواج) a court process for children that are not registered at birth. The court's decision is proof of the child's age and family relations
Trabriya (or Tabreya)	(in Arabic: تبرئة) a tribal justice mechanism, according to which a person who has some link with ISIL, either as wife, father, brother, or even son, disavows their family member who was affiliated with ISIL in front of the tribe
Unified national card	(in Arabic: البطاقة الموحدة) a national identity card, issued in accordance with the National Card Law. Unifies the former civil status ID, Iraqi nationality certificate and residence card.

EXECUTIVE SUMMARY

Access to identity and civil documentation is a prerequisite to accessing basic rights and services, including social protection, education, health care and nationality, and this is no less true for Iraq.

The importance of identity and civil documentation in Iraq has been highlighted in the context of post-conflict displacement and societal disruption – which have limited access to such documentation and undermined efforts to work towards durable solutions for internally displaced persons and returnees. Children of female-headed households are particularly vulnerable to being unable to access identity and civil documentation as well as nationality, further compounding vulnerability.

In this context, this report sets out the findings of research undertaken to better understand:

- The legal and practical barriers to children obtaining identity and civil documentation and to obtaining Iraqi nationality;
- The obstacles to women transmitting Iraqi citizenship to their children.

This study is based on documentary analysis of legislation and key informant interviews (KIs). The author also conducted a preliminary desk review.



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Photo 1: IOM Iraq

The following eight key findings were reached following the KIs:

1	Children face significant barriers in day-to-day life without identity and civil documentation
2	Many Iraqis do not have access to documents that are required to obtain further identity and civil documents
3	<p>Following the conflict with Islamic State in Iraq and the Levant (ISIL), the Courts began requesting DNA testing to confirm lineage, which further complicates the process, though with advocacy this is slowly changing</p> <ul style="list-style-type: none"> • Finding 3.1 There is a clear rationale for DNA testing, which is widely understood in Iraq • Finding 3.2 Travelling to Baghdad in order to undertake DNA testing is difficult, if not impossible for some • Finding 3.3 There is a variety of approaches taken by the Court when ordering DNA testing
4	The conflict with ISIL has led to an increased prevalence of single women raising children without proof of lineage
5	<p>The process to establish proof of lineage is convoluted, requires travel and can be expensive</p> <ul style="list-style-type: none"> • Finding 5.1: The process to establish proof of lineage is complex for applicants • Finding 5.2: Travel may be an inherent requirement to obtaining civil documents • Finding 5.3 Several direct and incidental costs act as a barrier to registration
6	<p>Cultural and societal norms and values can act as barriers, particularly for children with unknown fathers and women whose husbands are affiliated to ISIL</p> <ul style="list-style-type: none"> • Finding 6.1: Children with unknown fathers are at significant risk of not being registered, in part due to cultural and societal norms • Finding 6.2: Women face specific challenges as a result of their husbands' affiliations to ISIL, which can prevent access to identity documents
7	Children with unknown fathers are at significant risk of statelessness
8	The circumstances in which a child can obtain Iraqi nationality via their mother remain unclear

The findings reveal that the post-conflict landscape has exacerbated what appear to be pre-existing barriers and/or increased the prevalence of children vulnerable to non-registration as a result of the barriers.

On the basis of these findings, this report makes six recommendations to inform future programming:

1	<p>Advocate for solutions to complex cases, including in particular, cases where a child's father is unknown</p> <p>If a child's father's identity is unknown, obtaining proof of marriage or proof of lineage may be impossible. This caseload is recognized as being incredibly sensitive, and includes children born to rape, sexual enslavement and forced marriage:</p> <ul style="list-style-type: none"> • <i>Recommendation 1.1: Advocate for legal reform to bypass the need to prove paternal lineage so that proof of lineage does not prevent access to identity and civil documentation, and nationality</i> • <i>Recommendation 1.2: Undertake broad consultation to formulate the details of any proposal for reform to ensure that the rights of the child and safety and security of the child's mother can be protected in the absence of knowledge of paternal lineage</i>
2	<p>Advocate for a consistent and less onerous approach to DNA testing in proof of lineage cases</p> <p>Whilst DNA testing is understood to be important, it can also act as a barrier to obtaining a proof of lineage determination. Different approaches are undertaken across Iraq.</p> <ul style="list-style-type: none"> • <i>Recommendation 2.1 Undertake a decision analysis in order to understand these differences and establish an evidence base</i> • <i>Recommendation 2.2: Advocate for a practice direction that details the circumstances in which DNA testing should be ordered, and emphasizes the best interests of the child</i>
3	<p>Reduce the burden of travel by finding localised solutions to registration processes</p> <p>Travelling to a local Civil Affairs Directorate (CAD) is particularly problematic for those who live a considerable distance away. Applicants should be able to obtain documentation at their nearest CAD.</p>
4	<p>Engage with Courts continuing to request Ikhbar</p> <p>Whilst Ikhbar (the legal process of "disavowing") is no longer a requirement across most of Iraq, some Courts continue to require it prior to proceeding with proof of lineage or proof of marriage cases. Targeted advocacy with these Courts should be undertaken to ensure consistency across the country.</p>
5	<p>Pursue an education campaign around the rights of the child to obtain Iraqi nationality via their mother</p> <p>Responses from the KIIs suggest that there is a lack of understanding as to how CADs apply the Iraqi Nationality Law:</p> <ul style="list-style-type: none"> • <i>Recommendation 5.1 Clarify the Government's position</i> • <i>Recommendation 5.2: Conduct an education campaign targeting public servants and lawyers that assist vulnerable groups</i> • <i>Recommendation 5.3: Advocate for reform to the Iraqi Nationality Law so that men and women have equal rights to transmit their nationality to their children, irrespective of whether a child is born within or outside of Iraq</i>
6	<p>Amplify the voices of affected women to ensure that any proposed solutions are fit for purpose</p> <p>In the wake of the conflict with ISIL, women are particularly impacted by the barriers to obtaining identity and civil documentation for their children. It is recommended that further research be undertaken with women directly, via KIIs and/or focus group discussions, to understand the issues and the value of any potential solutions from their perspective.</p>

PART 1: INTRODUCTION

CONTEXT: The impact of the conflict with ISIL on access to identity and civil documentation and the right to nationality

The importance of access to identity and civil documentation in Iraq is well documented. Children without identity and civil documentation are denied access to services, including education¹ and health care.² Their freedom of movement is restricted,³ and their parent(s) may not receive sufficient social support (specifically via the Public Distribution System (PDS)) as they do not have documents to evidence the number of children in the family.^{4,5} The amount of support provided through the PDS is calculated based on the number of household members.

Resolving displacement-related vulnerabilities and achieving durable solutions without identity and civil documentation is virtually impossible.⁶ Furthermore, such documents are required to prove nationality, and without them, children are at risk of statelessness.

Iraqis have historically enjoyed high rates of birth registration of children (95%+)⁷ and subsequent access to identity and civil documentation. Prior to the conflict with ISIL, obtaining identity and civil documentation was known to take less than a week in Iraq.⁸

Identity and civil documentation

Many Iraqis now face immense difficulties in obtaining or renewing identity and civil documentation. Whilst barriers existed prior to the conflict, their impacts were limited. There are cost, distance and complexity barriers to registering life events, including births, deaths and marriages. Whilst many of the barriers to obtain identity and civil documentation have not necessarily been borne out of the

conflict, the impacts of the conflict and of displacement have exacerbated them.

The post-conflict landscape features:

1. High costs associated with applying for identity and civil documentation, including the cost of travelling between a person's current place of residence and the CAD, which is responsible for issuing identity and civil documentation;
2. A higher proportion of female-headed households, due to the number of men that are missing, dead, have been incarcerated or whose location is otherwise unknown;
3. Specific security clearance requirements;
4. A tendency in some regions to affiliate female-headed households with ISIL;
5. Social pressures and a reluctance in communities to accept families with perceived affiliations to ISIL, which can make it difficult to reintegrate into society following return;
6. Direct impacts of the conflict, including the destruction of records, confiscation of documents and an inability to obtain official civil documentation whilst living under ISIL occupation.

1 In 2018, the Ministry of Education issued a directive which provides that children should be registered in schools across Iraq even if they cannot provide the necessary civil documentation. However, reports indicate that problems persist. See: Norwegian Refugee Council (NRC), *Barriers from birth: Undocumented children in Iraq sentenced to a life on the margins*, (Oslo, NRC, 2019), p.11.

2 National policies do not require civil documentation to be provided when accessing medical assistance, however in practice it can be a requirement. For example, a health official reported that birth certificates are required to vaccinate newborns. Similarly, women report fearing that their children will be taken away from them if they cannot prove lineage. See NRC, *Barriers from birth*, p.13.

3 ID is often a requirement at checkpoints.

4 The Public Distribution System (PDS) is a social scheme which provides food rations to eligible citizens. PDS cannot be accessed without a Public Distribution System Card, which is issued to the head of a household, and contains a list of household members. See NRC, *Life in the margins*, (Oslo, NRC, 2022) p.12.

5 A survey conducted by IOM revealed that "more than six in ten (63%) respondents expressed facing problems because they lack documentation. The most commonly cited problems included the inability of children to attend school, movement restrictions, inability to register births and difficulty accessing social welfare". See IOM, *Legal needs assessment* (Geneva, IOM, 2023), p.9.

6 IOM, *Enabling rights and durable solutions: IOM Iraq legal programme overview 2022*, (Geneva, IOM, 2023), p.4.

7 United Nations Children's Fund (UNICEF) and United Nations Assistance Mission for Iraq (UNAMI), *Analysis of the legal framework governing civil documentation in Iraq* (Baghdad, UNICEF and UNAMI, undated), p.4.

8 NRC, *Barriers from birth*, p.3.

A survey conducted by IOM found that 50 per cent of respondents (which consisted of internally displaced persons (IDPs) and returnees), reported that they or a family member were missing one or more civil documents.⁹ The core civil documents include: a birth certificate, a unified national card (which acts as both an identity document and proof of nationality) and a PDS card.¹⁰ Many children that are missing these core civil documents are from female-headed households, which is problematic. The Norwegian Refugee Council (NRC) summarizes the issue as follows:¹¹

Civil documentation processes in Iraq are often interlinked. The ability to register a child's birth and obtain a civil ID are contingent on presenting documentation of preceding family life events, including official marriage certificates, birth certificate/proof of lineage and death certificates.

If a child's father is absent, it can be very difficult for a child's mother to obtain a marriage certificate and to subsequently prove lineage. The conflict with ISIL has increased the number of families in which a child's father is absent.

Nationality

The ability to access legal identity and nationality for children returning from abroad is an increasingly important question for the Iraqi diaspora, including for families returning from locations such as Sweden and the United Kingdom, as well as Iraqi nationals returning from Al-Hol, Syria after the conflict with ISIL. It is estimated that there are more than 2 million Iraqi migrants, and returnees are an increasingly important feature of post-conflict landscape.¹² It is vital that returnees are able to access identity and civil documentation in order to be able to reintegrate into society; however, a study conducted by IOM revealed that one in five returnees from abroad reported that access to civil documentation is poor or very poor.¹³ Anecdotal evidence suggests that the situation is particularly complex if a child's father is not Iraqi, despite the fact that the Iraqi Constitution provides that any person born to an Iraqi father or an Iraqi mother is an Iraqi.¹⁴

METHODOLOGY

This study is based on documentary analysis of legislation and key informant interviews (KIs). A preliminary desk review was also conducted. The purpose of undertaking the KIs was to clarify the legal landscape and how the relevant laws are applied in practice, as well as to identify key barriers to children being able to enjoy their rights to legal identity and nationality.

A total of 12 KIs were conducted, comprising of six internal KIs (that is, with IOM staff) and six external KIs. The KIs were conducted in Arabic using guiding questions and ran for one to two hours. Some additional follow-up interviews were also conducted.

The KI profiles are as follows:

1. IOM Lawyer (Kirkuk and Kurdistan Region)
2. IOM Lawyer (Kirkuk)
3. IOM Lawyer (Ninewa)
4. IOM Lawyer (Salah al-Din)
5. IOM Lawyers (x2) (Anbar)
6. IOM Lawyer (Sinjar)
7. External Lawyer, intergovernmental organization (IGO) (Kirkuk)
8. External Lawyer, IGO (Baghdad)
9. External Lawyer, Women's Rights Organization (Baghdad)
10. Judicial Assistants (x2) (Anbar)¹⁵
11. Government Official (Kirkuk)
12. Government Official (Salah al-Din)

9 IOM, *Legal needs assessment*, p.9.

10 Ibid, p.13.

11 NRC, *Barriers from birth*, p.17.

12 IOM, *Returning from abroad: experiences, needs and vulnerabilities of migrants returning to Iraq. Findings from a longitudinal study* (Geneva, IOM, 2023), p.6.

13 Ibid, p.26.

14 Article 18.

15 One judicial assistant interviewed was from the Investigative Court and the second was from the Personal Status Court.

PART 2: KEY FINDINGS

FINDING 1:

Without identity and civil documentation, children face significant barriers in day-to-day life

Interviewees went to great lengths to emphasize the extent of the impacts for children without identity and civil documentation. One interviewee summarized the impact as follows:¹⁶

"They are deprived of the most basic rights: health, education, government support for the family, freedom of movement between governorates, checkpoints, all of these barriers. The discrimination for this child that cannot even be educated has a negative impact on his well-being".

More specifically:

1. **Impact on education:** Interviewees reported that some schools will not accept enrolments for children without identity and civil documentation. Other schools may allow children without identity and civil documentation to attend until grade 6 (that is, until a child is about 12 years old), but not beyond this age. This is because official exams take place, and they cannot be undertaken without proof of identity.
2. **Impact on health care:** Interviewees explained that identity and civil documentation acts as proof of a relationship between a parent and child. A mother who gives birth at hospital, would not be provided with a birth certificate for her newborn baby unless she presents the required documents proving her and her husband's identity and marriage. Similarly, she may not be provided with a birth certificate for her newborn baby if her husband has perceived affiliations to ISIL and she has not undertaken the process of *ikhbar*.¹⁷ One interviewee said: *"If you go to the doctor at night for an urgent matter, the hospital will ask: how can you prove that this is your child? The hospital will say we cannot take the responsibility."*¹⁸
3. **Access to social protection:** Documenting a child is a prerequisite to updating the PDS card, to evidence the number of members in a family, entitlement to PDS and

the monthly salary paid to single mothers.¹⁹ A family will not receive ration cards for a child who is not listed on the PDS. This compounds vulnerability, particularly for female-headed households, who face additional barriers in gaining secure employment.

4. **Freedom of movement:** There are security checkpoints throughout Iraq, including within governorates. Travel through checkpoints is not permitted without identity documents, and presenting at such checkpoints without identity documents can cause issues and can lead to arrest or detention. One interviewee said: *"People cannot pass through controls. If the child tries to move anywhere, then the people at the controls ask her for ID and she does not produce it, then she will face troubles with the security forces."*²⁰ Parents may be accused of having kidnapped their children. Another interviewee said that the security officers at the checkpoint may intimidate people without identity documents and suspect them of being affiliated to ISIL.²¹



Photo 2: IOM Iraq

16 IOM Lawyer (Kirkuk, Kurdistan Region of Iraq).

17 See for more: IOM, *Families with perceived affiliation to ISIS: A Search for durable solutions to the lack of civil documentation and access to basic services* (Baghdad, IOM, 2022). See more on *ikhbar* in [Finding 5.1 below](#).

18 IOM Lawyer (Kirkuk).

19 This salary is paid to women who are divorced or widowed. The amount varies depending on the woman's circumstances but starts at 150,000 Iraqi dinars (IQD).

20 KI: IOM Lawyer (Salah al-Din).

21 KI: External Lawyer, IGO (Kirkuk).

FINDING 2:

Many Iraqis do not have access to documents that are required to obtain further identity and civil documents

Identity and civil documentation processes are often interlinked in Iraq. That is, in order to obtain one document, a person must have access to another.

If a child is not registered at birth then an application must be made for proof of lineage in the Personal Status Court.²² The outcome of this application is a decision by the Court which essentially replaces a birth certificate; it records the child's age and identity of their parents and can be used to obtain further identity and civil documentation, including a unified national card.

The following documents are required to apply for proof of lineage:

1. The identity documents of applicants (typically the child's parent(s));
2. A copy of civil registration record(s); and
3. A marriage certificate.

As concerns the copy of civil registration record, it can only be obtained from the CAD where the person is registered.²³ If a person has moved away from their local CAD (such as an IDP), then they might need to travel a considerable distance to obtain their copy of civil registration record. If the parent(s) do not have a marriage certificate and they are simultaneously bringing an application for proof of marriage, they will each need to obtain a copy of civil registration record. Whilst some interviewees (including a government official) reported that a person can authorize a lawyer or any person to obtain the copy of civil registration record on their behalf,²⁴ many other interviewees explained that a person must attend a CAD personally to obtain the copy of civil registration record. An IOM lawyer explained that in reality, many IDPs are not able to authorize a person to act on their behalf because their own identity documents are too old.

²² Or for non-Muslims, the Personal Articles Court.

²³ Interviewees reported that very few people in Iraq would have never been registered prior to the conflict with ISIL (KII: IOM Lawyer (Sinjar)).

²⁴ KII: Government Official (Salah al-Din).

²⁵ Note: A law exists that pardons those who married outside of the Court before 20 August 2016.

²⁶ See Article 10(2) of the Personal Status Law.

²⁷ Often referred to as "foreign ISIS fighters" or "foreign terrorist fighters".

As concerns the marriage certificate, there are a number of reasons a person may not have it:

1. **They never married legally:** In Iraq, registering every marriage with the Court is a requirement. Failure to do so is an offence, punishable by up to six months imprisonment and/or a fine of up to 250,000 Iraqi dinars (IQD).²⁵ Despite this, many couples only marry before a cleric. One reason for doing so is that there is a requirement that the bride and groom undertake a blood test to ensure that they are "compatible" and do not have any communicable diseases.²⁶ This test costs approximately IQD 50,000, which dissuades couples from registration.
2. **Their marriage certificate was destroyed:** During the conflict with ISIL, many records were destroyed, including in Courts and government buildings.
3. **They married during the conflict with ISIL:** Couples that married during the conflict may have been unable to register their marriage with the Courts, which were not operational in the areas under ISIL control. Interviewees also explained that many women married members of ISIL, who are now missing. Many of these women do not know how to locate their husbands/former husbands or their families. Furthermore, many of these men may not have been Iraqi,²⁷ and may have since left Iraq.

If a person does not have a marriage certificate, then they will need to bring an application for proof of marriage. If witnesses of the marriage or direct relatives are not available, which might for example be the case if a person married during the conflict with ISIL and outside of their community, then it will be impossible to obtain proof of marriage. Therefore, obtaining proof of lineage for any child born of the marriage may be impossible, and as a consequence, the child will not have access to a unified national card. Interviewees reported that this is a common outcome for children whose fathers are foreign ISIL fighters and whose whereabouts and identity are unknown.

This situation necessarily adds to the complexity of obtaining identity and civil documentation (see more on complexity at [Finding 5](#)).

FINDING 3:

Following the conflict with ISIL, the Courts began requesting DNA testing to confirm lineage, which further complicates the process (though with advocacy this is slowly changing)

Finding 3.1 There is a clear rationale for DNA testing, which is widely understood in Iraq

Following the conflict, Courts began increasingly referring applicants for DNA testing prior to making a determination on proof of lineage. This is because the normal functioning of society was overwhelmingly disrupted during the conflict with ISIL; women and girls were raped, and/or forced into marriages. Some women married despite already being married, or in the absence of documents to prove the death of their former husbands. Many children were left orphaned and were raised by people other than their parents.

All of this is cause for concern for the Courts in proof of lineage cases. By way of example, one interviewee explained that there have been cases where a mother has made an application for proof of lineage and submitted that her child is born of her husband who is now dead. On the basis of the marriage certificate, the Court accepts the application and issues a decision providing that the child's father is the mother's late husband. The child's alleged father's family may then return from overseas, see the child, and claim that the child is not their grandchild or nephew. They then bring an application to overturn the proof of lineage decision, and the Court orders DNA testing. In some of these cases, DNA testing has revealed that the lineage was decided incorrectly.²⁸

In this context, DNA testing can be seen as an important tool in allowing a child to realize their right to know and be cared for by his or her parents, which is consistent with Article 7 of the UN Convention on the Rights of the Child (CRC). It also enables children to ensure that they can secure their rights to inheritance under Islamic law. DNA testing may, in some cases, be in the best interest of the child, and Article 3 of the CRC stipulates that best interests must be a primary consideration in all actions concerning children.

Finding 3.2 Travelling to Baghdad in order to undertake DNA testing is difficult, if not impossible for some

Notwithstanding the positive intention behind requesting DNA testing, it can cause significant difficulty for families seeking to register their children. There is only one DNA testing centre in Iraq, located in Baghdad; travelling to the capital can be expensive and dangerous. For example, travel from Qaim, Anbar to Baghdad might cost IQD 100,000. Many people may be unwilling or unable to undertake this

journey, fearing the security situation. For example, one interviewee reported:²⁹

One of my beneficiaries, her husband was convicted. We got up to a point where she had to do the DNA test, along with the paternal uncle of the child. After a while, she said this is very hard for me and the area is far away and I can't do it. She said she would wait for her husband to come back from Al-Hol; she would wait till they release him. We tried to make it easier for her, we offered to pay the costs of transport to Baghdad. But she saw it was too difficult for her to go. She did not go to Baghdad.

In addition, if a parent is not present, then the Court may order that DNA samples be taken from first-degree relatives. In some cases, the relatives (usually of the father) may also be unwilling or unable to travel to Baghdad. Another interviewee explained that where the child's father has affiliations to ISIL, his family may be fearful of sending one of his siblings (that is, the child's uncle or aunt) to Baghdad given that they will need to pass through checkpoints and the security forces will have records of the child's father's affiliation to ISIL.

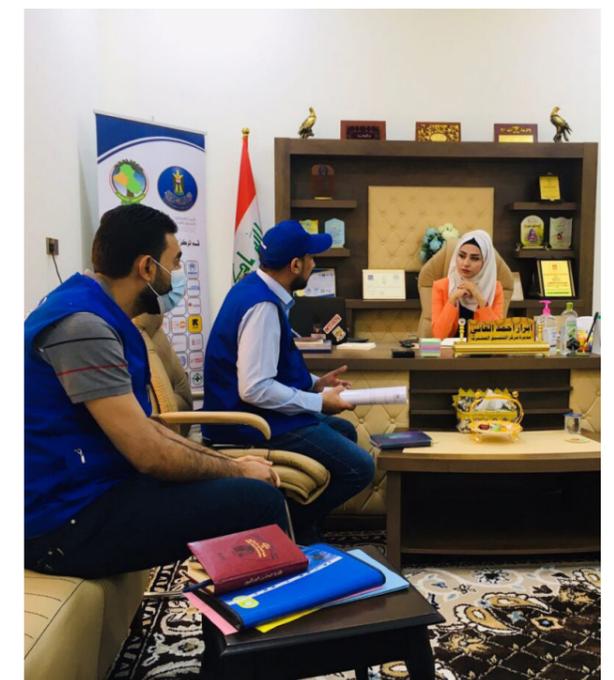


Photo 3: IOM Iraq

²⁸ KII: IOM Lawyer (Kirkuk).

²⁹ KII: IOM Lawyer (Salah al-Din).

Finding 3.3 There is a variety of approaches taken by the Court when ordering DNA testing

Interviewees agreed that the approaches to DNA testing varied as between judges, Courts and governorates.

In some governorates, it appears unlikely that a judge would order a DNA test if proof of marriage exists and the father is present. The exception to this would be if the children were older (for example, 15 years old), which would lead the judge to query why they have not yet been registered. In other governorates, they might still order a DNA test. The mother, father and child, would then need to travel to Baghdad to have their DNA tested, and wait for the outcome.

In cases where the father is not present, some judges may be content to rely upon witness evidence that the children are children born of the marriage. If there is a discrepancy in the witness evidence, then it is likely the judge would order DNA testing. In other cases, the judge may order DNA

testing (using DNA samples from the father's family) from the outset. One interviewee explained:³⁰

Sometimes the judge is convinced by the witnesses, sometimes the judge isn't. It is up to the judge. We can't interfere with this. In Iraq, we say the judge is the supreme authority.

In some cases, if the judge does not order DNA testing, the office of public prosecution³¹ may appeal the decision to the Court of Cassation (the appellate court) in Baghdad. The criteria for appeals also appears to be unclear in some cases. The same interviewee explained:³²

Sometimes there is inconsistency. For example, sometimes it is almost the same case. I open a case for one beneficiary, and my colleague for another. My colleague's case is appealed because the case hasn't been referred for DNA testing, and mine isn't.



Photo 4: IOM Iraq

³⁰ KII: IOM Lawyer (Kirkuk).

³¹ Al Dua'a al 'Am. In Arabic: الدعاء العام

³² KII: IOM Lawyer (Kirkuk).

FINDING 4:

The conflict with ISIL has led to an increased prevalence of single women raising children without proof of lineage

Anecdotal evidence suggests that a significant number of single women are raising children in Iraq. Their husbands may be missing, dead, in prison or otherwise unknown. Many women were married to members of ISIL during the conflict. Not all of these men were Iraqi; some were foreign ISIL fighters. Many women do not know the identity of these men or their whereabouts. Even if a woman does know the whereabouts of the child's father, in reality, they are unlikely to return to Iraq or make themselves known to authorities for fear of reprisals from the government; terrorism is punishable by death in Iraq.

If a woman's husband is unable to appear in Court to make a case for proof of marriage and proof of lineage, then the woman must rely on his family to be witnesses. If she does not know his family, this will be impossible and any children of the marriage will be left without identity and

civil documentation, and without any proof of entitlement to nationality (see [Finding 7](#)).

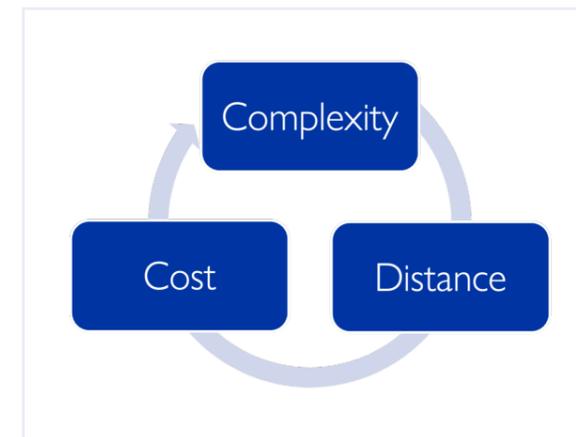
One interviewee described the situation as follows:³³

The toughest cases that we are facing are the husbands who went missing in in the recent violence that we call the war with Daesh, and the control by the Islamic State. Many husbands went missing – we don't know if he is missing, dead, alive but in another location, or outside of Iraq. Most of the cases we see are these cases. There are hundreds of children without IDs because of this and because the court asks for DNA testing."

Interviewees further explained that there is no solution to these cases. Paternity cannot be proved. Neither the Court nor the government has provided any official guidance on how to address these cases.

FINDING 5:

The process to establish proof of lineage is convoluted, requires travel and can be expensive



Finding 5.1: The process to establish proof of lineage is complex for applicants

Where a child has not been registered at birth in accordance with the usual process, then the Courts are responsible for determining proof of lineage in accordance with the Personal Status Law.

Establishing proof of lineage can be complex, particularly in cases where one or both parents are not present and there

is no proof of marriage. In such cases, an application for proof of marriage needs to be brought along with or prior to seeking proof of lineage.

- a. A number of documents are required, including:
 - I. Proof of marriage (if available);
 - II. Copy of civil registration record/(s), which often requires an applicant to attend their local CAD in person.
- b. If the child's father is missing and has affiliations to ISIL, then the mother will need to obtain security documents,³⁴ including a certified statement from her local Mukhtar to confirm the father's affiliations to ISIL. Obtaining security documents is often a cause of delay;³⁵
- c. The child must be referred to a medical committee to confirm their age, and photos of the child are required for this;
- d. The judge may order DNA testing to confirm lineage (see more in [Finding 3](#));
- e. A mother may be expected to obtain a divorce from the child's father if he has affiliations to ISIL.

³³ KII: IOM Lawyer (Kirkuk).

³⁴ It is noted that even if the documents received from the security agencies show that a person is wanted for terrorism-related crimes, or is otherwise affiliated to ISIL, the process continues as usual. It is not clear then why the security documents are requested, if they have no bearing on the process.

³⁵ KII: Judicial Assistant (Anbar).

In addition, a mother might be asked or required to undertake “Tabriya” or “Ikhbar”, which essentially would require her to make a report against her husband in the Criminal or Investigative Court. By way of background:³⁶

Tabriya ... is the colloquial term to describe the filing of a complaint in front of an investigative judge to support future prosecution of male relatives thought to be affiliated with ISIL. Historically, Tabriya was a tribal practice that amounted to disavowing a relative with regard to one's tribe, a process that had no legal implications and was primarily a tribal/community process. This difference is particularly important to make as Tabriya, as it is currently being implemented, does have legal implications (rather than community acceptance/reintegration ones) and can be used to secure death sentences for those in prison.

Accordingly, whilst Tabriya is the tribal/community process, Ikhbar is the legal process that is currently being implemented.³⁷

Most interviewees reported that Ikhbar was no longer a requirement by Courts;³⁸ however, other interviewees reported that it is still required in some parts of Iraq, including Ninewa and Anbar.³⁹ A Judicial Assistant in Anbar explained that the process in the Investigative Court must conclude before a proof of lineage decision can be made, and even once it is made, it appears that the Investigative Court's decision is attached to the proof of lineage decision.⁴⁰ Another interviewee explained that the CAD may request Ikhbar even if the Court does not.⁴¹

More generally, interviewees explained that the process is so complex that a lawyer is almost always required.⁴² Many Iraqis would not be able to afford legal fees, and therefore are dependent on legal assistance from international organizations, including IOM.⁴³

Finding 5.2: Travel may be an inherent requirement to obtaining civil documents

A range of travel is likely to be required when seeking proof of lineage and/or proof of marriage:

1. **Court:** The distance to Court can be considerable, as Courts are not always located in close proximity to villages, towns and displacement camps.
2. **CADs:** As noted above, copy of civil registration records must generally be obtained in person by the applicant. A lawyer cannot always attend a CAD on behalf of a client. This means that a person may need to travel to the CAD that they are registered at – which, particularly for IDPs, may be a significant distance from where they are currently located. In addition to this, once proof of lineage is obtained, an application for a unified national card must be made at the same local CAD.
3. **DNA testing:** DNA testing is only available in Baghdad. This means that if a Court orders that DNA testing be undertaken, then the child or children, and their parents or any relatives being tested, must travel to Baghdad to undertake the test.
4. **Prison:** Finally, if a child's father is in prison, then the child's mother needs to bring any proof of lineage or proof of marriage case in the Court that is closest to the prison that he is in. If the case is not transferred back to her local Court, she may also need to bring witnesses to the Court. The prison is not always located in the same governorate as the child and their mother.

Travel can be dangerous, particularly for women who are not accompanied by male relatives. It can also be daunting. There are security checkpoints, which people may not be able to pass through without identity and civil documentation.

Finding 5.3 Several direct and incidental costs act as a barrier to registration

Interviewees explained that the cost of bringing an application for proof of lineage and/or proof of marriage is unaffordable for the typical Iraqi.⁴⁴ One interviewee reported that a case may cost IQD 150,000 in total, but that if DNA is required, the total cost of the case might increase to IQD 600,000 due to the cost of transport. Other interviewees reported that it costs IQD 7,000 to register a proof of lineage, between IQD 7,000 and 10,000 to prepare all the paperwork for the formal application to the Court, and then IQD 25,000 for each publication in the newspaper to report a person missing (usually occurs twice). There is no discount for poor families.⁴⁵

There are also a range of incidental costs:

1. **Travel:** As noted above, a range of travel may be required, which may involve significant expense.

2. **Costs of documents:** It costs IQD 1,000 to obtain a copy of the copy of civil registration record from the CAD. In addition, one interviewee explained that it is often necessary to pay unofficial fees to avoid undue delay in obtaining security documents. The unified national card officially costs IQD 5,000, but in practice this cost can be higher. In Qaim, it is typically IQD 6,000.
3. **Penalties:** Marriage outside the courts is illegal. If a couple married after 20 August 2016, they may be liable for a penalty of IQD 50,000–250,000, and/or six months imprisonment (although it is understood by interviewees that imprisonment is rare). This will need to be paid to proceed with the proof of marriage case.



Photo 5: IOM Iraq

36 Schadi Semnani, Siobhan O'Neil, Melisande Genat, Yousif Khosnaw, *MEAC Findings Report 32: Return and reintegration prospects for Iraqis coming back from Al Hol* (Geneva, United Nations Institute for Disarmament Research, October 2023), p.22.

37 An interviewee explained: “Tabriya and Ikhbar are the same thing. The legal process is Ikhbar. It is required when the Mukhtar finds that the husband is Daeshi. It occurs in the criminal court. She goes and gives evidence against her husband. Sometimes the husband's family may threaten her, may discourage her, but sometimes may do the Tabriya themselves. More than 95 per cent of people need to do it; it has become normal. Because they need to do it. No processes can complete without this.” (KII Interview: IOM Lawyer (Ninewa)).

38 Notably, this was attributed to advocacy activities by international organizations.

39 KII: IOM Lawyer (Ninewa).

40 KII: Judicial Assistant (Anbar).

41 KII: Government Official (Kirkuk).

42 KII: Judicial Assistant (Anbar).

43 KII: IOM Lawyers (Anbar).

44 For example, KII: Judicial Assistant (Anbar).

45 It is understood that pursuant to Ministerial Order No. 488 (August 2022), the application fee for civil documentation should be waived for orphans, homeless people, and people who are living in poverty. However, this exception was not cited by any interviewee, and therefore it is not clear if it is being applied.

FINDING 6:

Cultural and societal norms and values can act as barriers, particularly for children with unknown fathers and women whose husbands are affiliated to ISIL

Interviewees almost always cited cultural and societal norms as a challenge to registering children in certain complex cases, including in particular children born to unknown fathers. Interviewees emphasized that the law was one thing, and the community and the village was another; so that even if there are legal solutions to certain cases, there may be no practical solution to registering a child. The cultural practices and societal expectations may have more influence on communities than the law.

Finding 6.1: Children with unknown fathers are at significant risk of not being registered, in part due to cultural and societal norms

Ideally, a child's birth would be registered immediately, and details of both the mother and father would be provided to the CAD by the health authorities. However, birth

registration may not occur immediately for a range of reasons (for example, the child's parents' marriage is not registered). In order to subsequently register a child, the CAD requires proof of lineage (as determined by the Courts). Proof of lineage is required because a child is registered along paternal lines,⁴⁶ and in practice, the child's mother's details are also recorded in the civil information system.⁴⁷ In the absence of details of the father's identity and/or DNA from him or his family, then the Court is unlikely to be able to make a determination on proof of lineage.

Accordingly, in cases where a child's father's identity is unknown or cannot be confirmed, the child cannot be registered in the usual way and cannot obtain proof of nationality in the form of the unified national card. The difficulty with the process is summarized in the following diagram:



Where a birth certificate is not issued by the health authorities when a child is born, the Courts are responsible for making a proof of lineage determination. This is because the Courts implement the Personal Status Law

If a child's father is unknown, then the Court will not be able to make a determination on lineage. This is because there will be no way to prove the couple were married and/or to provide DNA testing if required

without proof of lineage the child cannot be registered in the civil information system. This is because births are "recorded in the form of registration based on... data issued by competent authorities" and a child is registered along paternal lines (i.e. with his or her father and grandfather's name)

Without registration, a child will not be able to access a unified national card, and will not be able to prove his or her Iraqi nationality.

⁴⁶ See Article 19(1) and 19(2), National Card Law.

⁴⁷ Presumably as part of the "form of registration" referred to in Article 19(2) of the National Card Law.

These children are referred to as "Majhoul Al-Nasab" – children with unknown lineage.

Such children can be registered as foundlings and there is a specific process in the Civil Status Law 32 of 1974⁴⁸ and National Card Law⁴⁹ for registering a foundling; however, four interviewees explained that registering a child as a foundling may be considered as shameful,⁵⁰ and hence, in most cases, the child will simply not be registered. They will therefore be left without identity documents and without any proof of entitlement to nationality.

However, even if a woman chooses to register a child as a foundling, it can be a complex process. One interviewee reported that she had a case where a woman had been unsuccessfully trying to register her child that was born out of wedlock for 14 years.⁵¹

The situation is particularly complex and sensitive for Yezidi women who have had children as a result of being raped by members of ISIL. First, their communities may not accept the children because they have not been born to Yezidi fathers. The Yezidi religious doctrine mandates that both parents must be Yezidi for child to be considered as such.⁵² Second, if a Yezidi mother was to attempt to register such a child with an unknown father, Iraqi law provides that a child born to an unknown father is to be registered as Muslim.⁵³ As a result, these children are at risk of being rejected by the Yezidi community because they are associated with ISIL fighters who killed Yezidis and similarly, because their fathers are Muslim, they are registered and considered as Muslim rather than Yezidi.⁵⁴

Finding 6.2: Women face specific challenges as a result of their husbands' affiliations to ISIL, which can prevent access to identity documents

Interviewees explained that in some cases, a woman will face difficulties from her community and from the Government if her husband has affiliations with ISIL. One interviewee gave the following example:⁵⁵

[w]e had a case where the woman wanted to get documents for her child. She went to the police to do this. But the whole community didn't want to help her. The Mukhtar didn't want to help her, because her husband was a Daesh leader.

The woman needed the Mukhtar to provide evidence of her marriage in order to obtain proof of lineage. Without this support, she was left with no solution to obtain identity and civil documentation for her child.

Because of such repercussions, women are almost always forced to get a divorce.⁵⁶ Interviewees explained that women cannot progress their affairs without a divorce, particularly if their husband is wanted by the authorities. In the absence of a divorce, she will face difficulties at the CAD and in obtaining documents from the security authorities.

Divorce is also necessary for a woman to be able to get a residence card as the head of household. Divorcing is the only way a woman can obtain the card because authorities do not provide death certificates for those who have affiliations to ISIL and are missing; they simply stay missing, and the wives of those missing stay married.⁵⁷

⁴⁸ See Articles 24–29.

⁴⁹ See Articles 19–20.

⁵⁰ Interviewees explained that even though the process is confidential, the child's civil records will nonetheless reflect that he or she is a foundling.

⁵¹ KII: External Lawyer (Women's rights organization).

⁵² Seed Foundation, *Children born of the ISIS war* (Erbil, Seed Foundation, January 2020), p.12.

⁵³ See Article 20 of the National Card Law.

⁵⁴ See: Jane Araf, "ISIS forced them into sexual slavery. Finally, they've reunited with their children", *The New York Times*, New York (12 March 2021, updated 28 May 2021). See also: Dana Taib Menmy "We do not accept those children": Yazidis forbid ISIL offspring", *Al Jazeera* (24 March 2021).

⁵⁵ KII: IOM Lawyer (Kirkuk).

⁵⁶ Tafreeq Kada-ae. In Arabic: تفريق قضايا

⁵⁷ KII: IOM Lawyer (Ninewa).

FINDING 7:**Children with unknown fathers are at significant risk of statelessness**

The right to nationality is protected by the Iraqi Constitution, which provides that any person born to an Iraqi mother or an Iraqi father shall be considered an Iraqi.⁵⁸ The Iraqi Nationality Law provides that:⁵⁹

- A child born to an Iraqi mother or Iraqi father is Iraqi;
- A child born in Iraq to unknown parents will be Iraqi; and,
- A child born outside of Iraq to an Iraqi mother, may be considered Iraqi, subject to several qualifications, including Ministerial approval.

In theory, this should provide protection from statelessness for children with unknown or missing fathers. However, in practice, parents may be reluctant to register their children as foundlings, and therefore the right to nationality cannot be

FINDING 8:**The circumstances in which a child can obtain Iraqi nationality via their mother remain unclear**

Responses to questions about the ability of a child to obtain Iraqi nationality via their mother varied significantly. The questions asked of interviewees explored two scenarios: one in which a child is born inside of Iraq, to an Iraqi mother and non-Iraqi father, and one in which the child is born outside of Iraq to an Iraqi mother and non-Iraqi father.

Seven of nine interviewees acknowledged that the Iraqi Nationality Law enables a child to obtain Iraqi nationality via their mother where that child was born in Iraq, but many noted that it would be a more complex process, and some explained that it would result in a child being provided with a “specialist ID”.⁶⁰ The remaining two interviewees were unsure whether such a child would be entitled to Iraqi nationality.

Where a child is born outside of Iraq, four of nine interviewees were unsure whether the child would be able to obtain Iraqi nationality via his or her mother, whilst five of nine interviewees reported that a child would be entitled to Iraqi nationality. One of the five interviewees was a senior government official who reported that in both scenarios the process is largely the same and that approval is required from

realized without proof of lineage. Proof of lineage requires that both parents be known.

Therefore, in the most complex cases, including those of children with unknown fathers, proof of lineage is the issue. And because this step can be insurmountable, the step of obtaining proof of nationality is never reached or considered. See diagram in Finding 6.

The fact that the Iraqi Nationality Law provides for equal rights is meaningless unless lineage is proved first. This means, for example, that women who married foreign ISIL fighters and had children in Iraq are unable to register their children if their husbands/former husbands are now missing. Such children are unable to enjoy the right to Iraqi nationality and are therefore left at risk of statelessness.

the Minister or his delegate (the Manager of Naturalization) irrespective of whether the child was born inside or outside of Iraq.⁶¹ In contrast to this:

1. An interviewee explained that she had a case in which the children’s father was originally Egyptian but had been granted Iraqi nationality after living in Iraq and being married to an Iraqi woman. The children had presumably been born in Iraq and their mother was Iraqi. However, there was some discrepancy as to whether or not the father had in fact been naturalized. Instead of relying on the children’s mother’s nationality to confirm their entitlement to nationality, it was simplest to prove that the father had met the residency requirements for naturalization, and therefore secure the children’s own Iraqi nationality via their father. This was notwithstanding that the children’s father had died.⁶²
2. An interviewee explained that his organization does not offer legal support to children born outside of Iraq to non-Iraqi fathers, because the legal position as to the child’s right to Iraqi nationality is unclear.⁶³

⁵⁸ See Article 18.

⁵⁹ Article 3 provides that: “A person shall be considered Iraqi if: a. he/ she is born to an Iraqi father or an Iraqi mother; b. he/ she is born in Iraq to unknown parents. A founding found in Iraq shall, in the absence of proof to the contrary, be considered to have been born therein.” Article 4 provides that: “The Minister may consider Iraqi any person born outside Iraq to an Iraqi mother and an unknown or stateless father, if he chooses the Iraqi nationality, within one year from coming of age (reaching the age of maturity), unless he fails to do so, due to difficult circumstances, provided that he is residing within Iraq at the time of application for the Iraqi nationality”. Unofficial translation.

⁶⁰ KII: IOM Lawyers (Anbar).

⁶¹ KII: Government Official (Salah al-Din).

⁶² KII: IOM Lawyer (Salah al-Din).

⁶³ KII: External Lawyer, IGO (Kirkuk).

PART 3: RECOMMENDATIONS**RECOMMENDATION 1:****Advocate for solutions to complex cases, particularly in cases where a child’s father is unknown**

Interviewees explained over and over again that the most complex cases they see are the cases of children born to members of ISIL who are now unknown. The father may be Iraqi or otherwise foreign, but the child’s mother has no way of tracing the father or his family so as to obtain proof of marriage or proof of lineage. This caseload is recognized as being incredibly sensitive and includes children born to rape, sexual enslavement and forced marriage.

One interviewee said:⁶⁴

Organizations are always asking for the nationality laws to be changed. They say: what have the children done wrong? What have the women who don’t know their husbands done wrong?

How can she get a marriage certificate if she is married to a foreigner? She doesn’t know who he is, or where he is or where his family is.

We want a solution to deal with these cases. But they have given us nothing that we can use.

Recommendation 1.1: Advocate for legal reform to bypass the need to prove paternal lineage

The need for legislative change was reiterated by interviewees. They explained that the Courts were hamstrung; the Courts cannot grant proof of lineage without knowing the identity of the child’s father; and hence these cases are simply unresolvable. Accordingly, legal reform is required to create a mechanism to bypass proof of paternal lineage for these children.

It is recommended that work be undertaken with partners to engage with government to implement legislative change which directly addresses this issue and provides a solution. This is consistent with the recommendations of the Committee on the Rights of the Child (the treaty body responsible for implementation of the CRC), as set out in its 2015 Concluding Observations.⁶⁵

⁶⁴ KII: IOM Lawyer (Kirkuk).

⁶⁵ Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Iraq (CRC/C/IRQ/CO/2-4), (3 March 2015) [32].

⁶⁶ Unofficial translation.

The Committee calls upon the State party to amend article 4 of Act No. 26 (2006) with a view to ensuring that children can obtain their mother’s nationality without any restrictions and to

(b) Ensure that children from non-registered marriages are issued identification, and make legal amendments for the registration of every voluntary marriage, regardless of the faith of the couple; (emphasis added)

It is noted that Article 20(7) of the National Card Law provides that:⁶⁶

Procedures of registration in the civil information system of foundlings, children of unknown parentage, children of the absent and missing persons and illegitimate children shall be determined by instructions to be issued by the Minister.

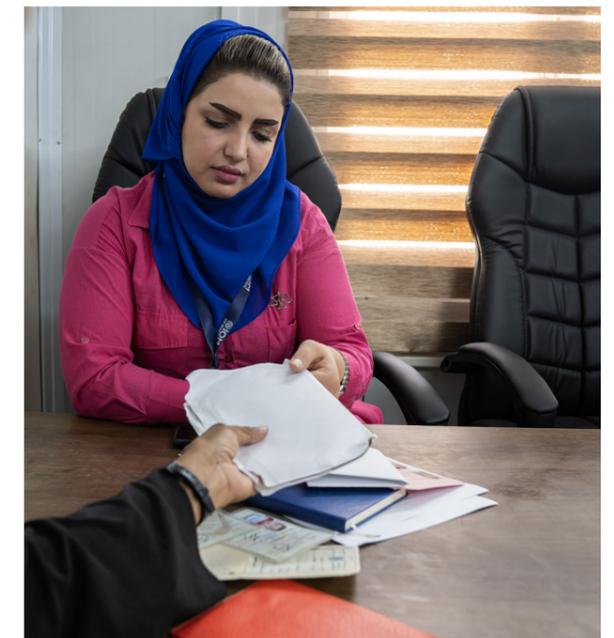


Photo 7: IOM Iraq

It is unclear whether the Minister has already published instructions under this provision; however, consideration should be given to whether the Minister can issue or amend any instructions to provide solutions to complex cases and avoid the need for a lengthy legislative reform process.

Another option that could be explored in lieu of legislative change is a practice direction. A judicial assistant interviewed clarified that where the Personal Status Law is silent on an issue, then the Court must make a decision in accordance with principles of Islamic Sharia law.⁶⁷ Accordingly, consideration could be given to a practice direction which articulates the application of Sharia law for these cases.

Recommendation 1.2: Undertake broad consultation to formulate the details of any proposal for reform

Questions of lineage have a significant cultural value, and therefore present specific challenges when it comes

to reform. Accordingly, any proposed solution will require broad consultation and it will be important to demonstrate how the rights of the child, and the safety and security of the child's mother, can be protected in the absence of knowledge or confirmation of paternal lineage.

In particular, consultation should be undertaken with:

- Affected women;
- Women's rights organisations which operate in various parts of Iraq;
- The judiciary;
- Government, including the Ministry of Interior and the office of public prosecutions.



Photo 8: IOM Iraq

RECOMMENDATION 2:

Advocate for a consistent and less onerous approach to DNA testing in proof of lineage cases

Whilst the importance of DNA testing is recognized and understood in the post-conflict landscape, different approaches are taken across Iraq. Furthermore, different approaches are taken by different Courts within governorates, and different judges within Courts. A consistent approach is required in order to give lawyers the ability to advise their clients on the process with greater certainty.

Recommendation 2.1 Undertake a decision analysis

It is recommended that recent proof of lineage decisions from Personal Status Courts and Personal Articles Courts be reviewed.

This aim of this review would be to:

1. Understand the prevalence of orders for DNA testing;
2. Ascertain the circumstances in which DNA testing is ordered, and similarly identify varying approaches as between Courts and judges;
3. Confirm whether requesting DNA is a barrier to proof of lineage cases being finalized.

Recommendation 2.2: Disseminate a practice direction

Grounded in the decision analysis evidence base, it is recommended that the judiciary disseminate a practice direction (or similar) which details:

- That care should be taken to ensure that a requirement for DNA testing does not act as a barrier to children accessing civil and identity documents; that is, it should not be the only mechanism to prove lineage;
- The circumstances in which DNA testing is required;
- Who or how many people should be tested.

Such a practice direction should clearly stipulate that DNA testing should only be ordered where it is in the best interests of the child, in accordance with Article 3 of the CRC. In order to assist judges in considering best interests, the practice direction could list questions or factors which judges are obliged to consider (in writing) before making an order for DNA testing.

In addition, consideration should be given to:

- Whether evidence from a greater number of witnesses might reduce the need for DNA testing;
- Whether DNA testing can be undertaken in locations across Iraq, given the difficulties cited in respect of travel to Baghdad.

It is understood that the President of the Supreme Judicial Council⁶⁸ and the Judicial Oversight Committee⁶⁹ have advocated for alternatives to DNA testing through law review-style publications, which provides a positive starting point for advocacy activities.

Again, it is recognized that DNA testing is a complex issue due to the importance of ensuring that lineage of a child is recorded accurately. Accordingly, it is recommended engagement be undertaken with affected people and with local partners in order to formulate proposals that are palatable from a cultural and societal perspective.



Photo 9: IOM Iraq

⁶⁷ KII: Judicial Assistant (Anbar).

⁶⁸ Supreme Judicial Council of the Government of Iraq. *Denial of parentage between the legal ruling and the DNA print* (Baghdad, 20 February 2023)

⁶⁹ Judicial Oversight Committee Study No. 110/Studies/2022, cited in UNCHR document, *Complex case scenarios and alternatives to DNA testing* (September 2023).

RECOMMENDATION 3:**Reduce the burden of travel by finding localized solutions to registration processes**

As noted at [Finding 5.2](#), applicants for proof of marriage and/or proof of lineage must travel to the CAD that they are registered at in order to obtain a copy of their copy of civil registration record to submit to the Court, and to apply for a unified national card. This requirement is particularly problematic for those who now live far away from their CAD. Interviewees explained that there is a “VIP Service” available that allows a person to apply for a unified national card at any CAD. This “VIP Service” costs approximately 200 United States dollars; however, on occasion, it is extended to vulnerable people at no cost, including the elderly who may be unable to travel.⁷⁰ Assuming that this option exists across Iraq, consideration should be given to extending it to vulnerable applicants as a matter of practice. This category might include:

- IDPs;
- Female-headed households;
- The elderly;

RECOMMENDATION 4:**Engage with Courts continuing to request Ikhbar**

As set out in [Finding 5.1](#), Interviewees explained that in most parts of Iraq, Ikhbar is no longer required. More than one interviewee attributed this to advocacy efforts by organizations, which demonstrates the impact that ongoing advocacy can have. However, Ikhbar is still required in some governorates (at least in Ninewa and Anbar, and possibly elsewhere).

RECOMMENDATION 5:**Pursue an advocacy and education campaign around the rights of the child to obtain Iraqi nationality via their mother**

As noted in [Finding 7](#), obtaining nationality is a secondary step, which is often not reached. The first step is obtaining proof of lineage, and this is particularly difficult for children with unknown fathers.

However, there are some cases in which a child is born to an Iraqi mother and a non-Iraqi father who is known, and present, but for whatever reason, cannot transmit his nationality to his child.

- The poorest families.

In addition or in the alternative, consideration could be given to:

- The establishment of mobile missions in areas where there are high concentrations of IDPs, including formal and informal camps;⁷¹
- A mechanism in which a person presents at their closest CAD, which can then make a request for the copy of civil registration record to be mailed to the person from their local CAD so as to avoid the need to travel;
- Opening more than a single local CAD in each governorate, taking account of population density; and/or
- Issuing a directive which mandates that CADs release copy of civil registration records and unified national cards to authorised persons, including lawyers or other family members who might find it easier to attend a local CAD

Further research should be undertaken to confirm which Courts are still requiring Ikhbar, and why. Following this, further targeted advocacy should be undertaken to encourage these Courts to cease the practice of requiring Ikhbar. Discussions with the Supreme Judicial Council may also assist in engaging with specific Courts.

Recommendation 5.1: Clarify the Government’s position

Engagement should be undertaken with the Government of Iraq to clarify its position and confirm whether the position explained by the senior government official (being that children born to Iraqi mothers inside and outside of Iraq are entitled to Iraqi nationality) is similarly adopted by CADs in other governorates.

Recommendation 5.2: Conduct an education campaign targeting public servants and lawyers that assist vulnerable groups

Once the position is clear, further work should be undertaken to ensure that public servants employed at the CADs are aware of the process and that lawyers providing legal assistance to IDPs and returnees are aware of the options and the relevant procedures. For example, short workshops or professional development sessions could be undertaken with representatives from both the CADs and lawyers from organizations that provide legal support, in order to explain the process, both in law and in practice, and address any queries.

RECOMMENDATION 6:**Amplify the voices of affected women so that any proposed solutions are fit for purpose**

In the wake of the conflict with ISIL, it is women who are particularly impacted by the barriers to obtaining identity and civil documentation for their children. Whilst the identity of both parents must be known (and so in theory, the absence of any parent can complicate the process), interviewees reported that most of their complex cases were those in which the child’s father is missing, dead, incarcerated or otherwise unknown.

Accordingly, in implementing or considering any of the above recommendations, it is vital that affected women be consulted and that their voices emerge clearly in any reform activities. It is recommended that further research be undertaken with women directly, via KIs and/or focus group discussions, to understand the issues and the value of any potential solutions from their perspective. For example, it would be helpful to understand the following from women’s perspective:

- Why they feel they cannot use the existing process to register foundlings;
- How they would like to register their children, in the absence of the child’s father;
- What measures they need in place in order to allow them to feel safe when travelling to Baghdad / their local CAD.

Such knowledge will contribute to ensuring that any reform actually meets the needs of women and children, as intended.

Recommendation 5.3: Advocate for reform to the Iraqi Nationality Law

Article 3(a) of the Iraqi Nationality Law gives men and women equal rights to transmit nationality to their children. However, Article 4 qualifies this right and sets out a separate regime for children born outside of Iraq to an Iraqi mother and unknown or stateless father. Whilst it appears that this provision might be being applied generously in practice, it nonetheless provides men and women with different rights to transmit their nationality and leads to situations in which children are at risk of statelessness. Accordingly, Article 4 should be removed, such that Article 3 operates without qualification.



Photo 10: IOM Iraq

⁷⁰ KI: External Lawyer, IGO (Baghdad).

⁷¹ See for example: UNCHR, *Access to civil documentation IDPs and IDP returnees in Iraq | 2022 – 2023* (24 August 2022).

PATHWAYS TO LEGAL IDENTITY

Exploring the legal framework and barriers to obtaining
lineage and nationality in post-conflict Iraq

IOM IRAQ

iraq.iom.int

iomiraq@iom.int

UNAMI Compound (Diwan 2),
International Zone,
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