

BARRIERS FROM BIRTH

Undocumented children in Iraq sentenced to a life on the margins



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The Norwegian Refugee Council (NRC) is an independent humanitarian organisation helping people forced to flee. In crises across 31 countries, NRC provides emergency and long-term assistance to millions of people every year. NRC promotes and defends displaced people's rights locally, nationally and on the world stage. NORCAP, NRC's expert deployment capacity, helps improve international and local ability to prevent, prepare for, respond to and recover from crises. NRC also runs the Internal Displacement Monitoring Centre in Geneva, a global leader in reporting on and advocating for people displaced within their own countries.

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Front Cover: Hana, mother of seven children, fled Hawija in 2017 as the Iraqi government retook the city now resides in a displacement camp in Kirkuk. Her three children born under IS rule do not possess birth certificates and, as a result, cannot obtain IDs. * Names throughout the report were changed due to protection concerns.

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Ahmed's son Mithaq was born in Hawija under IS control and was unable to obtain a birth certificate or civil ID. He was born with a mental disability. "Because he has no papers, we can't get him appropriate medicine. We can't move from Hawija for the same reason, so he is condemned to stay here without treatment," says his father.

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EXECUTIVE SUMMARY

More than one year since former Iraqi Prime Minister Haidar Al-Abadi declared 'victory' over the Islamic State (IS) group, an estimated 870,000 Iraqi children today remain displaced. Thousands were born under IS rule. About 45,000 children displaced in camps today do not have Iraqi-state issued birth certificates or other civil documents proving their legal identity. This is depriving them of their most basic rights as Iraqi citizens.

Children without these documents are at high risk of being sentenced to a life on the margins of Iraqi society – creating a neglected generation unable to travel between Iraqi cities and towns, barred from attending formal schools and obtaining educational certificates, and denied access to health care or state social welfare programs. If not addressed before reaching adulthood, these children risk being denied having their marriages recognised by the state, owning or renting property or having a fair chance at formal employment.

The reasons these children lack documentation vary. Many of their parents had documents confiscated by IS militants, others lost their documentation as they fled. Others had their documents confiscated by Iraqi security forces due to perceived affiliation with the extremist group. While IS was in control, the group also established its own version of state bureaucracy, which included registering births, marriages and documentation of life events. These IS issued documents are considered invalid by the Iraqi government.

Children and their families face continued challenges in obtaining civil documentation. Procedures to do so in Iraq are today even more lengthy and complex than they were before 2014. Civil directorate offices are strained and under-resourced. Obtaining a civil ID for the first time or renewing was known to take less than a week before the war with IS. Based on the Norwegian Refugee Council (NRC)'s experience, today in Mosul this process can take up to six months, if there are no additional complications.

Today, Iraqi women with either deceased or missing husbands are forced to undergo an even lengthier and more complex process of proving the circumstances of the death, and proof of marriage in order to have the necessary paperwork issued. This is necessary to then obtain birth certificates, nationality certificates or civil IDs for their children.

Compounding these problems is the desire for retribution, and related stigma and marginalisation of those whose family members or relatives – no matter how distant - are perceived to have had links to, or sympathy with, the Islamic State group.ⁱⁱ For children from families who are accused of IS affiliation by state security forces or neighbours in their areas of origin, obtaining documentation becomes nearly impossible, resulting in the collective punishment of thousands of children.

As the Iraqi government, and the international community, continues to

invest in the restoration of public services and institutions, ensuring the people most severely affected by the conflict with IS have the documentation required to access services will be critical to guarantee that Iraq's road to recovery is inclusive. This must include children. Failure to do so risks undermining prospects for social cohesion and exacerbating existing ethno-religious tensions that were dramatically worsened by the conflict with IS.

Key Recommendations

- The Government of Iraq should effectively delink 'security clearance' processes from the procedures to obtain civil documentation at an operational level.
- The Prime Minister's Office (PMO) should state publicly the right to legal identity is a universal right, enshrined in the Iraqi Constitution. This statement should emphasise that all Iraqis have the right to access civil documentation, regardless of affiliations of their relatives, and that denying IDs or services to families with children who were born under IS rule is a form of collective punishment and a violation of Iraqi law.
- The Ministry of Justice (MoJ) and the Ministry of Interior (MoI) should issue a national directive to allow mothers, for the next five years, to obtain birth certificates or 'proof of lineage' and civil IDs for their children without being required to present: the father's ID, father's nationality certificate, proof of the husband's death or missing person's certificate; and a formal marriage certificate.
- The international community should scale up support to legal assistance programmes, and provide technical support to the key line ministries, including the MoI and Ministry of Justice (MoJ) to enact policies that speed up access to documentation for children, including as a key part of their stabilization policies.
- Humanitarian agencies should ensure that distribution of humanitarian assistance is not contingent upon the possession of civil documentation, and that people in need who do not have documentation are not denied access or deprioritised for humanitarian assistance.



A child with asthma sleeping in a tent in a camp in Kirkuk. His mother does not have a civil ID and is unable to leave the camp to take him to the hospital. Ali's mother is afraid of sending him to a hospital with another adult because she has no proof of lineage and is worried that he could be taken away from her. © **NRC/Tom Peyre-Costa**



1 UNRECOGNISED BY THE STATE

More than a year after the defeat of the Islamic state group (IS) was declared in Iraq, more than 1.7 million people remain displaced,ⁱ 870,000 of whom are children. The more than four million people who have managed to return home still struggle to rebuild their lives. The UN estimates that 6.7 million Iraqis still require humanitarian assistance in 2019, and around half of them are children.ⁱⁱⁱ

Many of these children do not have proof of their legal identity, through state-issued civil documents. The impact of this on Iraqis who lived under and fled IS rule is a less visible, but fundamental challenge leaving internally displaced Iraqis and those returning home at risk of marginalisation. This lack of documentation is a challenge that is essential to overcome as the country faces the difficult path towards inclusive recovery and reconstruction. The Head of UNHCR in Iraq has described civil documents as “stepping stones on the road to recovery”.^{iv}

Although nationwide figures on the number of children lacking documentation have been difficult to obtain, based on existing assessments NRC estimates that more than 80,000 households across conflict-affected areas in Iraq have family members that are missing at least one form of civil documentation.^v The number of children is likely even higher; NRC has found that households with parents who are missing civil documents are more likely to have children also missing civil documents.^{vi} In displacement camps alone, about 45,000

children, or one in every five children, are now estimated to be missing birth certificates.^{vii}

NRC's Legal Support to Children in Iraq

Through its legal assistance program, NRC has helped issue nearly 8,000 legal identity and related civil documents for children affected by the conflict with IS in Iraq since 2016. Yet the most complicated cases— children whose parents are undocumented, are on one of the government's security databases or are perceived to be affiliated with IS— face much greater difficulties accessing legal documentation. NRC legal teams receive, on average, requests for around 170 cases like this per month across the country.

The majority of children in Iraq impacted by civil documentation challenges that have arisen in the aftermath of IS are currently under five years old, born during the period the group was in control. But the consequences of these policies, if not quickly addressed, have the potential to spiral. Lacking legal identity and civil documents puts children at increased risk of statelessness^{viii} and has been known to lead to exclusion from political, social, and economic life.^{ix}

Confiscated, lost, damaged or invalid

During their rule, IS routinely confiscated civil IDs, nationality cards and other state-issued documents from people. IS were also known to have developed and managed a complex bureaucracy, issuing their own documentation.^x The Iraqi government considers these documents invalid. Even being found in possession of them today puts Iraqi civilians at risk of harassment and arrest by security forces or civilian authorities.^{xi} Many displaced families, including women, reported having their IDs arbitrarily confiscated by Iraqi security actors and intelligence officials after fleeing IS controlled areas and upon arriving or residing in camps, often leaving them confined to camps with nothing to prove their identity.^{xii} Others lost their documents as they fled during the Iraqi and Coalition-backed military operations to retake territory from IS. These factors have all contributed to the number of people missing some form of civil document.

Hana, Displacement Camp, Kirkuk

Hana, mother of seven children, fled Hawija in 2017 as the Iraqi government retook the city, one of the last remaining IS strongholds, to a camp in Kirkuk governorate. Intelligence officials confiscated her civil documentation after she arrived in the camp. She says

her husband joined IS while the group was in control, but he died in an airstrike with her eldest son in 2017. Now she and her children are alone and unable to leave the camp.

Her three children born under IS rule do not possess birth certificates and, as a result, cannot obtain IDs. She says her youngest child has asthma, but she is unable to take him to a hospital outside the camp. She is afraid of sending him to a hospital with another adult because she has no proof of lineage and is worried that he could be taken away from her.

She tried to seek assistance from a lawyer working with a humanitarian organization to start the procedure to formally divorce her husband and try get her ID back and obtain documents for her children, but they said they were unable to assist because of accusations of IS affiliation. She says the humanitarian assistance she receives is limited because priority is given to those who can provide identification.



A child takes his first steps in Hammam Al-Alil camp near Mosul. Children see their movement several limited when they lack civil documents. © **NRC/Tom Peyre-Costa**



2 DEPRIVED OF THEIR RIGHTS AS IRAQI CITIZENS

The lack of legal identity and related civil documentation for Iraqis who lived under or fled from IS rule is a significant barrier to exercising their full rights as Iraqi citizens. One of the most basic human rights, the right to be recognised as a person before the law and possess legal identity, is fundamental to enabling an individual to claim other rights, including the right to a nationality, freedom of movement, and to access a range of basic services such as education, healthcare and adequate housing.

2.1 Denied Public Services

A combination of the civil ID and other state-issued documents, including the Public Distribution System (PDS), nationality card, and housing card, are required to access a range of public services in Iraq, including for children. While the application of the official requirements fluctuates- often at the whim of civil authorities- children from areas formerly controlled by IS, whether in or out of camp, are often denied basic services like education and medical services as a result of lacking civil documents.

In 2019, NRC and others documented the impact of lacking civil documents on Iraqis ability to access basic services and found that Iraq's undocumented population is regularly denied basic rights as Iraqi citizens in areas formerly under IS control.^{xiii}

Education

Registering children in Iraqi schools requires several types of civil documents, including the ID of the student, as well as the IDs of both of his or her parents. Sitting exams or obtaining graduation certificates is often not allowed without a civil ID. In the case of a deceased or missing father, an official death certificate must be provided to the school administration proving the circumstances of the death. Families who do not possess these documents today almost immediately raise questions or suspicions of association with IS group, stigmatising them within their own community.^{xiv}

The Ministry of Education issued a directive in 2018 allowing the registration of undocumented children in schools across Iraq.^{xv} Yet a recent study by NRC and others show that nearly one in five households living outside of camps who reported having children with documentation issues faced challenges registering their children in school.^{xvi} This problem is likely even worse in camps, where documentation issues amongst displaced children are more acute.

“Nearly one in five households living outside of camps who reported having children with documentation issues faced challenges registering their children in school.”

Nada, Displacement Camp near Mosul

Nada, a mother of seven, originally from Qayyara district in Ninewa, now lives in a camp near Mosul. She said she lost her documents, including her marriage certificate, her civil ID, and the IDs of five of her children, as she was fleeing from the fighting. Nada's husband abandoned her and her children and got remarried shortly after they arrived in the camp. Nada has not heard from him since. She is unable to get her children's civil IDs reissued as she requires proof of lineage and the civil ID of the father is not accessible. The high transportation costs to reach the civil directorate office has made it even more difficult to try.



Nada, displacement camp near Mosul

The only government services available in the camp for Nada's daughters, including schooling and food distribution, are inaccessible. The school in the camp requires children to provide documentation to enroll and government assistance is only distributed to those with civil IDs. © **NRC/Tom Peyre-Costa**

As a result, it is difficult for her and her children to move outside the camp. The only government services available in the camp, including schooling and assistance to female headed households, are inaccessible to Nada and her children. The government run school in the camp requires children to provide documentation to enrol and government assistance is only distributed to those with IDs. Nada's only form of subsistence is in-kind aid she receives from NGOs; which she says she's often forced to sell to feed her family. She says, 'My children lost their future and their dreams'.

She told NRC she was questioned about whether her husband was affiliated with IS or if her child was conceived outside of a marriage. The hospital staff also threatened to keep her new born in the hospital until the father presented himself. Eman gave birth at home without a doctor to supervise the process. Her daughter, Abeer, is now more than a year old and still does not have a birth certificate or any other form of ID. Her daughter recently fell ill and Eman wanted to take her to a hospital in one of the camps, hoping they had less stringent documentation requirements. However, she was unable to pass through the checkpoint on the way to the camp.

Health Services

While national policies do not officially require documentation when seeking medical assistance, it is often required by medical officials when conducting serious procedures. Basic health facilities are available in many camps, but more specialised care often requires travel to another city or town which poses additional challenges given restrictions on freedom of movement (see below).

In practice, the documentation requirements in hospital and medical facilities around the country vary greatly. In one case documented by NRC, Eman, a woman from west Mosul whose husband was missing, could not give birth in two different hospitals because she did not possess a valid civil ID or a marriage certificate.

Undocumented newborns in Hawija, Kirkuk denied vaccinations

According to a local health directorate official in Hawija, women without documentation are allowed to give birth in hospitals in the area. However, hospitals will not issue a birth certificate for the child unless both parents are carrying their civil IDs. Without a birth certificate, one health official said that newborns are not able to receive vaccinations, reportedly resulting in the emergence of diseases amongst children, such as leishmaniasis, scabies and measles, that were not present in the area before the IS period. Further exacerbating the challenges facing women to obtain birth certificates for

their children is the ability to reach a hospital, particularly for women living in rural areas. The road between Hawija city and the surrounding villages is closed after 19:00, so women who go into labour in the evenings have no choice but to give birth at home. This delays the issuance of the birth certificate, and if left for more than 40 days, requires women to go to court with witnesses to obtain the alternative proof of lineage certificate.

2.2 Risk of Isolation and Stigma

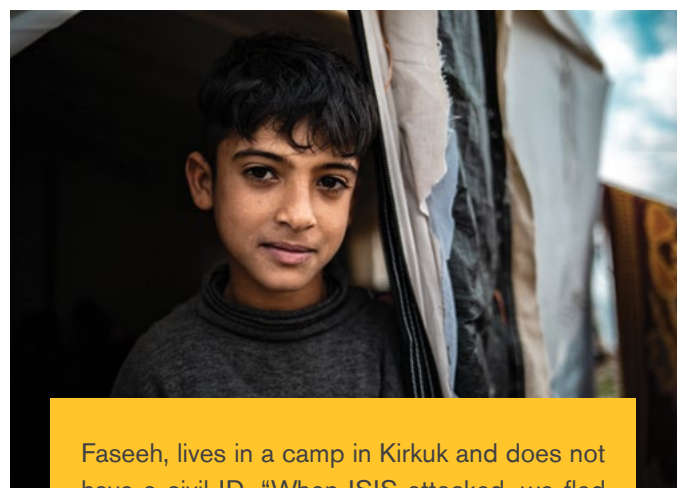
Men, women and children who lack civil IDs are commonly suspected by security forces and fellow community members to be affiliated with IS. This has serious consequences for their relations with both authorities and the wider community. The risks of community stigmatisation, isolation, and exclusion are amplified for female-headed households, who often lack strong community support networks to navigate potentially hostile environments.^{xvii}

Freedom of movement is also severely limited when lacking civil documents, restricting IDPs from returning home, but also traveling between cities and towns. Iraqis without documentation are at increased risk of arbitrary arrest or detention at checkpoints.^{xviii} This often deters people with documentation issues from traveling outside their immediate surroundings to avoid police or other authorities, increasing

their isolation and further undermining their access to essential services. These same limitations on freedom of movement have also impeded displaced Iraqis—including women—from traveling to civil directorates too far a distance from where they reside to renew or obtain their civil IDs or their children's.

Fatima, Anbar

Fatima, woman in Anbar, initiated the procedure to obtain her son's ID in her area of displacement. When she went to her original area to pick up her file, they had written "Son of Daesh" on it and returned it to her. Authorities then told her to send her oldest son alone to collect his ID, but she was too afraid because she believed they would arrest him.




Faseeh, lives in a camp in Kirkuk and does not have a civil ID. "When ISIS attacked, we fled to Kirkuk. We didn't take anything with us but what we were wearing. My brothers and I can't leave the camp, they don't let us go home to Hawija," he said. © **NRC/Tom Peyre-Costa**



Nada's two children, standing by their tent in a camp near Mosul, lack the civil IDs to attend school in the camp.

© NRC/Tom Peyre-Costa

A large, bold, orange number '3' is positioned on the left side of the image. The background is a photograph of a road with a white dashed line, leading towards a blue sky. The right side of the image is a solid orange color.

3 ROADBLOCKS TO SOLUTIONS

Iraq's current civil documentation system is ill-equipped to respond to the circumstances and challenges in post-IS Iraq. Furthermore, there are political as well as legal, and administrative hurdles that actively impede children who were born under or fled IS rule for accessing documentation. This is resulting in the deprivation of legal identity and related civil documents of thousands of Iraqi children.

3.1 Complex, Under-resourced and Bureaucratic: Processes to obtain documentation after the conflict with IS

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. Additionally, a combination of four documents (commonly referred to by many Iraqis as the 'golden square') which include the civil ID, nationality card, Public Distribution System (PDS) card, and housing card, are often required to update one another and access a range of services in Iraq. In the absence of a centralised, digitised civil registry, civil directorates often still rely on paper documents, which if lost significantly complicates the procedure.

Undocumented marriages under IS and the challenge in proving lineage

A significant number of marriages are estimated to have taken place while IS was in control, many of which were administered under IS, but are not recognised by Iraqi authorities. One study by Iraq's Ministry of Interior estimated that as many as a third of marrying-age Iraqi women in IS controlled territory married during this period. Some of them are in possession of IS-issued marriage certificates, many have lost these documents or are afraid of being caught by security forces with them, leaving them with no proof of formal partnership. Though Iraqi citizenship can be inherited through either one's mother or father, lineage in Iraq is established through an official marriage certificate.

Registering a marriage in a state court enables a couple to change their marital status on their legal identity and civil IDs, but is a complicated and lengthy process. If a couple are in possession of both of their civil IDs and are able to produce two witnesses, they can retroactively register their marriage in an Iraqi Personal Status Court and obtain a marriage certificate. Only then can they begin the process of updating their marital status on their civil IDs and subsequently obtain a birth certificate for their child. At present, without the marriage certificate and both civil IDs, registering a birth is either delayed until these documents or suitable alternatives are obtained, or not possible at all.

Role of tribal and religious leaders

In Iraq, religious and tribal leaders play a critical role in bearing witness to family life events, such as marriages or births, and documenting proof of lineage. In many cases a sheikh may administer a marriage, particularly in rural areas, which should eventually be legalized through an administrative court. This was common while IS was in control, as people did not have access to the Iraqi state courts to legalize these marriages. Other community leaders such as mukhtars or wujiha are often called on by community members to provide witness to the fact of a child birth and proof of lineage, as well as other procedures that have documentation requirements, including inheritance and property ownership. These people are often pivotal figures in the 'security clearance' process to return, and are relied on by security forces to declare that a family is not associated with IS. IDPs are often required to obtain permission or a character recommendation from their mukhtar to return, who also consults other members of the community on their behalf.

Deceased or missing fathers

Regardless of whether the child's father is missing, imprisoned or dead, without government-issued proof of the event, mothers are very often unable to obtain

civil documentation for her children, even if she has a government-issued marriage contract.^{xxiv} This includes obtaining a birth certificate, and eventually a civil ID for her child. If the child's father was killed during the conflict or went missing, with no proof of the circumstances, transforming an IS-issued marriage certificate into a state-issued one, is incredibly difficult.

As an indication of the scale of the problem, UN and Iraqi authorities have estimated that anywhere between 29,000 and 68,000 civilians may have been killed in military operations against the IS group.^{xxv} The International Committee of the Red Cross (ICRC) has named Iraq, which has faced decades of international and civil conflict, as the country with the highest number of missing persons in the world.^{xxvi}

If no proof of the death exists, an individual must declare a person missing for a set period of time before a court will agree to issue a death certificate. This involves 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. The Criminal Investigations Court will open a file on the case and the family will be required to post a public notice of the missing person in local newspapers. In theory, after two years of no news from the missing person, a relative will be able to request from the Personal Status Court that the missing person be declared dead, but the reality is this usually takes up to four years.

Noor, Hamam Al-Alil camp, Ninewa

Originally from a village outside Qayyara, Noor and her family fled to Mosul when her village was being retaken by the Iraqi military during the summer of 2016. In July 2017, towards the end of the Mosul offensive, she fled the Old City with her children. She has three children between the ages of four and eight. Her oldest child, who was ten years old, was killed during airstrikes on the city. Noor left her husband behind and assumed he died but is unsure. Noor lost her civil ID in a transit camp, but she has a government-issued marriage certificate, as well as the civil IDs of her two older children, but her four-year old daughter only has a 'birth notification' from a hospital in Qayyara and no civil ID.

She said because her husband is absent, she has to produce a death certificate to start any civil documentation procedures for her children. She says, "I can't obtain a death certificate because I will be asked about the body of my husband. I have no information; I don't know where to go." Noor heard about a procedure to formally dissociate herself from her husband but feared potential retaliation from her husband's family.

Meanwhile, lack of ID impacts the life of her family in the camp. "I'm asked for my ID during food distributions. When I say I don't have it, I'm the last one to receive items and sometimes there is nothing left. I don't have access to enough

humanitarian aid, and I can't move freely." She also described the impact of her movement around the country, "At checkpoints, some officers say: 'Maybe you or your daughter are not Iraqi.'"

3.2 Strained civil directorate offices and courts

With IS no longer controlling territory in Iraq, the Iraqi government has gradually started to re-establish public institutions in areas formerly controlled by the group. The consequences of the conflict have put significant strain on personal status courts, civil status directorates, and administrative bodies responsible for documentation procedures. This significantly affects the ability of displaced Iraqis and those returning home to access these services. The total absence of some administrative services in formerly IS-held areas, coupled with the sheer number of people who lost documents over the last four years has caused a serious backlog. NRC's lawyers have found that although many courts often work two shifts per day, they are still unable to meet the needs of people. In addition, these offices are also known to be chronically understaffed.

Even years after the start of Iraq's most recent displacement crisis, civil ID needs remain high. For example, the Kirkuk Personal Status Court issued twice as many birth certificates during the spring in 2018 compared to the

spring in 2017.^{xxvii} In Mosul, civil directorate offices allocate different neighbourhoods to specific days each month, which in practice adds an extra month to each procedure. Today in Mosul, it may take up to six months to obtain a copy of a single record required as only one part in a multi-step process to obtain a new ID. Many personal status records in the civil status directorates were destroyed during the conflict with IS, which means that documents now have to be sent from Baghdad.^{xxviii}



A deserted street in Sinjar town

Sinjar, at the foothills of the mountain, still lies in ruins more than three years after it was retaken. Remnants of bombs from airstrikes and booby traps laid by IS are still strewn in the rubble. Education and health services are limited, and the civil directorate office for the town, where returning families can obtain and renew civil documents to access these services, has still not reopened. © **NRC/Tom Peyre-Costa**

Closed civil directorate office in Sinjar town

Though Sinjar town was retaken by the Iraqi authorities in the early years of the crisis, the civil directorate office in Sinjar town has still not reopened. Before the crisis, the Sinjar civil directorate served an estimated 130,000 people in the town and surrounding area. Returns to Sinjar have been slow, but the only directorate in the area is in neighbouring Sinuni, more than one hour away. The Sinuni civil directorate office now services people from Al-Andalous, Khanasor, Hatan, Al-Qaddisya, Yarmouk, and Al-Aruba, as well as those who have files in the Sinjar town directorate. This has caused severe overcrowding. This has caused severe overcrowding. The Sinuni directorate only recently increased its open days from one to three days a week; two days are set aside to provide services to Sinuni area residents still in camps. To make matters worse, transportation costs between Sinjar and Sinuni are high—particularly for an entire family—when compared livelihood opportunities are hard to come by, adding another layer of challenges to obtaining civil documents. In addition, Yazidi women in particular, have reported to NRC's legal teams feeling too afraid and traumatised to travel outside of the town.

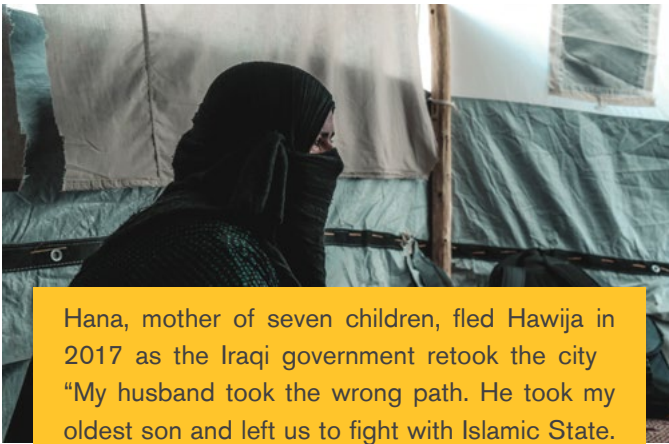
3.3 Fuelling Corruption and Fraud

The scale of the documentation problem means that this system, which was cumbersome and complicated to navigate even before the conflict, is not adequately functioning. The long backlog, as well as the unclear and opaque procedures to obtain civil documentation and security clearance, has made the system even more vulnerable to corruption. A number of people who have successfully obtained civil IDs for their families reported being asked to pay bribes ranging from 100,000 to a million Iraqi Dinars (84 to 840 USD) to civil directorate officials if they wanted to avoid delays in their cases. One woman from Shirqat district, living in Qayarra Air Strip camps told NRC,

“An official at the civil directorate asked for 800,000 IQD (670 USD) to issue three IDs and to change my ID status from married to widow. I gave him the money, but he stole it. If I complain, I'll go to prison.”

The pressure to pay bribes is not limited to the directorate. Others reported being asked to pay bribes to have their names removed from security database. Families often believe this is the only way to ensure their civil ID applications are processed. One woman who used to live in Kilo 18 camp in Anbar said,

“They ask for bribes because our husbands were with IS. They tell us his name is in the database, and so they ask for bribes. I've heard of families who got clearance for five or six million IQD (\$4-5,000).”



Hana, mother of seven children, fled Hawija in 2017 as the Iraqi government retook the city. "My husband took the wrong path. He took my oldest son and left us to fight with Islamic State. They are both dead now, and I am alone in this camp with my young children. Three of them don't even have IDs. My husband destroyed our lives, me and my children suffer," the widow says.

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3.4 Counter-Terrorism Policies and Security Procedures: tools of collective punishment

Compounding the bureaucratic and resourcing issues, civil documents are not renewed, updated, or reissued for anyone who is on or has a close relative on the national security database or on any of the 'wanted' lists held by security actors or government-aligned militia in an area retaken from IS. Women with male relatives on one of these lists are often barred from obtaining or updating their civil IDs,^{xxix} or are fearful of visiting the authorities and therefore do not apply, in turn impeding their ability to obtain a birth certificate or ID for their children.

The exact number of people on these lists is unknown, however Human Rights Watch has estimated that these policies could impact at least 100,000 Iraqi citizens.^{xxx}

Criteria that determine who is added to the national security database are unclear and the accuracy of this database has been called into question. Placing an individual on the list offers ample opportunity for manipulation and exploitation, as it appears no actual evidence of claims is required to be presented in the process, they lack the most fundamental safeguards and it is extremely difficult to appeal or undo. One's name could appear on one of these lists if community members suggested his name to take revenge for a personal dispute or tribal grievances. Once a name is on one of these lists, individuals are at heightened risk of detention and even enforced disappearance. People with similar names as those on 'wanted' lists are also at similar risk.^{xxxi}

In the last few years, there have been unclear and at times contradictory reports of directives issued by the Iraqi authorities on the issuance of civil IDs for families, including children with perceived affiliation to IS group members.^{xxxii} In Anbar, one official of the civil status directorate reported receiving specific directives from the Ministry of Interior to issue civil IDs for children, even if they are perceived to be affiliated with IS.^{xxxiii} In contrast, across Ninewa, some families believe there are directives instructing the opposite.^{xxxiv} An individual often only learns about whether he or she has security clearance after visiting the civil status directorate in their area of origin. NRC has been unable to obtain any of the directives in question and is unable to confirm the content of them.

Nevertheless, Iraqi counter-terrorism laws are applied broadly^{xxxv} and are often used by Iraqi authorities to justify these measures--including requirement to undergo a security clearance procedure and denial of ID. In short, they largely "[ignore] the principle of individual criminal responsibility."^{xxxvi} Even public sector and other civilians who were employed by IS's bureaucracy have been prosecuted on terrorism charges.^{xxxvii} Human rights groups have consistently pointed out that these policies amount to collective punishment.^{xxxviii}

Tribal agreements and the treatment of women and children accused of IS affiliation

In some areas in Iraq, a deterioration in rule of law, marginalization of Sunni communities, and lack of confidence in public institutions has strengthened tribal identity.^{xxxix} A number of tribal agreements have been negotiated across villages, towns, and cities in Ninewa, Salah Al-Din, and Anbar governorates to respond to IS crimes in these communities. Despite meaningful efforts to work with tribal leaders to bar the use of collective punishment against family members of alleged IS members, including amending tribal laws to prevent revenge attacks,^{xl} many tribal agreements still sanction this practice,^{xli} including against women and children. This has included the confiscation and

destruction of property of perceived IS families, expulsion from communities, and revenge attacks. National laws in Iraq explicitly bar these practices.

NRC has witnessed the ripple effects of these policies on local communities through its legal assistance programming in Iraq. For example, local mukhtars in Ninewa have told NRC that they often fear providing support for documentation to families who they believed may either be on a security database or have suspicions of supporting IS group. They cite fear that authorities could prosecute them with terrorism charges under these laws. Such threats have also been made by Iraqi security forces against lawyers including aid workers who provided legal assistance to displaced families to reclaim government-issued IDs that were lost, damaged, or destroyed during the war, alleging they are aiding "IS families."^{xlii}

International rights and obligations

The Universal Declaration of Human Rights affirms every person's right to a nationality.^{xliii} Iraq government has made come commitments to align to international standards on this matter. This includes ratifying the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the

Rights of the Child (CRC), which stipulates that every child has the right to be registered at birth, acquire nationality and preserve his or her identity.^{xliv} In cases where a child is deprived of this, the responsibility is on the state to “provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”^{xlv}

In addition, the UN Guiding Principles on Internal Displacement, state that authorities are responsible to ensure displaced persons are able to be issued identity documents and not “[impose] unreasonable conditions, such as requiring the return to one’s area of habitual residence in order to obtain these or other required documents.”

^{xlvi} The Convention on the Elimination of Discrimination against Women (CEDAW), which Iraq has also ratified, also requires states to “guarantee conflict-affected women and girls equal rights to obtain documents necessary for the exercise of their legal rights and the right to have such documentation issued in their own names, and ensure the prompt issuance or replacement of documents without imposing unreasonable conditions.”

National Legal Framework

The 2005 Iraqi Constitution states that Iraqi nationality can be inherited through either patronal or maternal lineage and emphasizes that all “Iraqis are equal

before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status,” ^{xlvii} suggesting that recent circumstances should not impede Iraqi children from laying claim to their Iraqi citizenship and associated documentation. Iraq’s Personal Status Law of 1959, ^{xlviii} which is influenced, in part, by sharia law and Islamic jurisprudence, treats lineage as passed through wedlock.^{xlix} Administrative requirements requested by Iraqi authorities to issue civil identification documents, which are governed by Iraq’s Birth and Death Registration Law and Civil Code, heavily rely on existence of documentation possessed by the father. Iraq’s 2008 National Policy on Displacement largely mirrors the UN Guiding Principles on Internal Displacement and the Inter-Agency Standing Committee (IASC) Framework on Durable Solutions.ⁱ

Federal laws in Iraq clearly prohibit the use of collective punishment and emphasize that person guilty of a crime will be held responsible individually, and Iraqi customary law also forbids reprisals, which it defines as “a reaction from one party to the adverse party which undertook an act that led to damages thereto with the aim of revenge and deterrence.”ⁱⁱ



Ayub and his brother Ahmed, both out of school and looking out the window of their house in Hawija. Ayub and Ahmed lost their IDs while fleeing the fighting in Hawija. Their father is unemployed and unable to afford to retrieve them, mainly due to the transportation cost. © **NRC/Tom Peyre-Costa**



CONCLUSION AND RECOMMENDATIONS

Without the political will and resources to enable Iraq's youngest citizens to claim their right to legal identity and civil documents, these children risk of forever living on the margins of Iraqi society. There remain significant political, legal and administrative challenges that need to be addressed to solve this issue. But it is more critical now, during this recovery and reconstruction period, the Government of Iraq, with the support of the international community, establish policies that are responsive to post conflict realities. In the absence of this, a generation of Iraqis will face a cycle of exclusion and discrimination, undermining prospects for stability in Iraq in the future.

Government of Iraq, including Office of the Prime Minister, Ministry of Interior, Ministry of Justice and other relevant line ministries:

- As a matter of urgency, take all measures necessary to ensure children are able to obtain legal identity and associated civil documents as swiftly as possible, including by:
 - Issuing a directive by the Ministry of Justice creating an 'amnesty period' allowing, at least for the next five years, Iraqi women to obtain birth certificates or proof of lineage from the court for children without being required to present the father's ID, nationality certificate, proof of his death or missing person's certificate, or a state-issued marriage certificate. Alternative requirements could include:
 - » consistently allowing the mother's family or other witnesses to testify, in order to provide a marriage certificate and child's proof of lineage/birth certificate.
 - Issuing a directive by the Ministry of Interior that civil directorates consistently allow state-issued birth certificates or proof of lineage alone to be sufficient to obtain civil IDs, nationality certificates or the new 'unified ID' (which combines civil ID with nationality certificate) for children born in the last five years - without also requiring the father's civil ID, father's nationality certificate or his death certificate/missing persons certificate.
 - Ensuring these directives are public and disseminated to all relevant offices at the district level and amongst displaced persons.
 - Stating publicly that the right to legal identity is a universal right to anyone born to an Iraqi father or to an Iraqi mother, as enshrined in the Iraqi Constitution. This statement should emphasise that all Iraqis have the right to access civil

documentation, regardless of affiliations of their relatives, and that denying IDs or services to families with children who were born under IS rule is a form of collective punishment and a violation of Iraqi law and the Constitution.

- ° Delinking 'security clearance' from the procedures to obtain civil documentation at an operational level
- Establish a clear appeals system for those who have been denied security clearance and access to civil documents; disseminate information on the procedure to ensure transparency
- Ensure the minimum time frame needed for acknowledge of cases of death, and issuing death certificates, is reduced from four to two years, as per Iraqi law.
- In recognition of the backlog at civil directorate offices, do not penalise Iraqis travelling on old or expired IDs or other civil documents
- Enable displaced people to apply for civil documentation throughout the country, rather than requiring they return to their city of origin, including by ensuring that legal protection organizations can continue to provide power of attorney to IDPs rather than requesting their presence in person at civil status directorate offices.
- Reinstitute and scale up resources to a mobile court system in areas that are estimated high civil documentation needs, including in camps
- Scale up allocation of resources to civil directorate offices and personal status courts, including for sufficient staffing and reopening courts and offices in retaken areas
- Ensure children without documentation are able to attend school, sit exams, and receive certificates, including in camps
- Refrain from denying anyone without documentation medical services, including the ability to deliver births in hospitals; establish more flexible identification procedures if required
- Ensure that all directives related to documentation issues in Iraq are made publicly available and disseminated widely to relevant offices and directorates at the district level and amongst displaced people. This should include previous directive issued by the Ministry of Education allowing children without documentation to attend schools

- Ensure all newborns in Iraq have access to vaccinations, and that this is not contingent on possessing a birth certificate
- Increase trainings and certifications of midwives, who are able to issue 'birth notifications' (biyaan al-wilaada) which can then be transformed into birth certificates, particularly in areas where access to hospitals is difficult

Donor governments and diplomatic missions in Iraq:

- Donor governments should scale up support to legal assistance programming, and provide technical support to the key line ministries, including the Ministry of Interior and Ministry of Justice (MoJ) to enact policies that speed up access to documentation for children, including as a key part of their stabilization policies.
- Push reforms in the Iraq's civil documentation system with the relevant Iraqi authorities when engaging in dialogue on stabilization, recovery and reconstruction efforts, including delinking the security clearance process from procedures to obtain civil documentation
- Refrain from enacting policies that impede humanitarian agencies ability to deliver principled, needs based-assistance

Humanitarian agencies:

- Ensure that distribution of humanitarian assistance is not contingent upon the possession of civil documentation, and that people in need who do not have documentation are not denied access or deprioritised for humanitarian assistance
- Document cases where lack of 'security clearance' has impeded the ability to issue civil documents to build an evidence for advocacy with the authorities, while ensuring protection of personal data and information
- Work with Iraqi government actors, donors, and rights groups to set up a task force that works to operationalize policy solutions to children's legal identity challenges at the governorate and district level

- i. According to IOM's Displacement Tracking Monitor, there were 1,744,980 IDPs as of 28 February 2019. This figure was calculated based on previous estimations that half of Iraq's displaced are children.
- ii. The reasons for this perceived affiliation are often arbitrary, ranging from the family having lived in an area (or being from a tribe) that was a stronghold of support for IS; having fled an IS held area at a late stage in the hostilities; to male members of the family having been arrested as they fled IS-held territory.
- iii. Humanitarian Response Plan, Iraq, February 2019.
- iv. UNHCR, Thousands of displaced Iraqis vital obtain legal documents with UNHCR's help, 22 January 2018.
- v. This was calculated based on data collected by REACH in August 2018 which found that estimated 8% of returnees and displaced Iraqis outside of camps and 10% of Iraqi households residing in camps report missing one form of civil documentation; Multi-Cluster Needs (MCNA) Assessment: Returnees, Iraq, REACH, September 2018; MCNA: In-Camp IDPs, Iraq, REACH, September 2018; MCNA: Out-of-Camp IDPs, Iraq, REACH, September 2018. NRC's calculation applies the percentages above to IOM DTM and CCCM Cluster figures from February 2019: 701,997 returnee households; 290,830 displaced households, of which 200,489 were out-of-camp and 90,341 households were in camp.
- vi. Forthcoming publication, "Unlocking Iraq's Civil Documentation System," Norwegian Refugee Council, Danish Refugee Council, International Rescue Committee, May 2019.
- vii. Calculations based on IDP Camp Profiling- Round XI Dataset, REACH, Iraq, 18 March 2019. National level analysis was weighted per REACH's weighting guidelines; about 49% of the population was below 18 years old. When adjusted for national level analysis, the weighted national average of minors is 48% of the formal camp population in Iraq. Based on the Formal Site Monitoring Tool, 442,531 individuals remain in formal camps in Iraq as of February 2019. Based on these calculation, 212,415 individuals are children. Across the sites surveyed in REACH's February 2019 camp profile, 20.39% of adult respondents with children under 18 reported their children to be missing their birth certificates. Adjusting for national analysis, the national average for children in formal sites missing birth certificates is 21.28%, which when applied to the 212,415 children in formal camps, NRC estimates is approximately 45,202 individuals.
- viii. More on the link between access to legal identity and civil documents, displacement and statelessness can be found here: Albarazi, Zahra; van Waas, Laura, Statelessness and Displacement--

Scoping Paper, Norwegian Refugee Council and Tilburg University. 2018.

ix. Harbitz, Mia; Tamargo, Maria del Carmen, "The Significance of Legal Identity in Situations of Poverty and Social Exclusion- The Link Between Gender, Ethnicity and Legal Identity, Inter-American Development Bank, Institutional Capacity and Finance Sector, Institutional Capacity of the State Division, November 2009.

x. This has been widely documented by academics, researchers and journalists, some example include: Callimachi, Rukmini, The ISIS Files, The New York Times, 4 April 2018; Revkin, Mara, ISIS' Social Contract: What the Islamic State Offers Civilians, Foreign Affairs, 10 January 2016.

xi. HRW or Amnesty report? <https://www.reuters.com/article/us-mideast-crisis-mosul-children-idUSKBN13A17F>

xii. The Condemned: Women and Children Isolated, Trapped and Exploited in Iraq, Amnesty International, 2018.

xiii. Forthcoming publication, "Unlocking Iraq's Civil Documentation System," Norwegian Refugee Council, Danish Refugee Council, International Rescue Committee, May 2019.

xiv. Barriers for Mothers Seeking Civil IDs for their Children in formerly IS-controlled Territories of Iraq, Proximity International, Norwegian Refugee Council, October

xv. Iraq Humanitarian Situation Report, UNICEF, December 2018.

xvi. Forthcoming publication, "Unlocking Iraq's Civil Documentation System," Norwegian Refugee Council, Danish Refugee Council, International Rescue Committee, May 2019.

xvii. Reasons to Remain: Categorizing Protracted Displacement in Iraq, International Organization for Migration (IOM), Returns Working Group: Iraq, Social Inquiry, November 2018.

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

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xxv. Estimates based on UN Casualty Figures for Iraq for the Month of August 2017 and The Statistics Portal: Number of Documented Civilian Deaths in the Iraq war from 2003 to February 2019.

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Back Cover: Two siblings in their home in Hawija. They
 lack civil documents and are unable to access public
 assistance in Iraq. © **NRC/Tom Peyre-Costa**

